

Best Practices and Collaborations That Promote Safety for Immigrant Crime Victims

March 17, 2016

Santa Ana Pueblo, New Mexico

Learning Objectives:

By the end of this keynote address participants will be better able to:

- Promote language access to victim and justice system assistance for limited English proficient victims
- Provide safety planning to immigrant victims that promotes access to protection from deportation and safe access to family court protections
- Build multi-disciplinary collaborations that follow best practice models for serving immigrant crime victims

What countries do immigrants in your jurisdiction come from and what language do they speak?



New Mexico Demographics (2013)*

- ❖ Total foreign born population – 211,249
- ❖ 10.1% of the state's 2,085,287 people is foreign born
 - 34.4% naturalized citizens
 - ~61.4%[^] lawful permanent residents or temporary visa holders (2012 data)
 - ~4.3%[^] undocumented (American Immigration Council 2012 data)
- ❖ 41.2% rise in immigrant population from 2000 to 2013
- ❖ High proportion of new immigrants
 - 24.3% entered in the 1990s
 - 36.6% entered 2000 or later
- ❖ 23% of children in the state under age 18 have one or more immigrant parents
 - 88.2% of these children are native-born U.S. citizens

[^] The Department of Homeland Security no longer reports on lawful permanent resident or temporary visa holder statistics

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=NM>
(January 2015)

New Mexico – Countries/Regions of Origin (2013)*

- ▶ **Latin America – 78.6%**
 - ▶ Mexico (72.5%)
 - ▶ El Salvador (0.9%)
 - ▶ South America (1.9%)
- ▶ **Europe – 8.3%**
 - ▶ Germany (2.7%)
 - ▶ United Kingdom (1.8%)
 - ▶ Eastern Europe (1.7%)
- ▶ **Asia – 10.6%**
 - ▶ Vietnam (2.1%)
 - ▶ China/Taiwan (1.6%)
 - ▶ India (1.2%)
- ▶ **Africa – 1%**
- ▶ **Canada – 1.2%**
- ▶ **Oceania – 0.3%**

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=NM>
(January 2015)

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Bi-Partisan Congressional Goals of Violence Against Women Act Immigration Protections

- Benefits to law enforcement and victims of language access and immigration relief
 - Tool to promote successful criminal investigations and prosecutions
 - Promote victim protection and safety
- Illustrative stories

Department of Homeland Security



- DHS Video Here

Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**
- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

*Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
 - Lifetime as high as 49.8%
 - Those married to citizens and lawful permanent residents – 50.8%
 - U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
 - twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
- Latina college students
 - experience the highest incidents of attempted rape compared to White, African American and Asian college students
- Victimization of immigrant children also high
 - child sexual abuse

Immigration Related Abuse as a Lethality Factor

- 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
- Lethality factor can predict abuse escalation
- Corroborates existence of physical and sexual abuse

*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%
 - VAWA petitioners arrested at crime scene instead of the abuser 15.4%
 - U visa victims 26.7%
- Traffic stops
 - VAWA self-petitioners 28.6%
 - U visa victims 26.7%

What barriers and fears exist for
immigrant victims of crime to
report?

If they report...

- They will be deported
- Offender will retaliate
 - Harm them
 - Harm family members, children
- Nothing will happen
- Cannot communicate with officers

Fears & Misconceptions

- ▶ Do not trust police/prosecutors
- ▶ Economic survival
- ▶ Pressures from both families
- ▶ Fear of abandoning the home/community
- ▶ Fear of losing children
- ▶ Religious factors
- ▶ Fear of unknown
- ▶ Victim believes that if perpetrator deported she has to go with him
- ▶ Dangers in the home country
 - ▶ Retaliation
 - ▶ Ostracism
 - ▶ Police
 - ▶ Political instability
 - ▶ Gender barriers

Systemic Barriers to Help for Immigrant Victims of Crime

- Language
- Fear of Deportation
- Lack of information about immigrant victim's legal rights under US law
 - Systems personnel
 - Immigrant/LEP communities and victims
- Need to build more trust that police/prosecutors will help immigrant victims
- Lack of reporting and/or cooperation as the case moves forward

Language Access

Best Practices to successfully investigate and prosecute cases involving non-English speaking victims

DOJ Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - *When officer decides it is helpful* to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons' primary language

DOJ Sample Policy Center City Police Department

DOJ Approach to language access outline in:

Steps for Obtaining Interpreters

**First Responders –
What do Police do when they
arrive at a crime scene?**

DOJ and Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer /victim/or public

Source of Law

- LEP Executive Order 13166 (2001)
 - Requires all agencies receiving any federal financial assistance to
 - Ensure meaningful language access
 - Develop and implement language access plans
 - “Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith.”

