

## ***Ensuring Language Access to Immigrant Victims of Sexual Assault<sup>12</sup>***

*By Leslye Orloff, Amanda Baran, and Martha Cohen*

### **Introduction**

According to the 2000 Census, 21.3 million foreign-born residents do not speak English “very well.”<sup>3</sup> Despite this statistic, most services to victims of sexual assault are available only in English. For immigrant victims, meaningful access to life-saving services and assistance can be severely hampered by not speaking the English language. An immigrant victim of sexual assault in an intimate relationship may rely on her partner to serve as her interpreter or

---

<sup>1</sup> “This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.” We gratefully acknowledge the editorial assistance from Deeana Jang and the hard work and contributions of Immigrant Women Program Interns in the preparation of this chapter; in particular we would like to recognize the contributions of Ericka Echavarría, and Miriam Bamberger of University of Miami School of Law.

<sup>2</sup> In this Manual, the term “victim” has been chosen over the term “survivor” because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term “victim” allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act’s (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim’s gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use “he” in this Manual to refer to the perpetrator and “she” is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – “actual or perceived gender-related characteristics.” On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child’s immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse’s gender.

<sup>3</sup> National Conference of State Legislatures, *Language Access: Giving Immigrants a Hand in Navigating the Health Care System*, STATE HEALTH NOTES, Oct. 7, 2002, available at <http://www.ncsl.org/IssuesResearch/Immigration/LanguageAccessGivingImmigrantsaHandinNavig/tabid/13143/Default.aspx>.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

language teacher.<sup>4</sup> The situation becomes problematic in cases where the victim is fearful or ashamed of disclosing the sexual assault partner. Even if a victim does encounter people who speak her language, she might not be able to safely obtain assistance with interpretation from community resources without jeopardizing the confidentiality of communications. In small immigrant communities, sexual assault can be a very humiliating and shameful experience and it is possible that the immigrant victim knows the interpreter.<sup>5</sup> Precautions should be taken so that the immigrant victim feels safe and that confidentiality will be honored.

Places where sexual assault victims seek assistance, such as rape crisis centers, shelters, police stations, health care providers, sexual assault hotlines, legal services offices, prosecutors' offices, and courts, may not have employees who can communicate in other languages or who are culturally competent. Without adequate language assistance, many immigrant victims cannot obtain police protection, counseling assistance, shelter, or emergency medical assistance they may need.<sup>6</sup> Interpreters need to be available at courthouses to assist limited English proficient (LEP) applicants with language interpretation to help victims prepare, file, and appear at hearings for sexual assault or domestic violence protection orders or LEP victims will not be able to obtain protection orders.<sup>7</sup> Furthermore, information about important immigration provisions in the Violence Against Women Act (VAWA)<sup>8</sup> must be available in a wide range of languages and must be distributed at courthouses, police departments, and victim's services programs, so that LEP victims can learn about and apply for VAWA immigration benefits.

The following case examples illustrate the gravity of the problem experienced by limited English proficient immigrant victims:<sup>9</sup>

*\*Tan-Fei is an immigrant victim of sexual assault. She is working in a large garment factory. Her family helped her find this job. After a week of working, her supervisor approached her and sexually assaulted her in one of the back rooms of the factory. Afterwards, Tan-Fei ran out of the factory. She wants to tell her family and maybe the police, but she is afraid that she will not be able to work. She does not speak English and does not know if the police can even help her. She has heard from other people in her community that if she is caught she will be sent back to China.*

*\*Hoang is an immigrant victim of sexual assault. She is working for as a domestic helper for a family. She is being sexually abused by her employer. Hoang is unable to leave the home without her employer's permission. She speaks very little English. She does know that what is happening to her is wrong, but she does not know where to turn to for help. She is afraid to call the police because she does not speak or understand English very well. She is also afraid of losing her job.*

*\*Ana Marie is an immigrant victim of domestic violence and sexual assault. Her boyfriend has severely beaten and raped her on several occasions. Ana Marie had just moved here from her native country. Her boyfriend injured her and she fears that she may be pregnant. She is alone here and is dependent on her boyfriend who speaks English to communicate with others. She does not know what to do. She has a neighbor that speaks Spanish and English, but she is afraid to reach out and ask for help.*

---

<sup>4</sup> BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS § 1.1 at 15 (Leslye E. Orloff & Kathleen Sullivan eds., 2004) (hereinafter, BREAKING BARRIERS).

<sup>5</sup> See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, SERVING LIMITED ENGLISH PROFICIENT VICTIMS OF SEXUAL ASSAULT AND DOMESTIC VIOLENCE: A SURVEY OF ISSUES 17 (2006).

<sup>6</sup> *Id.*

<sup>7</sup> See BRENDA UEKERT ET AL., NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), available at [http://www.ncsconline.org/D\\_Research/Documents/LEP\\_NIJFinalReport.pdf](http://www.ncsconline.org/D_Research/Documents/LEP_NIJFinalReport.pdf).

<sup>8</sup> For more information on immigration protections under VAWA, see BREAKING BARRIERS, *supra* note 4, § 4.

<sup>9</sup> An LEP individual is one who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance with respect to an important type of service, benefit, or encounter: the more important the service, the greater the need for language assistance. Examples of the services or activities very likely to require provision of language access include but are not limited to: 1) victims communicating with police at the scene of a crime; 2) providing emergency medical services; 3) providing interpretation at court proceedings in criminal or protection order cases; 4) communicating rights to a person who has been detained for criminal or immigration related activities; 5) providing information regarding bankruptcy or foreclosure proceedings; and 6) services that offer critical protections including but not limited to health, safety, or ability to exercise their legal rights.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

These real-life stories demonstrate that although immigrant victims can legally access services that are available to protect victims regardless of immigration status, such as sexual assault and domestic violence services, law enforcement protection, and immigration relief, many immigrant victims are unlikely to seek help due to language barriers, isolation, and lack of information about available help. When services are not offered in a language immigrant victims can understand fully and clearly, the services are effectively closed to them. This chapter will provide a brief overview of the requirements under federal law to ensure meaningful language access. Additionally, it will discuss ways to evaluate whether programs offer meaningful language access, as well as tips for working with your community to improve the delivery services to immigrant victims of sexual assault.

### **Title VI of the Civil Rights Act of 1964 and Executive Order 13166**

Title VI of the Civil Rights Act of 1964<sup>10</sup> prohibits recipients from discriminating on the basis of race, color, or national origin. Under Title VI, organizations receiving federal funding have an obligation to ensure that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.<sup>11</sup>

Further, under Title VI implementing regulations that outlaw practices or policies that have a discriminatory impact, recipients of federal financial assistance have a responsibility to take reasonable steps to provide limited English proficient (LEP) individuals with meaningful access to their programs and activities. Discrimination on the basis of national origin can occur if a recipient of federal funds does not provide appropriate language assistance to LEP individuals because an individual, whose language is usually tied to their national origin, will not have access to the same benefits, services, information, or rights that the agency receiving federal funds provides to everyone else.

Although Title VI has been in effect for over 40 years, more recently, the federal government has taken additional measures to improve compliance with respect to providing access to federal services for Limited English Proficiency persons. Executive Order 13,166,<sup>12</sup> titled “Improving Access to Services for Persons with Limited English Proficiency” went into effect in 2000. This order requires federal agencies to take reasonable steps to provide meaningful access for LEP people to federally conducted programs and activities. It also requires every federal agency that provides financial assistance to non-federal entities to publish guidance on how grant recipients can provide meaningful access to their services for Limited English Proficiency persons.

