

**Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims  
in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National  
Survey<sup>1</sup>**

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## ***Introduction***

This report explores the impact of that public discussions about immigration, the rise in anti-immigrant sentiment in the public discourse, and the increased federal immigration enforcement are having on immigrant crime victims and their willingness to seek help from courts, police, prosecutors, victim advocates, and attorneys. In particular, we are interested in understanding the experiences of immigrant and limited English proficient (LEP) crime victims in accessing the justice system.

To understand how increased immigration enforcement is affecting immigrant crime victims, we conducted on-line surveys with four different groups of professionals – judges, police, prosecutors, and victim advocates/attorneys. The goal was to learn about judges', law enforcement officials', prosecutors', and victim advocates' and attorneys' observations of differences in their work with immigrant and LEP victims and about immigrant victims' willingness or reticence to access help. The survey of victim advocates and victims' attorneys, contained two different types of questions. Many questions asked the advocate/attorney participants to reply with the number of their immigrant victim clients who had made a particular choice or had the experience described in the question. Other questions asked advocates and attorneys to report more generally about their immigrant victim clients' experiences. In some instances, we aimed to understand better the common themes emerging from these justice system professionals' experiences with immigrant and LEP victims. The results of this survey provide a complex picture developed from multiple perspectives describing:

- Whether fears about immigration enforcement and immigration status concerns are:

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<sup>1</sup> The authors wish to thank the many interns and Deans' Fellows at American University Washington College of Law for their collaboration and hard work including Tolulope Adetayo, Monica Bates, Rachel Nyakotey, Grace Logan, Mae McCauley, Zoe Morgan, Genesis Marte, and Nicole DiOrio. The authors also wish to thank the Judges, Law Enforcement officials and Advocates who provided their assistance and insights.

- Arising in courtrooms in criminal and family law cases;
- Affecting the willingness of immigrant and LEP crime victims to cooperate with police and prosecutors on criminal investigations and prosecutions;
- Influencing the ability of law enforcement to hold offenders accountable;
- Impacting community policing and relationships between law enforcement agencies and immigrant crime victims' advocates and attorneys;
- Deterring immigrant crime victims' and their children's access to the justice system for help;
- Contributing to immigrant crime victims' fears that going to court and attending proceedings at courthouses are not safe; and
- Decreasing victims' willingness to pursue crime victim related protection, including those available under immigration, family, and public benefits law.

The survey instruments questions required participants to provide evidence based information regarding their experience working with immigrant and LEP victims of crime (i.e. numbers and percentages), while also offering respondents the opportunity to provide narrative commentary on their work. The surveys were developed to include questions that are specifically relevant to each professional group's sphere of work and interaction with immigrant and Limited English Proficient (LEP) populations. The surveys contained questions that allowed us to analyze the data we collect both quantitatively and qualitatively as well as to track various changes in each group's interaction with immigrant and LEP populations in 2016 and 2017. Prosecutors were asked to compare the past year, the past three years and the past five years with previous years.

NIWAP distributed the survey to its list of 9,000+ attorneys, advocates, judges, law enforcement officials and organizations that worked with or sought training or assistance in case of immigrant victims, women and children. In addition, several professional organizations assisted NIWAP by sending the survey to their e-mail lists including the Police Executive Research Forum, the National Council of Juvenile and Family Court Judges, the Association of Prosecuting Attorneys, and a number of national and statewide organizations working on domestic violence, sexual assault or immigrant's issues.

A total of 779 individuals from a wide variety of professions and numerous jurisdictions participated in the survey during October and November of 2017. One hundred and eight (108) Judges and court staff from twenty five (25) states returned their *National Survey of Judges*. Two hundred and thirty two (232) law enforcement officials from twenty four (24) states returned their *National Law Enforcement Survey*. A total of fifty (50) prosecutors from nineteen (19) states returned their *National Prosecutors Survey*. Three hundred and eighty-nine (389) victim advocates and attorneys from all 50 states and the District of Columbia completed *The National Victim Advocates and Attorneys Survey*.

All four professional groups reported details about the variety of ways their work with immigrant crime victims and LEP has become more difficult in the past two years. Judges reported on how immigration status is being used more frequently by litigants offensively against immigrant victims in a range of family and criminal court cases. Prosecutors similarly reported that defense attorneys are raising immigration status of crime victims in criminal cases and that immigrant victims' willingness to cooperate in criminal prosecutions is declining. Law

enforcement personnel observed a decline in immigrant victims’ willingness to cooperate in criminal prosecutions as well an increase in difficulty of investigating criminal cases involving immigrant crime victims because of immigrant and LEP victims’ reluctance to cooperate. Similarly, victim advocates and attorneys saw declines in the number of immigrant victims willing to file for civil protection orders and for VAWA and U visa immigration relief and the number of immigrant domestic violence victims willing to call the police for help.

This report is divided into five parts: part one concentrates on results from the *National Survey of Judges*; part two focuses on the findings of the *National Law Enforcement Survey*; part three provides the results and analysis of the *National Prosecutors Survey*; and part four examines the results of the *National Victim Advocates and Attorneys Survey*. Part five offers broad policy recommendations and conclusions based on the data from all four surveys.

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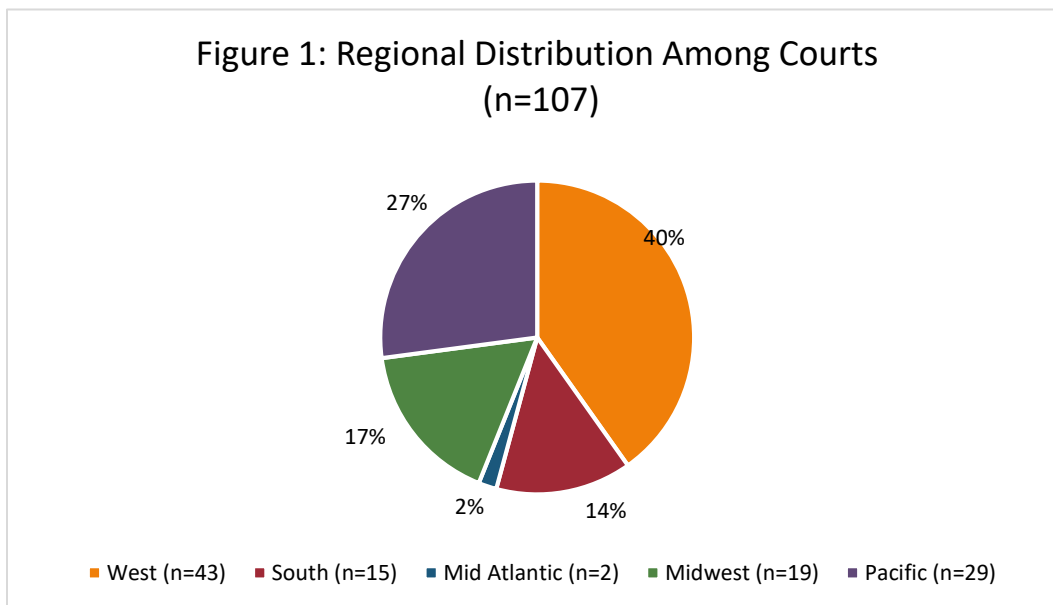
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## Part One - National Survey of Judges

### *Findings from 2017 National Survey of Judges (Judicial Survey)*

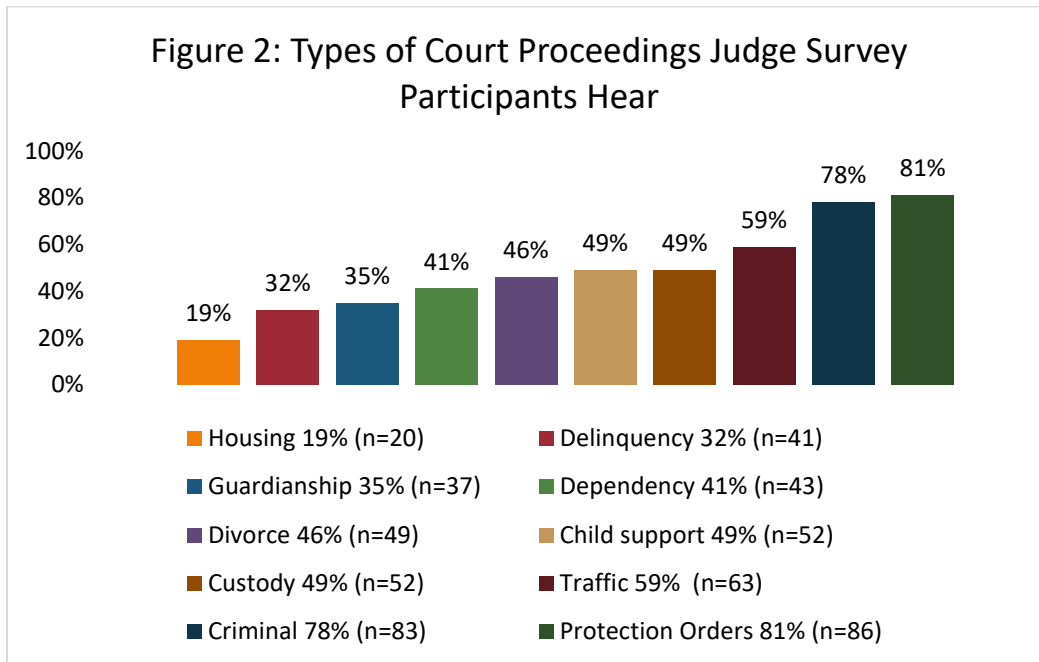
The National Immigrant Women’s Advocacy Project (NIWAP), American University, Washington College of Law conducted a survey of 103 Judges and 3 court staff and 2 court administrators from 25 states during November and December 2017. The aim of the survey was to learn from judicial observations regarding cases that come before courts involving immigrant and LEP victims. The survey questions particularly examined the intersection of immigration status and immigration concerns with state family and criminal court proceedings. It also explored whether judges and court administrators are observing changes in the immigrant victims’ willingness to participate in various types of court proceedings in 2017 relative to 2016.

Judges participating in the survey were from 25 different states. Figure 1 provides an overview of the regional<sup>2</sup> distribution among participating judges.<sup>3</sup> Judicial survey participants presided over a wide range of different types of state court proceedings (See, figure 2).

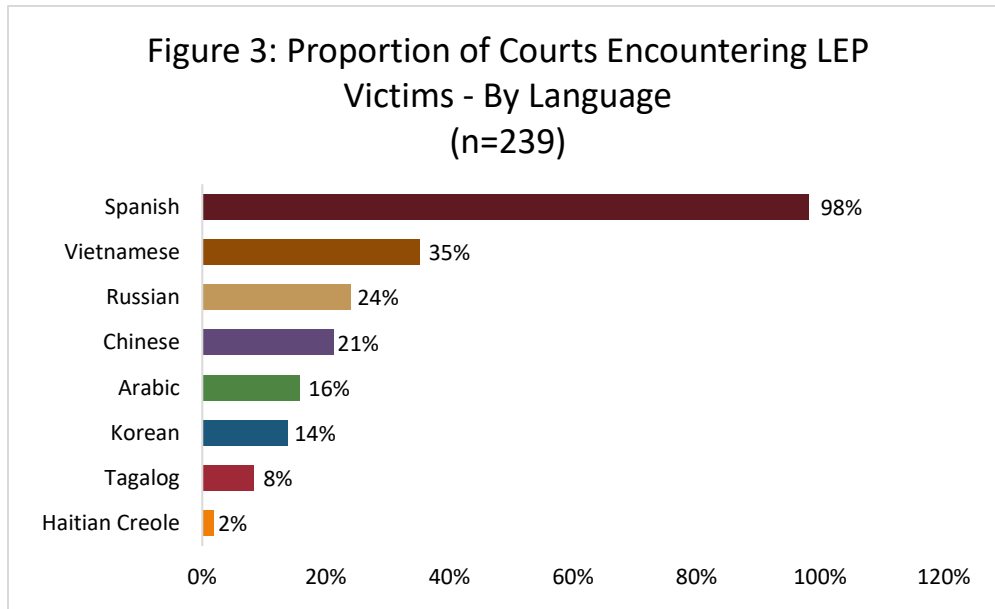


<sup>2</sup> The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest: (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).

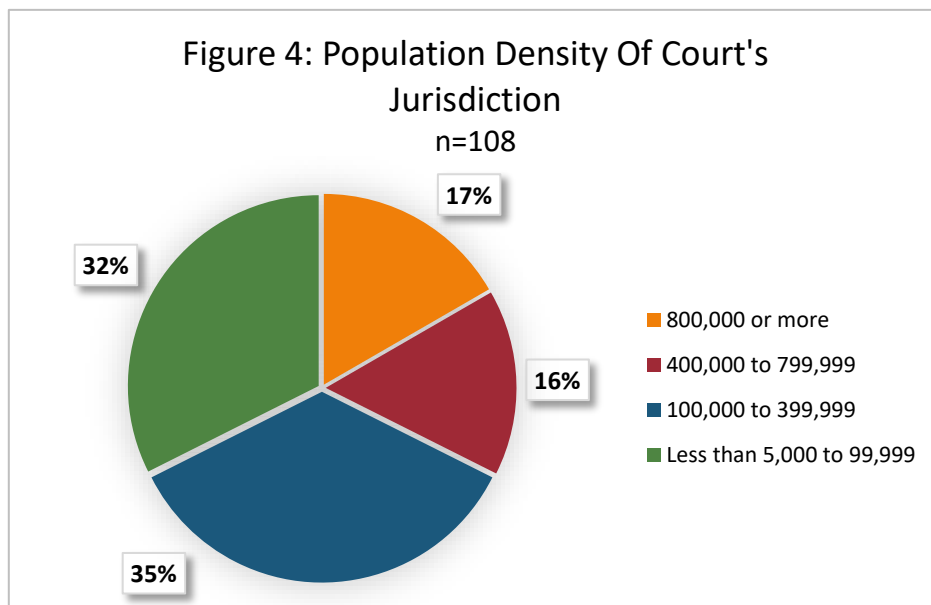
<sup>3</sup> States participants in the Survey: Midwest (IN, IA, KS, MI, MN, NE, OH, WI); Mid Atlantic (DE, PA); Pacific (WA, OR, CA, AK); South (AR, FL, LA, NC, TN, TX); West (AZ, CO, NV, NM, UT)



Most judges (69%, n=75) reported that they have a large number of LEP residents living in their jurisdictions. Another 25% (n=27) of judges reported working in jurisdictions that did not have a large LEP population living in the court’s jurisdiction, and 6% (n=6) of participants said they did not know. Those participating in the judicial survey routinely worked with LEP victims who spoke 29 different languages. The languages most commonly encountered after Spanish included: Vietnamese, Russian, Chinese, Arabic and Korean (Figure 3). Respondents (21%, n=23) indicated that their courts also encounter victims who speak other languages including: American Sign Language, Amharic, Cambodian, Cerundi, Chinese (Mandarin and Cantonese); Farsi, Hindi, Hmong, Kanjabal, Laotian, Mam, Nepali, Polish, Portuguese, Punjabi; Russian, Romanian, Somali, and Swahili.

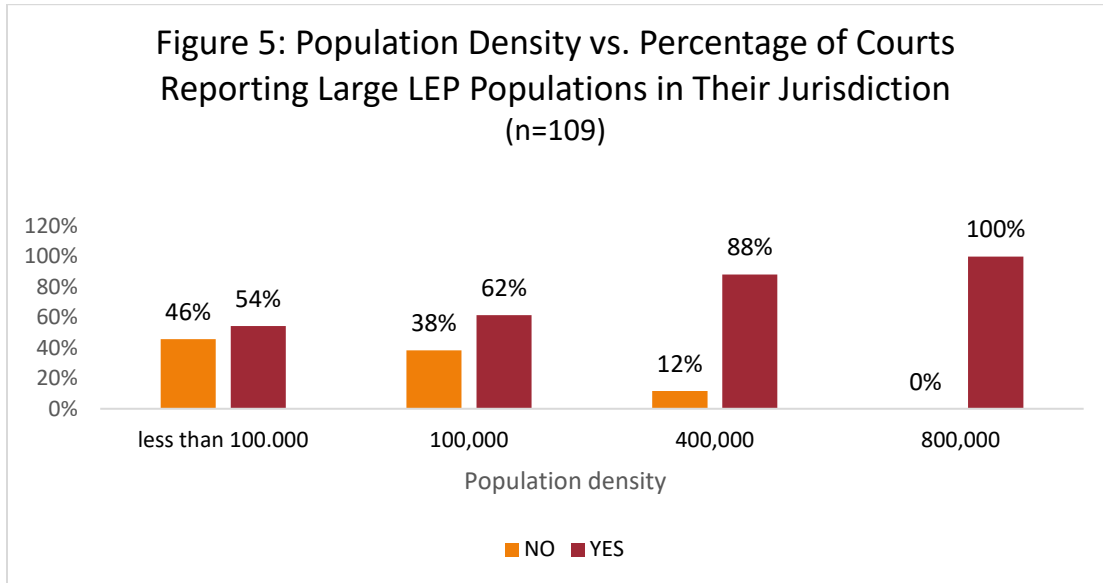


Survey participants worked in courts that served communities and jurisdictions with diverse population sizes (See, Figure 4). More of the judicial survey participants (67%, n= 73%) served rural and smaller jurisdictions (under 400,000) than served larger cities and metropolitan communities (33%, n=35). (See, Figure 4).



The survey respondents revealed the extent to which courts outside of large urban centers were encountering immigrant crime victims and children in court cases. The survey findings (see, figure 5) confirm what census data and a study commissioned by the Chicago Council on

Global Affairs<sup>4</sup> show that there has been a shift in immigrant settlement trends in the United States from large cities and to locations outside of traditional immigrant gateway cities. A substantial number of those participating in the survey reported immigrant and LEP populations being served by courts in rural communities across the country.



### Judges/Courts Signing U Visa Certifications, T Visa Certifications and Special Immigrant Juvenile Status (SIJS)

Participants in the judicial survey were asked to indicate whether judges in their courts signed U visa certifications in cases of immigrant crime victims, T visa certifications in cases involving immigrant human trafficking victim, and/or issued Special Immigrant Juvenile Status (SIJS) findings in cases of immigrant children who had suffered abuse, abandonment or neglect (“Signing Courts”). The majority (64%, n=66) surveyed indicated that judges in their courts do not sign U or T visa certifications and also do not sign SIJS findings (“Non-Signing Courts”). (See, figure 6).

**Figure 6: Courts Signing U or T Visa Certifications or Special Immigrant Juvenile Status Findings (n=318)**

	U Visa Certifications		T Visa Certifications		SIJS Findings	
	#	%	#	%	#	%
Yes - Signing Courts	19	18%	6	6%	28	26%

<sup>4</sup> The report shows that immigration is responsible for the population growth in five metro areas, including metro areas of Chicago, Rockford, and Akron. Additionally, the report shows growing immigrant populations outside traditional gateway cities. The immigrant population in cities like Champaign-Urbana had grown 8.1 percent in 2000 to 12.9 percent in 2015 and Minneapolis (7.7 to 11.9 percent). See Rob Paral, *Immigration a Demographic Lifeline in Midwestern Metros*, The Chicago Council on Global Affairs (March 23, 2017), <https://www.thechicagocouncil.org/publication/immigration-demographic-lifeline-midwestern-metros>.

No – Non-Signing Courts	37	35%	43	41%	41	38%
Do not know	50	47%	56	53%	38	36%
	106	100%	105	100%	107	100%

Most Signing Courts signed in only one type of case. The following characterizes Signing Courts (which comprise where 36%, n=37 of the participants work):

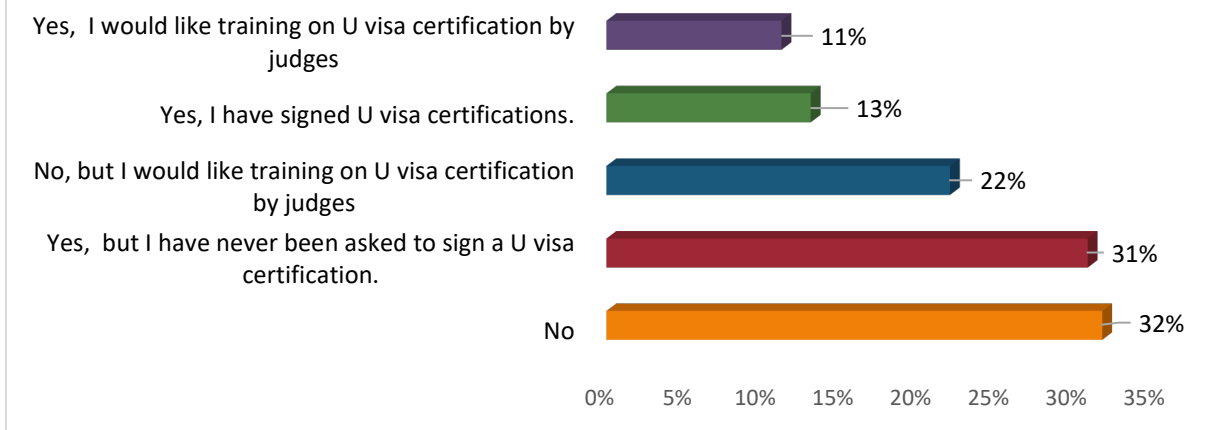
- 23% (n=24) of these courts had judges who signed in only one case type (either U visas, T visas or SIJS findings); and
- 13% (n=13) of these courts sign more than one of the forms of certification or findings Congress has authorized state court judges to sign.

The survey sought to assess judges' knowledge about U visas and the judicial role as U visa certifiers. More than two-thirds of judges participating in the survey (55%, n=64) reported that they were signing U visa certifications, were willing to sign but had not been asked to sign or wanted more training on U visa certification by judges. The results show that there is a substantial percentage of judicial survey participants (44%, n=47) who were either signing U visa certifications or knew about certification but had not been asked to sign a certification. However, many judicial participants (32%, n=34) reported that they lacked knowledge about both U visas and certification. Additionally, there was a third group of judges (33%, n=36) who were interested in receiving training on U visas and certification. (See, figure 8). Both judges who were signing (11%, n=12) and judges who were not signing (22%, n=24) were interested in receiving training on U visa certification by judges. Responses to the question about whether there has been a change in the numbers of immigrant victims seeking U visa certification or T visa certification from courts between 2016 and 2017 showed no change in a large majority of courts (U Visa: 89%, n=64; T Visa: 99%, n=69). However, a small number of participants reported an increase in certification requests (U Visa: 10%, n=.7; T Visa: 1%, n=1). (See, figure 7).



Figure 7: Do You Understand What a U Visa is and the Role of a Judge as a U Visa Certifier?

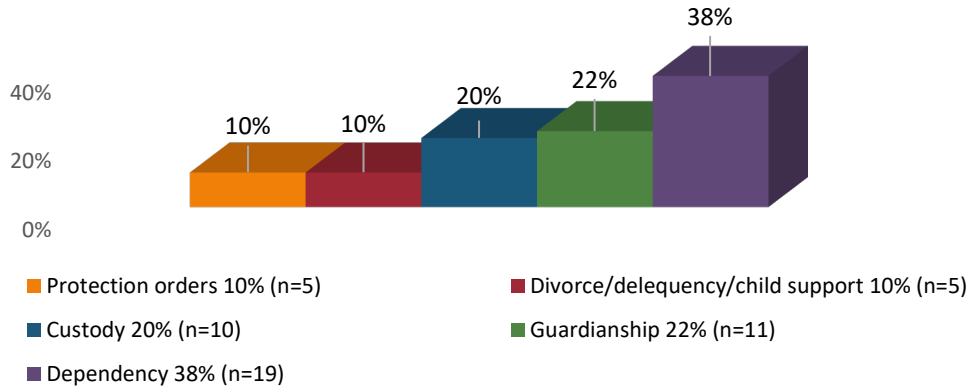
(n=117)



State courts are authorized by federal statute to sign SIJS findings in any state court proceeding where the court has jurisdiction to enter court orders regarding the custody or placement of a child. SIJS is a form of immigration relief that offers protection for immigrant children who have been abused, abandoned or neglected by one or both of the child’s parents. In order to apply for SIJS, an immigrant child who has suffered one or more of the harms listed in the SIJS statute must obtain a state court order containing specific SIJS findings as a prerequisite to the child being able to file for SIJS immigration protections.

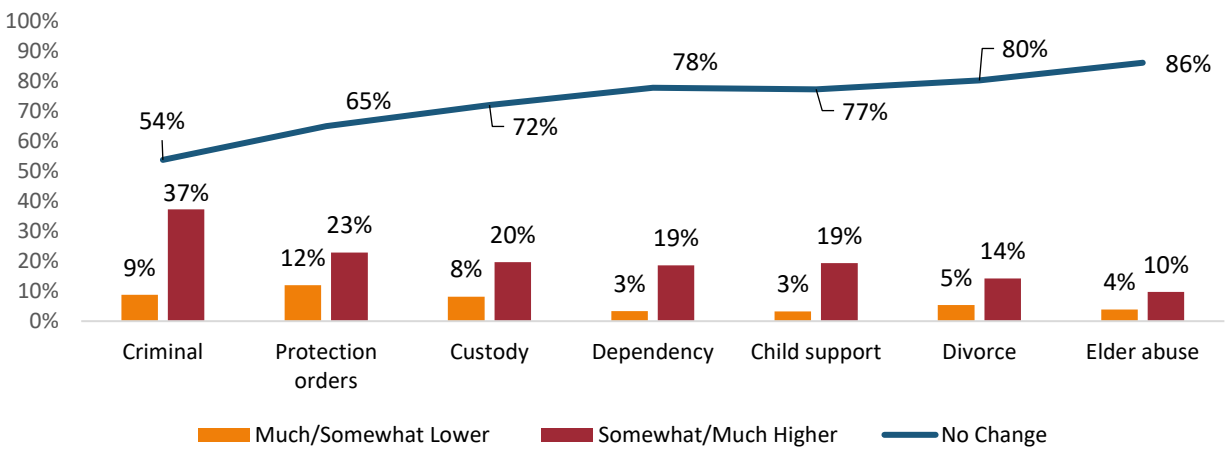
Over a quarter (26%, n=28) of survey participants reported that judges in their court issued Special Immigrant Juvenile Status (SIJS) findings and 38% (n=41) stated that their courts did not issue SIJS findings. Additionally, 36% (n=38) of responding court staff did not know whether SIJS findings were issued by judges in their courts. Those participating in the judicial survey reported issuing SIJS findings most commonly in dependency (38%, n=19), guardianship (22%, n=11), custody (20%, n=10), and protection order (10%, n=5) cases. Judges also reported issuing SIJS orders in divorce, delinquency and child support cases. (See, figure 8). Some participants (15% n=11) reported that requests for SIJS findings for abused, abandoned or neglected immigrant children went up in 2017 compared to 2016, but most participants (81%, n=59) reported no change.

**Figure 8: Judges Issued SIJS findings In a Range of State Court Proceedings (n=50)**



Participants in the judicial survey were asked whether the number of cases involving immigrant or LEP victims changed in 2017 relative to 2016. Some judges reported an increase in immigrant victims coming to court in 2017 in several types of cases. Other judges reported a decline in victim participation in criminal, protection orders, and custody cases. (See, figure 9).

**Figure 9: Judicial Survey Participants Reporting Changes in Numbers of Cases Involving Foreign Born/LEP Victims in 2017 relative to 2016 (n=463)**



### Signing Courts and Non-Signing Courts

Signing Courts differed from Non-Signing Courts in their comparisons of the number of cases involving immigrant or LEP victims appearing in state court proceedings in 2017 relative to 2016. Figures 10 and 11 summarize these results.

<b>Figure 10: Signing Courts Report Increases in Immigrant Victim Participation in Family Court Proceeding (in 2017 compared to 2016) Relative to Non-Signing Courts</b>	
<b>Immigrant/LEP Victim Participation in Family Law Proceedings</b>	<b>Rate at Which Signing vs Non-Signing Courts Reported Increases in 2017 over 2016</b>
Child support	3 times higher
Custody	2 times higher
Child Abuse/Neglect	1.8 times higher
Divorce	1.7 times higher
Civil protection orders	1.1 times higher

<b>Figure 11: A Higher Proportion of Non-Signing Courts Report Observing No Changes in the Rates of Immigrant Victim Participation in Family Court Cases (2016 to 2017) Compared to Signing Courts</b>	
<b>Immigrant/LEP Victim Participation in Family Law Proceedings</b>	<b>Rate at Which Non-Signing Courts, Compared to Signing Courts, Report Observing <i>No Change In Immigrant Victim Participation</i></b>
Child Support	1.8 times higher
Civil protection orders	1.7 times higher
Divorce	1.7 times higher
Custody	1.6 times higher
Child abuse/neglect	1.4 times higher

For criminal proceedings, a substantial portion of those responding to the judicial survey 45% (n= 13) in Signing Courts and 35% (n=22) in Non-Signing Courts reported that they are seeing more criminal cases involving immigrant crime victims in 2017 compared to 2016. Among those from Signing Courts 20% (n=6) reported increases in U visa certification requests and 80% (n=24) reported no change in numbers of U visa certification requests received during 2017 and 2016. With regard to requests for SIJS findings, 30% (n=10) of Signing Court judges reported increases in SIJS requests in 2017 compared to 2016, and 64% (n=21) reported no change in the number of requests received.

In qualitative responses to the survey, participants in the judicial survey included information that provides insight into why “Signing Courts” are seeing increases in immigrant victim willingness to turn to courts for help. Some of their answers noted,

- Reasons that immigrant victims continued seeking protection orders at the same or higher rate in 2017 compared to 2016 include:
  - Judges have made it clear that attorneys cannot simply raise allegations regarding a party’s or child’s immigration status as a negative or positive issue. This evidence is limited to cases where it is both relevant and a party presents evidence to support any claim with regard to immigration status.

- Participants in the judicial survey noted that protection order filings dropped during the first half of 2017 from immigrant and LEP victims. However, participants reported that as courts took steps to let immigrant community members know that ICE is not welcome in courthouses, particularly in family court and protection order cases, the number of immigrant victims seeking protection orders increased, including to levels beyond 2016 in some jurisdictions. When victims are afraid to appear in court due to a fear that coming to court would lead to the victim being subject to immigration enforcement, courts have authorized victims to participate in protection order and divorce cases telephonically

### Protections for Immigrant Crime Victims in Courthouses

The U.S. Department of Homeland Security (DHS) has several publications that help immigrant crime victims, their advocates and attorneys, the courts and law enforcement professionals to identify, screen for, and understand immigration protections designed to help immigrant victims of domestic violence, sexual assault, stalking, dating violence, human trafficking, and other criminal activities. These DHS materials include:

- DHS Infographic: Protections for Immigrant Victims<sup>5</sup>
- U.S. Citizenship and Immigration Service (USCIS), Immigration Options for Victims of Crime<sup>6</sup>
- U.S. Department of Justice, Domestic Violence and the International Marriage Broker Regulation Act<sup>7</sup>
- USCIS, Continued Presence: Temporary Immigration Status for Victims of Human Trafficking<sup>8</sup>
- USCIS, Immigration Relief for Abused Children: Special Immigrant Juvenile Status<sup>9</sup>

The survey sought to learn about the extent to which these important informational brochures developed by U.S. government agencies were being included by courts in the “*Know*

<sup>5</sup> Dep’t of Homeland Security, Protection for Immigrant Victims, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (January 12, 2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/>; Alexandra Brown, Leslye Orloff, *The Department of Homeland Security’s Interactive Infographic on Protections for Immigrant Victims*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (February 2, 2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-interactive-infographic-on-protections-for-immigrant-victims-8-29-17/>; Translations available: Chinese, Portuguese, Spanish, Russian, and Thai. See NIWAP, *The Department of Homeland Security’s Interactive Infographic on Protections for Immigrant Victims*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (February 2, 2017) <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>.

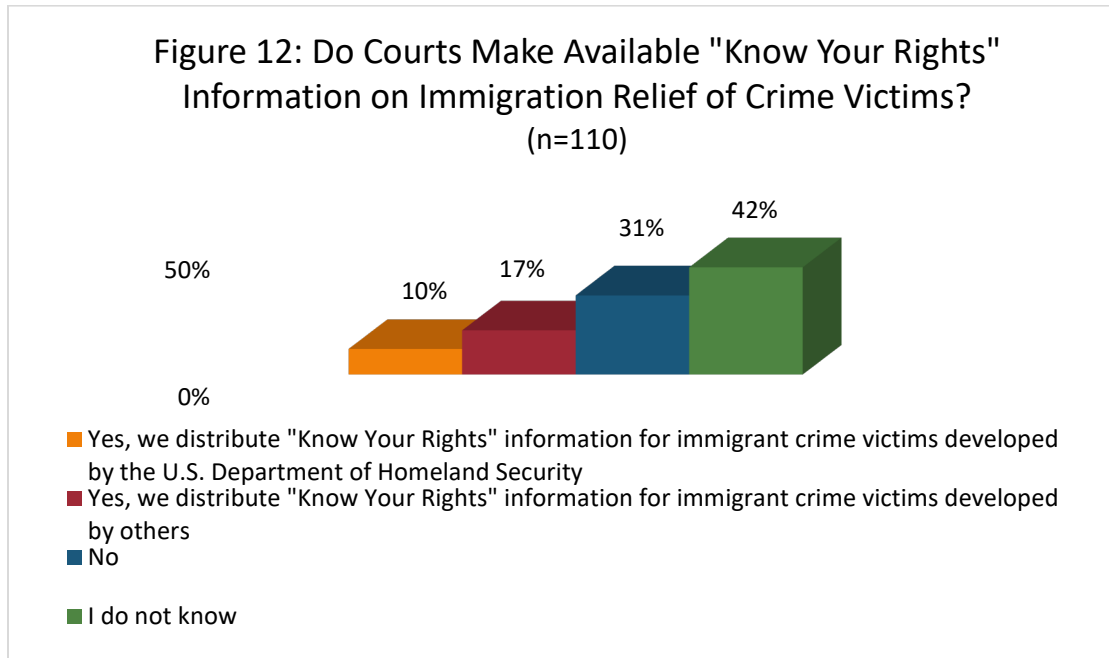
<sup>6</sup> NIWAP, Multilingual Materials by Language, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT <http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>

<sup>7</sup> Dep’t of Justice, Domestic Violence and the International Marriage Broker Regulation Act, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2014).

<sup>8</sup> Dep’t of Homeland Security, Continued Presence Temporary Immigration Status for Victims of Human Trafficking, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (July, 2010), <http://niwaplibrary.wcl.american.edu/pubs/dhs-continued-presence-brochure/>, <https://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>.

<sup>9</sup> Dep’t of Homeland Security, Immigration Relief for Abused Children: Special Immigrant Juvenile Status, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (May 1, 2016), [http://niwaplibrary.wcl.american.edu/pubs/uscis\\_sijs\\_brochure/](http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/), [https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/PED.SIJ.1015\\_Brochure\\_M-1114B\\_Revised\\_05.19.16.pdf](https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/PED.SIJ.1015_Brochure_M-1114B_Revised_05.19.16.pdf).

*Your Rights*” information that courts make available to the public. The survey also asked whether courts were making available know your rights information for immigrant crime victims developed by other entities. The majority of those participating in the judicial survey 76% (n=80) reported that either their courts do not include in the material available at courthouses “*Know Your Rights*” information on immigration law crime victim and children protections 31% (n=34) or that they did not know (42%, n=46) if these materials were include in the information their courts makes publicly available. (See, figure 12).



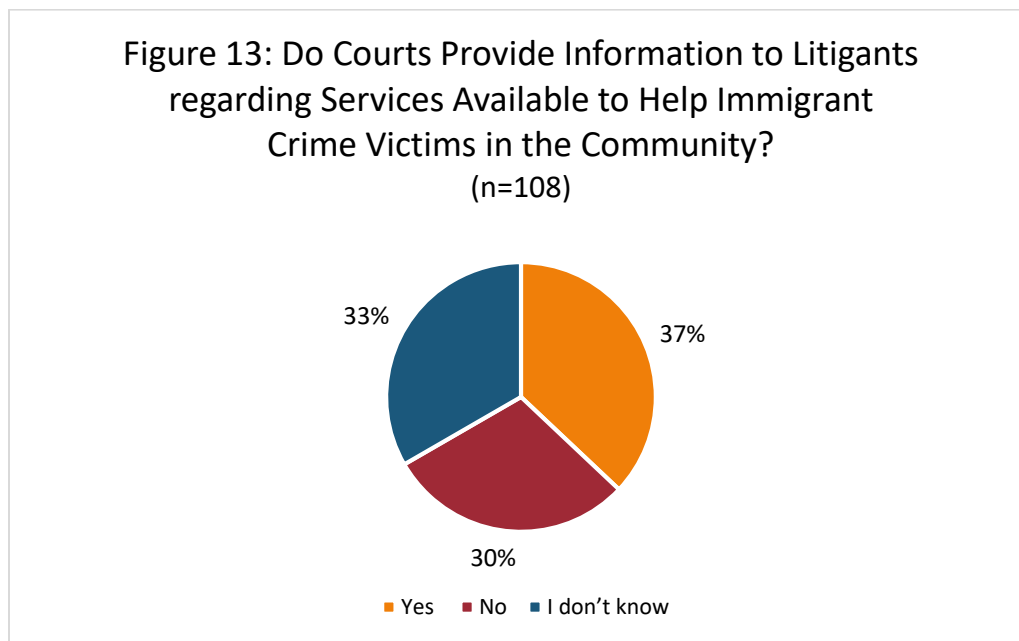
Connecting immigrant victims who come to court for help with victim and legal services organizations with expertise on the legal rights of immigrant crime victims and children as well as experience serving immigrant victims is an important role courts can play. In 2006 the *National Center for State Courts* conducted *National Institute of Justice* funded research on access to protection orders for LEP domestic violence victims which recommended that courts:

“Increase the courts’ collaboration with community-based organizations” and “Collaborate with community-based organizations to identify LEP communities that may have no access to court and to better understand the barriers to access faced by LEP persons, including those seeking protection orders.”<sup>10</sup>

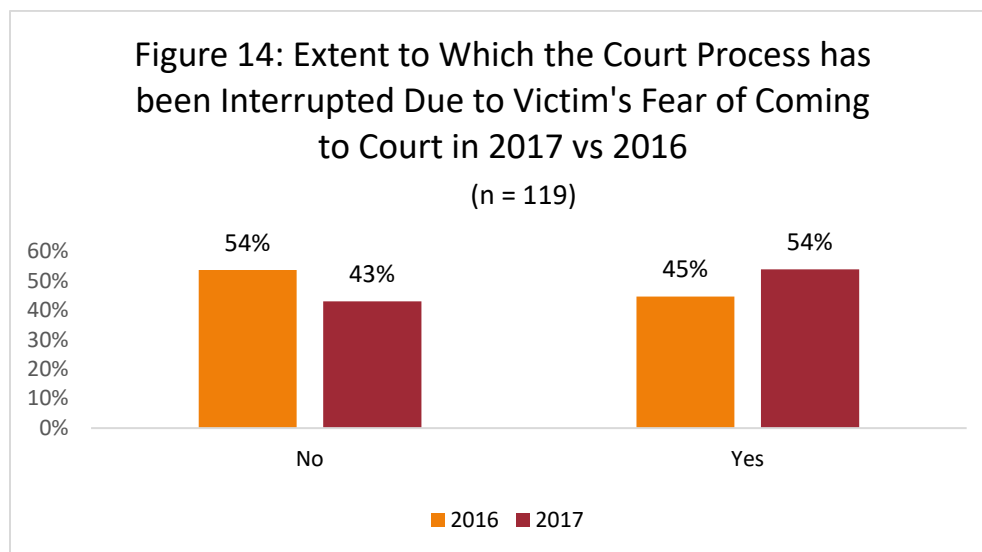
More than a decade later, this survey sought to learn the extent to which, in cases of immigrant crime victims, courts had established these relationships and were making referrals for immigrant victims to community-based programs with expertise serving immigrant and LEP victims. Thirty-seven percent (37%, n=40) of judicial survey participants reported that their

<sup>10</sup> BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>; BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, WHITE PAPER, IMPROVING THE COURTS' CAPACITY TO SERVE LIMITED ENGLISH PROFICIENT PERSONS SEEKING PROTECTION ORDERS (2016), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>.

courts were providing information to victims about community-based organizations with expertise serving immigrant victims. (See, figure 13)

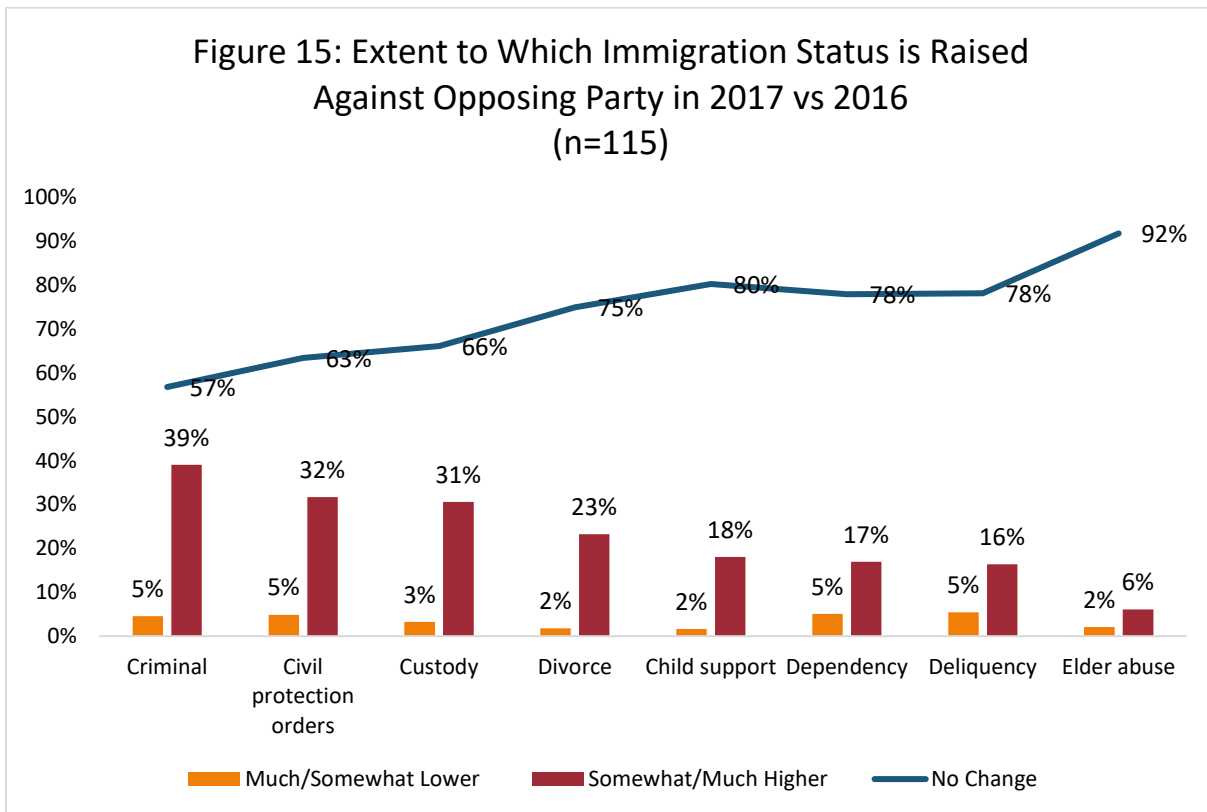


The survey also sought to learn the extent to which parties' immigration status was affecting their willingness to participate in state court proceedings and whether the survey participants observed any differences between 2016 and 2017. A greater percentage of participants reported that court cases were being interrupted due to immigrant victims' fear of coming to court in 2017 than in 2016. (See, figure 14).

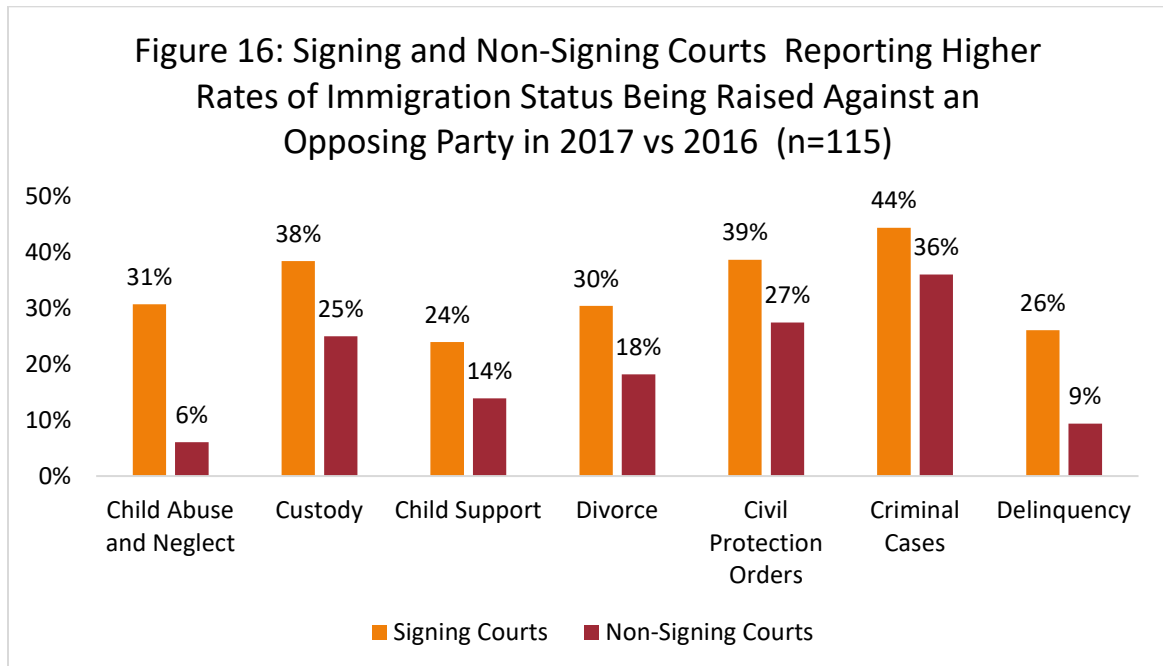


A substantial number of those participating in the judicial additionally survey reported that immigration status was being raised offensively by an opposing party in family court cases, against a victim in a criminal case, and against another parent in family and child abuse cases more frequently in 2017 compared to 2016. (See figure 15). Almost a third of judicial participants reported observing this occurring in civil protection order cases (32%, n=26) and

custody cases (31%, n=19), and just under a quarter (23%, n=13) reported these strategies being used in divorce cases.



Judges were also asked to describe the kinds of issues that lead to immigration status being raised in the courts. Most of the judges who provided answers (n=7) indicated that immigration status was raised as a form of threat to inform authorities about a litigant’s status. Deportation concerns were also raised in criminal cases (n=6) or as a form of threat in other cases (n=3). More Signing Courts reported hearing more cases in 2017 than in 2016 where parties raised the immigration status of an opposing party, victim, or parent than Non-Signing Courts. (See, figure 16).



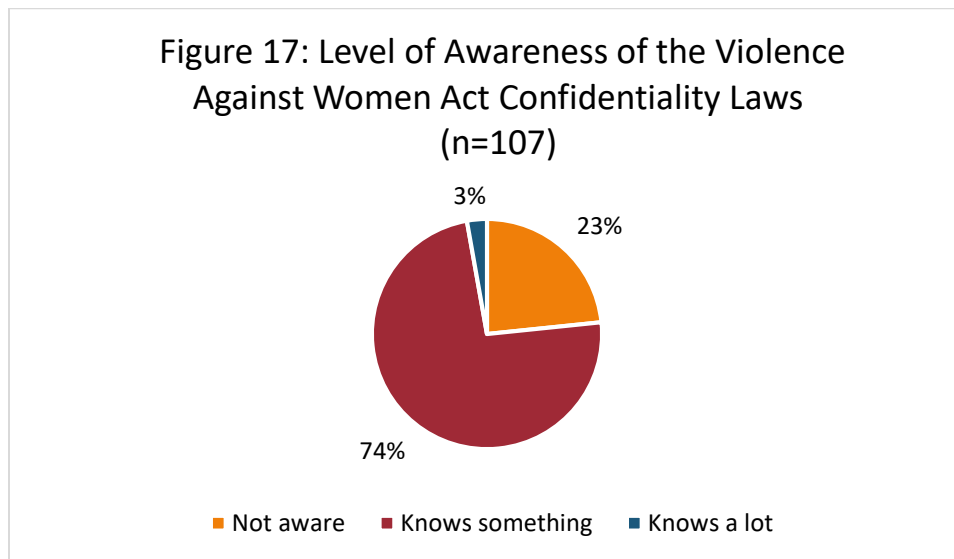
Those participating in the judicial survey shared descriptions illustrating how immigration related fears, threats, immigration related abuse, and immigration enforcement at courthouses have been impeding access to justice for immigrant and LEP victims and litigants. Judges reported:

- Examples of immigration related abuse include:
  - Taking and refusing to return a litigant’s passport or other important document
  - Threats to kidnap children
  - Threats to report opposing party to ICE if they do not do what the threatening party wants
  - Threats by litigants to report the opposing party to immigration authorities for deportation. The judge further noted:
    - “While these threats to report to immigration are not new, immigrant victims and litigants believe that the abuser, crime perpetrator, or opposing party will be successful in getting ICE to act on these reports in 2017.”
  - Parties and attorneys feel more comfortable raising immigration status offensively against an opposing party in 2017 than previously. “It’s a disturbing trend.”
  - Respondents in protection order cases use their control over the victim’s immigration status as leverage and another form of emotional abuse
  
- Examples of how immigration status is coming up in criminal cases include:
  - Witnesses are afraid to come to court to testify
    - In some cases even victims compelled to testify as a material witness in a criminal case are afraid to come to court
  - Jurors asking about a party’s immigration status
  - Defense attorneys raising the U visa as an attempt to undermine the testimony of sexual assault victims



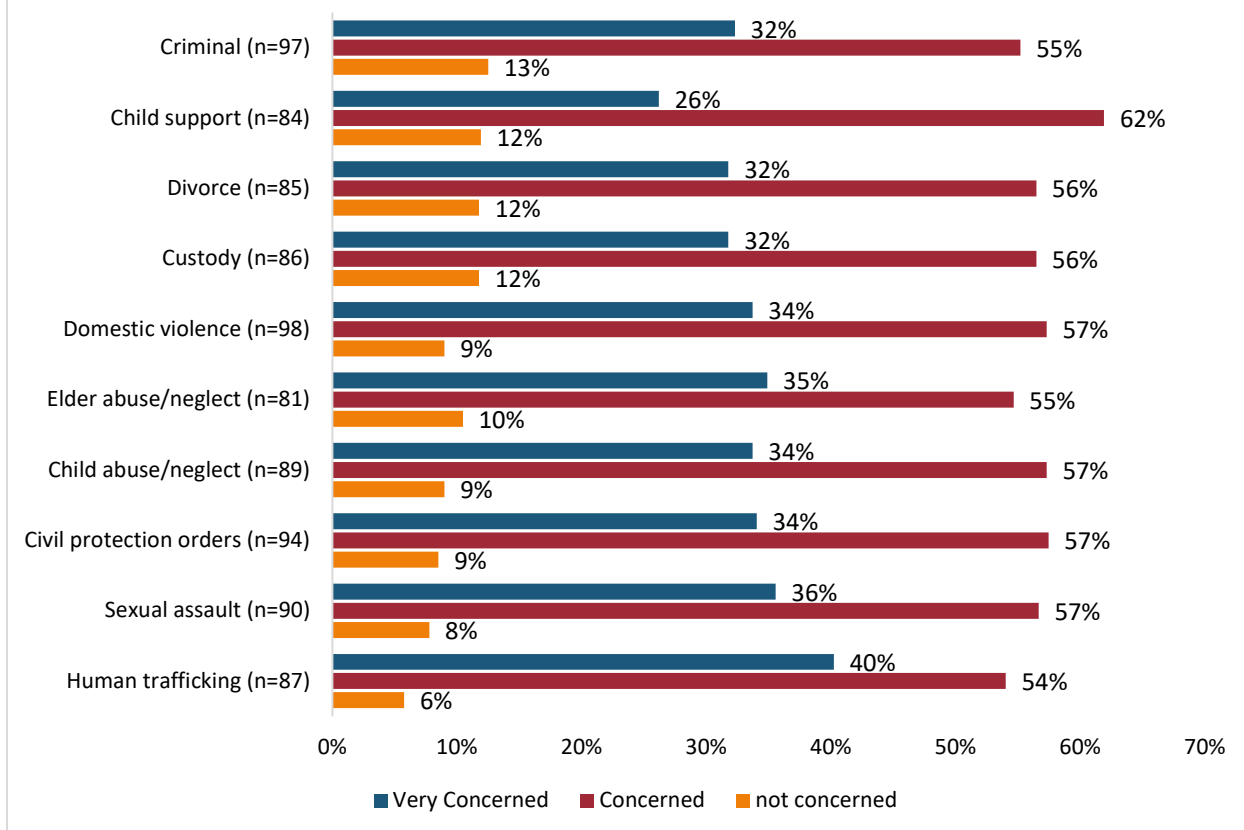
- In custody cases the “immigration status of the mother is raised in a crude attempt to show instability in parenting.”
- Judges are called upon more often to make rulings that preclude a litigant’s ability to raise immigration status issues about another party or victim absent proof of probative value and relevance
- Parties in family court matters are concerned about the impact divorce could have on a party’s immigration status and are concerned that coming to court in a family law case could force a victim or party to be separated from their family

Those participating in the judicial survey were asked if they were aware of the VAWA confidentiality laws that place limits on immigration enforcement actions permitted at courthouses. The majority 77% (n=82) reported knowing something about these VAWA confidentiality law protections and fewer (23%, n=25) noted that they were unaware about these VAWA confidentiality protections. (See, figure 17).



