

Language Access: Compliance Requirements and Complying with Title VI of the Civil Rights Act of 1964

Day Two
Plenary III
New Orleans, LA

Introductions

- Cannon Han and Wendy Lau
 - Asian Pacific Islander Institute on Domestic Violence
- Officer Michael LaRiviere
 - Officer, Investigator, Salem, MA Police Department
- Session 1: Honorable Lora Livingston,
Travis County Courts, Austin, Texas
- Session 2: Judge Ramona Gonzalez,
La Crosse County Circuit Courts, La Crosse, Wisconsin

Learning Objectives

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

- Understand the language access compliance requirements of Title VI of the Civil Rights Act of 1964
- Enhance the effective administration of justice the implementation of language access strategies in the justice system
- Improve victim, officer, and court staff safety

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

Title VI of the Civil Rights Act 1964

Meaning:

Government & government funded programs must provide meaningful access to programs & benefits to persons with limited English proficiency (LEP)

Policy Guidance

Four Factors

67 Fed. Ref. 41455

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

We Can't Afford Language Access

Financial limitations do not provide an exemption from language access requirements:

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

Americans with Disabilities Act and Section 504 of the Rehabilitation Act

Public accommodations and state entities are required to provide ASL interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals. Deference must be given to the deaf or hard of hearing individual's choice.

- 28 C.F.R. S28 C.F.R. S35.160 (b)(2) (NAD Law Center, 2002)

Who's covered?

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



When Are Programs Who are Not Federal Grantees Covered By Language Access Requirements?

Large Group Discussion

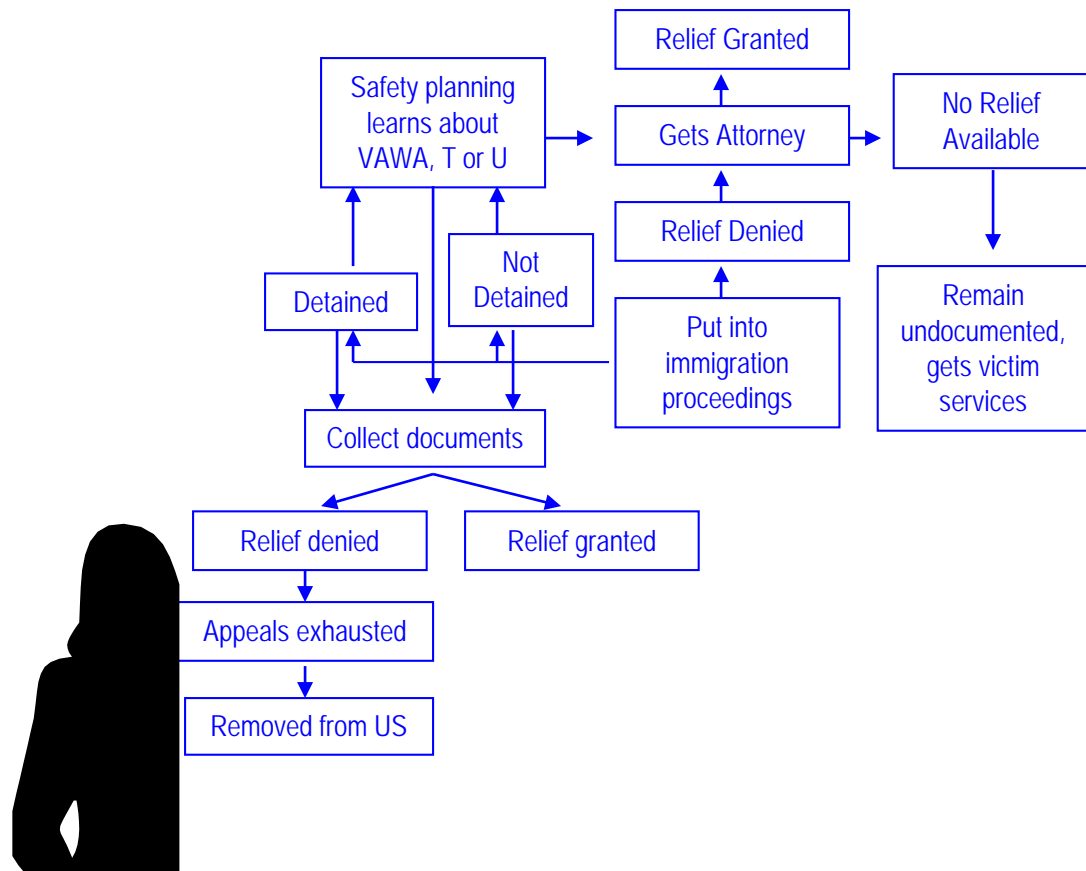
- How does lack of language access impact:
 - Victim safety
 - Offender accountability

