

Best Practices when Working with Crime Victims

**The National Center for Victims of Crime
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Introduction

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Materials

- Sign in sheet
- Power point and materials available at:
 - <http://niwap.org/go/ncvc2018>

General Caveats

- Women, men and children can qualify for U 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*

**What, if anything, do you know
about immigration relief for
immigrant victims?**

Participant Goals and Expectations



Learning Objectives

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

- Use the U and T visa programs to effectively enhance work of law enforcement and prosecutors with immigrant victims
- Enhance officer/victim/community safety using language access and certification programs
- Build collaborations and best practices for working with victim advocates and attorneys with expertise serving immigrant victims

Working with Immigrant Survivors

Demographics

US Demographics (2016)*

- ❖ **Total foreign born population – 43,739,345**
- ❖ **13.5% of the country's ~323.1 million people are foreign born**
 - 48.6% naturalized citizens
 - ~31% legal permanent residents (DHS data)
 - ~4.4% temporary visa holders
 - ~16% undocumented (includes pending VAWA, Us, Ts, SIJS)
 - 40.6% rise in immigrant population from 2000 to 2014
 - 21.6% of U.S. population speak a language other than English at home
- ❖ **Length of time immigrants have lived in the U.S.**
 - 54.7% entered before 1999
 - 26.7% entered 2000 -2009
 - 18.6% entered 2010 or after
- ❖ **25.2% of children under 6 have one or more immigrant parents**
- ❖ **25.8% of children under age 18 have one or more immigrant parents**
 - 88% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (July 2018) and DHS Population Estimates (November 2016)*

US – Countries/Regions of Origin & Limited English Proficiency (LEP)(2018)*

- ▶ **Asia – 28.1%**
 - ▶ China/Taiwan (6.2%)
 - ▶ India (5.6%)
 - ▶ Philippines (4.4%)
 - ▶ Vietnam (3.1%)
 - ▶ Korea (2.4%)
- ▶ **Latin America – 51.0%**
 - ▶ Mexico (26.5%)
 - ▶ Other Central America (4.7%)
 - ▶ South America (6.8%)
 - ▶ Caribbean (9.8%)
 - ▶ El Salvador (3.2%)
- ▶ **Europe – 10.9%**
 - ▶ Eastern Europe (4.9%)
- ▶ **Oceania – 0.6%**
- ▶ **Africa – 4.9%**
- ▶ **Middle East – 2.7%**
- ▶ **Non-U.S. North America – 1.8%**
- ▶ **Language spoken**
 - ▶ 21.6% of people in the U.S. speak language other than English at home
 - ▶ 49.1% of foreign born persons are LEP - speak English less than “very well”

*Source: Migration Policy Institute Data Hub (January 2017)

U.S. Demographics (2016)*

- ❖ Total foreign born population – 58,766
 - ❖ 2% of the state's 3 million people are foreign born
 - 40% naturalized citizens
 - ≈17.5 lawful permanent residents and temporary status
 - ≈42.5% undocumented
- <http://www.migrationpolicy.org/data/authorized-immigrant-population/state/MS>
- ❖ 47.3% rise in immigrant population from 2000 to 2016
 - ❖ 5% of children in the state under age 18 have 1 or more immigrant parents
 - 88.9% of children with immigrant parents in the state are U.S. native.

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

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Countries/Regions of Origin and Limited English Proficiency (2016)*

- ▶ Americas – 47.9%
 - ▶ Mexico (30%)
 - ▶ South America (4.2%)
 - ▶ Canada (3.1%)
- ▶ Asia – 31.2%
 - ▶ China (6.7%)
 - ▶ India (6.1%)
 - ▶ Philippines (6%)
 - ▶ Vietnam (5.5%)
 - ▶ Japan (2.4%)
- ▶ Europe – 8.9%
 - ▶ Germany (2.5%)
 - ▶ United Kingdom (1.7%)

- ▶ Africa – 5.4%
- ▶ Middle East – 3.2%

Limited English Proficiency
(Speak English less than very well)

- ▶ Naturalized citizens 26.9%
- ▶ Non-citizens 51.8%

Languages Spoken at Home

- ❖ Spanish (67,256)
- ❖ Vietnamese (5,951)
- ❖ French (3,983)
- ❖ Mandarin or Cantonese (3,740)
- ❖ German (3,116)
- ❖ Tagalog (2,837)
- ❖ Arabic (2,114)

*Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MS>
(Feb. 2018)

DYNAMICS AND BARRIERS FOR IMMIGRANT SURVIVORS

What barriers and fears prevent immigrant victims from seeking help?