Source of Law

- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- New Mexico Constitution Article 7, section 3:
- *Contains language confirming the rights of persons in the State of New Mexico to not be “restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages...”*

DOJ Requirements for Investigations & Interrogations

- “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings

Exigency: What You do Not Matters Later – Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements
(Excited Utterances)

Harms

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation
results in inaccurate
statements
- Trauma to children

Language Resources

- Language Line
- Department's staff who have been qualified to interpret
- Immigrant community based organization partners
- Health care providers
- School systems



U.S. Department of Homeland Security Victim Protection Priorities

Department of Homeland Security's Roles



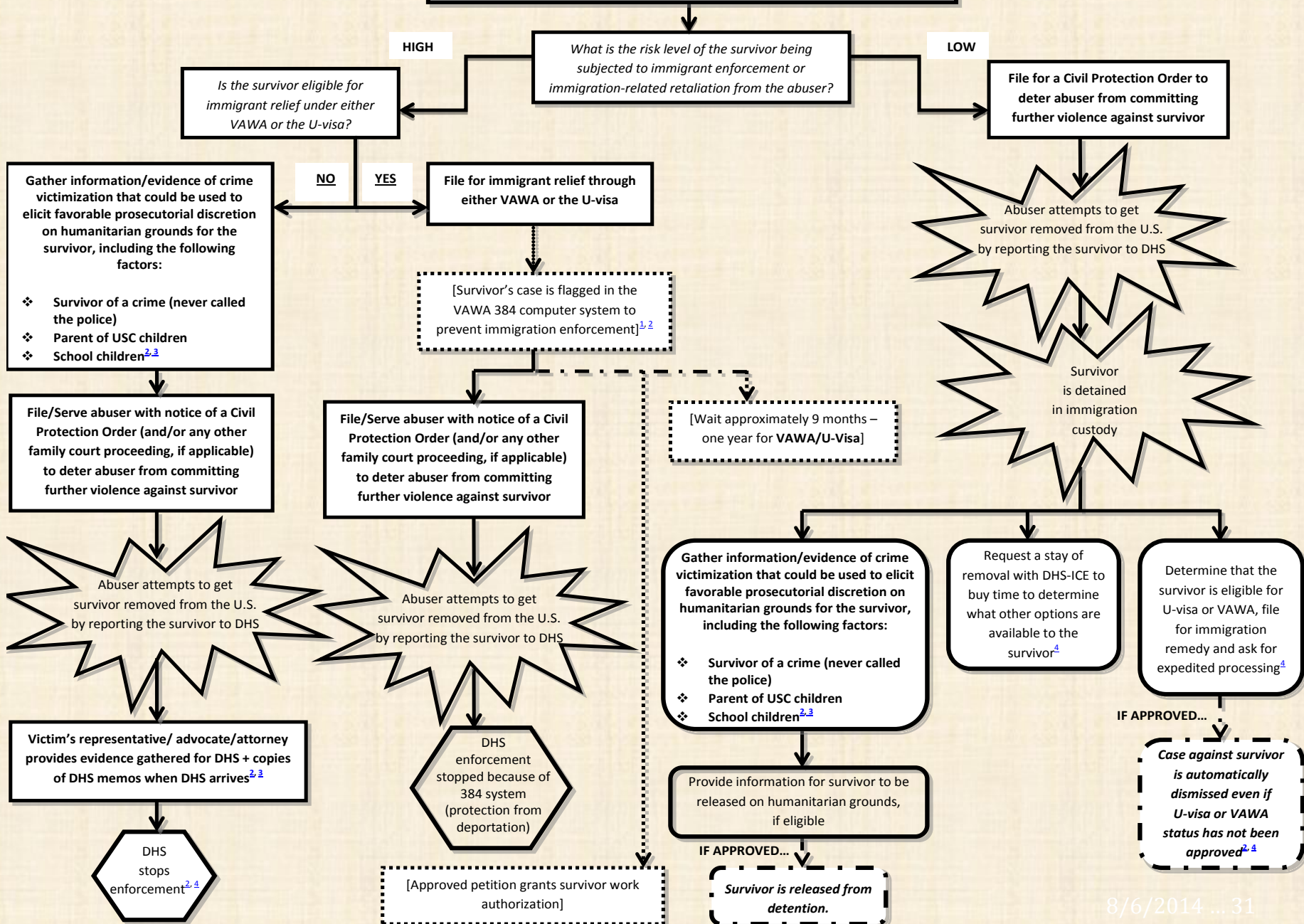
Homeland
Security
Blue Campaign

- Protecting vulnerable crime victims and children
 - Domestic violence, sexual assault, human trafficking, child abuse, elder abuse and U visa criminal activities
 - Children
 - SJIS – abused, abandoned, neglected
 - DACA
 - Children included in victim's applications
 - Adjudicating legal immigration status
 - Visas, lawful permanent residency, citizenship
- Remove undocumented immigrants from the U.S. who are high priorities for removal

DHS Priority on Victim Protection

- **Policies:** DHS policies that protect survivors and immigrant parents from deportation
- **Computerized Red Flag:** Special DHS computer system offers more solid protection if immigration case filed
- How these policies affect safety planning

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



Prevention & Safety = Filing Immigration Case Early

- Screen for VAWA, T and U visa eligibility
- File skeletal immigration applications early
 - Use trauma informed interviewing tool and request for further evidence process
- New strategy – file immigration case before
 - Protection order, divorce, or custody case
 - Victim travels to a new location
- Teach clients to memorize “A” numbers of their VAWA, T, and U visa cases
- Train client to tell DHS officials they encounter about
 - Victimization and primary caretaker of children