The LEP Experience

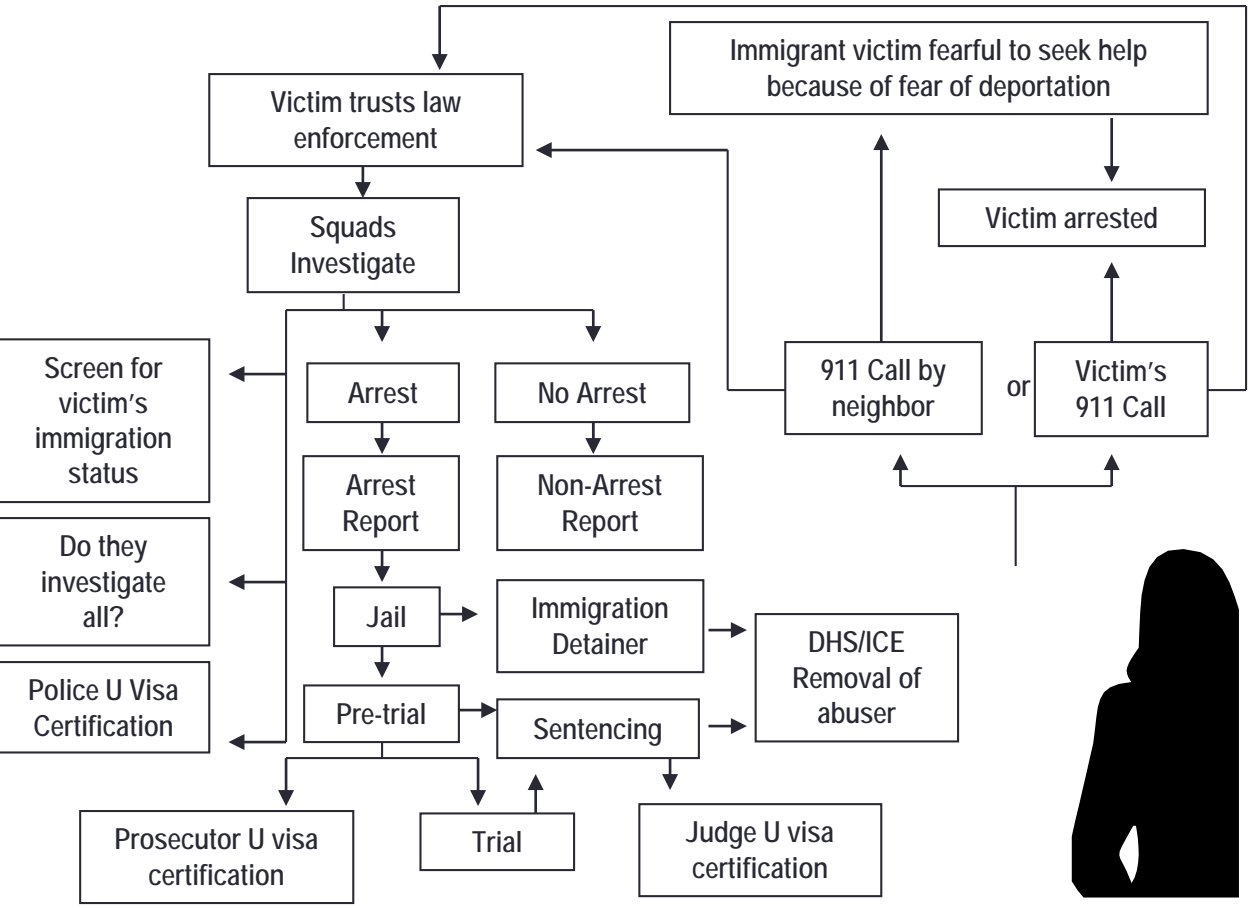




Immigrant Victims in the Justice System - Raquel

