

Office on Violence Against Women (OVW)

National Violence Against Women

**Law Enforcement Training and Technical Assistance
Consortium (LETTAC)**

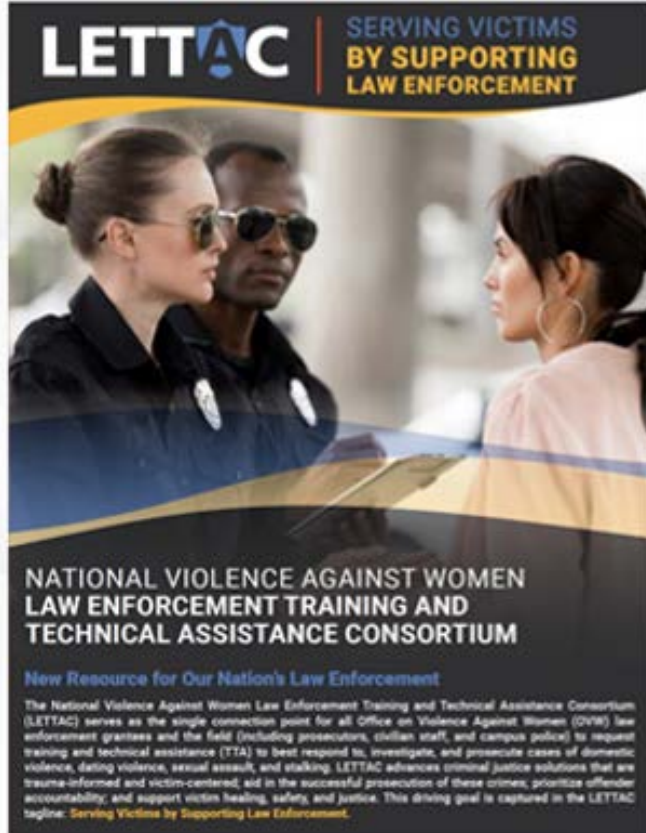
July 30 and 31, 2024

**Avoiding Liability: Building Stronger
Partnerships to Increase Community Trust
and Hold Offenders Accountable**

This project was supported by Grant No. 2020-TA-AX-K033 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.

LETTAC

LETTAC



- **Supported by the U.S. Department of Justice, OVW**
- **A comprehensive training and technical assistance (TTA) provider**
- **Provides no-cost, comprehensive, tailored TTA to OVW grantees and potential grantees, focused on strengthening the law enforcement response to and investigations of domestic/dating violence, sexual assault, stalking, and co-occurring crimes**
- **Provides customized on-site training, policy review and feedback, educational webinars, partnership development, collaboration building, and much more**

www.LETTAC.org

Introductions

- **Cannon Han, Senior Program Manager, Asian Pacific Institute on Gender-Based Violence (API-GBV)**
- **Natasha Haunsperger, Officer, Portland, Oregon, Police Bureau**
- **Leslye Orloff, Adjunct Professor, Director, National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law**

NIWAP

- **The NIWAP American University Washington College of Law**
- **We provide TTA to**
 - **Local, state, federal law enforcement; prosecutors; victim advocates; judges; attorneys; and other professionals**
 - **Serving immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, child/elder abuse, and other crimes**
 - **Our goal is to increase immigrant crime victims' safety, justice system participation, and the ability to rebuild their lives and thrive**



Virtual Roundtables

- **Law enforcement and prosecutors only**
- **Interactive discussion**
 - **Strategies to build rapport, establish trust, and ensure safety**
 - **Ask questions from subject-matter experts and peers**
- **To register, visit**
<https://www.surveymonkey.com/r/LERoundtable>



NIWAP <http://niwaplibrary.wcl.american.edu>

- **Training materials for:**
 - **Law enforcement**
 - **Prosecutors**
 - **Systems-based victim advocates**
 - **Judges**
 - **Attorneys**
 - **Other victim advocates**
- **Statutes, regulations, policies, and government publications**
- **Training tools, webinars, and podcasts**
- **Language access**
 - **Multilingual materials**
- **Immigration**
- **Law enforcement and prosecution tools**
- **Family and criminal law**
- **Violence Against Women Act (VAWA) confidentiality**
- **Public benefits, legal services, and economic relief**
- **Dynamics, culture, collaboration, and safety**

Interpretation Technical Assistance Resource Center (ITARC)

ITARC provides TTA to OVW-funded grantees, national organizations, state coalitions, and local programs on language access and interpretation. Our expertise focuses on: Title VI compliance, language access plan development and implementation, spoken language interpretation, sign language interpretation for deaf victims who do not use ASL, compliance with federal and state language access laws and policies, emphasizing the distinctions between bilingual advocacy and interpretation, and compiling resources and producing materials that enhance program development and practice

Materials Summary

- **Materials**
 - **Agenda**
 - **PowerPoint presentation**
 - **Hypotheticals**
 - **Evaluations**
- **Web library:** <https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials>
- **USB drives: Tools and resources**

NIWAP USB Drive Materials

- **U and T Visa Toolkit For Law Enforcement Agencies And Prosecutors**
- **U.S. Department of Homeland Security (DHS): U and T Visa Certification Resource Guides**
- **DHS memos and policies**
- **Tools for officers to promote language access**
- **Bluecard Tool Screening Victims for Immigration Protections**
- **Multilingual Know Your Rights materials**

General Caveats

- **Women, men, children, and persons of all genders can qualify for U and T visas**
- **Victims of almost all violent crimes, and many other crimes, are eligible to apply for U visas**

That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault

Participant Introductions, Goals, and Expectations



Learning Objectives

By the end of this training, you will be better able to:

- **Enhance successful outcomes of investigations and prosecutions by effectively using interpreters, leveraging bilingual officers, identifying technology to support interactions with victims, and implementing tools to strengthen victim safety**
- **Support U and T visa applications to promote trust with immigrant victims of crime and immigrant communities**
- **Improve victim safety and justice system participation and increase offender accountability through certification and language access**

Dynamics of Domestic and Sexual Violence Experience by Abused Immigrants

Department of Homeland Security (DHS)

- **DHS Video 1**



Coercive Control Over Immigration Status

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

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

Immigration-Related Abuse

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

Rationale

- **25% of perpetrators actively report the victim for removal**
- **36% of perpetrators get immigrant and Limited English Proficient (LEP) victims calling for help arrested for domestic violence**
- **U visa applicants have higher future crime reporting rates**

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (February 12, 2014) and Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff, and Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Victims (2017)*

What countries do the victims in your jurisdiction come from?*

*This project was supported by Grant No 15JOVW-21-GK-02208-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the U.S. Department of Justice, Office on Violence Against Women

- **Total foreign-born population: 1,227,488**
- **17.6% of the state's ~ 7 million people are foreign-born**
 - **54.6% naturalized citizens**
 - **27% legal permanent residents (as of 2019)**
 - **18.4% of temporary visa holders or undocumented immigrants**
 - **58.8% rise in immigrant population from 2000 to 2021**
- **Length of time immigrants have lived in the United States**
 - **41.3% entered before 1999**
 - **22.7% entered between 2000 to 2009**
 - **36% since 2010**
- **32.4% of children under age 18 have one or more immigrant parents**
 - **84.3% of these children are native-born U.S. citizens**

**Source: Migration Policy Institute Data Hub (October 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)*

Massachusetts: Countries/Regions of Origin and LEP (2021)*

- **Latin America: 38.8%**
 - **Caribbean (17.4%)**
 - **Central America (9%)**
 - **Brazil (7.8%)**
- **Asia: 27.3%**
 - **China/Taiwan (10.2%)**
 - **India (6.5%)**
 - **Southeastern Asia (6.1%)**
- **Europe: 18.5%**
 - **Eastern Europe (6.4%)**
 - **Portugal (4%)**
- **Africa: 9.6%**
 - **Western Africa (5.4%)**
- **Middle East: 3.4%**
- **Canada: 2.1%**
- **Oceania: 0.3%**
- **Language spoken**
 - **24.5% of people in the state who speak a language other than English at home**
 - **44% of foreign-born persons are LEP, speak English less than “very well”**

**Source: Migration Policy Institute Data Hub (October 2023)*

Massachusetts: Languages Spoken at Home (2021)*

- **Spanish (624,055)**
- **Portuguese (215,181)**
- **Chinese, including Cantonese and Mandarin (145,482)**
- **Haitian (84,603)**
- **Vietnamese (49,440)**
- **French, including Cajun (42,251)**
- **Arabic (40,414)**
- **Russian (37,680)**
- **Italian (27, 732)**
- **Hindi (27,646)**
- **Yoruba, Twi, Igbo, or other languages of Western Africa (18,970)**
- **Khmer (18,749)**
- **Japanese (17,180)**
- **German (17,146)**
- **Nepali, Marathi, or other Indic languages (16,673)**
- **Gujarati (16,029)**
- **Telugu (13,222)**

*Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/IA> (October 2023)

Massachusetts LEP (2021)*

- **LEP (speak English less than very well)**

- **Naturalized citizens: 36.4%**

- **Noncitizens: 53.1%**

- **LEP by language spoken at home**

- **Vietnamese (62.3%)**

- **Portuguese (50%)**

- **Khmer (49.4%)**

- **Chinese, including Cantonese and Mandarin (48.7%)**

- **Haitian (46.5%)**

- **Spanish (43.4%)**

- **Korean (37.6%)**

- **Russian (36%)**

- **Arabic (35.4%)**

- **Nepali, Marathi, or other Indic languages (34.7%)**

- **Gujarati (32.7%)**

Source: https://www.migrationpolicy.org/data/state-profiles/state/language/IA_ (October 2023)