Across a wide range of civil, family and criminal court proceedings, the vast majority, (88% to 94%) of those responding to the judicial survey reported being concerned about the impact increased immigration enforcement could have on access to justice for immigrant and LEP victims and witnesses. A substantial percentage of these judges (26% - 40%) reported that they were very concerned about this issue. (See, figure 18)

Figure 18: Judges' Level of Concern About the Impact of Immigration Enforcement on Immigrant and LEP Litigants by Case Type



Participants in the judicial survey were asked to report the number and types of cases where officials from the DHS were involved in immigration enforcement activities in their courthouses. They reported on 47 cases (civil =18; criminal 29) when immigration enforcement activities were carried out at their courthouses in 2016 and 2017. The number of cases of immigration enforcement in courthouses increased by 47% from 2016 to 2017. (See figure 19). This increase included a 25% increase in incidents of courthouse enforcement in non-criminal cases and a 64% increase in courthouse enforcement in criminal cases.<sup>11</sup> The participants in the judicial survey also identified the type of cases in which enforcement actions occurred during 2016 and 2017 were as follows:

- Criminal cases – 29

<sup>11</sup> The judges' survey did not ask judges to distinguish between victims and offenders when discussing courthouse enforcement taken in criminal cases. However, as discussed in the result of the National Survey of Advocates and Attorneys below reporting on 22 immigration enforcement actions taken at courthouses against immigrant crime victims in court for criminal misdemeanor (n=18) and felony criminal (n=4) matters. (See, figure 115). It is not clear from the survey data whether the victims who were subject to immigration enforcement actions were in court as defendants or as victim in the criminal court cases. Under VAWA confidentiality laws, immigration enforcement against a victim at a courthouse in connection with any criminal, civil or family law case related to the domestic violence, sexual assault or other criminal activity the victim suffered would require a filing by Immigration and Customs Enforcement of an affidavit demonstrating that VAWA confidentiality was not violated in taking any part of an immigration enforcement action. See, INA Section 239, 8 U.S.C. 1229(e).

- Family court cases (protection order, custody, child welfare) – 14
- Employment and civil cases – 4

<b>Figure 19: Instances of Immigration Enforcement at Courthouses in 2016 and 2017 Reported by Judges</b>		
Types of cases/Year	2016	2017
Family	6	8
Employment	1	2
Criminal	11	18
Other civil	1	0
Total Enforcement Actions	19	28
Percentage Increase in 2017 relative to 2016	<b>47%</b>	
Percentage Increase in Criminal Cases in 2017 relative to 2016	<b>64%</b>	
Percentage Increase in Family Cases in 2017 relative to 2016	<b>25%</b>	

Judges reported courthouse enforcement in family or civil court cases in a wide variety of states across the country, including: California, Florida, Kansas, Louisiana, New Mexico, North Carolina, Oregon, Washington, and Wisconsin. In January 2018, ICE issued a new policy on courthouse enforcement that limits when and in which types of proceedings immigration enforcement officials can undertake immigration enforcement actions in courthouses.<sup>12</sup> This policy severely limits courthouse enforcement actions<sup>13</sup> in non-criminal cases and requires that the Field Office Director, the Special Agent in Charge or their designee specifically authorizes courthouse enforcement in a non-criminal case against a particular individual immigrant.<sup>14</sup> Immigrant crime victims who are entitled under federal law to VAWA confidentiality protections should be protected by this policy and VAWA confidentiality laws and policies for courthouse enforcement.<sup>15</sup>

One of the justifications the ICE courthouse enforcement policy provides for immigration enforcement at courthouses is that: “courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails”.<sup>16</sup> It is important to note that participating judges reported immigration

<sup>12</sup> U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (last updated January 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq/>.

<sup>13</sup> See *National Map of Local Entanglement with ICE*, IMMIGRANT LEGAL RESOURCE CENTER (Jan. 25, 2018), <https://www.ilrc.org/local-enforcement-map>; Bryan Griffith and Jessica M. Vaughan, *Maps: Sanctuary Cities, Counties, and States*, CENTER FOR IMMIGRATION STUDIES (Jul. 27, 2017), <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>.

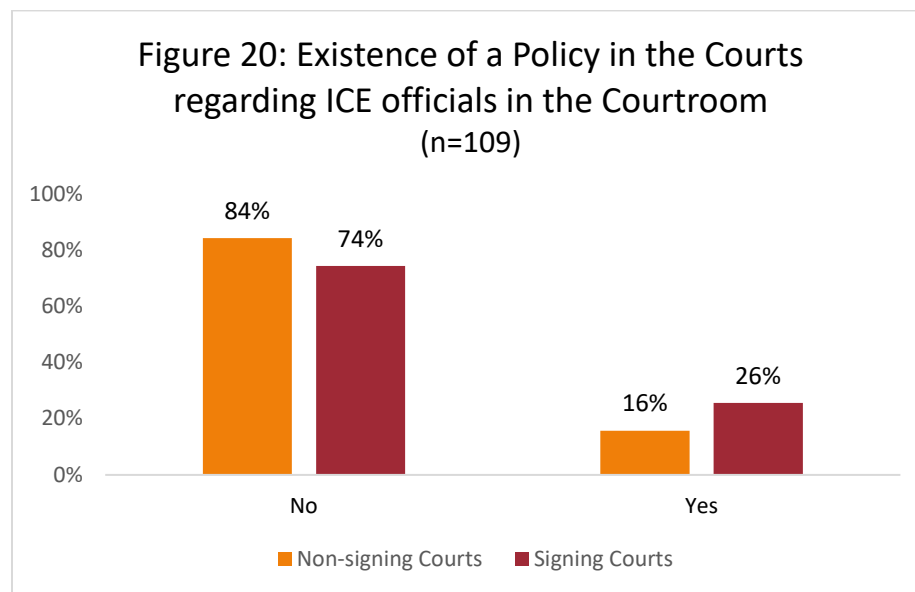
<sup>14</sup> U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 2 (last updated January 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq/>.

<sup>15</sup> *ICE Courthouse Enforcement Policies and VAWA Confidentiality Protections for Immigrant Crime Victims*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Jan. 31, 2018) <http://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims/>.

<sup>16</sup> U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 1 (last updated January 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq/>.

enforcement at courthouses in 18 non-criminal cases in 2016 and 2017 and these cases included reports of immigration enforcement occurring in family and civil courts in states where there is a high level of cooperation between state and local law enforcement and federal immigration enforcement officials (e.g., North Carolina, Kansas, Florida, Wisconsin, and Louisiana).

Only 19% (n=21) of the judges and court staff participating in the survey reported that their courts had a policy addressing immigration enforcement at courthouses. Signing Courts (26%, n=10) were more likely than Non-Signing Courts (16%, n=11) to have adopted policies on steps courts should take if immigration enforcement officials come to judges' courtrooms. (See, figure 20). A small number of judges shared knowing about and/or observations of ICE officials in the parking lots outside courthouses (n=2) and ICE agents following interpreters into courthouse hallways (n=1).



Courts that had implemented policies regarding immigration enforcement at courthouses reported that their courthouse policies included but were not limited to the following provisions:

- Immigration officials are prohibited from taking any action in a courtroom absent a serious public safety issue. Whether or not the circumstances constitute a serious public safety issue is decided by the court not by immigration enforcement officials.
- Immigration enforcement officers are prohibited from interrupting a court proceeding for any reason.
- All law enforcement officers, including immigration enforcement officers, are prohibited from making arrests and from initiating of any immigration enforcement action of any person in open court unless and until the proceeding involving that person has been concluded.
- Each judge is permitted to restrict any activity that interferes with courtroom operations. If an immigration enforcement official fails to comply with judicial orders, the judge is permitted to contact court security and/or determine if contempt proceedings should be initiated against the immigration officer.

- Court policies prohibit immigration officials from entering courtrooms to conduct any of their official duties. If an immigration official enters a courtroom, the judges will ask them to leave and a Marshall will escort them out of the courtroom.
- Immigration arrests may not be preformed in the courthouse and court security are required to contact the local ICE District Office to report immigration officials who arrive at court to conduct immigration enforcement activities.

### **In Their Own Words: Judges Concerns in Cases Involving Immigrant or LEP Victims**

At the end of the survey, participants in the judicial survey were asked to identify other concerns or challenges they have observed in cases involving immigrant or LEP victims that were not addressed in the survey. Several judges reported that fear of coming to court, worry, and distrust of the police, courts, justice system and getting involved with any government agencies impedes access to justice for immigrants (n=10). The suggestion was made by one judge that increased community outreach by the courts on the front end, will help immigrant victims and immigrant communities learn about help available to crime victims and children from the courts. Building relationships with community organizations serving immigrants could encourage more immigrant crime victims to report to police and courts about the abuse they have suffered.

Additionally, several judges (n=7) commented about the need for more qualified interpreters, the difficulty of obtaining qualified interpreters in rural areas and that access to qualified interpreters should not be limited to court proceedings. Judges noted that qualified interpreters are needed to assist in preparation for court (e.g., in clerks offices and other court services or court ordered programs). The concerns raised by judges regarding LEP litigants' needs for interpreters are consistent with best practices. Providing qualified interpreters to help LEP persons access the full range of court services including court clerks' offices and court ordered programs and services is both recommended<sup>17</sup> and required.<sup>18</sup>

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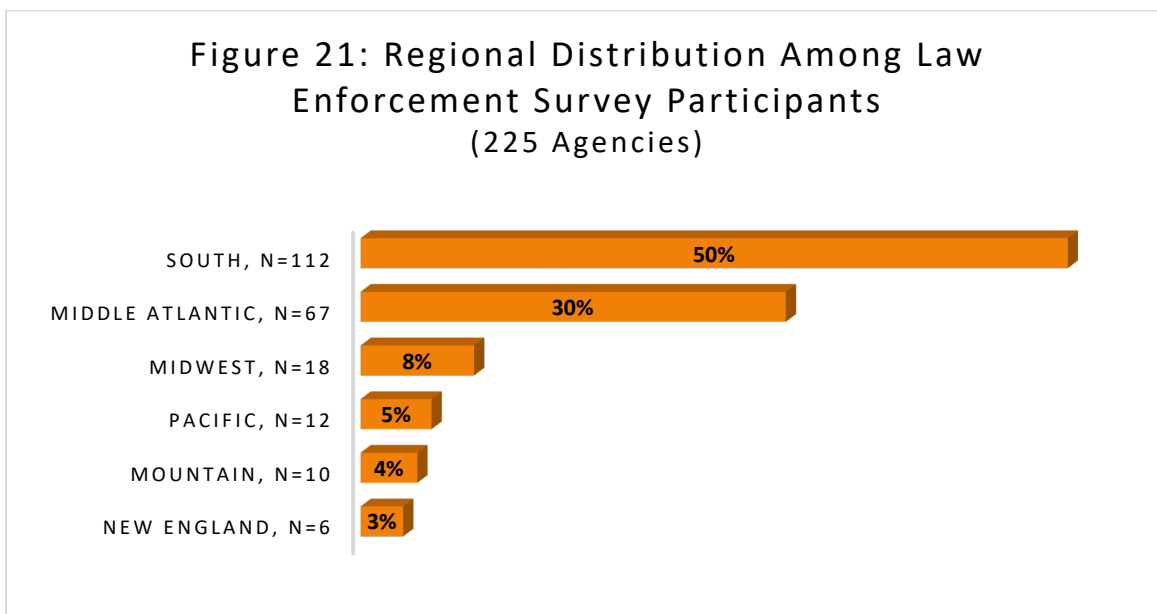
<sup>17</sup> BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>;

<sup>18</sup> Letter from Thomas E. Perez, Assistant Attorney General, U.S. Dep't of Just., to Chief Justice/State Court Administrators, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (August 16, 2010), <http://niwaplibrary.wcl.american.edu/pubs/lang-access-doj-courts-letter/>

## Part Two: National Survey of Law Enforcement Officials Findings from 2017 National Survey of *Law Enforcement Agencies*<sup>19</sup>

The National Immigrant Women’s Advocacy Project (NIWAP), American University, Washington College of Law conducted a survey of 232 law enforcement officials in 24 states during October and November 2017. The aim of the survey was to understand changes in law enforcement officials’ interactions with immigrant and LEP victims in their communities. More specifically, the survey sought to explore whether law enforcement officials are seeing changes in immigrant victims’ cooperation and willingness to report crimes and in law enforcements’ ability to investigate crimes involving immigrant and LEP victims in 2017 compared to 2016.

Law enforcement officials from 24 different states participated in the survey.<sup>20</sup> Figure 21 provides an overview of the regional distribution among participating law enforcement officials.<sup>21</sup> Half (50%, n= 95) of those who participated in the survey were from the South. (See figure 1). Participants in the survey were employed by police departments (94%, n=210), sheriff’s offices (4%, n=9), state police offices (1%, n=2), and by offices of the prosecutor or inspector general (1%, n=3).

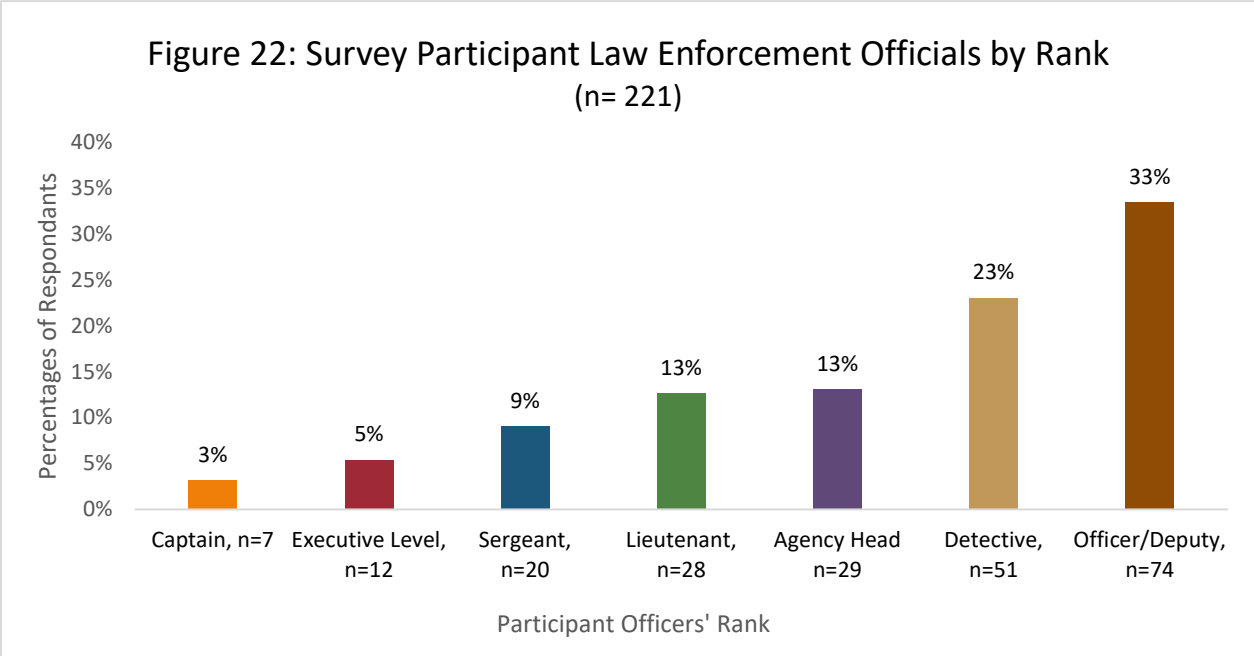


The law enforcement officials participating in the survey included a balanced mix of law enforcement professionals. Over half (57%, n=125) of the survey participants were patrol uniformed (officers/deputies) or detectives and another 43% (n=96) were law enforcement officials in supervisory or managerial roles. (See, figure 22).

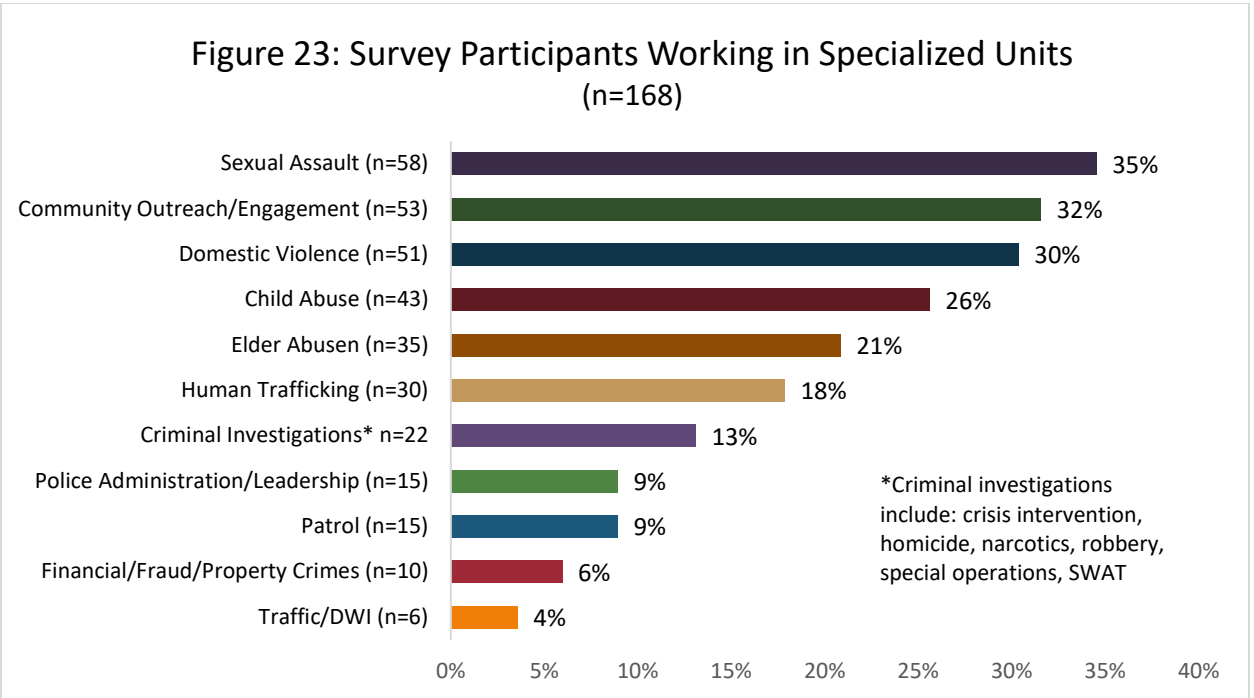
<sup>19</sup> The authors wish to thank Stacey Ivie, Detective, Alexandria Police Department; Michael LaRiviere, Investigator, Salem Police Department; Detective Shelli Sonnenberg, Boise Police Department; and Antonio Flores, Sergeant Inspector, San Francisco Police Department for their assistance with this article.

<sup>20</sup> Prosecutors participated in the survey from the following states: AK, AZ, CA, CO, FL, GA, ID, IL, IA, LA, MD, MA, MI, NE, NM, OH, OR, PA, TN, TX, UT, VA, WV, WI

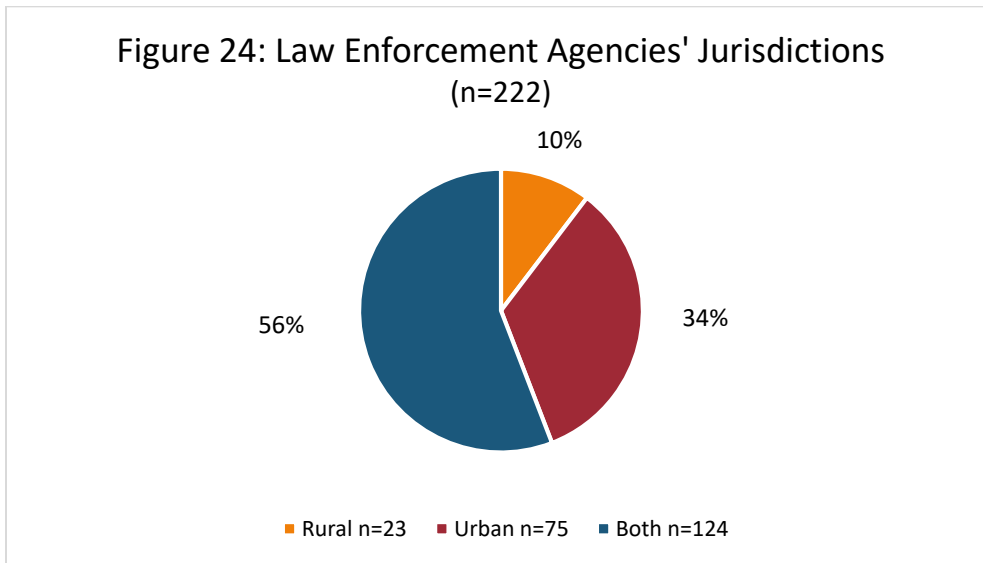
<sup>21</sup> The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest: (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).



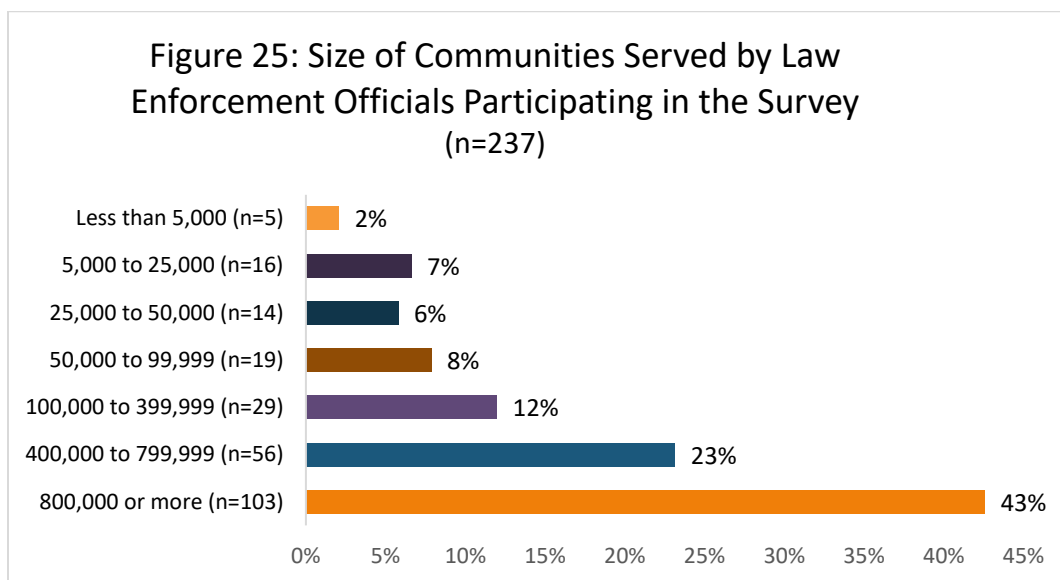
Seventy-two percent (n=168) of officers participating in the survey worked in a specialized unit. (See, figure 23).



The survey was successful in reaching law enforcement officials who serve communities of different sizes, and who officers characterized as rural (10%, n=23), urban (34%, n=75), or a combination of both (56%, n=124). (See, figure 24).



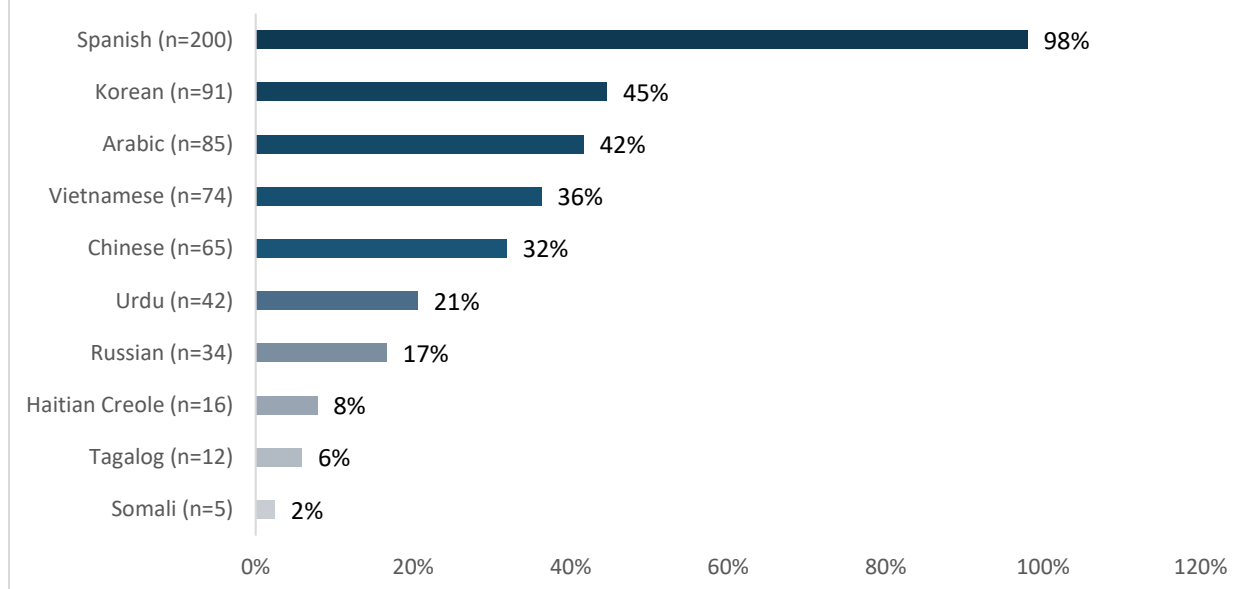
The majority of the participating law enforcement officers (68%, n=159) worked in larger cities and metropolitan areas. (See, figure 25).



Most of the law enforcement officials participating in the survey (86%, n=193), regardless of rank, unit assignment, or community population size, reported that they encounter large numbers of LEP victims living in their jurisdictions who require the services interpreters. Those LEP victims speak a wide variety of languages including, and in order of most to least spoken, Spanish, Korean, Arabic, Vietnamese Chinese, and Urdu. See, figure 26 for the top 14 languages law enforcement officials reported as encountering.



**Figure 26: Top 10 languages encountered by Law Enforcement Officials**



Several law enforcement officials (13%, n=25) provided details about other languages (in addition to those in figure 26) that immigrant and LEP crime victims and witnesses they encounter speak. These languages included: Amharic, American Sign Language, Farsi, Burmese, French, Hmong, Bosnian, French Creole, Hmong, Japanese, Karen, Khmer, Kirundi, Kinyarwanda, Kizigau, Laotian, Nepalese, Pashtu, Portuguese, Romanian, Somali, Sudanese Swahili, Twi, Ukrainian, Uzbek, and several indigenous languages from Guatemala.

### **Law Enforcement Agencies Signing U Visa Certifications and T Visa Certifications**

Law enforcement officials were asked to indicate whether their agency signed U visa certifications and/or T visa certifications in cases of foreign-born or LEP crime or human trafficking victims. Over a third (35%, n=79) of law enforcement official respondents said that their agencies signed U visa certifications for LEP and foreign-born victims. (See, figure 27). The responses for T-visa certifications were lower showing that 16% (n=36) of the participants' agencies signed T visa certifications. (See, figure 28). There are important differences between the U and T visa programs that help explain why law enforcement officials report that more of their agencies are signing U visas compared to T visas. First, it is important to understand that obtaining a U visa certification is a statutory prerequisite<sup>22</sup> to a victim's ability to file a U visa application. In a T visa application, the certification is not required, but is preferred and helpful.<sup>23</sup> As a result, although DHS encourages law enforcement agencies to sign T visa

<sup>22</sup> INA 101(a) (15)(U); U.S. Citizenship and Immigration Services - DHS, 72 Fed. Reg. 53013, 53015 (Sep. 17, 2007) ("an alien victim must include a certification from such agency in support of his or her request for U nonimmigrant status"); 8 C.F.R. 214.14(c)(2)(ii).

<sup>23</sup> DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 6 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

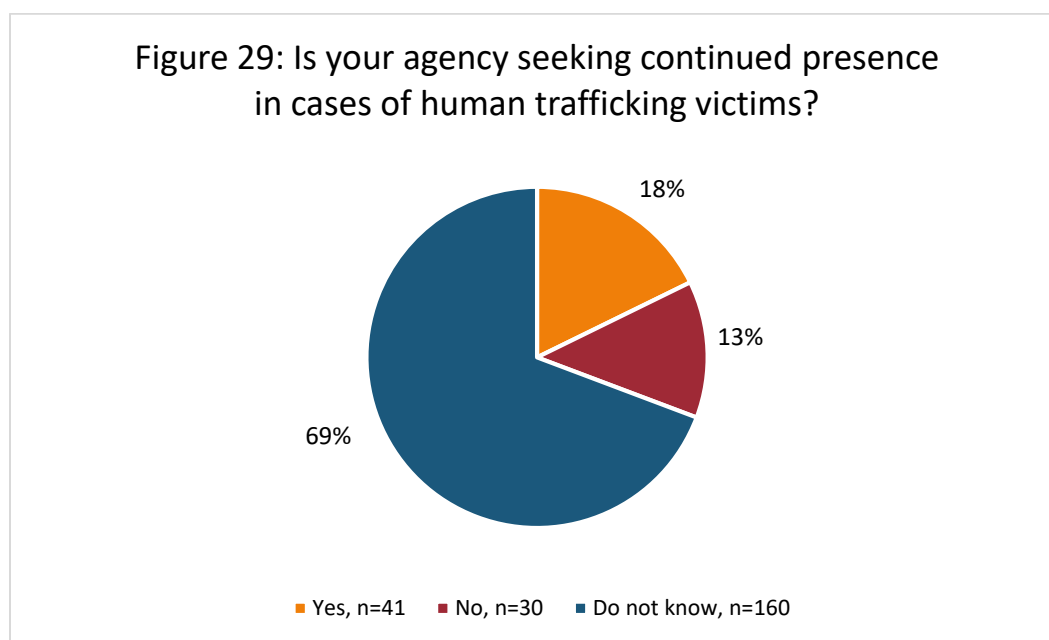
certifications,<sup>24</sup> advocates and attorneys working with U visa victims must obtain a certification. In a T visa case, although the T visa certification is preferred evidence by DHS, if a victim’s attorney provides evidence to DHS that they requested the certification and one was not provided,<sup>25</sup> the immigrant human trafficking victim may proceed to file a T visa application and prove eligibility without providing a T visa certification.



<sup>24</sup>DEP’T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT 6 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

<sup>25</sup> DEP’T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT 11 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

Although, immigrant human trafficking victims can file for a T visa when law enforcement agencies fail to certify, trafficking victims cannot obtain the special protections from deportation and economic support Congress designed for immigrant victims of human trafficking without assistance from law enforcement officials. Continued presence is designed to offer immediate help and protection to stabilize victims of severe forms of human trafficking who are potential witnesses in a trafficking investigation or prosecution.<sup>26</sup> The survey found that only 18% (n=40) of participating law enforcement officials' agencies seek continued presence for immigrant human trafficking victims. (See, figure 29). This is surprising in light of the U.S. DHS's encouragement of law enforcement officials to request continued presence from ICE officials on behalf of immigrants who are victims or potential witnesses in human trafficking prosecutions.<sup>27</sup>



### “Signing Agencies” Compared to “Non-Signing Agencies”

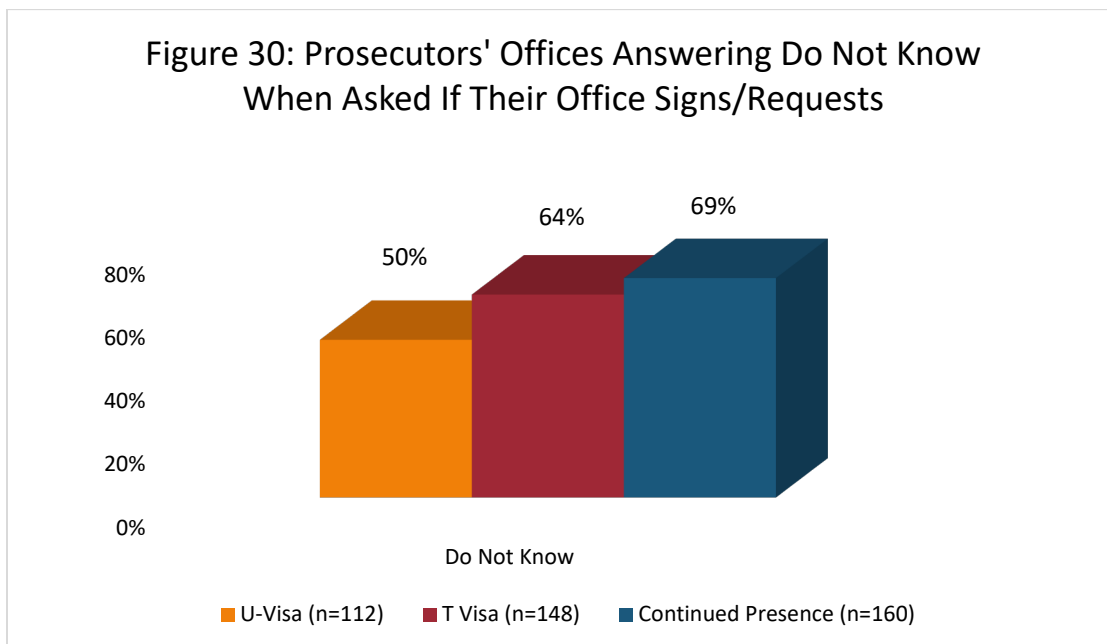
This report categorizes law enforcement agencies as either Signing Agencies or Non-Signing Agencies. Signing Agencies are law enforcement agencies that sign one or more of the following forms:

- U visa certification;
- T visa certification; or
- Requests for continued presence.

<sup>26</sup> NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *DHS Roll Call Video on U Visa Certification and T Visa Endorsement by Law Enforcement (Part 2)*, YOUTUBE (Jul 18, 2013), [https://www.youtube.com/watch?v=O3t0O2\\_vdCM](https://www.youtube.com/watch?v=O3t0O2_vdCM).

<sup>27</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CONTINUED PRESENCE TEMPORARY IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Jun. 2010), <http://library.niwap.org/wp-content/uploads/DHS-Continued-Presence-Brochure.pdf>; DEP’T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT 27 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> (An application for CP should be initiated immediately upon identification of a victim of human trafficking.)

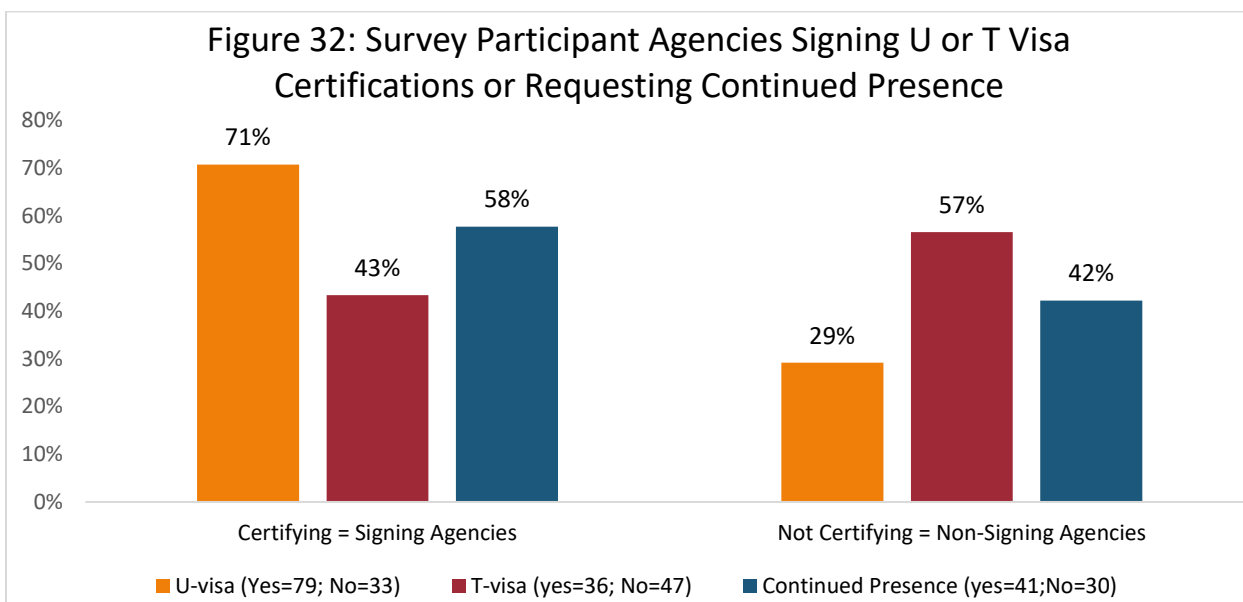
The classification of a law enforcement agency as one that does not certify includes law enforcement officials who reported that their agencies do not certify. Officials who reported that they do not know whether their agency signs U visas, T visas or seeks continued presence on behalf of immigrant victims of human trafficking are excluded from the Signing/Non-Signing classification. (See, figure 30). It is important to note the the number of law enforcement officers participating in the survey reporting that they did not know about their agencies certification policies or practices may be in part a reflection of the numbers of patrol officers who participated in the survey (33%, n=74). The fact that patrol officers may be less familiar about department certification practices and procedures than officers working in specialized units or with ranks of detective or higher, is not necessarily unusual. Also, the law enforcement officials working in smaller communities, particularly those that are more rural that have more recently experienced growth in the immigrant populations in their communities, may be less connected with their immigrant populations and the community-based advocates and attorneys organizations that serve immigrant crime victims.



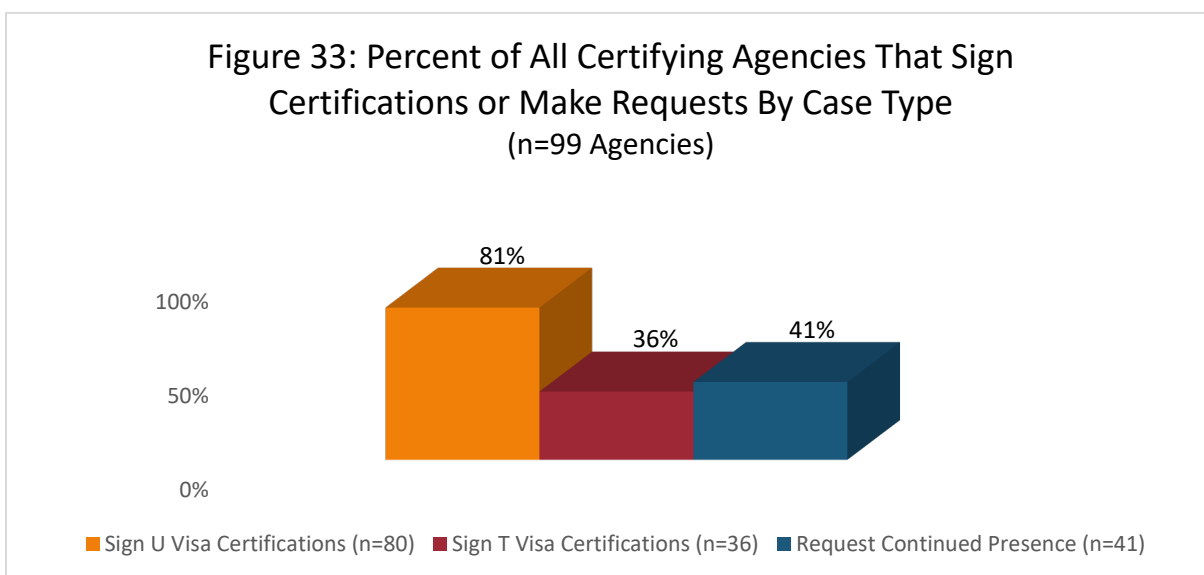
“Non-Signing Agencies” are agencies that do not sign any of these certifications or requests. Figure 31 provides an overview of the signing practices of the participating law enforcement officials.

Does the Agency Sign?	U Visa Certifications		T Visa Certifications		Continued Presence Requests	
	#	%	#	%	#	%
Yes = Signing Agencies	80	36%	36	16%	41	18%
No =Non-Signing Agencies	33	15%	47	20%	30	13%
Do not know = Non-Signing Agencies	112	50%	148	64%	160	69%
Totals	225	100%	231	100%	231	100%

The majority of law enforcement officers participating in the survey do not know if their agencies sign U visa certifications (50%), T visa certifications (64%), or whether they seek continued presence from DHS on behalf of human trafficking victims (69%). Of the law enforcement officials who are aware of their agency’s signing practices, the majority work for agencies that sign U visa certifications (71%, n=79) or make continued presence requests (58%, n=40). This is not the case for T visa certifications; the majority of law enforcement officials who are aware of their agency’s signing practices do not sign T visa certifications (56%, n=46). (See, figure 32).

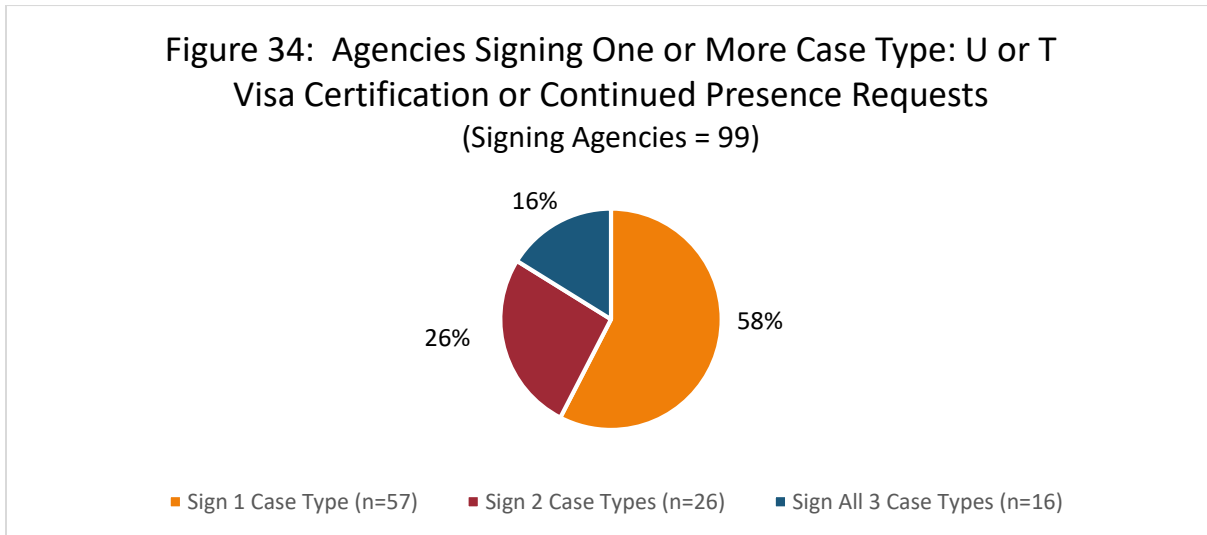


Additionally, it is important to note that of all survey participants (n=232), 43% (n=99) worked in signing agencies. Among Signing Agencies, the largest proportion signed U visa certifications (81%, n=80) and were less active in assisting human trafficking victims applying for T visas (36%, n=36) and seeking continued presence (41%, n=41).

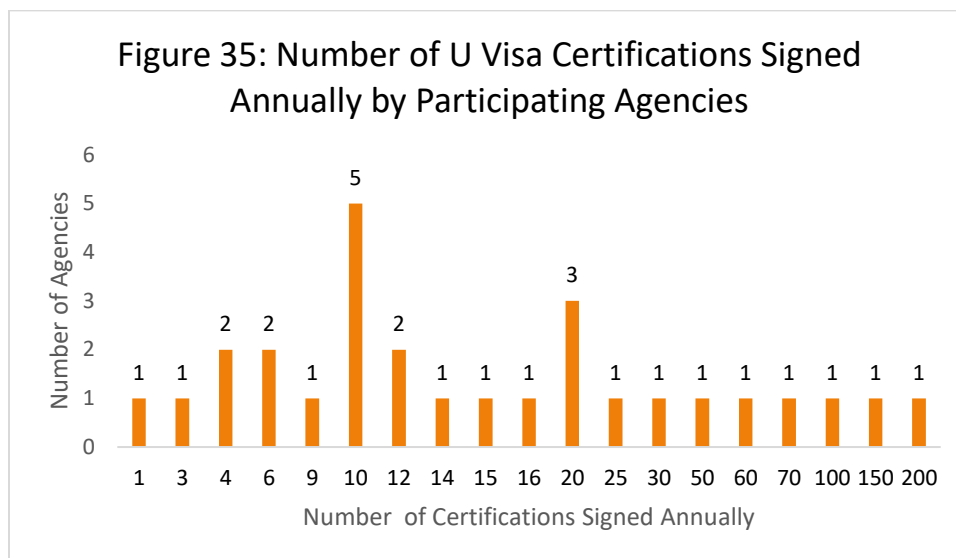


Several signing agencies signed in more than one type of case. The following list and figure 34 present the survey findings regarding the extent to which Signing Agencies are signing or making requests on behalf of immigrant victims in multiple case types:

- 58% (n=57) signed in only one type of case: U visa certifications T visa certifications or requests for continued presence;
- 26% (n=26) signed in two of the three of these types of cases; and
- 16% (n=16) signed in all three types of cases - U visa certifications, T visa certifications, and requests for continued presence.

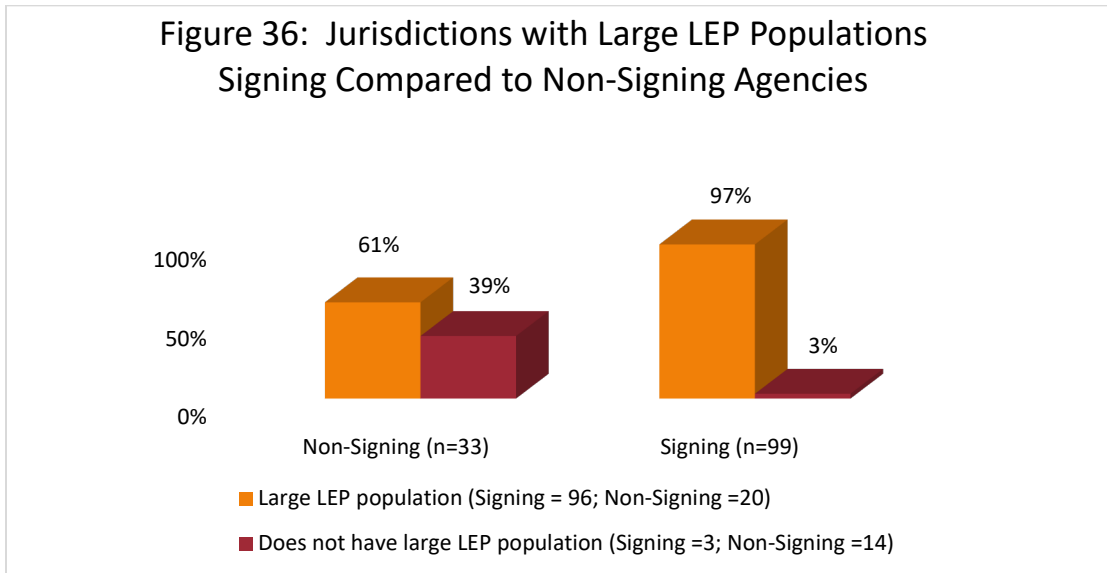


Just over a quarter (28%, n=28) of participating law enforcement officials working in Signing Agencies provided the number of U visa certifications their agency signs annually. The number of U certifications signed annually ranged from 1 to 200. Figure 35 provides details about the number of certifications signed annually by the survey participants' agencies (for those who reported such numbers).