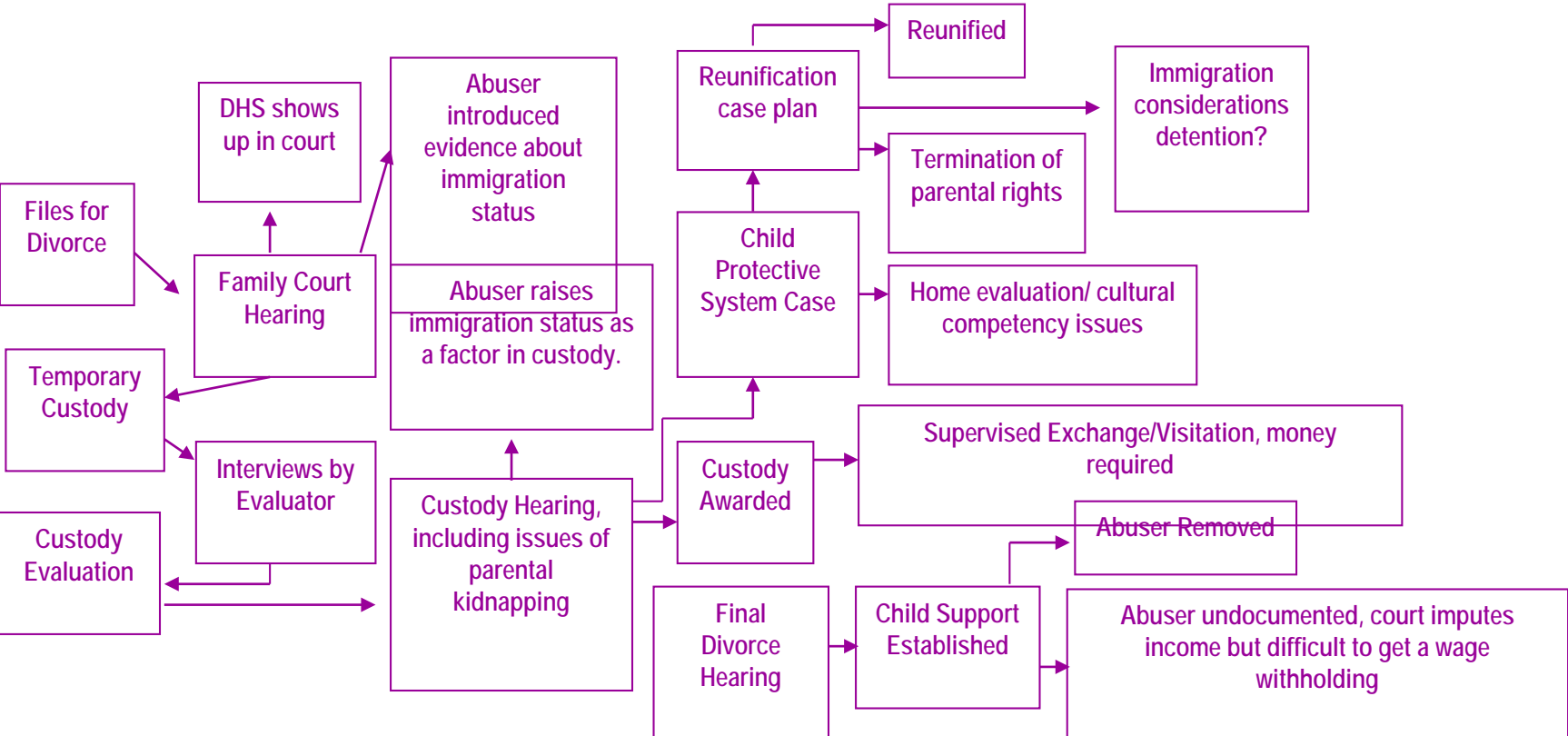


IMMIGRATION MAP



DOMESTIC VIOLENCE/ ARREST INCIDENT

FAMILY COURT



BENEFITS MAP