Pursuant to Executive Order 13,166, the Department of Justice (DOJ) published its LEP guidance. The DOJ Limited English Proficiency guidance seeks to assist recipients of federal financial assistance from DOJ in fulfilling their legal responsibilities to provide meaningful access for Limited English Proficiency persons. The LEP Guidance provides a description of four factors recipients of federal funds should consider in fulfilling their responsibilities to LEP persons. Under Title VI these four factors are:

1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which LEP individuals come into contact with the program;
3. The importance of the benefit, service, information, or encounter to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and
4. The resources available to the recipient and the costs of providing various types of language services.

Programs receiving federal financial assistance from DOJ can use these factors to determine whether and when there is an obligation to provide language assistance to LEP persons needing or seeking their services and how the program will meet their obligation to provide language assistance to LEP persons.

Although the DOJ LEP Guidance is meant to serve as a general template for all recipients of federal financial assistance, each federal agency that awards federal financial assistance has developed its own agency specific

---

<sup>10</sup> 42 U.S.C. § 2000d, et seq.

<sup>11</sup> *Id.*

<sup>12</sup> Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

## Ensuring Language Access to Immigrant Victims of Sexual Assault

guidance. For example, the U.S. Department of Health and Human Services (HHS), which funds community health centers, public health programs, childcare centers, shelters, and domestic violence programs, has its own Limited English Proficiency guidance based on what is both necessary and reasonable for a community in light of the four factor analysis established by the Department of Justice.<sup>13</sup> Many victims' services programs receive funding from a combination of sources, including the DOJ, HHS, and HUD.<sup>14</sup>

The Violence Against Women Act is one of several sources of DOJ funding that supports governmental and nongovernmental programs that offer assistance to victims of sexual assault, domestic violence, and trafficking. Recipients of federal funds from the Department of Justice include police, prosecutors, courts, hotlines, counseling and domestic violence programs. Programs receiving funding from multiple government sources are encouraged to review the LEP guidelines issued by each governmental funding agency.<sup>15</sup> To find a federal agency's guidance, refer to [www.lep.gov](http://www.lep.gov).

### **How would a rape crisis center evaluate its responsibilities to LEP clients based on the four LEP Guidance factors?**

*The following is an example of a series of actions HHS deems as sufficient to comply with Title VI regulations:<sup>16</sup>*

*A rape crisis center is operated by a recipient of HHS funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The center uses competent community volunteers to help translate vital outreach material into Chinese and Spanish. The center's hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese languages. The bilingual staff handles calls for immediate assistance. The center has one counselor and several volunteers fluent in English and Spanish. Some volunteers are fluent in different Chinese languages and in English. The center works with community groups to access interpreters in the several Chinese languages that they encounter. The center's staff trains community volunteers in the sensitivities surrounding sexual assault issues and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget.<sup>17</sup>*

### **Who is covered by Title VI?**

Any recipient of federal financial assistance (including non-cash, in-kind assistance) is covered by the requirements of Title VI. This includes:

- Law enforcement agencies
- Sexual assault and domestic violence programs
- Shelters
- Courts
- Special education programs
- Social service agencies
- Hospitals and health care providers
- Benefits granting agencies<sup>18</sup>

---

<sup>13</sup> See U.S. DEP'T OF HEALTH AND HUMAN SERVICES, GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE REGARDING TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS 24, *available at* <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html>. (hereinafter, HHS LEP Guidance).

<sup>14</sup> See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, Guidance to Federal Financial Assistance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 70968 (Dec. 19, 2003) (hereinafter, HUD LEP Guidance).

<sup>15</sup> It is also advisable for programs who receive separate state funding to review any state LEP requirements.

<sup>16</sup> Please note that not all federal agencies have an Office of Civil Rights (OCR). For example, the Department of Labor has a Civil Rights Center. The DOJ LEP guidance was issued by the Coordination and Review Section of the Civil Rights Division. There is an OCR at the Office of Justice Programs, but they did not issue the guidance. See U.S. DEP'T OF JUSTICE, Guidance to Federal Financing Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons, 67 Fed. Reg. 41455 (Jun. 18, 2002) (hereinafter "DOJ LEP Guidance").

<sup>17</sup> See HHS LEP Guidance, *supra* note 13, 46.

<sup>18</sup> See Nondiscrimination in Federally Assisted Programs, 28 C.F.R. § 42.104(b)(2) (2003).

## Ensuring Language Access to Immigrant Victims of Sexual Assault

### *HHS recipients:*

HHS LEP guidance provides the following types of agencies as examples of HHS recipients:<sup>19</sup>

- State, county, and local health agencies
- Programs for families, youth, and children
- Non-profit agencies providing victim assistance (such as sexual assault and domestic violence programs)
- Hospitals and health care providers

### *DOJ recipients:*

DOJ LEP Guidance provides the following types of agencies as examples of DOJ recipients:<sup>20</sup>

1. Courts
  - Departments of corrections, jails, and detention facilities, including those that house detainees of Immigration and Customs Enforcement.
2. Police
  - Other agencies with public safety and emergency service missions.
3. Prosecutors
4. VAWA-funded victim services programs

It is important to note that coverage extends to a recipient's entire program or all parts of a recipient's activity.<sup>21</sup> In other words, even if only one part of the recipient agency's program receives federal assistance, the remaining operations of that recipient agency are also covered by the LEP requirements of Title VI.<sup>22</sup>

### ***What does providing access to LEP individuals mean?***

Ensuring that LEP immigrant victims are afforded access requires an in-depth analysis of the community, the needs of the community, and resources currently available. Collaboration and partnerships among agencies and services are key to ensuring that LEP immigrant victims are able to access assistance. Below are some examples of activities that can be undertaken that attempt to meet the needs of their LEP community members.

### *Emergency Service Lines*<sup>23</sup>

*A large city has determined that 10% of the city's population is LEP and 60% of the LEP population speaks Spanish. The city has decided to take on the following steps:*

- *Provide bilingual operators for the most frequently encountered languages.*
- *Use a commercial telephone interpretation service when it receives calls from LEP persons who speak other languages.*
- *Add a 311 line for non-emergency police services that has Spanish speaking operators, and uses a language bank.*

### *Courts*<sup>24</sup>

---

<sup>19</sup> Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services, 45 C.F.R. §80.3(b) (2005). See also HHS LEP Guidance, *supra* note 13, 24. There are other recipients. However, these agencies probably will provide assistance to victims of sexual assault.

<sup>20</sup> See 28 C.F.R. § 42.104(b)(2).

<sup>21</sup> See *id.*

<sup>22</sup> See *is*. The regulations use the following example: DOJ provides assistance to a state Department of Corrections to improve a particular prison facility. All of the operations of the entire state Department of Corrections, not just the particular prison, are covered.

<sup>23</sup> DOJ LEP Guidance, *supra* note 16.