Major Challenges in Working with Immigrant Victims of Crime

- Fear of Deportation
- Language
- Retaliation
- Fear of losing their children
- Lack of knowledge of legal rights
- Do not trust that advocates, attorneys, police, prosecutors, judges will help them

Department of Homeland Security



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 survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
 - Lifetime as high as 49.8%
 - Those married to citizens and lawful permanent residents – 50.8%
 - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

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.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." *International Review of Victimology* 7 93113

- 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)

Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse
 - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
 - May predict abuse escalation
 - Corroborates existence of physical and sexual abuse

*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
 - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).
- Latina college students
 - Experience the highest incidents of attempted rape compared to White, African American and Asian college students
 - Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000).

When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7% (2013) – 39% (2017)

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 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)

VAWA CONFIDENTIALITY, VICTIM SAFETY, AND CASE STRATEGY IN CASES OF IMMIGRANT SURVIVORS



Raise Your Hand if...

- You have worked with domestic violence or sexual assault victim clients who have received
 - Received threats of deportation from perpetrators
 - Been contacted by immigration enforcement officials

VAWA Confidentiality Prongs

Non-
Disclosure

Abuser-
Provided
Information
Prohibition

Location
Prohibitions

VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone

Relying on Information Provided by: Abuser, Perpetrator, Trafficker

- The government cannot gather and/or use information provided solely by:
 - an abuser;
 - trafficker;
 - crime perpetrator or
 - People closely associated with the perpetrator (e.g. family members) (ICE 2007)
- To take an adverse action against a victim includes
 - Arrests for civil immigration violations
 - Placing the an immigrant in removal proceedings or detention
 - Seeking or using information provided by the perpetrator in the victim's immigration case

Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



January 2018 ICE Courthouse Enforcement Policy

Limit enforcement to targeted immigrant

- Criminal convictions, gangs, national security, public safety, orders of removal
- Will not target witnesses or people accompanying to court
- Enforcement in family law and other non-criminal
 - Should generally be avoided AND
 - Requires Field Office Director/Special Agent in Charge Approval

DHS VAWA Confidentiality Computer System

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

VAWA Confidentiality Violations



- Each violation sanctions against federal government officials
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Dismissal of the immigration proceeding against the non-citizen

Victims for Which VAWA Confidentiality Will Offer Less Protection

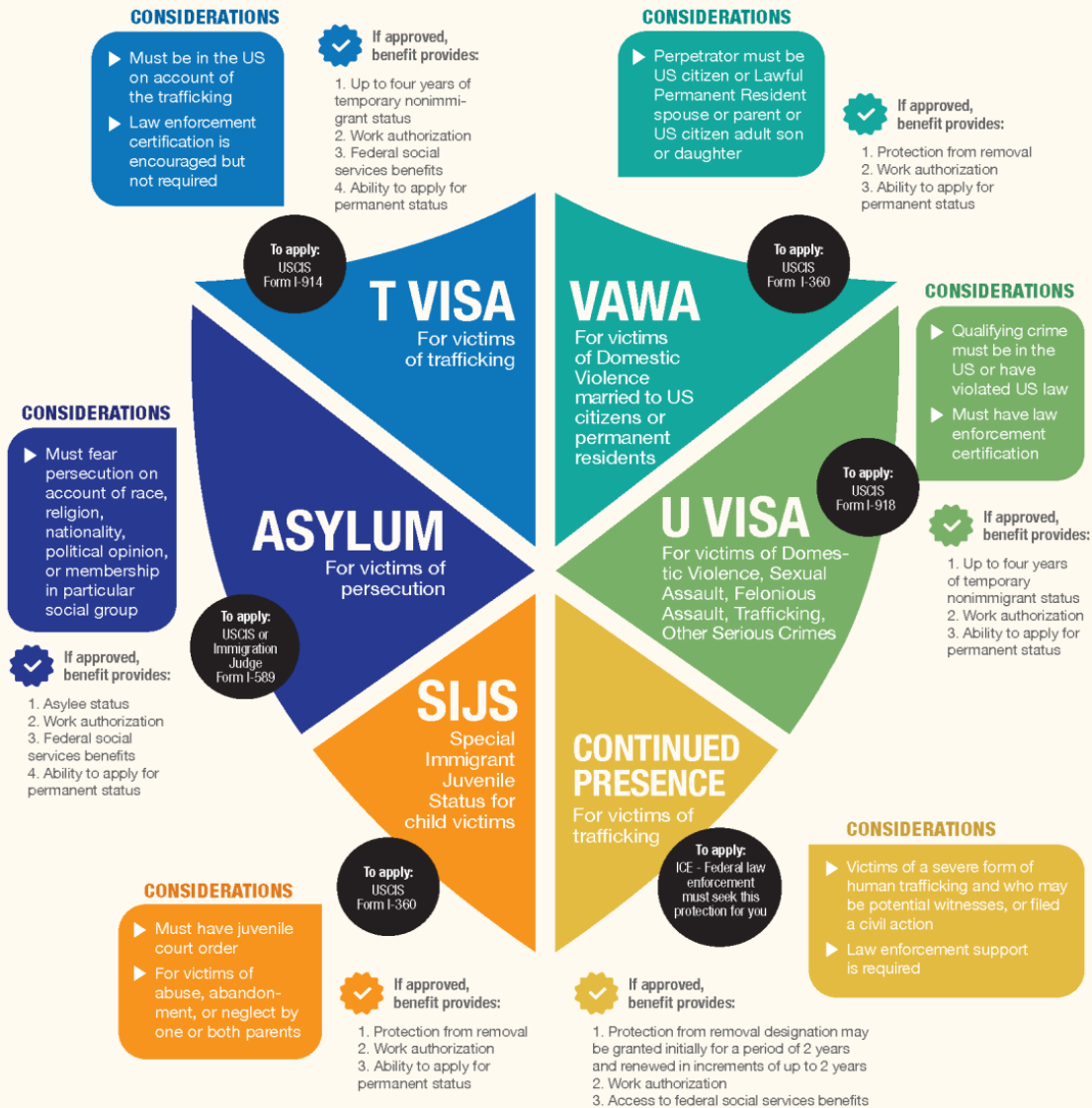
- Victims with criminal histories
 - Including arrests
- Victims with outstanding deportation orders
- Victims eligible for VAWA, T or U who have not filed their immigration case

Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- Incorporate into safety planning
 - How victim can safely carry DHS document copies

Violence Against Women Act Protections for Immigrant Survivors

PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

How does filing for immigration relief help immigrant domestic and sexual violence victims?

Importance of Immigration Status

- Ability to work legally
- Protection from deportation and removal
- Ability to obtain a driver's license and social security number
- Better access to justice, housing and public services
- Break from isolation/ Gain Independence
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately citizenship

Purpose of Immigration Relief for Survivors

- Improves access to justice
- Helps build community policing and relationships
- Increases prosecution of perpetrators
- Allows victims to report crimes without fear of deportation
- Keeps communities safe

Potential Immigration Remedies

- Applications filed with DHS
 - VAWA self petition
 - Battered spouse waivers
 - Work authorization for abused spouses of work visa holders
 - U-visa (crime victims)
 - T-visa (victims of trafficking)
 - Special Immigrant Juvenile Status
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation

Battered Spouse Waivers

- For survivors with a 2 year conditional residency card
- Waives the joint filing requirement and two year wait for full lawful permanent residency
- Requires proof of
 - Good faith marriage to U.S. citizen or permanent resident *and*
 - Battered or subjected to extreme cruelty
 - To spouse, child, step-child

General VAWA Self-Petitioning Requirements

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

Forms of Extreme Cruelty

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

VAWA Self-Petitioning Available

- Even if no physical violence
- If case filed within 2 years of marriage termination
- Bigamy + unknowing immigrant “spouse”
- Child abuse up to age of 25 to file
- Step children up until divorce
- Credible evidence standard of proof (police report, protection order, medical records NOT required)

VAWA self-petitioners get:

- Deportation: Protection from deportation soon after filing
- Immigration Benefits for Children:
 - VAWA self-petitioner's children receive immigration benefits
 - VAWA cancellation parole into US visa process required
- Public Benefits: As qualified immigrants (\approx 3 months)
- Employment authorization:
 - Citizen abuser (\approx 6 months);
 - Lawful permanent resident abuser (\approx 12 months).
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
 - Citizen perpetrator apply upon approval (1 year)
 - Lawful permanent resident perpetrator (\approx 3+ years)

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

Qualifying Criminal Activity

Domestic Violence	Kidnapping	False imprisonment
Sexual Assault	Abduction	Blackmail
Rape	Trafficking	Extortion
Incest	Involuntary servitude	Witness tampering
Prostitution	Slave trade	Obstruction of justice
Torture	Being held hostage	Perjury
Female genital mutilation	Peonage	Stalking
Felonious assault	Fraud in foreign labor contracting	Manslaughter

*Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity

Large Group Discussion

- Have you helped victims with U Visa Certifications?
- From whom?
- What has been your experience with U visa certification requests?