Immigrant victim tries to access benefit

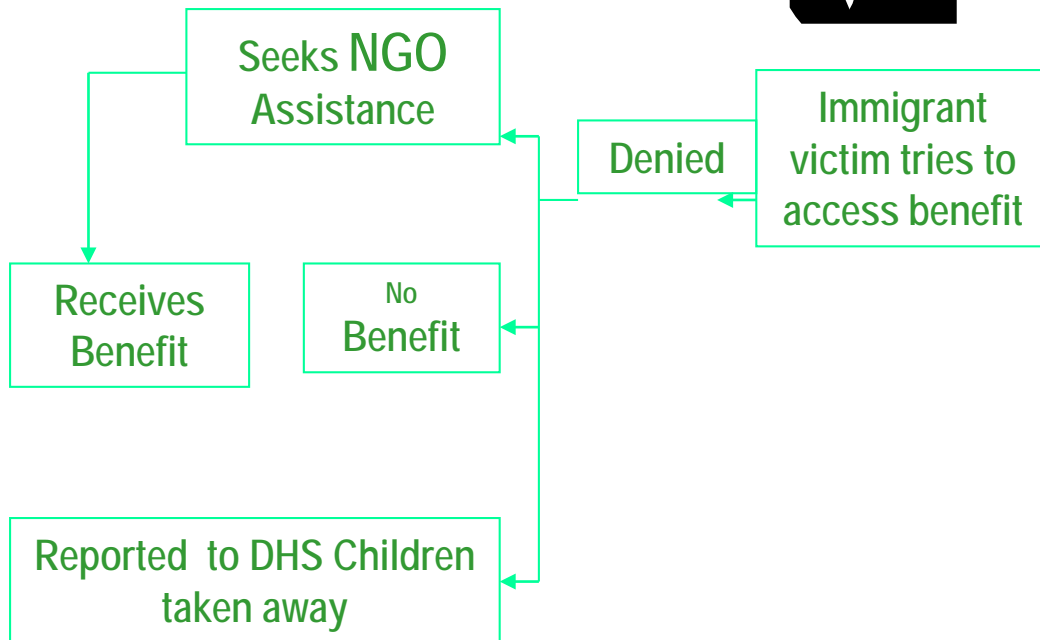
Denied

Seeks NGO Assistance

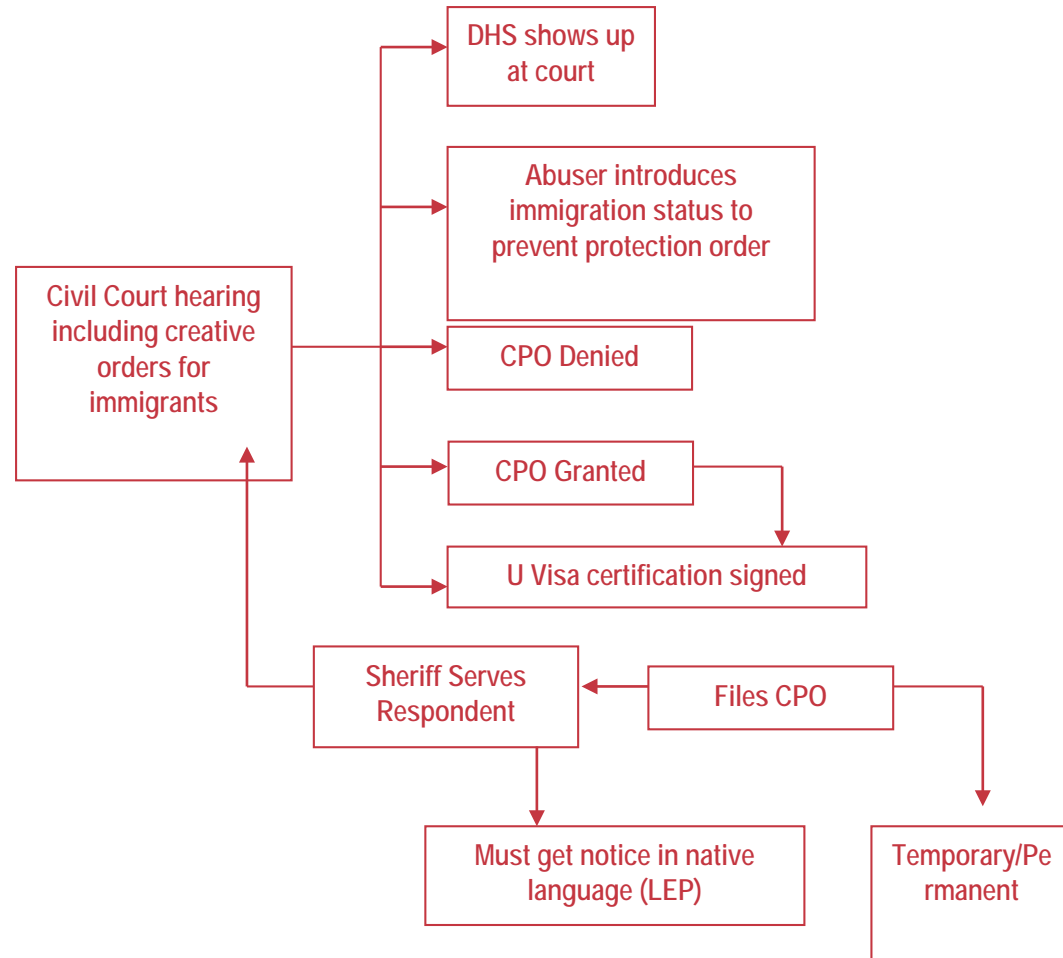