<sup>24</sup> *Id.*

## Ensuring Language Access to Immigrant Victims of Sexual Assault

*A court in a rural county receives Department of Justice funds, but does not have the same budget as a court in a nearby urban county. Both counties have a substantial Spanish-speaking population. The urban county court has developed Spanish translations of its materials. The rural county court has decided to adapt the urban court materials for their use with the assistance of local family law and domestic violence and sexual assault advocates serving Spanish-speaking communities.*

*The court in Seattle has developed extensive networks of resources to find interpreters in a wide range of languages. The court through e-mail, internet research, and referrals has developed contacts across the country that includes universities, other courts and individual qualified interpreters who live elsewhere in the country.<sup>25</sup> They use this network creatively to find interpreters they need and have used an experienced and trained interpreter in New York who speaks six African languages to provide telephone interpretation when a local interpreter in that language was not available.<sup>26</sup> A similar approach could be used by victim services programs to help them serve LEP victims who speak languages for which no local interpreter can be located.*

### *State and Local Government Offices<sup>27</sup>*

*A county in Minnesota is the largest of the state's 87 counties. Approximately 100,000 individuals, in the county have limited English proficiency. Thirty-three departments deliver over 1000 programs to the citizens of this county and surrounding jurisdictions. From 1995 to 1999, patient visits to this county's Medical Center requiring language assistance increases 111 percent.*

*In 2000, the county did the following to meet the needs of this new community:*

- *Established the Office of Multi-Cultural Services to facilitate the delivery of services to this new limited English proficient population.*
- *Hired a staff of 44 individuals that speak 28 languages to act as a bridge between county departmental staff, its LEP clientele, and the community.*
- *Created a language bank of 10 interpreters.*

### *Hospitals<sup>28</sup>*

*A county in Wisconsin has a population of 450,000. An estimated 15,000 come from Spanish-speaking communities and have limited English proficiency. There is also a significant Hmong population. In order to meet the rising language assistance needs of these communities, eight hospitals and clinics in one of the states' counties created the Health Care Providers' Interpreter Services Group. This group has developed standardized interpreter policies as well as a system to assess individuals' abilities to provide competent translation services for the service group members.*

### *Community Based Organizations<sup>29</sup>*

*A community-based organization in Northern Virginia established a full-service health care interpreting program that has identified identify the need for trained interpreters and cultural competency training for health care providers. The program recruits, screens, and tests interpreters.*

### ***How does Title VI get enforced?***

---

<sup>25</sup> See UEKERT ET AL., *supra* note 7, 94-99.

<sup>26</sup> See *id.* at 98-99.

<sup>27</sup> See generally, MARA YODELMAN & JANE PERKINS, THE COMMONWEALTH FUND, PROVIDING LANGUAGE INTERPRETATION SERVICES IN HEALTH CARE SETTINGS: EXAMPLES FROM THE FIELD 13 (2002), available at [http://www.cmwf.org/usr\\_doc/810\\_Youdelman\\_providing\\_language\\_services.pdf](http://www.cmwf.org/usr_doc/810_Youdelman_providing_language_services.pdf) (referring to the office of Multi-Cultural Services in Hennepin County, Minnesota).

<sup>28</sup> *Id.* at 25 (referring to the Health Care Providers' Interpreter Service Group in Dane County, Wisconsin).

<sup>29</sup> *Id.* at 31 (referring to the Northern Virginia Health Education Center (AHEC)).

## Ensuring Language Access to Immigrant Victims of Sexual Assault

Both the Department of Health and Human Services (HHS), and the Department of Justice (DOJ) have published policy guidance documents that concern LEP compliance under Title VI of the Civil Rights Act to recipients of federal funds.<sup>30</sup> This policy guidance also explain how federal agencies enforce Title VI.

Although federal agencies engage in and encourage voluntary compliance by providing information and technical assistance, federal agencies that provide federal financial assistance will take any complaints regarding recipients *from any individual or specific class of individuals who believe themselves to be subjected to discrimination* that is prohibited under Title VI.<sup>31</sup> It is important to note that a victim's advocate or agency can assist in the filing of this complaint. The federal agency will investigate complaints and conduct compliance reviews of recipients of federal financial assistance. If there is finding of compliance, it will inform the agency of its decision and the basis for the decision. If the federal agency finds the recipient to be noncompliant, it will send a Letter of Findings to the recipient, and will include a list of the appropriate steps the agencies must take to become compliant. The federal agency will give the recipient the opportunity to become compliant through informal means, but will act more aggressively, or terminate federal assistance, if compliance is not met by voluntary means. Finally, the complaint can be referred to DOJ to achieve compliance through other legal means.<sup>32</sup>

### Working with LEP Immigrant Victims of Sexual Assault<sup>33</sup>

Often LEP victims do not report sexual assault or domestic violence due to language barriers. Unaware that interpretation services exist, LEP victims assume their only options are to find an interpreter at their own cost or request assistance from family or friends.<sup>34</sup> Hence, providing language access, assistance, and resources is critical if LEP immigrant victims are to find help and attain legal remedies. Information about the fact that interpreters can be requested and are available from the agency must be advertised, posted, and provided in multiple languages.<sup>35</sup> Additionally, properly translated materials and competent trained interpreters are essential for immigrant victims to have the same access to relief and law enforcement protection as other victims of sexual assault. The prosecutions of rape and sexual assault perpetrators are hampered when police and prosecutors cannot fully and clearly understand victims and witnesses.<sup>36</sup>

Immigrant victims benefit greatly when they receive assistance and support from bilingual advocates. However, it is essential that roles of interpreter and advocate remain separate and distinct. Each requires special training and skills. Just as interpreters do not have the skills and training to advocate for victims, bilingual advocates should not be used for interpretation in lieu of trained qualified interpreters. The interpreter's role is to provide the non-English speaking person the same opportunity to hear everything and to respond that an English speaking person would have.<sup>37</sup> "To achieve this goal, the interpreter must interpret every unit of meaning faithfully, reflecting the language register (level of language), errors, hesitations, etc., while at the same time trying to be as unobtrusive as possible. There must be no paraphrasing or summarizing."<sup>38</sup> Bilingual advocates who have received interpreter training are capable of serving as qualified interpreters for immigrant victims with courts, police, and other agencies. When advocates are serving as qualified interpreters their goals are those of the interpreter, not the victim's advocate. They will be required to interpret faithfully all that is said by the victim and the person the victim is speaking to when they are serving in the role of interpreter.

---

<sup>30</sup> HHS LEP Guidance, *supra* note 13, 24. Although Executive Order 13,166 gave DOJ the unique authority to provide LEP Guidance to other Federal Agencies and ensure consistency among each agency, HHS developed its own guidance document for purposes of clarifying, organizing, and accommodating particular programmatic needs and purposes.

<sup>31</sup> 45 C.F.R. § 80.3(b). See HHS LEP Guidance, *supra* note 13, 24; see also Nondiscrimination in Federally Assisted Programs, 28 C.F.R. § 42.107 (1973), 28 C.F.R. § 42.104 (b)(2).

<sup>32</sup> See HHS LEP Guidance, *supra* note 13, 24.

<sup>33</sup> This section is partially adapted from BREAKING BARRIERS, *supra* note 4, § 1.1 at 15.

<sup>34</sup> See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 8.

<sup>35</sup> See UEKERT ET AL., *supra* note 7, 51-52, 58.

<sup>36</sup> See *id.* at 9, 11.

