

VAWA Immigration Protections, Immigration Enforcement and Language Access

Maryland Coalition Against Domestic Violence

Lanham, Maryland

August 16 , 2013

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Resource Library: niwaplibrary.wcl.american.edu

Learning Objectives

- Be able to use DHS victim protection policies to prevent immigration enforcement against battered immigrants
- Know that early screening for immigration relief eligibility protects against immigration enforcement
- Advocate for language access to justice system protections

IMMIGRANT DEMOGRAPHICS

U.S. Immigrant Demographics

- **Immigrant:** defined as someone born outside the U.S. (and is not a U.S. citizen)
- 35.7 million immigrants in U.S.
- 55% increase over 1990
- Today 25% of U.S. population are immigrants or children of immigrants

From Michael Fix & Jeffrey S. Passel, The Urban Inst., *Immigration and Immigrants: Setting the Record Straight* 39-40, at <http://www.urban.org/publications/305184.html> (last visited November 9, 2012).

Immigrant Demographics

- 80% of immigrants are living in the U.S. legally
- 1/3 of foreign-born populations are naturalized U.S. citizens
- 1/3 of permanent residents were at one time undocumented

From Michael Fix & Jeffrey S. Passel, The Urban Inst., *Immigration and Immigrants: Setting the Record Straight* 39-40, at <http://www.urban.org/publications/305184.html> (last visited November 9, 2012).

Children in Immigrant Families

- 85% of immigrant families are “mixed status” (including at least 1 U.S. citizen, often a child)
- 1 in 5 children is the child of an immigrant
- 18% (5 and older) speak a language other than English at home

From Michael Fix & Jeffrey S. Passel, The Urban Inst., *Immigration and Immigrants: Setting the Record Straight* 39-40, at <http://www.urban.org/publications/305184.html> (last visited November 9, 2012).

What country do the victims in your jurisdiction come from?

Maryland Demographics

(Migration Policy Institute Data Hub)

- Total foreign born population – 811,701
- 13.9% of the state's 5.8 million people is foreign born
 - 45.9% naturalized citizens
 - 29.6% legal permanent residents (U.S. Dept. of Homeland Security)
 - 24.5% temporary legal status or undocumented
- 56.6% rise in immigrant pop 2000-2011
- High proportion of new immigrants
 - 53.7% entered in the 1990s
 - 15.9% entered 2000 or after
- 51% of immigrant population are female
- 24.4% of Maryland children have 1 or more immigrant parents
- 84.1% of children with immigrant parents in Maryland are U.S. citizens

Maryland Countries of Origin

- El Salvador: 11.5%
- South America: 8.9%
- Western Africa: 8.2%
- Central America (other countries): 7.6%
- Africa (other non-listed regions): 7.4%
- China: 6.1%
- India: 6%
- Europe 5.8%
- Asia (other non-listed countries): 5.3%
- Philippines: 4.9%
- Caribbean: 4.9%
- Korea: 4.8%
- Eastern Europe: 4.6%
- Mexico 4.0%
- Jamaica 3.2%
- Vietnam 2.2%
- Middle East 2.1%
- Canada: 1.1%

DYNAMICS OF DOMESTIC AND SEXUAL VIOLENCE EXPERIENCED BY IMMIGRANT WOMEN AND 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 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

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

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for victims:
 - 72.3% never file immigration papers.
 - The 27.7% who did file had a mean delay of **3.97 years**.

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

Children of Immigrant Women Who Received Help Protected Against Child Abuse

- National co-occurrence rate: 30-40%
- Rates among immigrants similar
- Co-occurrence among
 - Help seekers: 23%
 - Abused immigrants who did not seek help: 77%
- Children of help seekers 20% less likely to have abuser threaten them
- 33% less likely to have abuser threaten to take them away from their mother

Tools

- *“Are You Safe At Home?” and “Know Your Rights”* brochures
- *“Breaking Barriers” and “Empowering Survivors”* Manuals
- Conference materials available at niwap.org/go/MNADV

Screening and Safety Planning In the Context of Immigration Enforcement

VAWA Protections In a Time of Increased Immigration Enforcement

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

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.
- Led to 89% increase in the percentage of convicted criminals removed by ICE

Policy Shift

- Away from 287(g)
 - Arizona v. U.S. impact
- Toward Secure Communities
- Implications for immigrant survivors
 - Fear of calling police
 - Undermines victim access to U visas
 - Enhanced dangers of dual arrest
 - Powerful incentive for abusers to convince police that victim is the perpetrator