Receives Benefit

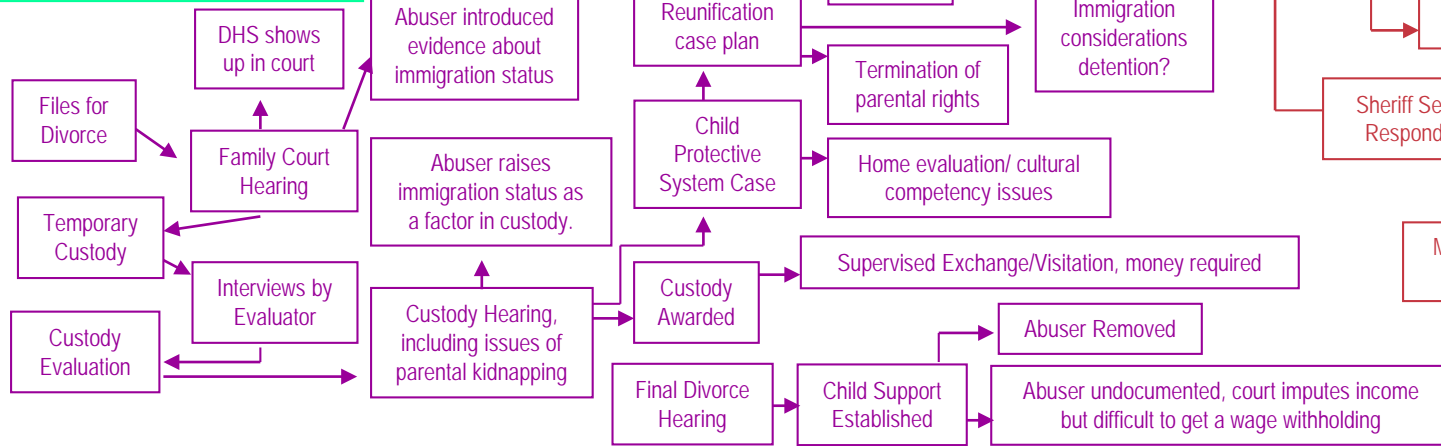
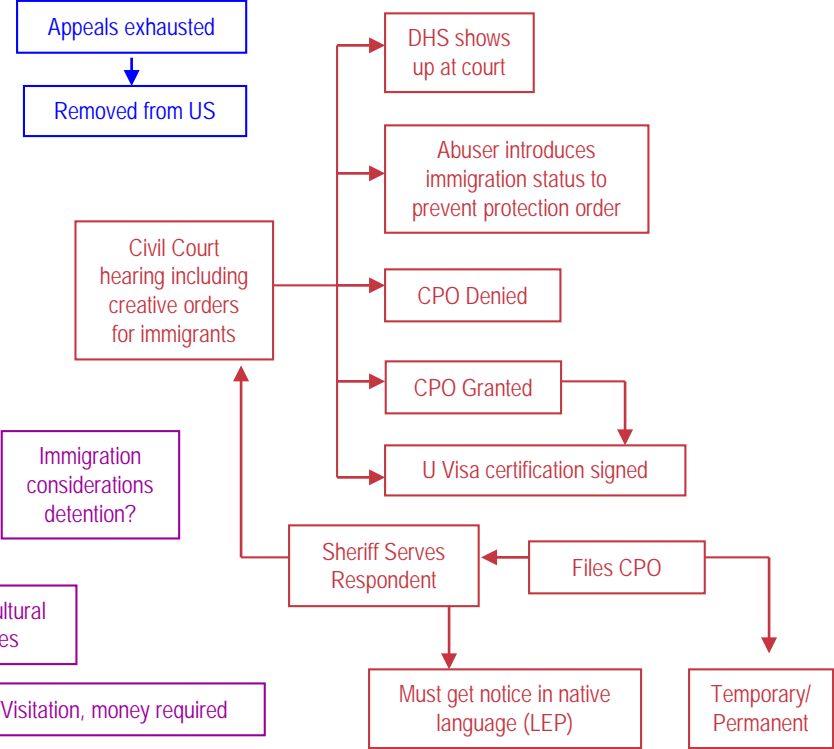
