PROTECTING ACCESS TO SAFETY AND JUSTICE FOR IMMIGRANT SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE AND TRAFFICKING

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Casa de Esperanza

Starting from a small group of Latina activists in St. Paul, Minnesota in 1982, Casa de Esperanza has grown into the premier Latin@ domestic violence organization in the country.

• We recognize that it is the community that will end domestic violence, not any system or organization.

• We emphasize developing social capital (i.e. trust, reciprocity, information and cooperation) because we believe it decreases domestic violence.

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Our Mission

Mobilize Latinas and Latin@ communities to end domestic violence.

Five core values:
• Latina leadership
• Entrepreneurship
• Organizational excellence
• Living free of violence
• Community-driven solutions

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The National Latin@ Network

- The National Latin@ Network is a project of Casa de Esperanza that is working to end domestic violence and sexual violence while promoting the health and well-being of Latin@ communities around the country.

- The main goals of the National Latin@ Network are:
  - Education and awareness
  - Advocacy
  - Capacity building
  - Accountability and training

Goals

By participating in this session, you will be better able to

- Identify forms of immigration-related abuse
- Assess remedies for survivors of domestic violence, sexual assault and trafficking
- Discuss policy updates that affect survivor-based immigration cases
- Enhance safety planning practices for immigrant survivors
Barriers to Accessing Services

- Language Access
- Experiences in home country
- Fear of removal & family separation
- Practical: lack of knowledge of rights and resources
- Economic
- Abuser-generated risks | System generated risks

Immigration Power & Control Wheel

The New York Times

Texas Deputy Accused of Molesting 4-Year-Old and Threatening to Deport Her Mother

Fear of deportation, many domestic violence victims are steering clear of police and courts

The New York Times

Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation.
Addressing Concerns: Going to Court or Contacting Police

3 OUT OF 4 ADVOCATES

Are immigrant survivors sharing with your agency that they have concerns about contacting police?

78% Yes

Survey conducted by: NNEDV, NAESV, Tahirih Justice Center, ASISTA, National DV Hotline, API-GBV, Casa de Esperanza
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Work Place Risks

FORMS OF IMMIGRATION RELIEF
Hypothetical

- Julia came to the United States in 2010 with her 4 year old daughter Cristina. She was promised a job teaching but instead was made to work in a hotel and often was not paid.
- She met Richard in 2012 and he helped her move away. They married and had a daughter Elena.
- Richard eventually became physically abusive, and forced Julia to have sex against her will. He said if she called the police, then he’d call to get her deported and that she’d never see Elena again.
- After one incident when he cut her arm with scissors in front of the children, she left with her daughters to her friend’s house.
- Her friend took pictures of the injuries and took Julia to the hospital for stitches. Her friend urges Julia to call the police to take a report, but Julia is reluctant to do so because of what Richard has said.

What forms of immigration relief might Julia be eligible for?

Congress created important protections in a bipartisan manner
- Violence Against Women Act (VAWA)
- Trafficking Victims Prevention Act (TVPA)

Recognize that abusers often exploit a victim’s lack of immigration status as a tactic of abuse.

VAWA also includes important confidentiality protections for immigrant survivors

Protections for Immigrant Survivors

- Some of the Legal Protections Available to Immigrant Survivors

The Constitution
- Due Process
- Right Against Self-Incrimination

Federal Law
- Civil Rights laws
- Access to services necessary for life or safety
- VAWA, FVPSA, VDCA, INA
- Wage Protection Laws

International law
- Int'l treaties: refugees
- Convention Against Torture

State Law
- Privilege, confidentiality
- State and local services

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Immigration Relief-Elements

- **VAWA self-petition**
  - Spouse or child of USC or LPR or parent of adult USC son or daughter
  - Suffered battery or extreme cruelty
  - Joint residency with abuser
  - Good moral character
  - For petitions based on marriage: show good faith marriage

- **U visa**
  - Victims of Qualifying Crime—full list at INA 101(a)(15)(u)(iii)
  - Suffered substantial physical or mental abuse as a result of victimization;
  - Had information about the crime;
  - Was, is, or will be helpful in the investigation or prosecution of the crime.
  - Crime occurred in U.S. or violated U.S. law
  - Admissible or eligible for a waiver under INA 212(d)(14) “national or public interest”

- **T visa**
  - Victims of severe form of trafficking:
  - Physically present in the U.S. on account of the trafficking;
  - Complied with reasonable requests for help in the investigation or prosecution of trafficking;
  - Would suffer extreme hardship if had to return to home country.