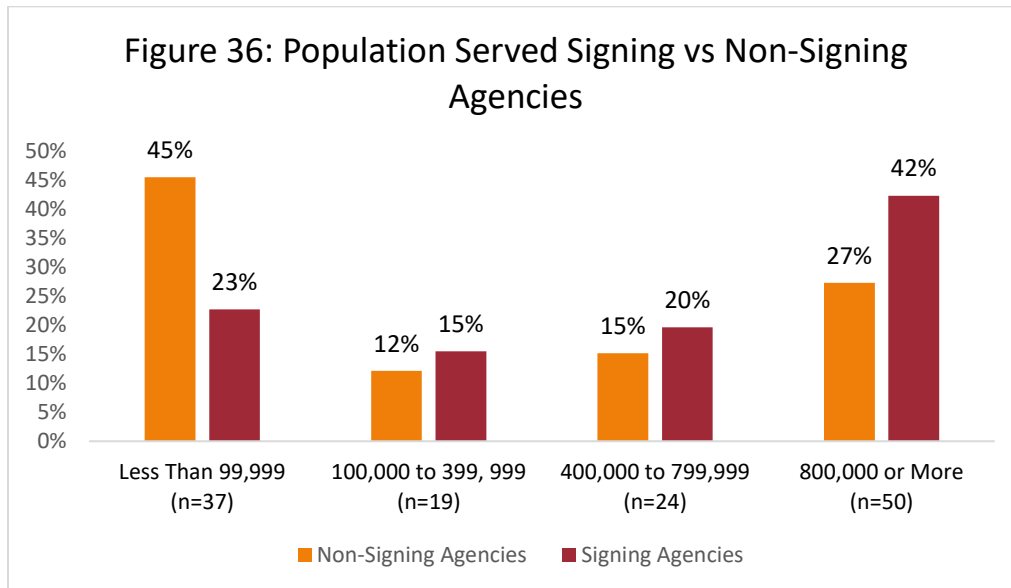


### Populations served by Signing and Non-Signing Law Enforcement Agencies

The data collected by the survey allowed for an analysis of whether and how Signing Agencies differed from Non-Signing Agencies with regard to several topics explored in the survey. The majority of law enforcement officials working in Signing Agencies worked in jurisdictions with large LEP populations (97%, n=96). Among the 33 participants working in Non-Signing Agencies, 61% (n=20) worked in jurisdictions with large LEP populations and 39% (n=13) worked in jurisdictions that serve smaller LEP populations. (See, figure 36).



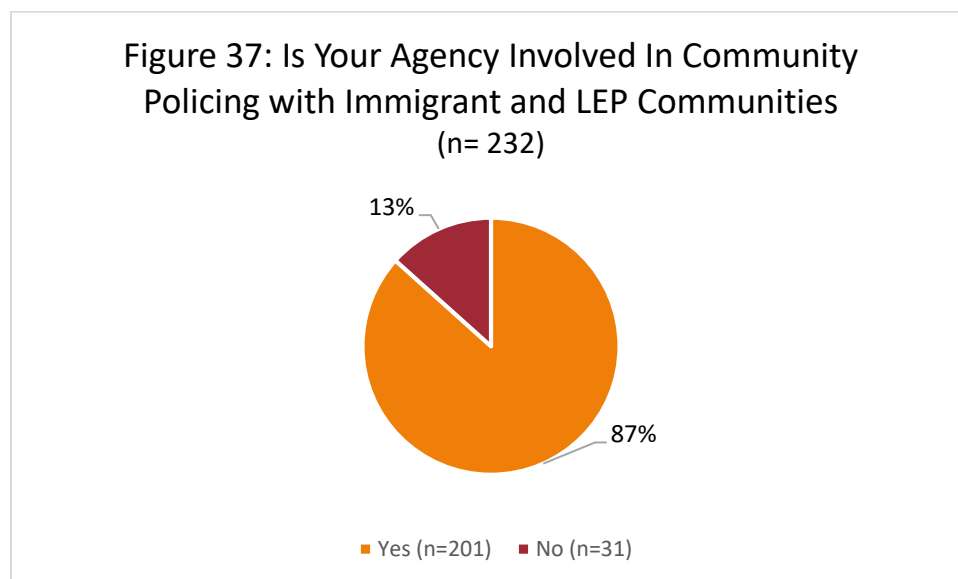
Law enforcement officials working in Signing Agencies reported that the population sizes of their jurisdictions vary widely. Signing Agencies were located in jurisdictions with population sizes of 800,000 or more (42% n=41), of 400,000 to 799,999 (20% n=19), of 100,000 to 399,999 (15% n=15) as well as small jurisdictions with less than 99,999 inhabitants (23% n=22). Almost half (45%, n=15) of the Non-Signing agencies, however, were located in small jurisdictions (less than 99,999). Similarly, 61% (n=20) of the law enforcement officials working in Non-Signing Agencies worked in large jurisdictions with over 800,000 inhabitants. (See, figure 36).



### The Impact of Increased Immigration Enforcement and Community Policing

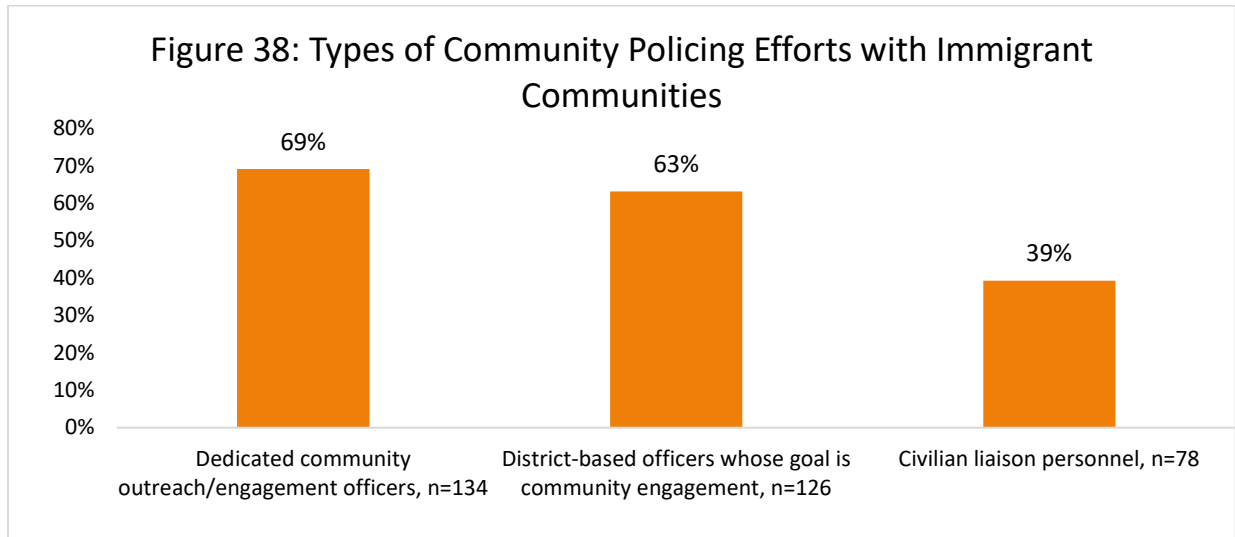
One of the objectives of this survey was to document whether and, if so, the extent to which increased immigration enforcement affected law enforcement’s ability to protect and serve immigrant and LEP communities. Receiving information from community members about perpetrated crimes is important for effective policing.

The survey participants provided information about their agency’s community policing efforts with immigrant communities in their jurisdictions. The majority of participants (87%, n=201) indicated that their agencies were involved in community policing efforts with immigrant and LEP communities. (See, figure 37).



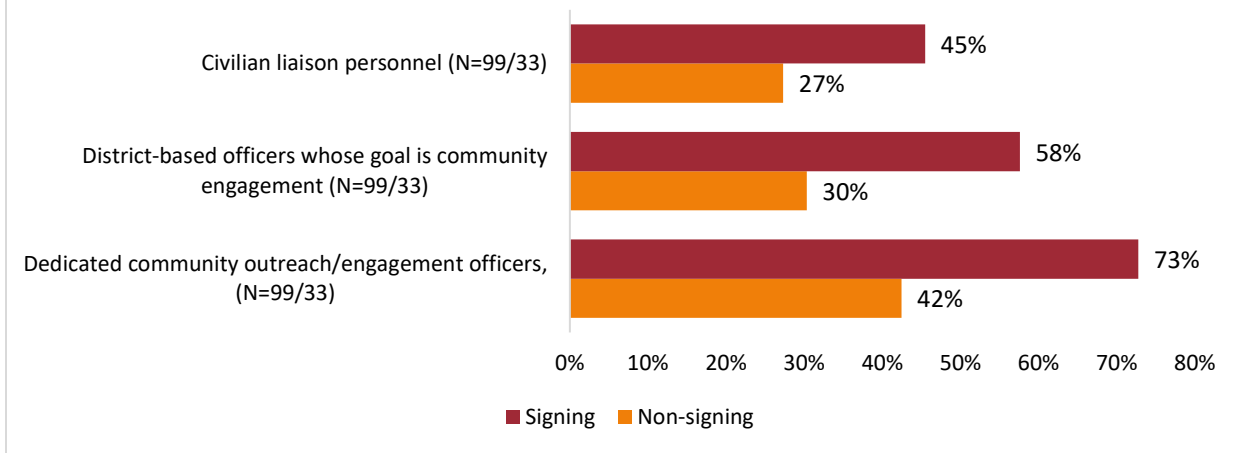


Police departments staffed community policing efforts with immigrant and LEP communities in different ways. Over half of the departments in which officials responding to the survey staffed these community policing efforts with dedicated community outreach/engagement officers (69%, n=134) and/or district-based officers whose goal is community engagement (63%, n=126). Civilian liaison personnel were involved in staffing community policing efforts with immigrant and LEP communities in 39% (n=78) of survey participants' departments. (See, figure 38).



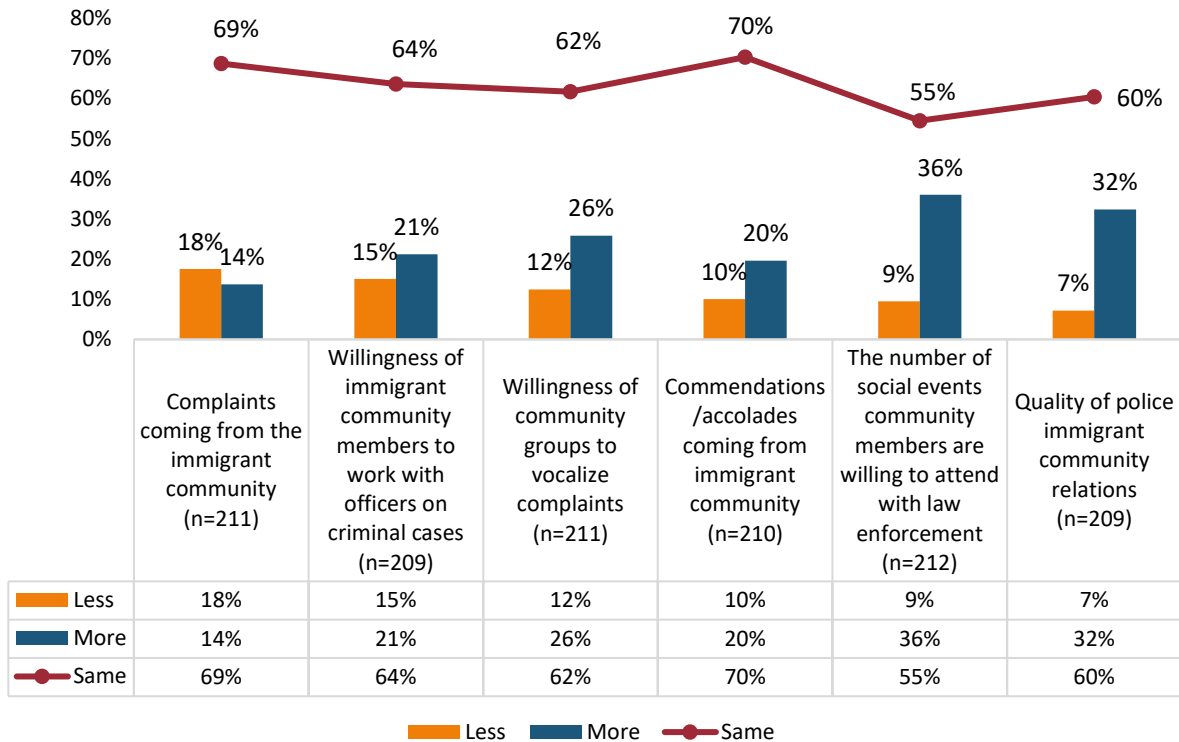
The data reveal differences between Signing Agencies and Non-Signing Agencies in their staffing of community policing efforts with immigrant and LEP communities. A greater proportion of Signing Agencies have dedicated community outreach and/or engagement officers than Non-Signing Agencies (73%, n=72 versus 42%, n=14). More Signing Agencies had civilian liaison personnel in the agency's community policing efforts, including bilingual victim advocates working for the law enforcement agency - almost twice as many Signing (45%, n=45) than Non-Signing Agencies (27%, n=9 civilian liaisons). Almost double the number of Signing Agencies had district-based officers in community engagement activities (58%, n=57 versus 30%, n=10) (See, figure 39).

Figure 39: Community Policing Efforts for Signing and Non-Signing Agencies



According to the law enforcement survey participants, some of their agencies experienced a decline in the number of immigrant community members who are willing to file complaints (18%, n=37) and who are willing to work with officials in criminal cases (15%, n=32) in 2017 compared to 2016 (See, figure 40). Some officials reported that immigrants in their communities were more willing to work with law enforcement on criminal cases (21%, n=45), vocalize complaints (26%, n=54), attend events planned by law enforcement (36%, n76). Almost a third (32%, n=68) reported improved quality of police immigrant community relations. (See, figure 40).

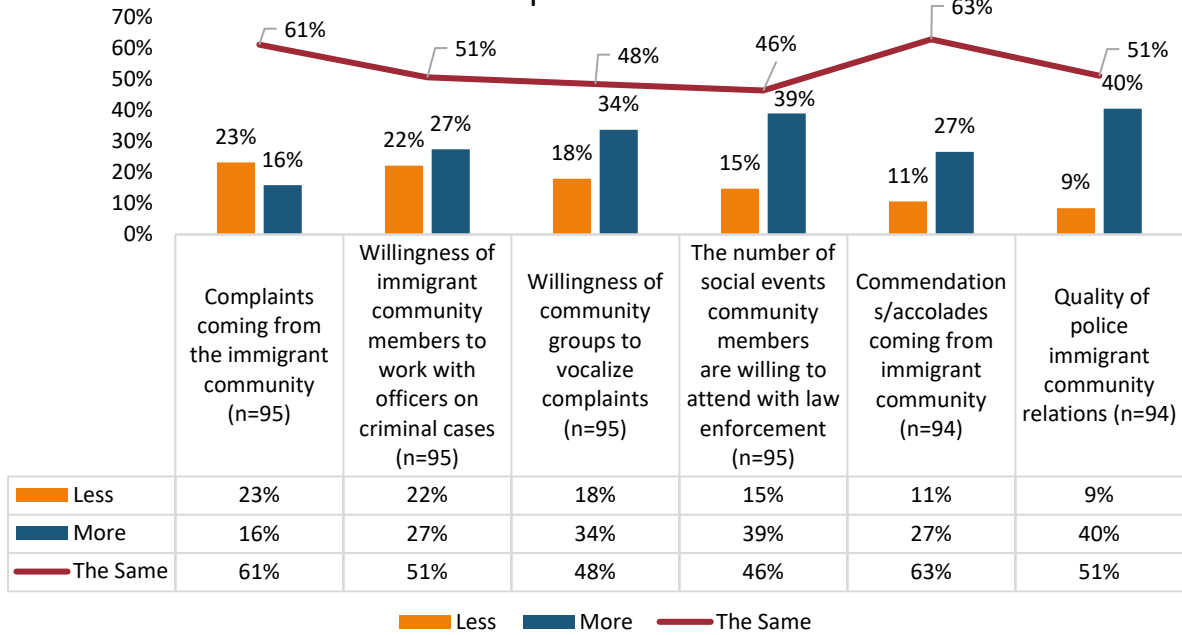
Figure 40: Change From 2016 to 2017 in Specific Community Policing Work with Immigrant and LEP Communities (n=218)



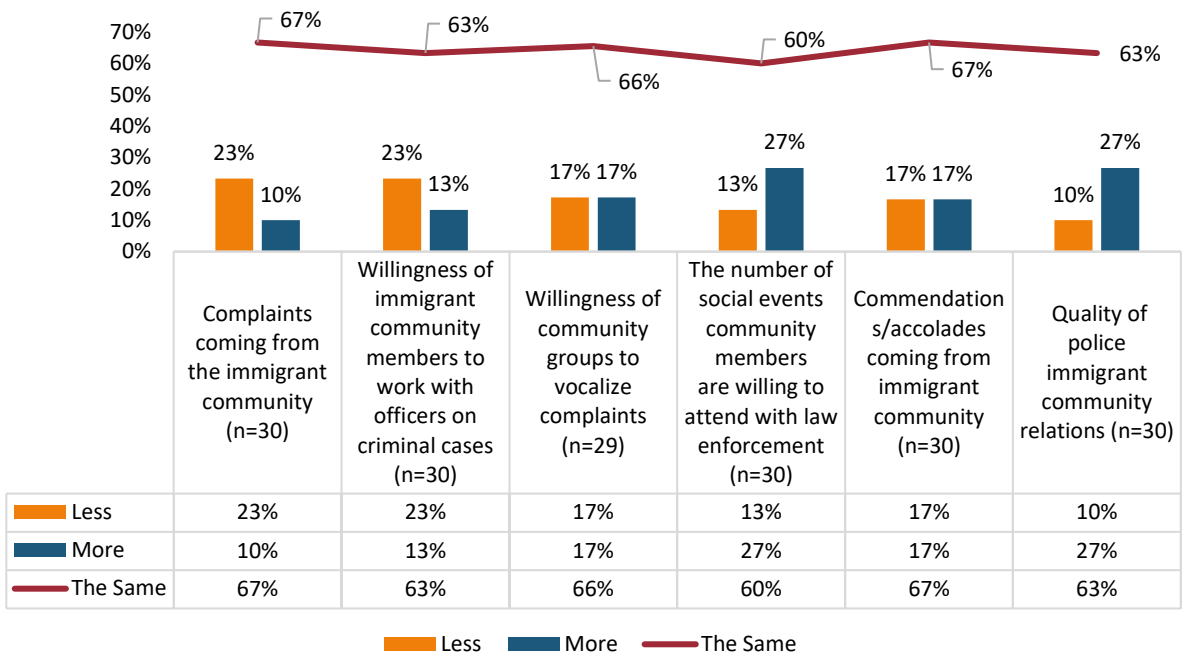
When asked about the effects of community policing efforts in 2017 relative to 2016 greater proportion of signing agencies reported more cooperation from immigrant community members on criminal cases than non-signing agencies (27%, n=26; vs 13%, n=4). On questions regarding the overall quality of community policing, more law enforcement officers working in signing agencies than non-signing agencies reported improvements in the quality of immigrant community/law enforcement relationships in 2017 relative to 2016 (40%, n=38 vs 27%, n=8).

The narratives provided by law enforcement survey participants showed some detailed explanations of how and why this increase in their Signing agencies occurred. Officers reported that they have increased their community policing and outreach with immigrant and LEP communities specifically because they were seeing the decline in cooperation and a rise in fear of law enforcement. It appears that these community outreach activities combined with the fact that the law enforcement agencies were also Signing U visa certifications as well as in some cases T visa certifications and continued presence lead to the increase in the immigrant communities' willingness to work with them. This ability to increase the immigrant communities' willingness to work with the police can be attributed to the quality of police and immigrant community relations and has resulted in cooperation on criminal investigations. (See figures 41 and 42).

**Figure 41: Signing Agencies - Changes in Effectiveness of Community Policing With Immigrant Communities 2017 Compared to 2016**

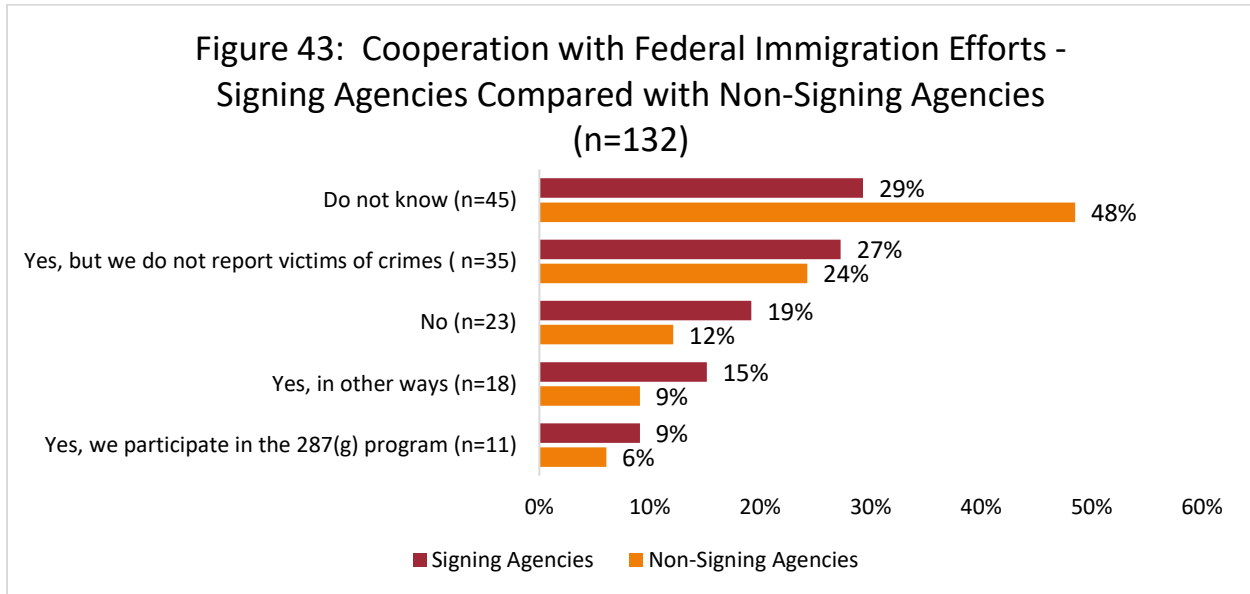


**Figure 42: Non-Signing Agencies - Changes in Effectiveness of Community Policing With Immigrant Communities 2017 Compared to 2016**



## The Impact of Increased Immigration Enforcement, Relationships with Federal Immigration Enforcement Agencies and the Ability to Investigate Crimes Perpetrated Against Immigrant Victims

Law enforcement officials participating in the survey were also asked whether and how their agencies cooperated with federal immigration efforts, as portrayed in figure 43.

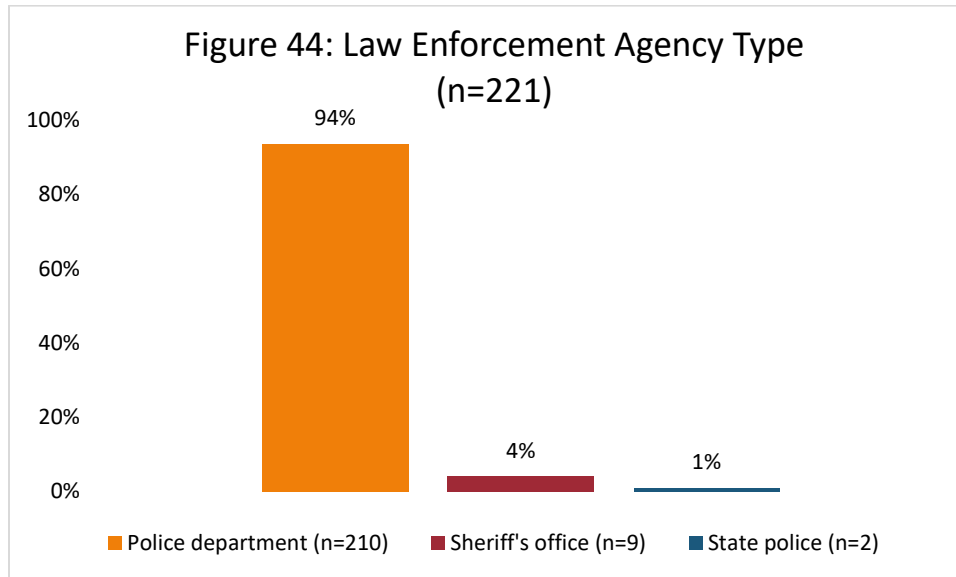


More than a quarter (27%, n=35) of law enforcement agencies reported that they do not cooperate with federal immigration enforcement efforts when the target of the enforcement action is a crime victim. Just as the data showed more cooperation from immigrant communities with Signing agencies, they show that a slightly higher proportion of Signing agencies (27%, n=27) than Non-Signing agencies (24%, n=8) affirmatively excluded immigrant and LEP crime victims from their agencies cooperation with federal immigration enforcement officials. Additionally, a greater percentage of law enforcement officers working in Non-Signing than Signing agencies did not know what their agencies policies or practices were with regard to cooperation with federal immigration efforts (48%, n=16 vs. 29%, n=29). The remaining 20% (n=22) of officers suggested that their agencies cooperated with federal immigration efforts in other ways including:

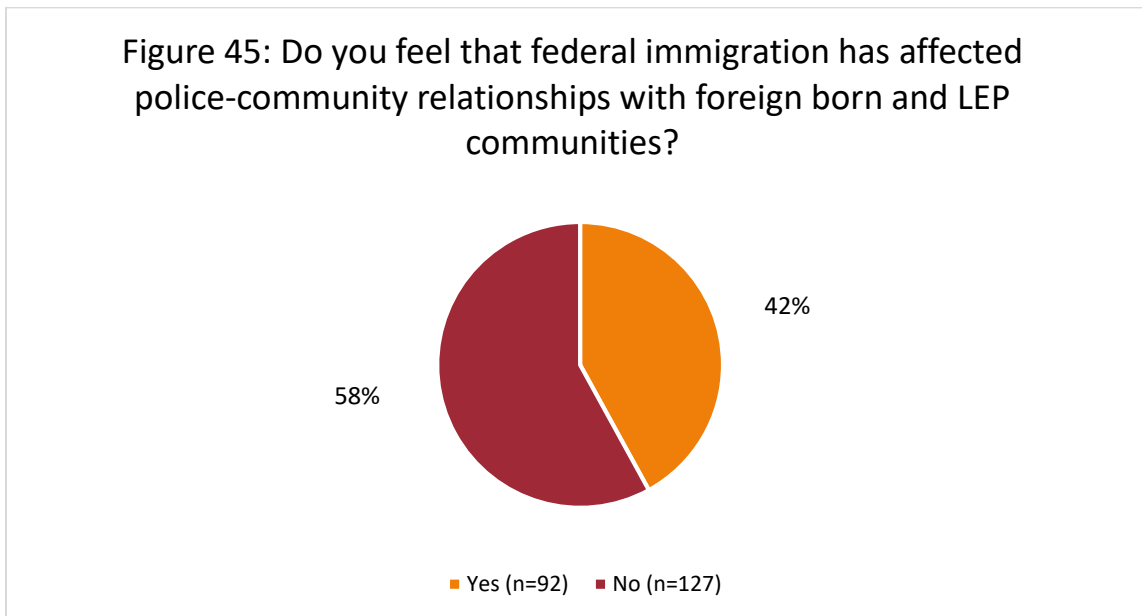
- Notifying Immigration and Customs Enforcement (ICE) when they encounter previously deported felons (n=4);
- Working with ICE on criminal investigations of gangs, drugs and human trafficking (n=3);
- Only communicating with ICE about persons have been arrested (n=3); and
- Assistance with service of federal judicial warrants, ICE warrants, jail holds, and notifying ICE about the release times and dates of perpetrators from jail (n=6).

The fact that a large majority of survey participant agencies were police departments (94%, n=210) as opposed to Sheriff's Offices (4%, n=9) may explain why the number of survey

participants reporting that their agency collaborates with Immigration and Customs Enforcement on warrants and jail holds may be low. (See, figure 44).

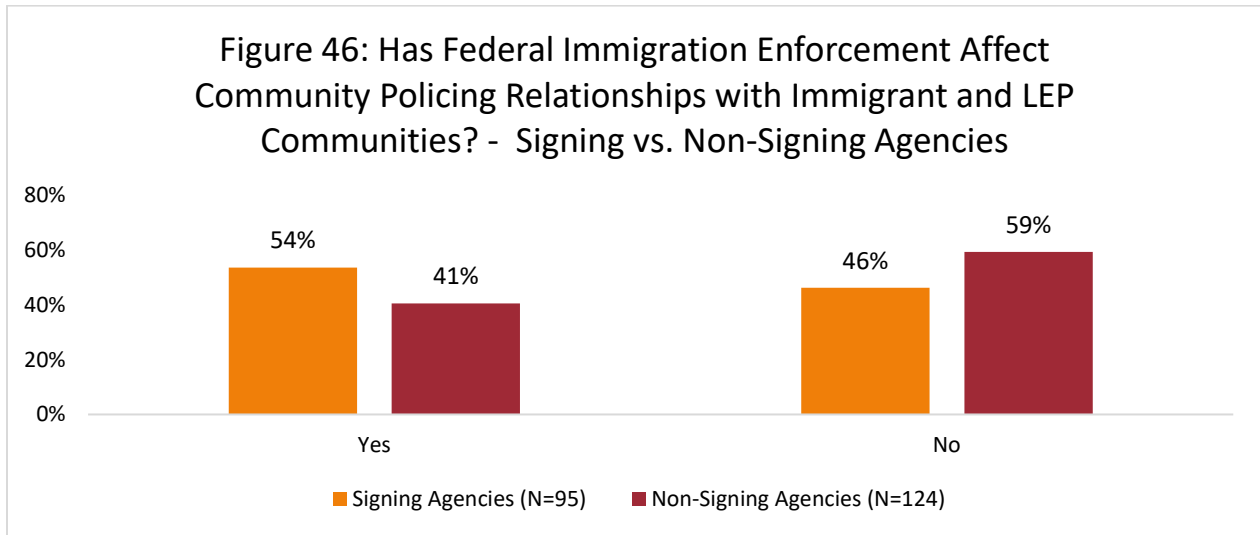


A number of questions in the survey asked law enforcement officials to compare their ability to investigate crimes perpetrated against immigrant and LEP victims in 2017 relative to 2016. Forty-two percent (42%, n=92) of all respondents felt that federal immigration had affected police-community relationships with foreign born and LEP communities, whereas 57% (n=127) felt it had not. (See, figure 45).

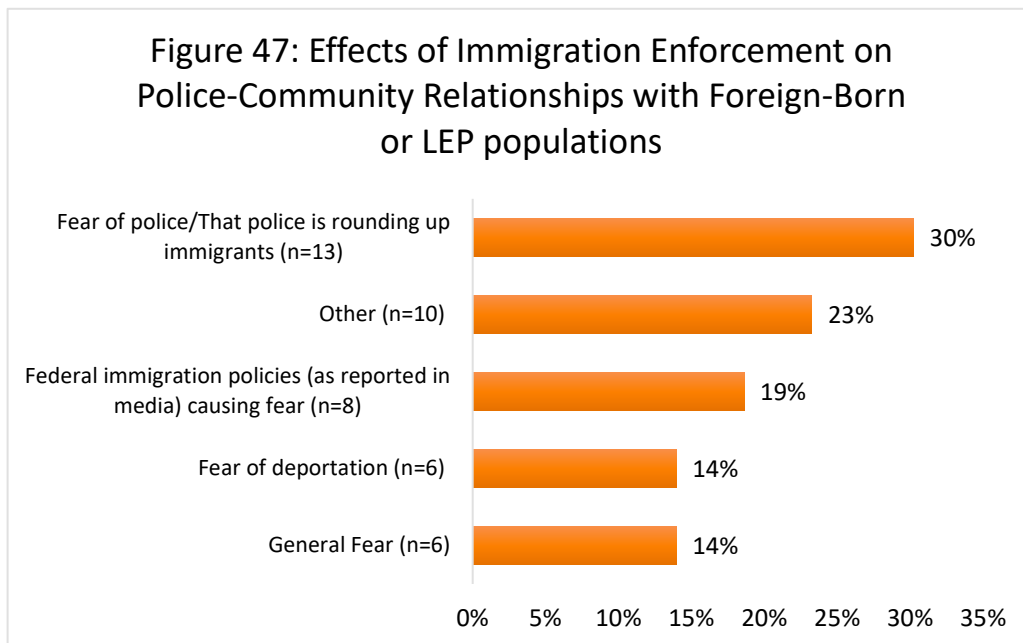


However, law enforcement officials from Signing Agencies reported that immigration enforcement is having a greater impact on their work with immigrant and LEP communities than Non-Signing agencies. Fifty-four percent (n=51) of Signing agencies observed an impact of

immigration enforcement on their relationships with immigrant and LEP communities compared to 41% (n=13) of Non-Signing agencies (See, figure 46).



The law enforcement officials participating in the survey were asked to explain the impact of immigration enforcement on their communities. Respondents who believed that federal immigration policies had indeed affected community-police relationships with foreign-born or LEP populations (n=43) were asked to elaborate on what they believed were the main causes for the changed relationships. The responses received fall into the five categories listed in figure 47.



The most frequently stated impact was that immigrant and LEP community members believed that local law enforcement and federal immigration enforcement agencies operate similarly. Immigrant victims and immigrant community members assumed that calling police for

help would result in law enforcement turning victims over to federal immigration enforcement officials. Many law enforcement officials respondent to the survey expressed their frustration that, despite their efforts to assist immigrant and LEP populations, many in the community are hesitant to reach out to law enforcement because they believe local law enforcement have the authority (and in some cases, the desire) to deport these individuals. Participants stated:

- That immigrant populations “fear the police is going to deport them when our primary goal is to assist them...[m]sot do not understand the difference in jurisdiction and responsibility,”
- “LEP communities many times do not realize that local level law enforcement are not directly involved in enforcing Federal Law,” and “There is a sense of fear of communicating with police because they see us as an extension of ICE.”

Participants also suggested that:

- Members of their community “live in a daily and pervasive climate of fear” and
- Are “afraid to go to a doctor’s appointment, or even take their children to school. [T]hey are afraid to open their doors thinking that is immigration. I often hear moms concerned about deportation and leaving their children behind.”

Some participants in the survey discussed how they attempted to counteract the increased fear among the immigrant and LEP populations they serve by increasing community engagement efforts. One participant stated,

Although we have experienced and increase in willingness my impression is this is a result of the efforts we have made to reach the immigrant and LEP community and make it known we are available to help and they don't need to fear reaching out to us. The information the immigrant population is receiving from outside our community via media, personal contacts or federal government statements still keeps many from feeling safe reporting crimes to us.

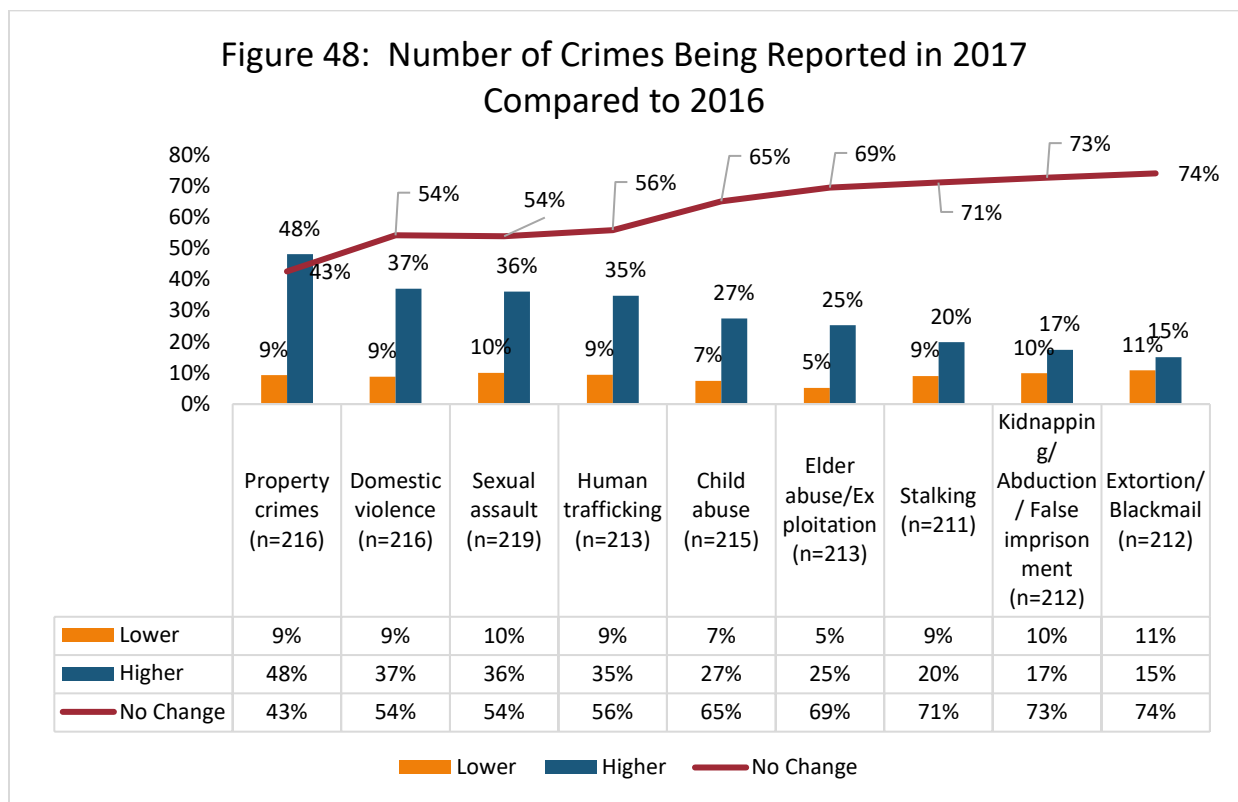
Another explained,

The news created from the new Federal programs continues to affect our ability to be efficient and effective with community groups. We have had to increase our outreach and social events to put a stop to the false news stories and perceptions.

To better assess whether and how the experiences of immigrant and LEP victims may be different from crime victims generally in the communities served by law enforcement officers we asked officers to report their experiences with crime victim reporting by the population as a whole for certain crimes in their communities. The survey was particularly interested in learning about crimes covered by the U and T visa programs including domestic violence, sexual assault, child/elder abuse, human trafficking, stalking and other violent crimes. For comparison, the survey also added one common non-violent crime category, property crimes, to the survey list. Figure 48 illustrates that while for most crimes more than half of the officers responding to the survey are seeing no change in crime reporting among the general population between 2017



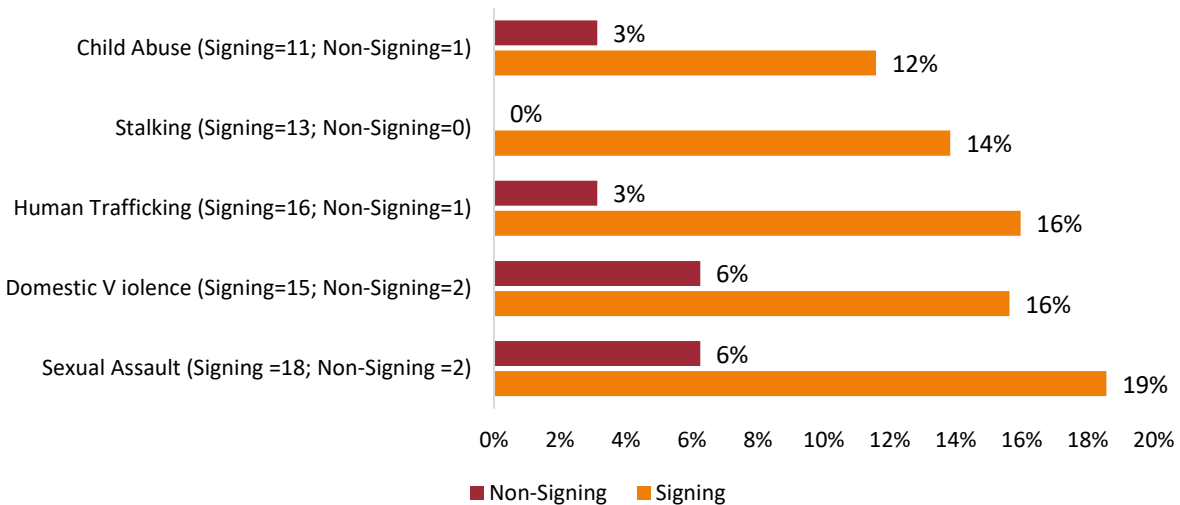
compared to 2016, over a third of the jurisdictions are experiencing higher levels of crime reporting in 2017 relative to 2016. These crimes include property crimes (48%, n=104), domestic violence (37%, n=80), sexual assault (36%, n=79) and human trafficking (35%, n=74).



This survey’s findings regarding law enforcement agencies involved in effective community policing with immigrant and LEP communities and the immigrant and victim advocacy/attorney organizations serving immigrant crime victims (see, figures 37-42), may help explain why there are increases in crime reporting during 2017 compared to 2016 by a number of the law enforcement agencies participating in this survey. (See, figure 48).

The data show a difference between Signing and Non-Signing agencies regarding the numbers of agencies observing lower rates of crime reporting in their communities generally for certain crimes comparing 2016 with 2017. This was particularly clear for violence against women and family violence crimes (See. Figure 49). This question was not limited to immigrant victims. The level of analysis that has been able to be completed with the data to date has not included a more detailed analysis of this question by the size of the LEP and immigrant populations that survey participants who answered this question served. However, it appears from this data that Signing Agencies and agencies involved in community policing with immigrant communities may be more attuned to drops in reporting of violence against women crimes generally.

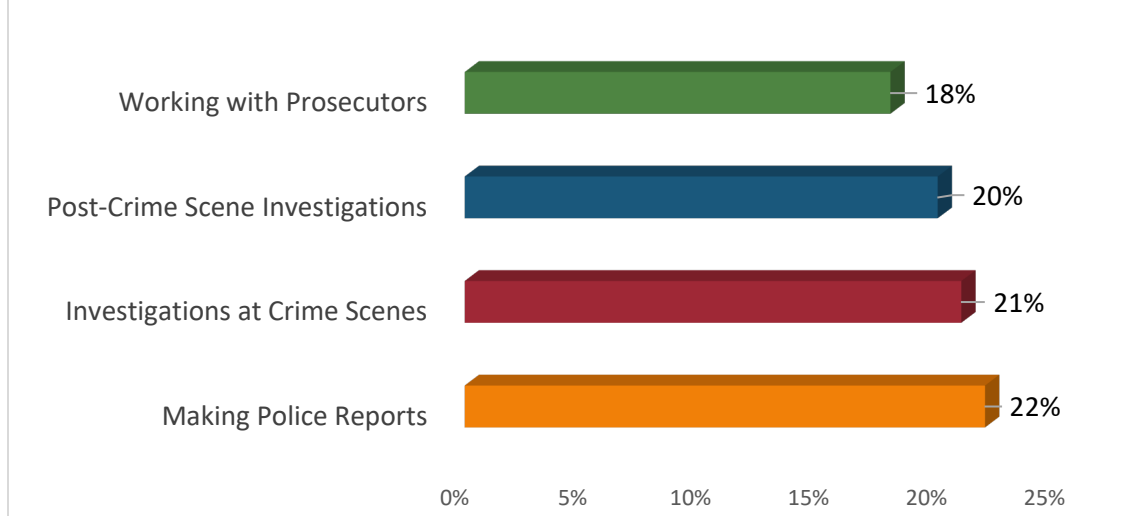
Figure 49: Non-Signing Agencies Reporting Lower Rates Declines in Reporting of the Family Violence and Violence Against Women Crimes in the Community Generally 2017 Compared to 2016



When asked to compare immigrant victims’ willingness to cooperate in 2017 relative to 2016, several police officials reported decline in immigrant and LEP victim’s willingness to cooperate with law enforcement in their jurisdictions. (See, figure 50). Officers reporting reductions in 2017 identified the following areas where immigrant and LEP victims were less willing to seek assistance:

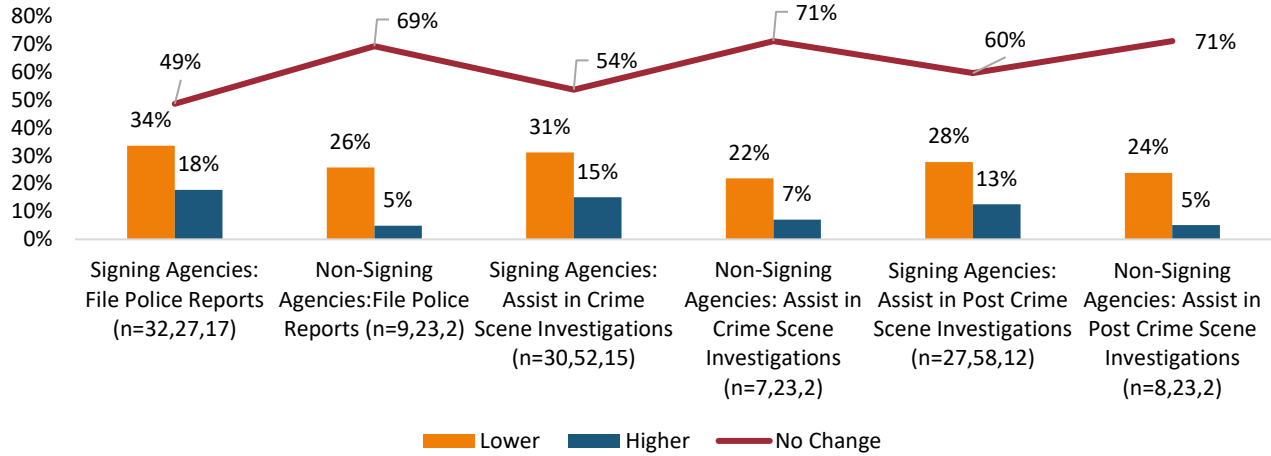
- Making police reports – (22%)
- Investigations when the police arrive at a crime scene – (21%)
- Post-crime scene investigations – (20%)
- Working with prosecutors – (18%)
- Working with victim witness advocates (13%)

Figure 50: Top Areas of Immigrant & LEP Victims' Reduced Willingness to Seek Assistance From Law Enforcement



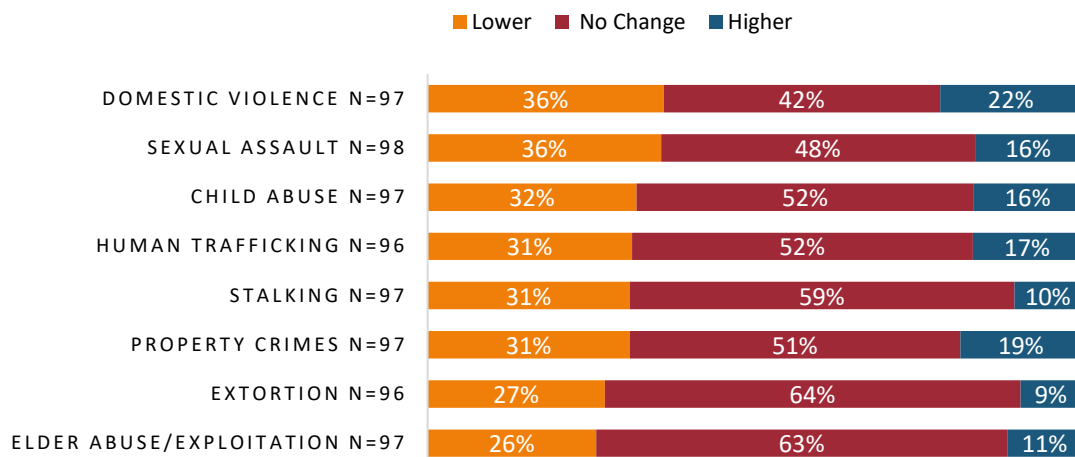
The survey asked participating law enforcement agencies to report on the extent to which they were observing differences in the willingness of immigrant and LEP crime victims to assist law enforcement officials in criminal investigations and prosecutions in 2011 compared to 2016. With regard to crime scene investigations, willingness to make police reports, and willingness to work with police in post-crime scene investigations, examining the observations reported by law enforcement officials working at Signing Agencies and Non-Signing Agencies there were important differences between agencies' experiences. The survey found that Signing Agencies reported greater declines and greater increases in immigrant and LEP victim willingness to cooperate with law enforcement at each of these three stages of criminal investigation, than Non-Signing Agencies. (See, figure 51).

**Figure 51: Signing Agencies Observe Both More Decline and More Increase in Cooperation From Immigrant and LEP Victims Than Non-Signing Agencies in 2017 compared to 2016**

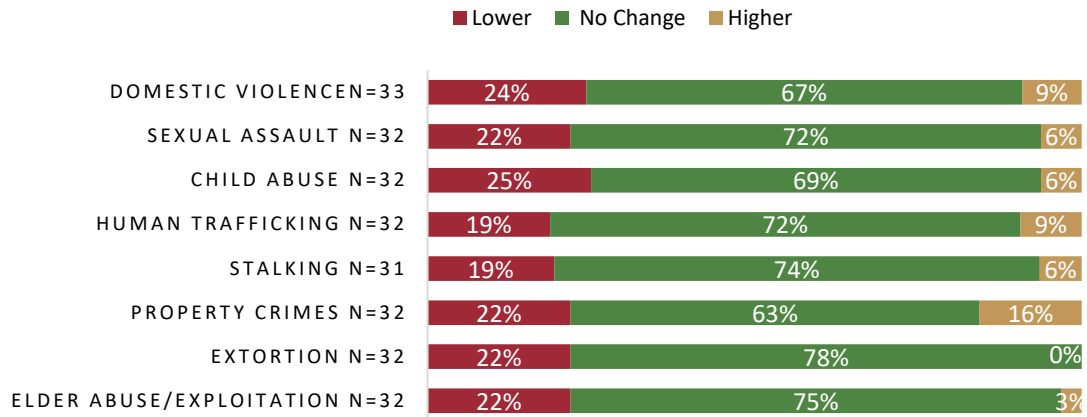


These differences between the experiences of Signing vs. Non-Signing Agencies were found across a wide range of criminal cases including, domestic violence, sexual assault, and child abuse. Figures 52-57 provide details regarding law enforcement survey participant’s observations of immigrant victim cooperation in criminal cases in 2017 compared to 2016 by the type of criminal case. Examining these findings together with the answers to the qualitative survey questions reported on pages 40-41 of this report, it appears that as Signing Agencies observed drops in immigrant crime victims’ willingness to participate, these agencies increased their community policing outreach and this lead to increases in the willingness of immigrant victims to cooperate with law enforcement investigating crimes committed against immigrant victims.