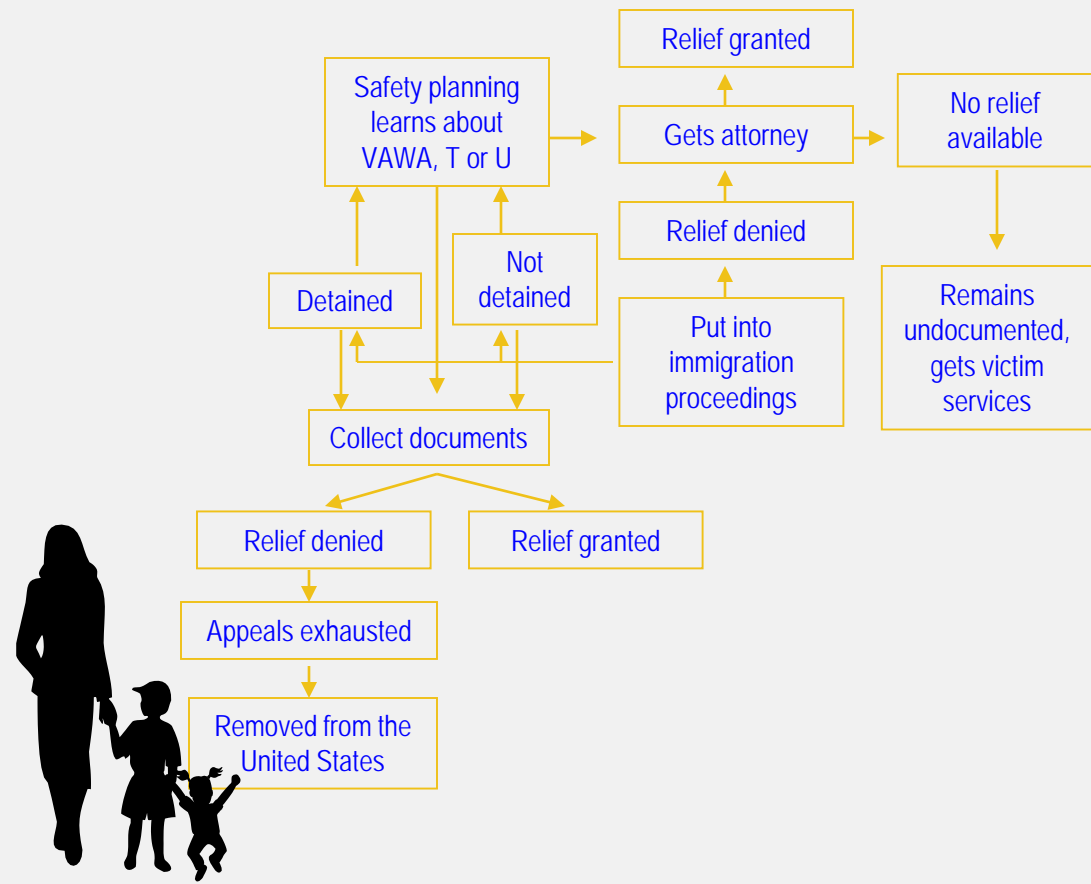
What does this mean for law enforcement and prosecutors?

Language Access and Title VI

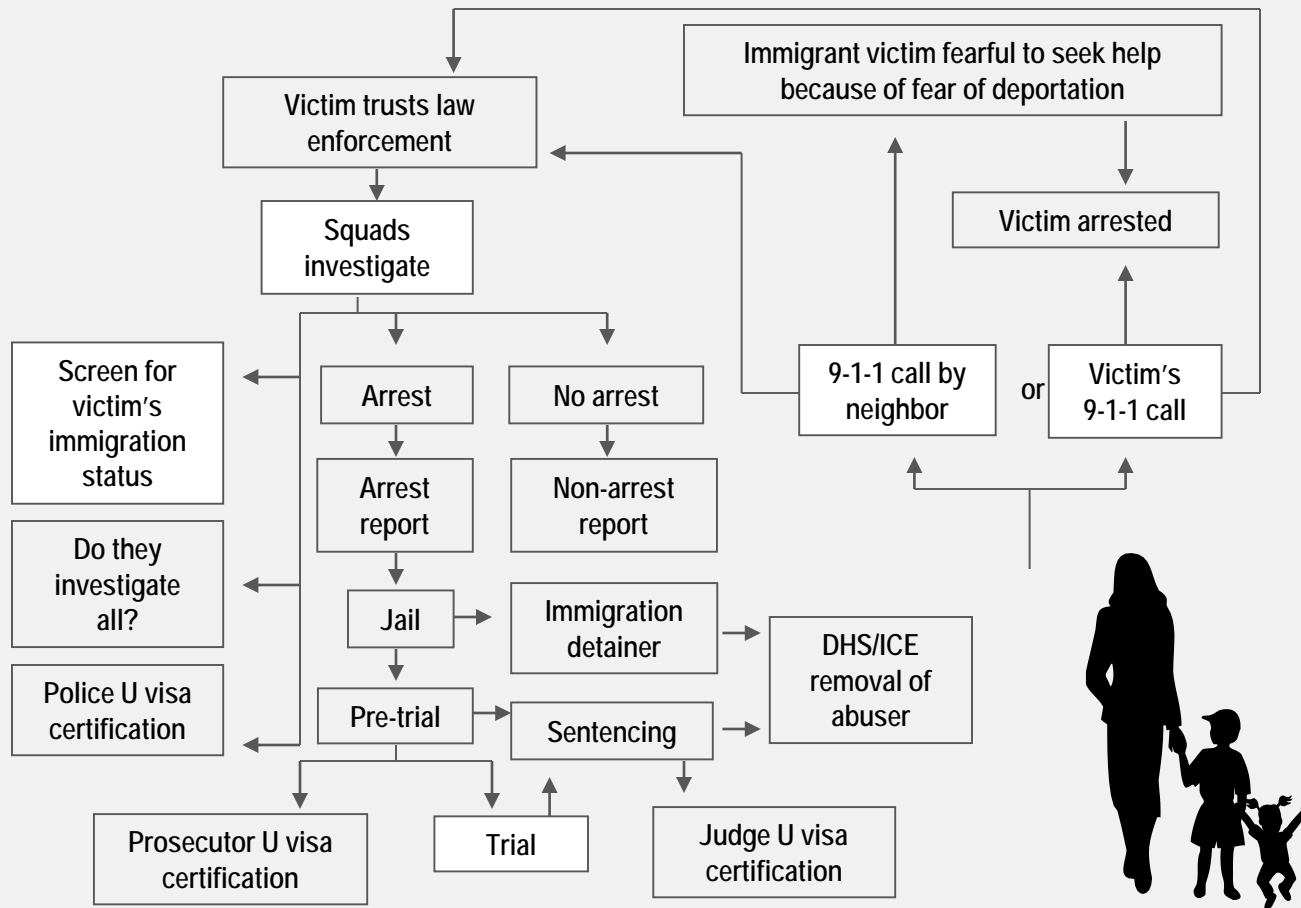
Why We Are Talking About Language Access



