

# NIWAP

## New Department of Homeland Security Policies and Immigrant Victims: From Secure Communities to the DHS Role in Victim Protection

Jane Doe, Inc.  
Worcester, Massachusetts  
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# Massachusetts Demographics

# Massachusetts: Demographics

- 15.0% of Massachusetts' population is foreign born
  - 48% naturalized citizens
  - 33% lawful permanent residents
  - 19% temporary legal status or undocumented
- 27.2% rise in immigrant population from 2000 to 2010
- High proportion of new immigrants
  - 24.6% entered in the 1990s
  - 38.1% entered 2000 or after
- 25.8% of Massachusetts children have at least one immigrant parent
  - At least 86.5% of children with immigrant parents in Massachusetts are U.S. citizens

# Massachusetts: Countries of Origin

- Caribbean (15.4%)
- Central America (8.7%)
- China and Taiwan (8.2%)
- Eastern Europe (7.4%)
- Brazil (7.2%)
- Portugal (6.0%)
- India (5.2%)
- South America, other than Brazil (4.9%)
- Northern Europe (4.3%)
- Western Africa (4.0%)
- Other Africa (3.9%)
- Southeastern Asia, other than Vietnam (3.8%)
- Vietnam (3.5%)
- Southern Europe, other than Portugal (3.2%)
- Canada (3.0%)

# *Dynamics of Domestic Violence Experienced By Battered Immigrants and Their Children*

# Research Among Immigrant Women Found

- Similar results lifetime abuse rates for immigrant women in the U.S. 33-50%
- Immigrant women also have high rates of sexual assault particularly during the first two years after arrival in the U.S.
- Victimization of immigrant children also high including child sexual abuse
- Multiple immigrant populations studied

# Domestic Violence Prevalence Rates and Severity

- U.S. in general – 22.1% (NIJ)
- Immigrant women – 30-50%
- Research has found that immigrant victims
  - Stay longer
  - Have fewer resources
  - Sustain more severe physical and emotional consequences of abuse

# Abuse Rates Rise When U.S. Born Citizen Marries Immigrant Woman

- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average



# The Power of Control Over Immigration Status

- Of those married to a citizen or lawful resident spouse who could have filed legal immigration papers
- 72.3% never file immigration papers.
- The 27.7% who did file had a mean delay of 3.97 years.

# Immigration-Related Abuse

- Immigration related abuse =
  - Threats/attempts to have her deported
  - Threats to and acts to withdraw papers
  - Calls to USICE to turn her in – have her case denied
- Keeps victims from
  - seeking help
  - Getting protection order
  - Calling police
  - Cooperating in prosecutions
- NIJ Research found that 65% of immigrant victims report some form of immigration related abuse

# Immigration Related Abuse as a Lethality Factor

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

# Immigration Related Abuse as Coercive Control

- Any time relationship and control over victim's immigration status
- Family Violence
- Sexual Assault in the workplace
- Other examples?
- Cohesive control (Mary Ann Dutton)
  - Isolation
  - Intimidation
  - Economic Abuse
  - Immigration related abuse

# NIJ funded research on protection orders and immigrant survivors found

- With advocates support immigrant victims will use and benefit from protection orders
  - 60.9% *first* learned about protection orders from their advocates/legal services attorneys
  - 81% chose to seek and got a protection order with help from advocate/attorney
  - Evidence of benefits of safety planning
    - Strong correlation between severity of violence and undocumented immigrant victims' willingness to seek a protection order
  - 96% found them helpful
  - Protection orders reduced violence but –
    - 68.3% of violations immigrant related abuse

# Advocacy Makes a Difference

- Safety Planning and Advocacy Work
  - Victims learned about CPO
  - Advocates assessed lethality
  - When high risk of lethality more immigrant victims working with sought orders
  - Process with this help was easier than women expected
- Challenge: effective advocacy in an age of immigration enforcement