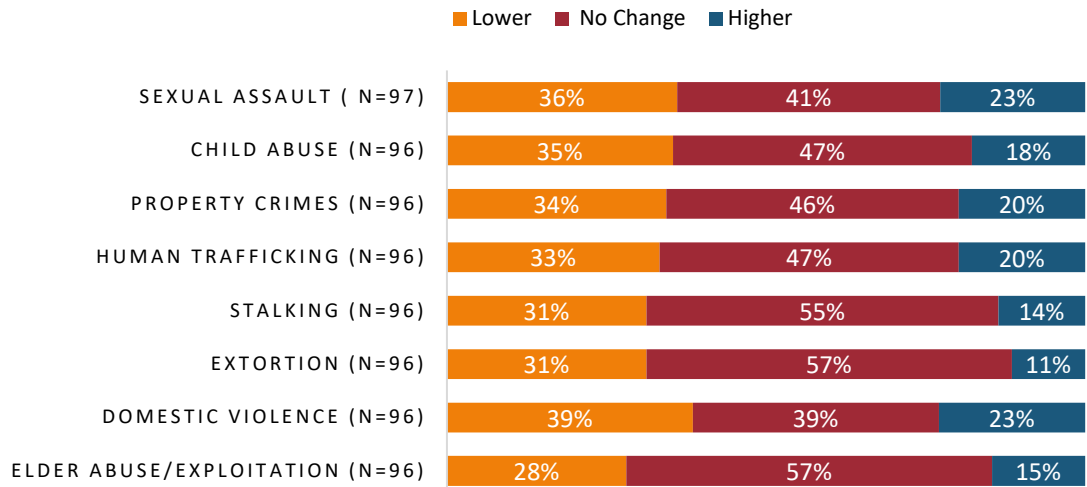
**Figure 52: Immigrant And LEP Victim's Willingness Assisat With Crime Scene Investigations In 2017 Vs 2016 - Signing Agencies**



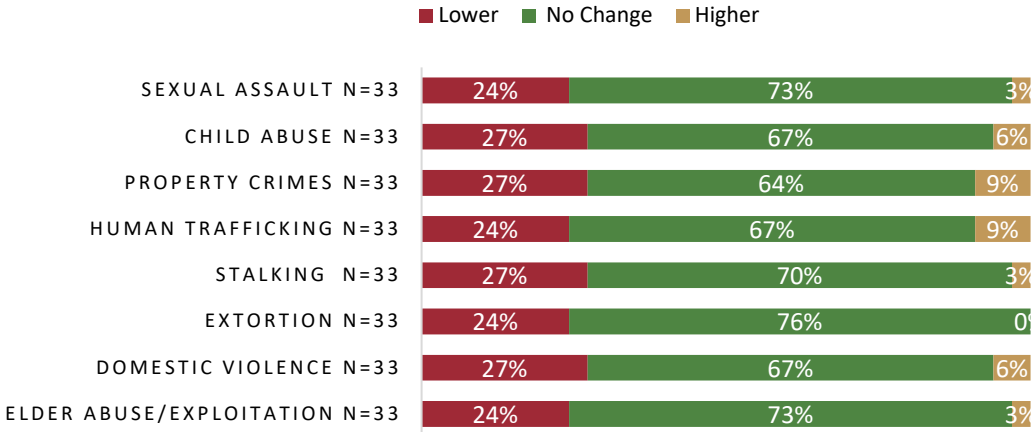
**Figure 53: Immigrant And LEP Victim's Willingness Assist With Crime Scene Investigations in 2017 vs 2016 - Non-signing Agencies**



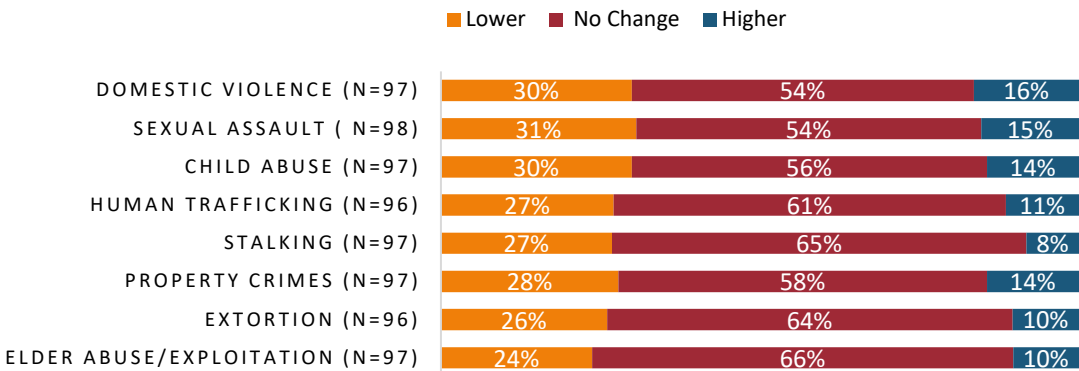
**Figure 54: Immigrant And LEP Victim's Willingness to file Police Reports In 2017 Vs 2016 -Signing Agencies**



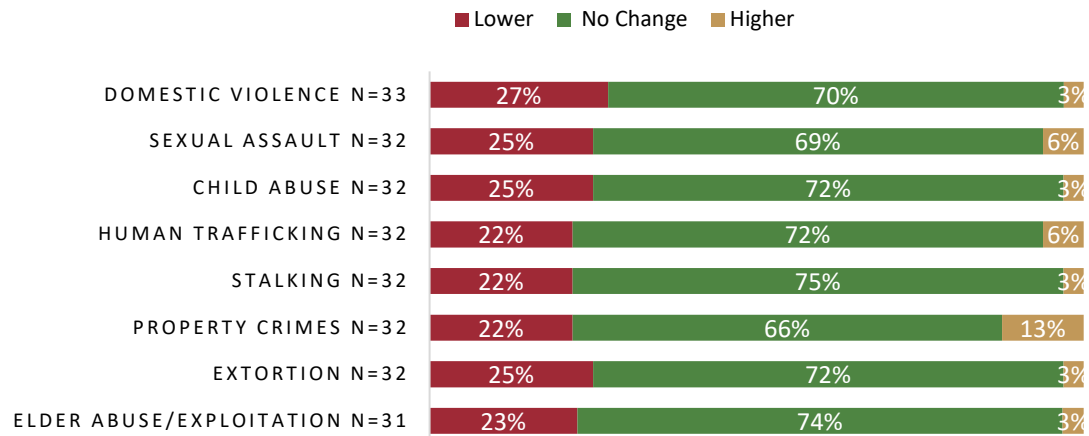
**Figure 55: Immigrant And LEP Victim's Willingness To File Police Reports In 2017 Vs 2016 - Non-signing Agencies**



**Figure 56: Immigrant And LEP Victim's Willingness Assist With Post-crime Scene Investigations In 2017 Vs 2016 - Signing Agencies**

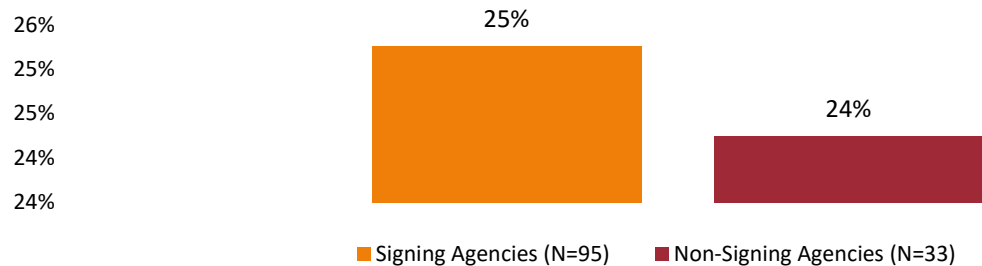


**Figure 57: Immigrant And LEP Victim's Willingness Assist With Post-crime Scene Investigations In 2017 Vs 2016 -Non-signing Agencies**



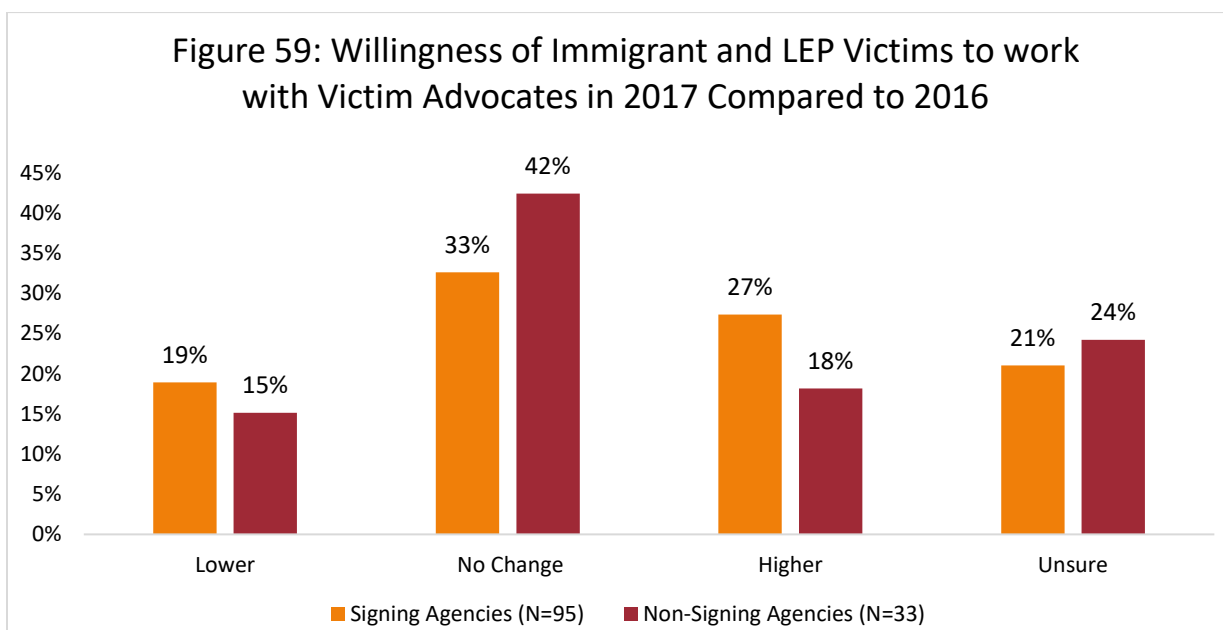
About a quarter of both Signing and Non-Signing agencies reported declines in immigrant and LEP crime victim willingness to work with prosecutors on criminal investigations and prosecutions. (See, figure 58).

**Figure 58: Percent of Law Enforcement Agencies Reporting That in 2017 Compared to 2016 Immigrant and LEP Victims are Less Willing to Assist Prosecutors**



Some of these differences between Signing and Non-Signing jurisdictions may be attributed to the fact that Signing jurisdictions appear from the community policing data discussed above and in figures 38-42 to be more involved with the immigrant communities they serve than Non-Signing jurisdictions. This allowed Signing Agencies to gauge the changes with the immigrant and LEP population that was on their radar and they responded. Also, Signing agencies' certification practices bring officers working for these agencies in more frequent contact with immigrant and LEP crime victims who communicate with officers about victims' fears and concerns.

This trend in the data is reinforced by the differences between Signing and Non-Signing Agencies with regard to the willingness by immigrant and LEP victims to work with police departments' based victim advocates and victim witness staff. Signing agencies more frequently reported increases in immigrant victim cooperation with victim witness staff than Non-Signing agencies (27%, n=26 vs 18%, n=6). Also, consistent with the community policing data and the qualitative responses provided by law enforcement survey participants, a slightly higher percentage of Signing agencies than Non-Signing agencies to saw a decline in immigrant victims' willingness to work with victim advocates police department staff (19%, n=18 vs 15%, n=5) (See, figure 59)



Law enforcement officials were asked to report on the reasons most commonly given to them by immigrant and LEP crime victims for not cooperating or not continuing to cooperate with law enforcement as the criminal case moves from a crime scene investigation, to a police report, to the post-crime scene investigation, and potentially to a prosecution. Immigration status related concerns were three (3) of the top six (6) concerns victims had and reasons victims provided for non-cooperation (See, figures 60 and 61)

It is important to note that access to legal immigration status brings with it access to legal work authorization. As a result in cases of immigrant domestic violence or work place sexual assault victims, concerns about the victim's inability to support herself and her children if she leaves leads immigrant victims to stay in abusive employment and homes for until the victim obtains legal work authorization through the victim's VAWA or U visa immigration case.<sup>28</sup> Figure 30 lists the top six concerns law enforcement officials reported as concerns immigrant victims have shared with them. Additionally, figure 61 provides more details about the range of

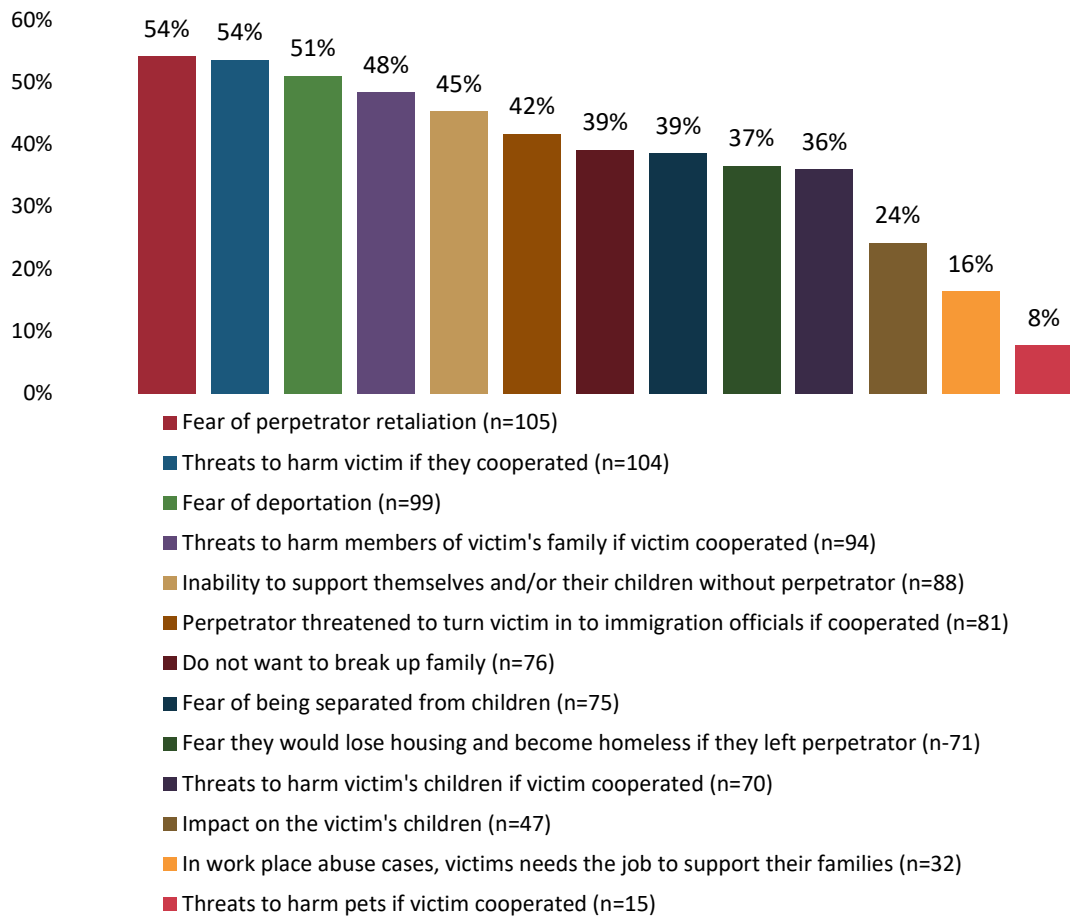
<sup>28</sup> Leslye E. Orloff, National Survey on Timing of Access to Work Authorization by Immigrant Victim VAWA Self-Petitioners and U-Visa Applicants, LEGAL MOMENTUM (Sep. 28, 2011), <http://niwaplibrary.wcl.american.edu/pubs/imm-qref-timingaccessworkauthoriz9-28-11/>.



immigrant victims' concerns and reasons for their non-cooperation with numerous justice system officials as reported by the participants in the law enforcement survey. Many of the factors listed are similar to all crime victims who experience family violence, sexual assault, stalking, and human trafficking.

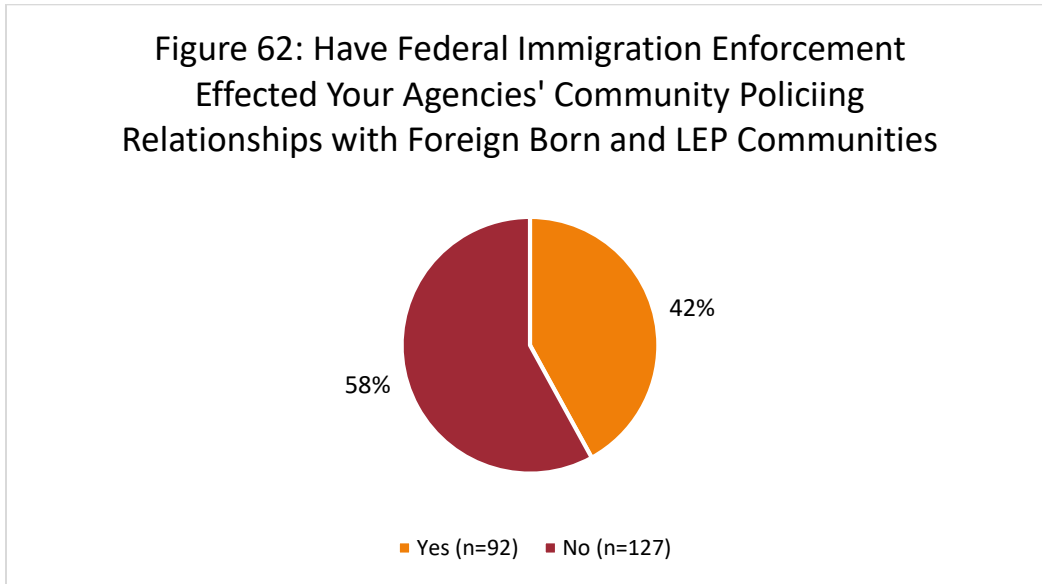


Figure 61: Reasons Immigrant and LEP Victims gave Law Enforcement for Non Cooperation



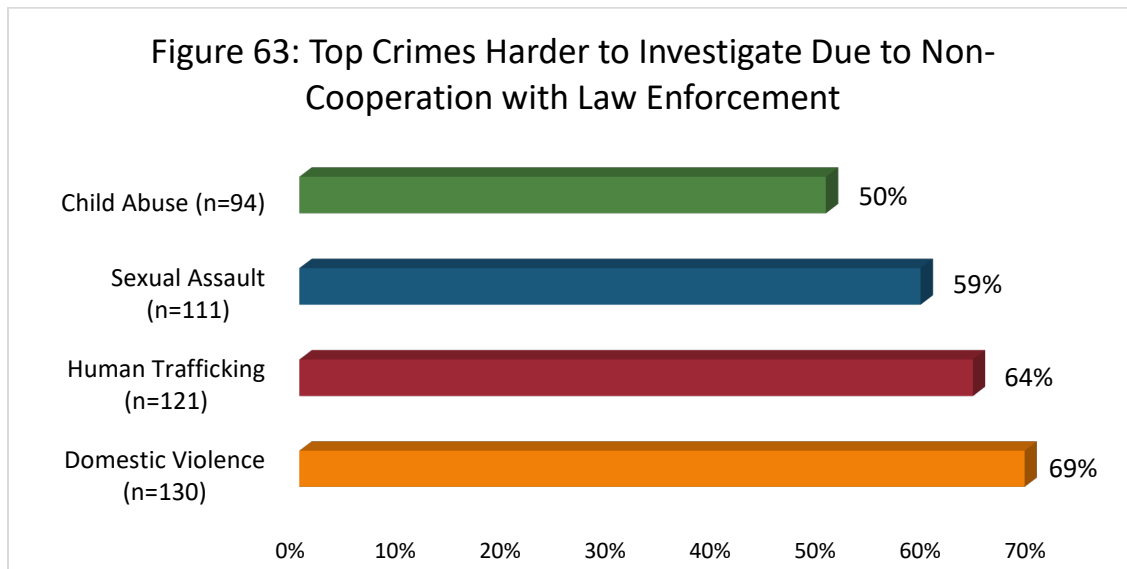
Moreover, the survey showed that police officers are facing increased challenges in investigating crimes involving immigrant and LEP victims in 2017 relative to 2016. A significant percentage (42%) of law enforcement officials felt that federal immigration enforcement practices were affecting police-community relationships with foreign born and LEP communities. (See, figure 62).

Figure 62: Have Federal Immigration Enforcement Effected Your Agencies' Community Policing Relationships with Foreign Born and LEP Communities



A large proportion of law enforcement officials taking the survey reported that some crimes involving immigrant and LEP victims were becoming harder to investigate in 2017 compared to 2016 due to victim non-cooperation. Fears, threats, and concerns that victim cooperation will trigger the victim’s deportation are important factors in victim’s non-cooperation decisions. (See, figure 63).

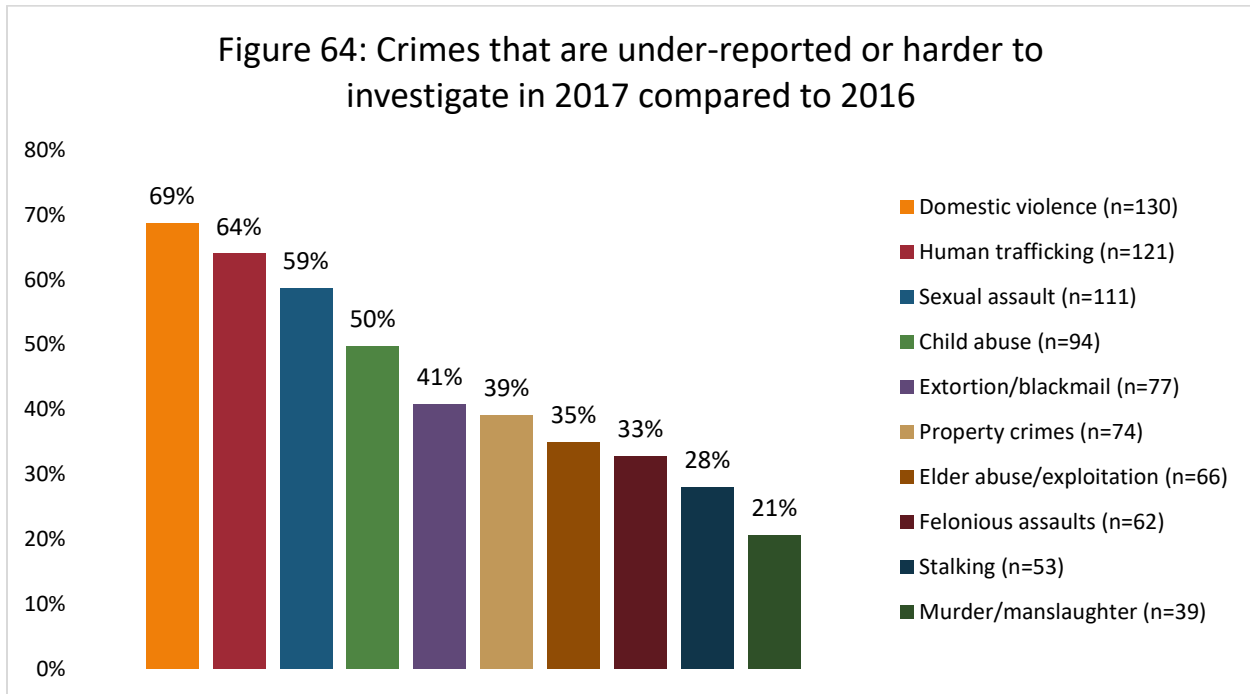
Figure 63: Top Crimes Harder to Investigate Due to Non-Cooperation with Law Enforcement



Law enforcement officials reported that a wide range of crimes go unreported and have become harder to investigate when the victims are immigrant or limited English proficient. Figure 64 lists the crimes many officers reported have become more difficult to investigate and prosecute in 2017 compared to 2016. These include:

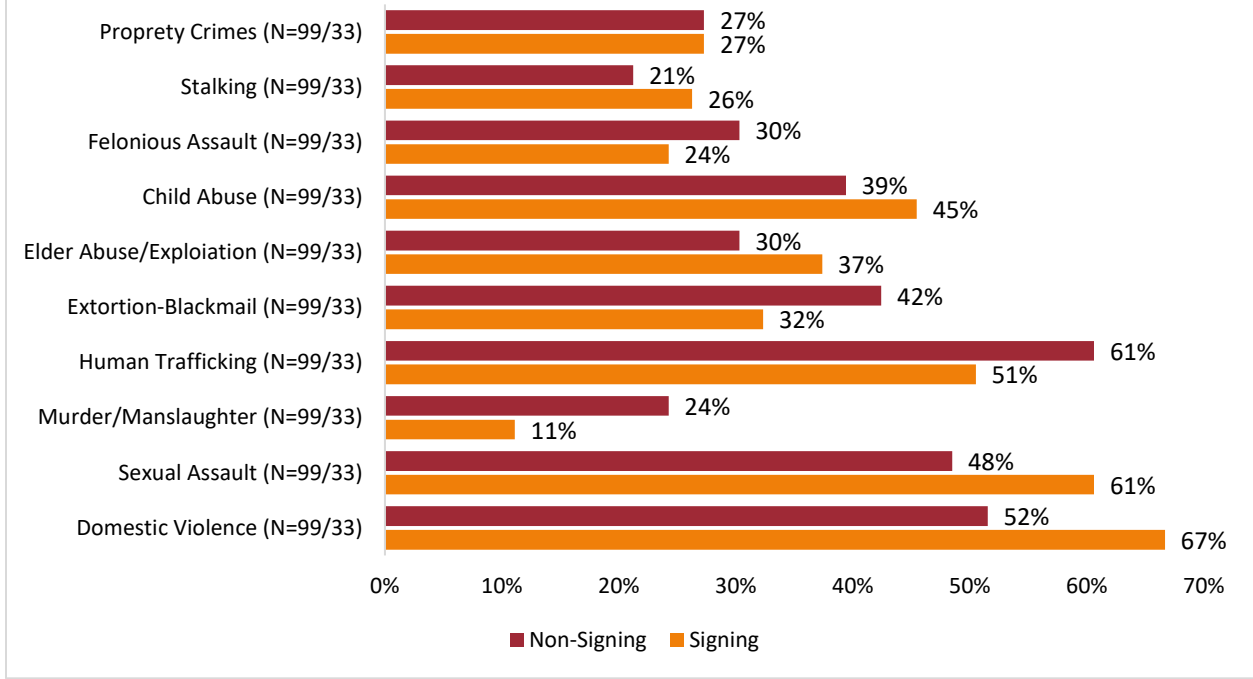
- Domestic violence – (69%)

- Human trafficking – (64%)
- Sexual assault – (59%)
- Child abuse – (50%)
- Extortion-Blackmail – (38%)
- Elder abuse and exploitation (34%)
- Felonious assaults – (33%)



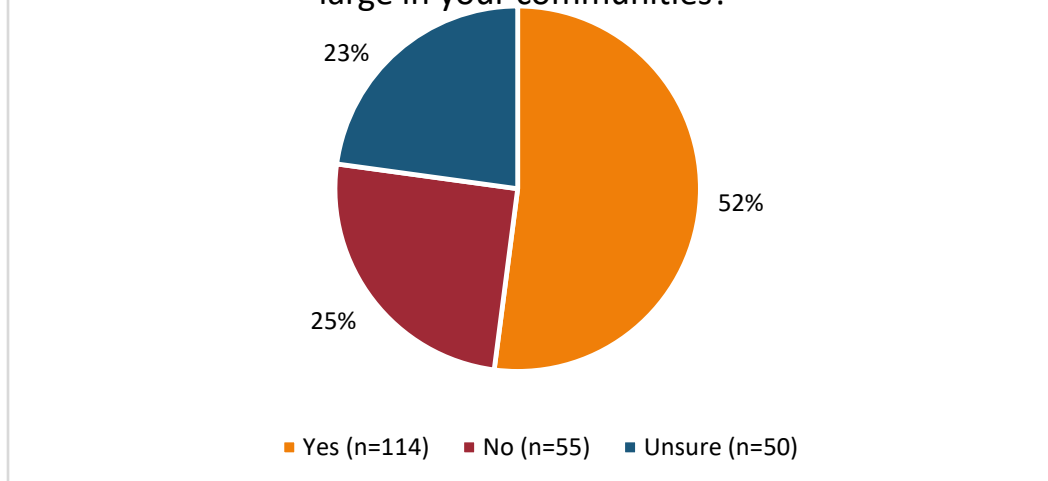
The responses of the law enforcement officials employed by Signing agencies indicating that various crimes were becoming underreported and/or harder to investigate differed greatly from those employed by Non-Signing agencies (See, figures 63 and 64). The crimes that substantial numbers of law enforcement officers working in Signing agencies report have become harder to investigate include domestic violence (67%, n=66 vs 52%, n=17) and sexual assault (61%, n=60 vs 48%, n=16). A greater proportion of law enforcement officers in Non-Signing agencies indicated that murder/manslaughter has become underreported/harder to investigate than Signing agencies (24%, n=8 vs 11%, n=11). A slightly higher percentage of officials from Non-Signing than Signing agencies reported that human trafficking and extortion/blackmail is becoming underreported/harder to investigate (61%, n=20 vs 51%, n=50; 42%, n=14 vs 32%, n=32) (See, figure 65).

Figure 65: Crimes That Have Become Underreported or Harder to Investigate in 2017 vs 2016 by Signing and Non-Signing Agencies

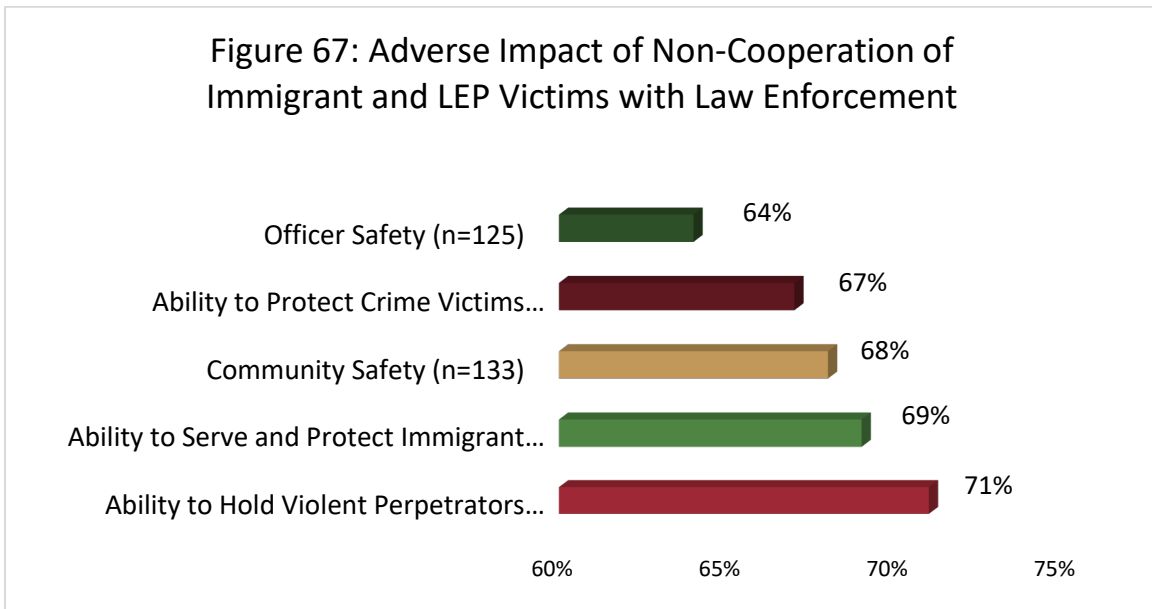


Importantly, almost 52 % of law enforcement officials participating in the survey reported that barriers facing LEP and immigrant victims resulted in greater numbers of perpetrators at large in their communities. (See, figure 66).

Figure 66: Do the barriers facing LEP and immigrant victims result in greater numbers of perpetrators at large in your communities?

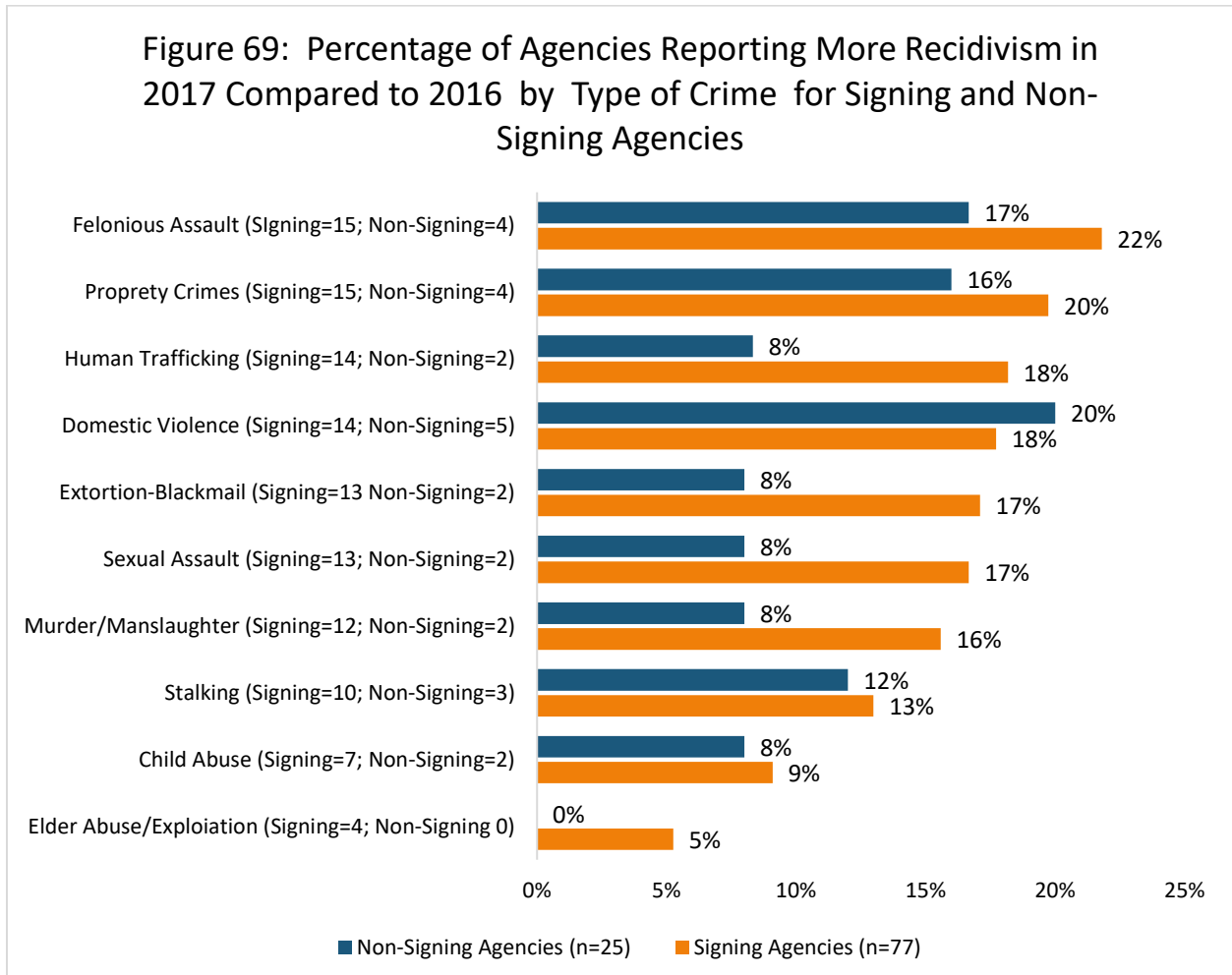


Survey participants provided more detail on the impact of this when asked whether the barriers affecting immigrant and LEP victims had adverse effects. (See, figure 67). A significant number of those participating in the survey reported an adverse impact on victim, community and officer safety. Higher proportions of Signing Agencies reported impacts on community safety and their ability to hold offenders accountable than Non-Signing Agencies. (See, figure 68).



Law enforcement officials also reported that the decline in immigrant victim cooperation is leading to increased recidivism by perpetrators of a range of crimes in their communities, including domestic and sexual violence crimes. A greater proportion of law enforcement officials from Signing agencies reported increased recidivism than those from Non-Signing

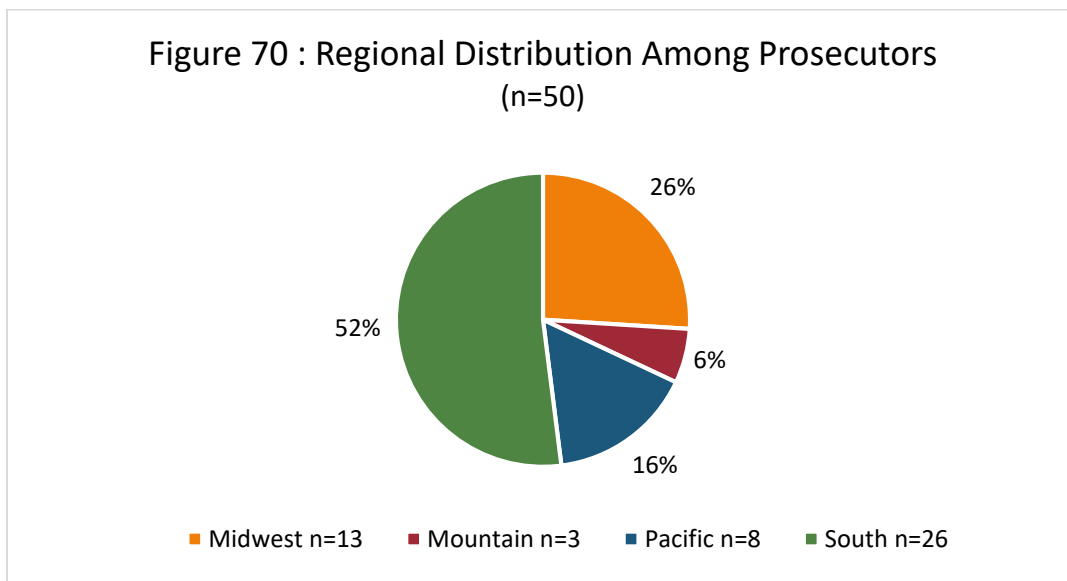
agencies in 2017 compared to 2016 including with regard to felonious assault (22% vs. 17%) property crimes (20% vs 16%), and human trafficking (18% vs 8%). (See, figure 69).



**Part Three: National Survey of Prosecutors**  
**Findings from 2017 National Survey of Prosecutors**

**Introduction to the Participating Prosecutors**

A total of 50 prosecutors participated in the survey from 19 states.<sup>29</sup> Figure 1 provides an overview of the regional distribution among the participating prosecutors.<sup>30</sup> More than half of those who participated in the survey were from the South of the United States and more particularly from the state of Virginia (n=13). (See, figure 70).

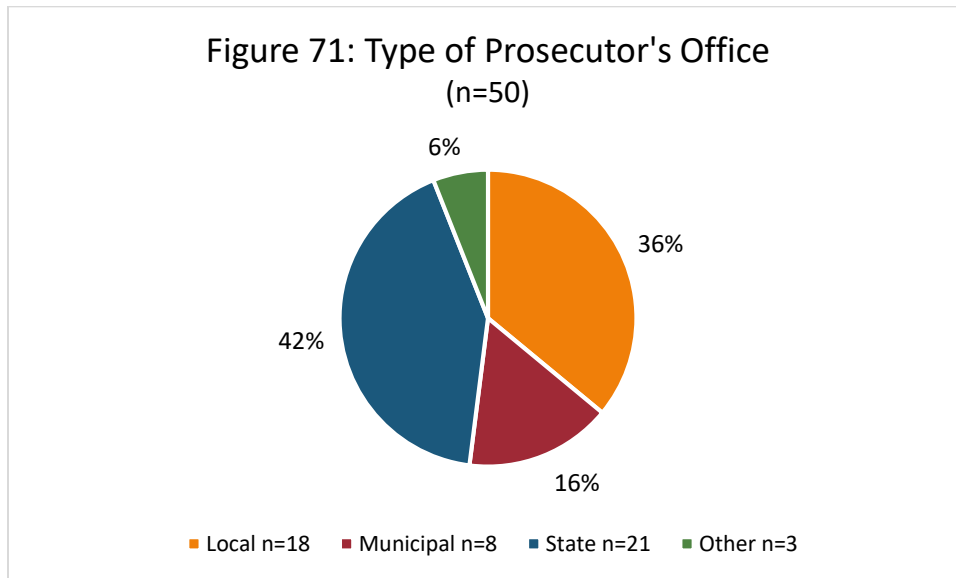


Most survey participants worked for local, municipal, or county prosecutor offices (56%, n=28) and another 42% (n=21) worked for state prosecutor’s offices. (See figure 2).

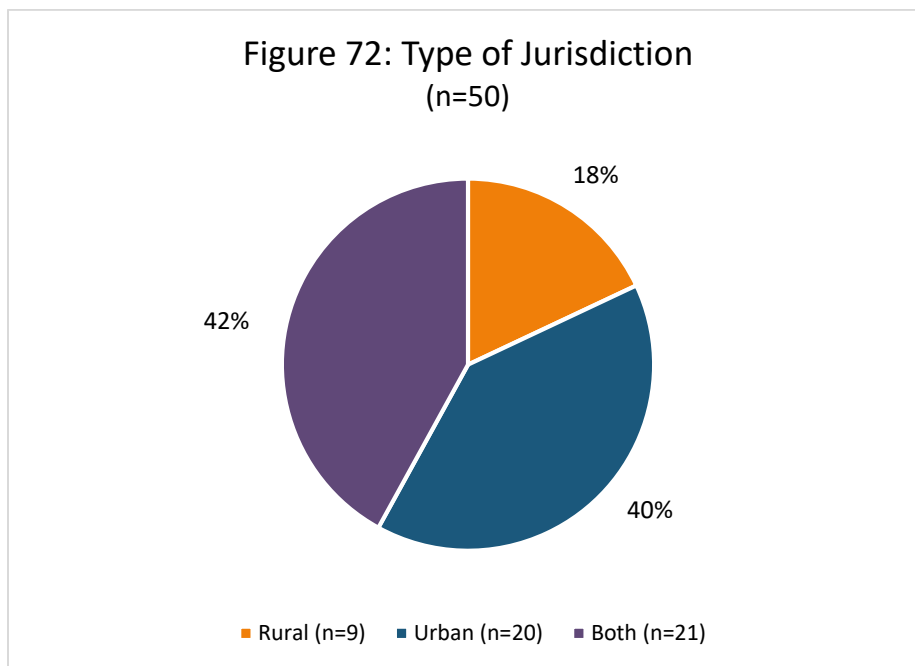
<sup>29</sup> Prosecutors participated in the survey from the following states: AZ, CA, FL, GA, HI, ID, LA, MI, MN, MO, NC, NM, OH, OK, OR, TN, VA, WA, WI

<sup>30</sup> The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest: (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).

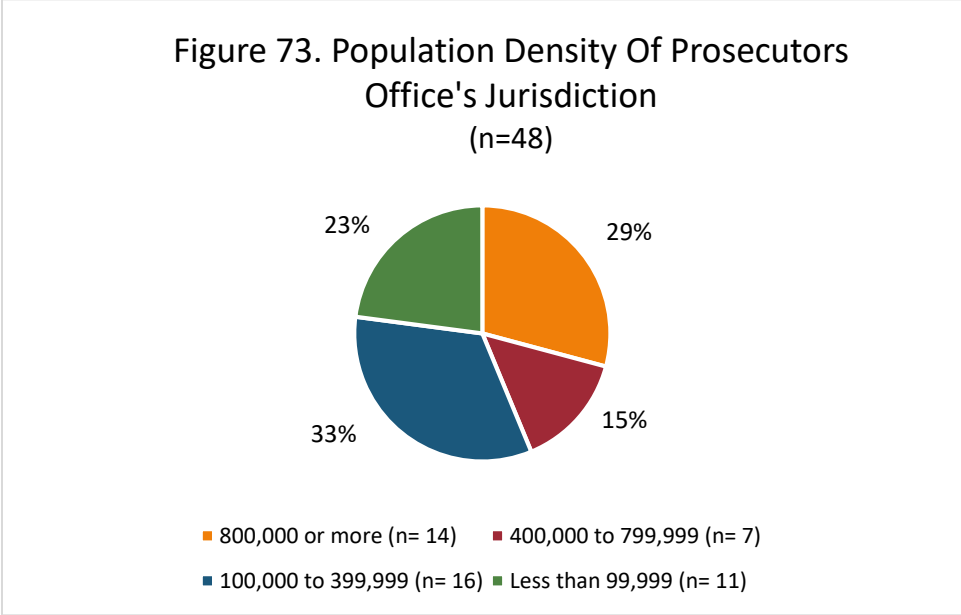




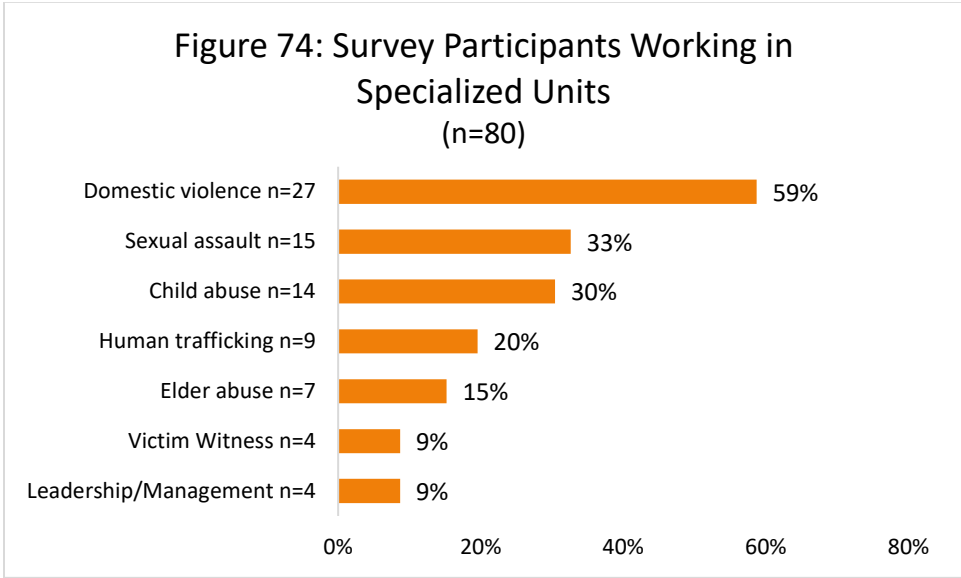
Survey participants worked in prosecutor offices that serve jurisdictions with diverse population sizes. (See, figure 73). The largest number of survey participants (42%, n=21) served jurisdictions that are both urban and rural. Another 40% (n=20) served only urban jurisdictions and 18% (n=9) served jurisdictions that were exclusively rural. (See, figure 2).



Over half (56%, n=27) of the prosecutors participating in the survey reported serving smaller jurisdictions with populations under 399,000. A little more than quarter (29%) of the prosecutors participating in the survey serve large cities with populations of more than 800,000. (See figure 73).

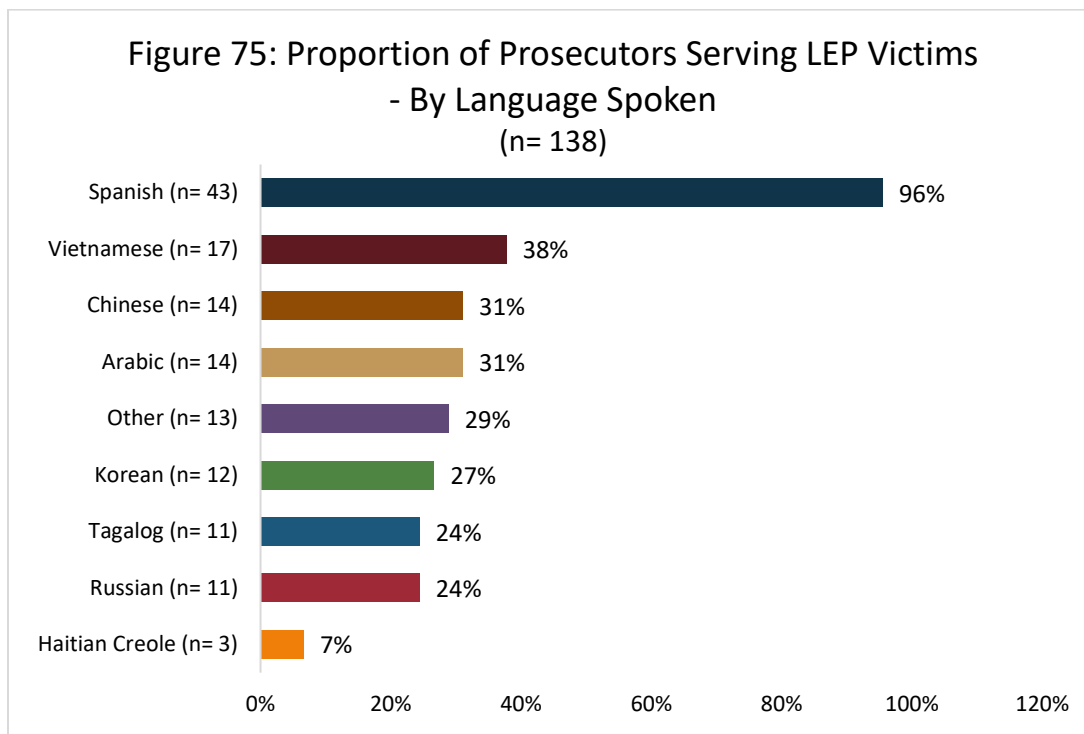


Most of the participants worked in a specialized unit. Fifty-nine percent (n=27) worked in a domestic violence unit, thirty-three percent (n=15) worked in a sexual assault unit, thirty percent (n=14) in a child abuse unit, and twenty percent (n=9) in a human trafficking. (See, figure 74).



The majority (71%, n=35) of participants in the survey indicated that their jurisdiction has a large number of Limited English Proficient (LEP) residents. The eight languages most encountered by the prosecutors are listed in figure 6. In order of most to least spoken these languages are: Spanish (96%, n=43), Vietnamese (38% n=17), and Chinese (31%, n=14) were the three most commonly encountered languages. (See, figure 6). Twenty-nine percent (n=13) of prosecutors reported that they commonly encounter languages that are not included in the top 8 languages listed in figure 75. These prosecutors provided additional details about which languages the crime victims and witnesses they encountered speak. The languages included

Amharic, American Sign Language, Chuukese, Farsi, H'mong, Ilocano, Japanese, Korean, Marshallese, Nahuatl, Somali, Samoan, and several indigenous languages from Guatemala.