DHS' Competing Mandates

- Victim protection
 - Identify victims and witnesses
 - Provide access to VAWA, T, U immigration relief
 - Prevent victim's removal
 - Do not waste enforcement resources on victims, witnesses and low priority immigrants
- Immigration enforcement
- Co-equal mandates

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 a perpetrator or his or her family members to make adverse determination regarding admissibility or 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

Protecting Victims From Immigration Enforcement

- 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

Protecting Victims From Immigration Enforcement

- Provide victims with proof of victimization
 - Carry proof of case filing
 - Tools (Flow chart, Rights in Immigration Enforcement, High Risk)
- Teach DHS/local law enforcement to screen for victimization
- Prevent and not pursue actions against victims
- Inform about DHS Detainer language re 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, prosecutorial discretion, detainer, victim witness memo, pending applications

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

Immigration Relief

Immigration Options for Survivors

VAWA self-petition

Abused spouses/children of US citizens and lawful permanent residents

- Abused parents of U.S. citizens over 21 years of age

Battered spouse waiver

- Abused spouses of US citizens with two-year conditional permanent residency

T visa

- Victims of severe forms of human trafficking

Asylum

- Persecution based on protected classes

U visa

- Victims of criminal activity
- Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- Substantial harm from criminal activity

Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, abandoned or neglected

Deferred Action (DACA)

- Deferred action for child arrivals including Dreamers

DHS Prosecutorial Discretion

- “low priority” for removal immigrants -- survivors, witnesses, parents, others
- Humanitarian detention release

VAWA SELF-PETITIONING

OMB No. 1841-0023, Expires 09-30-2018

**I-485, Application to Register
Permanent Residence or Adjust Status**

For USCIS Use Only

Returned	Receipt
Resubmitted	

File Name

Apt. #

General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse,
 - parent,
 - adult son/daughter (over 21)
- With Whom self-petitioner resided
 - No time period required
- Good Moral Character
- Good Faith Marriage

How might you define “extreme cruelty”?



Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets

Factors that can constitute extreme cruelty

- Correlate strongly with physical & sexual abuse
 - Isolation
 - Intimidation
 - Economic Abuse
 - Employment Related Abuse
 - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away children
- Threats to take away money

Early Survivor Identification, U-visa Certification & VAWA,U, T-Visa Filing (cont.)

- Provide victim security & support
- Victim can more safely cooperate in family/custody and criminal case against perpetrator



THE U-VISA FOR CRIME VICTIMS



Crime Victim (“U”) Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- 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

U Visa Criminal Activity



Domestic violence
Sexual assault
Rape
Incest
Prostitution
Torture
**Female genital
mutilation**
Felonious assault
Manslaughter
Murder

Stalking
Kidnapping
Abduction
Trafficking
**Involuntary
servitude**
Slave trade
**Being held
hostage**
Peonage

False Imprisonment
Blackmail
Extortion
Witness tampering
**Obstruction of
justice**
Perjury

Who can certify?

- Police officer
 - State
 - Local
 - Federal
 - University
- Prosecutor
- State of Federal Judge
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity

U Visa Law
Enforcement
Certification Resource
Guide
for Federal, State, Local, Tribal and Territorial
Law Enforcement
Department of Justice



“Investigation or Prosecution” Includes:



- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

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

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 (8.18.2011)
 - Protections for immigrants who came to US as children (6.15.2012)
- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.2010)
 - Prosecutorial discretion for crime victims (6.17.2011)

DHS VAWA Confidentiality Computer System

- Directs use of new “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses

- Minimize the effect that immigration enforcement may have on the willingness and ability of
 - Victims of crime
 - Witnesses to crime
 - Individuals pursuing legitimate civil rights complaints
 - To call the police and pursue justice
- Designed to stop immigration officials from acting
 - When local police make dual arrests
 - Leading to victims being arrested and having their fingerprints turned over to DHS

DHS and White House Working to Ensure Enforcement Conforms to DHS Priorities

- In the civil immigration context DHS is confronted with more administrative violations than resources
- By favorably exercising prosecutorial discretion, DHS decides not to assert the **full** scope of its enforcement authority available to the agency in “**low priority**” cases on a case by case basis
- **Prioritize** use of enforcement personnel, detention space and removal assets on:
 - National security
 - Border security
 - Public safety
 - Integrity of the immigration system

Positive factors

- Length of time in US (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood*
- Pursuit of education: US high school/college
- Person/close family, veteran/military particularly combat*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness*

