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## Critical Issues for Working with Immigrant and Limited English Proficient Survivors

presented by  
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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 leading national Latin@ organization addressing domestic violence



- Our mission—to mobilize Latin@ communities to end domestic violence—is served through our five **core values**:
  - Latina leadership
  - Entrepreneurship
  - Organizational excellence
  - Living free of violence
  - Community-driven solutions
- 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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# Significant Initiatives

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- Youth Peer Education
  - Expands Latin@ teens' opportunities by developing skills in leadership, public speaking, and facilitation.
- Líderes
  - Initiative for Leadership Development.
  - Develops skills necessary to support, educate, and encourage Latinas.
- Information Center and Resource Center
  - Provides internet access and technology resources that have enabled visitors to access information concerning domestic violence, medical service, housing, and other topics.
- Fuerza Unida
  - Focuses on listening to the stories and hopes of Latinas to create action plans that engage the community in ending domestic violence.
- Advocacy and Services
  - Family Advocates
  - 24/7 bilingual crisis line
  - El Refugio Emergency Shelter
  - Safety planning
  - Court advocacy
- National Latin@ Network for Healthy Families and Communities



# The National Latin@ Network for Healthy Families and Communities

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- The National Latin@ Network is a project of Casa de Esperanza that is working at ending domestic violence and promoting the health and well-being of Latin@ communities around the country.
- The main goals of the National Latin@ Network are:
  - Increasing **meaningful access** to services and support for Latinas experiencing domestic violence
  - Developing culturally relevant **tools and trainings** for advocates and practitioners
  - Conducting culturally relevant **research** that explores the context in which Latin@ families experience violence
  - Interjecting the lived realities of Latin@s into **policy** making processes so that laws and policies better support efforts to prevent and end intimate partner violence



# Objectives

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- Review demographic information on immigrants
- Promote a Human Rights perspective in addressing domestic violence
- Provide information about access to services for undocumented immigrants according to federal laws
- Provide information about the rights of individuals with Limited English Proficiency (LEP) to have “meaningful access” to services
- Dialogue about how to improve our advocacy efforts in these areas
- Provide additional resources

# Part I: Overview of Demographics and Advocacy Framework

# Foreign-born Population in U.S.

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- Of the total foreign-born population in U.S. (39.9 million):
  - 53% were born in Latin America and the Caribbean
    - 9.3% are from the Caribbean
  - 28% were born in Asia
  - 12% were born in Europe
  - 4% were born in Africa
  - 2% were born in Northern America
  - 0.5% were born in Oceania
- Foreign-born residents make up approximately 13% of the population today, compared to 15% in 1910 at peak of immigration influx

(U.S. Census; 2010 American Community Survey Report)

# Latin@s in the United States

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- Approximately 53 million Latin@s living in the U.S. (17% population) (2012 U.S. Census update)
- Heterogeneous group embracing varied histories, socio-economic backgrounds, and cultural and linguistic subtleties from 22 countries of origin
- Approximately 40% of Latin@s in U.S. are foreign born; 60% were born in the U.S.
- Many families have mixed immigration status: 75% of children in immigrant families are U.S. citizens



# Barriers to Seeking Help for Immigrant Survivors

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- Lack of knowledge and misinformation about the U.S. legal system
- Fears of the Police and Judicial System, of deportation, of social services and child welfare agencies, etc.
- Linguistic and Cultural barriers
- Discrimination
- Economic and Employment challenges
- Isolation from family and community

# Importance of Strengths-Based Advocacy

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- Acknowledging the survivor's courage and strength.
- Asking the survivor what her goals and priorities are.
- Understanding and building community resources and networks.
- Strengthening Community Engagement

# Creating a Comprehensive Framework

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## Fundamental guidelines:

- DV violates the **human rights** of survivors & their children by creating unsafe & fearful environments.
- Their **safety** must be central to any work we do.
- Safety is unattainable unless we practice **cultural and linguistic competency** consistently and improve access at the organizational and individual level.



# Part II: Access to Services Critical for Life and Safety, Regardless of Immigration Status

# Group Question

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## True or False?

In order to be able to access shelter or transitional housing services, an immigrant survivor must meet the criteria for “qualified alien,” as established in PRWORA (the 1996 welfare reform law that limits access to federal public benefits). **True or False?**

# Access to Services for Undocumented Immigrants

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- As a matter of law, immigrant women who are victims of violence have full access to domestic violence shelters and in-kind services, regardless of their immigration status
- Programs that turn away undocumented battered immigrants because of their status risk being charged with discrimination in violation of Federal laws

# Maintaining Access to Services Critical to Life or Safety

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- The welfare reform law passed in 1996 created new requirements affecting access to “federal public benefits” for immigrants.
- The federal law provided eligibility for “qualified aliens” but also created exceptions that maintain access to certain services **critical for life or safety** regardless of immigration status.
- The Attorney General, Janet Reno, issued guidance on access to these services.