<sup>37</sup> Martha Cohen, King County Superior Court, Office of Interpreter Service (2007); see also NATIONAL CENTER FOR STATE COURTS, PROTECTION ORDERS AND LIMITED ENGLISH PROFICIENT INDIVIDUALS, available at [http://www.legalmomentum.org/assets/pdfs/25-protection\\_orders\\_and\\_lep\\_individuals\\_ncsc.pdf](http://www.legalmomentum.org/assets/pdfs/25-protection_orders_and_lep_individuals_ncsc.pdf).

<sup>38</sup> Martha Cohen, King County Superior Court, Office of Interpreter Service (2007).

## Ensuring Language Access to Immigrant Victims of Sexual Assault

Bilingual advocacy is another set of skills that provide crucial assistance to immigrant victims. When bilingual advocates accompany victims seeking services from courts, hospitals, benefits-granting agencies, and other organizations, their role is to advocate to ensure their clients gain access to all services and assistance they are legally entitled to receive. Their language skills and ability to communicate effectively with non-English speaking victims is an important component of effective advocacy. Their role in this context is as an advocate, not interpreter. Immigrant victims need access to advocates who will support them throughout their interactions with the justice and health care systems and other services designed to help sexual assault victims. A key function of good advocacy on behalf of immigrant victims is to assure that victims are provided qualified interpreters by the agencies from which they seek services in compliance with Title VI of the Civil Rights Act of 1964.

Each agency -- non-profit, legal services, health care or government -- to whom victims of sexual assault turn for help should develop and have readily available interpretation services that will allow limited English proficient victims of sexual assault to fully access the same services and assistance available to English speaking victims. Agencies should develop relationships with interpreters who can be called upon to assist victims who turn to the agency for help. Interpreters for each of the significant language minority populations in the jurisdictions served should be identified. Efforts should be made to train interpreters on sexual assault and family violence issues. This increases interpreter's familiarity and comfort with the subject matter and the specialized terms used. Many programs serving victims encourage interpreters to participate in the trainings that the program offers its staff, volunteers and crisis line workers. In recruiting interpreters to work with victims of sexual assault it is important to assure that female interpreters are recruited in addition to male interpreters. Some immigrant women will be more comfortable disclosing intimate sexual assault details through a female interpreter.

### **Learning About the Immigrant Communities in Your Area**

The first step in providing meaningful access to LEP individuals is to learn about the immigration populations in your given area.<sup>39</sup> This must include a review of the language needs of the communities you serve or encounter. There are several tools available to find this information, including the 2000 Census data and demographic information.<sup>40</sup> Additionally, immigrant community-based groups, the local school system, and faith-based groups that serve immigrant communities may also have information on the different immigrant populations residing in your community. This information-gathering process works best when agencies collaborate. Answering the following questions can assist in learning about the different immigrant populations in your area:

- What are the demographics of immigrant population(s) in the community and state?<sup>41</sup>
- What are the countries of origin of the immigrant women in the community?
- What factors may have caused these immigrant women to immigrate to the United States and come to your community?
  - Are they fleeing civil war, persecution, or economic despair?
  - Did they come to the United States with their family or to reunite with relatives in an established immigrant community?
  - Did they come primarily to work or for school?
  - Were they recruited to work in the United States?
  - Did they come as wives who met their spouses through international matchmaking organizations?
  - Did they come as wives of servicemen?
  - Did they come through an arranged marriage to someone from their home country who now is currently living in the United States from their home country?
- Do they reside permanently in the community? Do they annually migrate to the community to do seasonal work?
- Do immigrant populations generally reside in the city, county, or township?

---

<sup>39</sup> See GAIL PENDLETON, THE FAMILY PREVENTION FUND, BUILDING THE RHYTHM OF CHANGE: DEVELOPING LEADERSHIP AND IMPROVING SERVICES WITHIN THE BATTERED RURAL IMMIGRANT WOMEN'S COMMUNITY (Emily Goldfarb, Carolyn Hubbard & Leni Marin eds., Family Prevention Fund) 2001, available at <http://www.endabuse.org/userfiles/file/ImmigrantWomen/Building%20the%20Rhythm%20of%20Change.pdf>.

<sup>40</sup> Demographic and other information about the immigrant communities in a given area can be found at the U.S. Census Bureau website, available at <http://www.census.gov/>.

<sup>41</sup> Demographic and other information about the immigrant communities in a given area can be found at the U.S. Census Bureau website, available at <http://www.census.gov/>.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

- Is the immigrant population isolated from the rest of the community?
- Are immigrant women isolated from the rest of the immigrant community?
- Which individuals are considered immigrant women community leaders?
- Is there a community center for immigrants?
- Where do immigrant women congregate, seek services, and organize? (e.g., work, shops, places of worship)?
- Whom do immigrant women in the community trust, confide in, and seek services from?
- What information about cultural or religious beliefs in the immigrant population might affect the way agencies might try to reach immigrant women?
- What are the significant immigrant populations in the area, and what language(s) do they speak?<sup>42</sup>
- What attitudes toward sexual abuse and domestic violence does the immigrant community hold?
- Where can an agency find statistics or materials, either national or local, on how the victim's culture or community look upon or treat sexual assault victims?
- Where can an agency find statistics or materials, either national or local on the dynamics of domestic violence experienced by this population? Where can an agency find statistics or materials, either national or local, on how the victim's culture or community look upon or treat domestic violence victims?
- What services do non-profit or faith-based organizations offer in the immigrant community?
- Which, if any, organizations are in contact with isolated immigrant women? Do these organizations have any resources that would help educate difficult-to-reach populations?
  - Such organizations might include:
    - Family Support Centers on military bases
    - Women's centers at universities
    - Health clinics and health care workers in rural and migrant communities<sup>43</sup>
- Are there immigrant communities that your agency is not reaching? These communities may need additional outreach.

Agencies seeking help in gathering information about the immigration populations in your community should consult with local and national service providers, immigrant community-based organizations, and women leaders in immigrant communities. These programs can help you identify both the populations of immigrants and the gaps in services for immigrant victims in the community served by your agency. Examples of unmet needs may include: interpreters, strengthening relationships with immigrant community-based organizations, or information about the best ways to approach immigrant women in your community. Agencies should focus on identifying resources that could help build services for women in different immigrant communities. For family law issues, research conducted on LEP access to courts that grant protection orders found that many (90 percent) of immigrant community-based organizations surveyed nationally reported being actively involved in assisting petitioners with protection orders. Also, over 90 percent of these organizations accompany petitioners to protection order hearings.<sup>44</sup> Agencies should also consider tapping into resources available in city government offices, public libraries, and through national advocacy groups that work on issues pertaining to immigrant women.<sup>45</sup> Furthermore, national advocacy organizations can provide multilingual educational materials that can be adapted and translated for local use. This helps keep local agencies from having to invest time recreating existing materials.

Undertaking this research will also help advocates form collaborative relationships with agencies who have a history of working with the immigrant community and with respected and established community leaders. Collaborating with other programs will benefit mainstream sexual assault and domestic violence victim services because immigrant women are more likely to trust agencies that have a positive relationship with trusted

---

<sup>42</sup> Try to identify language minority communities in your area, but also be aware that there will also be individual immigrant women living in your area isolated from their cultural communities.

<sup>43</sup> SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN. A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICE PROVIDERS 96-111 (Leslye E. Orloff & Rachael Little eds., Ayuda 1999).