# Advocates are key for immigrant survivors access to services

- Once immigrant survivors with advocate support seek protection orders
- Factors in Immigrant victims calling police for help
- Positive Factors:
  - Length of time in the United States
  - She had spoken to 2 or more persons about the violence
    - (46% know other women victims)
  - Her children witnessed the abuse
  - **She had a protection order**
- Negative Factor:
  - Victim's immigration status

# Immigration Status Affects Willingness to Call Police

- Significant difference between victims willingness to call the police related to their immigration status:
  - Stable (citizen/permanent resident) 34.4%
  - Temporary (temporary visa) 16.7%
  - Undocumented 14.8%



# Primary Support Persons With Whom Battered Immigrants are Willing to Discuss Abuse

- Female Friend 49.6%
- Mother 30.1%
- Sister 22.5%
- Another Battered Woman 10.4%
- Shelter Worker 9.5%

# Percent receiving services vs. percent disclosing abuse

- Lawyers/Legal Services (50.1% vs 8.7%)
- Doctor/Nurse/Health Care(59% vs.. 4.6%)
- Social Services/Social Worker
  - (58.2% vs.6%)
- Police (11.9% vs. 8.4%)
- Job Training/ESL(36.7% vs 1.5% employer)
- Religious organization/worker
  - (5.4% vs. 8.4%)

# How Victims End Up Arrested or in DHS Detention?

- Police role in Massachusetts?
- DHS role in Massachusetts?

# How Immigrant Victims End Up in DHS

## Detention

- Abusers/crime perpetrators report them
- Employers or co-workers report them
- Police called to respond on domestic violence incident
  - Make a dual arrest
  - Arrest the victim
  - Language access issues
- Traffic stops
- Immigration enforcement at the worksite
- Reports by CPS
- Reports by welfare worker
- Reports by health care providers
- Reports by others

# New DHS policies provide more opportunity for advocacy

Screening and Safety Planning  
In the Context of Immigration  
Enforcement

# Immigrant Victim Protections In a Time of Increased Immigration Enforcement

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Must be aware of local law enforcement practices regarding immigrant
- Transportation issues for victims
  - To courts
  - To services
- Secure communities and the dangers of dual arrest

# VAWA Confidentiality

# VAWA Confidentiality

- **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
  - Victims with VAWA confidentiality protected cases filed
- **Abuser Provided Information:** DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
  - All victims
- **Location Prohibitions:** Enforcement locational prohibitions
  - All persons



# Non-Disclosure: Protecting Immigration Files

- Prohibits from disclosing of any information relating to someone who has filed one of the eligible self-petitions, a T or a U visa.
- Applies to Departments of:
  - Justice
  - Homeland Security
  - State
- Disclosure rules extend to
  - Everyone
  - Not only crime perpetrator
- Disclosure rules generally bar access by government officials

# Non-Disclosure: Protecting Immigration Files

## Exceptions

- Legitimate law enforcement purposes
- Judicial Review of immigration case only (Hawke)
- Agency to whom victim has applied for public benefits only for benefits granting purposes
- Limitation ends when application for relief is denied based on substantive grounds and all opportunities for appeals have been exhausted
- If no denial confidentiality continues

# What does this mean for immigrant victims?

# Protecting Immigration Files

## Preventative Strategies?

### Legal strategies:

- Attorneys/Advocates should clearly mark all immigration filings with the § 384 warning
- Advise victim and whomever victims interact with to know that such protections exist
- Object to discovery of information contained in or about the immigration case in family court proceedings

## Relying on Abuser Provided Information

- The government cannot gather and/or use information provided solely by an perpetrator or his or her family members to make adverse determination regarding admissibility/deportability
- The victim does not have to have filed or even qualify to file a VAWA, T or U visa immigration application
- Need only prove that the individual is a protected immigrant

# Location Prohibitions: Immigration judge to dismiss

case if any part of an enforcement action occurs at:

- 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

Where else is DHS not supposed to conduct enforcement activities?

# Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities



## Location Prohibitions

- This enforcement location bar applies in all cases and does not require victimization
- But if there is an enforcement action at one of these locations:
  - the Immigration Court Notice to Appear must include a certification by a DHS official
  - confirming that none of the VAWA confidentiality prohibitions were violated
  - DHS Policy
    - VAWA Confidentiality Enforcement

# Relying on Information, Locational Prohibitions

## Preventative Strategies

- Provide victims with proof of victimization
- Work with DHS and local law enforcement to screen for victimization
- Prevent and not pursue actions against victims
- Train personnel who work at prohibited locations
- File skeletal immigration applications
- Advise victim and everyone working with the victim about these protections...they may need to advocate on the spot
- Distribute copies of DHS policies
  - 384 Computer system
  - Pending applications

## Preventative Strategies, Cont.

- File skeletal immigration applications
- Provide victims with proof of filed VAWA, T or U case
- Object to discovery of information contained in or about the immigration case in family court proceedings

## When Violations Happen

- Advocate on the spot- provide
  - proof of victimization,
  - Copy of the statute
  - DHS enforcement policy
  - DHS complaint system
  - DHS 384 system
- Collect information about the violating officer
  - Name
  - Agency
  - Badge Number
- Work it up the chain to a supervisor
- File a formal complaint-
  - penalties of up to \$5000 per incident against the violating officer individually
  - Also disciplinary actions
- Advocate for release from detention/jail, termination of immigration proceedings, granting immigration relief

# DHS Memos

- DHS Enforcement priorities
  - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
  - Low priority immigrants vs. high priority immigrants (3.3.2011)
  - Prosecutorial discretion (6.17.2011)
  - DHS and White House Directives regarding immigration case processing (8.18.11)
  - Protections for immigrants who came to US as children (6.15.12)
- Protections for crime victims
  - Initiation of VAWA confidentiality computer check system (12.21.10)
  - Prosecutorial discretion for crime victims (6.17.2011)

# DHS Humanitarian Release

## 2007 expanded in 2008

- Breastfeeding mothers
- Sole/primary caregivers of children
- Screening in detention done
  - In English/Spanish
  - Oral and writing
- Release as
  - Order of recognizance
  - Order of supervision
  - Alternatives to Detention

# Potential Immigration Remedies

- Applications filed with DHS
  - VAWA self petition
  - Battered spouse waivers (spouses of USCs with conditional permanent residency)
  - U visa
  - T visa (victims of trafficking)
  - Asylum (persecution based on protected classes)
- Forms of relief from removal- granted by Immigration Judge
  - VAWA cancellation of removal
  - VAWA suspension of deportation

# Temporary protections for immigrants who entered US as children (6.15.12)

- Came to the United States under the age of sixteen;
- Has resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- Is currently in school, has graduated from high school or GED, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- Has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is not above the age of thirty



# Secure Communities



# Secure Communities

- Secure Communities is an information sharing program between federal, state, and local law enforcement agencies
- When individuals are arrested, they are fingerprinted, and their fingerprints are conveyed to the FBI and checked against the criminal database. The data is also shared with ICE and checked against immigration records.
- Through Oct. 2011, removals through Secure Communities significantly contributed to 89% increase in the percentage of convicted criminals removed by ICE

# DHS Fact Sheets on Secure Communities

- State and local jurisdictions cannot opt out of Secure Communities.
- Federal officers, not state or local law enforcement, determine what immigration enforcement action, if any, is appropriate.
- A local jurisdiction's decision not to receive fingerprint information from DHS does not affect whether the local ICE office will or will not take enforcement action based on those results.

# ICE States That

- It works closely with local law enforcement agencies to properly identify crime victims and witnesses.
- The vast majority of jurisdictions do not arrest victims or witnesses at a domestic altercation.
- In consultation with CRCL, ICE has issued a policy to ensure an appropriate exercise of discretion toward victims and witnesses. (Victim Witness memos)

# DHS to Provide Training on Secure Communities

- In May 2012, DHS Office for Civil Rights and Civil Liberties and ICE announced plans for trainings and awareness briefings for state and local law enforcement personnel on Secure Communities.
- A topic that videos and materials will address is
- Protecting “witnesses, refugees and victims of crime or domestic violence.”
- It will highlight the special considerations
  - on domestic violence among immigrants,
  - the availability of T and U visas, and
  - the ability for victims to self-petition for LPR status and suspension of deportation under VAWA.