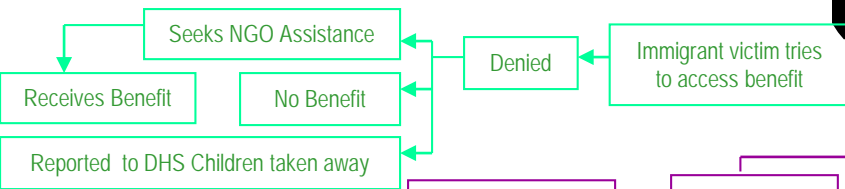
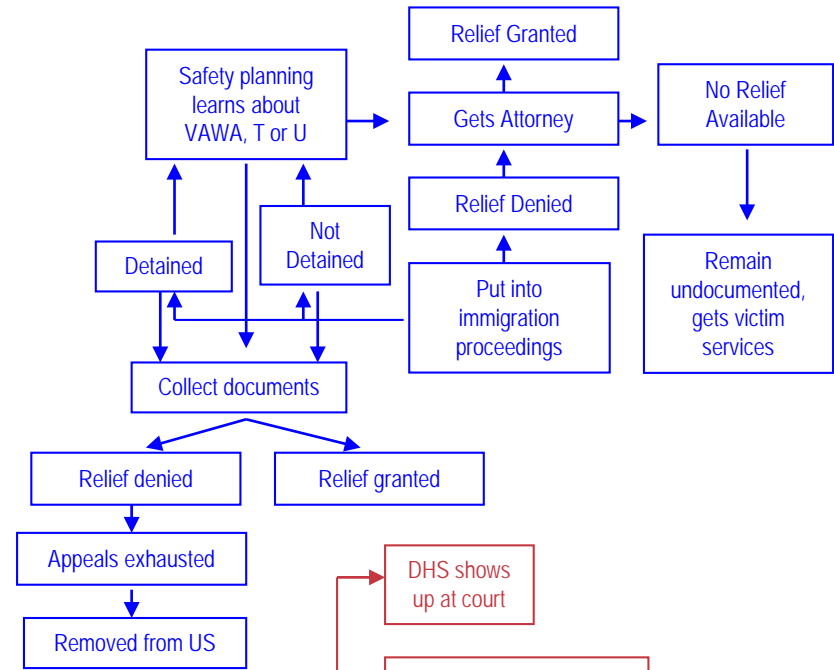
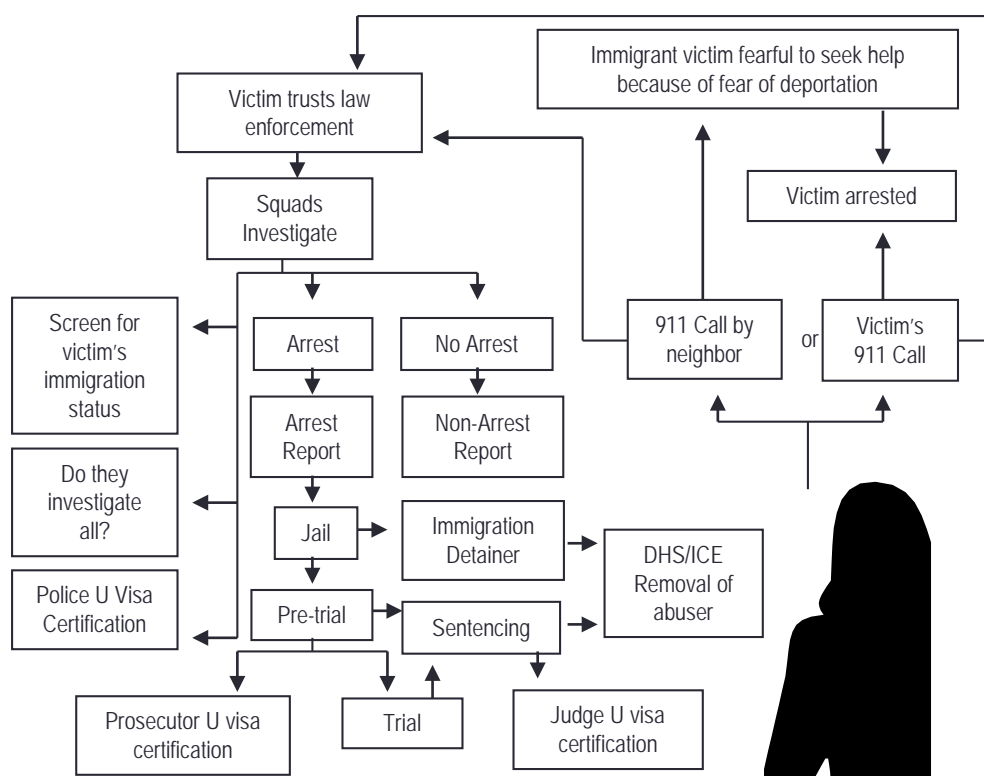
No Benefit