Other positive factors

- Pregnant or nursing women
- Spouse is pregnant or nursing
- Nationality renders removal unlikely
- Long time lawful permanent residents
- Likely to be granted immigration relief as
 - spouse, child of a citizen of lawful permanent resident
 - Domestic violence, trafficking or victim of other serious crime
 - Crime victim
 - Asylee/refugee
- **Victims and Witnesses** cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others

Negative Factors to Consider

- Clear risk to national security*
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind*
- Known gang members or other individuals who pose a clear danger to public safety*
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud*
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud
- Whether the person poses a national security or public safety concern

White House and DHS Announcements (August 18, 2011)

- Requires DHS attorneys to review all immigration court cases and
 - “Totality of the circumstances”
 - Case by case review
 - Administratively close “low priority cases”
 - With ability to apply for work authorization
 - Includes review final orders of removal in compelling cases
- Future cases screened for priority and removal not initiated if “low priority”
- Three tier system

Temporary protections for immigrants who entered US as children

- 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**

A New Era In Safety Planning With Immigrant Survivors

Safety Planning and Action Steps for Immigrant Survivor

- Tools
 - New safety planning flow chart
 - Immigrant victim brochure
- 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 Challenges Related to Enhanced Immigration Enforcement

- Immigration screening as early as possible essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Changes in strategy – Immigration case filed before
 - CPO, family or criminal court case
 - Victim travels to new location
- Give client number of consular notification if she is detained – essential particularly if she has children

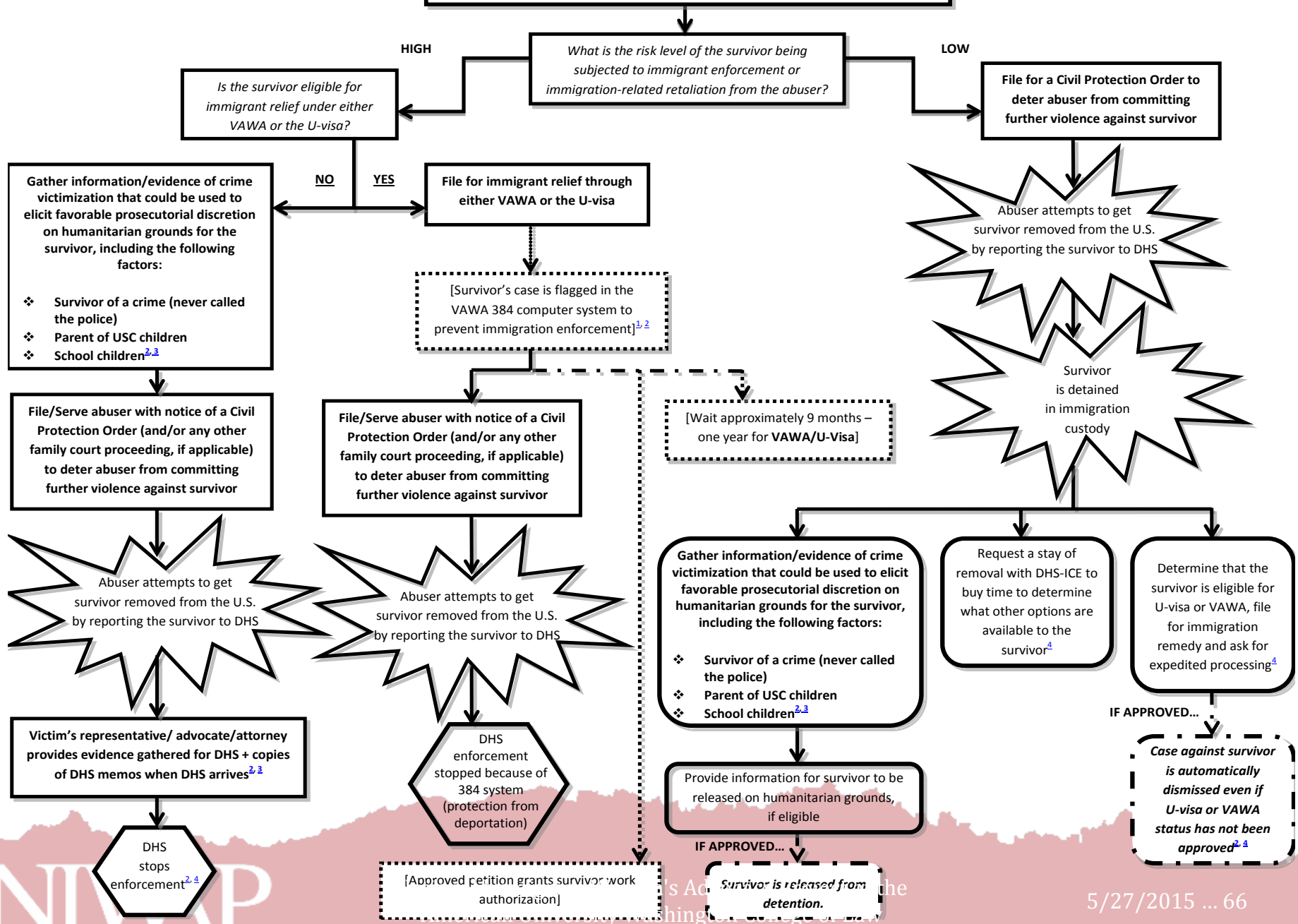
Application for VAWA, T or U immigration status improves immigrant victims access to public assistance