<sup>44</sup> See UEKERT ET AL., *supra* note 7, 60.

<sup>45</sup> Materials are available through the National Network to End Violence Against Women and coordinating organizations: The National Immigrant Women's Advocacy Project, 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016, (202) 274-4457, <http://www.wcl.american.edu/niwap/>; The Family Violence Prevention Fund, 383 Rhode Island St., Suite 304, San Francisco CA 94103-5133, (415) 252-8900, [www.endabuse.org](http://www.endabuse.org); and ASISTA Immigrant Women's Technical Assistance Project, 515 28th Street, Des Moines, IA 50312, (515) 244-2469, [www.asistaonline.org](http://www.asistaonline.org).

## Ensuring Language Access to Immigrant Victims of Sexual Assault

community-based or faith-based organizations.<sup>46</sup> Many immigrant victims will feel more comfortable accessing help from a program partnering with an agency that has a history of trust in the immigrant community.

Agencies can begin to build the trust that will lead immigrant victims to seek assistance through various means including getting involved in the immigrant communities. Advocates can participate in meetings, interact with immigrant community members, work with trusted community-based organizations, and attend activities planned by community-based or faith-based organizations serving the immigrant community. Advocates should always ask the victim what services she needs and what programs she feels comfortable accessing. Some immigrant victims are more likely to seek services from agencies they hear about through other women in their immigrant community.<sup>47</sup> Contrarily, some victims may be fearful of going to an organization in their own immigrant community because of shame and confidentiality concerns.<sup>48</sup> These victims may prefer receiving services from a mainstream program that is not as closely connected with their community

### *Improving Language Capacity to Serve Immigrant Victims of Sexual Assault*

After learning about the immigrant communities in the area, the next step is to do an internal review of your agency to see how you can improve capacity to serve immigrant victims of sexual assault. The following questions can help you ascertain the capacity your agency has:

- What staff is currently bilingual/bicultural? How are these staff members utilized in the program? What additional training and support can you provide to maximize their skills and experience?
- What materials are available in the community or from national organizations in other languages other than English? Is it possible to adapt some of the materials for your agency?
- What interpretation/translation resources are available in your community? What is the cost?
- What relationships can you build with other programs to assist in developing your language capability in your agency; can you recruit volunteers from colleges, universities, or places of worship?
- Can you develop a partnership contract with a local immigrant serving community-based organization hiring their staff to provide language interpretation?
  - Bilingual staff, community based advocates and volunteers should be offered training to become qualified interpreters. This will expand the pool of interpreters available to your immigrant victim clients and will help assure that victims receive interpreter services from persons sensitive to sexual assault issues.
- Is it possible to do cross-trainings with the immigrant community-based organizations on the services your agency provides and the services and cultural issues the immigrant community-based organizations can provide?
- Begin keeping track of the languages encountered at your agency. The data should be reviewed to determine your agency's immediate language needs.

### *Developing a Plan to Serve LEP Immigrant Victims of Sexual Assault*

#### Identify Translation/Interpretation Resources for the Agency

In-house interpreters may be necessary depending on the size of the LEP immigrant communities in your area and the frequency in which individuals from each community access your services. Skilled interpreters in the languages and in the dynamics of sexual assault provide invaluable assistance to providing meaningful aid to immigrant victims. While a bilingual individual may be fluent and well-suited to having direct conversations in the LEP person's primary language, this individual may not be skilled at converting conversations from one language to another and may not understand the role of an interpreter. It is important to assess the interpretation skills of your

---

<sup>46</sup> THE FAMILY PREVENTION FUND, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN (Deeana L. Jang, et al. eds., The Family Violence Prevention Fund 1997); Del-An BryAnn Chen, "We Just Got Together and We Enjoyed It:" An Analysis of the Georgia Coalition for Battered Refugee and Immigrant Women as a Social Movement (1998) (unpublished M.A. thesis, Georgia State University) (on file with author); FAMILY VIOLENCE PREVENTION FUND, ROMPIENDO EL SILENCIO, MANUAL DE ENTRENAMIENTO PARA ACTIVISTAS, CONSEJERAS Y ORGANIZADORAS LATINAS 35 (Sonia Parras Konrad et. al. eds., The Family Violence Prevention Fund 2003); see also UEKERT ET AL., *supra* note 7, 68.

<sup>48</sup> See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 5.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

staff, as some may need training to build their interpretation skills. The skills do not only include being fully bilingual, but they include knowledge of specialized terminology in both languages, methodology, protocol, cultural competency and knowledge of ethics, including confidentiality, role of an interpreter and cultural competency.<sup>49</sup> Even if some of your staff may be less than fully bilingual, their language skills may still be helpful in outreach and basic conversation to set victims at ease or to provide simple directions.<sup>50</sup> Agencies that actively recruit bilingual/bicultural staff will be able to better serve all victims who need their services. When recruiting and hiring, bilingual or multilingual ability should be considered a priority and compensable hiring criterion.<sup>51</sup>

It may also be necessary to develop a pool of qualified interpreters that can be contracted to work with the agency. Formal contracting with interpreters who provide services in each of the languages represented in a given community offers assurance that an agency will be able to offer its full range of services to immigrant victims of sexual assault. When contracting with interpreters it is important to keep in mind the following considerations:

- Agencies should include a line item in their budgets to pay for interpreters and translators for materials
- Hiring your agency's own group of interpreters avoids conflicts that arise in small ethnic communities where the interpreter may be an acquaintance of the victim, of the family, or of the perpetrator.
- Make sure that the interpreters are trained on the sensitive criminal, legal, and sexual assault issues and terminology that is likely to be used during interpretation.

Children, family members, friends, or other companions of immigrant victims should not be used as interpreters. It is dangerous and inappropriate.<sup>52</sup> Children lack the necessary maturity and skills to interpret. Interpretation can be especially traumatic for children because it places them in a position to hear and have to repeat the details of the abuse. It will also be difficult for children to interpret specialized terminology. Companions should not be used either. Companions may have an interest in the immigrant victims' decision-making and can pose confidentiality and safety risks.<sup>53</sup>

If the LEP victim brings her own interpreter, they should be screened, particularly if they are a volunteer interpreter.<sup>54</sup> Your agency should verify if the volunteer is sensitive to sexual assault issues, can remain impartial, possess the necessary interpreting skills and will voluntarily sign a confidentiality agreement.<sup>55</sup> It is also important to determine the extent to which the volunteer is acquainted with the victim or even the perpetrator, as well as any ties to the community.<sup>56</sup> The agency should privately interview the victim and confirm that the person she came with can safely interpret for her.<sup>57</sup>

It is also important to be aware of issues surrounding gender when hiring and identifying interpreters who will be helping sexual assault victims. In many immigrant communities, sex is a taboo subject. Immigrant victims may not feel comfortable sharing details about a sexual assault around males.<sup>58</sup> Similarly, male interpreters may have preconceived notions about victims of sexual assault including disbelief that rape can happen within a marital context. It is critical that advocates working with immigrant victims talk with their clients about what services would make her feel most comfortable and safe. This is especially important with LEP victims whose language has no word or phrase for the concept of counselors or victim advocates and the services they provide.<sup>59</sup>

---

<sup>49</sup> *Id.* at 9.

<sup>50</sup> Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

<sup>51</sup> BREAKING BARRIERS, *supra* note 4.

