

Language Access Requirements and Effective Strategies to Remove Barriers for Limited English Proficient (LEP) Survivors

Language Access Municipal Network
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NIWAP Topics

- Best practices for working with immigrant and LEP survivors of domestic violence and sexual assault for
 - Law enforcement officers
 - Prosecutors
 - Victim advocate staff at these agencies
- U and T Visa certification
- U and T Visas and language access as crime fighting tools
- Crime scene language access best practices
- Prosecution strategies for successful prosecutions
 - VAWA confidentiality and discovery
 - Case strategies in criminal cases involving immigrant domestic and sexual assault survivor

Learning Objectives

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

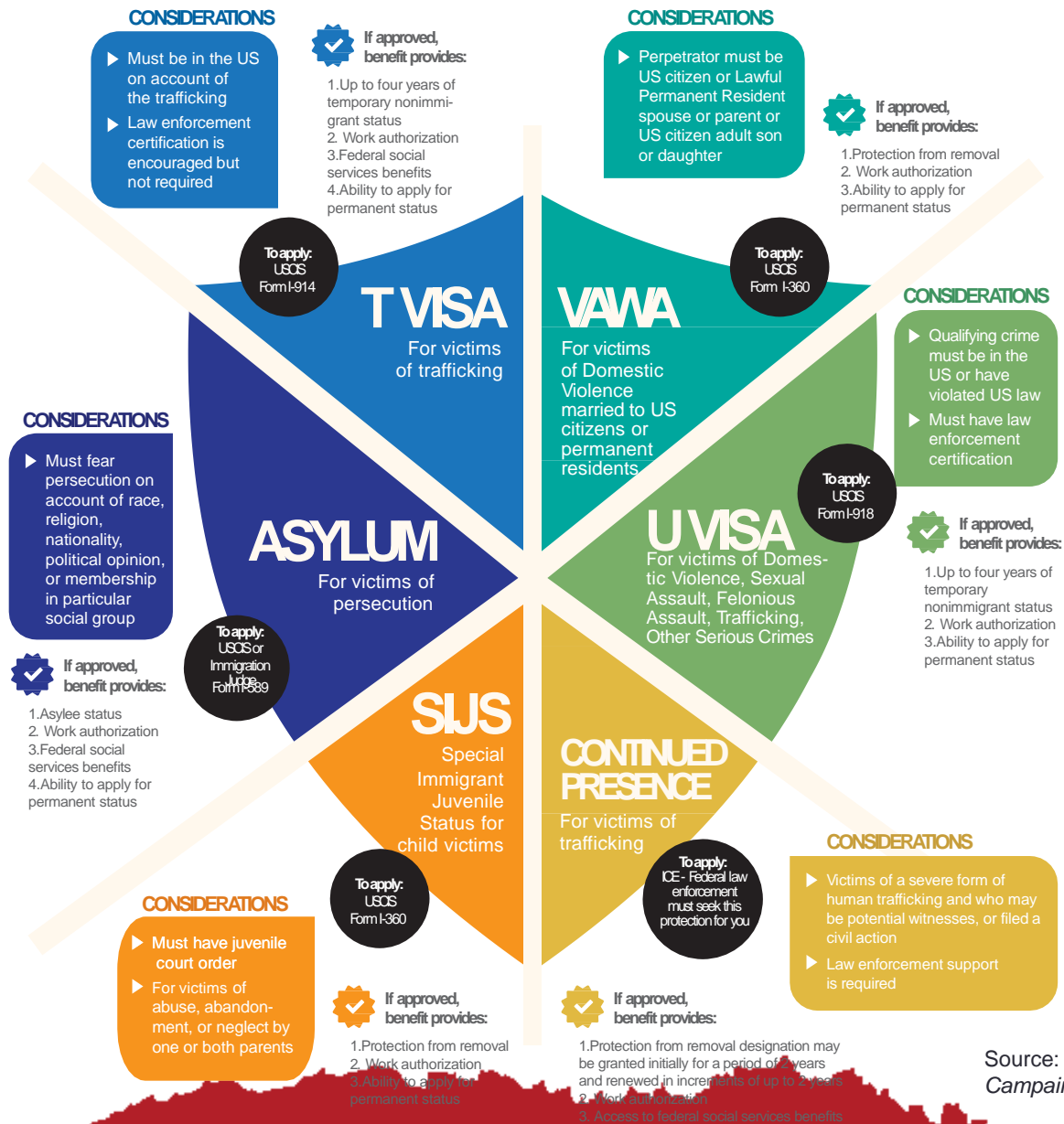
- Describe the language access requirements of Title VI and the American Disabilities Act
- Improve investigations and prosecutions by using language access tools
- Enhance victim safety and participation in the criminal justice system by improving language access