Certification Required From:

*DHS U and T Resource Guide states:
“law enforcement” & “law enforcement agencies” =*

- Federal, state, and local
 - Law enforcement
 - Prosecutors
 - Judges, Magistrates, Commissioners
 - Civil protection order
 - Divorce, Civil &
 - Criminal cases
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime

U Visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 110,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 36-48 months)
- Limited state benefits
- Lawful permanent residency after 3 years if
 - Cooperation or not unreasonably refuse to cooperate
 - + humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency + proof of good moral character

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children under the age of majority under state law who have been
 - Victims of abuse, abandonment, neglect, or dependency
 - By at least **one parent**
- Eligibility requires state court jurisdiction over
 - the care, custody, or dependency of the child
 - has issued a court order, finding, or declaration on three statutorily required issues

SIJS' may NEVER file family petition for either of the child's natural parents

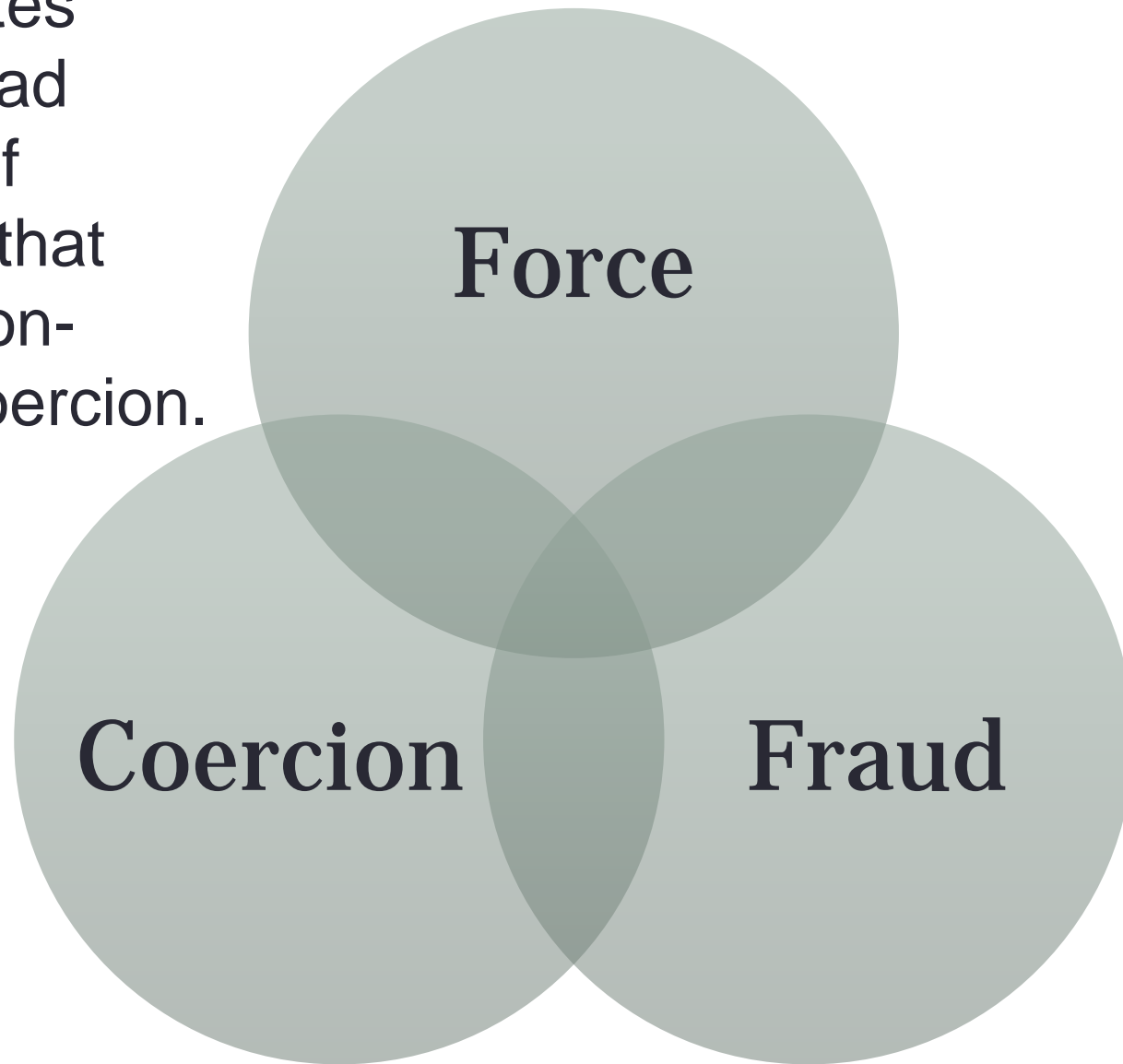
T Visa Overview

- Non-Immigrant, 4 Year visa
 - Victim of severe form of trafficking
 - In the US or territories on account of trafficking
 - Respond to reasonable requests for collaboration with investigation and prosecution unless victim is under 18
 - Limited “trauma exception”
 - Hardship upon return to home country
- May apply for adjustment of status after investigation/prosecution is over or 3 years, what ever time is shorter

Human Trafficking

- Generally: use of force, fraud and/or coercion to exploit a person for profit.
- Federal statute: TVPA 2000
- Every state now has their own human trafficking statute – (labor trafficking), (sex trafficking)

Most statutes have a broad definition of “coercion” that includes non-physical coercion.



The diagram consists of two rows of chevron-shaped boxes. The top row features a dark green chevron pointing right with the word 'Trafficking' in white, followed by a light gray chevron pointing right with the word 'Exploitation' in black. The bottom row features a dark green chevron pointing right with the word 'Smuggling' in white, followed by a light gray chevron pointing right with the word 'Transportation' in black. The chevrons are arranged in a staggered, overlapping fashion.

Trafficking

Exploitation

Smuggling

Transportation

Keys to Success: Starting with Language Access

Source of Language Access Laws

- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- 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.”

What is Meaningful Access?

- Meaningful access is defined in the US Department of Justice's own Language Access plan 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”

DOJ Model Guidance



- Federally funded programs provide free language access to:
 - LEP persons who request it
- 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

Language Resources

- Language line
- Video remote interpretation
- Video relay interpretation