Complexity of battered women's lives, Praxis International, and Ellen Pence

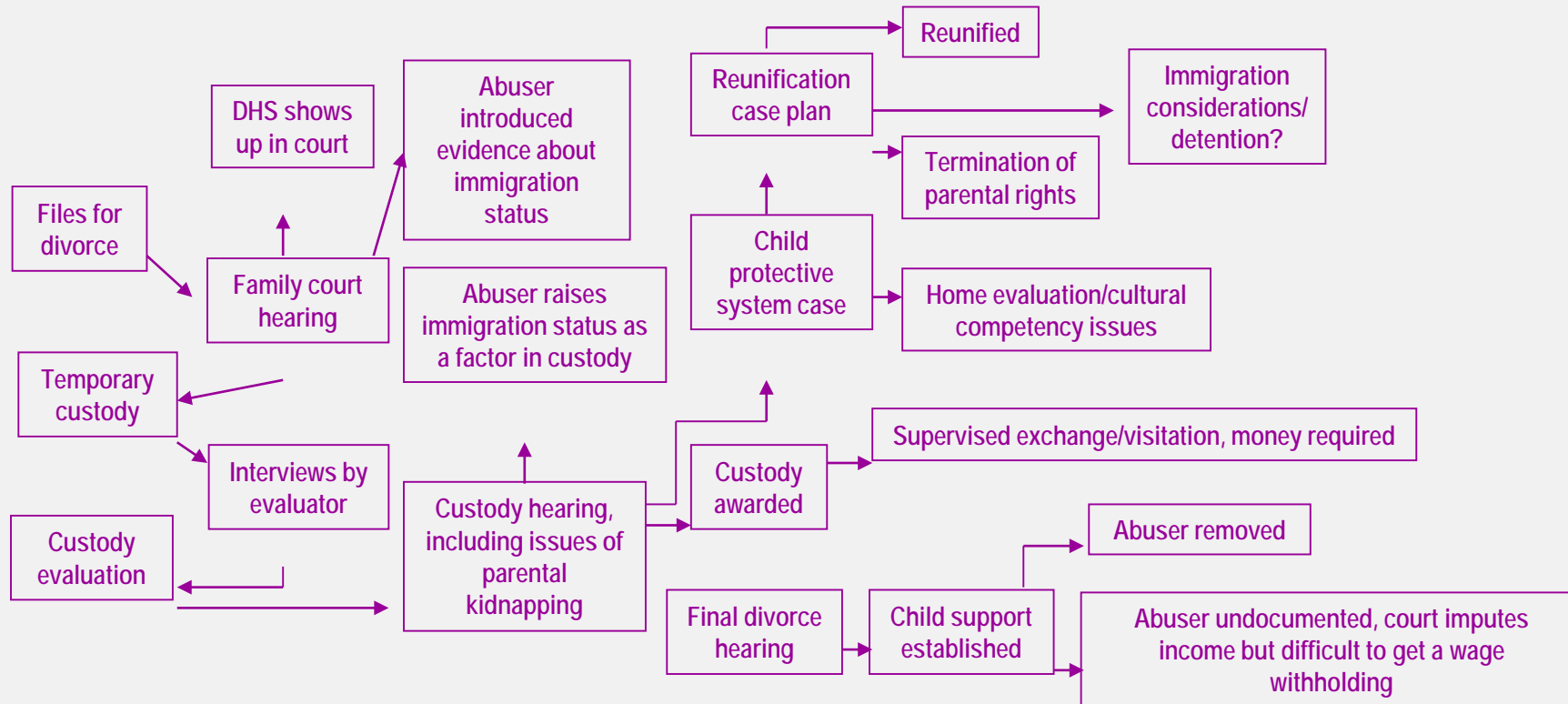


IMMIGRATION MAP

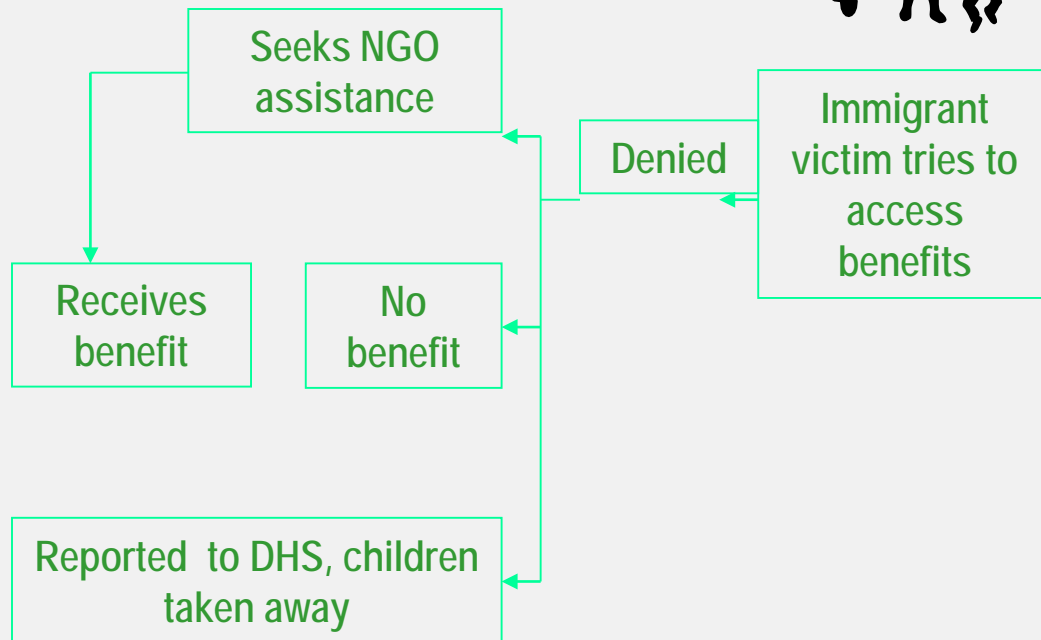


DOMESTIC VIOLENCE/ ARREST INCIDENT

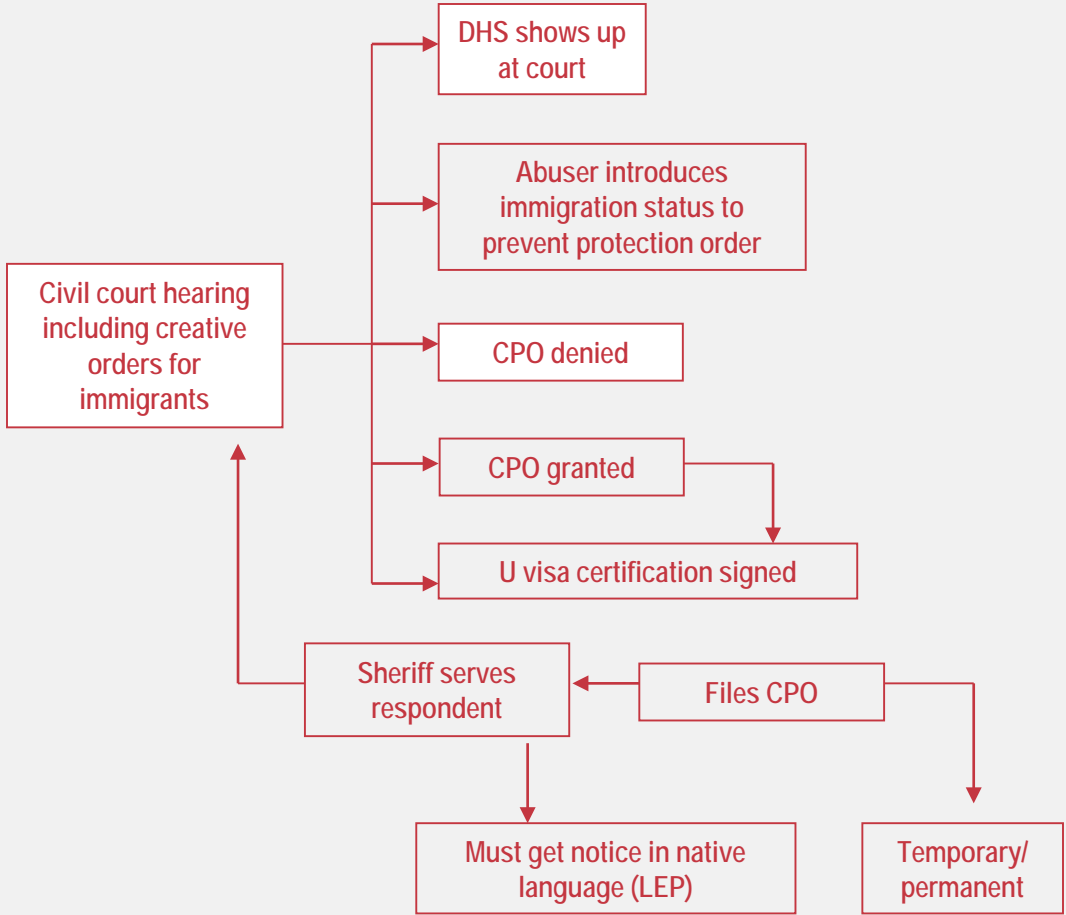
FAMILY COURT

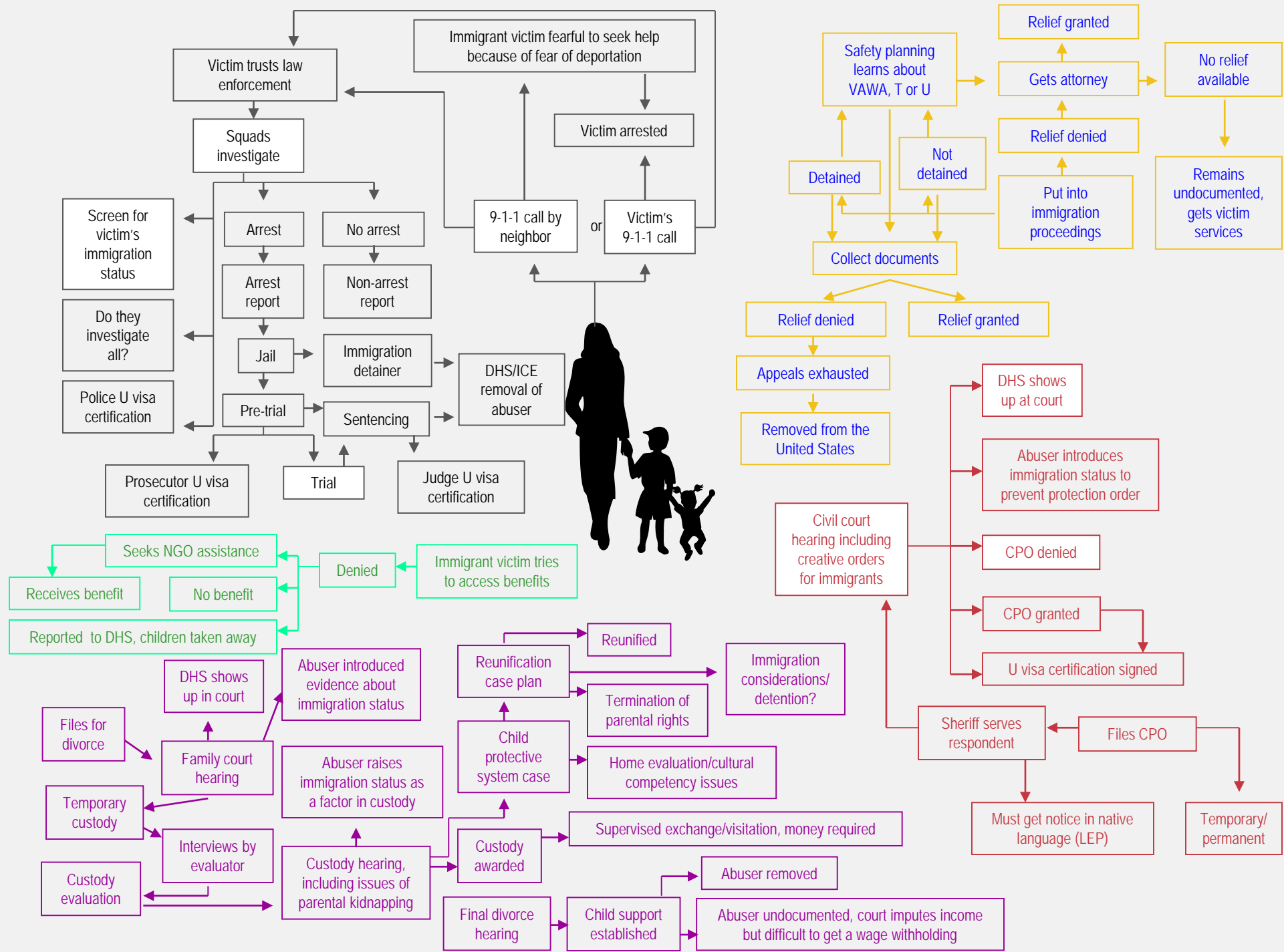


BENEFITS MAP



PROTECTION ORDER: CIVIL COURT PROCESS





Consequences of Lack of Language Access: Victims

If programs are not accessible, survivors will not seek help

**Perpetrators are rewarded:
cycle of victimization
continues and worsens**

**Risk to the life and
safety of the victim**

**Lack of community trust in
your organization**



Re-victimization

Consequences of Lack of Language Access: Police and Prosecutors

Risks to officer and community safety

Perpetrator not held accountable

Arrest of the victim instead of the perpetrator

Perpetrator reoffending

No conviction



Title VI

- Any recipient of federal financial assistance has a responsibility to ensure access/understanding to LEP persons
- The U.S. Department of Justice (DOJ) strongly suggests, but does not require, a written language assistance plan be put in place (this does not preclude the obligation of the recipient)
- The DOJ discourages the use of informal interpreters (e.g., family members, guardians, caretakers, friends) except in limited or emergency situations
- The DOJ leaves the determination of what documents need to be translated for the benefit of the LEP persons up to the recipient

**** *We can't afford language access:* This is not an acceptable excuse****

Difference Between

- **Securing the scene**
- **Interviewing victims and witnesses**



DOJ Requirements for Investigations and Interrogations

“A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”

- **Criminal interrogations**
- **Crime witness interviews**

Vital written materials translated into the primary language

- **Miranda warnings**

DOJ Model Guidance

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

LEP: A Federal Interagency Website, <https://www.lep.gov>

“Meaningful Access”

“Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior, as compared to programs or activities provided to English proficient individuals”

LEP: A Federal Interagency Website, <https://www.lep.gov>

DOJ and Exigent Circumstances

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

DOJ Requirements For Investigations and Interrogations

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

Qualified Interpreter

“When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer’s dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting, and tape recordings are made of the entire interview”

Definitions

Interpretation: Process of orally rendering communication from one language to another language (interpreter)

Translation: Preparation of a written text from one language into an equivalent form in another language (translator)

Definitions

Qualified bilingual member interpreter: Department members who identify themselves as “bilingual” must demonstrate, through a formal procedure which has been established by the city or department, competency to communicate in the source language by demonstrating the ability to listen to a communication in one language (source language) and orally convert it to another language (target language) while retaining the same meaning

Definitions

Qualified bilingual member interpreter: The department will provide all members with training in interpreting techniques, roles, and ethics so that they may understand and follow confidentiality and impartiality rules for interpreters. This also includes qualified bilingual members from other police departments

Modes of Interpretation

Simultaneous: The process of orally rendering one language into another language virtually at the same time that the speaker is speaking

Consecutive: The process of orally rendering one language into another language after the speaker has completed a statement or question

Sight translation: The rendering of material written in one language into spoken speech in another language

Interpretation Exercise

- 1. Person A will read the paragraph out loud, and Person B will attempt to reiterate/interpret the entire paragraph consecutively, in either English or in the target language**
- 2. Person B should not look at the material being read by Person A**
- 3. Person A should read the paragraph without pausing, and Person B will not be able to ask Person A to repeat the sentences or utterances. Person B, however, can take notes as Person A is reading**
- 4. When Person B has finished, Person A will then be the interpreter, and Person B will read a different paragraph or exercise with the same rules as #2**

Summary Interpretation

Summarization is NOT interpretation

- **Not allowed in legal and medical settings due to professional standards**
- **Can cause crucial information in interviews or interrogations to be excluded**
- **Untrained interpreters resort to this mode because they lack the skills for simultaneous or consecutive interpretation and cannot accurately reproduce rate of speech and density of information**
 - **Using a bilingual individual who may use their discretion to say what is important**
 - **Using a bilingual staff or member who has not been qualified, instances in an interrogation where a bilingual member does not accurately and completely interpret**