**What is the Actual Benefit?**

- **VAWA self-petition**
  - Able to apply for green card and end abusive relationship
  - Can include minor children as derivative beneficiaries
  - Work authorization upon approval

- **U visa**
  - Can include certain family members as beneficiaries
  - If in U.S. 2 year work permit (deferred action) while on the waitlist
  - Once issued full 4 year visa, can apply to become LPR after 3 years

- **T visa**
  - Provides 4 year visa, after certain time or case posture can apply to become LPR
  - Can include certain family members as beneficiaries
  - Access to expanded public benefits (like refugees)
Importance of Law Enforcement Certification

- In order to be eligible for a U visa, the victim must submit a U visa certification completed by a certifying agency or official. (USCIS Form I-918B)

- Certifiers: law enforcement agency, prosecutor, judge, or other government official (e.g. CPS, EEOC)

- Certify that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of a qualifying criminal activity


Confidentiality Protections: 8 USC 1367 Provisions

- Non-Disclosure
  - Protects victims who have filed a protected case with ICE
  - Violation = $5,000 fine and/or disciplinary action

- Abuser-Provided Information Prohibition
  - Includes family members of abusers, former perpetrators
  - Violation = $5,000 fine and/or disciplinary action

- Location Prohibitions
  - Protects All Victims
  - Requires: No action at protected locations OR Notice to Appear must include that they complied with 8 USC 1367
  - Violation = $5,000 fine and/or disciplinary action

Location Prohibitions under VAWA Confidentiality

- Enforcement actions are not to be taken at the following locations unless ICE can certify in writing it complied with VAWA Confidentiality provisions:
  - Shelter
  - Rape Crisis Center
  - Supervised Visitation Center
  - Family Justice Center
  - Victim service provider or program
  - Community based program
  - 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

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ACCESS TO SERVICES

True or False

True or False: Survivors who are undocumented do not have access to emergency shelter and housing assistance.

True or False: Survivors who are undocumented have access to medical and public health services necessary for life or safety.

True or False: Meaningful access to services for individuals with limited English proficiency is required by federal grant recipients.

Obligations of Service Providers

- Obligations of non-discrimination
- VAWA, VOCA, FVPSA
- All individuals are eligible for emergency services necessary for protection of life and safety regardless of immigration status, when services are also in-kind and not means tested (PRWORA legislation; 8 U.S.C. §§ 1611(b)(6)(B))
- Joint HUD, DOJ, HHS letter
- Joint HUD, DOJ, HHS letter
- Short term shelter or housing assistance
- Crisis counseling and intervention programs
- Child and Adult Protection Services
- Soup kitchens, community food banks
- Medical and public health services necessary for life or safety
- Assistance to help individuals during adverse weather conditions (e.g., during hurricanes)
- Other services necessary to protect life or safety that meet 3-prong test

https://www.justice.gov/ovw/file/883641/download

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IMPORTANCE OF LANGUAGE ACCESS

Just because a program does not turn someone away, does that constitute “Meaningful Access?”

In order for access to services to be “meaningful access,” it is necessary to ensure language access for individuals with Limited English Proficiency (LEP).
Who are Individuals with Limited English Proficiency (LEP)?

• Individuals with LEP are those individuals who do not speak English as their primary language and have a limited ability to read, write, speak or understand English.

• Many individuals with LEP are in the process of learning English and may read, write, speak and understand some English, but not proficiently.

Why Provide Meaningful Language Access?

It’s a Legal Requirement

• Any organization that receives federal financial assistance—either directly or indirectly—is required to comply with Title VI of the Civil Right Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act).

• If an organization receives any federal funds then all aspects of that organization are obligated to take reasonable steps to ensure that individuals with LEP have meaningful access to the benefits and services provided by that organization.
Title VI of the 1964 Civil Rights Act

“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.”

Section 601 of Title VI, 42 U.S.C. sec. 2000d

Requirements of Executive Order 13166

1. The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English Proficiency (LEP), and develop and implement a system to provide those services so individuals with LEP have meaningful access to them. Requires agencies to develop a language access plan.

2. The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

Requirements for Recipients of Federal Funds and Federal Agencies

If an organization receives any federal funds then all aspects of that organization are obligated to take reasonable steps to ensure that individuals with LEP have meaningful access to the benefits and services provided by that organization.
It’s the Right Thing to Do

Because our work is about ensuring safety, healing and justice for those harmed by violence.