Poll1: Who has joined us
for this call?

- Agency
- State



PROTECTIONS FOR IMMIGRANT VICTIMS



Source: Department of Homeland Security, *Blue Campaign, Protection for Immigrant Victims* (2017)

Goals of Immigration Legal Relief for DV and SA

Prosecutions

Community-police relations

Improve

Reporting of crimes

Safety of victims, communities, and police

National Demographics (2017)*

- ❖ Total foreign born population – 44,525,855*
- ❖ 13.7% of the state's 325.7 million people are foreign born
 - 43% naturalized citizens
 - 28% lawful permanent residents
 - 29% temporary status or undocumented
- ❖ 43.1% rise in immigrant population from 2000 to 2017
- ❖ 26.0% of children in the state under age 18 have 1 or more immigrant parents
 - 88.0% of children with immigrant parents in the state are U.S. native.

**Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>*

National– Countries/Regions of Origin and Limited English Proficiency (2017)*

- ▶ Latin America – 50.4%
 - ▶ Mexico (25.3%)
 - ▶ Caribbean (9.9%)
 - ▶ South America (7.2%)
 - ▶ El Salvador (3.1%)
- ▶ Asia – 27.7%
 - ▶ China/Taiwan (6.4%)
 - ▶ India (5.9%)
 - ▶ Philippines (4.5%)
 - ▶ Vietnam (3.0%)
- ▶ Europe – 10.8%
- ▶ Africa – 5.1%
- ▶ Middle East – 3.5%
- ▶ Canada – 1.8%
- ▶ Oceania – 0.6%

Limited English Proficiency

(Speak English less than very well)

- ▶ Naturalized citizens (37.3%)
- ▶ Non-citizens (58.8%)

Languages Spoken at Home

- ▶ Spanish (41,017,620)
- ▶ Chinese (3,462,091)
- ▶ Tagalog (1,746,344)
- ▶ Arabic (1,227,768)
- ▶ French (1,202,060)
- ▶ Russian (936,344)
- ▶ German (917,812)

**Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>
(Feb. 2018)*

United States – LEP*

- Limited English Proficiency
 - Speak, read, write, understand English less than very well
 - Naturalized citizens - 37.3%
 - Noncitizens - 58.3%
- Of Persons Who Speak Language Other Than English at Home % LEP (344,000+ speakers)
 - Vietnamese 58.3%
 - Chinese 54.6%
 - Korean 51.8%
 - Russian 42.8%
 - Spanish 40.1%
 - Haitian 38.9%
 - Arabic 37.2%

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/US> (July 2019)

Title VI of the Civil Rights Act 1964

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.

Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d

LEP Executive Order

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

Executive Order 13166

Goal

Provide meaningful access to people with limited English proficiency

Provides

Instruction and guidance about what Title VI and Lau v. Nichols means for federal agencies and grantees

Encourages

the development of language access plans

What is Meaningful Access?

- Meaningful access is defined in the US Department of Justice as:

“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”

Who's covered?

1. Federally conducted programs
2. State/local government grantees
3. Non-governmental organization grantees



Recipients of Federal Financial Assistance and Title VI Compliance

- Title VI covers a recipient's entire program or activity
 - Even if only one part of the recipient's funding comes from federal financial assistance
- Sub-recipients are also covered

Meaning of Title VI

- If an organization receives any federal funds
- All aspects of the organization must take reasonable steps to provide meaningful access to programs, benefits, and services offered by the organization to persons with LEP

Recipients of Federal Financial Assistance and Title VI Compliance



Poll 2: Which one of these factors outweighs the others for first responders, courts and victim services agencies?