- Screen for immigration case already filed
- Screening + Filing (VAWA, T or U) =
 - Lawful Presence
- Filing for immigration benefits required for VAWA self-petitioners to become qualified immigrants eligible for federal public benefits

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
- Set victim on path to legal work authorization

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



An 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

Tools:

- Safety planning flow chart
- Immigrant victim brochure
- Advocate's toolkit for working with immigrant survivors at high risk of immigration detention
- Advocate's victim safety planning flow chart

LARGE GROUP ACTIVITY

- How would you prepare Maura to prevent immigration enforcement if either Jose or Juan called DHS or local police to turn her in as undocumented?
- How would you argue that DHS should not pursue immigration enforcement against her?

Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her stepfather, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

For what form of relief, if any, is Maura eligible?

If Victim is Detained

Helping victims who are arrested

- If when the police arrived they spoke only to Juan and he convinced them to arrest Maura resulting in her finger prints being turned over to DHS
- How would you advocate for Maura's release from jail/detention?
- What tools/memos would you use?
- Whom would you collaborate with in your community?

Public Advocate: Contact Field Liaison

- **Baltimore Field Office**
- **Assistant Field Office Director:** Hugh J. Spafford
- **Email:** Baltimore.Outreach@ice.dhs.gov
- **Area of Responsibility:** Maryland
- 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

HSI Victim Assistance Specialists and Forensic Interviewers

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 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.

DHS Crime Victim Notification

- When perpetrator is in DHS custody
- Victim must register with DHS to be informed of
 - “release related activates”
 - Receive information about relocation of the offender
 - Present victim impact statement to immigration judge in perpetrator’s removal case

Advocating for Language Access for Limited English Proficient Victims

Importance of Language Access

- Services and legal protections effectively closed to victims without language access
- Medical records, counseling records, and police report with incorrectly interpreted information can:
 - Lead to “conflicts” between testimony and written records
 - Undermine victim/witness credibility
- No access violates federal law

What is LEP?

- Limited English Proficiency
 - English is not primary language
 - Limited ability to read, write, speak or understand English
 - Language for LEP individuals can be a barrier
 - Access to benefits or services,
 - understanding and exercising legal rights
 - complying with responsibilities
 - understanding other information provided by Federally funded programs and activities.
 - **Determination is by person, not by agency**

U.S. Department of Justice

- *Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from accessing and/or understanding important rights, obligations, and services, or from communicating accurately and effectively in difficult situations.*
- *Hampered communication with LEP victims, witnesses, alleged perpetrators, and community members can present the law enforcement officers with safety, evidentiary, and ethical challenges.*

LEP Definition

DOJ LEP Definition

- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." These individuals may be entitled language assistance with respect to a particular type or service, benefit, or encounter.

Factors That Complicate Communication For LEP Crime Victims and Witnesses

- Effect of Trauma
- Languages that do not have words for certain crimes
 - Rape
 - Sexual assault
- Cultural taboos about discussing sex and sexual violence

Laws Governing Law Enforcement Agency Provision of Language Assistance to Limited English Proficient Persons

- Civil Rights Act of 1964 Title VI: prohibits national origin discrimination by programs receiving federal funding or assistance.
 - This includes all law enforcement agencies
- Lau v. Nichols (1973): U.S. Supreme Court held
 - “failing to take reasonable steps to ensure MEANINGFUL access for LEP persons is national origin discrimination under Title VI”
- Presidential Executive Order 13166 (2000): Title VI language access requirements apply
 - to all federally *conducted and funded* programs and activities
- U.S. Department of Justice Clarifying Memorandum Regarding Limited English Proficiency and Executive Order 13166 (2001):
 - 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.