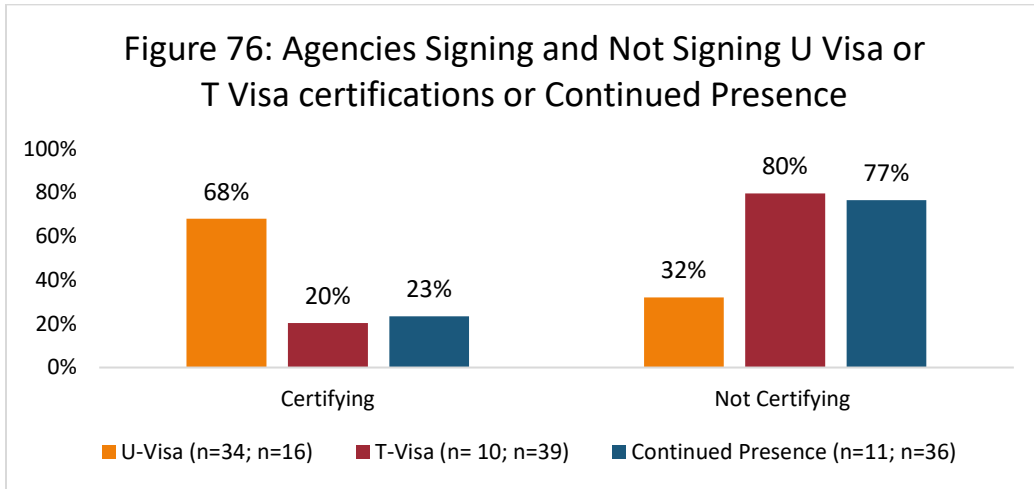


### **Prosecution Agencies Signing U Visa Certifications, T Visa Certifications and/or Requesting Continued Presence**

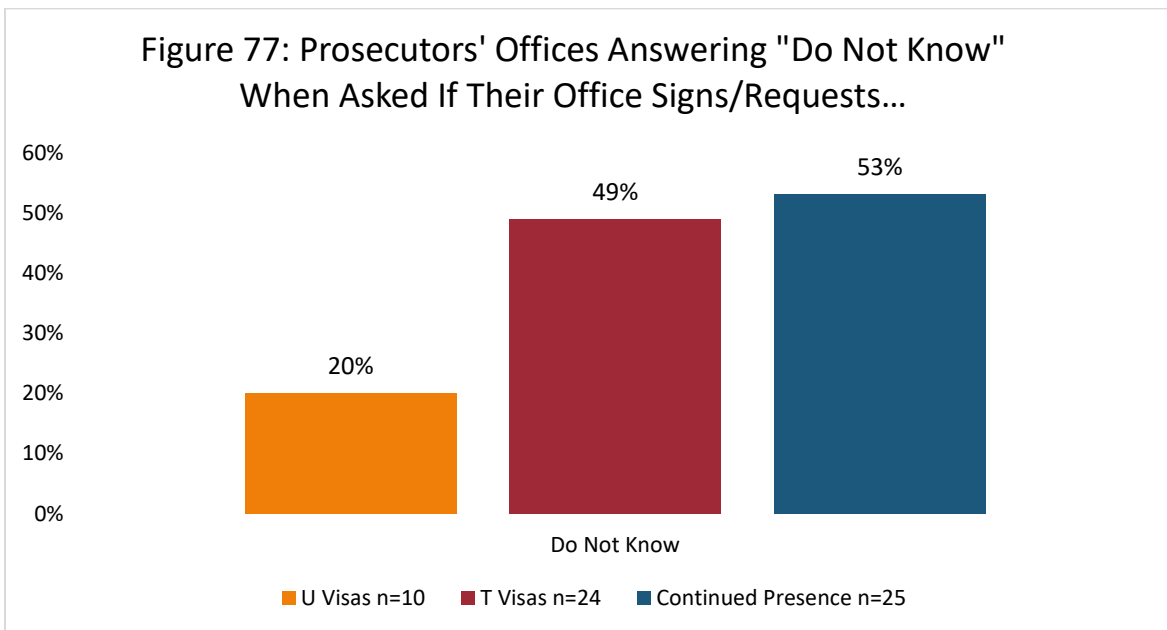
Prosecutors were asked to indicate whether their agency signed U visa certifications and/or T visa certifications in cases of foreign-born or LEP crime victims or human trafficking victims. The majority indicated that their agencies (68%, n=34) sign U visa certifications for LEP and foreign-born victims. For T-visa certifications, only 20% (n=10) of prosecutors reported that their offices signed T visa certifications. The U.S. Department of Homeland Security encourages prosecutors to seek continued presence from immigration and Customs Enforcement (ICE) officials on behalf of immigrants who are victims or potential witnesses in human trafficking prosecutions.<sup>31</sup> Less than a quarter (23%, n=11) of the participants in the survey indicated that their prosecutor offices seek continued presence for human trafficking victims.

<sup>31</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CONTINUED PRESENCE TEMPORARY IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Jun. 2010), <http://library.niwap.org/wp-content/uploads/DHS-Continued-Presence-Brochure.pdf>; DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, 27 NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> (An application for CP should be initiated immediately upon identification of a victim of human trafficking.)

The majority of prosecutors reported<sup>32</sup> that their agencies do not sign T-visas (80%, n=39), and are not seeking continued presence (77%, n=36). The majority of prosecutors reported that their agencies are Signing U Visa certifications (68%, n=34). (See figure 76).



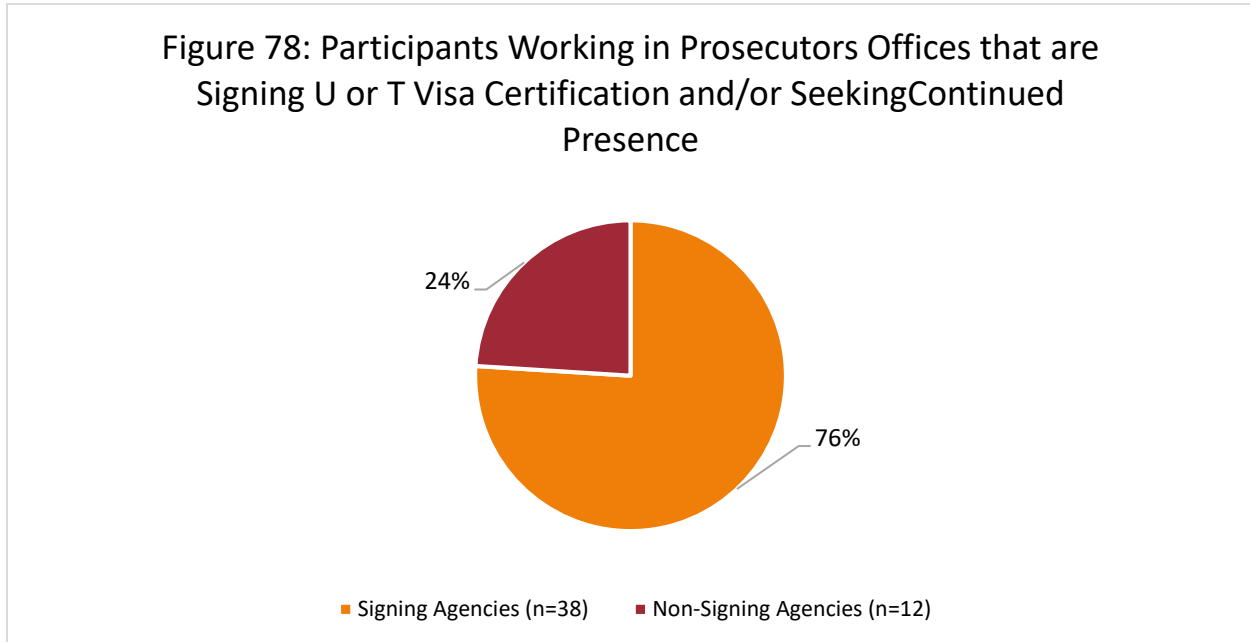
Of those who are included in the do not certify category, many reported that they do not know whether their agency is Signing U visa certifications, T visa certifications, or was requesting continued presence on behalf of immigrant crime victims and human trafficking victims. (See, figure 77).



<sup>32</sup> This includes prosecution offices who reported that their agencies are not signing and survey participants who reported they did not know whether their agency was certifying or requesting continued presence.

### “Signing Agencies” Compared to “Non-Signing Agencies”

A significant majority (76%, n=38) of the agencies where the prosecutors participating in the survey worked are “Signing Agencies”. The remaining 24% (n=12) participating in the survey worked in “Non-Signing Agencies”. (See, figure 78).



Signing agencies were defined as prosecutors’ offices that signed at least one of the following:

- U visa certifications
- T visa certifications
- Requests for continued presence

Most prosecutors participating in the survey signed U visa certifications (68%, n=34). Details about survey participant prosecutors practices of signing U and/or T visa certifications and/or continued presence requests are reported in Figure 79.

Does the Agency Sign?	U Visa Certifications		T Visa Certifications		Continued Presence Requests	
	#	%	#	%	#	%
Yes = Signing Agencies	34	68%	10	20%	11	23.5%
No = Non-Signing Agencies	6	12%	15	31%	11	23.5%
Do not know = Non-Signing Agencies	10	20%	24	49%	25	53%
<b>Totals</b>	<b>50</b>	<b>100%</b>	<b>49</b>	<b>100%</b>	<b>107</b>	<b>100%</b>

Among the 76% (n=38) of prosecution agencies who reported working in Signing Agencies:

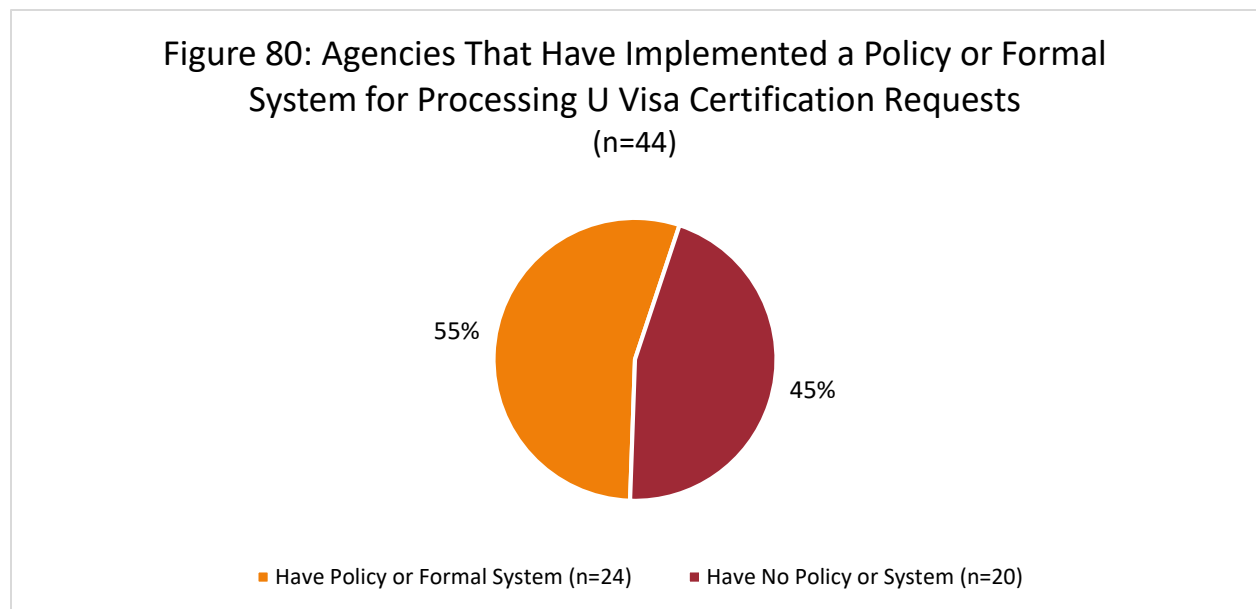
- 48% (n=24) signed only one type of visas: U visas, T visas, or requests for continued presence;
- 22% (n=11) signed two of the three types of cases - U visa certifications, T visa certifications or seeking requests for continued presence; and
- 6% (n=3) signed in all three of the case types -U visa certifications, T visa certifications and seeking requests for continued presence.

**Practices of U Visa Certifications, T Visa Certifications and Seeking Requests for Continued Presence.**

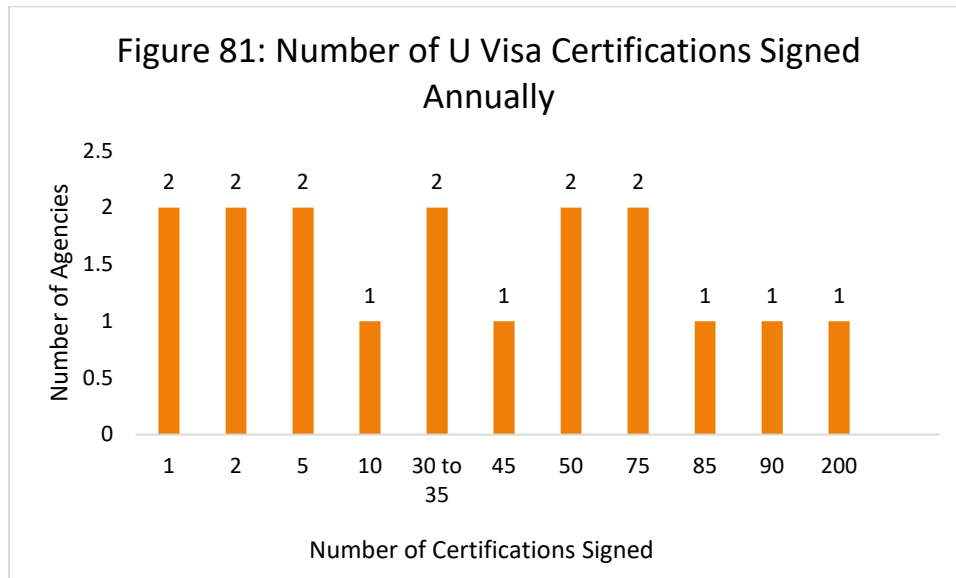
The survey also asked questions about visa certification practices employed by prosecutor’s offices. The following are details about the U visa, T Visa, and requests for continued presence practices.

**U Visa Certification Practices**

Among survey participants, 45% (n=20) reported having a formal U visa certification policy or system in place. (See, figure 80).



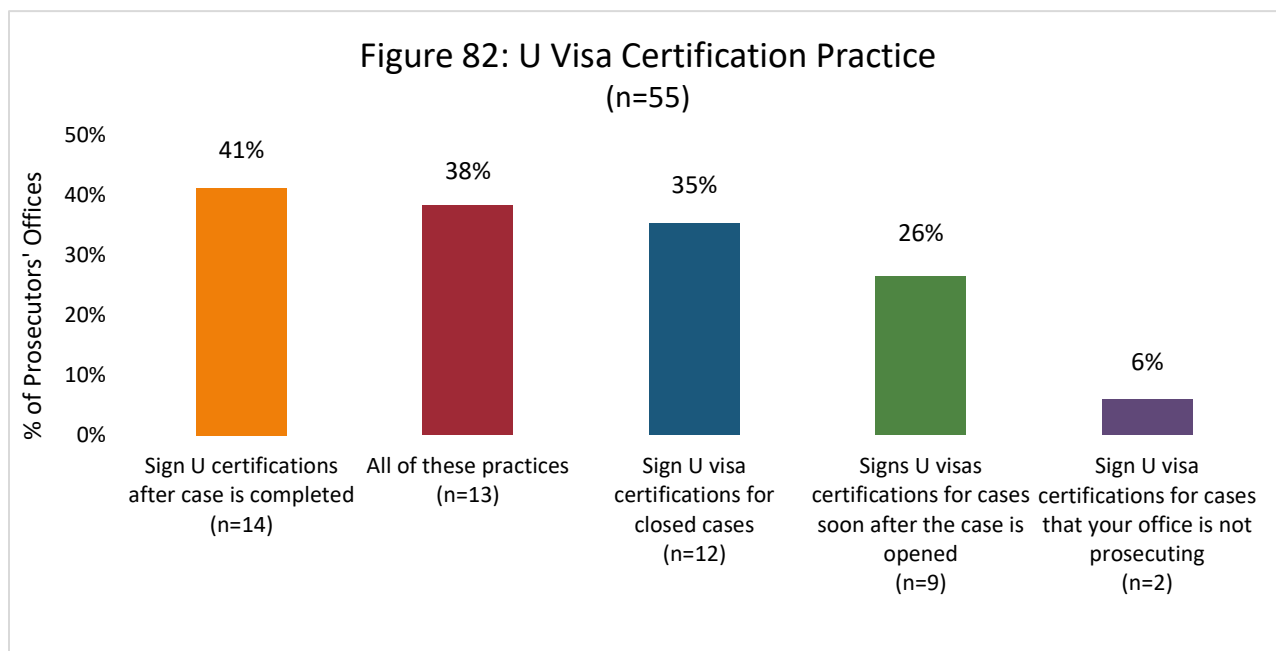
Eighteen of the thirty-four (36%) prosecutors participating in the survey who work in agencies that sign U visa certifications reported the numbers of visas they sign annually (See, figure 81). These prosecutors’ 18 agencies reported signing a total of 761 U visa certifications annually. The number of U visa certifications signed ranged from 1 to 200.



Many prosecutors who work in Signing Agencies reported that they have implemented best practices recommended for U visa certification by the U.S. Department of Homeland Security (DHS).<sup>33</sup> Examples of recommended practices include: signing U visas soon after the agency receives the case (26%, n=9 implemented this), certifying based on detection including when their office decides not to prosecute (6%, n=2), and signing certifications in closed cases (35%, n=12). However, the survey also found certification practices that are not recommended or required by DHS. A substantial percentage of respondents (41%, n=14) sign U visa certifications after the criminal case is completed.<sup>34</sup> Many prosecutors' offices (38%, n=13) reported that employ both of these practices. (See, figure 82).

<sup>33</sup> See DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, 18 NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> ("There is no required time when you may or may not sign a certification. It is possible to sign a certification at any stage in the case, including at the point of detection, during an investigation, when the prosecutor initiates a prosecution, before a trial, whether or not the victim is needed to testify, and after the case is concluded").

<sup>34</sup> Training tools for prosecutors on best practices for prosecutions in cases involving immigrant victims can assist prosecutors' offices in developing case strategies that both remove barriers and address concerns that lead prosecutors to delay certifications and promote a higher probability of attaining convictions in these cases. Tools can be accessed at: <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>



Although it can be helpful for prosecution agencies to implement U visa certification policies, they are authorized to certify without having to implement a certification policy under federal regulations.<sup>35</sup> Prosecutor's offices can initiate certification practices with certifications being signed by the head of the prosecution agency (e.g. the elected prosecutor or District Attorney) or by prosecutors with supervisory authority whom the agency head designates.<sup>36</sup>

Survey participants working in agencies that had established U visa certification policies or practices provided the following examples of their U visa practices:

- The U visa certifications are all routed to and processed by a dedicated team of prosecutors and support staff designated as U visa certifiers;
- Each prosecution branch has designated deputies that sign U visa certifications for victims in their respective case load;
- Several senior prosecutors are designated as U visa certifiers for the agency;
- Victim advocates and victim witness staff are involved in reviewing and preparing U visa certification requests for final review by the U visa designated prosecutor certifier (agency head or designated certifier);
- U visa certification requests are U reviewed by the prosecutor who prosecuted the victim's case who drafts the U visa certification and sends it to the agency's U visa certifier for signature; and/or
- Agency staff conduct a thorough case review, speak with prosecutors and law enforcement officials involved in the case, in some cases may interview the victim,

<sup>35</sup> DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, 16 NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

<sup>36</sup> DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 15 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>



collect and verify information about the victim's helpfulness including but not limited to police reports, 911 calls, investigative interviews with police and prosecutors and provide this information to their prosecution agency certifiers.

### **T Visa Certification Practices**

Over half (56%, n=10) of the participating prosecutors reported employing the DHS supported best practices<sup>37</sup> of signing T visa certifications soon after the case is opened. They are also signing U visa certifications for closed cases (44%, n=8), and in cases their office has decided not to prosecute (17%, n=3). As discussed above, in addition to these T visa certification practices, less than a quarter (23%, n=11) of the prosecutors surveyed were also requesting continued presence for human trafficking victims from federal immigration authorities for victims and witnesses of human trafficking criminal investigations and prosecutions.

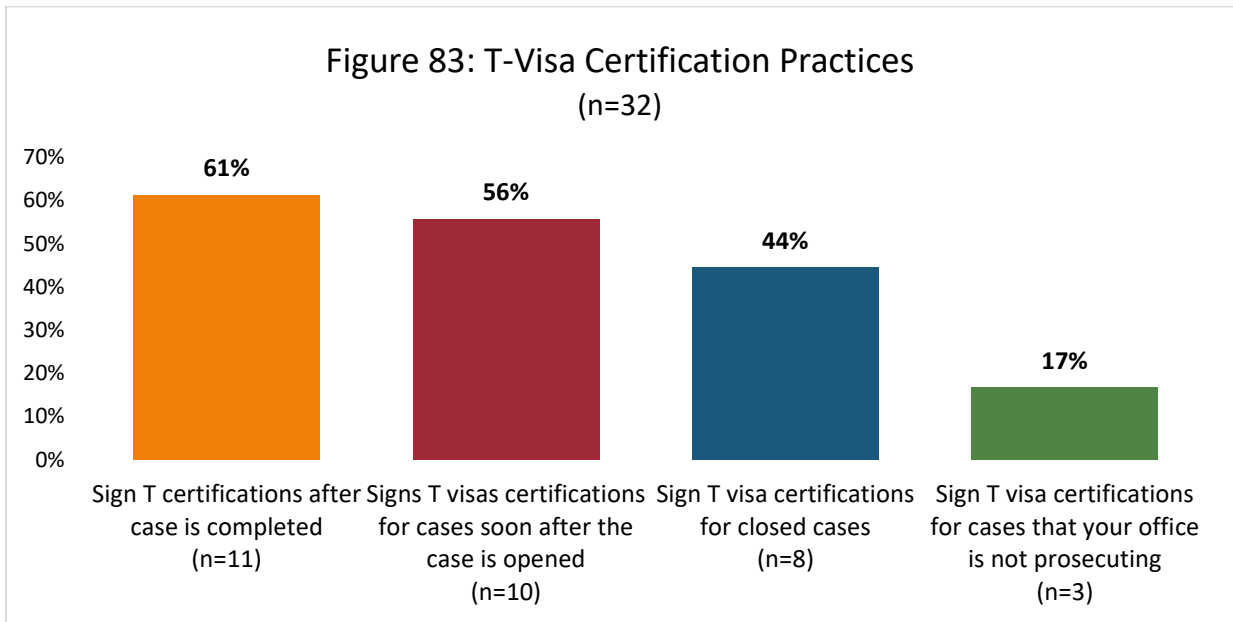
However, the majority (61%, n=11) of the prosecutors participating in the survey reported that they often wait to sign T visa certifications until after the case is completed (See, figure 12). The data shows that among the prosecutors participating in the survey, the percentage waiting to sign T visas until after prosecution is complete is higher than for U visas (61% vs 41%). As discussed above regarding U visas, prosecutors of human traffickers could improve outcomes of trafficking prosecutions by employing prosecution strategies that include early certification for T visa victims.

Early certification practices should be part of a pre-trial strategy that prepares prosecutors to be ready to respond effectively when defense counsel raises the immigration status of the victim or U or T visa certification in the criminal case. If the victim's credibility is challenged by the defense using the U or T visa, prosecutors can introduce the victim's prior consistent statements in the criminal case. This evidence becomes admissible evidence to rehabilitate the victim, showing that the victim's testimony at trial is the same as the statements the victim made to law enforcement and prosecutors before the victim learned about the U or T visa program.<sup>38</sup>

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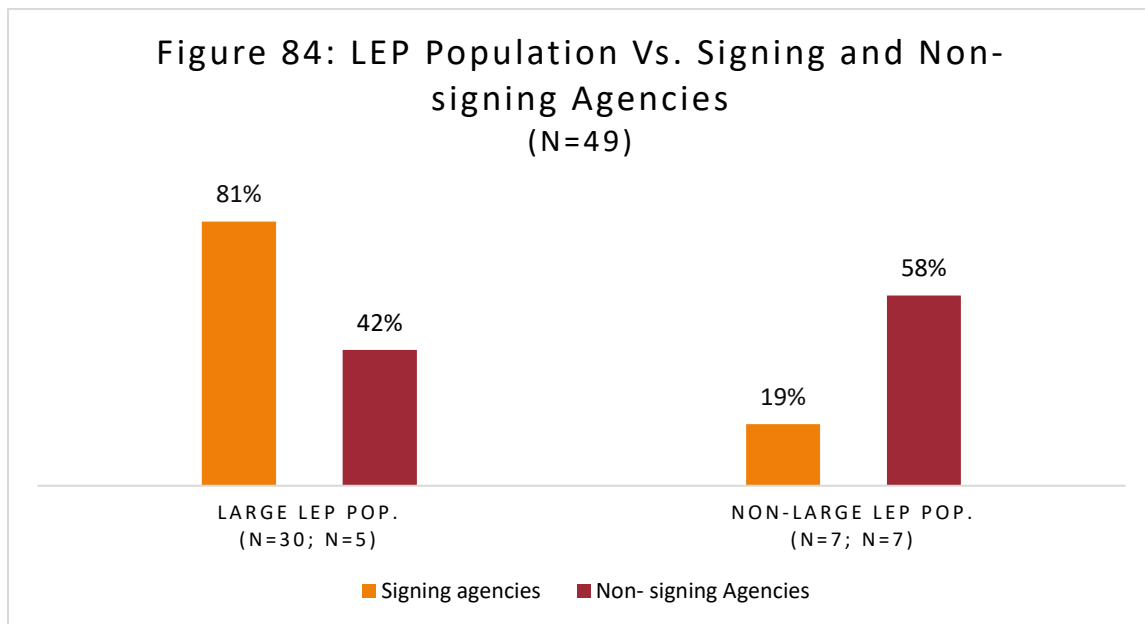
<sup>37</sup> DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 18-19 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> ("It is possible to sign at any stage of the case including at the point of detection...and after the case is closed."); ("may sign when the prosecutor decided not to prosecute").

<sup>38</sup> Training tools for prosecutors on best practices for prosecutions in cases involving immigrant victims can assist prosecutors' offices in developing case strategies that both remove barriers and address concerns that lead prosecutors to delay certifications and promote a higher probability of attaining convictions in these cases. Tools can be accessed at: <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>



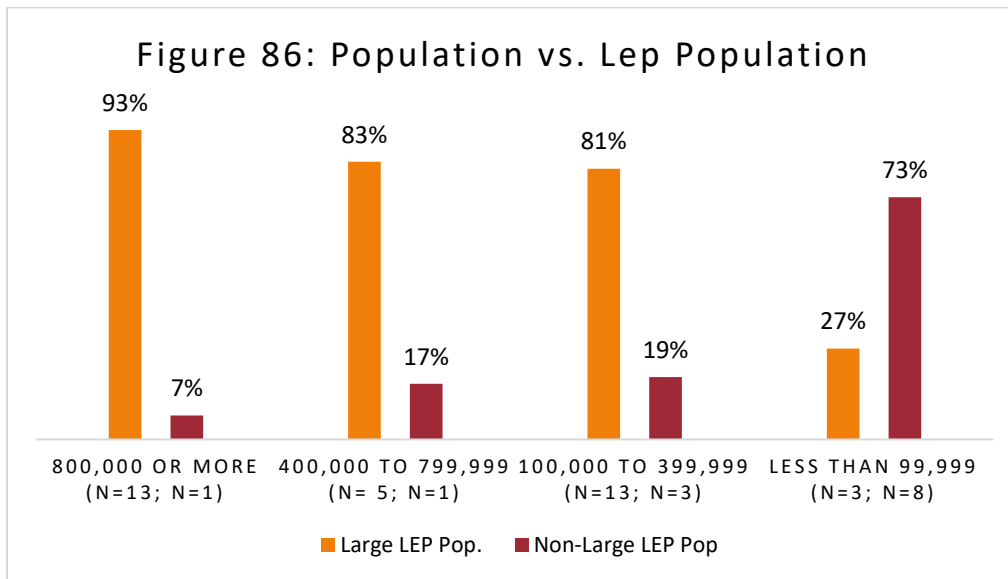
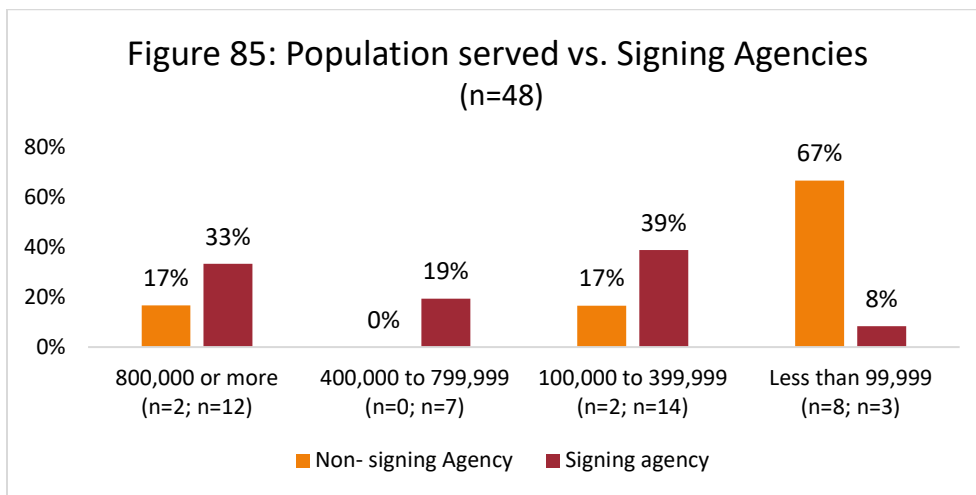
### Populations served by Signing and Non-Signing Prosecutors' Offices

The survey data enabled the analysis of whether and how Signing Agencies and Non-Signing Agencies differ. The majority (81%, n=30) of prosecutors in the 37 “Signing Agencies” worked in jurisdictions with large Limited English Proficient (LEP) populations. Among the 12 “Non-Signing Agencies,” 42% (n=5) reported that they worked in jurisdictions with large LEP populations and 58% (n=7) reported that they worked in jurisdictions that serve small LEP populations. (See, figure 84).



The prosecutors in Signing Agencies served jurisdictions with a wide range of population sizes. Signing Agencies were located in jurisdictions with population sizes of 800,000 or more (33% n=12), of 400,000 to 799,999 (19% n=7), of 100,000 to 399,999 (39% n=14) as well as

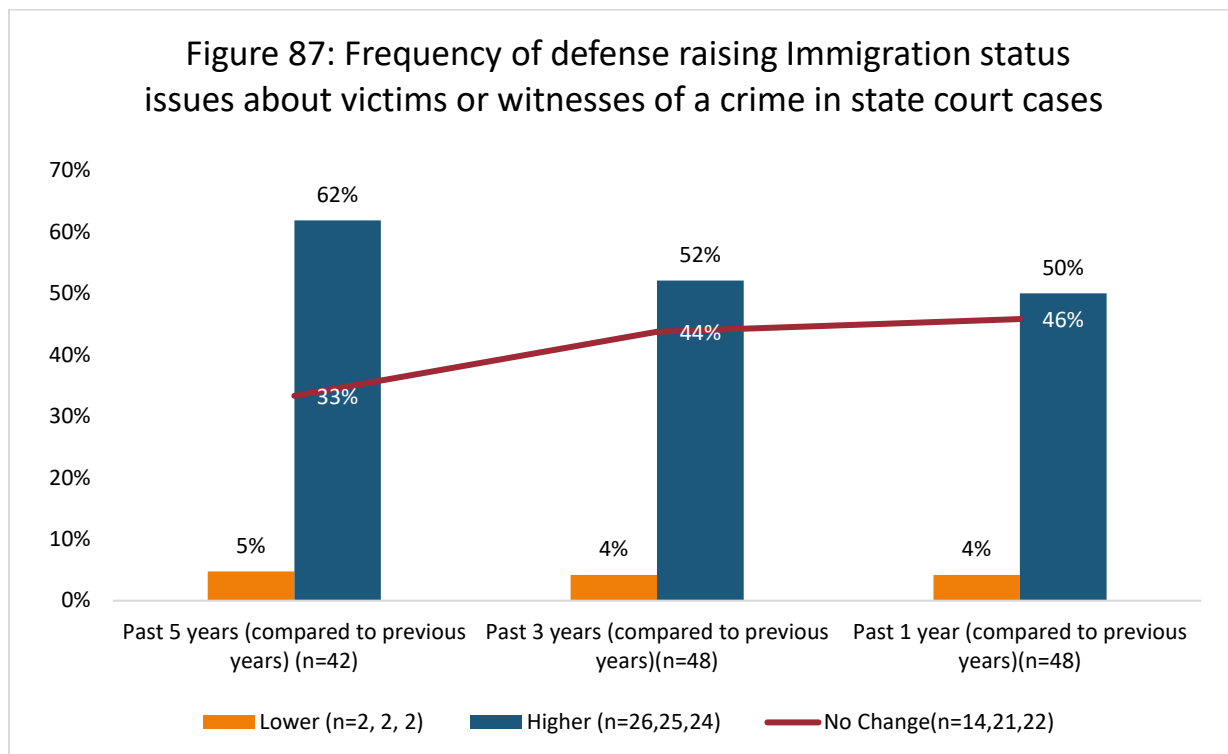
small jurisdictions with less than 99,999 inhabitants (8% n=3). In contrast, the majority of prosecutors working in Non-Signing Agencies (67% n=8) worked in small jurisdictions with populations of less than 99,999 (See, figure 85). The data also showed that prosecutors working in signing agencies were not limited to larger jurisdictions with significant LEP populations. Figure 86 illustrates that many of the prosecutors working in signing agencies were working in smaller communities with smaller LEP populations.



### Immigration Status Issues in Criminal Prosecutions

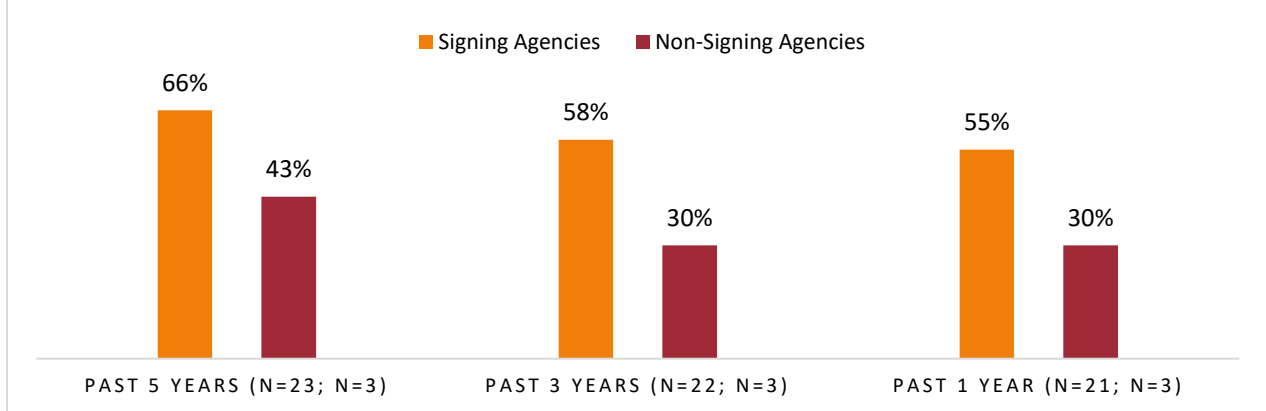
The survey explored whether the frequency of defense raising immigration status issues about victims or witnesses of a crime in state courts has changed in the past five, three, and one year(s). The majority of participating prosecutors (62%, n=23) indicated that immigration status issues were raised in state criminal courts cases more frequently in the past five years than ever

before. However, the extent to which immigration issues were raised about a crime victim or witness appears to be dropping slightly with time. Nevertheless, at least half of prosecutors responding to this question (n=25) reported that the cases where defense counsel is raising immigration status of the victim in criminal prosecutions remains high. The percent of prosecutors reporting higher rates of this defense counsel raise the immigration status of the victim as a defense strategy in the past 3 years compared to prior years was 52% (n=22) and in the past year compared to prior years was 50% (n=21). (See, figure 87).



The survey also sought to examine the extent to which prosecutors working in both Signing Agencies and Non-Signing Agencies were encountering criminal defense counsel raising immigration status of victims in a criminal prosecution. Although prosecutors in Signing Agencies reported encountering cases where defense counsel attempts to raise the immigration status of a victim in a criminal prosecution more frequently than non-signing agencies, the number of prosecutors encountering this appears to be declining slightly over the past 5 years (See, figure 88).

Figure 88: Percentage Of Prosecutors (Signing Vs Non-signing) Who Reported A Higher Frequency Of Defense Raising Immigration Status Issues About Victims Or Witnesses Of A Crime In State Court Cases



One contributing factor to this decline of defense attorneys raising the victims' immigration status could be the training that prosecutors are receiving on best practices for prosecution of criminal cases involving immigrant crime victims. In a growing number of jurisdictions prosecutors are successful in arguing that raising the immigration status of a victim or witness in a criminal case is prejudicial and irrelevant, and should be excluded from the criminal case.<sup>39</sup> In cases involving immigrant crime victims and witnesses, prosecutors should consider this approach in addition use of prior consistent statements and VAWA confidentiality laws as strategies to educate the jury and limit the impact of immigration-status questions or evidence on the jury.

In cases where the prosecutor is not able to keep immigration status issues out of the criminal case altogether, an alternate strategy is successfully being employed by prosecutors. If the defense counsel questions the witness or presents evidence attacking the credibility of the immigrant victim witness alleging that the victim is lying about the crime victimization to gain access to immigration status, prosecutors can set out a timeline describing when the victim learned about immigration relief and then introduce the victim's prior consistent statements as rebuttal.<sup>40</sup> As prosecutors take this approach in jurisdictions across the country, they are more successful in gaining convictions and the number of cases in which defense counsel raises the U or T visas as a defense tactic in criminal case often declines.

- NIWAP and AEquitas, the Prosecutors Resource on Violence Against Women, have been training prosecutors on these best practices for prosecutors' response when defense attorneys raise any of the following three issues in a prosecution involving an immigrant victim or witness: The victim's immigration status be raised by the defense attorney by during cross examination of the immigrant victim or witness, by presenting evidence in the case or other means

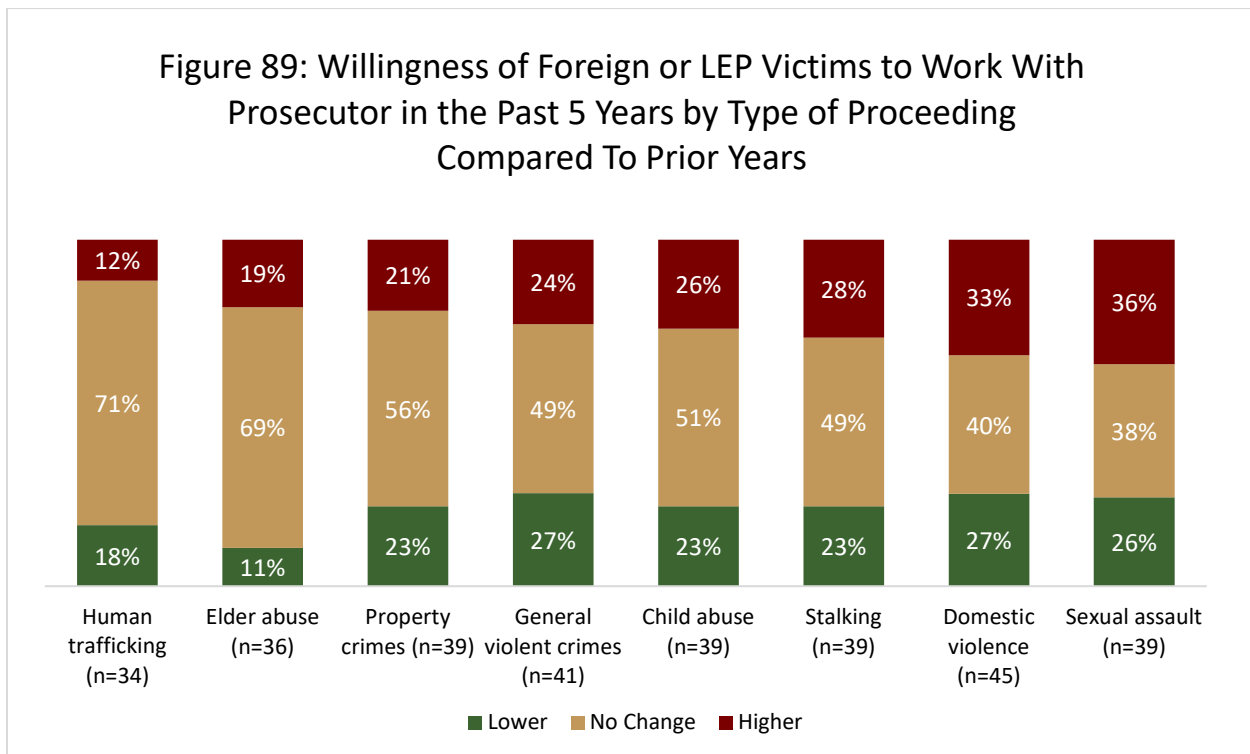
<sup>39</sup> See 2017 WA REG TEXT 475745 (NS); See also *Evidence Rule 413 - Unpacking Washington's New Procedural Protections for Immigrants*, NWLAWYER WASHINGTON STATE BAR ASSOCIATION (forthcoming 2018).

<sup>40</sup> *Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>

- When the defense tries to impugn the victim's credibility by arguing that the victim is lying or has made up the abuse or other crime victimization in order to obtain a U or T visa or VAWA self-petition
- Best practices for responding to discovery requests seeking information about a victim or witnesses immigration case file, the existence of an immigration case, decisions made in the victim's immigration case or the U or T visa certification.

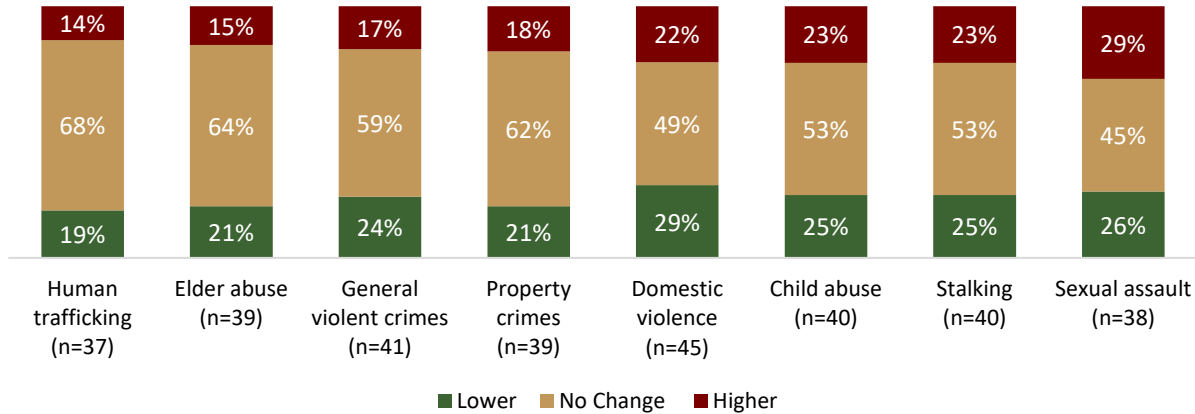
### Immigrant and LEP Victims Willingness Work With Prosecutors over the Last Five, Three, and One Year(s)

More than a quarter of prosecutors participating in the survey reported higher levels of willingness by immigrant and LEP victims to work with prosecutors in the past 5 years relative to years before. Immigrant and LEP victims were willing to work with prosecutors on sexual assault cases (36%, n=14), domestic violence cases (33%, n=15), stalking (28%, n=11), and child abuse cases (26%, n=10) (See, figure 89).



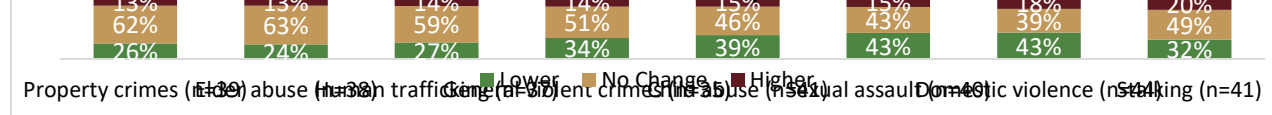
The prosecutors' responses to the questions regarding immigrant and LEP victims' willingness to cooperate with them as less or the same for the last three years compared to earlier years. The only type of case for which a substantial number of prosecutors reported a higher level of victim willingness to cooperate with prosecutors in the past 3 years compared to prior years is sexual assault (29%, n=11). Most of the prosecutors however, reported no change in the level of cooperation of immigrant and LEP victims (see figure 90).

Figure 90: Willingness of Foreign or LEP Victims To Work With Prosecutor In The Past 3 Years (Compared To Prior Years)



The prosecutors’ survey responses regarding immigrant and LEP victims’ cooperation with them within the immediate the prior year were also significant.<sup>41</sup> Within the past year, the willingness of immigrant and LEP victims to cooperate in criminal prosecutions according to the prosecutors’ responses, was lower than they had reported for earlier years. (See, figure 91). The criminal cases for which immigrant and LEP victims were least willing to cooperate were: domestic violence (43%, n=19); sexual assault (43%, n=17); and child abuse (39%, n=16). However, these were not the only types of cases where immigrant and LEP victims were less willing to cooperate with prosecutors. Figure 21 shows the extent to which in the past year compared to prior years immigrant victims’ willingness to work with prosecutors is decreasing for general violence crimes, stalking, human trafficking, property crimes, and elder abuse .

Figure 91: Willingness of Foreign or LEP Victims To Work With Prosecutor In The Past 1 Year Compared To Prior Years

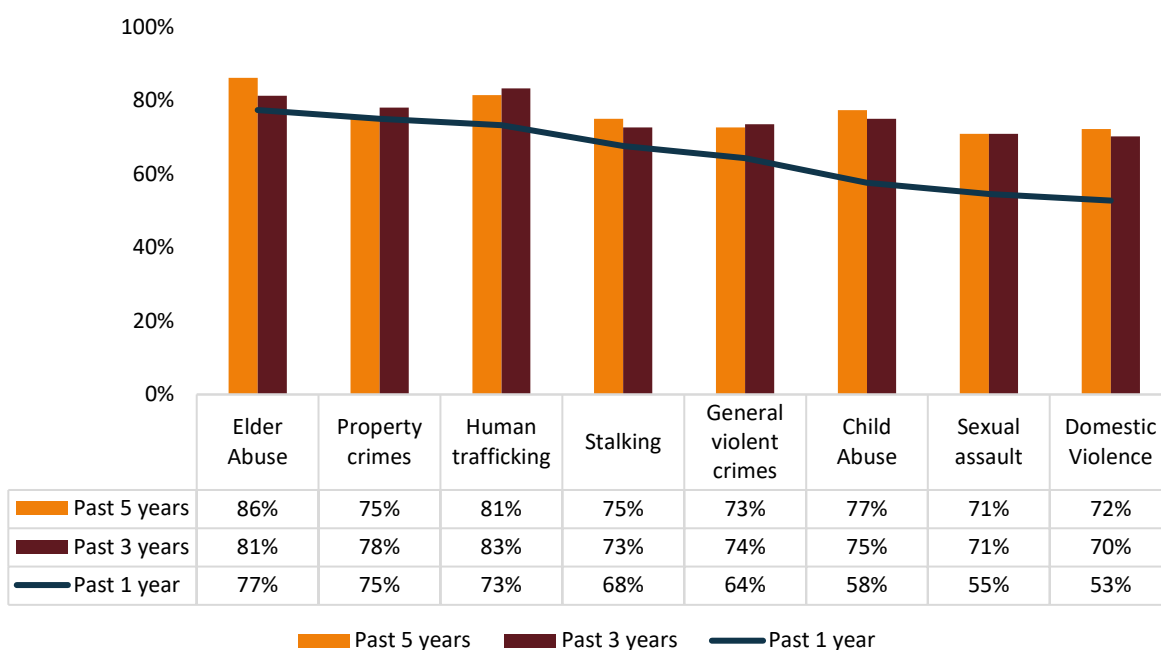


Since the majority of survey participant’ prosecutors worked in Signing Agencies, the next section of this report looks particularly the data from regarding immigrant victim cooperation with Signing Agencies. The survey shows that a large number of prosecutors working in Signing Agencies found that immigrant and LEP victims maintained either the same level or higher levels of willingness to cooperate with prosecutors in the past 5 and 3 years relative to years prior (See, figures 92 and 93). However, this level of cooperation in cases of immigrant crime victims

<sup>41</sup> The survey was administered between October 9 and November 20, 2017.

dropped in the during the past year compared to prior years particularly for domestic violence (17-19%), sexual assault (16%) and child abuse (17-19%). (See, figure 94).