Bilingual Staff vs. Interpreter

- **Bilingual staff**
 - **When they are interpreting, they are not investigating**
- **Biculturalism vs bilingualism**
 - **Different words have different meanings:**
 - **For example, variations of the word “highway” depending on what state you are from**
 - **Intoxication vs intoxicar**

Bilingual vs. Interpreter

Bilingual staff

- **Fluent in English and native language**
- **Not a conduit or neutral party**
- **No government standard, but recommends assessment**
- **Qualified**

Interpreters

- **Spoken language from one language to another**
- **Training**
- **Neutral party**
- **Fluency in English and native language**
- **Conduit to communicate**

Bilingual Staff as Interpreter

- 1. Are you fluent in English and the foreign language?**
- 2. Are you able to interpret in the consecutive or simultaneous mode accurately?**
- 3. Are you familiar with specialized terminology of domestic violence and sexual assault in the source language?**
- 4. Can you avoid a conflict of interest?**
- 5. Can you stay in the interpreter's role and avoid functioning in the police role?**

Bilingual Staff as Interpreter

- 6. Will there be confusion by your change of roles?**
- 7. Could you be a potential witness in the case?**
- 8. Will you be interpreting for the victim and not the abuser/offender?**
- 9. Will waiting for a qualified interpreter negatively affect the victim's immediate safety?**

Meza Case: 2008

- ✗ **Charged with first-degree murder; charge was dropped to manslaughter**
- + **Baby died after Meza shook his son so violently that the child's brain began to swell, ultimately killing him**
- + **Detectives used a Spanish-speaking officer to assist with the interview**
- + **A review of the tapes revealed that the officer interpreting left out some of the information and misinterpreted several statements made by the suspect and the detective**

Qualified Interpreter

- **Proficiency in English and the interpreted language**
- **Can interpret using either the consecutive or simultaneous modes of interpretation**
- **Knowledge and use of a broad range of vocabulary, subject-specific terminology, and slang**
- **Knowledge and use of cultural nuances, regional variations, idiomatic expressions, and colloquialisms in all working languages**

Qualified Interpreter

- **Speak with proper pronunciation, diction, and intonation in all working languages**
- **Ability to listen to and comprehend various regional accents and/or dialectical differences in all working languages**
- **Following interpreter ethical standards**

Code of Ethics and Professional Conduct

- **Accuracy and completeness**
- **Representation of qualifications**
- **Impartiality and avoidance of conflict of interest**
- **Professional demeanor**
- **Confidentiality**
- **Restriction of public comment**

Code of Ethics and Professional Conduct

- **Scope of practice**
- **Assessing and reporting**
- **Impediments to compliance**
- **Duty to report ethical violations**
- **Professional development**

Strengthening Response to Gender-Based Violence

Identifying and using effective interpreters

Working Effectively With an Interpreter

- **Tell the interpreter the circumstances/conditions**
 - **Speakerphone vs. passing the phone, ensuring telephonic interpreter pauses**
- **Tell the interpreter and LEP individual that everything will be interpreted (false starts, mumbling, cursing, and thinking out loud)**
- **Maintain pauses/hand signals to regulate the speaker**
- **Be attentive to extraneous noise**

Working Effectively With an Interpreter

- **Conduct team interpreting for events lasting more than two hours**
- **Be aware of a LEP individual's education level, the interpreter will NOT adjust**
- **Explain and break down the system and legal concepts**
- **Do not give the interpreter any explanatory responsibilities**

Working Effectively With an Interpreter

- **Use straight, simple, direct language; short phrases; and first and second person**
- **Speak slower not louder; go sentence by sentence and pause**
- **Talk through, not *to*, the interpreter; continue to speak to the LEP individual and maintain eye contact as if the interpreter is not present**

Working Effectively With an Interpreter

- **Do not ask the interpreter for their opinion about the LEP individual**
- **Have patience; interpreted interviews will take longer**
- **Be aware of interpreter fatigue**
- **Check and recheck to be sure that the client understands using open-ended questions**
- **Do not be afraid to step in if you see something amiss**
- **Thank the interpreter!**

Telephonic Interpreter: Language Access Protocol

Ensure that patrol officers can access the telephonic interpretation service

- **Smart phone**
- **Need to radio to have a phone brought to them**
- **Personal cellphone**

Telephonic Interpreter: Language Access Protocol

Provide training for officers and prosecutors to recognize bad interpretation and to ask for a new interpreter

- **Factor in circumstances such as time, emergency, and necessity**
- **Inform the interpreter that you will be requesting another interpreter, then tell the client via an interpreter, “I will be requesting a new interpreter; please wait as I call in again for a new interpreter”**
- **A good practice is to record the bad interpreter’s identification number**