<sup>52</sup> Despite this fact, this problem is quite prevalent. A 2006 survey of courts conducted by the National Center for State Courts found that 30 percent of courts in non-rural counties acknowledge relying on adult family members and friends of the LEP victim to interpret at a court hearing and that 7 percent of all courts reported using children as interpreters in protection order cases. See UEKERT ET AL., *supra* note 7.

<sup>53</sup> There are instances when LEP immigrants may be more comfortable with a family member or friend interpreting. However, agencies should take care to ensure that these informal interpreters are appropriate and have received some training in light of the circumstances and subject matter of the program, service, or activity. See DOJ LEP Guidance, *supra* note 16.

<sup>54</sup> BREAKING BARRIERS, *supra* note 4, § 2.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 7.

<sup>57</sup> *Id.* If no employee at your agency can communicate with the victim, the National Domestic Violence Hotline can provide assistance with the interview to discover if the victim has any concerns about the interpreter.

<sup>58</sup> See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 5, 17.

<sup>59</sup> *Id.* at 7.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

Language lines and telephonic interpretation services are another option when there is no interpreter pool or when immediate interpretation is needed. These lines are particularly useful for law enforcement, hotlines, and 911 services. However, language lines can be expensive. Explore whether this option is available at least in emergency situations, or if possible, collaborate with law enforcement and hotline services to access this assistance.<sup>60</sup>

The quality of interpretation, including completeness and accuracy, can be better achieved if agencies understand and address the common problems that often occur:<sup>61</sup>

- There can be linguistic differences within a language depending upon the region the victim comes from.
- Interpreters summarizing the victim's statements either because the interpreter inappropriately determines the relevance of the statements, does not want the victim to become confused or overwhelmed with an abundance of information, or is uncomfortable with repeating certain statements.
- Interpreters providing inaccurate renditions when no comparable cultural concept or linguistic term exists, allowing personal feelings to influence the interpretation, or using terms having contradictory meanings across cultures.

It is not only crucial to provide interpreters that are accurate, sensitive, and knowledgeable, but also to secure interpretation services for the LEP victims immediately. Delay in services may hinder a victim's interaction with law enforcement as well as the ability to obtain effective emergency medical and mental health services.<sup>62</sup> Moreover, postponing the victim's interview with police until an interpreter is found and an interview conducted<sup>63</sup> may cause the perpetrator to be released from custody.

### *Using Professional Interpreters Rather Than Volunteers*

If your agency determines that the demand for more extensive language services is great based on the size of the LEP communities in your area, the frequency in which LEP individuals do or should be accessing your services, and the type of services provided by your agency, then the use of professional interpreters instead of volunteers should be strongly considered.

Qualified professional interpreters as opposed to volunteer interpreters help prevent a variety of problems that arise. While volunteer interpreters usually understand the need to accurately interpret during court proceedings, volunteer interpreters may not fully comprehend the ramifications of imprecise and inaccurate interpreting during the counseling and investigative stages of a case. Interpreted statements are relied upon by emergency room doctors in treating the victim, victim advocates in counseling and danger assessment, police conducting an investigation, by prosecutors in determining whether to prosecute the perpetrator, and by legal services providers in developing legal strategy. Volunteer interpreters may not understand that paraphrasing a victim's story on a police report or during the interpretation of testimony at a court proceeding can be used to attack a victim's credibility, affect the legal outcomes for the victim, or affect the chances of successful appeal.<sup>64</sup>

The use of professional interpreters offers the most comprehensive language services for the LEP immigrant victims of sexual assault. Bilingual/bicultural persons may be able to assist in conversations with LEP victims based upon their fluency in a given language and familiarity with a particular culture. However, fluency and cultural awareness are not the sole indicators of competency for interacting with LEP victims. Trained, qualified interpreters can offer more extensive language assistance based on their specialized skills and technical ability.

---

<sup>60</sup> A hotline to call: Multilingual Volunteer Interpreters Project: (413) 577-1691.

<sup>61</sup> See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 12-14.

<sup>62</sup> *Id.* at 9.

<sup>63</sup> *Id.* at 5, 17.

<sup>64</sup> *Id.* at 11-12; see also Maria L. Ontiveros, Rosa Lopez & Christopher Darden, *Issues In Gender, Ethnicity, And Class in Evaluating Witness Credibility*, 6 HASTINGS WOMEN'S L. J. 135, 272 (1995) (discussing how the English interpretation version of court testimony is the only version recorded by court reporters). Inaccurate interpretation can affect the chances of a successful appeal if there is no record to refer to.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

State courts have developed a Model Code for the standards of professionalism and testing for court interpreters.<sup>65</sup> For an interpreter to be qualified,<sup>66</sup> the interpreter must be able to perform the following:

- Simultaneous interpretation from English to the foreign language
- Consecutive interpretation, English to the foreign language and foreign language to English
- Sight translation of English documents into the foreign language
- Sight translation of foreign language into English

Testing techniques help ensure that the interpreter can demonstrate competence, accuracy, and professionalism.<sup>67</sup> A competent interpreter should possess a broad vocabulary that includes formal, casual, and colloquial language. This skill includes the ability to communicate and understand the nuances in language based on the culture, gender, and class of an LEP individual. Second, an interpreter must be able to express what the victim is saying without omitting, adding, or making any changes to the victim's story.<sup>68</sup> Interpreters are members of a profession, and must remain impartial and maintain a low profile when facilitating a communication, even where the interpreter is a volunteer, or a friend or acquaintance of the victim.<sup>69</sup> Exhibiting cultural competency and awareness, maintaining accuracy by acknowledging that one's job is to merely convey the words of another, and keeping a neutral position are methods through which interpreters can help preserve a victim's credibility.

It is important that your agency has a means for identifying the language victims seeking services speak and for communicating to them that you can secure interpreters to help them receive services from your agency. Language identification cards can be purchased to help victims identify the language they speak. Signs can be posted in your agency in multiple languages advertising your agency's willingness to provide interpreters. The following list of questions can help you assess a sexual assault victim's needs for interpretation and to assess whether an interpreter is qualified to interpret:<sup>70</sup>

### ***Sample Questions to Assess The Victim's Understanding of English***

- Can you please tell me your name?
- How old are you?
- How did you get to our office today?
- How did you find out about us?
- What kind of work do you do?
- How comfortable are you talking with me in English about what happened to you?
- Would you like us to provide you with a free interpreter to help you talk to us about what happened and what kind of help we can give you?

### ***Determining the Language Needed***

- Determine the language of the party using language ID cards
- If the victim cannot read you can
  - Call a language line for assistance determining the language the victim is speaking.

---

<sup>65</sup> See WILLIAM HEWITT, NATIONAL CENTER FOR STATE COURTS, COURT INTERPRETATION: MODEL GUIDELINES FOR POLICY & PRACTICES IN THE STATE COURTS, ASSESSING INTERPRETER QUALIFICATIONS: CERTIFICATION TESTING AND OTHER SCREENING TECHNIQUES (National Center for State Courts 1995), available at [http://www.ncsconline.org/wc/publications/Res\\_CtInte\\_ModelGuideChapter5Pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter5Pub.pdf).

<sup>66</sup> The term qualified includes certified interpreters. There are not formal interpreter certification programs for all languages. Thus, it is important for programs to be able to distinguish between interpreters who are qualified to interpret and persons who are not qualified.