Federal Agency Guidance on Language Access

- DOJ Department of Justice Guidelines: (2002)
 - Shall provide information about and offer free language assistance services to LEP individuals whom they encounter
 - Applies to police, courts, justice system

HHS Office of Civil Rights (2000):

- Agencies are in compliance when materials regularly provide in English, vital documents and notices that interpreters are translated into regularly encountered languages in a jurisdiction.
- Definition : Regularly encountered languages = 10% or 3,000, whichever is less, of the population in the jurisdiction

Omnibus Crime Control and Safe Streets Act of 1968
42 U.S.C. § 3789d(c)(1) Nondiscrimination
requirements

- “No person in any State shall on the ground of race, color, religion, *national origin*, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds....” -- from any of the following federally funded programs

Federally Funded Programs

- Bureau of Justice Assistance (BJA)
- Bureau of Justice Statistics (BJS)
- Community Capacity Development Office (CCDO)
- Drug Courts Program Office (DCPO)
- National Institute of Justice (NIJ)
- Office for Victims of Crime (OVC)
- Office of Juvenile Justice and Delinquency Prevention (OJJDP)
- Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking Office (SMART)
- Office on Violence Against Women (VAWA)
- Trafficking Victims Protection Act (TVPA)

What federally funded services do victims need to access?

- Law enforcement (DOJ)
- Courts (DOJ, HHS)
- Housing assistance (HUD)
- Shelters – battered women's, homeless, transitional (HHS, HUD, DOE)
- Legal Services (DOJ)
- Victim services, family justice, supervised visitation centers (DOJ)
- State, county, local health & welfare (HHS)
- Hospitals, health clinics (HHS)
- Welfare to work (HHS, DOL)
- Mental Health Centers (HHS)
- Education & Head Start (DOE, HHS)
- Nutrition (Agriculture)

WHO IS COVERED?

- Public and private entities receiving federal financial assistance (recipients) are “covered entities”
 - HHS
 - DOJ
 - HUD



Timeliness of Services

- Interpretation should be provided in a timely manner
- Language assistance should be provided
 - at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or
 - delay in important rights, benefits, or services to the LEP person.
- In providing **law enforcement, health, and safety services**, and **when important legal rights are at issue**,
 - an agency would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service

In cases involving victims, timeliness is of the utmost importance!

DOJ Courts Letter (2010)

- Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that cornerstone.
- Court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons

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 Model Guidance

- Primary language means
 - Native tongue
 - Language in which the individual most effectively communicates
- Interpretation - oral
 - Act of listening to a communication in one language and orally converting it to another language while retaining the same meaning
 - Consecutive
 - Simultaneous
 - Sight
- Translation – written

Certification vs. Qualification

- Certification
 - Only available in some languages
 - Alternatively interpreters can be qualified
- Why certification or qualification



Data on LEP Survivors and Quality of Services Provided

- Service providers reported most LEP clients were Spanish speakers, followed by Portuguese, Russian and Korean.
- In cases when LEP clients called the police for help, the officer:
 - spoke the victim's language 12% of the time
 - identified the victim's language 42.6% of the time
 - spoke with an unqualified interpreter 30% of the time
 - used a language line 7% of the time
 - used a qualified interpreter 10.4% of the time

LEP Survivors Experiences

- Unqualified interpreters included:
 - Children of the victim or the perpetrator (24.3% of cases)
 - Friend of neighbor (22.9% of cases)
 - An adult relative (17.8% of cases)
 - A person who claimed to know the victim's language who was not a friend, neighbor or relative (9.8% of cases)
- Inability to communicate and lack of knowledge about U visa, VAWA or legal rights and options for immigrant survivors were the most commonly cited reasons for police not taking a report

Domestic Violence Victims

The police responding to the call for help only spoke to the perpetrator who spoke English in 8.1% of cases.

Victims were referred to culturally or linguistically appropriate victim services in 29.3% of cases.

Police did not take a report in 54.4% of cases.

Sexual Assault Victims

Police only spoke to the perpetrator in English in 10.7% of cases.

Victims were referred to culturally or linguistically appropriate services in 19.7% of cases.

Police did not take a report in 51.3% of cases.

Human Trafficking Victims

Police spoke only with the perpetrator who spoke English in 4.84% of cases.

Victims were referred to culturally or linguistically appropriate victims services in 17.6% of cases.