# ICE Response to the Task Force on Secure Communities

## Findings and Recommendations Report (4.27.2012)

- Against ICE policies to initiate removal proceedings or immigration enforcement actions against crime victims and witnesses absent special circumstances
- References the “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs” memo of June 2011
  - Purpose: to protect victims of domestic violence and other crimes and to ensure that crimes continue to be reported and prosecuted
- DHS offers protection to victims of trafficking and violence, including those arrested for a crime and later determined to be a victim, not a perpetrator

# ICE Response to the Task Force on Secure Communities

## Findings and Recommendations Report (4.27.2012)

- Encourages crime victims that were arrested and subject to ICE detainer to call ICE's Law Enforcement Support Center (LESC) at their toll-free number: (855) 448-6903
  - Enables ICE to take prompt action on aliens against whom enforcement would be inappropriate
- Requests that local law enforcement agencies notify ICE LESC if
  - An individual may be a crime victim
  - The local agency wants the individual to remain in the US for law enforcement purposes, including serving as a witness

# Public Advocate – Contact Field Liaison

- Boston Field Office
- Assistant Field Office Director: Todd Thurlow
- Email: [Boston.Outreach@ice.dhs.gov](mailto:Boston.Outreach@ice.dhs.gov)
- **Area of Responsibility:** Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont



# A New Era In Safety Planning With Immigrant Survivors



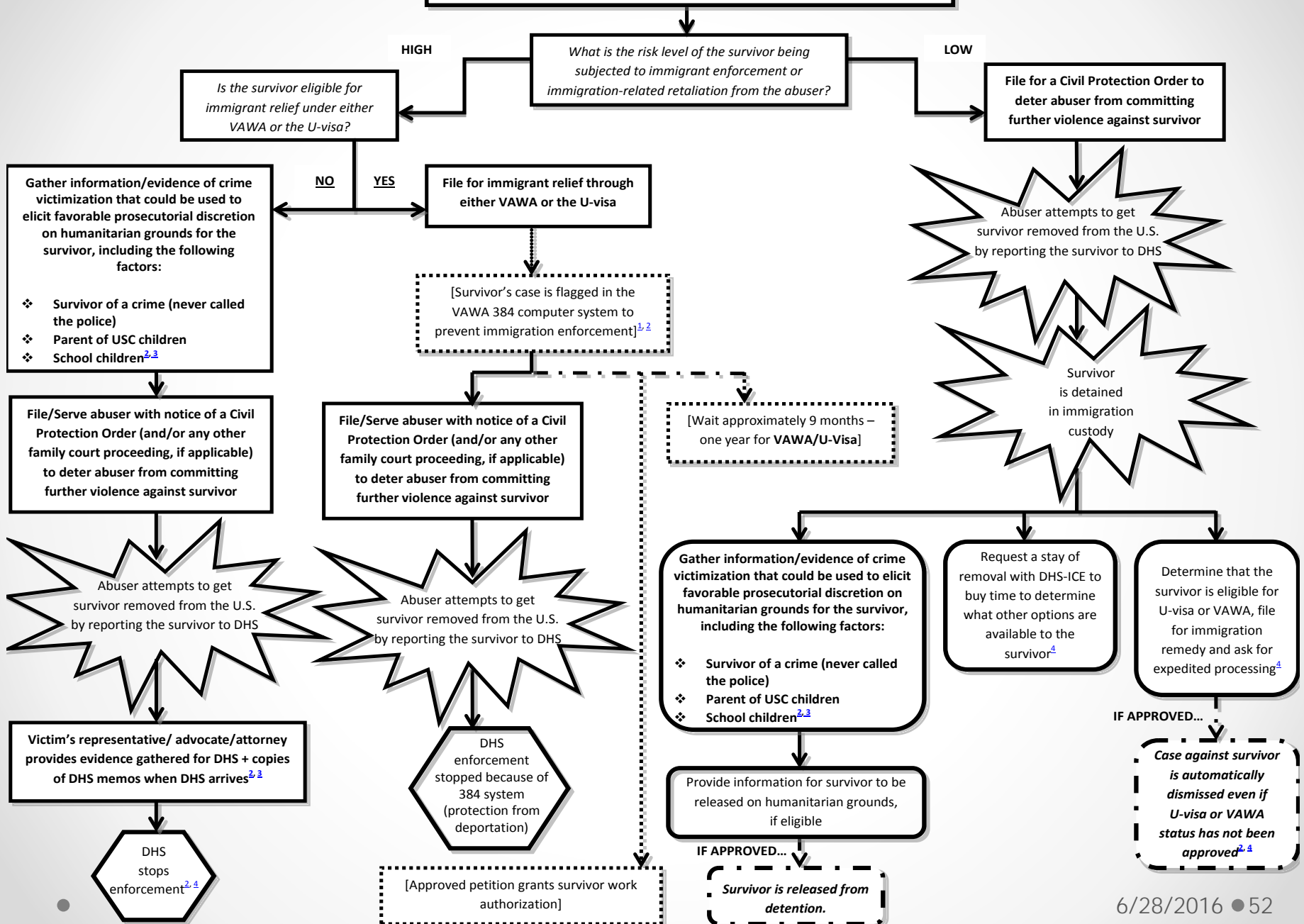
# Safety Planning and Action Steps for Immigrant Survivor Mothers