1. Number or proportion of LEP individuals served or encountered in the eligible service population
2. Frequency of contacts
3. The nature and importance of the program, activity or services
4. Resources available →
 - Dept. of Justice guidance states that lack of resources is no excuse for failure to comply.

Policy Guidance Four Factors - 67 Fed. Ref. 41455

POLL

We Can't Afford Language Access

Financial limitations do not provide an exemption from language access requirements. Investigators will look at:

1. Demonstrated previous success
2. Whether other essential services are being restricted or defunded
3. Whether additional revenues secured or technology used
4. Whether the grantee has an implementation plan
5. Nature and impact on LEP persons

LANGUAGE ACCESS AND FIRST RESPONDERS



DOJ Model Guidance for Law Enforcement Agencies

- Police provide free language access to:
 - LEP persons who request it
 - When officer decides it is helpful to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language
 - DOJ Sample Policy Center City Police Department
 - DOJ Approach to language access outline in:
 - Steps for Obtaining Interpreters

DOJ and Exigent Circumstances

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

DOJ Requirements for

Investigations & Interrogations

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

Once The Investigation Begins A Qualified Interpreter is Needed

- Writing a police report
- Detective interviews
- Taking initial statements
- Crime scene interviews
- Communication relating to taking photographs
- Formal interviews at the station
- Developing probable cause
- Preparing case for prosecution

What is a Qualified Interpreter?

- Different than a certified interpreter
- Category for languages that certification does not exist but the interpreter has:
 - completed interpreter training and
 - has experience interpreting.



Bilingual Officer v. Interpreter

- Bilingual officers
 - When they are interpreting, they are not investigating
- Biculturalism v. bilingualism
 - Different words have different meanings:
 - e.g. Variations on the word “highway” depending on what state you’re from.
 - Feet v. meters

Case Study - *Jose Lopez Meza - 2008*



- Charged with first degree murder – Charge was dropped to manslaughter
 - Baby died after Meza shook his 3 week old son so violently the child’s brain began to swell, ultimately killing him
 - Detectives used a Spanish speaking officer to assist with the interview
 - Review of the tapes by court appointed certified interpreters revealed that the officer interpreting left out some of the information, misinterpreted several statements made by the suspect and the detective

Using Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements (excited utterances)

Harms

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



SALEM POLICE DEPARTMENT ADDRESSING LANGUAGE ACCESS

Salem Police Department - Language Access

- Training for bilingual officers, civilian employees, advocates, community partners to become qualified interpreters
 - Across Jurisdictions
 - Qualified interpreter assessments
- Access to over the phone interpretation for officers, detectives and other department staff
- Securing audio/video all inclusive interpreter stations

Salem Police Language Access Policies and Collaboration

- Development of language access policies, procedures and protocols
- Action and procedure memo's that support meaningful response
- Collaboration with service providers, others
- Language Access + U visa certification Enhances community outreach

Promising Practices

- Face-to-face interpretation:
 - Qualified interpreter training for first responders, court staff, advocates and services providers
 - Training on how to interpret
 - Competency exam
 - Note on police report= alerts court of need
 - Collaboration with university with language interpretation programs for student interpreters

Interpretation Best Practices

- Interpreter uses a dictionary, takes notes
- Interpreter comfortable with subject matter of the case
- Address cultural experiences ahead of time
- Ensure that they do not know the parties
 - If using telephonic interpreters: first ask where they are located
- Team interpreting and interpreter breaks

Tips for Working with Interpreters

- Speak in first person
- Always look at the LEP person needing interpretation when speaking or when interpreter is speaking
- Pause after a full thought for interpretation to be accurate and complete
- Avoid asking multiple questions without breaks
- Remember everything will be interpreted

Red Flags



- Can you understand the interpreter?
- Does the LEP person look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter summarizing?
- Is there a change in the individual's demeanor?
- Are they using English words?