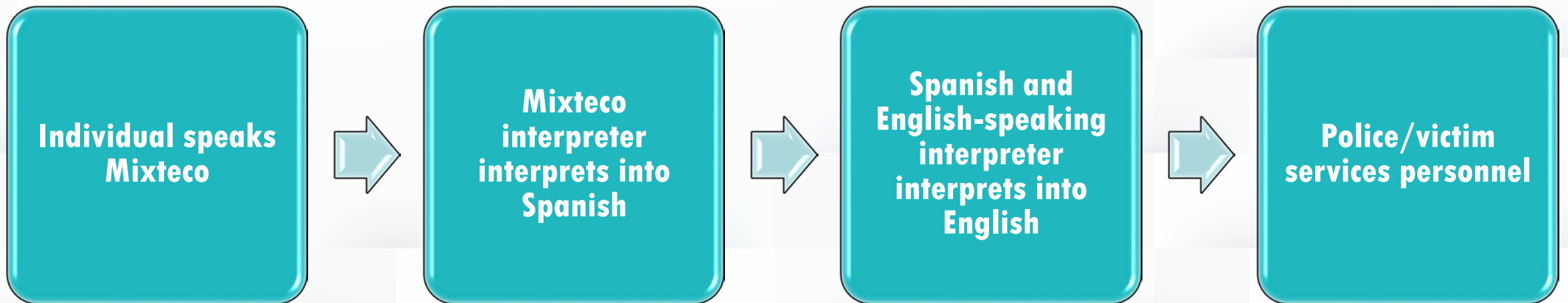
Vetting and Preparing Noninterpreters

- **In some emergencies and exigent circumstances, it may be necessary to use a third-party bilingual individual until a phone, interpreter, or qualified bilingual member arrives**
- **Qualifying questions**
 - **Ask for experience or credentials: Is the person educated in both languages?**
 - **Have they worked in both languages?**
 - **How did they learn the language?**
 - **Relationship to the party?**
- **Review the interpreter role**
 - **Complete**
 - **Accurate**
 - **Neutral**
- **Record the use of a third-party bilingual speaker**

Spotting a Bad Interpreter

- **Can you understand the interpreter?**
- **Does the individual look confused?**
- **Does the interpreter appear confused?**
- **Is the interpreter engaging in side conversations?**
- **Is the interpreter engaging in conversations with the individual before/after the interpretation meeting?**
- **Is the interpreter summarizing?**
- **Is everything being interpreted?**
- **Is there a change in the individual's demeanor?**

Relay Interpreting



“Confirming Our Meeting”

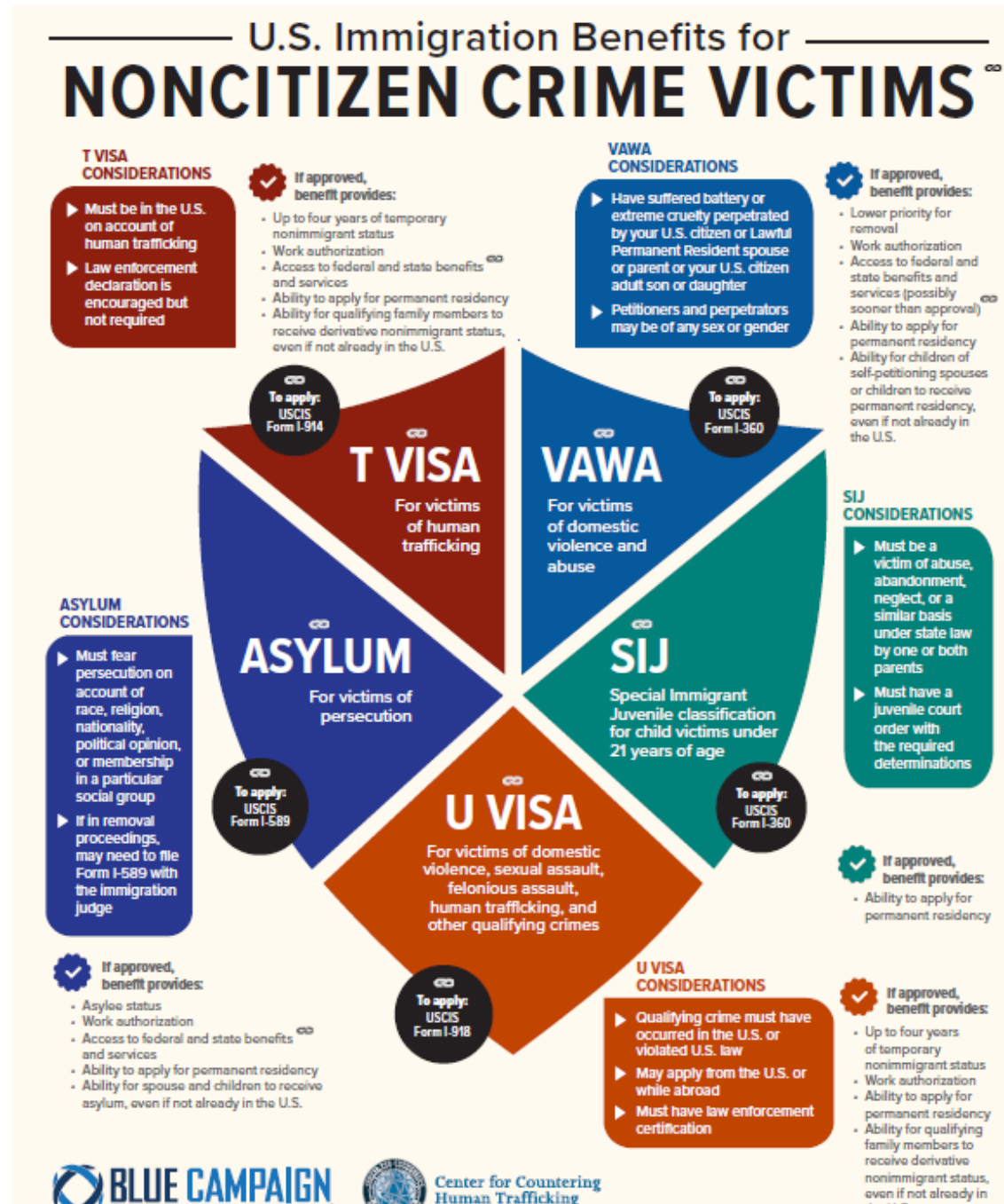
A word about Google Translate and other forms of mechanized translation

Break

History and Purpose of the U and T Visa Programs and VAWA's Immigration Protections



Immigration Protections for Noncitizen Victims of Crime and Abuse



Why do you think these forms of immigration relief exist for victims of crime?

Legislative Intent

- **We want crimes reported to police**
- **No one should be a victim of crime, especially violent crime**
- **Offenders prey upon the most vulnerable in our communities, often immigrants**
- **Without victims reporting crimes, we do not know about the most dangerous offenders**
 - **Domestic violence**
 - **Sexual violence**

Goals of Immigration Relief

Community-police relations

Increase victim participation in prosecutions

Improve

Safety of victims, communities, and police

Reporting of crime



U Visa Statistics

11/2011

% of U visas	Criminal activity
76.1% = Domestic and sexual violence	
9.9%	Felonious assault, murder, manslaughter
8.47%	Kidnapping, being held hostage, unlawful criminal restraint, torture
5.3%	Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation

Mass. Stat. Part III, Title IV, Ch. 258F §§ 1–4 Certifications for Victims of Violent Crime and Human Trafficking

Requires state and local law enforcement agencies to:

- **Adopt U and T visa certification policies**
- **Process certifications within 90 days**
 - **Complete and sign certifications**
 - **Issue written denial stating reasons**
 - **Written explanation of delay with projected response date**

Amherst Police Department (APD) Immigrant Community Members Policy #29 (July 1, 2020): 1

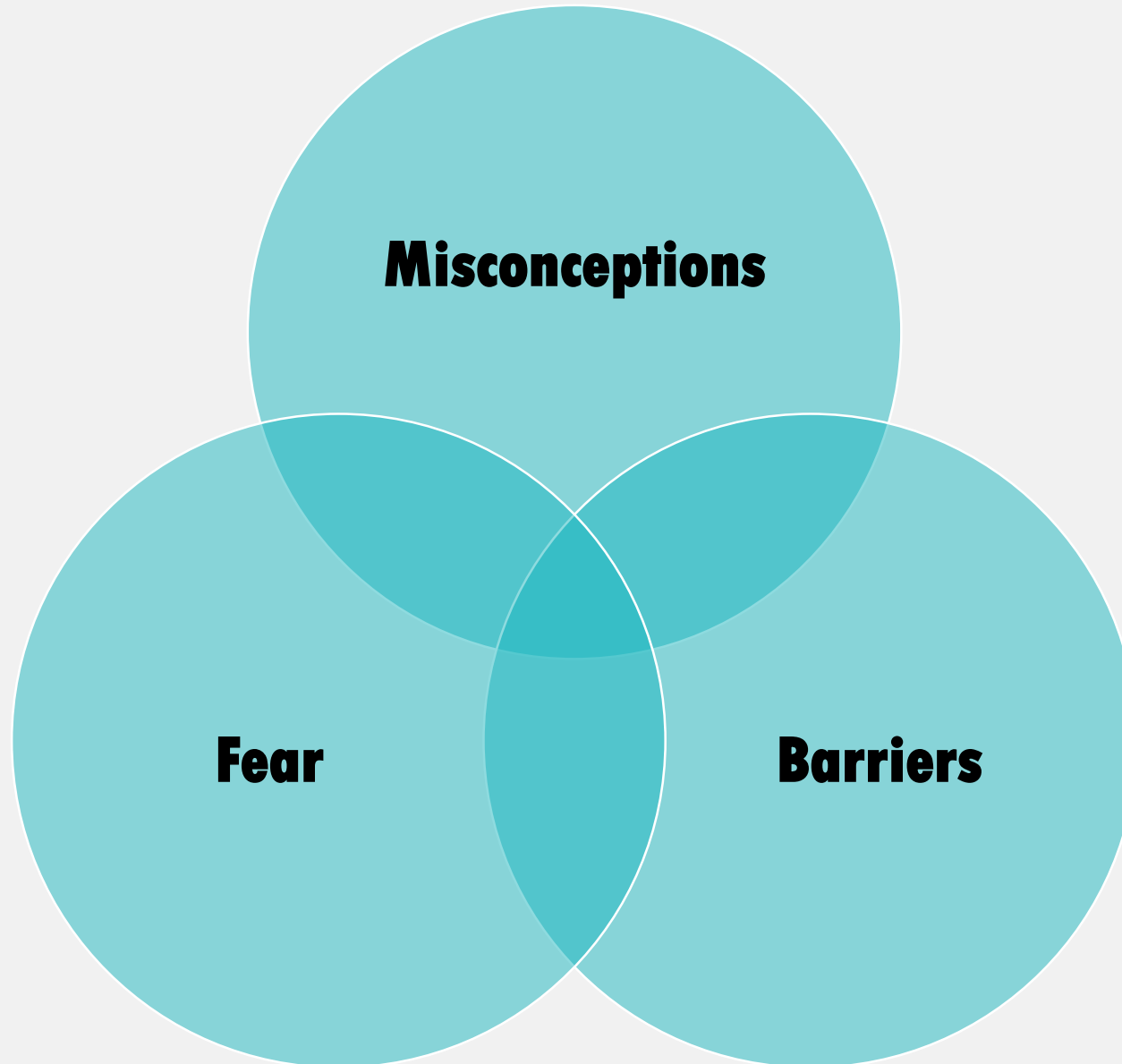
- **APD serves and protects all persons without regard to immigration status**
- **All persons have the right to file a police report, participate with police in activities, and benefit from police services**
- **APD does not:**
 - **Enforce immigration laws**
 - **Inquire about immigration status**
 - **Use immigration status as leverage with victims, witnesses, or suspects**
- **Being undocumented is not a basis for police contact, investigation, detention, arrest, or impact disposition of police contact**