- Timing of immigration and family court cases
- New safety planning flow chart
- Documentation victim can carry with her
  - Evidence that immigration case has been filed
  - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children
- Safety planning
  - Developing plan to ensure care of children if detained
  - Power of Attorney appointing guardianship
- Give client number for consular notification

# Early Victim Identification, Certification & VAWA/U-Visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure
  - Protection from deportation
  - Release from detention
  - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator

# IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



# IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY

- *What is the risk level of the survivor being subjected to immigrant enforcement or immigration-related retaliation from the abuser?*
  - High
  - Low: Need to work with victim to balance risks
    - Informed by lethality assessment and immediacy of CPO need vs.
    - Risks of perpetrator calling DHS when served

# HIGH: Is the Survivor Eligible for Immigrant

## Relief Under Either VAWA or the U-visa?

### YES

- File for VAWA or U-visa immigration relief
- [Survivor's case flagged in 384 system to prevent enforcement]
- [Wait 9 months-1year for VAWA/U-visa]
- File/serve abuser with CPO
- *Abuser reports survivor to DHS*
- DHS enforcement stopped because of 384 system
- [Approved petition grants survivor work authorization]

### NO

- Gather information/evidence of crime to elicit favorable prosecutorial discretion
  - Survivor of crime
  - Parent of USC children
  - School children
- File/serve abuser with CPO
- *Abuser reports survivor to DHS*
- Victim's representative provides DHS with gathered evidence upon arrival
- DHS stops enforcement

If Victim is  
Detained

# Steps to Secure Release From Detention

- Request stay of removal with DHS-ICE
  - Buy time to determine options available to survivor
- Determine survivor eligible for VAWA or U-visa, file for immigration remedy, and ask for expedited processing
  - (if approved) Case against survivor automatically dismissed even if VAWA or U-visa status not yet approved
- Gather information/evidence for favorable prosecutorial discretion
  - Survivor of crime
  - Parent of USC children
  - School children
- Provide information for survivor to be released on humanitarian grounds
  - (if approved) Survivor released from detention



# Online Detainee Locator System

- ICE includes limited personal information about detainees in a publicly searchable Internet database. It is intended to assist family members, friends, and legal representatives in locating persons in custody.
- ICE may not disclose information about any individual who has applied for benefits under VAWA or a T or U Visa without that person's consent.
- A victim can check a box on the consent form that says she does not consent to ICE disclosing information about her status and location in the database. If she does not complete the form, ICE will not enter information about the detention.