Police did not take a report in 67.8% of cases

Key Findings with LEP Survivors and LE

- Police treatment of immigrant and LEP clients was rated more favorably in larger jurisdictions, and worsened as jurisdiction type got smaller. (chart)
- Law enforcement agencies that had a collaborative relationship with service providers on outreach to LEP communities more likely to use a qualified interpreter or a language line (chart)
- Respondents reported that their LEP clients face challenges not only in dealing with law enforcement but in gaining access to public resources (health, housing, education) and therapy and victim counseling.
- Language access has a profound impact on the willingness of a client to report their crime. (chart)

People Who Should NOT Interpret

- Children
- Family member of the victim
- Perpetrator
- Family member of the perpetrator
- Friend of the victim or perpetrator
- Person who has a personal interest or stake in the case
- Person whose cultural views of domestic violence may be damaging to the victim
- Interpreter being used by the perpetrator



Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer /victim/or public
- Once exigency passes
 - Seek an interpreter
 - Bilingual personnel HR approved
 - Pacific interpreters
 - Contract /volunteer interpreters

COMMUNITY AWARENESS

- HOW TO FIND AN INTERPRETER
- WHAT RESOURCES ARE AVAILABLE ON A LOCAL, STATE AND NATIONAL LEVEL?

A Competent Interpreter Will...

- Demonstrate proficiency in and ability to communicate information accurately
 - in both English and in the other language
- Identify and employ the appropriate mode of interpreting
 - (e.g., consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of
 - any specialized terms or concepts peculiar to the entity's program or activity
- Understand & follow confidentiality & impartiality rules
- Understand and adhere to their role as interpreter
 - without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts)

COMMUNITY AWARENESS

- ADVOCACY IN DIFFERENT VENUES FOR YOUR NEEDS
- COURTS
- POLICE DEPARTMENTS
- ORGANIZATIONS FOR THE DEAF
- OTHERS

How will it affect case outcomes?



How Interpretation Benefits Law Enforcement

- Affects case outcome avoids
 - Case being dismissed
 - Lesser charge
 - Conviction overturned
 - Prosecutor decides not to prosecute
- Improves officer safety
 - Correctly identify victim and perpetrator
 - Primary aggressor determination
 - LEP persons with interpreters are better able to follow law enforcement directions
- Improves integrity and quality of the investigation
 - Reduces impeachment evidence at trial

Why is accuracy of information important

- Better statements for prosecution
 - More likely to get accurate statements from LEP person at the scene
 - Due to accurate interpretation
- Prosecutor has solid statement should the victim recant
- Reduces number of times victim will need to be interviewed to clarify “inconsistencies”

Interpreter Code of Ethics

- 1. Accuracy and Completeness
- 2. Representation of Qualifications
- 3. Impartiality and Avoidance of Conflict of Interest
- 4. Professional Demeanor
- 5. Confidentiality
- 6. Restriction of Public Comment
- 7. Scope of Practice
- 8. Assessing and Reporting Impediments to Compliance
- 9. Duty to Report Ethical Violations
- 10. Professional Development

See: Interpreters Code of Conduct

Best Practices

- Hire bilingual/bicultural who have or receive interpretation training
- Develop qualified interpretation resources and train them on DV/SA
 - Contractors
 - Volunteers
- Arrange/contract for use of telephone interpreters for languages not covered
- Translate written materials that are regularly provided in English for clients

COMMUNITY AWARENESS

- CREATING CREATIVE PARTNERSHIPS
- ADMINISTRATIVE OFFICE FOR THE COURTS
- BUSINESS AND CORPORATIONS
- D.V. ADVOCACY ORGANIZATIONS
- PROGRAMS TO TRAIN INTERPRETERS
- OTHERS

Complaint Procedure

- Complaint form through Office of Civil Rights, Compliance and Review
- Department of Justice will look favorably on intermediate steps that recipients take given that compliance will take time



Resources

Resources

- Know Your Rights brochures in different languages
- “I SPEAK” Cards to identify language
- www.lep.gov
 - Policy guidance for specific agencies
 - Demographic data
 - Model programs



Technical Assistance

- PowerPoint and materials from this training
 - www.niwap.org/go/kansas
- NIWAP's technical assistance
 - (202) 274-4457
 - niwap@wcl.american.edu
- Web Library NIWAP and Legal Momentum
 - iwp.legalmomentum.org
 - Training materials
 - Tools for advocates
 - Multi-lingual materials for immigrant survivors
 - National online directory of programs serving immigrant survivors

CLOSING AND EVALUATION