Creative Approaches

- Building trust through outreach
- Role of language access programs
- Collaboration
- Tapping into community resources
- Resource sharing

Language Access in the Courts



DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

- LEP individuals are to be provided qualified interpreters
 - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minor crime victims)
 - In ALL court room proceedings whether civil, criminal, administrative, includes motions and status hearings
 - LEP individuals should not incur any fees for these services

DOJ LEP Directive to State Courts on Interpreters (8/20/2010)

- LEP individuals are to be provided qualified interpreters
 - Not restricted to court rooms, also other court functions including:
 - Clerks offices, records room
 - Alternative dispute resolution
 - *Pro se* clinics
 - All interactions with court appointed personnel (e.g. batterers treatment, guardians ad litem, court psychologists, testing)

Translation

- Requirements for Documents
 - Translated petitions, court orders, and materials explaining rights and obligations
 - Post signs and public service announcements in foreign languages advertising free qualified interpreters
 - Language cards to accurately identify individual language needs

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010)

Languages for Translation

- Translation Requirements for Documents
 - All languages spoken by the lesser of 5% of population or 1000 individuals
 - When fewer than 50 persons = 5% written notice in that language of right to receive oral interpretation

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010)

Collaboration on Language Access

- How courts develop and grow language access programs
- Attorneys should alert the court in advance when a case involves any person with LEP
 - Note the victim's language on the court jacket
 - Police can help by noting language in the police report
 - The court can qualify an interpreter for the case
 - National Center for State Courts Bench Card
- Attorneys can arrange to translate evidence in advance and provide in discovery

Resources, Training and Technical Assistance

Limited English Proficiency (LEP)

LEP.gov

A Federal Interagency Website

Search LEP.gov

LEP Resources and Information

[Frequently Asked Questions](#)

[Executive Order 13166](#)

[Resources by Subject](#)

[Recipients of Federal Assistance](#)

[Interpretation and Translation](#)

[LEP and Title VI Videos](#)

[Demographic Data](#)

[LEP Mapping Tools](#)

LEP Compliance

[Federal Agency LEP Plans](#)

[LEP Guidance for Recipients](#)

[LEP Guidance for DOJ Recipients](#)

[File a Complaint](#)

[LEP.gov](#)

[Suggest LEP Resources](#)

[Report Broken Links on LEP.gov](#)

[Last Updated: November 19, 2018](#)

Department of Justice LEP Guidance for Recipients and Agencies

Department of Justice LEP Guidance for Recipients and Agencies

[LEP Guidance for DOJ Recipients](#)

[Language Access Guidance Materials](#)

[State Courts](#)

[Corrections](#)

[Police and Sheriff's Departments](#)

[Guidance to State and Local Government](#)

[Guidance for Federal Agencies](#)

LEP Guidance for DOJ Recipients

[\[TOP\]](#)

[2002 LEP Guidance for DOJ Recipients - June 18, 2002](#)

[General Guidance Issued with Executive Order 13166 - August 16, 2000](#)

[LEP Enforcement and Compliance Activities](#)

Language Access Guidance Materials

[\[TOP\]](#)

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LEP.gov website

Virtual Roundtables

- Only law Enforcement & Prosecutors
- Interactive discussion
 - Strategies to build rapport, establish trust, and ensure safety
 - Ask questions from subject-matter experts and peers
- To register, visit <http://site.niwap.org/tools/law-enforcement-prosecution-roundtable/>



Technical Assistance

- Technical Assistance
 - Call: (202) 274-4457
 - Email: info@niwap.org

Resources

- Materials on Language Access
- NIWAP's Web Library
<http://niwaplibrary.wcl.american.edu>
- Materials and tools for law enforcement and language access available at
<http://niwaplibrary.wcl.american.edu/language-access-materials-for-police-and-prosecutors/>

Trainings

- Onsite training on immigrant crime victim issues and language access
- Available for law enforcement, prosecutors, judges, victim service professionals, allied professionals, and others
- To sign up to have us bring training to your jurisdiction go to:
<https://www.surveymonkey.com/r/training-form>

Question and Answer



Thank You!