VAWA Confidentiality

- DHS barred relying on information provided by perpetrator/family to harm victim
- DHS cannot disclose VAWA information to anyone (very limited exceptions)
- Enforcement locational prohibitions

Enforcement prohibited locations



- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking
 - DHS –ICE **New courthouse enforcement policies**

Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities

Prohibition on disclosure:

- **Information about the existence of the case**
- **Any information contained in the case**
- **Action taken on the case by DHS**



VAWA Confidentiality Violations



- Each violation sanctions against federal government officials
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Dismissal of the immigration proceeding against the non-citizen

Legal Immigration Status Options for Non-citizen Crime Victims and Children

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- Asylum
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender based asylum
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers
- DHS Prosecutorial Discretion
 - “low priority” for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
 - Humanitarian detention release

Materials overview of remedies - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits>

U Visa Basics

- Law enforcement certification is just one part of the overall process it does not = Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Increases immigrant victim participation in criminal justice system

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in Foreign Labor Contracting
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

*Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

U Visa Criminal Activities (11/2011 data)

- Domestic violence 45.9%
- Rape, sexual assault, incest, trafficking 30.4%
- Felonious assault, murder, manslaughter 9.9%
- Kidnapping, being held hostage, unlawful criminal restraint, torture 8.47%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation 5.3%

DHS Terminology: Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - Judges, Magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

What the U-visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
 - Include any findings regarding injuries
- Helpfulness of the victim
 - Current,
 - Past, OR
 - Willingness to be helpful
- Any family members implicated in the crime



- Human trafficking, domestic violence, sexual assault, other serious crimes
- Roll Call Videos
- U and T Visa Resource Guide
 - November 30, 2015
- Training available

BEST PRACTICES: COLLABORATIONS THAT IMPROVE IMMIGRANT OUTCOMES

NIJ Funded Immigrant Victims and Protection Order Study Findings (2006)*

- With advocate support immigrant victims will use and benefit from justice system assistance
 - 60.9% of victims first learned about protection orders from their advocates
 - 81% got a protection order with help from advocate
 - 96% found them helpful
 - 68.3% of violations of immigrant victims' protection orders were ongoing immigration related threats and abuse

*Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darcy Terrell, Use and Outcomes of Protection Orders By Battered Immigrant Women (November 10, 2006)

Best Practice: Advocacy Makes a Difference*

- Safety planning and advocacy work
 - Victims learned about protection orders
 - Advocates assessed lethality
 - Including immigration related abuse
 - Coercive control in the relationship
 - When there was a high risk of lethality, more immigrant victims sought orders
 - With this help, process was easier than women expected

*Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton and Giselle A. Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research (August 1, 2012)

Barrier: When Service Providers DO NOT Have Accurate Information About....

- Immigrant victims' legal rights to
 - Legal services
 - Life and safety programs including
 - Shelter, transitional housing, and victim services
 - Certain forms of health care
 - Language access
 - Immigration relief
 - Non-discrimination

NIJ Research Examining Effective Responses to Serving Immigrant Survivors Found

Rachael Rodriguez, 2007

(NIJ 1999-WT-VX-0011; 2000-WT-VX-0005)

- Rural CCR partnerships involving blend of
 - Community based victim advocates
 - Professionals with knowledge and expertise helping victims access the justice and other systems offering help
- Most effective model leading immigrant victims to receive justice system help

Best Practices:

Characteristics of Effective Partnerships

- Involves advocates from the community
 - Authentic, develop from living realities of the community
 - Have/gain women's trust
 - Help others step forward
- Real relationships with systems personnel
 - Work together on cases/systems reforms
 - On first name basis
 - Communicate with each other regularly

Benefits to These Collaborations*

- Factors positively affecting LEP/immigrant victim's willingness to call the police:
 - To protect children
 - Severity of abuse
 - Learned from others in the community who received help
 - Safety planning/victim advocacy
 - Obtained a protection order that was violated

*Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16,2013)

Impact Without Collaborations*

- When immigrant/LEP victim called for help, of law enforcement who responded:
 - 24.3% used the perpetrator or child to interpret
 - Spoke only with perpetrator in cases of
 - DV (10.7%); SA (8.1%); Trafficking (4.8%)
 - Did not take police report despite visible injury
 - DV (9.6%); SA (10.4); Trafficking (11.8%)

*Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16,2013)

Research Findings: Benefits of Collaboration

- Collaborations between law enforcement and community based victim advocates improves
 - Language access
 - U visa certification
- Collaborations on
 - Cases (81.3%); Trainings (71.9%); Community Education (69.2%); SART (58.8%); CCR (57.9%); immigrant community outreach (51.5%)

*Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16,2013)

Resources

- **U-Visa Legal Advocacy: Overview of Effective Policies and Practices**
(December 12, 2013)
 - LAV grantee lessons learned successful collaborations with law enforcement
- **Immigrant and Limited English Proficient Victims' Access to the Criminal Justice System: The Importance of Collaboration (2013)**

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NM2016
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Evaluations



Thank you!