**Figure 92: Signing Agencies Reporting Willingness of Immigrant Victims to Cooperated Higher or the Same as Prior Years by Crime**

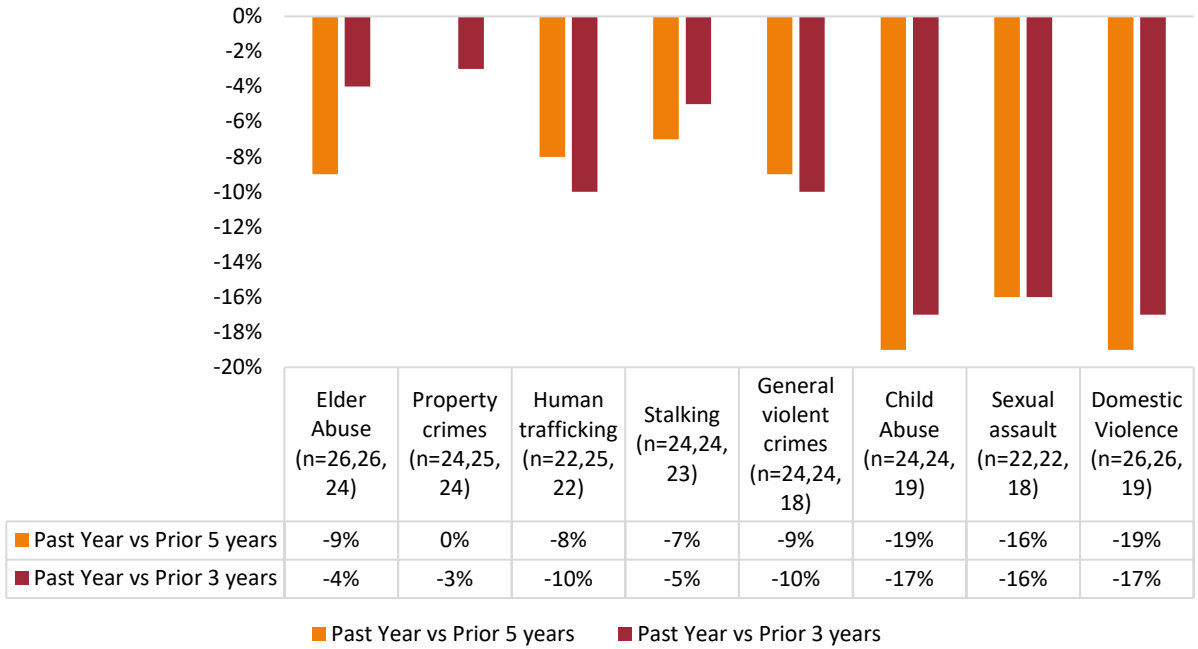


**Figure 93: Responses of Prosecutors in Signing Agencies about Immigrant Victim's Willingness to Cooperate Compared to Prior Years (Higher or the Same)**

Types of crimes	Past 5 years		Past 3 years		Past 1 year	
	%	#	%	#	%	#
Elder Abuse	86%	26	81%	26	77%	24
Property crimes	75%	24	78%	25	75%	24
Human trafficking	81%	22	83%	25	73%	22
Stalking	75%	24	73%	24	68%	23
General violent crimes	73%	24	74%	25	64%	18
Child Abuse	77%	24	75%	24	58%	19
Sexual assault	71%	22	71%	22	55%	18
Domestic Violence	72%	26	70%	26	53%	19

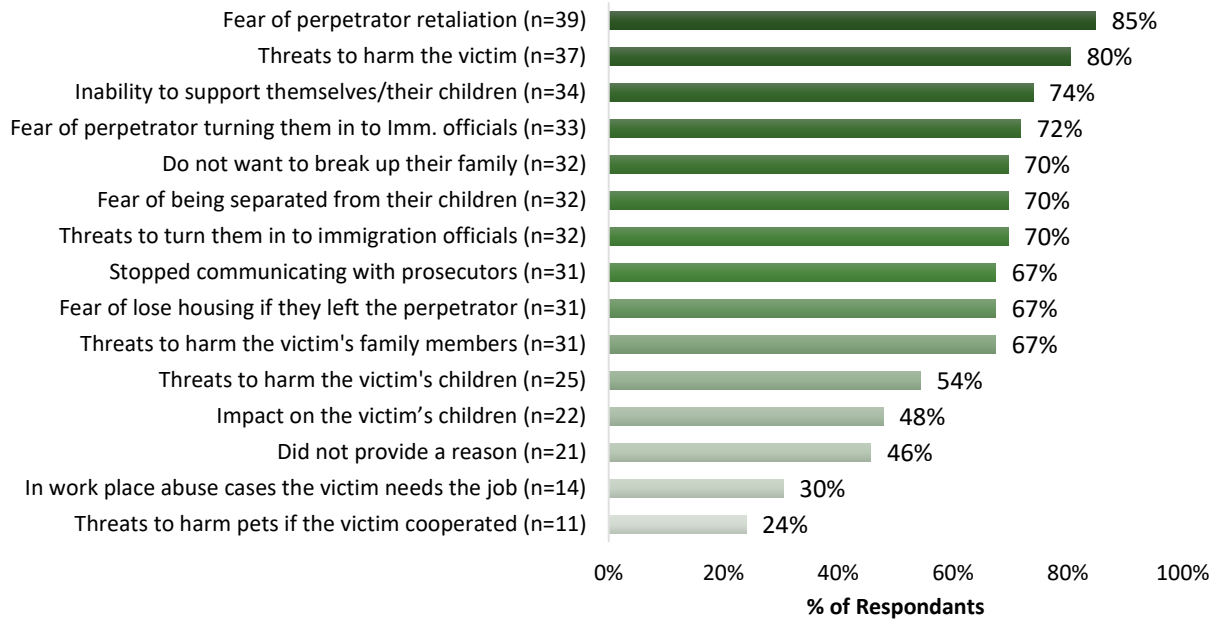


Figure 94: Decline in Willingness of Immigrant Crime Victims to Cooperate With Prosecutors in Signing Agencies - Past year compared to Prior Years



To better understand the factors that impede immigrant and LEP victims’ willingness to cooperate with prosecutors’ offices in criminal cases, the survey asked prosecutors for the reasons that immigrant and LEP victims gave them for not cooperating or not continuing to cooperate in a criminal investigation or prosecution. The top two reasons prosecutors reported are consistent with the concerns of all victims in criminal prosecutions – fear of perpetrator’s retaliation (85%, n=39) and perpetrator’s direct threats to harm the victim if the victim cooperates (80%, n=37). For immigrant and LEP victims the additional fears that the perpetrator will have the victim deported (72%, n=34) and the perpetrator’s direct threats to deport the victim (70%, n= 32%) also play an important role in the unwillingness to cooperate (See figure 95).

**Figure 95: Reasons for LEP Victim's Non-Cooperation with Prosecutors**  
(n=425)



Prosecutors also provided information about the factors that are negatively affecting prosecutor-community relationships with foreign-born or LEP communities. The factors most commonly listed by survey participants were:

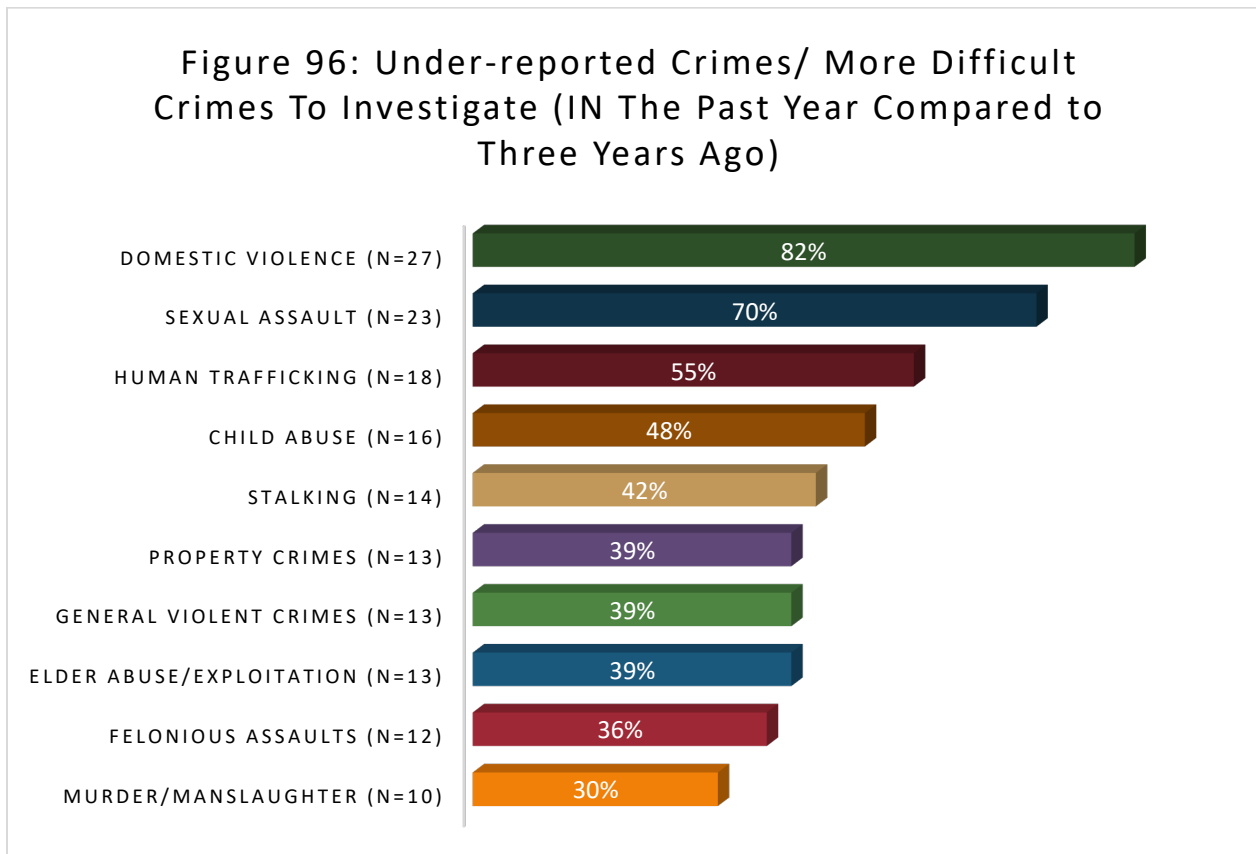
- Victim's increased fear and risk of deportation and fear that deportation will lead to separation from children
- The presence of immigration enforcement officials from the Department of Homeland Security at state courthouses fuels the victim's fears that coming to court will lead to their deportation
- Rise in anti-immigrant sentiments including statements by federal government officials that further reinforce deportation fears
- Immigrant victims misunderstanding of the separate roles and jurisdictions of state, local police and prosecutors versus the immigration enforcement role of ICE
- Lack of knowledge about help available from law enforcement, prosecutors and immigration relief for immigrant crime victims
- Difficulties in communicating with LEP victims due to lack of access to qualified interpreters

The factors contributing to victims' fears of cooperating with prosecutors impact prosecutors' ability to criminally charge and successfully convict perpetrators of crimes committed against immigrant and LEP victims. Prosecutors participating in the survey noted that victims' cooperation is fundamental to the prosecution. The factors listed above and those contained in figure 24 often result in immigrant or LEP victims' decisions not to participate in criminal investigations, not to cooperate with prosecutors, and/or not to testify in criminal

prosecutions. When victims decide not to cooperate, the participating prosecutors noted that this often results in prosecutors:

- Not being able to prove their case at trial
- Deciding not to prosecute cases that are weaker without the victim’s testimony
- Finding the criminal case against the perpetrator more difficult to successfully prosecute
- Agreeing to pleas that result in shorter sentences that the prosecutor would have been able to more successful if victim’s cooperation
- Winning fewer convictions

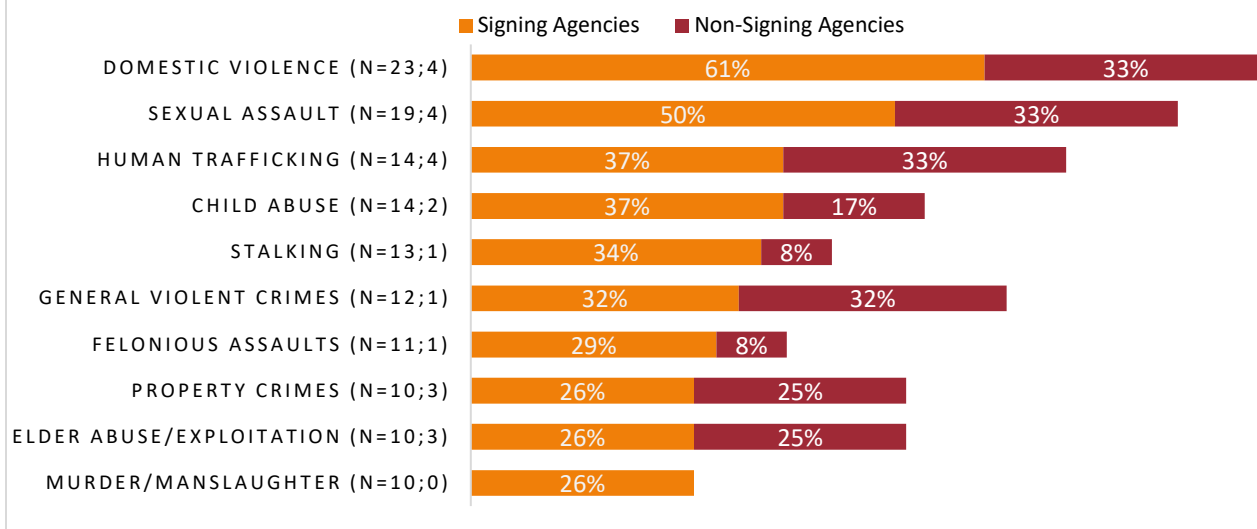
The survey asked prosecutors to rank the crimes involving immigrant and LEP victims that have become increasingly underreported or harder to investigate and prosecute during the past year relative to three years prior. Their responses show that domestic violence (82%, n=27), sexual assault (70%, n=23), human trafficking (55%, n=18), and child abuse (48%, n=16) are the crimes that have become increasingly underreported and harder to investigate and/or prosecute (See, figure 96).



The survey also sought to understand the whether prosecutors from Signing Agencies differed from prosecutors from Non-Signing Agencies in terms of their views about whether the decline in immigrant victim cooperation noted in figure 94 was making cases involving immigrant victims harder to investigate and prosecute. As figure 97 illustrates a higher percentage of prosecutors from Signing Agencies, compared to Non-Signing agencies reported

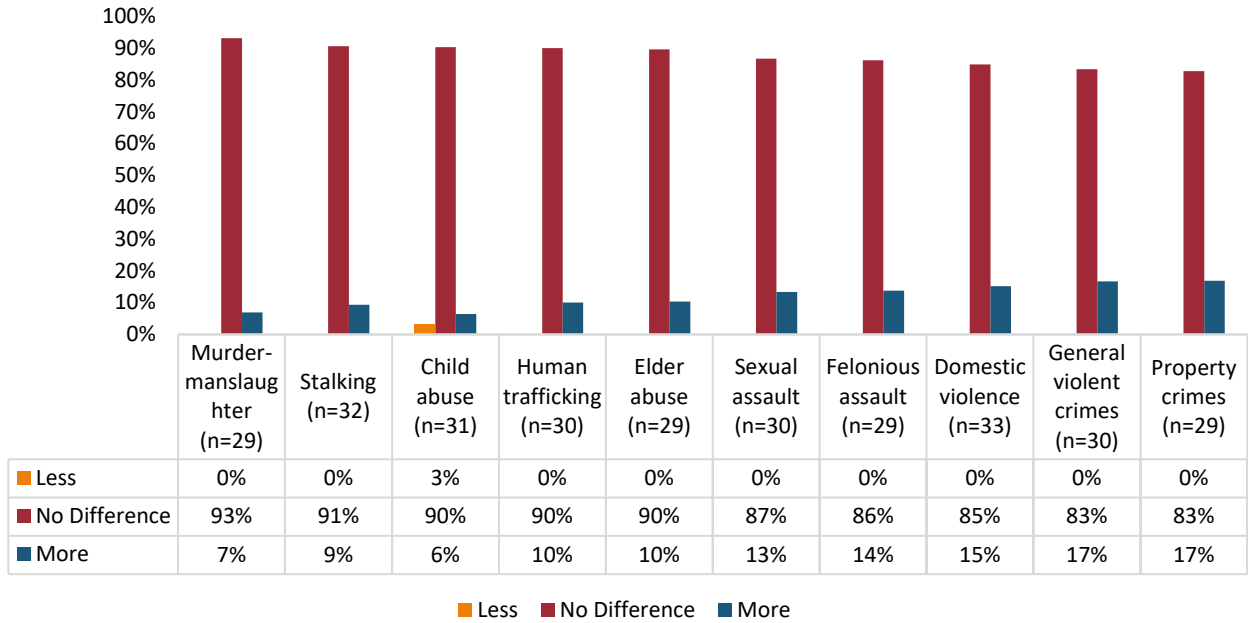
that crimes against immigrant victims were underreported and were harder to prosecute in the past year compared to three years ago. For instance, 61% (n=23) of prosecutors in signing agencies identified domestic violence as underreported/harder to investigate, compared to 33% (n=4) of prosecutors in non-signing agencies. Prosecutors in signing agencies also identified that in the past year murder (26%, n=10) has been underreported/harder to investigate or prosecute compared to 3 years ago compared to 0-% from Non-Signing Agencies. (See, figure 97).

**Figure 97: Percentage Of Prosecutors (Signing vs Non-Signing) Who Stated the Following Crimes as Under-reported Or Harder To Investigate Or Prosecute Comparing The Past Year With Three (3) Years Ago**



Prosecutors also identified types of cases where recidivism has increased in the past three years. The data shows that the top three types of cases with the largest increase in recidivism during that time period were: property crimes (17%, n=5), violent crimes generally (17%, n=5), and domestic violence (15%, n=5). (See, figure 98).

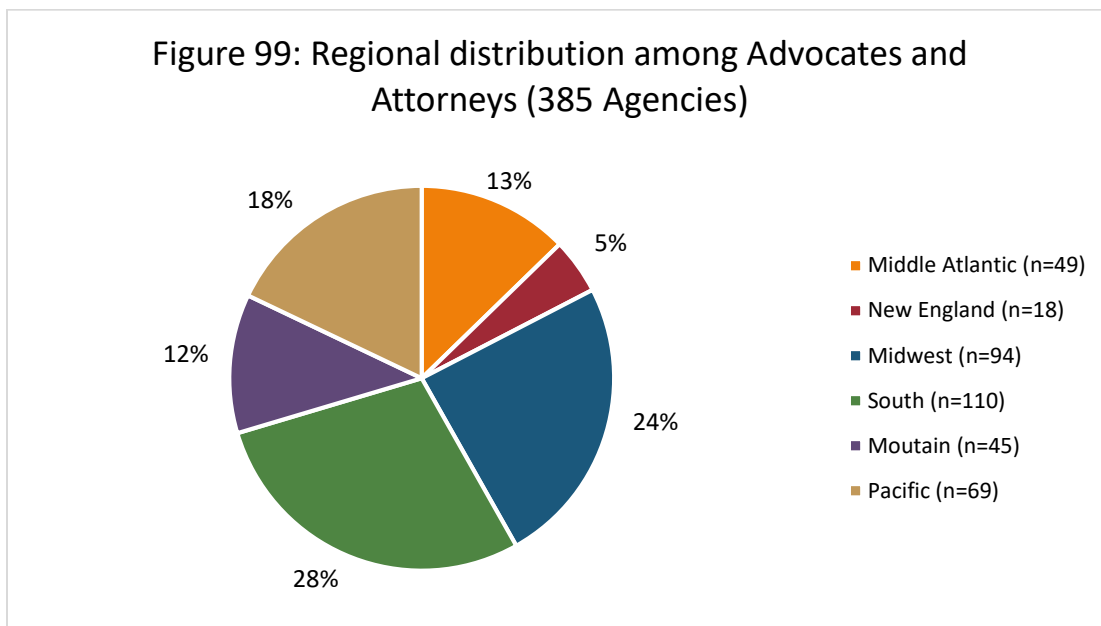
Figure 98: Extent to Which Recidivism Changes in Crimes Against Foreign Born and LEP Victims in the Past Year Compared to Three Years Ago



**Part Four: National Survey of Victim Advocates and Attorneys**  
**Findings from 2017 National Survey of Victim Advocates and Attorneys**

A total of 389 advocates and attorneys who work with immigrant survivors of domestic violence, sexual assault, child abuse, elder abuse, human trafficking, and other violent crimes participated in a national survey administered in October and November, 2017. Advocate/attorney survey participants worked with a total of 4,228 immigrant victims who were VAWA self-petitioners or U visa, T visa or civil protection order applicants between January, 2016 to October, 2017. More than half (54%)<sup>42</sup> of the victims the survey participants worked with were limited English proficient. The survey participants worked for agencies that have significant experience assisting immigrant victims, helping a total of 75,979 immigrant victims during this same time period. The immigrant victims they represented had an average of between 2 and 3 children.<sup>43</sup> The majority (85%)<sup>44</sup> of the immigrant victims’ children served by the survey participants were U.S. citizens.

Survey participants worked in all 50 states and the District of Columbia. Figure 1 below shows percentage of participants in each region of the United States.<sup>45</sup> The highest percentage of respondents (29%, n=110) were in the Southern part of the United States<sup>46</sup> with the greatest proportion in Texas (n=20) and Florida (n=22). (See, figure 99).



<sup>42</sup> The percentage is equal 228 agencies.

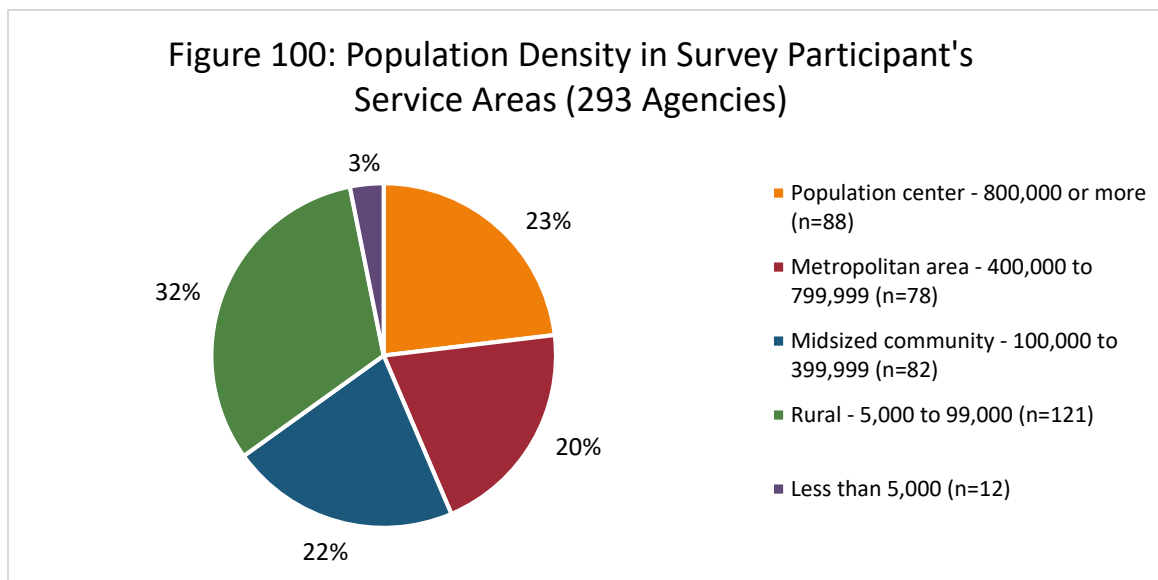
<sup>43</sup> The percentage is equal 292 agencies. Average number of children of the immigrant victims that agencies represent was 2.4 children per immigrant victim client.

<sup>44</sup> The percentage is equal 157 agencies.

<sup>45</sup> The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).

<sup>46</sup> The Southern Part of the United States here consisted of West South Central (OK, TX, AR, LA); East South Central (KY, TN, MS, AL) and the South Atlantic (FL, GA, SC, NC, VA, WV).

The greatest number of survey participants served smaller and rural communities (35%, n=133) with 32% (n=121) working in communities with a population density of 5000 to 99,000 and 3% (n=12) in small isolated rural communities with a population density of less than 5,000 people. Participants working in large cities and metropolitan jurisdictions accounted for 23% (n=88) of the total participants. (See, figure 100).



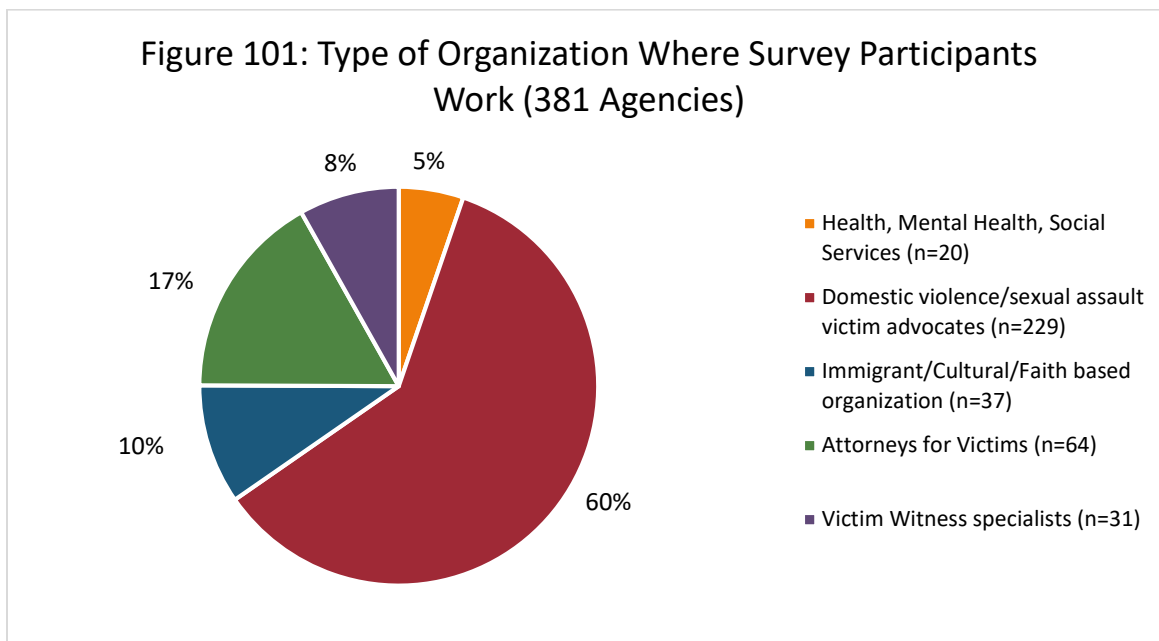
Participants in the advocates/attorneys survey included a range of professionals who provide direct services to immigrant survivors of domestic violence, sexual assault, child abuse, stalking, dating violence, human trafficking and other criminal activities covered by the U visa program.<sup>47</sup> These professionals included:

- Victim advocates working at shelters, rape crisis centers, victim services agencies, immigrant community based organizations and faith based organizations;
- Victim attorneys working in legal aid and legal services organizations, programs serving domestic violence, sexual assault, stalking, dating violence and child abuse victims, immigrant rights legal services agencies, pro bono attorneys working in law firms, and university based victim and immigrant clinics;
- Social workers and other staff working at community base social services programs serving crime victims and/or immigrants;
- Health and mental health care providers; and
- Victim witness staff working in prosecutors' offices.

Over half (60%, n=229) of participants in the survey were victim advocates and another 17% (n=64) were attorneys representing victims. Additionally, 5% of survey participants were victim-witness specialists working for prosecutors' offices. (See, figure 101). The professionals

<sup>47</sup> INA Section 101(a)(15)(U) U-visa qualifying criminal activity includes, but is not limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, stalking, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, fraud in foreign labor contracting, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law.

participating in the National Survey of Victim Advocates and Attorneys will be referred to as “advocates and attorneys” throughout this part of the report.



Advocates and attorneys participating in the survey were asked questions requiring two different types of answers. For most of the survey, participants were asked to provide the numbers of immigrant victim clients they worked with and provided a variety of services to during 2016 and 2017. The second type of questions in the survey required the attorneys/advocates to report what they have observed about their immigrant victim clients generally in 2017 relative to 2016.

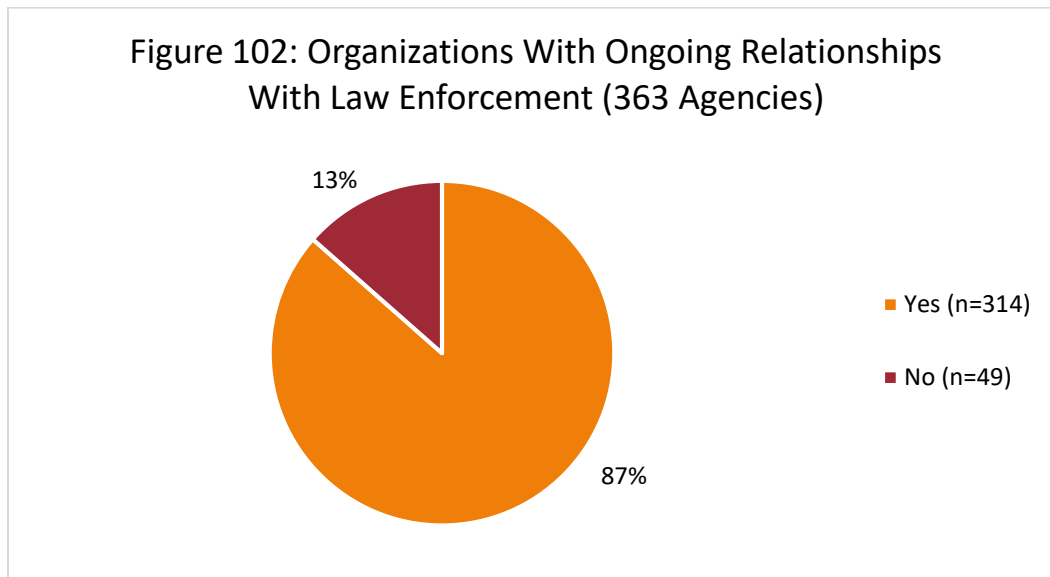
Many victim and legal services organizations who work with victims of domestic and sexual violence and other crimes have developed effective working relationships with law enforcement agencies.<sup>48</sup> It is through these relationships that victim advocates and attorneys provide a partnership with justice system staff (e.g., police, prosecutors, courts) who promote the willingness and ability for immigrant survivors of domestic and sexual violence to access legal protections and safety planning that is vital to the safety, security and healing of immigrant victims and their children.<sup>49</sup> The vast majority (87%, n=314) of this survey’s attorney/advocate participants reported having ongoing working relationships with law enforcement in their local communities. (See, figure 102). These close working relationships are common and best practices for programs working on issues of domestic violence and sexual assault. Seventy-nine

<sup>48</sup> See Giselle Hass et. al., U-Visa Legal Advocacy: Overview of Effective Policies and Practices, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013), <http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief/>; NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, Fact Sheet: Immigrant and Limited English Proficient Victims’ Access to the Criminal Justice System, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013) <http://niwaplibrary.wcl.american.edu/pubs/importance-of-collaboration-victims/>; NATALIA LEE ET. AL., NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION AND LANGUAGE ACCESS, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013), <http://niwaplibrary.wcl.american.edu/pubs/rsch-police-response-immigrant-victims/>.

<sup>49</sup> Nawal H. Ammar et. al., *Battered Immigrant Women in the United States and Protection Orders*, 37 CRIM. JUST. REV. 337, 337-359 (2012), <http://niwaplibrary.wcl.american.edu/pubs/battered-women-protection-order-research/>.



percent (n=251) of survey participant agencies worked in agencies that served victims of domestic violence and sexual assault (See, figure 103).



The average length of time the participants reported their agency had been working with law enforcement was 19 years.<sup>50</sup> Programs collaborate with law enforcement on cases and on community policing efforts related to domestic and sexual violence, human trafficking, and with immigrant and limited English proficient (LEP) communities (See, figure 103). Other issues where they collaborated with law enforcement include assistance with transportation for victims and referring victims for intake at the victim/legal services organization. The majority of the collaborative work reflects best practices where advocates and attorneys participate with law enforcement both on individual cases of crime victims and on Coordinated Community Response (CCR) to domestic violence teams<sup>51</sup> and Sexual Assault Response Teams (SART).<sup>52</sup> T Prior research found that there is a strong correlation between ongoing collaborations between victim advocates/attorneys on domestic and sexual violence issues and whether a local law enforcement agency signs U visa certification on behalf of immigrant victims.<sup>53</sup>

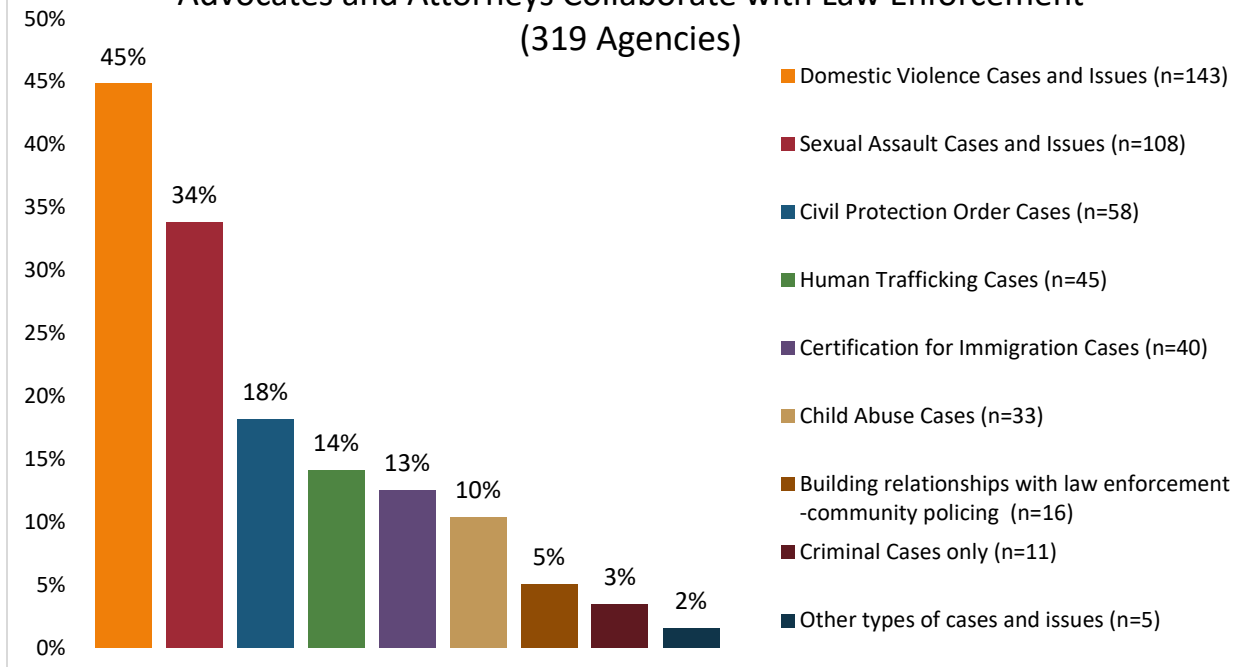
<sup>50</sup> The percentage is equal 255 agencies reporting.

<sup>51</sup> *The Blueprint for Safety*, PRAXIS INTERNATIONAL, <http://praxisinternational.org/blueprint-home/blueprint-communities/>. (last visited Apr. 27, 2018)

<sup>52</sup> Rebecca Campbell et. al., *Sexual Assault Response Team (SART) Implementation and Collaborative Process*, NAT’ CRIM. JUST. REFERENCE SERVICE (2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/243829.pdf>; *SART Overview*, END VIOLENCE AGAINST WOMEN INTERNATIONAL, <http://www.evawintl.org/PAGEID7/Best-Practices/Resources/SARRTs>. (last visited Apr. 27, 2018).

<sup>53</sup> NATALIA LEE ET. AL., NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION AND LANGUAGE ACCESS, 10 NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013), <http://niwaplibrary.wcl.american.edu/pubs/rsch-police-response-immigrant-victims/>.

**Figure 103: Types of Issues and Cases on Which Victims Advocates and Attorneys Collaborate with Law Enforcement (319 Agencies)**



### Types of Cases Immigrant Victims Pursue

The victim and legal services attorneys and advocates together reported filing a total 4,228 cases on behalf of immigrant victims of domestic violence, sexual assault, child abuse, human trafficking, and other criminal activities between January 2016 and October 2017. The three types of cases victim attorneys and advocates pursued most were VAWA self-petitions/VAWA cancellation of removal cases (44%, n=1868), civil protection orders (38%, n=1619), and U visas (16%, n=695) (See, figure 104). In the VAWA self-petition/cancellation of removal cases, 81% (n=360) of the cases were based on battering, extreme cruelty, sexual assault or child abuse perpetrated by a citizen spouse or parent. In 19% (n=84) of the cases, the perpetrator was a lawful permanent resident.

Survey participants' reported that the cases their agencies filed on behalf of immigrant victims in 2016 relative to 2017, declined by 40% (2,118 cases in 2016 – an average of 234 cases/month - to 1,417 cases in 2017 – an average of 142 cases/month).<sup>54</sup> This overall decline in cases filed was composed of substantial declines in some immigration case types and increases in the numbers of protection orders immigrant victims were willing to file. Declines and increases by case type were:<sup>55</sup>

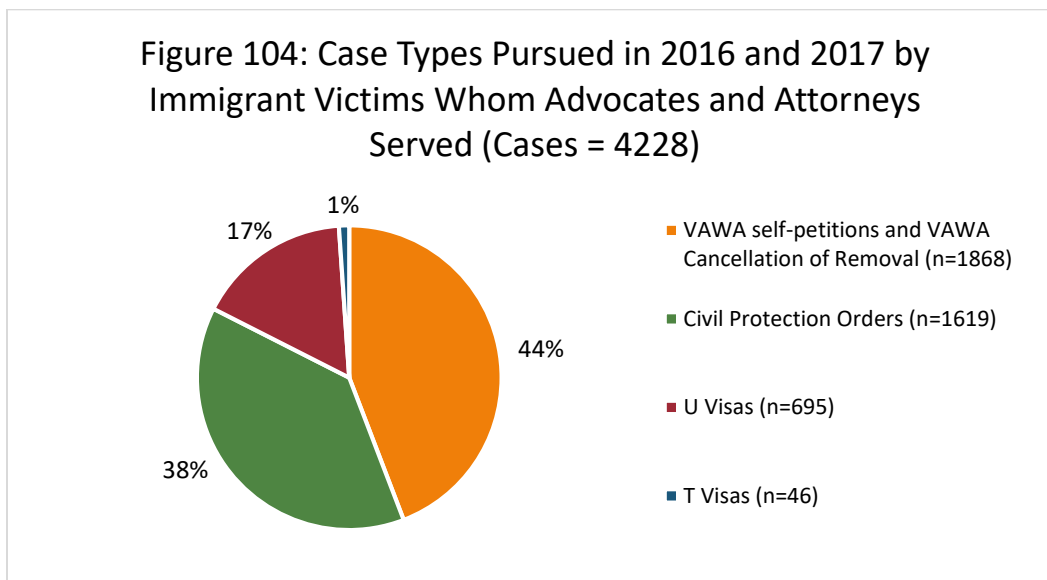
- Decline in VAWA self-petitions – 391% lower (2016 =1567; 2017=325)

<sup>54</sup> The survey collected data on cases advocate/attorney participants handled for the full year of 2016 and for January through October 2017. The per month number of cases for all of the agencies participating was used to compare the filing rates in 2016 and 2017.

<sup>55</sup> All 2017 case filing numbers were calculated by taking the numbers of cases reported for January through October 2017, dividing by 10 to arrive at the average monthly case filings and then multiplying by 12 to obtain the full year 2017 projected number of cases filed.

- Decline in U visas – 31% lower (2016=524; 2017=324)
- Increase in T visas – 64% higher (2016=14; 2017=38)
- Increase in civil protection orders filed – 23% higher (2016=775; 2017=1013)

The survey data illustrate the extent to which the climate of increased immigration enforcement and anti-immigrant public discourse have fueled fears of deportation are leading battered immigrant spouses and children abused by U.S. citizens and lawful permanent resident spouses, parents and step-parents locked in abusive homes. Agencies report filing almost 4 times (3.9) lower rate of filing VAWA self-petitions in 2017 compared to 2016. The effects on battered immigrants is also reflected in the 31% decline in U visa filings in 2017 compared to 2016, since domestic violence and child abuse cases make up approximately 46% of U visa cases filed nationally.<sup>56</sup>



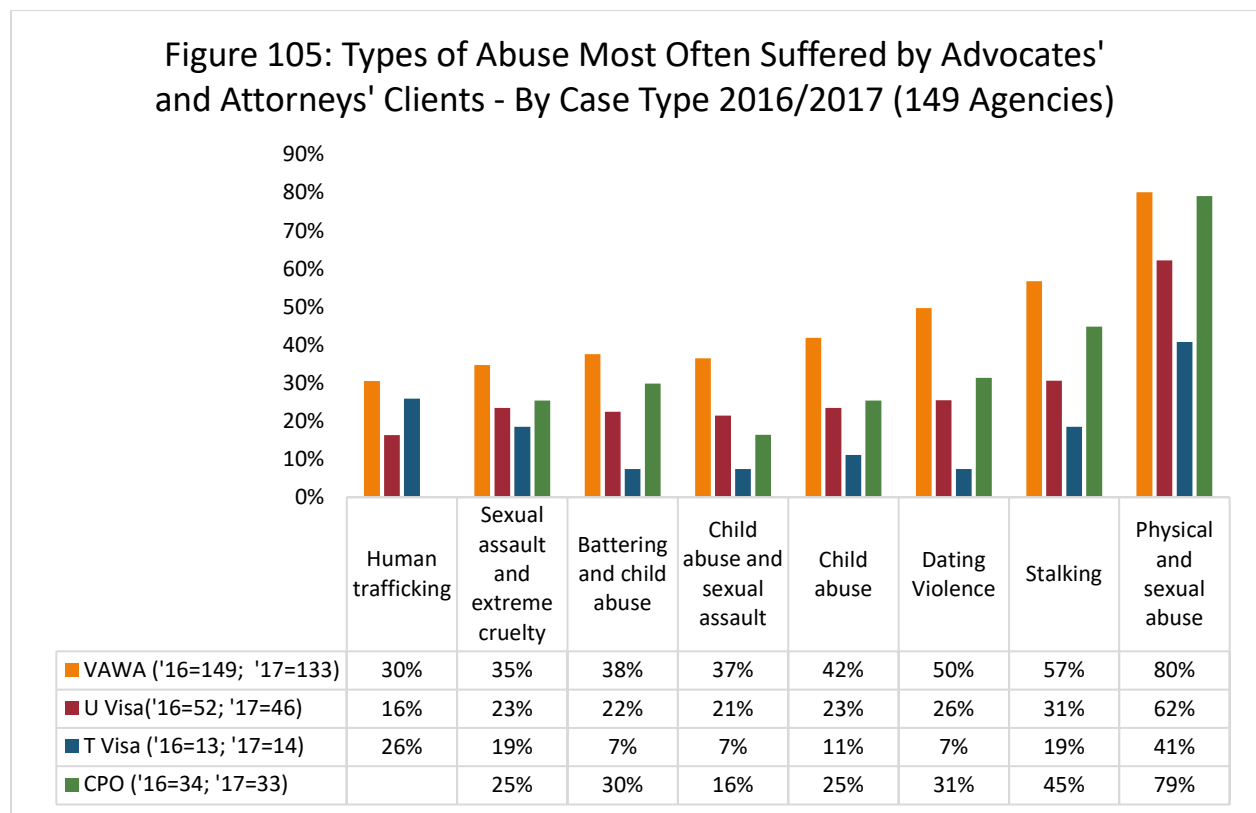
### Types of Abuse and Crime Victimization Suffered

Figure 105 shows the responses of the advocates/attorneys (n=149) about the numbers of the overlapping forms of abuse their VAWA self-petitioning, U visa and protection order clients and their children suffered. The survey asked them to check all that apply to the clients they served in 2016 and 2017. There were a total of 447 responses. Attorneys and advocates reported that the majority of their clients (across all types – U visa, VAWA, and CPO) were victims of abuse that included both battering and sexual assault (ranging from 62% for U visa clients to 80% for VAWA clients). In many relationships, this was accompanied by extreme cruelty (ranging from 30% for protection order clients to 50% for VAWA self-petitioners). It is important to note that in many states protection orders are only available to victims of physical and sexual abuse or other behaviors (e.g. stalking, attempted assaults) that constitute crimes

<sup>56</sup> LESLYE E. ORLOFF & PAIGE E. FELDMAN, NATIONAL SURVEY ON THE TYPES OF CRIMINAL ACTIVITIES EXPERIENCED BY U VISA RECIPIENTS (2011), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-criminal-activities-survey/>.

under state law.<sup>57</sup> The immigration law definition of domestic violence includes forms of extreme cruelty that may not be considered as criminal or an assault.<sup>58</sup>

This survey also captured the extent to which the abuse underlying the cases advocates and attorneys were working with immigrant victims on included. They included co-occurring domestic violence and child abuse (ranging from 23% in U visa cases to 38% in VAWA self-petitioning cases) and were based exclusively on physical and/or sexual abuse of a child (ranging from 16% or 25% )in civil protection order cases to a high of (40% to 42%) in VAWA self-petitioning cases. While there was co-occurrence of elder abuse reported (ranging from 5% for U visa clients to 13% for VAWA clients), it nevertheless lower than that of child abuse. (See, figure 105).



Additionally, a small proportion of advocates and attorneys reported working with immigrant victims who were involved in the following criminal activities:

<sup>57</sup> See *Restraining Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/general/restraining-orders> (last visited Apr. 27, 2018); *Appendix N: Domestic Violence Includes Child Abuse and Child Neglect*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A GUIDE TO BEST PRACTICE FOR JUDGES AND COURTS (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-n-domestic-violence-abuse-and-neglect/>; Catherine F. Klein; Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 1190 (1993)

<sup>58</sup> Leslye E. Orloff et. al., *Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (2015), <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order/>

- Blackmail, extortion, perjury, obstruction of justice – U visa (14%, n=14); Civil Protection orders (25%, n=17);
- Kidnapping, unlawful restraint, hostage taking, torture – U visa (17%, n=17), Civil Protection Orders (18%, n=12);
- Felonious assault, murder, manslaughter – U visa (12%, n=12); Civil Protection orders (3%, n=2).

Advocates/attorneys were also asked to respond to questions about the types of abuse the children of their VAWA self-petitioning, U visa and protection order clients suffered independent of or in addition to the abuse suffered by their immigrant parent. All forms of immigration relief that protect immigrant crime victims allow immigrant parents to apply for protection when their child is abused whether or not the parent is also abused.<sup>59</sup>

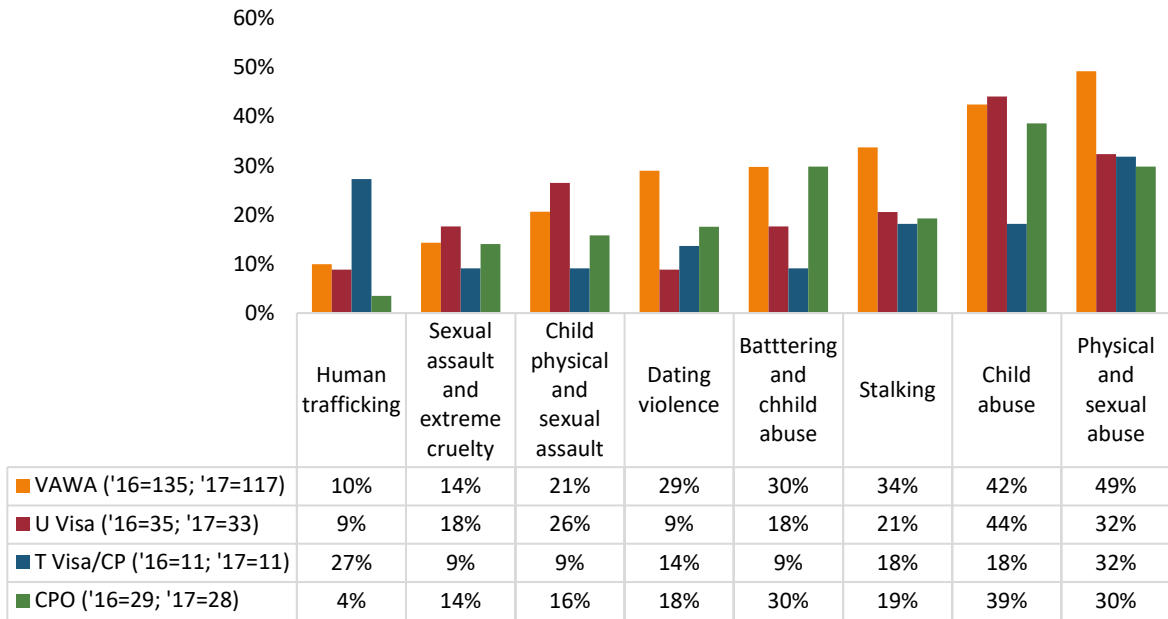
Similarly, non-abused parents can bring civil protection order actions on behalf of their abused children. This practice is however, less common than abused immigrant parents filing for immigration relief based on abuse of their children so that they can safely take steps to protect their children from ongoing abuse and help their children heal.<sup>60</sup> The survey asked the participating advocates and attorneys to check all that apply to the clients they served in 2016 and 2017. The majority of the attorneys and advocates clients' children (across all client types, U visa, T visa, VAWA, and CPO) were physically or sexually abused. (See figure 106). It is important to note that while many attorneys and advocates (n=239) reported working with clients whose children had been either physically or sexually assaulted, a relatively large number (n=179) reported working with clients whose children had been both physically and sexually assaulted<sup>61</sup>.

<sup>59</sup> See e.g. U visas INA Section 101 (a) (15)(U)(ii); INA Section 204(a)(1)(A)(iii); and INA Section 204(a)(1)(B)(ii)(1).

<sup>60</sup> JOANNE LIN & COLLEEN O'BRIEN, IMMIGRATION RELIEF FOR CHILD SEXUAL ASSAULT SURVIVORS, *IN* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2015), <http://niwaplibrary.wcl.american.edu/pubs/ch8-imm-relief-child-sexual-assault-survivors/>

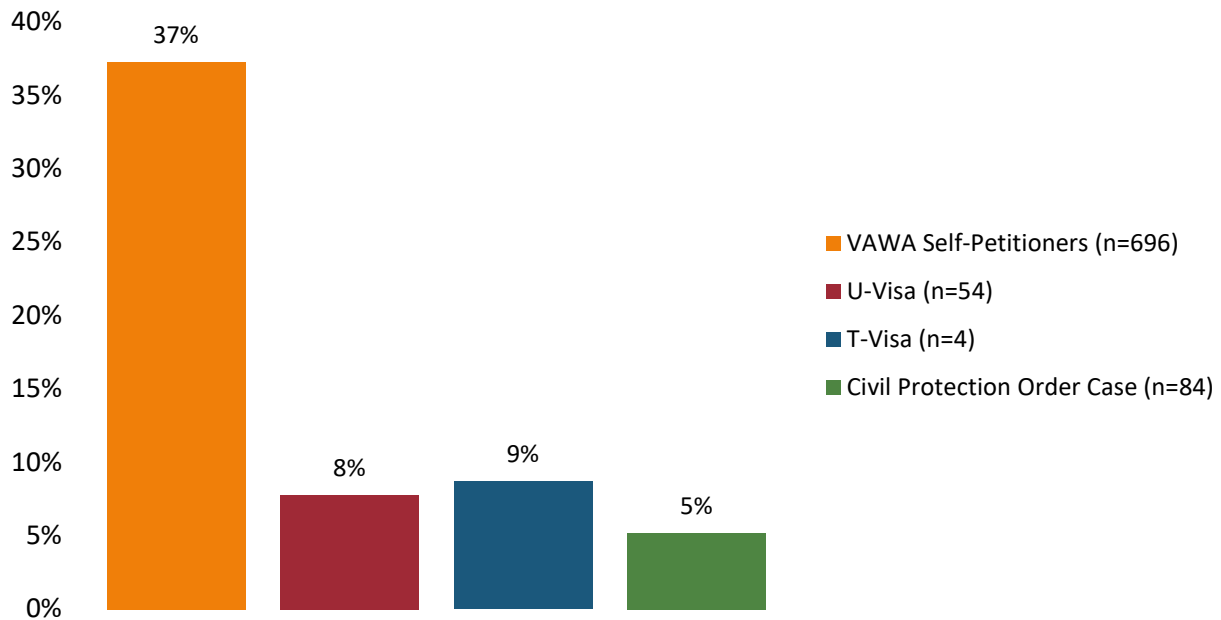
<sup>61</sup> In the case of children of VAWA self-petitioners this abuse would have been perpetrated by the child's parent or stepparent.