It’s the Right Thing to Do

By being proactive, we ensure that all individuals with limited English proficiency (LEP) have meaningful access to critical services.

It Improves Services and Enhances Outcomes

- Research shows that domestic violence survivors with LEP were more likely to seek out services if those services were provided in their language.
- Language access clearly enhances safety if you consider that without it, the survivor cannot interact fluently with an advocate, other service providers and systems.
- Research in the domestic violence and sexual assault fields shows that survivors appreciate and feel more supported when language access services are provided.

Language Access Planning

Identification and convening of a cross functional workgroup

Identification and assessment of LEP communities

Collaboration with LEP communities and other stakeholders

Description of timeframes, objectives and benchmarks

Identification of persons who will implement the plan

Identification of funding and procurement strategies

Formalizing Plan Implementation

Staff training on policies and procedures

Outreach to notify survivors of language assistance services

Monitoring and updating of policies, plan and procedures

Language Access Tools

www.nationallatinonetwork.org/lep-toolkit-home

• Free, bilingual tools to help your organization create language access plans.

• Step-by-step materials to help you advocate for immigrant survivors with limited English proficiency.

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www.languageaccessplans.org
A free, bilingual toolkit to help you advocate for increased language access in the courts.

ENHANCED SAFETY PLANNING

Improving Access to Safety for Immigrant Survivors
What Works for Immigrant Survivors

What do you think is needed to ensure the safety of immigrant women and children who experience domestic violence?

What comes to mind?

Violence is not the ONLY, nor the MOST PRESSING challenge that they face.

Financial Resources
Family
Mental Health
Education
Housing
Language Access
Immigration
What Works for Immigrant Survivors

**Safety**: The right to have a life free of violence. Trust in systems that enhance their safety.

**Financial stability**: Includes access to housing, employment, transportation, etc.

**Health and emotional wellbeing**: Access to healthcare, mental health, etc.

**Education**: Access to formal and informal educational opportunities, i.e. English classes, job training, informational community workshops, etc.

**Legal Stability**: Access to legal services for OFPs, immigration, family law matters etc.

** Culturally and Linguistically Appropriate Services**: Enhance safety planning, language access, culturally responsive services.
Responding to the Needs of Immigrant Survivors

- Assessing current organizational practices and policies and identifying opportunities for enhancement through a culturally responsive framework.

- Collaborative efforts where agencies, programs, organizations and service providers commit to working together to ensure that all are providing culturally and linguistically responsive resources and equitable access to services.

- Ongoing communication and sharing of information, resources and tools between the collaborative group, as well as working together with immigrant survivors to ensure that her needs are met.

Identify the purpose/goal of what you’d like to achieve

Engage key stakeholders in the conversations/process

As a group, assess the gaps, trends and strengths

Develop a plan of action

Establish roles and responsibilities

Create a project leadership team and a immigrant survivor advisory group

Develop protocols and procedures

Implement developed or enhanced strategies

Evaluate on a regular basis, adapt strategies accordingly

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Improving Access to Safety for Immigrant Survivors

• Engage in community outreach so immigrants know services are accessible

• Know forms of survivor-based immigration relief

• Provide referral to experienced advocates and attorneys to assist in screening and applying for immigration remedies; file cases ASAP

Improving Access

• Assist in documenting history of abuse
  • Trauma-informed approach

• Courthouse accompaniment and accompaniment to USCIS appointments

• Provide enhanced and individualized safety planning

• Ensure meaningful language access

TIP: For mixed status families, safety plan revolves around developing a family care plan if one or both parents are deported.

It’s important for survivors to let the temporary guardian (and potentially other trusted individuals) know the location of legal documents.

*Custody rules vary by state. Survivors should consult with a trusted local immigration attorney
**Enhancing Safety Planning**

- Collect important documents (identity, medical and financial information)
- Carry name of attorney or advocate and phone number
- Survivors should know their and their children’s “alien registration number” or A#
- Share “Know Your Rights Materials” and make aware the risks of contact with criminal legal system
- Family Safety Planning
  - Child Care Plan/Who will care for children if parent is detained?
  - Financial Issues

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**What Should Individuals Carry with Them?**

- The contact information of your attorney or legal representative
- A know-your-rights card.
- Valid license, work permit or green card if have one.