<sup>67</sup> DEBORAH M. WEISSMAN, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C. L. REV. 1899, 1956-57 (2000).

<sup>68</sup> *Id.*

<sup>69</sup> SEATTLE OFFICE OF CIVIL RIGHTS, CITY OF SEATTLE, CITY OF SEATTLE INTERPRETER TOOL KIT: A GUIDE TO HELP YOU PROVIDE INTERPRETATION AND TRANSLATION SERVICES TO SEATTLE'S MULTILINGUAL COMMUNITY, APPENDIX C: CODE OF PROFESSIONAL CONDUCT FOR INTERPRETERS AND TRANSLATORS 14 (May 1999), at <http://www.seattle.gov/civilrights/documents/litk.pdf#search=%22Code%20of%20Professional%20Conduct%20for%20Interpreters%20and%20Translators%2C%20Seattle%20Office%20for%20Civil%20Rights%22>.

<sup>70</sup> See UEKERT ET AL., *supra* note 7, 171-172.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

- You may also try asking about the victim's country and city of origin which may have the same or similar name in English as in the victim's native language.

### *Sample Questions to Assess Interpreter Qualifications*

- What training or credentials do you have as an interpreter?
- Are you or have you been a qualified or certified interpreter in this or another state?
  - If so, by what agency?
- Have you been qualified or certified by a court to interpret?
- Are you familiar with the Code of Professional Responsibility for interpreters?
- What are its main points?
- How did you learn English?
- How did you learn (non-English language)?
- Do you know the victim or the perpetrator? If yes, how do you know them?
- What is your educational background?

### *What to Expect From a Qualified Interpreter.*

A good interpreter will:

- Interpret in the first and second person
- Interpret everything said, with no additions, omissions, explanations, or personal input
- Request clarification if a phrase or word is not understood
- Ask you to speak one sentence at a time
- Will ask you to slow down to give him or her time for interpretation if you are talking for too long
- Encourage you to speak to the client not to the interpreter
- Use appropriate interpreter tools such as a language dictionary and note-taking materials
- Be as unobtrusive and professional as possible

## **Developing Materials for LEP Immigrant Victims of Sexual Assault**

Written materials are an important way to convey information and to conduct community outreach. After identifying the LEP immigrant communities in your area, identify existing materials that could be adapted for your agency. Courts, law enforcement, immigrant community-based organizations, victim services organizations, hotlines, and national organizations working on immigrant victims' legal rights may already have materials that have been developed that your agency can put your contact information on and use. If you are working with an immigrant population that is different from the one that the materials were developed for you may want to consider starting with these materials and adapting them for your immigrant community.<sup>71</sup>

It is important that materials use language that is appropriate and accessible to the target LEP community. Avoid legalese as it is hard for even English speaking victims to understand and may be difficult to translate. It is essential to have the materials reviewed by several trusted and skilled translators. Do not assume that all immigrant communities will understand the terminology your agency typically uses in English. There may be variations in language that can have different meanings for different immigrant groups. Furthermore, not all immigrants will have the same fluency level in their native language. Translated materials that use more simplified language will be understood by a broader range of immigrant victims both in English and when translated. It is important to be aware of these differences.

---

<sup>71</sup> For examples of resources, see Limited English Proficiency, A Federal Interagency Website, <http://www.lep.gov/>; National Center for State Courts, <http://www.ncsconline.org/>; U.S. Department of Housing and Urban Development, Limited English Proficiency, <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>; Legal Momentum, Language Access Tools, <http://endabuse.org/userfiles/file/ImmigrantWomen/Language%20Access%20Tools.pdf>.

## Ensuring Language Access to Immigrant Victims of Sexual Assault

When working with immigrant victims of sexual assault, special attention must be given to producing a culturally competent publication. Sexual assault is viewed differently in each immigrant community. There may be stigmas attached to being a victim of sexual assault. In addition, some immigrant communities may view sexual assault as a taboo subject. Words like ‘sexual harassment’, ‘stalking’, ‘rape’ may not be easily translated to other languages.<sup>72</sup> Other terminology may need to be used to explain this behavior. It is important for women from immigrant communities and sexual assault experts to be involved in the development, so that the materials are culturally competent.

The following are subjects that are useful to include in translated materials for immigrant victims of sexual assault:

- Lists of resources and agencies where immigrant victims can seek help;
- Brief information about eligibility for VAWA immigration relief and access to services and benefits available to all immigrant victims regardless of immigration status;<sup>73</sup>
- Information on relief available from courts, e.g. sexual assault protection orders and criminal prosecution of sexual assault perpetrators;
- Access to Victim of Crime Compensation (VOCA);
- Information on health care issues affecting immigrant victims of sexual assault and victims’ legal rights to access health care;
- Overview of sexual assault, sexual harassment, stalking, rape, and child sexual abuse.

### Interpreters for LEP Victims at Court Proceedings

Courts should make every effort to ensure that LEP immigrant victims of sexual assault are provided competent interpreters at all criminal and civil court appearances including hearings, trials, and motions.<sup>74</sup> Courts should also be responsible for providing interpreters to help victims complete applications in order to file for and receive emergency protection orders.<sup>75</sup>

Advocates and attorneys working with LEP victims play an important role in assuring that courts provide interpreters for LEP victims.<sup>76</sup> The National Center for State Courts found in a National Institutes of Justice funded survey of LEP victims’ access to protection order courts that a “court’s capacity to provide interpreters fell substantially short of what was required to meet the needs of the LEP population they served.”<sup>77</sup> Despite this lack of resources, over 59 percent of courts reported that they believed they had sufficient language services to meet the needs of LEP petitioners for protection orders.<sup>78</sup> This figure rose to 79 percent for rural courts.<sup>79</sup> Where advocates, attorneys, and community-based organizations worked with their courts and had good communication, LEP petitioners’ access to the courts and interpreters for LEP protection order petitions improved.<sup>80</sup>

Federal and state courts have different methods of qualifying interpreters. At the federal level, the Court Interpreters Act of 1978 led to a national certification exam to assess the competency level of court interpreters.<sup>81</sup> This federal certification process is only available in Spanish.<sup>82</sup> It is therefore important that programs and government agencies make themselves accessible to LEP victims by knowing how to qualify interpreters who speak other languages.

Standards for interpreter certification and/or qualification may vary from state to state, but many states have joined together and formed “The Consortium for State Court Interpreter Certification” to develop and regulate court

---

<sup>72</sup> See NAT’L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 5.

<sup>73</sup> BREAKING BARRIERS, *supra* note 4, § 4.

<sup>74</sup> See DOJ LEP Guidance, *supra* note 16.

<sup>75</sup> See UEKERT ET AL., *supra* note 7, 197-206.

<sup>76</sup> *Id.* at 7, 204.

<sup>77</sup> *Id.* at 3.

<sup>78</sup> *Id.* at 5.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 8, 67-81.

<sup>81</sup> The NCSC now administers the Federal Court Interpreter Certification Exam for the Administrative Office of the U.S. Courts. See Federal Court Interpreter Certification Program, [http://www.ncsconline.org/d\\_research/fcice\\_exam/index.htm](http://www.ncsconline.org/d_research/fcice_exam/index.htm).