# Telephone Service for Detainees

- SP Telecom, at [www.detaineescallhome.com](http://www.detaineescallhome.com) or 1-845-342-8000 provides reduced cost telephone service for detainees and their families
- The service provides each caller with telephone numbers local to the facility of the detained individual.

# Public Policy Advocacy

# State and Local Advocacy Options

- Local police
  - Secure communities required
  - Advocate for use of risk assessment tool locally
  - Risk assessment tool handout
  - Train local police on the impact of arrest of victims with Secure Communities Program
  - Collect DHS policies available at:  
[iwp.legalmomentum.org](http://iwp.legalmomentum.org)
  - Provide a set of policies with relevant sections highlighted to inform local officials about DHS positions on enforcement against immigrant victims

# Risk Assessment Tool

- To be used by local police to screen for victimization before finger prints are turned over to DHS
- Identify victims so they do not spend time in jail
- Use qualified interpreters
- Screening conducted by officials with sexual assault/domestic violence expertise
- Non-citizens determined to be victims
  - Released
  - Not fingerprinted
  - Not jailed
- Proposed screening questions

# Advocating for Adoption of Risk Assessment

- High number of detained immigrant women are victims
- Including screening for victimization will help fulfill DHS enforcement priority goals
  - Many victims eligible for VAWA, T-visa, and U-visa relief
  - Non-citizens eligible for relief are lower flight risk
  - Saves ODPP the costs of unnecessarily detaining a victim eligible for immigration relief
- Crime perpetrators use immigration system to abuse
  - Provide “tips” to DHS in order to trigger immigration enforcement
- Victims can help law enforcement prosecute perpetrators
- Victims need legal and social services support for the continued trauma they face

# State and Local Advocacy Options

- DHS -- Immigrant victims with pending/approved VAWA T and U visa cases
  - Collect stories documenting how immigrant victims become caught up with immigration enforcement
  - Collect and highlight DHS policies
  - Ask about their procedures and practices for checking the DHS VAWA confidentiality computer system (Only helps with cases already filed)
  - Seek meeting with ICE official to develop a system/relationship
    - Delaware example
  - Meeting goal to identify liaison to call when a problem arises

# Story collection tool

- Compelling emotional
- Captures the violence/abuse
- Highlights abuse not process need balance
- Impact on victim and children
- Written to support those within the agency who want to do what is right to help victims
- Tone not adversarial
- Maximum one page
- Names changed



# Building Relationships That Promote U-Visa Certification

# The U-visa Process

1. Certification
2. Application
3. Prima Facie if detained or in removal proceedings
4. Approval
5. U-Visa status 4 years
6. Some will qualify for lawful permanent residence

## Considerations For Law Enforcement

- Identify the victim
  - Note injuries observed
- Helpfulness of the victim
  - Current or past
  - Willingness to be helpful
- Any family members implicated in the crime
- Goal: Identification of the crime, the victim and initiation of the process

# Large Group Discussion

- Are you getting certifications?
- Who is providing certifications?
- How did the certification process get started?
- Relationships involved?
- Where has certification been an issue?

# U-visa Opportunity to Build Relationships that Benefits Immigrant Survivors

- Best practices related to U-visa certification
- Long term relationships with law enforcement and prosecutors – KEY
- Role of advocates

Systemic barriers that prevent immigrant victims from coming forward, proceeding and/or following through

Language  
Access

Psychological  
Factors

Justice  
System

Economic  
Factors

Immigration  
Enforcement

# PSYCHOLOGICAL STATE

Psychological toll of abuse  
Frustration with process intrusive and lengthy

Fears:  
About retaliation, feeling they have to  
chose between, abuse v. streets, abuse v.  
children, protection v. community, fleeing  
abuse v. deportation