APD Immigrant Community Members Policy #29 (July 1, 2020): 2

- **U visa certification**
 - **Affirms an immigrant victim's past, present, or future helpfulness; a police report is sufficient**
 - **Needed to enable victims to meet one eligibility requirement**
 - **Only DHS grants immigration status**
 - **Victims have an ongoing obligation to provide assistance**
 - **If the victim is no longer helpful, APS will notify USCIS only when the victim's lack of cooperation is not reasonable**
 - **APD officers should be aware of the U visa; it has applicability for immigrant communities and usefulness so that immigrants know that APD is a resource for assistance, not deportation**

How Promising Practices in Domestic Violence Investigations Promote Officer Safety

**What prevents immigrant victims
from reporting crime?**



Improving Outcomes of Criminal Investigations and Prosecutions: Leveraging U and T Visas

Fears

- **Deportation**
- **Returning to home country**
- **Separation from children**
- **Lack of contact with family**
- **Family in danger in their country of origin**
- **Ostracism from the community**
- **Retaliation**

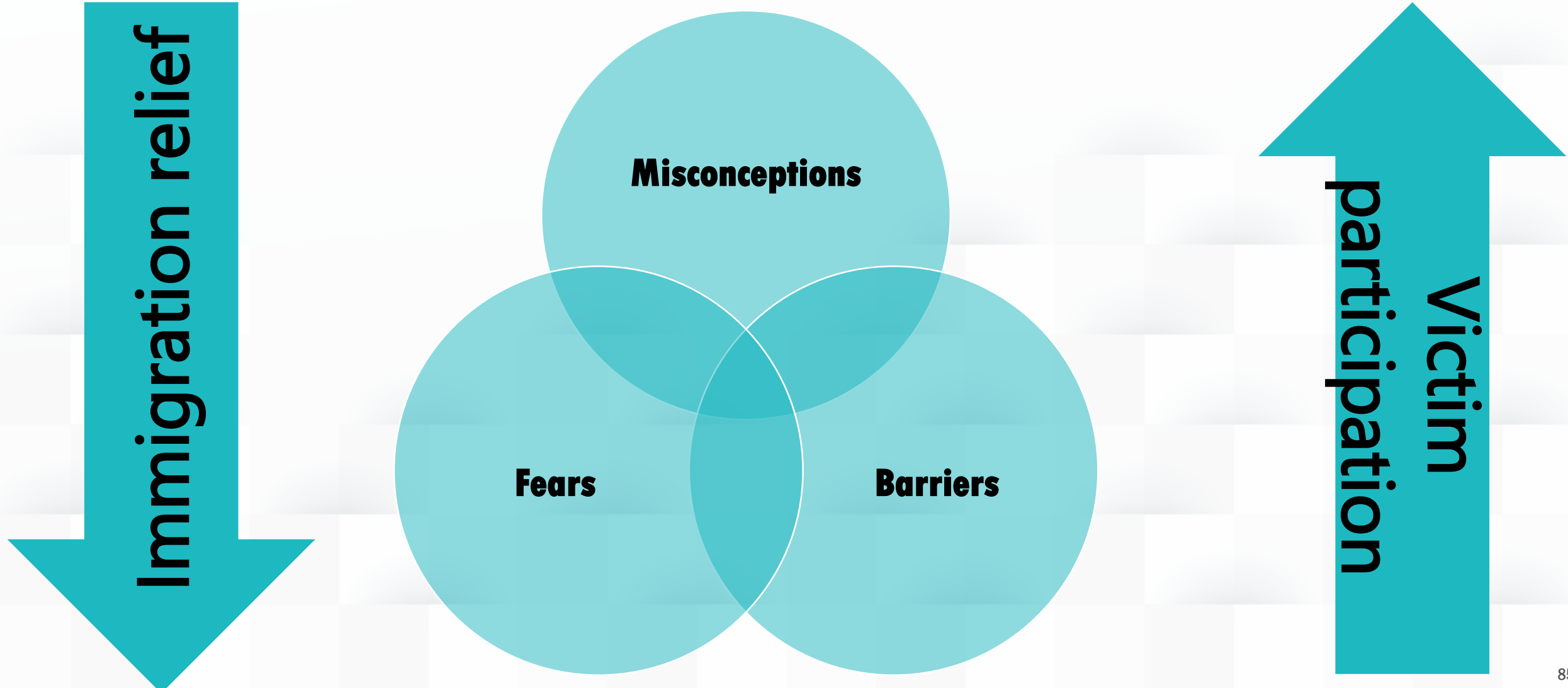
Misconceptions

- **Lack of knowledge of:**
 - **Crime victim legal rights**
 - **Laws regarding domestic violence and sexual assault**
- **Do not trust the police**
- **Believe that police will arrest them**
- **Think that local police are immigration officers**
- **No services are available to immigrant victims**
- **Believe that police are corrupt**
- **Think that the criminal justice system will do nothing**

Barriers

- **Do not speak or understand English**
- **Financial dependence on perpetrator**
- **Isolation**
- **Lack of transportation or childcare**
- **Community pressure**
- **Family pressure**
- **Religious factors**

Lack of Reporting



U Visa as a Tool to Address Crime

**Improving the reporting, investigation, and
prosecution of violent crime and keeping everyone
safer**

**What, if anything, do you know about
U visas?**

U Visa Basics

- **Law enforcement certification is just one part of the overall process; it does not equal citizenship**
- **Meant to promote the reporting of crime**
- **Target offenders who prey on the most vulnerable victims**
- **Offender may be a citizen or noncitizen**
- **Increases immigrant victim participation in the criminal justice system**
- **No statute of limitations**
- **Can be revoked**

U Visa Requirements

Victim (certification)

- **Qualifying criminal activity**
- **Possesses information about the crime**
- **Criminal activity occurred in the United States or violated U.S. law**
- **Admissible to the United States or granted a waiver**

Helpful (certification)

- **Has been, is being, or is likely to be**
- **Detection, investigation, prosecution, conviction, or sentencing**

Harm (victim's application)

- **Substantial physical or mental harm as a result of having been a victim of criminal activity**

Qualifying Criminal Activity

Abduction	Hostage	Sexual assault
Abusive sexual contact	Incest	Sexual exploitation
Blackmail	Involuntary servitude	Slave trade
Domestic violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False imprisonment	Murder	Trafficking
Felonious assault	Obstruction of justice	Witness tampering
Female genital mutilation	Peonage	Unlawful criminal restraint
Fraud in foreign labor contracting	Perjury	Prostitution
Rape	Attempt, conspiracy, or solicitation to commit a crime or similar activity	
	These are general categories and not specific crimes or citations to a criminal code	

Types of Qualifying Criminal Activity

- **Conviction of criminal activity is not required**
 - **Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes**
- **Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:**
 - **Hate crimes**
 - **Video voyeurism**
 - **Elder abuse/abuse of adults with disabilities**
 - **Child abuse**
 - **Robbery or aggravated robbery could be similar to felonious assault depending on the evidence and state law definition**

Who can certify?