<sup>82</sup> *Id.*

## Ensuring Language Access to Immigrant Victims of Sexual Assault

interpreter certification procedures.<sup>83</sup> In fact, at least 35 percent of all courts rely on a state register of qualified interpreters.<sup>84</sup> To find out what your state requires, contact the court interpreter program in your state. If there is no state court interpreter program, check with the administrative office of the courts in your state.<sup>85</sup>

Immigrant victims should understand the role of court interpreters. Judges should take the time to explain the interpreter's role as a neutral party present to interpret the court proceedings. For many immigrant victims, this may be their first experience with the judicial system and their first experience explaining the traumatic events that have brought them to court. For this reason, it is also important to have a bilingual advocate accompany the immigrant sexual assault victims to court since the interpreter cannot serve in that role.

Advocates accompanying victims to court can play an important role helping victims dispel myths, understand court proceedings, be less afraid, and be more comfortable in testifying. Many immigrants may come from countries with a civil law system where evidence is typically accepted in the form of signed, notarized, and sealed affidavits.<sup>86</sup> For many immigrants, the courts may have also been the enforcers of oppressive laws and provoked feelings of fear and distrust for some immigrants.<sup>87</sup> It is important for advocates and attorneys to take the time to explain the court process and answer any questions the immigrant victim may have. They should explain that oral testimony is not only valid evidence, but the primary method that evidence is presented to the court.<sup>88</sup> They should be assured that the courts function independently and are a neutral ground for parties to resolve their disputes. Immigrant women may expect that persons who succeed in court are wealthy and politically connected. Advocates and attorneys should also inform victims that a sexual assault perpetrator or batterer cannot use his legal immigration status or economic status against them in court. Bringing immigrant victims to see testimony in court proceedings in similar cases can help immigrant victims better understand legal relief that is available to victims in the United States. This will help a victim who may have to testify in a criminal or civil court action be a more effective witness because she knows what to expect when she testifies. This works particularly well in protection order and family law cases.

Ensuring quality of interpretation is also a vital requirement for court proceedings. When advocates who are proficient in the language are present at court proceedings, they can help evaluate the accuracy of the interpretation. Sometimes interpreters will paraphrase or supplement a witness' testimony, instead of interpreting the meaning of what has been stated. This is especially problematic for immigrant victims who are testifying about rape, sexual assault, and domestic violence.<sup>89</sup> Attorneys should control the questioning and the interpretation. The interpreter should be instructed to interpret fully everything stated by any party, the judge, or any attorney to the proceeding. In courts that have a system for tape recording proceedings, attorneys should request that the proceedings are tape recorded. Should problems arise with the interpretation, the victim's attorney will be able to make an objection to the interpretation for the record and the tape recording will provide an opportunity to have the interpretation reviewed by a qualified interpreter. Some attorneys representing immigrant victims bring to court persons who are fluent in the language that the victim speaks to inform the attorney of interpretation problems when the attorney does not speak the client's language.

### *Healthcare Access*

Healthcare access is one of the most crucial areas in which LEP immigrants must be provided assistance in their primary language. Nowhere could this be more true than when victims of rape or sexual assault seek healthcare for injuries and forensic exams. Many health programs provide information about their services only in English. Too often LEP immigrants seek services from hospitals and medical clinics with receptionists, nurses, and doctors who speak only English. Interviews to determine eligibility for medical care or social services are often conducted in

---

<sup>83</sup> National Center for State Courts, Consortium for State Court Interpreter Certification—Frequently Asked Questions (Mar. 14, 2005).

<sup>84</sup> See UEKERT ET AL., *supra* note 7, 44.

<sup>85</sup> National Center for State Courts, Court Interpretation, [http://www.ncsconline.org/D\\_Research/CourtInterp.html](http://www.ncsconline.org/D_Research/CourtInterp.html) (last visited Dec. 14, 2009) (listing several resources on court interpretation programs).

<sup>86</sup> GRACE HUANG, *Immigrant Women of Color Face Special Barriers to Legal Redress: Celebrating the Courts in an Inclusive Society*, EQUAL JUSTICE NEWSLETTER, Mar. 2000, at 2, available at [http://www.courts.wa.gov/programs\\_orgs/pos\\_mjc/newsletter/032000/equaljustice.cfm?article=immigrant.htm](http://www.courts.wa.gov/programs_orgs/pos_mjc/newsletter/032000/equaljustice.cfm?article=immigrant.htm).

<sup>87</sup> See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 6.

<sup>88</sup> *Id.* at 2.

<sup>89</sup> See MARIA L. ONTIVEROS, ROSA LOPEZ & CHRISTOPHER DARDEN, *Issues In Gender, Ethnicity, And Class in Evaluating Witness Credibility*, 6 HASTINGS WOMEN'S L. J. 135, 272 (1995).

## Ensuring Language Access to Immigrant Victims of Sexual Assault

English by intake workers who do not speak any language other than English. This often results in the denial of medical care or social services, delays in the receipt of such care and services, incomplete or inaccurate medical records, or the provision of care and services based on inaccurate or incomplete information.<sup>90</sup> These delays are particularly problematic and dangerous for immigrant victims of rape, sexual assault, and domestic violence who are seeking healthcare and forensic examinations.

The medical community is crucial in providing assistance and relief to immigrant victims of sexual assault. At times they are the first point of contact for help. Below are some suggested actions you can take to ensure that immigrant victims of sexual assault are provided adequate, competent and language accessible assistance from the healthcare system:

- Find out what collaborations the healthcare community has with immigrant and sexual assault advocacy groups.
- Research the Sexual Assault Response Team (SART) in the community and find out what resources and partnerships it has for LEP immigrant victims of sexual assault.
- Approach healthcare providers about periodic cross-trainings on sexual assault, immigrant communities, and resources and services available to all immigrant victims and build relationships and collaborate with them.
- Find out what interpreter services and translated materials are available for LEP immigrant victims of sexual assault in the community, in the state, and nationally.
- Adapt materials created nationally or in your state for your community and translate the materials in the language(s) LEP victims need in your community.
- Provide training to healthcare providers and organizations on how to work effectively with interpreters.

### Conclusion

Improving the delivery of services to immigrant victims of sexual assault requires a significant assessment of LEP access. Crucial information vital to assisting immigrant victims of sexual assault must be made available in various languages. This includes: information on law enforcement, healthcare, VAWA and other immigration relief, sexual assault services, and access to public benefits. The best programs include of collaborative partnerships between law enforcement, prosecutors, courts, healthcare, sexual assault services, legal services and programs working with immigrant communities that have gained the trust of immigrant women.

For more information on how to assess and develop your programs to ensure LEP access, please see [www.lep.gov](http://www.lep.gov), specifically [http://www.lep.gov/Law\\_Enforcement\\_Planning\\_Tool.htm](http://www.lep.gov/Law_Enforcement_Planning_Tool.htm).

---

<sup>90</sup> See e.g. JOHN HORNBERGER, MD, MS ET. AL, *Bridging Language and Cultural Barriers Between Physicians and Patients*, 112 PUB. HEALTH REP., 410-417 (Sept.-Oct. 1997).

**National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)**  
**American University, Washington College of Law**  
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016  
(o) 202.274.4457 · (f) 202.274.4226 · [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu) · [wcl.american.edu/niwap](http://wcl.american.edu/niwap)