# Relationships Key

## Law Enforcement

### Success

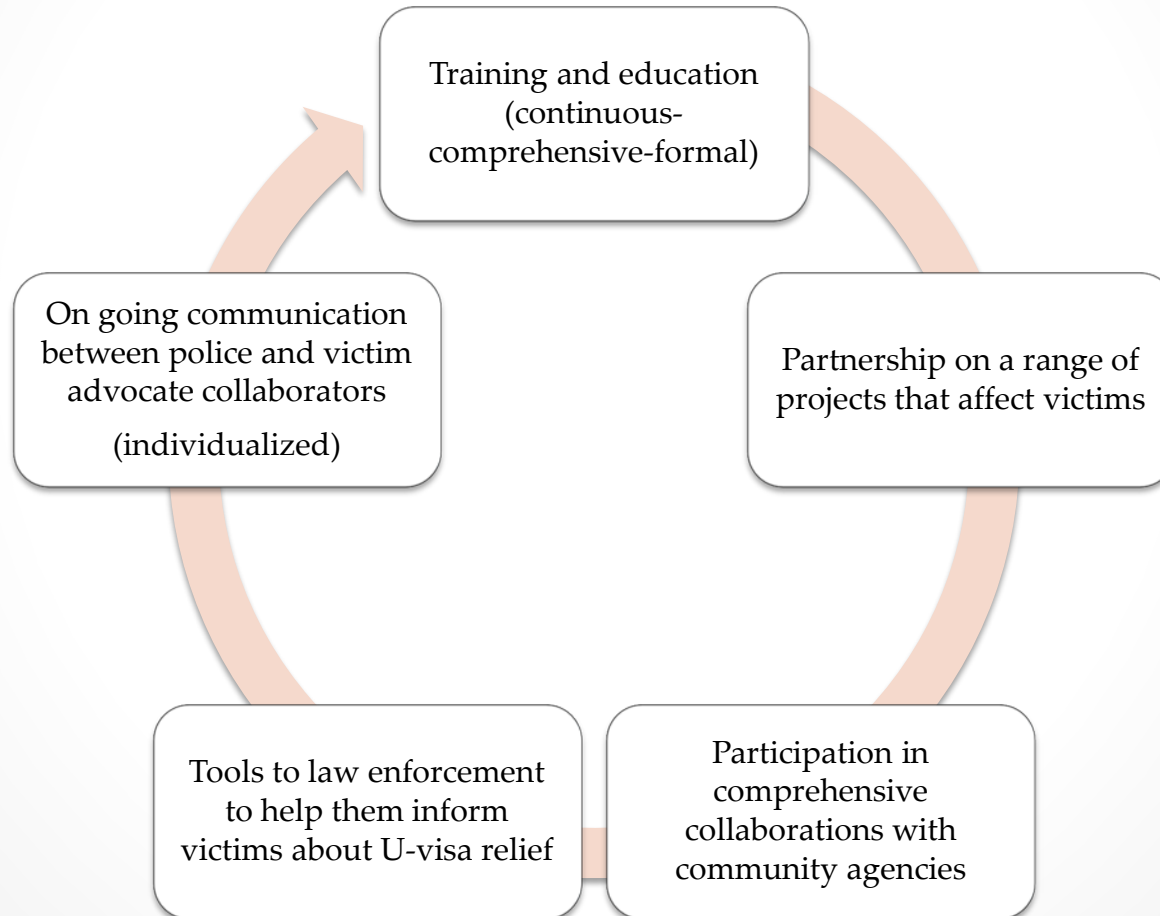
- Aware and sensitive about DV
- Coordinated with advocates and other first responders
- Call advocates when there is a case
- Educated about U visas
- Lack anti-immigrant attitude

### Challenges

- Not aware of DV dynamics
- Not coordinating with others
- Not educated about U visas
- Anti-immigrant attitude



# Building Advocate-Law Enforcement Relationships Result in U-Visa Certification



# Technical Assistance and Materials

- PowerPoint Presentations and Materials for This Conference At—
- [niwap.org/go/worcester](http://niwap.org/go/worcester)
- NIWAP Technical Assistance
- call (202) 274-4457 or
- e-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Website: [www.wcl.american.edu/niwap](http://www.wcl.american.edu/niwap)