Reported to DHS Children taken away



PROTECTION ORDER – CIVIL COURT PROCESS





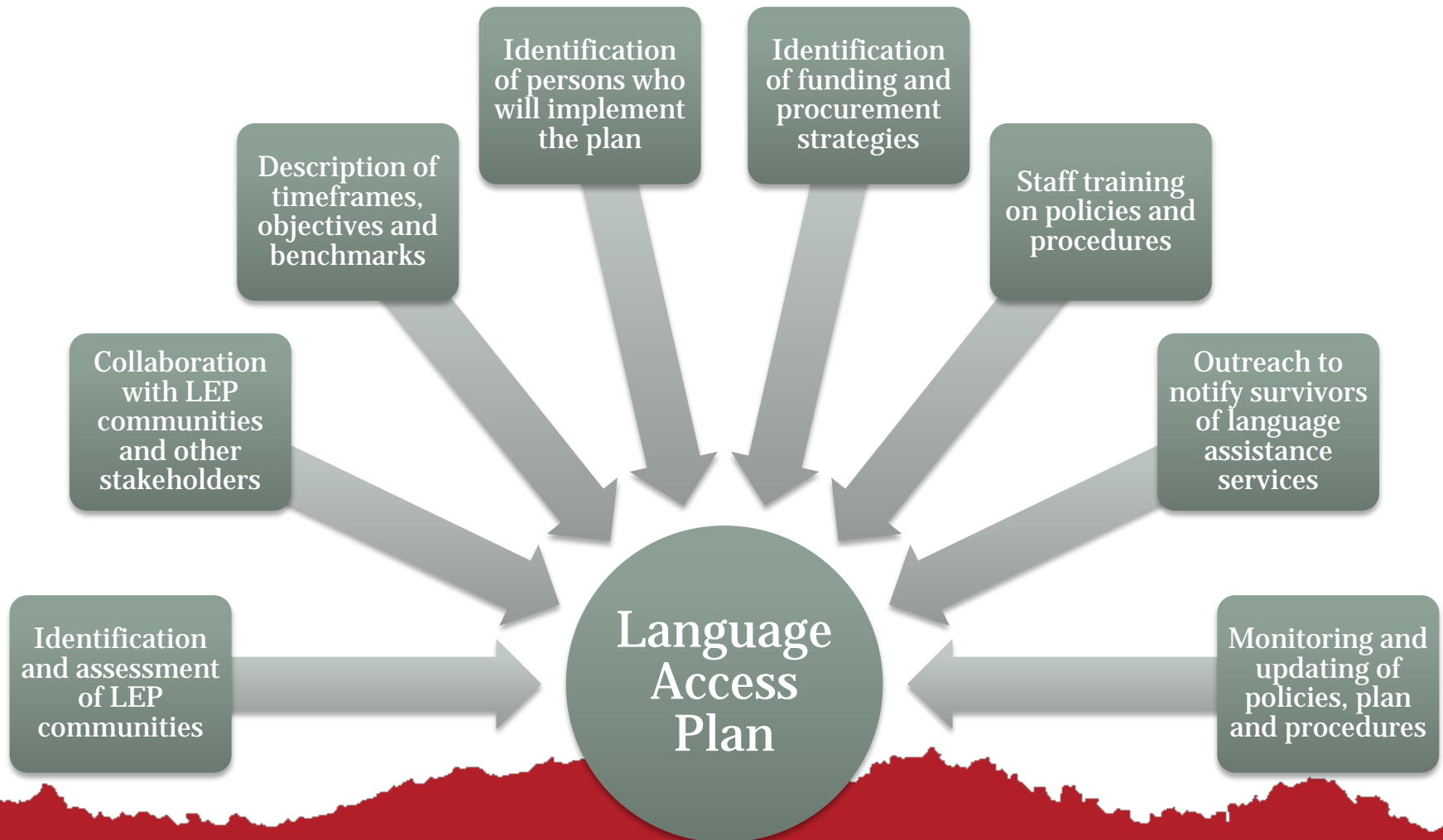
Compliance

- Role of language access plans for
 - Victim and legal services agencies
 - Law enforcement and prosecutors offices
 - The courts

Signs You Need a Policy and Plan

1. Relying on relatives, children, or friends to interpret for clients
2. Only bilingual staff are used as interpreters, in addition to the other staff job responsibilities
3. No formal arrangements are in place to hire competent interpreters
4. Staff does know how to contract for interpretation services
5. Staff are turning away LEP individuals
6. No translated materials

Developing an Effective Language Access Plan



Language Access: Successful Criminal Investigations and Prosecutions

Challenges for Law Enforcement Responding When

- Victims are LEP
- Witnesses are LEP

What Happens When These Challenges Are Not Addressed?

How Does Access to Qualified Interpreters Benefit Law Enforcement and Prosecutors?

Benefits

- More convictions
- Convictions not overturned
- Cases not dismissed
- Perpetrator not prosecuted on a lesser charge
- Prosecutor more likely to prosecute
- Improves integrity and quality of the investigation
 - Reduces impeachment evidence at trial
 - Better police reports
 - Less “*inconsistent*” statements
- More information from victims
- More victim safety

Benefits to Officer Safety

- Correctly identify victim and perpetrator
 - Primary aggressor determination
- LEP persons with interpreters are better able to follow law enforcement directions



The Difference Between --

- Securing the Scene
- Interviewing victims and witnesses



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

How Can Law Enforcement and the Community Work Together to Address Language Access Correctly?



Promising Practices

- Face to face interpretation:
 - Qualified interpreter training for law enforcement, advocates and services providers
 - Training on how to interpret
 - Competency exam
 - Collaboration with university with language interpretation programs for student interpreters

Promising Practices

- Over the telephone interpretation