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems
- Court systems



Tips for Working with Interpreters

- Control the interview
- Pre-session with the interpreter
 - Where are they located?
 - Establish what your rules are
 - Hand Signals
- Interpreter has to interpret everything that you say
 - Example: when you are explaining confidentiality

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?



Interpretation Best Practices

- Evaluation systems
- 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

Working Cross Culturally

- Meet the victim where she is and offer help
- For those who try to leave and those who stay or return to abusers
- Separation not required for
 - Protection order
 - Immigration relief
 - Relief that protects life and safety
 - Health care provided by
 - Community health clinics
 - Emergency medical care
- Immigrant Victims who receive support will use the civil and criminal justice systems

Working Effectively Cross Culturally

- Ask open-ended questions
- Avoid using legal jargon
- Know Your Own Assumptions and Do Not Use Them
- Offer help to women who choose not to leave
- Allow an immigrant survivor to define:
 - what she needs
 - her fears
 - the barriers she must overcome to seek help
- **She will define these from within her own cultural context**
- **Make a list**

Work with Her Identify and Address Each Need, Fear, Barrier Creatively Through:

- Education and Support
- Immigrant Rights & Women's Groups
- Her Community/Church Resources
- Victim Services
- Protection Orders
- Counseling
- Public Benefits, Social Services
- Her Own Resources

Keys to Success

- Be Creative
- Respond to Clients Needs
- Allow Battered Immigrant to Choose What She Needs
- Collaboration

National Immigrant Women's Advocacy Project Resources

NIWAP Web library

niwaplibrary.wcl.american.edu



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Types of Technical Assistance

- Case consultations
- Training materials and practice tools
- Legal research, motions, briefs
- In-person trainings and webinars
- 24/7 web library and training videos
- Help developing policies/protocols
- Strategies for removing systemic barriers
- Community of Practice and Roundtables
- List serves

NIWAP Topics

- VAWA, U and T Visas, Gender based asylum, SIJS
- VAWA confidentiality
- U and T Visa certification
- Language access and legal services access
- Immigration allegations in custody, CPOs, and divorce
- Special Immigrant Juvenile Status (SIJS), child abuse, and protective battered immigrant parents
- Public benefits access for immigrant victims
 - Health care, housing, TANF, SNAP, FAFSA, and more
- Serving victim's cultural, religious, and immigration needs
- Providing trauma informed help for immigrant survivors

Interested in Joining the Community of Practice or Roundtable

- Application available at:
<http://niwap.org/go/COPapplication>
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit
<http://niwap.org/go/LEARoundtables/>

Technical Assistance and Materials

- **Materials for this training:**
 - <http://niwap.org/go/ncvc2018>
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- **Web Library:**
niwaplibrary.wcl.american.edu