“Law enforcement” and “law enforcement agencies”

- **Federal, state, and local**
 - **Police, sheriffs, FBI, HIS, or ATF**
 - **Prosecutors**
 - **Head of agency or designee**
 - **Judges, magistrates, commissioners, or other judicial official**
- **Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)**
- **Child and elder abuse agencies**
- **Other government agencies with investigative authority**

***Why did Congress design
the U visa to authorize
multiple agencies to
provide
U visa certification?***



U Visa Facts

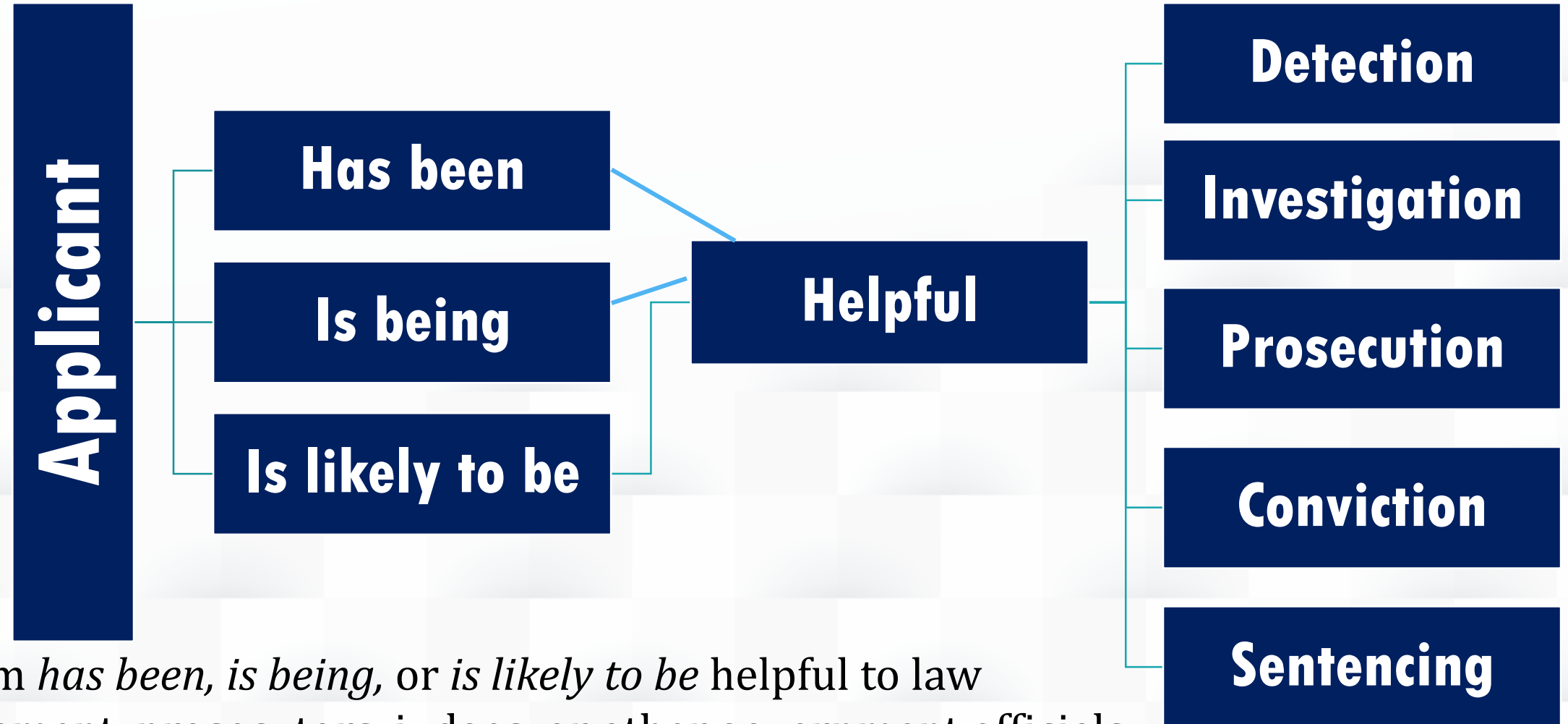
- **Only 10,000 U visas can be granted annually**
- **Bona fide determination with work authorization four to five years after filing**
- **The U visa grants a temporary four-year stay**
- **Only some U visa holders will qualify for lawful permanent residency, no guarantee**
- **U.S. citizenship can only be attained after lawful permanent residency for five years and proof of good moral character**

Who can apply?

- **Victim of qualifying criminal activity**
- **Parents and guardians can apply as an “indirect victim” if:**
 - **The direct victim is a child under 21 years of age**
 - **The direct victim is incompetent, incapacitated, or deceased due to murder or manslaughter**
- **Indirect victims must demonstrate that they were, are being, or are likely to be helpful**
- **When the victim is a child, the helpfulness requirement can be met by a “next friend” or family member being helpful**
- **Bystander victimization, very limited**

Definition of “Helpfulness”

8 C.F.R 214.14(b)(3)



A victim *has been, is being, or is likely to be* helpful to law enforcement, prosecutors, judges, or other government officials

Determining Helpfulness

- **Certifying agency determines “helpfulness”**
- **No degree (or timing) of helpfulness required**
 - ***DHS adjudicates helpfulness based on the totality of the circumstances***
- **Any agency may complete U visa certification as soon as they assess victim’s helpfulness**
- **Victim’s criminal history does not preclude U visa eligibility, particularly when the crime is connected to the abuse**
- **The investigation or prosecution can still be ongoing**
- **Certification can be “revoked”**

Example of Helpfulness May Include

Calling 9-1-1

Having a rape kit performed

Providing a description of an offender or their whereabouts

Allowing photographs to be taken

Filing for a protection order

Bringing a minor victim to court

Providing a statement about "other bad acts"

Providing evidence of abuse in a custody, child welfare, or divorce case

Testifying at a bond hearing, trial, or sentencing

Hypotheticals

Small Group Activity

- **Is this person eligible for a U visa certification?**
- ***Stories handout***



Helpfulness in the Regulations

- **Statute and DHS regulations: Has been helpful, is being helpful, or is likely to be helpful in the**
 - **Detection or investigation**
 - **Prosecution or conviction**
 - **Sentencing**
- **There is no degree of helpfulness required**
- **Law enforcement may complete U visa certification once they assess a victim's helpfulness**
- **The investigation or prosecution can still be ongoing**

The Following Are *Not Required* to Certify That a Victim Has Been Helpful

- **Certification signed within the statute of limitations of the qualifying criminal activity; crime can be long ago**
- **Conviction**
- **Charges filed**
- **Offender arrested/prosecuted**
- **Victim provides testimony at trial**
- **Victim is a necessary witness**
- **Offender is identified**
- **Offender is alive**
- **Case involving the offender is open or closed**



**Victim-
centered
approach**

DHS Promotes a Victim-Centered Approach

- **Includes practices that build trust, help stabilize victims, and minimize victimization and additional trauma. Equally values:**
 - **The identification and stabilization of victims, including providing immigration relief**
 - **The detection, investigation, and prosecution of perpetrators of serious crimes**
- **Promoted by use of qualified interpreters**

How do law enforcement and prosecution benefit from the U visa?



U Visa Benefits to Law Enforcement and Prosecutors

- **Encourages victims to report crimes**
- **Improves investigation and prosecution of violent crimes**
- **Increases the potential to convict the most dangerous criminals**
- **Demonstrates commitment to protecting immigrant community members**
- **Enhanced immigrant community involvement**
- **Makes it easier to identify victim witnesses**
- **Reduces repeat calls and recanting victims**
- **Fosters community policing partnerships**
- **Enhances officer and community safety**

International Association of Chiefs of Police 2018 Resolution

- **Recognizes U and T visas as significant tools to address crime and using them as best practice**
- **Supports training, education, communication, and “increased police leadership involvement”**
- **Committed to increasing collaboration**

U visas are “effective tools for law enforcement agencies that enhance public safety, officer safety, and protection of victims nationwide”

U and T Visa Victims “Red Flagged”



- **DHS computer system “red flags” victims who have filed for or have been granted victim-based immigration relief**
- **Reminds DHS staff of legal obligation not to rely on “tips” from perpetrators regarding victims of:**
 - **Domestic violence, sexual assault, stalking, and human trafficking**

Ongoing Assistance

Helpfulness

Filing

**Bona fide or wait
list determination**

**Approval and
reception of U
visa**

**Lawful permanent
residency**

**Continuing obligation to provide assistance when reasonably
requested**

Bona Fide Determination Process

Implemented on June 14, 2021

- **USCIS exercises its discretion to grant employment authorization documents and deferred action**
- **Applies to victims and qualifying family members with pending bona fide applications**
 - **“Bona fide” generally means made in good faith, without fraud or deceit**

Why would a victim report a crime and then refuse to participate in the ensuing investigation and trial?

Reasons for Refusing to Participate

- **Fear of reprisal**
- **Continued threats or violence**
- **Pressure from either family**
- **Financial hardship**
- **Lesser of two evils**

Helpfulness vs. Cooperation/Assistance

For certification before filing the U visa

- Has been helpful *or*
- Is being helpful *or*
- Is likely to be helpful

TO . . .

- Detection *or*
- Investigation *or*
- Prosecution *or*
- Conviction *or*
- Sentencing

After filing the U visa and for permanent residency

- Ongoing obligation to provide cooperation or assistance
 - Reasonably requested by law enforcement or prosecutors
- **Exception:** May show that refusal to cooperate or assist was not unreasonable

Was the request reasonable?

Reasonable requests are subjective, but consider if the request:

- **Endangers the victim, witnesses, family members, or others**
- **Subjects the victim to greater harm**
- **Increases trauma to the victim**
- **Negatively affects the victim's ability to support herself or her family**
- **Is reasonable in light of the perpetrator's force, fraud, or coercion of the victim**

Was the refusal unreasonable?