 - Securing contracts for language access by telephone
 - Sharing contracts that one agency has with another
 - On scene access

Language Access At the Court House For Limited English Proficient Survivors



Language for Limited English Proficient Persons Can Be a Barrier To:

- Access to justice, benefits or services
- Exercising legal rights
- Filing for a protection order, custody, divorce, child support
- Participating in court proceedings
- Understanding information and instructions provided
- Complying with court orders

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 or other
 - LEP individuals should not incur any fees for these services

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

- 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 such as guardians ad litem or court psychologists

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

- 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)

- 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

Raise your hand if all of the courts in your jurisdiction provide qualified interpreters to victims in --

- Protection order cases
- Custody cases
- Child support cases
- Divorce proceedings
- Criminal cases



Are you seeing differences at the stage of the proceeding?

- Temporary orders
- Motions
- Final orders
- Trials
- Hearings

How many of you are in jurisdictions where qualified interpreters are provided by the courts --

- For filing protection orders and family court cases in the clerks office
- Meetings with custody evaluators or for social studies
- Mediation
- Communication with guardians ad litem

Judges Perspective

- How do you encourage a judge to provide a qualified interpreter for an immigrant victim's case?



Promising Practices For Victim's Court Cases:

- Requesting interpreters
- Working with interpreters in the court room
- Approaching the court regarding
 - Errors in interpretation
 - Quality of interpretation
 - Interpreters giving legal advice

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2016
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

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