DO NOT Carry False Documents

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**Agency Safety Planning**

- Be pro-active; identify internal challenges
- Rely on confidentiality obligations (i.e. VAWA, FVPSA, VOCA, state law, privilege) to not provide information
- Be aware of difference between DHS issued warrant vs a Court-issued warrant (which would need to be signed by a judge)
Agency Safety Planning (Cont.)

- Develop internal protocols to respond effectively to clients at risk of detention and removal, including authorization of release of portions of her file
- Provide a business card to client with a direct number
- Train your staff on handling ICE calls
- Keep "positive equities" for clients on file

Resources

ASISTA Immigration Assistance:
www.asistahelp.org

Casa de Esperanza: National Latin@ Network for Healthy Families and Communities:
www.casadeesperanza.org
www.nationallatinonetwork.org
www.nationallatinonetwork.org/lsp-toolkit-home

Tahirih Justice Center:
www.tahirih.org

Asian Pacific Institute on Gender-based Violence:
www-api-gbv.org
National Immigrant Women’s Advocacy Project (NIWAP)
http://niwaplibrary.wcl.american.edu/

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www.casadeesperanza.org
www.nationallatinonetwork.org
www.teinvito.org
www.nationallatinonetwork.org/lep-toolkit-home

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Resource List

I. TA Providers

- Asian-Pacific Institute on Gender-based Violence: http://www.api-gbv.org/
- Casa de Esperanza: National Latin@ Network: https://nationallatinonetwork.org/
- Ujima: National Resource Center on Violence Against Women in the Black Community: https://ujimacommunity.org/
- ASISTA: www.asistahelp.org
- National Immigrant Women Advocacy Project: www.niwap.org

II. Language Access & Access to Services & Benefits

- NIWAP Public Benefits Map: http://map.niwap.org/

III. Resources for Survivors

- Women’s Law: National Network to End Domestic Violence
  - www.womenslaw.org
Directory of State and Local Programs: 
http://www.womenslaw.org/gethelp_type.php?type_name=State%20and%20Local%20Programs

- **Immi** (online resource developed by Immigration Advocates Network (IAN) and Probono Net): https://www.immi.org

- **Immigration Advocacy Network Legal Services Directory:** 
  https://www.immigrationadvocates.org/nonprofit/legaldirectory/

- **VAWnet (NRCDV):**

### III. Resources on Immigration Benefits For Survivors of Crime

#### A. General Resources for Advocates

- **Chart: Immigration Benefits for Survivors:**

- **USCIS Resources:** https://www.uscis.gov/tools/humanitarian-benefits-based-resources/resources-victims-human-trafficking-other-crimes
  Brochures also available in Spanish, Chinese and Russian

#### B. U visa Resources

- **DHS Law Enforcement Certification Guide:**

- **DHS One-pager for Law Enforcement on U visas:**

- **Human Rights Watch. “Immigrant Crime Fighters” How the U visa Program Makes U.S. Communities Safer:**

- U visa Processing Times (Check Form I-918): https://egov.uscis.gov/processing-times/


- U visa Clearinghouse: www.asistahelp.org

C. VAWA Self-Petitions

- Overview of VAWA Self-Petitions: Womens Law:


- VAWA Processing Times (Check Form I-360 at the Vermont Service Center): https://egov.uscis.gov/processing-times/

- VAWA Clearinghouse: www.asistahelp.org

D. T visas

- Coalition to Abolish Slavery and Trafficking: http://castla.org/


• T Visa Processing Times (Check Form I-914 at the Vermont Service Center): https://egov.uscis.gov/processing-times/

IV. Individual Safety Planning
• IRLC Family Preparedness Plan: https://www.ilrc.org/family-preparedness-plan. Available In Spanish here: https://www.ilrc.org/plan-de-preparaci%C3%B3n-familiar


• ILRC Red Cards: https://www.ilrc.org/red-cards

V. Materials for Agencies
• Minnesota Coalition for Battered Women All Are Welcome Here Materials: http://www.mcbw.org/immigration-resources


• NNEDV Confidentiality Toolkit https://www.techsafety.org/confidentiality

VII. DHS and ICE Resources and Memos
• ICE Detainer Locator: at https://locator.ice.gov/odls/homePage.do

• ICE Q&A on Sensitive Locations: https://www.ice.gov/ero/enforcement/sensitive-loc


• USCIS Memo on Requests for Further Evidence (RFE) and for Notices of Intent to Deny (NOID): [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFES_and_NOIDs_FINAL2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFES_and_NOIDs_FINAL2.pdf)