Unreasonable refusals are subjective, but consider if it is reasonable to refuse a request if the victim is:

- **In danger**
- **Unaware of the request**
- **Being intimidated**
- **Being threatened**
- **Concerned about the safety of her family**
- **Under the belief that participating is more dangerous than not**

Evaluating Unreasonableness

DHS regulations require affirmative evidence and consideration of:

- **Totality of the circumstances**
- **The nature of the victimization**
- **Applicable guidelines for victim/witness assistance**
- **Victim's fear of the abuser**
- **Trauma suffered (both mental and physical)**
- **Force, fraud, or coercion**
- **Age, maturity, and capacity of the applicant**
 - **8 C.F.R. 245.24(a)(5)**
- **Also look for witness tampering**

- **Proactively address witness intimidation**
 - **Monitor jail phone calls**
 - **Conduct wellness checks, when appropriate**
 - **Recognize changes in communication patterns**
- **Collaborate with victim service professionals**
- **Communicate with victim's immigration attorney or victim advocate**
- **Establish safe points of contact with friends and family**
- **Identify tactics used by the offender to assert power and control**
- **Continually safety plan with the victim**

Immigration Relief and Human Trafficking

Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Process: Act

- **Recruits**
- **Entices**
- **Harbors**
- **Transports**
- **Provides**
- **Obtains**
- **Advertises**
- **Maintains**
- **Patronizes**
- **Solicits**
- **Benefits, financially or by receiving anything of value**

Means

- **Force**
- **Fraud**
- **Coercion**

- **Proof of force, fraud, or coercion not required for sex trafficked children under 18**

Purpose: End

- **Commercial sexual activity**

- **A commercial sex act is any sexual act for which something of value is given or received**
 - **Money**
 - **Drugs**
 - **Food**
 - **Shelter**
 - **Clothing**
 - **Transportation**

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Process: Act

- **Recruits**
- **Harbors**
- **Transports**
- **Provides**
- **Obtains**
- **Benefits, financially or by receiving anything of value**

Means

- **Force**
- **Restraint**
- **Threats of harm**
- **Abuse or threatened abuse of the legal system**
- **Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint**
- **No federal exception for minors**

Purpose: End

- **Involuntary servitude**
- **Peonage**
- **Debt bondage**
- **Slavery**

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
- Victim is physically present in the United States on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions:
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the United States would cause extreme hardship
- Can include certain family members

Continued Presence

- **Temporary immigration status for any victim of human trafficking *who may be a potential witnesses***
 - **Sex and/or labor trafficking**
- **Victim (and certain family) remain lawfully in the United States during investigation or prosecution into human trafficking**
- **Granted for two years, can be renewed**
- **Receive work authorization, public benefits, and services**
- **Officers should refer victims to federal authorities who are authorized to file continued presence applications for trafficking victims with the DHS**

Large group discussion:

What tactics do you think traffickers use against immigrant victims of sex and labor trafficking?

U.S. Department of Labor

- **Deferred action available to victims and witnesses of forced labor and labor exploitation**
- **OSHA and wage and hour U visa certifications**

With Deferred Action and Work Authorization, Trust Improves

- **Increased justice system involvement**
 - **114% increase in willingness to trust the police**
 - **36% make police reports regarding future crimes**
 - **22% help other victims report abuse and seek help/justice**
- **Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse**
 - **74% decline in immigration-related abuse**
 - **78% decline in threats to snatch/cut off access to children**
 - **65% decline in efforts to use immigration status of the victim to gain advantage in family court**

2013 and 2017 Research Found Increased Justice System Participation

- **VAWA self-petitioners**
 - **62% participate in criminal investigations and prosecutions**
 - **63% seek civil protection orders**
 - **60% turn to the courts for child custody orders**
- **U visa victims**
 - **70% participate in active criminal prosecutions and investigations**
 - **29% are willing to cooperate if their criminal cases went forward**
 - **67% seek protection orders**
 - **64% seek custody orders**

Break

Complexities of Gender-Based Violence: Strategies for Enhancing Community Trust and Collaboration

Organizational Language Access Strategies

- **Language access policy**
 - **A guiding framework for bilingual members**
 - **A guiding framework for interpreters' roles and practices**
 - **Evaluations**
- **Training and continuous education**

Community-Police Partnership

- **Policy development road map**
 - Survivor-led participation
 - Community-based language experts
 - Bilingual members' participation
 - Monolingual members' participation

Road Map for Safer Communities

- Know various partners' roles
- Come to the table and have an open communication
- Create committees that form attainable goals and ensure that they are met
- Include representation from various multidisciplinary groups
- Establish policy to resolve issues that have or may come up
- Communicate about small problems immediately

Collaboration Between Law Enforcement and Prosecution

- **Maintain victim and witness contact**
- **Update victims on case status**
- **Coordinate victim services**
- **Investigate witness tampering and other co-occurring crimes**

Cooperation is key



Transcending Criminal Justice

- **Human connection**
- **Respect**
- **Understanding**
- **Humility**
- **Ownership**
- **Commitment (internal mobilization of supporters)**

Resources

- ▶ **Technical Assistance**

- ▶ **Call: (202) 274-4457**

- ▶ **Email: niwap@wcl.american.edu**

- ▶ **Web library: <https://niwaplibrary.wcl.american.edu/>**

- ▶ **Materials for certifying agencies on best practices for working with immigrant victims**

- ▶ **<https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials>**

- ▶ **U and T Visa Certification Toolkit**

- ▶ **DHS U Visa Certification Resource Guide**


- ▶ **Roll call training videos**

- ▶ **DHS Victim-Centered Approach**


Working With Interpreters: Strategies (Telephonic)

Tips for working with telephone interpreters, available at:

<https://www.lep.gov/resources/TIPS%20FOR%20WORKING%20WITH%20TELEPHONE%20INTERPRETERS%20%203-19-14%20%20508.pdf>



TIPS FOR WORKING WITH TELEPHONE INTERPRETERS



BEFORE YOU START:

- Know the target language (and preferably the dialect) for interpretation ahead of time
- Listen to a demonstration:
- Explore the vendor's website:
- Know how to use your conference call or three-way calling features
- If your meeting is longer than 30 minutes, try to schedule an in-person interpreter

If you have line quality problems before reaching an interpreter, press to be transferred. Ask the representative to stay on the line to check for sound quality.

If you have problems connecting to an interpreter, call Customer Service:

PLACING THE CALL:

Call: []
 (Client ID/Access Code:)

The number and Client ID should not be shared with outside entities.

AT THE START OF THE CALL:

Record the interpreter's ID number, introduce yourself and the interpreter, and define the role of the interpreter in the conversation. Be sure to let all parties know that they may be asked to stop, rephrase, or clarify throughout the call.

- ✓ Talk directly to the LEP individual, not the interpreter. For example, "What is your name?" and not "Please ask the caller for their name."
- ✓ If the LEP individual is willing to share, **obtain the caller's phone number** in case of accidental disconnection.
- ✓ **Pause after one or two sentences** to allow for interpretation
- ✓ **Ask one question at a time.**
- ✓ **Speak clearly** at a normal pace and refrain from technical language.

If you think something is wrong with the interpretation, feel free to ask the LEP individual:

"Would you mind repeating back to me what I said, so that I can make sure I am communicating clearly?"

If you believe that your communication with the LEP individual has been compromised by the quality of interpretation, END THE CALL.

Call the telephone interpretation service to obtain a new interpreter. Once you have successfully completed your call with a new interpreter, please provide feedback as noted.

AN INTERPRETATION MAY NOT BE GOING SMOOTHLY IF:

- The interpretation is too long or too short compared to the length of the material being interpreted;
- The interpreter repeatedly asks for clarification;
- It sounds like the interpreter is having a side conversation with the LEP individual;
- The LEP caller corrects or appears to disagree with the interpreter;
- The LEP caller begins to speak in halting and incorrect English;
- The interpreter or the LEP caller is becoming increasingly impatient;
- It sounds like the interpreter is using many English terms to convey the meaning of your conversation; or
- The interpreter does not conduct himself or herself in a professional manner.

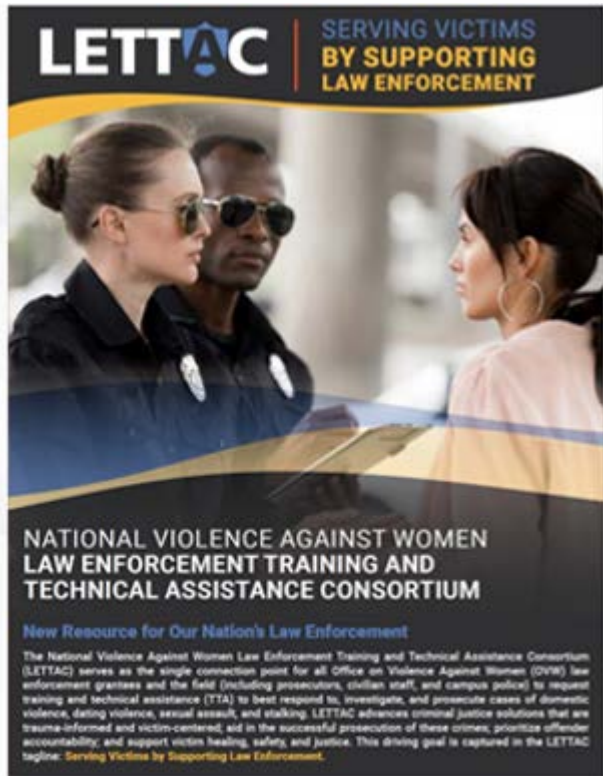
PROVIDING FEEDBACK: If you encounter technical problems or have questions, contact your section's Language Access Point of Contact:

For additional copies or technical assistance in language access matters, contact the Federal Coordination and Compliance Section at LEP@usdoj.gov April 28, 2014

Language Access Resources

- **U.S. Department of Justice, Civil Rights Division, Federal Coordination and Compliance Section (FCS)** www.justice.gov/crt/cor
- **www.lep.gov**
- **API-GBV, Interpretation Technical Assistance Resource Center, Cannon Han: chan@api-gbv.org | (415) 568-3314**
- **Vera Institute of Justice Center on Victimization:**
<https://www.vera.org/securing-equal-justice/ensuring-access-for-people-with-disabilities-and-deaf-people>

Your Voice Matters



- **Your feedback today will improve and shape future events**
- **Share LETTAC with colleagues and be our champions**



www.LETTAC.org