Figure 106: Types of Abuse Most Often Suffered by Children of Advocates' and Attorneys' Clients - By Case Type 2016/2017 (135 Agencies)



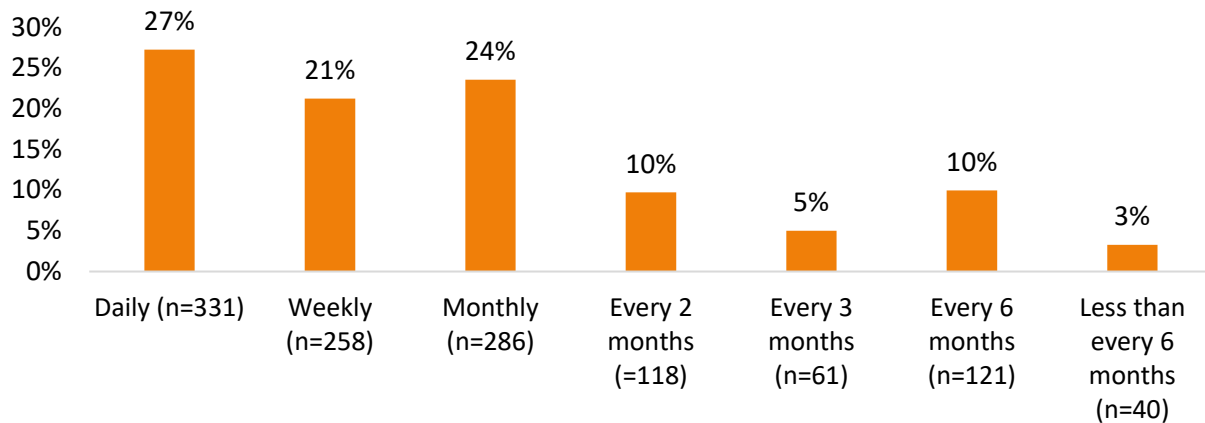
The survey also sought to learn about what forms of abuse occur and with what frequency when immigrant crime victims face barriers in seeking help and return to or are unable to leave abusive homes or employment. Figure 107 reports the percent of immigrant victims who stay or return to their abuser by type of case (immigration or protection order) that the immigrant victim is pursuing.

Figure 107: Percent Of Immigrant Victims Who Stay/Return to Their Abusers in 2016 and 2017 (838 cases)

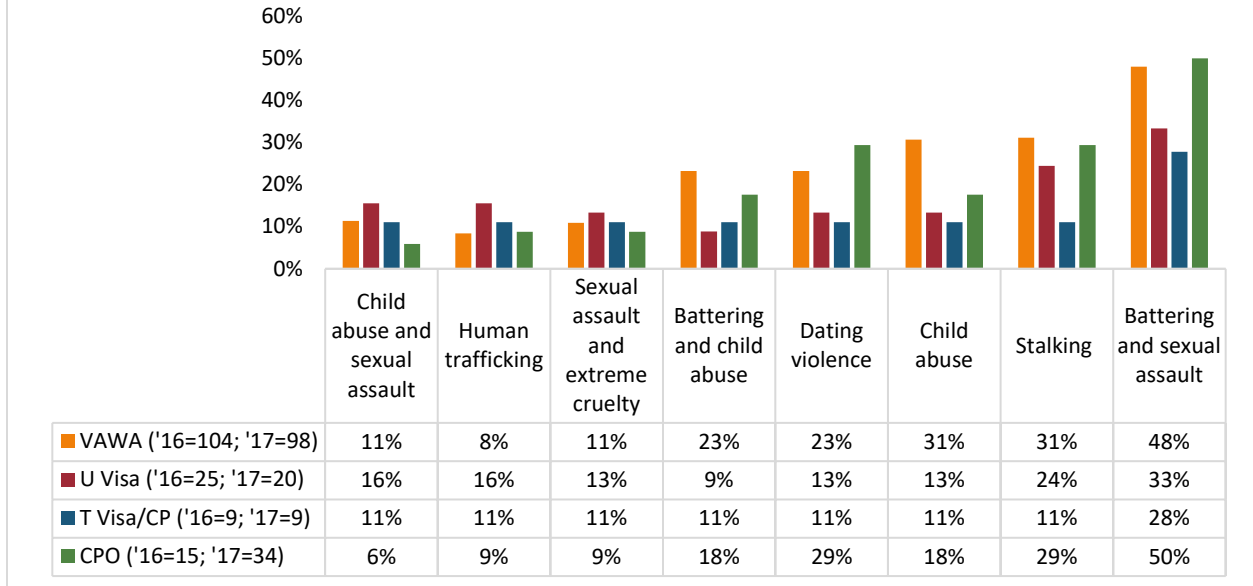


Of the participants who reported their clients stayed with or returned to their abusers, almost three-quarters (72%, n=902) suffered daily, weekly or monthly abuse (See, figure 108) and the majority said their clients (regardless of client type) suffered from battering and sexual assault. (See, figure 109 for a detailed report of the types of abuse suffered).

Figure 108: Frequency of Abuse for Victims Who Stayed/Returned to Their Abusers (2016-2017) (1215 cases)



**Figure 109: Advocates and Attorneys Reporting Ongoing Abuse Victims and their Children Suffer if they Stay or Return to Their Abusers (2016/2017) (104 Agencies)**



### **Types of Benefits, Services, and Justice System Assistance Immigrant Victims are Willing to Seek**

The attorneys and advocates were asked what services their VAWA, U visa, T visa, and civil protection order clients were willing to seek. (See, figures 110 and 111). Figure 111 shows the responses the attorneys/advocates gave regarding their clients “likelihood” to seek the following services: healthcare<sup>62</sup>, victims’ services<sup>63</sup>, public benefits<sup>64</sup>, and justice system<sup>65</sup>. Victims who were receiving assistance from advocates and attorneys were willing to receive a wide range of victim services, health care and housing and other public benefits. (See, figure 110). Trafficking victims were slightly less likely than other victims to seek these services. Victims were also generally willing with the support of victim advocates and attorney to access justice system help. (See, figure 111).<sup>66</sup> However, as discussed in more detail below, the analysis of data of individual client choices in 2016 and 2017 revealed that their clients continued participation; particularly in the justice, system is affected by fear of negative

<sup>62</sup> This refers to healthcare for themselves as well as healthcare for children.

<sup>63</sup> This is made up of help with an employment, rape crisis center or sexual assault program victim advocacy, counseling services, shelter and the domestic violence program services and victim advocacy.

<sup>64</sup> This includes state and federal public benefits for the victim themselves and/or for the victim’s children including but not limited to subsidized childcare services, and housing.

<sup>65</sup> Justice system assistance from the both the criminal and civil justice systems included help from prosecutors, police, courts, and specifically civil protection orders, custody, child support and divorce in family courts.

<sup>66</sup>The survey questionnaire inadvertently did not list sexual assault programs as a services as an option from survivors receiving civil protection orders.



immigration consequences of justice system involvement and perpetrator’s threats to deportation made to those who participate.

Figure 110: Services Immigrant Victims are Willing to Seek 2016/2017 - By Case Type (142 Agencies)

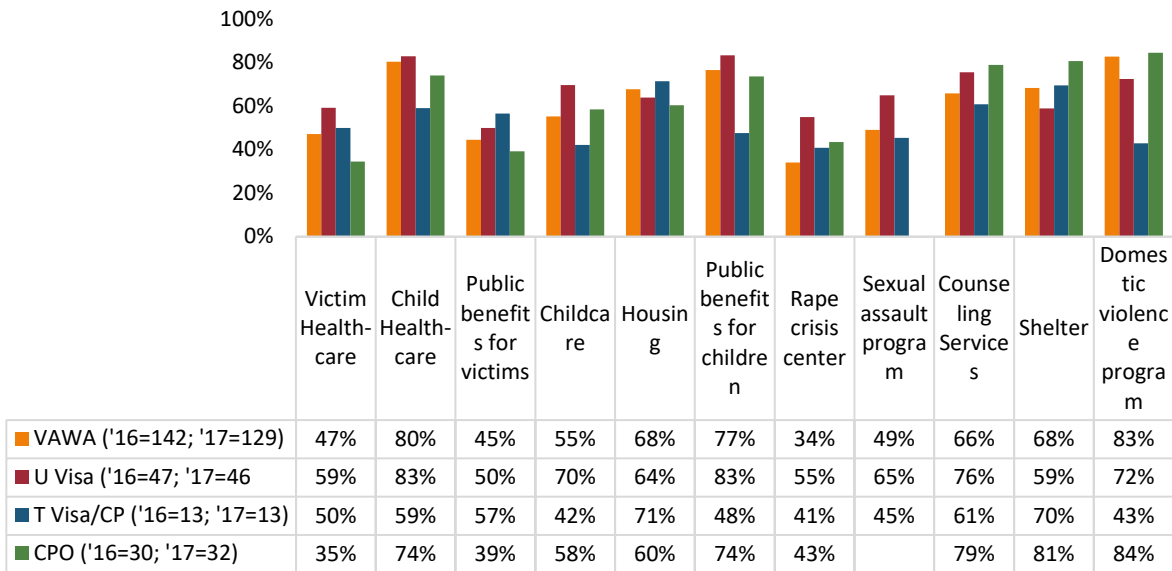
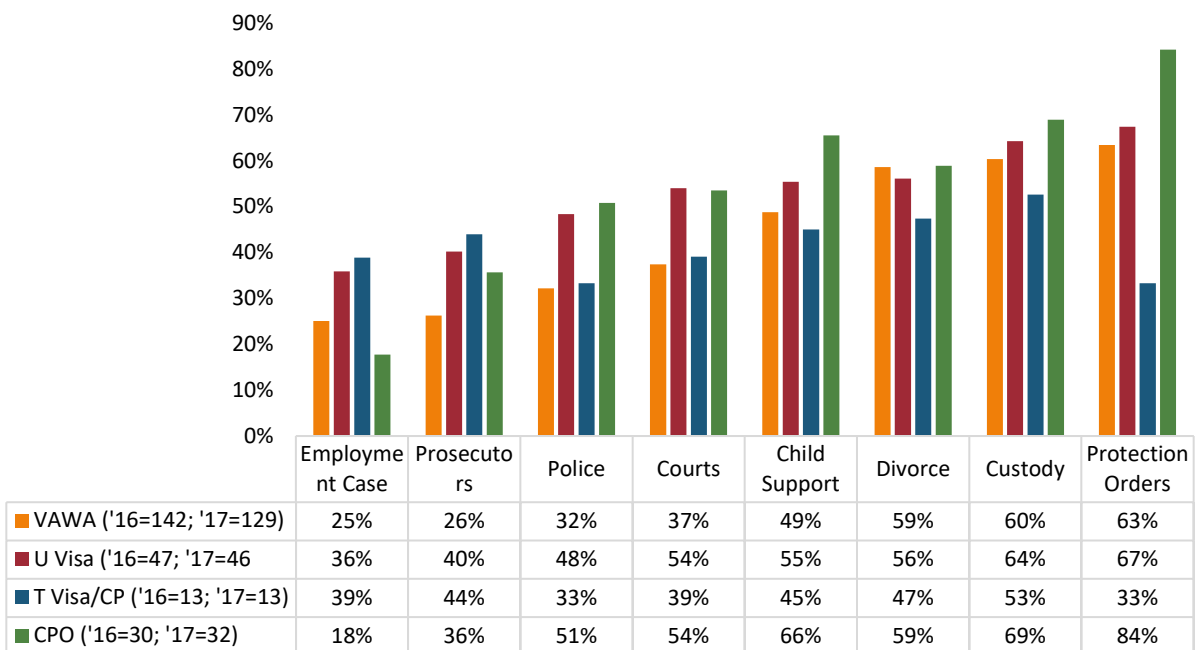
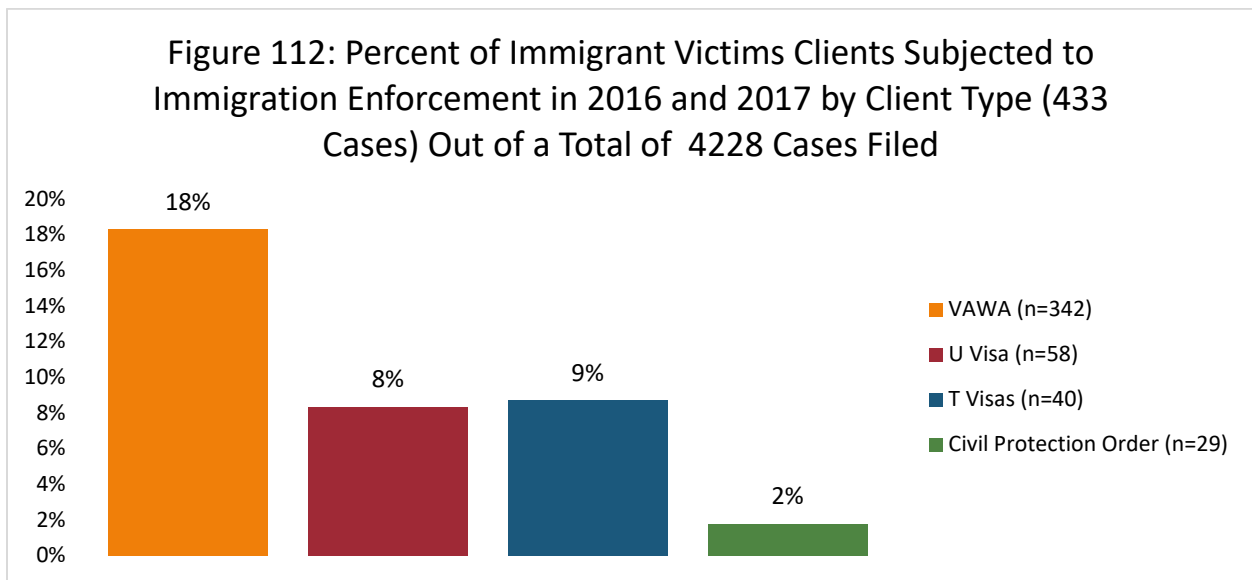


Figure 111: Immigrant Victims' Willingness to Turn to Justice System for Help 2016/2017 - By Case Type (142 Agencies)



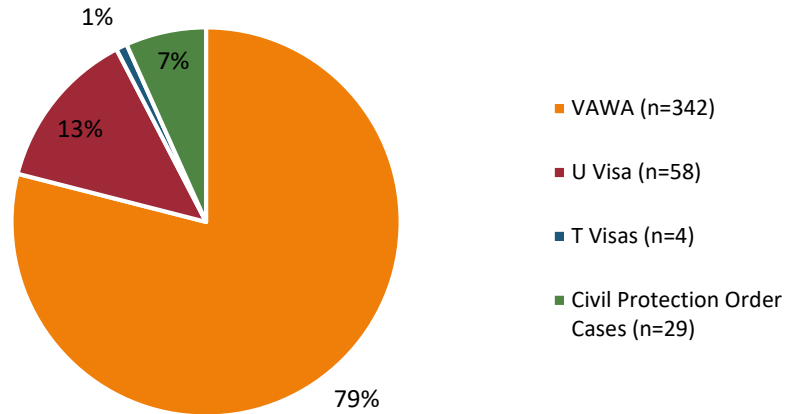
## Immigrant Crime Victim’s Experiences with Immigration Enforcement

A key focus of this survey involved examining the extent to which immigration enforcement is affecting immigrant crime victims. Advocates and attorneys were asked to report on the numbers of their immigrant victim clients who in 2016 and 2017 had been subject to an immigration enforcement action by U.S. Department of Homeland Security enforcement officials who worked at either Immigration and Customs Enforcement (ICE) or Customs and Border Patrol (CBP). This includes being stopped, questioned, detained, deported, or had a notice to appear in immigration court issued against them. In total, 433 cases advocates and attorneys’ immigrant victim clients had been subject to immigration enforcement actions in 2016 and 2017. This constitute 10% of the total number of immigrant victims cases (n= 4228) that attorney and advocates reported in the survey. VAWA self-petitioners at least twice as likely as immigrant victims with other type of cases filed (U visas, T visas and civil protection orders) to subject to immigration enforcement. (18% VAWA self-petitioners compared to U visa 8%, T visa 9% and protection orders 2%).(See, figure 112).



Out of the total number of immigrant victim clients exposed to immigration enforcement identified by the advocates/attorneys in this survey, over three-quarters (79%, n=342) of them were VAWA self-petitioners who were abused by their U.S. citizen or lawful permanent resident spouses or parents. (See, figure 113).

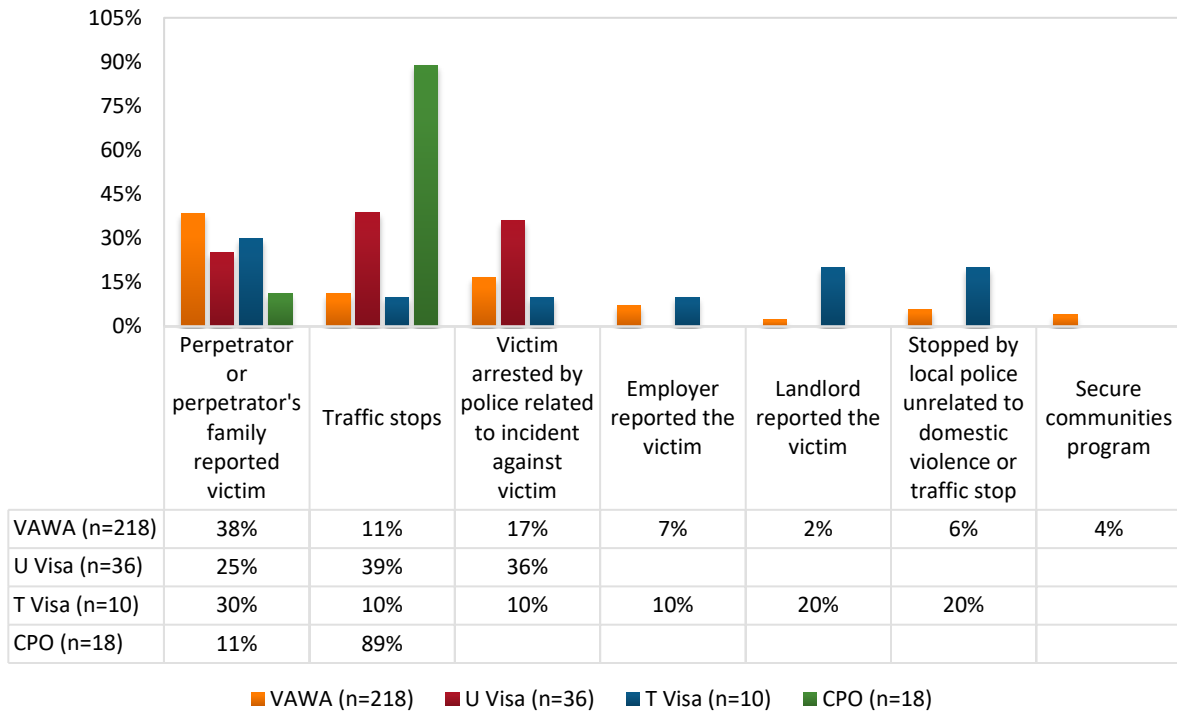
Figure 113: Enforcement Actions Against Immigrant Victims Reported By Advocates and Attorneys 2016-2017 By Case Type (433 cases)



Advocates and attorneys who said that their clients were subjected to immigration enforcement were also asked to identify what led to the enforcement action for each of their clients. The perpetrator or perpetrator’s family members calling immigration enforcement officials to turn the victim in for immigration enforcement was the answer given by the largest number of advocates/attorneys. Providing tips and information about the victim to ICE or CBP agents accounted for a quarter to over a third of immigration enforcement actions initiated against immigrant victims who were VAWA self-petitioners (38%, n=97), trafficking victims (T visas 30%, n=3) or victims with pending U visas (25%, n=9).<sup>67</sup> Battered immigrant victims who were civil protection order clients were most often (89%) targeted for immigration enforcement during traffic stops. Over a third of U visa victims (36%, n=13) and 17% (n=42) were turned in for immigration enforcement when they had called local police or sheriffs for help and the police arrived at a crime scene. (For a detailed breakdown, See, figure 114).

<sup>67</sup> These findings in terms of perpetrator’s role in triggering enforcement actions against victims are consistent with prior research conducted in 2013. That research similarly found that when VAWA self-petitioners and U visa victims were subject to immigration enforcement, tips from perpetrators triggered immigration enforcement against victims in 38.3% of the VAWA cases and 26.7% of the U visa cases. Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT 26 (Feb. 2014), [http://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12/](http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/).

Figure 114: Motives that Triggered the Immigration Enforcement Action 2016 and 2017 (282 cases)



Advocates and attorneys were also asked about the locations where the immigration enforcement actions against their clients took place. Of the 206 immigration enforcement actions against victims identified by advocates and attorneys in the survey, 51 of them occurred against immigrant victims in connection with their appearance at courthouses. Another 87 of the enforcement actions<sup>68</sup> reported took place at locations that Congress in the Violence Against Women Act 2005 prohibited immigration enforcement. As part of the VAWA confidentiality protections there is a list of protected locations where enforcement against immigrant crime victims was to be generally prohibited.<sup>69</sup> The list of VAWA confidentiality protected locations includes:<sup>70</sup>

- Domestic violence shelters
- Rape crisis centers
- Family justice centers
- Supervised visitation centers
- Victim services agencies, and
- Courthouses “ (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault,

<sup>68</sup> The 87 enforcement actions were conducted in the following locations: domestic violence shelter (n=33); victims service agencies (n=21); rape crisis center (n=17); family justice center (n=13) and; supervised visitation (n=3)

<sup>69</sup> Leslye E. Orloff, *VAWA Confidentiality Protections for Immigrant Crime Victims*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Jan. 31, 2018), <http://niwaplibrary.wcl.american.edu/vawa-confidentiality-materials-tools/>.

<sup>70</sup> INA Section 239(e).

trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 1101(a)(15),<sup>71</sup>

The Advocates/ attorney identified another 23 enforcement actions<sup>72</sup> against their immigrant victim clients at other protected locations and where immigration enforcements are prohibited. ICE has longstanding policies designed to prevent immigration enforcement actions at sensitive locations<sup>73</sup> these include:

- Schools,
- Hospitals, and
- Places of worship and other religious ceremonies

Figure 115 provides more details regarding attorneys and advocates responses regarding places where their immigrant victims faced immigration enforcements.

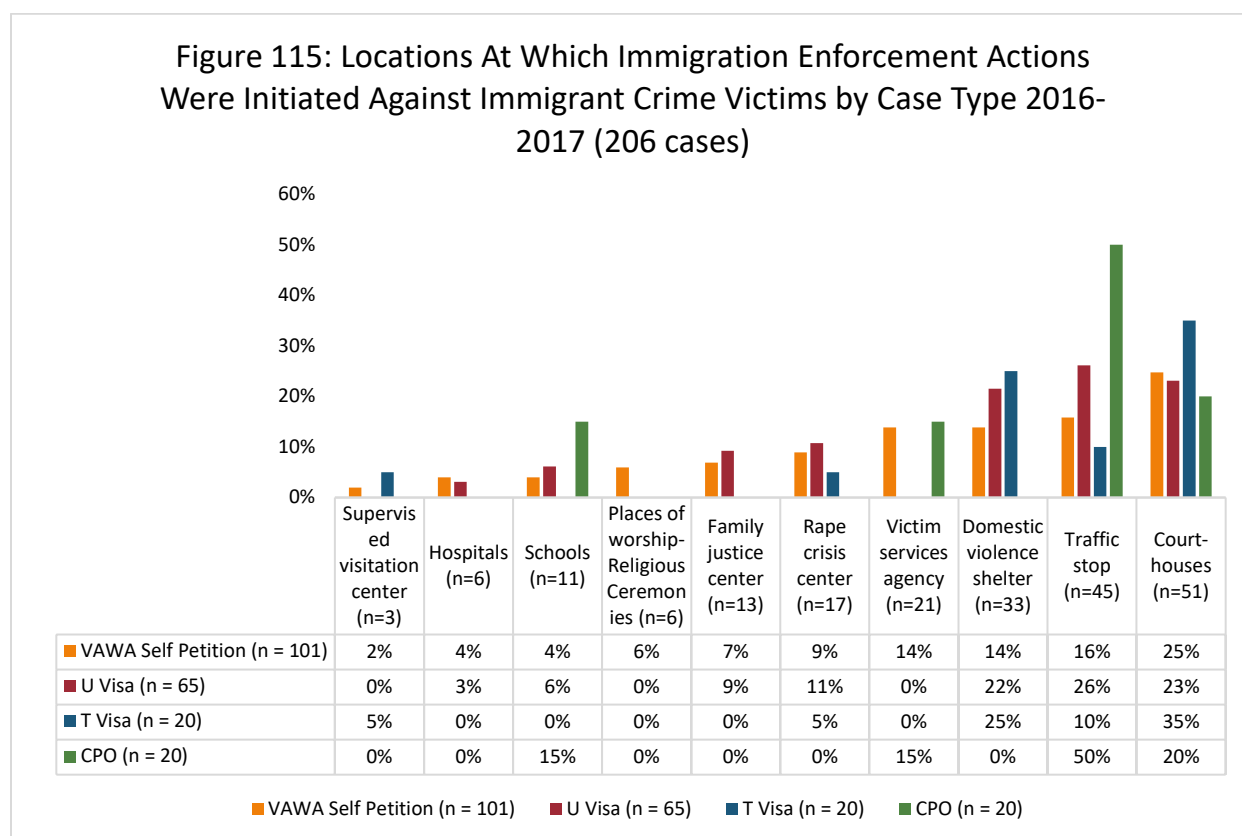


Figure 116 provides more detail documenting the fact that the immigration enforcement actions initiated against immigrant victims at courthouses were occurring in connection with

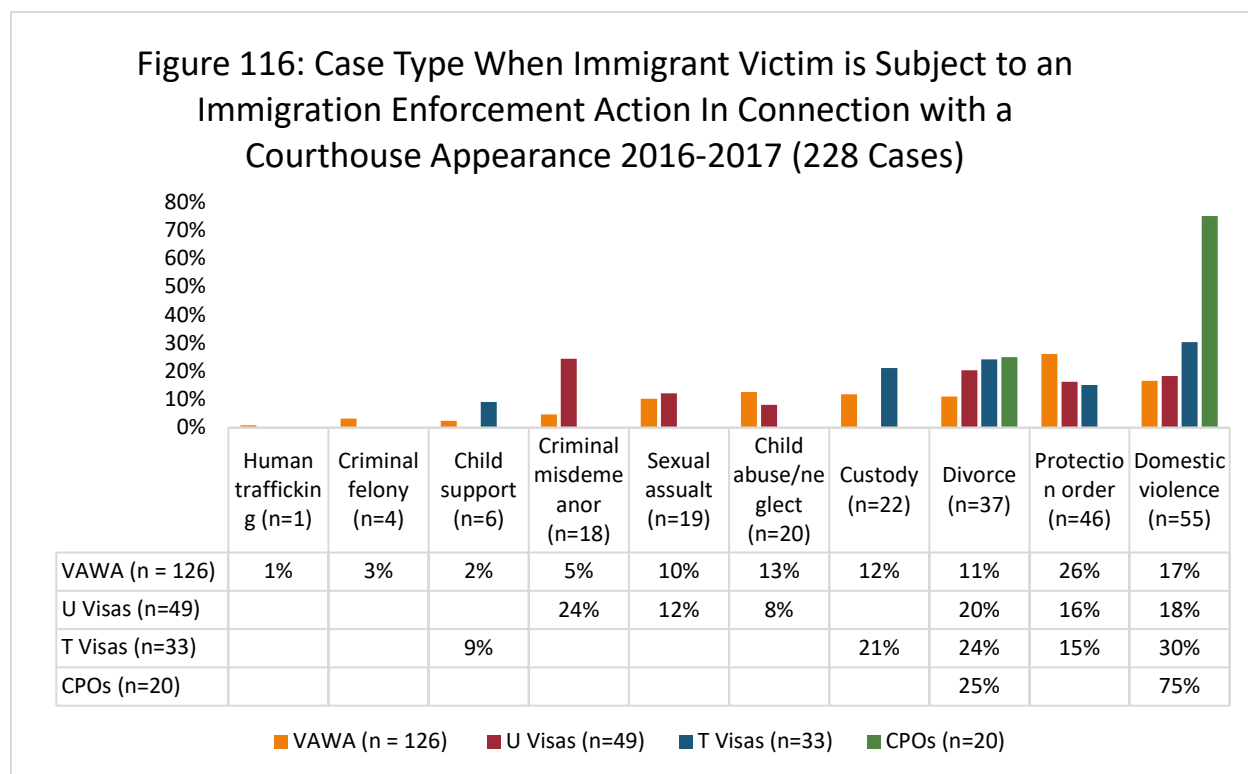
<sup>71</sup> INA Section 239(e)(2)(B)

<sup>72</sup> The 27 enforcement actions were conducted in the following locations: hospitals (n=6); schools (n=11); places of worship and other religious ceremony (n=6).

<sup>73</sup> Memorandum from Julie Myers, Assistant Secretary, U.S Immigration and Customs Enforcement, to All Field Office Directors, *Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations* (Jul 3, 2008), <http://niwaplibrary.wcl.american.edu/pubs/guidance-enforcement-sensitive-community/>; Memorandum from John Morton, Director, U.S Immigration and Customs Enforcement, to Field Office Directors, *Enforcement Actions at or Focused on Sensitive Locations* (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>

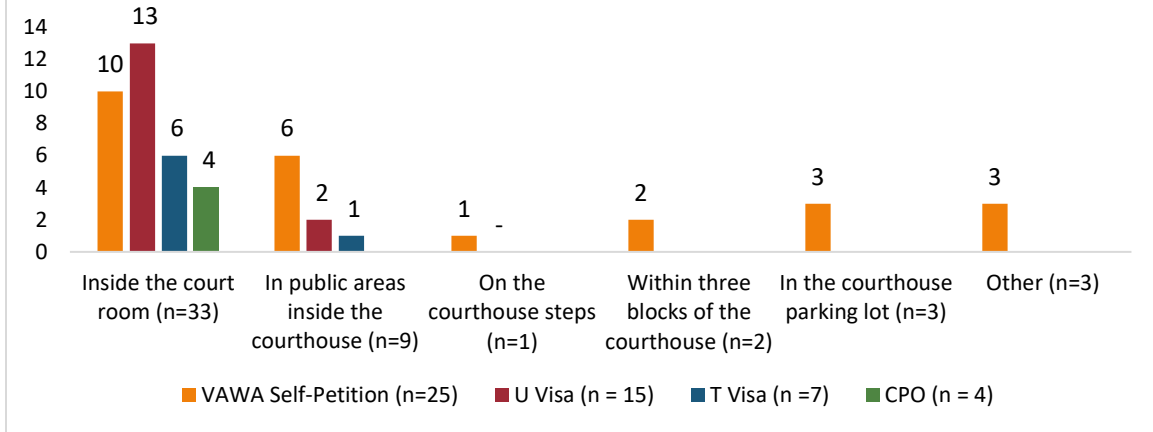
cases that should have received VAWA confidentiality protection. Courthouse enforcement was occurring when immigrant victims were going to or were in courts in connection with protection order cases, child custody cases, domestic violence cases and other cases related to seeking civil or criminal court remedies for the abuse or crime victimization.

Each of the enforcement actions related to cases described in figure 115 occurring at courthouses that immigrant victims were reported in the survey by advocates and attorneys (n=228) is prohibited VAWA confidentiality’s statutory protections and as a result should have been legally avoided. Instead, the advocates and attorneys’ clients were subjected to immigration enforcement in connection with their courthouse appearance. The majority of civil protection order (CPO) clients had immigration enforcement initiated against them during domestic violence court appearance (75%, n=15). Many of the advocates and attorney’s’ T visa clients who were victims of domestic violence related human trafficking were also targeted for immigration enforcement during domestic violence court cases (30%, n=10), during divorce court cases (25%, n=8) and custody court cases (21%, n=7). U visa clients, on the other hand, were often targeted for immigration enforcement during criminal misdemeanor court cases (24%, n=12) and divorce cases (20%, n=10) cases. Many VAWA self-petitioners, targeted for immigration enforcement during protection order cases (26%, n=33) against their citizen or lawful permanent resident spouses. See, figure 116 for further details.



The survey also obtained information from advocates and attorneys about where in connection with courthouse appearances their immigrant crime victim clients were being arrested and/or subjected to immigration enforcement actions. Most clients who were arrested at courthouses were inside the courtroom, and this is particularly typical for U visa and VAWA clients. (See, figure 117).

Figure 117: Location of Courthouse Enforcement Actions Conducted Against Immigrant Victims 2016-2017 (n=51)



Victim advocates and attorneys were asked to report only about immigration enforcement actions taken against immigrant victim clients at courthouses.<sup>74</sup> The states in which advocates and attorneys reported courthouse enforcement actions against their immigrant victim clients were: Florida, Georgia, Nevada, New Mexico, Oregon, Pennsylvania, Vermont and Wisconsin. These findings are similar to those discussed above in Section I of this report the National Judicial Survey,<sup>75</sup> the states in which this survey data found immigration enforcement to be occurring against immigrant crime victims was not limited to states with lower levels of cooperation with federal immigration enforcement officials. The reports of immigration enforcement occurring against immigrant crime victims were occurring mostly in civil and family court cases (see, figure 116) and also occurred in states that have high levels of cooperation with federal immigration enforcement activities (e.g. Florida, Georgia, Nevada, Pennsylvania, and Wisconsin).<sup>76</sup>

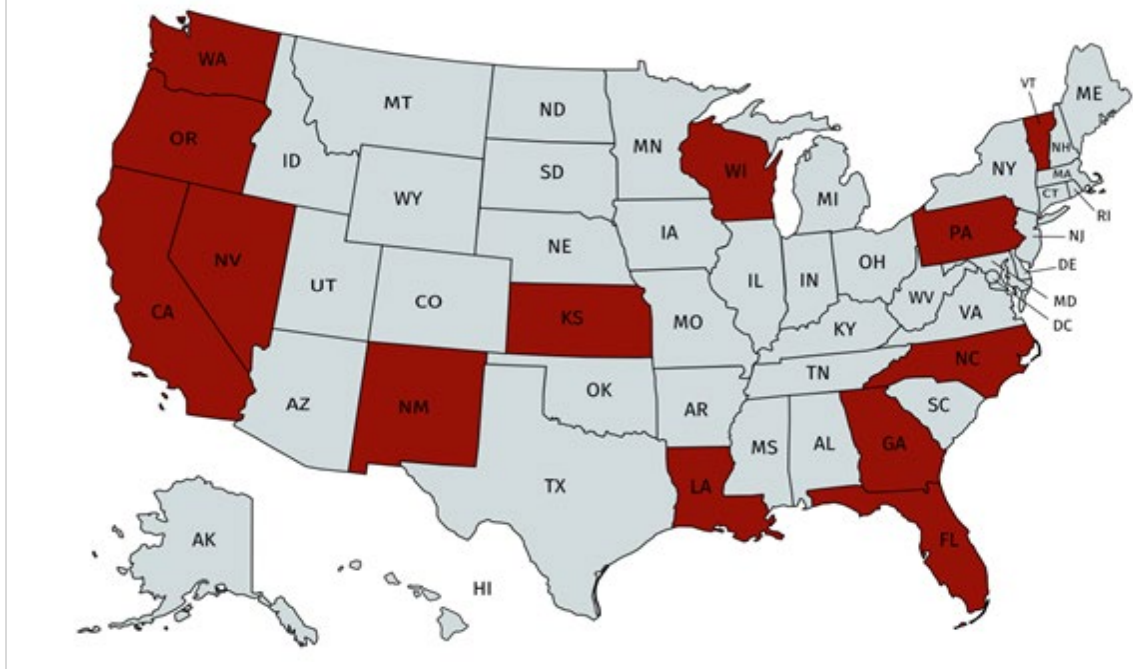
The map contained in Figure 118 provides an infographic overview of the Judicial Survey’s findings regarding immigration enforcement in non-criminal cases together with the Advocates and Attorneys’ survey findings on immigration enforcement at courthouses against immigrant crime victims in both civil and criminal cases. The states in red are the states in which judges and/or victim advocates/attorneys reported immigration enforcement actions.

<sup>74</sup> The questions about immigration enforcement asked in the judges’ survey asked about immigration enforcement at courthouses generally and did not specifically ask about immigrant crime victims. Despite this fact, the survey data revealed 18 cases in which immigration enforcement occurred in family court cases including protection orders and child welfare cases that were likely to have directly involved victims.

<sup>75</sup> Figures 19 and 20 in this Survey Report.

<sup>76</sup> *National Map of Local Entanglement with ICE*, IMMIGRANT LEGAL RESOURCE CENTER (Jan. 25, 2018), <https://www.ilrc.org/local-enforcement-map>; Bryan Griffith and Jessica M. Vaughan, *Maps: Sanctuary Cities, Counties, and States*, CENTER FOR IMMIGRATION STUDIES (Jul. 27, 2017), <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>.

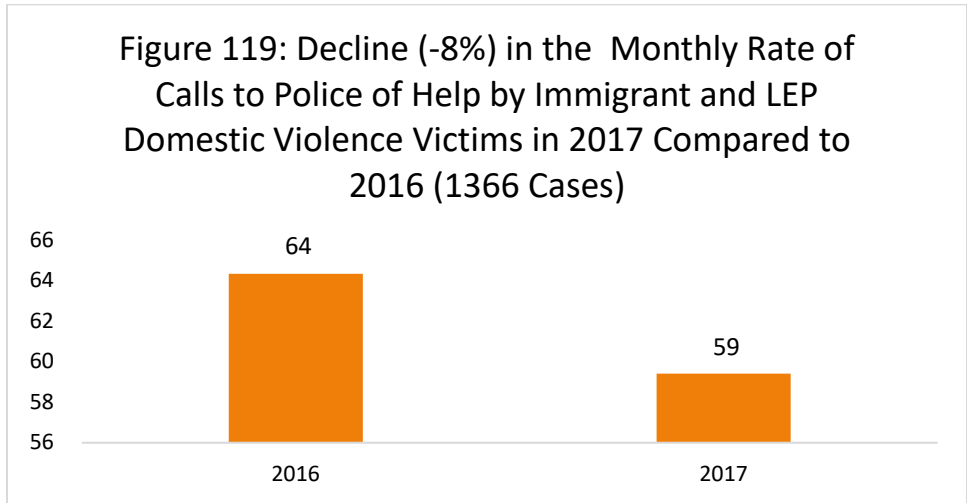
Figure 118: States with 2016-2017 Reports by Judges on Courthouse Immigration Enforcement in Family Employment and Civil Cases and Advocates, or Attorneys Reports on Courthouse Enforcement Against Crime Victims (71 cases; 51 Attorneys/Advocates Survey + 20 Judges Survey)



### **Impact of Immigration Enforcement on Immigrant Crime Victims and Their Children**

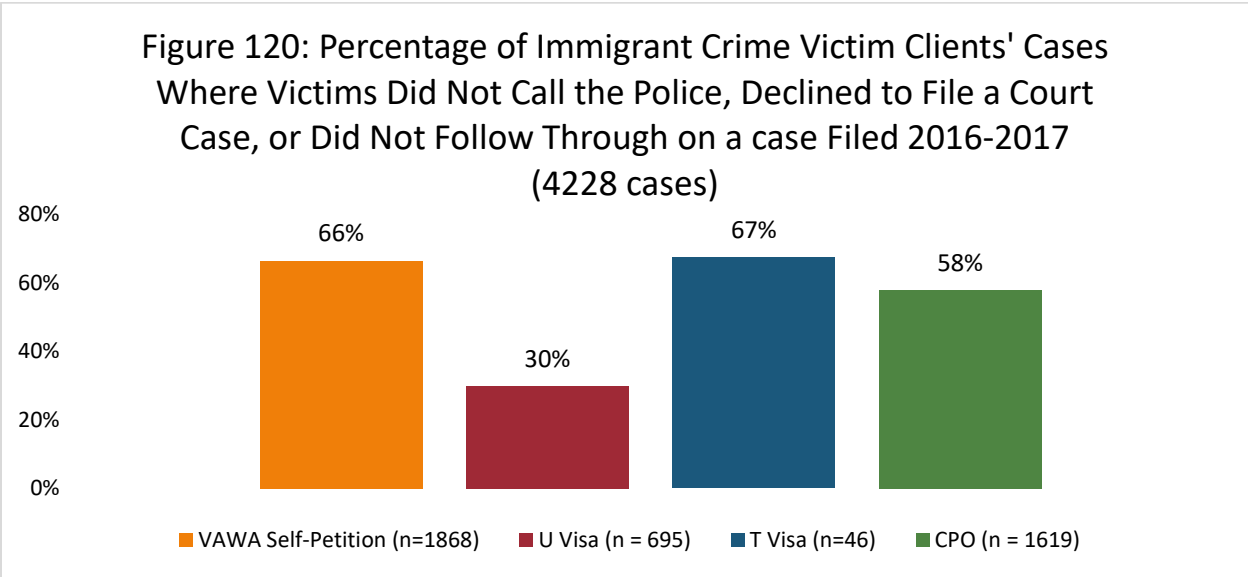
The survey also sought to better understand the impact immigration enforcement in communities and at courthouses has on immigrant crime victims and their willingness to turn to the justice system for help. The advocates and attorneys were, therefore, asked to indicate the experience of their clients who are domestic violence victims and their willingness to call the police for help in 2016 compared to 2017. They reported 1,366 cases where victims called the police for help. The number of immigrant domestic violence victims willing to call the police for help dropped 8% in 2017 vs 2016. (See, figure 119).





The advocates and attorneys noted that there were 4,228 cases of immigrant crime victim clients who in 2016 and 2017 did not call the police for help, decided not to file a court case, or filed but did not follow through on a court case filed. (See, figure 120). These cases are summarized below by type:

- Civil protection order clients 58%, n=938;
- VAWA clients 66%, n=1233;
- Trafficking victim clients 67%, n=31; and
- U visa clients 30%, n=207.



Additionally, the information provided in the survey regarding fears, concerns and factors that influence immigrant victims' individual decisions to seek help from the civil and/or criminal justice system is summarized in figure 18. Primary among the reasons for not seeking help from police or courts and not following through with these agencies are fear of deportation (37%, n=899), fear that the perpetrator will retaliate by calling immigration enforcement officials, and

reporting the victim (25%, n=605). (See, figure 121). Fear of losing children was the third factor (24%, n=591). Figure 18 provides information about the range of factors that play a role in influencing immigrant victims' reticence to turn to the justice system for help and figure 122 provides details about how these factors may be different among immigrant victims by case type.

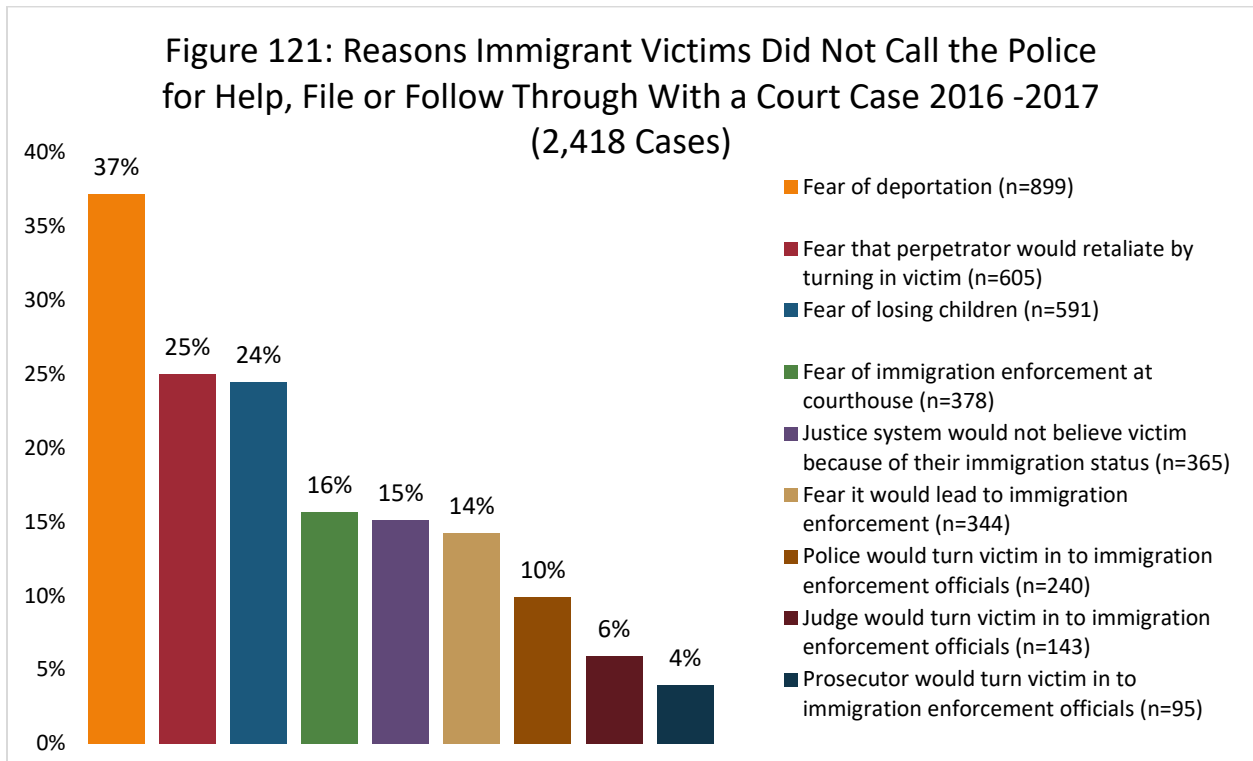
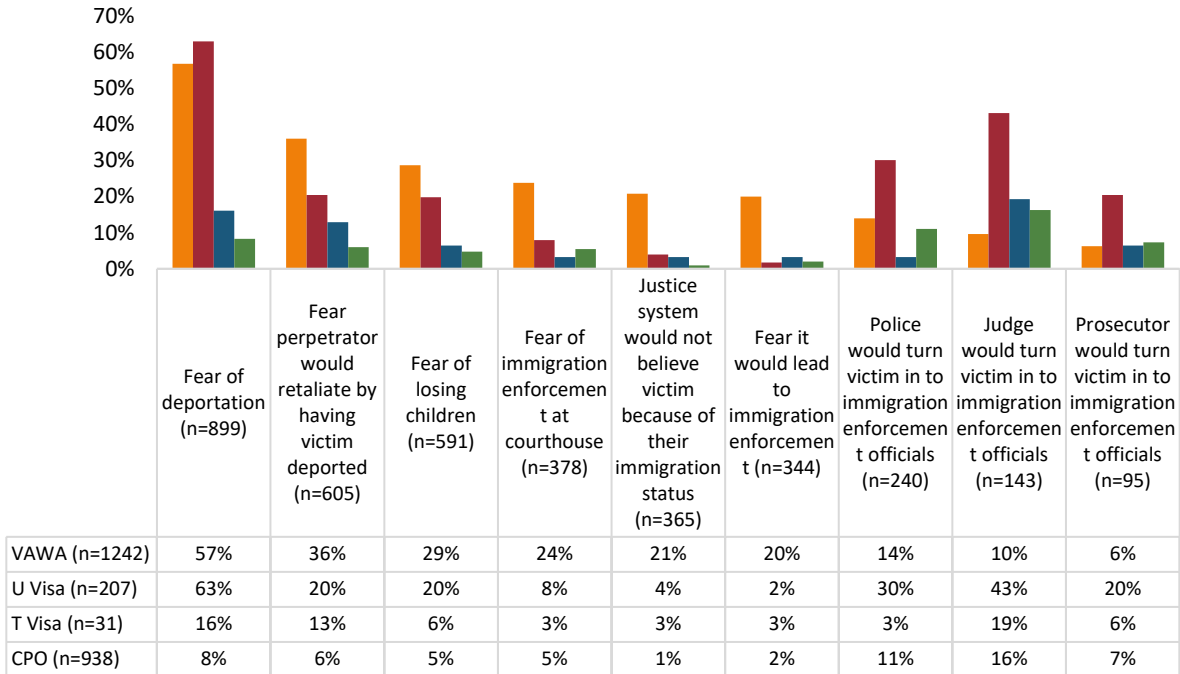


Figure 122: Reasons Immigrant Victims Did Not Call the Police for Help, File or Follow Through With a Court Case 2016 -2017 - By Case Type (2,418 Cases)



## Part Five: Policy Recommendations and Conclusions

### Initial Implications and Recommendations:

Over the past 27 years, the numbers of immigrants from linguistically and culturally diverse backgrounds has steadily increased. Immigrants have moved beyond traditional gateway states,<sup>77</sup> settling in urban and rural communities across the country, particularly in the Southeast, the Pacific Northwest, Mountain States, and the Sun Belt.<sup>78</sup> The immigrant population rose by 11.6% between 2000 and 2016. As of 2016:

- 13.5% (43,739,345) of the U.S. population is foreign-born;<sup>79</sup>
- 24.5% of the U.S. population is either foreign born or has one or more foreign born parents;<sup>80</sup>
- 25.8% of children in the U.S. under the age of 18 have one or more immigrant parents;<sup>81</sup>
- 88.2% of children in immigrant families are U.S. citizens.<sup>82</sup>

As a result, greater numbers of courts, law enforcement agencies, prosecutors' offices, victim advocates and attorneys across the country will be called upon to offer assistance to immigrant victims of crime including particularly domestic violence, sexual assault, child abuse, stalking, dating violence and human trafficking. This includes agencies working in new immigrant gateway communities that had not previously been home to growing immigrant populations.<sup>83</sup>

This survey showed some notable declines in immigrant crime victims' willingness to seek help in 2017 compared to 2016:

- 12% of judicial survey participants report declines in requests for protection orders by immigrant victims
- Declines in complaints filed by the immigrant community (18%) and in willingness (15%) of immigrant community members and victims to cooperate on criminal cases were reported by law enforcement survey participants
- Law enforcement officers reported in greater detail the areas in which they observed declines in immigrant victim willingness to:
  - Make a police report – 22%
  - Participate in crime scene investigations – 21%

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<sup>77</sup> For example, California, Florida, Illinois, New Jersey, New York and Texas.

<sup>78</sup> *Changing Patterns in U.S. Immigration and Population*, (December 18, 2014), The Pew Charitable Trusts (last visited Feb. 16, 2018), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/changing-patterns-in-us-immigration-and-population>.

<sup>79</sup> *United States Demographics*, Migration Policy Institute, (last visited Feb. 16, 2018) <https://www.migrationpolicy.org/data/state-profiles/state/demographics/US>.

<sup>80</sup> Sources: 2016 census data reported by Migration Policy Institute, *United States Demographics 2016* (Foreign born population 13.5%) + 2016 Census Migration Policy Institute, *Children in U.S. Immigrant Families* (citizen children under age of 18 with one or more immigrant parents 4.9% of US population) + 2014 census data The Pew Charitable Trusts, *Changing Patterns in U.S. Immigration and Population* (December 18, 2014) (adult citizen children of immigrant parents – Second Generation citizens 6.2%).

<sup>81</sup> *Children in U.S. Immigrant Families*, Migration Policy Institute, (last visited Feb. 16, 2018), <https://www.migrationpolicy.org/programs/data-hub/us-immigration-trends#children>.

<sup>82</sup> *Children in U.S. Immigrant Families*, Migration Policy Institute, (last visited Feb. 16, 2018), <https://www.migrationpolicy.org/programs/data-hub/us-immigration-trends#children>.

<sup>83</sup> *Changing Patterns in U.S. Immigration and Population*, (December 18, 2014), The Pew Charitable Trusts (last visited Feb. 16, 2018), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/changing-patterns-in-us-immigration-and-population>.

- Assist in post-crime scene criminal investigations – 20%
- Work with prosecutors – 18-25%
- Work with victim witness staff at police agencies – 13%
- Victim advocates and attorneys participating in the survey reported a:
  - 391% decline in the numbers of VAWA self-petitions filed on behalf of battered immigrant spouses and children of U.S. citizens and lawful permanent residents by the agencies on behalf of immigrant victim clients
  - 31% decline in the numbers of U visa cases filed by the agencies on behalf of immigrant victim clients
  - 8% decline in the number of immigrant domestic violence victims willing to call the police for help

In addition to these findings showing declines in immigrant victims' willingness to seek help through the justice system and willingness to file for immigration relief, there were areas in which the findings show increases in victim's willingness to use the justice system. These were observed more by Signing Courts and Signing Agencies than those that do not sign. The survey found that when courts, law enforcement agencies and prosecutors adopt practices, policies and/or protocols that result in U and T visa certifications, submitting requests for continued presence, and/or issue state court findings for immigrant children applying for Special Immigrant Juvenile Status, the message sent to the immigrant community by these Signing Agencies is strong. This agency or courthouse is a safe place where immigrant crime victim and abused, abandoned or neglected immigrant children can turn for help. Even in times of increased immigration enforcement and public anti-immigrant discourse, Signing Agencies including courts, law enforcement and prosecutors report seeing increases in the willingness of immigration crime victims to turn to these agencies and courts for help. Examples include:

- 23% of judges reported observing an increase in civil protection order filings by immigrant victims and similarly victim advocates and attorneys reported filing 23% more cases on behalf of immigrant victims in 2017 compared to 2016;
- 20% of judges reported an increase in custody cases involving immigrant crime victims

It is important to note that the qualitative and quantitative data collected in the survey found that both Signing Agencies and Signing Courts reported observing areas of decreases and increases of willingness of immigrant victims to avail themselves of services from their agency or court. The quantitative data collected from courts and law enforcement explains that as police or courts witnessed declines occurring they increased their efforts to reach out to the immigrant community and make it known that their agencies and courts were safe places for immigrants. These efforts resulted in a greater willingness of immigrant victims to use court services and seek help from police in communities where these efforts were underway and particularly when U visa certification, continued presence requests and judges signing SIJS orders were a part of these efforts. Signing Agencies and Signing Courts often work with non-governmental community based agencies providing legal, advocacy and social services to immigrant victims. The National Center for State Courts issued a White Paper that recommends that courts collaborate with community-based organizations to identify barriers and develop strategies to

improve access to the courts for LEP victims.<sup>84</sup> Prior National Institute of Justice funded research has found that victim advocates and attorneys play a key role in improving immigrant victims' willingness to file for civil protection orders.<sup>85</sup>

Another theme across disciplines that the survey data revealed is that although immigrant victims in many communities with victims filing more cases are becoming more difficult and complex:

- Judges observed this complexity as including:
  - The immigration status of victims being raised in criminal (39%), civil protection order (32%), custody (31%), divorce (23%) and other family court cases;
  - Court proceedings being interrupted due to victim's fears of coming to court (54% in 2017 and 45% in 2016)
  - Instances of immigration enforcement at courthouses (2016= criminal 11, family/civil 8; 2017 = criminal 18, family/civil 10)
  - Judges reporting that they are concerned or very concerned about the effect immigration enforcement is having on the willingness of immigrant and LEP litigants and victims to participate in court cases. Examples include:
    - Human trafficking – 94%
    - Sexual assault – 92%
    - Domestic Violence – 91%
    - Child abuse and neglect – 91%
    - Custody – 88%
    - Criminal – 87%
- Law enforcement officers reported
  - That fears about deportation and victim's being turned in by perpetrators to DHS are among the top reasons that criminal cases of crimes committed against immigrant and LEP victims are underreported and becoming harder to prosecute:
    - Domestic violence – 69%
    - Human trafficking – 64%
    - Sexual assault – 59%
    - Child abuse – 50%
    - Extortion-Blackmail – 38%
    - Elder abuse and exploitation 34%
    - Felonious assaults – 33%
  - That barriers to cooperation by victims are leading to greater numbers of perpetrators at large in their communities (52%)

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<sup>84</sup> BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, WHITE PAPER, IMPROVING THE COURTS' CAPACITY TO SERVE LIMITED ENGLISH PROFICIENT PERSONS SEEKING PROTECTION ORDERS 204 (2016), <http://niwaplibrary.wcl.american.edu/pubs/erving-lep-women-survey/>; See also BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>.

<sup>85</sup> MARY ANN DUTTON ET. AL., U.S. DEP'T OF JUST., USE AND OUTCOMES OF PROTECTION ORDERS BY BATTERED IMMIGRANT WOMEN REVISED FINAL TECHNICAL REPORT (2006), <http://niwaplibrary.wcl.american.edu/pubs/fam-gov-nijtechnicalreportprotectionorders11-10-06/>

- That when immigrant victims do not cooperate this affects officer safety (64%), community safety (69%), victim safety (67% all victims; 69% immigrant and LEP victims) and the ability to hold violent perpetrators accountable (71%)
- Prosecutors participating in the survey reported
  - That immigration status issues about crime victims were being raised in criminal cases more in the past 5 years than ever before (62%)
  - Declines in immigrant victims' willingness to work with prosecutors in the past year compared to prior years:
    - Domestic violence – 43%
    - Sexual assault – 43%
    - Child abuse – 39%
    - Stalking – 32%
    - Human trafficking – 27%
  - Immigration related reasons for non-cooperation in prosecutions included:
    - Fear that the perpetrator will turn the victim in to immigration officials – 72%
    - Fear of being separated from their children – 70%
    - Victims receiving threats from perpetrators to report the victim to immigration officials – 70%
  - That the following crimes are harder to prosecute in cases involving immigrant victims
    - Domestic violence – 82%
    - Sexual assault – 70%
    - Human trafficking – 55%
    - Child abuse – 48%

### **Recommendations for Victim Advocates and Attorneys**

Advocates and attorneys play a critical role in informing immigrant victims of domestic and sexual violence about their legal rights and options and facilitating access to justice system remedies for immigrant victims including help from the civil and criminal justice systems.<sup>86</sup> Victim advocates and attorneys provide essential support and help to victims. Immigrant victims and their children (who are often US citizens) will heal faster if they are able to successfully access the full range of public benefits and services that immigrant victims are legally eligible to receive under federal immigration laws, state family laws, state and federal public benefits laws and in criminal court cases.

The surveys this report summarizes show that long sustained relationships between advocacy/ legal services agencies and law enforcement experts on violence against women contributes to immigrant victims' safety and access to justice. The participants in the surveys we conducted have had a 19-year working relationship. Strong working relationships that are built over time and involve work on a range of domestic violence, sexual assault, language access and immigrant community issues lead to positive outcomes for immigrant crime victims and their

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<sup>86</sup> Nawal H. Ammar et. al., *Battered Immigrant Women in the United States and Protection Orders*, 37 CRIM. JUST. REV. 337, 337-359 (2012), <http://niwaplibrary.wcl.american.edu/pubs/battered-women-protection-order-research/>.

access to the civil and criminal justice systems.<sup>87</sup> Particularly in times of increased immigration enforcement, victim advocates and attorneys need to develop and strengthen their relationships with law enforcement officials/prosecutors, and need to build relationships with courts that promote access to justice for immigrant victims.

Immigrant victims' advocates and attorneys can benefit their clients by being proactive in reaching out to law enforcement and prosecutors and bringing them to the table where multi-disciplinary teams are working together to resolve issues and improve community responses to domestic and sexual violence. Close working relationships, built over time that establish mutual respect and trust create strong bridges will facilitate immigrant access to criminal and civil justice system relief for immigrant crime victims.

These relationships further create opportunities for law enforcement and prosecutors to join victim advocates and attorneys in efforts that help ensure that immigration enforcement officials will not initiate prohibited immigration enforcement actions against immigrant crime victims. Additionally, strong and sustained relationships between advocates/attorneys and law enforcement officials will also ensure that law enforcement officials will not initiate immigration enforcement when the victim's perpetrator calls ICE or CBP to turn the victim in for immigration enforcement in retaliation for the victim's cooperation in a criminal case or for the victim seeking a protection order or custody of children in family courts.

Victim advocates and attorneys need to file VAWA, T visa or U visa immigration cases as early as possible so that immigrant crime victims receive VAWA confidentiality protections against deportation. Early filing combined with collaborative working relationships with law enforcement and prosecutors can result in interventions by these justice system partners with immigration enforcement officials to prevent or reverse efforts to initiate immigration enforcement actions against victims.

This research documents the extent of the risk that immigration enforcement actions are triggered against victims by their perpetrators' calls to DHS and the extent to which this research found that perpetrators are persuading law enforcement officials to arrest the victim when the victim calls police for help. The response that victim advocates and attorneys employ to help immigrant survivors subjected to immigration enforcement needs to be expanded to include routine filing of VAWA confidentiality violation complaints whenever the facts lead the victim, attorney or advocate to believe that actions of the perpetrator led to or contributed to immigration enforcement activities being initiated against the immigrant crime victim.

Filing formal VAWA confidentiality violation complaints can play an important role in preventing future immigration enforcement actions against the victim while VAWA, T and U visa cases are pending. These complaints also are useful in informing DHS about officials who are violating VAWA confidentiality protections including by failing to examine the DHS Central Index System that would have notified the immigration enforcement officer that the immigrant against whom they are considering enforcement is a victim. Complaints lead to formal investigations by the Office of Civil Rights and Civil Liberties at DHS that draw attention to the immigration enforcement official's confidentiality violations and educate the officer and their

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<sup>87</sup> Cite U-Visa Legal Advocacy Overview of Effective Policies and Practices 2013.  
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief/>



supervisors about statutes, regulations, policies and directives that all DHS personnel are required to follow.<sup>88</sup>

The findings from the judge's survey highlighted the extent to which judges participating in the survey (31%) knew about U visas, but had not been asked to sign U visa certifications. Too often, advocates and attorneys limit their U visa certification requests to local law enforcement, when there are a number of government officials who can sign U visa certifications including judges, child and adult protective services, the EEOC and state and federal labor agency staff.<sup>89</sup> Attorneys and advocates working with immigrant victims need training on U visa certification by judges and the range of cases in which victims can seek certification from judges. Examples of the types of cases in which judges can sign U visa certifications based on detection of a U visa listed criminal activity occurring in a case before the court include, but are not limited to, civil protection order, custody and divorce cases.<sup>90</sup> In many of these cases the victim may never have called the police for help or when she did call for help the police did not secure the assistance of a qualified interpreter so the victim was unable to communicate with law enforcement at the crime scene. Judges can certify when the victim has come to court and filed a case that includes providing facts to the court about the criminal activity the victim suffered.

### Recommendations for Courts

Family courts across the country are seeing growing numbers of immigrants seeking civil protection orders, U visa certification from judges,<sup>91</sup> custody, child support, divorce, guardianship, and state court findings in cases of immigrant children who have been abused, abandoned or neglected by one of their parents applying for Special Immigrant Juvenile Status (SIJS).<sup>92</sup> State courts encounter immigrant children and families in a wide range of state court proceedings including civil protection orders, custody, divorce, child support, paternity, dependency, delinquency, termination of parental rights and adoptions.

Issues that arise in state court cases involving immigrant families, children and crime victims can present challenges for the courts. Immigrant and LEP litigants and children speak many different languages and courts are responsible for providing interpreters to facilitate LEP litigants and crime victims' access to courtroom proceedings, clerks' offices, courthouses

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<sup>88</sup> For further information about VAWA confidentiality and the complaint process *see*, DEP'T OF HOMELAND SECURITY, VIOLENCE AGAINST WOMEN ACT (VAWA) CONFIDENTIALITY PROVISIONS AT THE DEPARTMENT OF HOMELAND SECURITY (2008), <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-dhscomplaintinstrts-2008/>; LESLYE E. ORLOFF, VAWA CONFIDENTIALITY: HISTORY, PURPOSE, DHS IMPLEMENTATION AND VIOLATIONS OF VAWA CONFIDENTIALITY PROTECTIONS, IN NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), <http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/>; LESLYE E. ORLOFF, VAWA CONFIDENTIALITY, IN NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, BREAKING BARRIERS (2014) <http://niwaplibrary.wcl.american.edu/pubs/ch3-2-vawa-confidentiality/>. For technical assistance on VAWA confidentiality violations or potential violations contact NIWAP at (202) 274-4457 or [info@niwap.org](mailto:info@niwap.org)

<sup>89</sup> Benish Anver; Leslye E. Orloff, *U Visa Certifications: Range of Potential Certifiers at the Local, State, and Federal Government Levels*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, (Jun. 21, 2014), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-range-of-potential-certifiers/>

<sup>90</sup> DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Nov. 30, 2015), [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf); <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

<sup>91</sup> Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide*, 6 (Jan. 2016) [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf); <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

<sup>92</sup> U.S. Citizenship & Immigration Servs., *USCIS Policy Manual*, Vol. 6, Part J (last updated Aug. 23, 2017), <http://niwaplibrary.wcl.american.edu/pubs/uscis-policy-manual-vol-6-7-part-j-sijs-full/>

through public notices about interpretation services available and courthouse signage, as well as to all court ordered services.<sup>93</sup> In addition, immigrants come from many different cultural and religious backgrounds and their assumptions and expectations about the justice system are influenced by experiences in their home countries. Most live in mixed immigration status families where family members have a range of differing citizenship and immigration statuses.<sup>94</sup>

A review of state family court decisions reveals patterns of courts issuing rulings based on legally incorrect information about U.S. immigration laws and/or about immigration law's applicability to a child, party or a witness in the case before the court.<sup>95</sup> Access to legally accurate information about immigration laws, Department of Homeland Security (DHS) regulations and policies, and federal immigration law protections for immigrant crime victims and immigrant children promotes the fair administration of justice in cases involving immigrant victims, children and families.

Training materials, tools, and webinars have been developed that assist state court judges in swiftly accessing legally correct information to help state courts on a range of topics that arise in cases involving immigrant crime victims, children and families appearing in cases before state courts.<sup>96</sup> The following are examples of information such materials provide:

- *Immigration*: Federal immigration law protections for immigrant victims of domestic violence, child and elder abuse, sexual assault, human trafficking and other mostly violent criminal activities under the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) that have been an essential part of U.S. immigration laws for 18 years<sup>97</sup> creating a State court judge's role as U and T visa certifiers. The U visa offers immigration relief for immigrant victims of 26 types of criminal activities including domestic violence, sexual assault, human trafficking, felonious assault and kidnapping.<sup>98</sup>
- *Life and Safety Programs* offer government funded programs that are legally required to be open to all persons without regard to immigration status;<sup>99</sup>
- *Federal and state public benefits* are available to many immigrant crime victims and their children, access to benefits grows as victims and children apply for and are granted

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<sup>93</sup> Letter from Loretta King, Deputy Assistant Attorney General, Dep't of Just., to Director of State Court and/or State Court Administrator, *Handout 18: Limited English Proficiency & the Courts* (Dec. 1, 2003), <http://niwaplibrary.wcl.american.edu/pubs/lep-courts-doj-2003/>.

<sup>94</sup> Randy Capps, Michael Fix, and Jie Zong, *A Profile of U.S. Children with Unauthorized Immigrant Parents, Fact Sheets*, 1 (January 2016) available at <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.

<sup>95</sup> See Soraya Fata et al., *Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings*, 47 Fam. L.Q. 191, 244 (2013); Veronica T. Thronson et al., *Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights*, 9 Fam. & Intimate Partner Violence Q. 2-3, 1-169 (2017). <http://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>

<sup>96</sup> *Immigration Relief for Crime Victims and Children* (Dec. 11, 2017), NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Last visited Feb. 17, 2018), <http://niwaplibrary.wcl.american.edu/uandtvisatrainingmat/>.

<sup>97</sup> See Leslye E. Orloff, Charles Palladino, *Bench Card: Overview of Types of Immigration Status*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (October 14, 2013), <http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstaturtypes/>; Dep't of Homeland Security, *Protections for Immigrant Victims* (Jan 12, 2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims/>.

<sup>98</sup> Leslye E. Orloff, et al., *U Visa Certification Toolkit For Federal, State And Local Judges, Commissioners, Magistrates And Other Judicial Officers*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Last updated Nov. 7, 2017), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.

<sup>99</sup> Victim Rights Law Ctr., *Safety Planning with Adult Sexual Assault Survivors: A Guide for Advocates and Attorneys* (2013), <http://niwaplibrary.wcl.american.edu/pubs/safety-planning-with-adult-sa-survivors/>.

immigration relief. Courts need tools that provide the information needed to ensure court orders are consistent with state and federal benefits laws.<sup>100</sup>

- *What benefits an immigrant qualifies for varies by the:*
  - Immigration status an individual has received or applied for;
  - Date of entry into the U.S.;
  - Benefits program the immigrant needs; and
  - State the immigrant lives in.
- *Intersection of Immigration and State Family Law* including the following topics:
  - *Special Immigrant Juvenile Status (SIJS):* Role of state court judges issuing findings that immigrant children need to file for SIJS;<sup>101</sup>
  - *Custody, Protection Orders, Economic Relief:* Special issues that arise in cases involving immigrant children, victims, and litigants;<sup>102</sup>
- *Federal VAWA Confidentiality Laws* implications for discovery in civil and criminal court cases and limitations on courthouse enforcement against immigrant crime victims.<sup>103</sup>
- *Policies Limiting Courthouse Immigration Enforcement:* DHS Immigration and Customs Enforcement’s policies on courthouse immigration enforcement and how these policies intersect with federal VAWA confidentiality laws.<sup>104</sup>

To promote access to justice for immigrant and LEP victims and children in immigrant families, judges, court leadership, and national judicial organizations nationwide should implement the following recommendations at courthouses serving urban and rural communities across the country:

- 1) Implement practices and policies that promote understanding of the laws regarding U and T visa certification and issuance of SIJS findings by state court judges;
- 2) Adopt, implement and keep up-to-date language access plans and practices that ensure language access to all court services including courtrooms, clerks offices, self-help centers and, court ordered services (e.g. home studies, treatment programs, paternity testing);
- 3) Make available at courthouses DHS produced “Know Your Rights” information on immigration protections for immigrant crime victims and immigrant children;

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<sup>100</sup> See, e.g. *Public Benefits FAQs*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (last visited Feb. 17, 2018), <http://niwaplibrary.wcl.american.edu/frequently-asked-questions/public-benefits-faqs/>; *Interactive Public Benefits Map*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (last visited Feb. 17, 2018), <http://www.niwap.org/benefitsmap/>.

<sup>101</sup> U.S. Citizenship & Immigration Servs., *supra* note 9.

<sup>102</sup> See Leslye E. Orloff et. al., *Bench Card for State Court Judges on Common Issues That Arise From Parties’ Immigration Status: Economic Remedies* (Oct. 15, 2013), <http://library.niwap.org/pubs/fam-tool-econrelief-childspousalsuprt/>; Andrea Carcamo Cavazos & Leslye E. Orloff, *Immigrants and Protection Orders Bench Card* (Aug. 27, 2013), <http://niwaplibrary.wcl.american.edu/pubs/bench-card-imm-protection-orders/>; Candace Evilsizor et al., *Common Immigration Issues that Arise in Custody Cases Involving Immigrant Crime Victims and Their Children* (Mar. 4, 2014), <http://niwaplibrary.wcl.american.edu/pubs/common-imm-issues-custody-cases/>.

<sup>103</sup> *VAWA Confidentiality Protections for Immigrant Crime Victims (March 3, 2017-Update January 31, 2018)*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (last visited Feb. 16, 2018), <http://niwaplibrary.wcl.american.edu/vawa-confidentiality-materials-tools/>.

<sup>104</sup> *Immigration and Customs Enforcement January 2018 Courthouse Enforcement Policy and VAWA Confidentiality Protections for Immigrant Crime Victims (January 31, 2018)*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (last visited Feb. 16, 2018), <http://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims/>.

- 4) Develop professional relationships with local agencies serving immigrant and LEP communities and work collaboratively with these agencies to promote access to justice for crime victims and other litigants in immigrant communities;<sup>105</sup>
- 5) State court judges should take leadership roles in a multidisciplinary team approach to resolve immigration issues that may arise for domestic violence and sexual assault survivors in order to improve communication, protect confidentiality and enhance safety;
- 6) Adopt policies regarding courthouse immigration enforcement that guide judges on what steps to take should immigration enforcement officials come to civil, family and criminal courtrooms;
- 7) Educate and provide technical assistance to judges offered by judicial resource officers and/or national experts providing judges and judicial staff access to legally correct information about the issues that arise in state courts at the intersection of state laws and legal protections with federal immigration laws;<sup>106</sup>
- 8) Provide training for state court judges on:<sup>107</sup>
  - a. Immigration relief designed to protect immigrant victims of domestic violence, sexual assault, human trafficking, U visa criminal activities and child abuse, abandonment or neglect perpetrated against immigrant children;
  - b. U and T visa certification by judges;
  - c. Special Immigrant Juvenile Status findings;
  - d. Obtaining and applying legally correct information about immigration law and immigrant crime victim and children's benefits eligibility in custody, protection order, divorce, child support, child welfare and other state court cases in which immigration status is raised by a party as an issue in the case;
  - e. VAWA confidentiality protections against courthouse enforcement and against discovery of copies of information about immigration contained in federal immigration case files in family and criminal court cases; and
  - f. Federal immigration laws and policies that limit courthouse enforcement of immigration laws
- 9) The Chief Judge or Presiding Judge in each state or court should make trainings on U visas, T visas and SIJS mandatory for state court judges; and
- 10) Build these policies, trainings and practices into court budgets, grants, and court management and strategic plans so that the access to justice gained by courts that implement these recommendations become sustainable.

### **Recommendations for Law Enforcement**

These survey results found approximately 20% the law enforcement survey participants were seeing a reduction in immigrant and LEP crime victims' willingness to provide information to officers at the crime scenes, to make police reports and/or to participate in post-crime scene investigative interviews. A larger number of law enforcement officials reported that crimes involving immigrant crime victims, particularly, family violence and crimes of violence against

<sup>105</sup> See Recommendation section: BRENDA K. UEKERT ET AL.. THE NATIONAL CENTER FOR STATE COURTS, WHITE PAPER, IMPROVING THE COURTS' CAPACITY TO SERVE LIMITED ENGLISH PROFICIENT PERSONS SEEKING PROTECTION ORDERS 200-205 (2016), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>;

<sup>106</sup> See, e.g. San Francisco Superior Court Civil Division, U-Visa Certification Protocol (Oct. 27, 2017) <http://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol/>

<sup>107</sup> Training and technical assistance is available to judges and court staff from NIWAP (202) 274-4457 or [info@niwap.org](mailto:info@niwap.org).

women and children were becoming harder to detect, investigate and prosecute in 2017 compared with 2016 due to underreporting. Officers participating in the survey reported, as did victim advocates and attorneys, that victims' fears of deportation, perpetrators' deportation threats, and fears that police will turn in undocumented victims for immigration enforcement play a key role in victim's reticence to cooperate with law enforcement. Similarly, qualitative survey responses from judges and prosecutors showed that judges and prosecutors are hearing the same fears and concerns from immigrant victims explaining victim's reasons for not continuing to participate in criminal and family court cases.

Law enforcement agencies are undertaking community policing efforts designed to lessen fears, confusion and concerns of immigrant crime victims about calling the police for help and cooperating in criminal investigations. These community policing efforts will slowly convince immigrant crime victims that calling some police departments will not lead to their deportation or subject them to immigration enforcement. In many communities, law enforcement are working hard to establish, maintain and reestablish trust with immigrant communities. Partnering and collaborating with victim and legal services agencies with expertise serving immigrant crime victims are a very important part of successful community policing efforts.

The law enforcement survey results show some differences between Signing and Non-Signing agencies in terms of reporting rates for immigrant victims of crime. These differences could be interpreted as being due to more engaged role the Signing agencies play with their immigrant communities, which as a result puts them in a better position to observe the declines in participation with law enforcement. The fact that Non-Signing agencies had fewer dedicated community engagement and civilian liaison staff working with immigrant communities may have meant that Non-Signing these agencies were less involved with their immigrant communities and as a result less likely to gauge the changes between 2017 and 2016.

These survey findings regarding the differences between Signing and Non-Signing agencies demonstrate that since the U and T visas programs were fully implemented by DHS over a decade ago, law enforcement agencies across the country have found these visa certifications to be effective tools for fighting crime. These visa programs are important tools for building trust with immigrant crime victims and immigrant communities by removing fear of deportation as an obstacle to cooperation. This survey research found that law enforcement agencies are active in Signing certification (e.g. U visas 35% and T visas 17.8%). However, a significant number of law enforcement agencies represented in the survey did not know whether their agency was Signing certifications in either U visa (50%) or T visa (64%) cases.

Knowledge about the U and T Visa programs helps officers better protect and serve immigrant community members and immigrant crime victims while simultaneously protecting officer safety. By implementing U and T Visa certification practices and adopting certification policies, law enforcement agencies demonstrate to the community that they are receptive to and interested in protecting and helping immigrant and LEP victims.

Implementation of U and T visa certification programs is a necessary component of an effective community policing strategy that builds trust and develops strong working relationships with immigrant and LEP crime victims, the victim advocates and attorneys who serve immigrant and LEP victims, and with immigrant and LEP communities. Building trust, breaking the barriers

of language access and fear of deportation allows law enforcement agencies to undertake criminal investigations that would not otherwise be possible, often revealing other crimes and identifying dangerous criminal offenders in the community.

The value of the U and T visa programs as effective community oriented policing strategies has been well established.

- *FBI Law Enforcement Bulletin* (2009): Described the benefits of the U visa for both immigrant victims and law enforcement officers<sup>108</sup>
- *Department of Justice, COPs Office* (2011): Promoted the U-Visa as an important tool for community policing and promotes U visa training for law enforcement and the U Visa Law Enforcement Certification Toolkit;<sup>109</sup>
- *The Police Executive Research Forum* (2017): Conducted research and issued a report entitled *U Visas and the Role of Local Police in Preventing and Investigating Crimes Against Immigrants*, which highlighted promising practices employed by law enforcement agencies across the country and the successes, lessons learned and benefits for law enforcement and the community of the San Francisco Police Department's decade-long U visa certification program.<sup>110</sup>

U and T visa certification programs that include training and policies that reflect agency support of the community are important crime-fighting tools that eventually build trust with immigrant and LEP communities, reduce crime and promote officer safety. The following are four recommended steps that law enforcement agencies can follow to successfully implement U and T visa certification programs:

- **Initiate U and T visa certification practices:** Law enforcement agencies can begin issuing U visa and T visa certifications signed by the Chief/Sheriff/Colonel or by agency staff that the Chief/Sheriff/Colonel designates. According to DHS, designation can be accomplished by the Chief/Sheriff Signing a letter listing the law enforcement agency officials that the Chief designates to be certifiers for the agency. These certifying officials are required by DHS regulations to have supervisory responsibility.<sup>111</sup>
- **Adopt a U and T visa certification policy and language access plan:** Policies play an important role in raising awareness among law enforcement agency officials about the U and T visa programs. Establishing policies that all law enforcement personnel are responsible for being knowledgeable about can promote greater awareness among law enforcement agencies, which helps to address the proportion of officers this survey revealed “do not know” whether and what steps their agencies may have taken in

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<sup>108</sup> U.S. Federal Bureau of Investigation, 78 FBI Law Enforcement Bulletin no.4 (2009), <https://www.hsd1.org/?view&did=34531>

<sup>109</sup> LESLYE E. ORLOFF ET. AL., U VISA TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (2018), <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; Stacey Ivie and Natalie Nanasi, “The U Visa: An Effective Resource for Law Enforcement,” *FBI Law Enforcement Bulletin* 78 (2009): 10; Tony Flores and Rodolfo Estrada, “The U-Visa: An Important Tool for Community Policing,” *Community Policing Dispatch* 4, no. 1 (January 2011).

<sup>110</sup> POLICE EXECUTIVE RESEARCH FORUM, <http://www.policeforum.org/> (last visited Apr. 27, 2018)

<sup>111</sup> U.S. Citizenship and Immigration Services - DHS, 72 Fed. Reg. 53013, 53023 (Sep. 17, 2007) (the person signing the certificate is the head of the certifying agency or person(s) in a supervisory role who has been specifically designated with the authority to issue U nonimmigrant ); 8 CFR 214.14(c)(2)(i)

employing U and T visa certification and continued presence requests as effective crime fighting tools. It is important that any policies issued and any practices implemented follow DHS regulations and guidance on U and T visa certification. Policies also serve as an important tool for developing relationships with the programs serving immigrant crime victims and building trust with immigrant communities.<sup>112</sup> The National Model U and T Visa Certification Policies developed in collaboration with 13 law enforcement agencies with significant certification experience provides an excellent model that can be implemented in jurisdictions across the country.<sup>113</sup>

- **Expand community-policing efforts designed to reach immigrant crime victims:** This includes assigning greater numbers of officers with expertise and experience in working with crime victims, immigrant crime victims, LEP victims and refugee communities to community policing and also involving more civilian victim advocates to these activities. Develop and maintain ongoing personal working relationships between law enforcement officers who specialize in working with immigrant crime victims and local community based agencies that provide victim advocacy for and legal representation of immigrant victims in immigration and in family court matters. It is important that these relationships be transferred through training and mentorship that can sustain the relationship through staff changes at both the local law enforcement agency and the victim and legal services agencies.
- **Train law enforcement agency staff on U and T visa certification and continued presence:** Training for all ranks of law enforcement officials is critical for ensuring effective help for immigrant crime victims. Front line officers need knowledge about and an understanding of how these tools, combined with effectively implemented language access plans, facilitate proper identification and investigation of crimes being committed in communities. Mid-level supervisors and specialized investigators, including certifying officials and department leadership, need knowledge of the procedures and requirements to ensure victims receive certifications in a timely manner.<sup>114</sup>
- **Law Enforcement Officials Can Receive Technical Assistance National Law Enforcement Certification Experts:** Numerous training opportunities exist, including free and low-cost training on best practices and model policies for U visa certification provided by a national team of law enforcement and victim attorney experts on immigration relief for immigrant crime victims and U and T visa certification. Peer to peer technical assistance for law enforcement is offered through law enforcement/prosecutor roundtables and through assistance with issues that may arise in individual cases involving immigrant and LEP crime victims.<sup>115</sup>
  - Law Enforcement Agencies can receive interpretation skills training for the agencies' bilingual law enforcement officers and staff to become qualified

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<sup>112</sup> DHS, *U and T Visa Law Enforcement Resource Guide*. See National Model U and T Visa Certification Policies developed in collaboration with law enforcement agencies with significant certification experience: NIWAP, *Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations*, 2016, <http://niwaplibrary.wcl.american.edu/pubs/proposed-model-u-visa-policy>; NIWAP, *Discussion Paper for Model Policy for Working with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certification and T Visa Declarations*, 2016, <http://niwaplibrary.wcl.american.edu/pubs/discussion-paper-model-policy-u-visa-certification-may-2016>.

<sup>113</sup> Model U-Visa Certification Protocol for Law Enforcement Agencies, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (May 2011), <http://niwaplibrary.wcl.american.edu/pubs/model-u-cert-protocol-policy/>

<sup>114</sup> Cal. Penal Code § 679.10. (SB 674)

<sup>115</sup> *Law Enforcement & Prosecution Monthly U Visa Roundtable*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT <http://www.niwap.org/tools/law-enforcement-u-visa-certification-roundtables/> (last visited Apr. 27, 2018)

interpreters. This training and the technical assistance that comes with it can be provided by the Interpretation Technical Assistance & Resource Center (ITARC) based at the Asian Pacific Institute on Gender Based Violence.<sup>116</sup> Training law enforcement agency staff to be qualified interpreters enhances law enforcement agencies' ability to provide meaningful access to the agencies' services. When qualified interpreters are used at encounters with LEP victims and witnesses by officers responding to 911 calls, at crime scene investigations, when taking police reports and post crime scene investigations, the records in the criminal investigation will not contain flaws in interpretation of statements made by victims and witnesses that can often undermine criminal prosecutions.

### **Recommendations for Prosecutors**

The results of the survey research among prosecutors demonstrated that more prosecutors' offices need to adopt U visa and T visa certification practices. This survey also found that both prosecutors and law enforcement officials were under-utilizing continued presence as an important tool that protects victims of human trafficking and helps law enforcement officials. Continued presence provides swift access to temporary protection of legal immigration status for victims of human trafficking who are potential witnesses in human trafficking investigations. This findings of this survey clearly demonstrates that the frequency of instances of defense counsel raising the immigration status of the victim serving as a witness in criminal prosecutions is very common in criminal cases. (See, figure 87).

The national prosecutors' survey results additionally underscored that many prosecutors' offices were delaying certification of U and T visas until after any criminal case the prosecutor was pursuing against the perpetrator was completed. These practices put victims at risk, are not required or supported by the U visa's legislative history, and are not consistent with the letter, the purpose or the spirit of U visa and T visa regulations and DHS publications on the programs.

In criminal prosecutions involving immigrant crime victims as witnesses, prosecutors should implement a case strategy that includes deciding how the prosecution will address issues related to the victim's immigration status in the criminal case. Strategies to consider should include:

- In a domestic violence or child abuse case will the prosecutor want to raise the immigration status of the victim as part of the prosecution's case to demonstrate how the perpetrator used threats of deportation or immigration related power and control over the victim as part of the pattern of abuse;
- The prosecutor can file a pre-trial motion to keep immigration status related issues out of the immigration case as prejudicial and irrelevant;<sup>117</sup>
- Preparing to respond with a timeline demonstrating the point in the case at which the victim learned about immigration relief available to victims and introducing prior consistent statements to counter allegations raised by defense counsel that the victim is making up abuse to gain immigration status;

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<sup>116</sup> *Language Access, Interpretation, and Translation*, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/culturally-specific-advocacy/language-access/>

<sup>117</sup> See 2017 WA REG TEXT 475745 (NS); See also *Evidence Rule 413 - Unpacking Washington's New Procedural Protections for Immigrants*, NWLAWYER WASHINGTON STATE BAR ASSOCIATION (forthcoming 2018)



- Introducing expert witness testimony on the U visa, VAWA self-petitioning or the T visa programs to educate the jury about the history, purpose, and requirements of these programs; and
- Preparing objections to oppose potential requests for discovery of VAWA confidentiality protected immigration case files and information about the existence of any such immigration case the victim may have filed.

The following tools will support prosecutors in making their prosecutions more successful, leading to more convictions. This in turn will, over time, render defense attorneys in prosecutors' jurisdictions less likely to raise the immigration status of victims and the U visa as an issue in future cases. Prosecutor's training tools have been developed emphasizing the following issues:

- Pretrial strategies, the prosecutor may raise immigrant status related abuse, power and control as part of the prosecution's case. Whether or not a prosecutor employs this strategy, prosecutors will need to prepare immigrant victims for cross-examination, develop effective rebuttal questions and consider the use of expert witnesses.<sup>118</sup>
- Case preparation. There are advantages to signing U and T visa certifications early in the case for prosecutors, especially when the defense counsel raises the immigration status of the victim or the U or T visas as a discrediting strategy in the criminal case.<sup>119</sup> Case preparation strategies include developing and presenting evidence timelines that help the prosecution successfully admit "prior consistent statements" of the victim as evidence that counters efforts to discredit immigrant victims or use the victims' U visa certifications against them in criminal cases.
- Preventing discovery of VAWA confidentiality protected case files. Federal Violence Against Women Act confidentiality protections limit discovery of information about a victim's immigration case, including information contained in the victim's federal immigration case file, in criminal court cases.<sup>120</sup> Only the certification itself, signed by a law enforcement officer, a prosecutor, or a state court judge could potentially be discovered.

The success of criminal prosecutions involving immigrant crime victims will also be enhanced if prosecutors' offices implement the following recommendations:

<sup>118</sup>Jane Anderson, Leslye E. Orloff, and Benish Anver, What's Immigration Status Got to Do with It? Prosecution Strategies for Cases Involving Undocumented Victims (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/pretrial-strategies-7-24-17-final-with-logos/>

<sup>119</sup> Jane Anderson, Leslye E. Orloff, and Benish Anver, Certifying Early: When Should You Sign a U or T Visa Certification for a Victim? (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/certifying-early-7-24-17-final-w-logo/>

<sup>120</sup> Jane Anderson, Leslye E. Orloff, and Benish Anver, VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/discovery-and-va-wa-confidentiality-tool-final-7-24-17/>; Alina Husain and Leslye E. Orloff, VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy (March 11, 2017), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>; and Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/case-law-quick-reference-tool-7-24-17-final-w-logo/>

- Identify formal points of contact within the prosecutor’s office and the local victim’s advocacy and legal services organizations with expertise serving immigrant victims
- Develop strong relationships and work collaboratively with immigrant victim’s advocates and attorneys on:
  - Individual victim’s cases to ensure that victims receive information about immigration relief available to victims through the VAWA, T and U visa programs as early as possible in the prosecution
  - Developing partnerships to work on the development and implementation of improvements to local processes and procedures that improve immigrant victim’s ability to participate in criminal cases
- Identify prosecutors who will be the designated U visa certifiers for the prosecutor’s office, implement U visa certification practices and policies that encourage U visa certification early in the case and do not wait until the criminal case has concluded
- Work collaboratively with immigrant victim advocates and attorneys to receive training on immigrant crime victim’s legal rights and immigration options for prosecutors, and to provide training by victim advocates and attorneys on how they can best assist with prosecutions.

### **Recommendations for the Department of Homeland Security**

This survey’s findings confirmed that perpetrators of violence against immigrant crime victims during 2016 and 2017 were actively engaged in using threats of deportation and making calls to immigration enforcement officials in efforts to trigger initiation of immigration enforcement actions against immigrant victims. In total 433 immigrant victims of domestic violence, sexual assault, child abuse, and human trafficking who had filed or were in the process of filing VAWA self-petitions, U visa applications, T visa applications and for civil protection orders from state courts became the subjects of immigration enforcement. This amounts to 10% of all of the victims reported by attorneys and advocates in the survey in 2016 and 2017. VAWA self-petitioners were most likely to be subjected to immigration enforcement (18%) followed by U visa (8%) and T visa (9%) victims. (See, figure 112). This research found that what triggered the immigration enforcement action was most often reports from the perpetrator or the perpetrator’s family members to immigration enforcement officials.

The percent of immigrant enforcement actions against immigrant victims that were initiated by perpetrators or their family members by case type in this survey was:

- VAWA self-petitioners – 38%
- U visa victims – 25%
- T visa victims – 30%
- Civil protection order applicants – 11%

These findings are consistent with findings from research conducted in 2013, which found that immigration enforcement against crime victims was caused by calls from the perpetrator or the perpetrator’s family at the following rates:<sup>121</sup>

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<sup>121</sup> Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT 25-26 (Feb. 2014), [http://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12/](http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/).

- VAWA self-petitioners – 38.3%
- U visas – 26.7%

When immigrant victims who are limited English proficient (LEP) call the police for help and police arriving at the crime scene are not able to communicate with the victims because they do not obtain the assistance of a qualified interpreter, this can result in the police arresting the victim instead of or in addition to the perpetrator.<sup>122</sup> Often the person who speaks English at the crime scene will be the perpetrator or his family member.<sup>123</sup> Prior 2013 research has found that this leads to the victim's arrest in 15.4% of VAWA self-petitioning cases and 7.5% of U visa cases. This research found that in 2016 and 2017 police responding to domestic violence calls arrested the immigrant victim in addition to or instead of the perpetrators at the following rates:

- VAWA self-petitioners – 17%
- U visa victims – 36%
- T visa victims – 10%

It is important to note that traffic stops trigger immigration enforcement against immigrant victims and is the factor that triggered immigration enforcement against crime victims at the following rates:

- VAWA self-petitioners – 11%
- U visa victims – 39%
- T visas – 10%
- Civil protection order victims – 89%

VAWA confidentiality statutory protections were enacted by Congress in 1996 and improved and enhanced by the Violence Against Women Acts of 2000, 2005 and 2013.<sup>124</sup> The legislative history of VAWA confidentiality from VAWA 2005 states:

“This section enhances VAWA’s confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution... These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims’ immigration cases, and encouraging immigration enforcement officials to pursue removal actions against their victims.”<sup>125</sup>

<sup>122</sup> See e.g. Leslye E. Orloff; Mary Ann Dutton; Giselle Aguilar Hass; Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43, 100 (2003)

<sup>123</sup> Leslye E. Orloff; Mary Ann Dutton; Giselle Aguilar Hass; Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43, 100 , 64-69 (2003) (In responding to 8.34% of domestic violence calls and 10.7% of sexual assault calls involving immigrant victims police spoke only with the perpetrator who spoke English.)

<sup>124</sup> Alina Husain and Leslye E. Orloff, VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy (March 11, 2017), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>;

<sup>125</sup> DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

The Department of Homeland Security recognizes that:

“Violations of Section 1367 could give rise to serious, even life-threatening, dangers to victims and their family members. Violations compromise the trust victims have in the efficacy of services that exist to help them and, importantly, may unwittingly aid perpetrators retaliate against, harm or manipulate victims and their family members, and elude or undermine criminal prosecutions.”<sup>126</sup>

The findings from this national research on immigration enforcement highlight the ways perpetrators of domestic violence, sexual assault, child abuse, human trafficking and other violent crimes against immigrant victims are continuing to use their ability to trigger immigration enforcement against victims. Perpetrators who are successful in getting DHS to subject victims to immigration enforcement will be more successful in avoiding criminal prosecution, stopping victims from seeking civil protection orders, and gaining an advantage in custody and divorce proceedings to the detriment of victims and children.

The issuance of ICE Directive Number 11072.1 “Civil Immigration Enforcement Actions Inside Courthouses” on January 10, 2018 was an important step for immigrant crime victims. In this memo ICE confirms (in footnote 2) that immigrant crime victims and witnesses continue to receive VAWA confidentiality protections against courthouse enforcement that are in addition to the limitations on civil courthouse enforcement set out in the January 10, 2018 memo. The requirement that ICE officials cannot undertake civil immigration enforcement actions in non-criminal family and civil court cases and courtrooms without Field Office Director or Special Agent in Charge approval will be very helpful in deterring the kinds of immigration enforcement actions being taken at courthouses against victims that this research documents.<sup>127</sup>

There are additional steps that the Department of Homeland Security should take to address the findings regarding immigration enforcement against crime victims that this report has found. This survey found that immigration enforcement against victims is triggered most often by tips from perpetrators, by a victim’s arrest related to the domestic violence and by traffic stops. The following recommendations are designed to ensure full implementation of the ICE Courthouse Enforcement Directive 11072.1 and prevent immigration enforcement against immigrant crime victims protected by federal VAWA confidentiality statutes. These recommendations are designed to reach staff and supervisors at DHS who encounter immigrant crime victims or whose actions in their DHS work directly impacts victims. DHS should:

- Mandate annual training for:
  - All Immigration and Customs Enforcement and Customs and Border Patrol officials involved in and supervising immigration enforcement activities;
  - All new ICE and CBP enforcement officers;
  - All ICE Trial Attorneys;

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<sup>126</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, *in* NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 15 (Nov. 7, 2013) <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

<sup>127</sup> *Immigration and Customs Enforcement January 2018 Courthouse Enforcement Policy and VAWA Confidentiality Protections for Immigrant Crime Victims*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Jan. 31, 2018) <http://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims/>

- Any state or local law enforcement officers given authority to conduct immigration enforcement activities on under Section 287(g); and
- All DHS staff responsible for SAVE verification
- All DHS staff who receive detainer requests, work at detention centers and have any role in responding to requests about whether or not immigration enforcement officials are interested in a particular person on:
  - VAWA confidentiality requirements including how to access the Central Index System containing the “384” flag assigned to VAWA confidentiality protected cases and the “DHS Broadcast Message on New 384 Class of Admission”
  - ICE Directive Number 11072.1 procedures and requirements
  - ICE and CBP sensitive locations memo
  - ICE Victim Witness memo<sup>128</sup>
- Require that all DHS staff indicate as part of their performance review whether or not they have taken the annual required training courses on VAWA confidentiality laws and courthouse and sensitive locations.
- Require that CBP issue:
  - A written muster or other policy memo implementing VAWA confidentiality requirements; and
  - A policy directive or muster that implements the same courthouse enforcement limitations for CBP officials as contained in ICE Directive Number 11072.1 on courthouse enforcement
- Implement practices that will prevent use of immigration enforcement actions, immigration court, and detention resources on cases of immigrant crime victims including particularly those with pending VAWA, U visa, and/or T visa and other VAWA confidentiality protected cases.
- Coordinate across DHS including USCIS and ICE to update the process of expedited processing of U visa applications by USCIS in cases of immigrant crime victims who are in immigration detention, are in removal proceedings or have final orders of removal. Expand this process to apply to VAWA self-petitioners,<sup>129</sup> VAWA cancellation of removal applicants, VAWA suspension of deportation applicants, T visa applicants and any other applications covered by VAWA confidentiality protections. This research has found that perpetrators of crimes continue to use threats, attempts and calls to DHS immigration enforcement officials reporting immigrant victims. Often these calls are resulting in immigration enforcement actions being initiated against victims. An expedited process that works to swiftly adjudicate cases of VAWA, T and U visa victims will be an effective mechanism that cuts off perpetrator’s ability to undermine criminal investigations and prosecutions and to harm victims.

### **Recommendations for Additional Statutory Protections Needed to Protect Immigrant Crime Victims**

This report discusses recommendations that courts, law enforcement, prosecutors, victim advocates, victim attorneys and the DHS can implement that will help remove barriers to accessing

<sup>128</sup> Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs Policy Number: 10076.1 (2011).

<sup>129</sup> VAWA self-petitioners includes definition at INA 101(a)(51) includes battered spouse waiver applicants.

justice and improve access to federal statutory immigration protections designed to help immigrant victims and protect them from deportation. There are additional federal and state statutory protections that would greatly improve protections for immigrant victims of domestic and sexual violence, child abuse and human trafficking. Examples include:

- Federal Legislation to:
  - *Create a statutory list of locations deemed by statute to be sensitive locations at which immigration enforcement activities cannot be conducted unless the action has supervisor approval and meets limited statutorily defined exceptions. The list of sensitive locations should include but not be limited to:*
    - Domestic violence shelters
    - Rape crisis centers
    - Family justice centers
    - Supervised visitation centers
    - Victim services agencies
    - Courthouses
    - Schools
    - Hospitals
    - Places of worship and other religious ceremonies
    - Weddings
    - Funerals
  - *Eliminate the U visa annual cap:* This will shorten the time that U visa victims cooperating with law enforcement and prosecutors in criminal investigations or prosecutions are at risk from abusers attempts to have victims detained or deported.
  - *Allocate sufficient resources in appropriations bills and earmark support for sufficient staffing, supervision, and adequate training for the VAWA Unit.* Survey findings about the numbers of immigrant victims who stay with abusers until their cases are adjudicated and daily, weekly and monthly abuse suffered by immigrant victims and their children necessitates staffing levels that will eliminate long waits for U visa adjudication. Ensure that all VAWA self-petitions, battered spouse waivers, U visa and T visa adjudications occur in a swift and predictable manner that allow immigrant crime victims to implement safety plans that protect victims while they await deferred action and work authorization which are both key to victim safety, protection and full participation in the criminal and civil justice systems.
  - *Grant victims timely access to employment authorization within 6 months of filing for a U visa, a VAWA self-petition, a T visa or any other VAWA confidentiality protected case.* Lengthy delays in the adjudication process leaves victims of domestic violence, child abuse, human trafficking and workplace violence at the mercy of perpetrators. Without an ability to work, victims cannot support themselves and their children if they flee.<sup>130</sup>
  - *Protect survivors from removal while their VAWA self-petitions, VAWA cancellation, U visa, and T visa applications are pending.* The findings of this

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<sup>130</sup> Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 26 (Feb. 2014), [http://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12/](http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/).

research updates and builds upon findings in prior research<sup>131</sup> describing the extent to which immigrant crime victims eligible for and applying for immigration relief created to protect them are at risk of becoming the subject of immigration enforcement actions. Victims need to receive formal protection from deportation, detention and issuance of a notice of action against them once they have established a prima facie case. This will provide them protection soon after filing their VAWA, T or U visa case and will assure protection from all immigration enforcement actions whatever the trigger of the immigration enforcement action may be, including perpetrators tips, arrests of LEP victims at crime scenes, traffic stops or from any other source.

- State legislation to:
  - Require U visa certification within a specified time after the request is made by government agencies authorized by federal statutes to be certifiers. This includes, but is not limited to, law enforcement, prosecutors and judges.<sup>132</sup>
  - Provide access to state funded public benefits for immigrant victims of domestic violence, child abuse, human trafficking and, to immigrant victims with pending status, approved status or who are in the process of filing VAWA confidentiality protected immigration case. This includes, but is not limited to, granting these immigrant victims access to state funded TANF, subsidized health care, drivers' licenses and child care.<sup>133</sup>
  - Amend state discovery rules to preclude discovery in state family, civil or criminal court cases of information about any VAWA confidentiality protected immigration case that the victim has filed. This includes information about the existence of the case, actions taken in the case and discovery of the contents of the federal immigration case file.

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<sup>131</sup> Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 26 (Feb. 2014), [http://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12/](http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/).

<sup>132</sup> Cal. Penal Code §679.10; Conn. Gen. Stat. §46b-38b (2016)

<sup>133</sup> To identify states that have already implemented these provisions go to <http://www.niwap.org/benefitsmap/>