# Criteria to Qualify for AG Exemption

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## 3-prong test set forth by Congress:

1. Deliver in-kind services at the community level, including through public and private nonprofit agencies;
2. Do not condition the provision of the assistance provided on the individual recipient's income or resources: and
3. The Services are necessary for the protection of life or safety of the individual.

(8 U.S.C. 1611(b)(1)(D))



## **AG's list of Required Services for Life and Safety for which all immigrants remain eligible**

- **Crisis Counseling and Intervention Programs**
- **Child and Adult Protection Services**
- **Violence and Abuse Prevention**
- **Victim Assistance for Victims of Domestic Violence and other Criminal Activity**
- **Treatment of Mental Illness or Substance Abuse**
- **Short-term shelter or housing assistance for the homeless, for victims of DV, or for runaway, abused or abandoned children:**
- **Programs or Assistance to help individuals during adverse weather conditions**

# AG's List Cont'd

- **Soup kitchens and community food banks**
- **Senior nutrition programs and other community nutritional services for persons requiring special assistance**
- **Medical and public health services necessary to protect life or safety**
- **And any other programs, services, or assistance necessary for the protection of life and safety [that meet the 3-pronged test]**

AG Order No. 2353-2001, 66 Fed. Reg. 3613-3616 (1/16/01)

# HUD Guidance on Access to Shelters and Transitional Housing

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- HUD-funded programs that provide emergency shelter and transitional housing for up to two (2) years to victims of domestic violence are **deemed necessary for the protection of life and safety** and should not be barred to individuals due to immigration status
- “Disregarding the Federal laws, guidance and directives that protect and preserve the legal rights of otherwise eligible battered immigrants, particularly women and children, to gain much needed access to emergency shelter and transitional housing may result in imposition of appropriate sanctions.”

# Part III: Ensuring “Meaningful Access” for Survivors with Limited English Proficiency

# “Meaningful Access”

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In order for access to DV services and transitional housing programs to be “**meaningful access,**” it is necessary to ensure language access for individuals with Limited English Proficiency (**LEP**).

# Growth in LEP Population

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- Number of LEP individuals in the United States grew by 80% from 1990-2010.
- Highest concentration of LEP individuals are found in the top 6 immigration-destination states (CA, TX, NY, FL, IL, NJ) that together represent 68% of the total LEP population.
- Foreign-born Population in Idaho:
  - 96,568 (2012 Census report)
  - 6.1% of state population
  - 50.7% growth from 2000-2012; 121% change since 1990
- English Proficiency among foreign-born Population in Idaho
  - speak only English: 19.8%
  - speak English “very well”: 31%
  - speak English less than very well (LEP): 49.2%

# Linguistic Changes Over Time

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- In 1990 the top 5 languages spoken by LEP individuals in the U.S.: Spanish, Chinese, French, Italian and German.
- In 2000: Vietnamese, Korean and Russian in positions 3-5; By 2010 Russian replaced by Tagalog.
- Different top languages between and within states.
  - What do you think are the 5 most common languages in Idaho after English?
- Of the 40 million foreign-born individuals in 2010, 52% were LEP; 48% spoke English.
- Children of immigrants learn English at very rapid rates; generational differences stark.

# Languages most common in Idaho

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The State Department of Education in Idaho reported that the Top 5 Languages spoken in 2009-2010 by LEP students were:

- Spanish (82.9%)
- Native American Indian Languages (1.6%)
- Russian (1.4%)
- Arabic (1.4%)
- Nepali (1.0%)



# Title VI of the 1964 Civil Rights Act

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“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

# Implementation of Title VI

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- The U.S. Supreme Court stated that one type of national origin discrimination is discrimination based on a person's inability to speak, read, write or understand English (*Lau v. Nichols* (1974))
- President Clinton signed Executive Order 13166 in Aug. 2000: "Improving Access to Services for Persons with Limited English Proficiency."

Figure 1



Source: Historical Photograph Collection of San Francisco Public Library's San Francisco History Center.

# Requirements of Executive Order 13166

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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 LEP persons can have meaningful access to them. Agencies are supposed to develop an LEP 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.

# Who Qualifies as a Recipient of Federal Assistance

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- Federal financial assistance includes grants and training. Sub recipients are also covered, when federal funds are passed on from one recipient to another (e.g., state funds that are a pass through of federal dollars).
- Recipients of federal funds range from state and local agencies, to nonprofits and other organizations.

# Group Question

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If an organization gets only some federal funding to support a specific project or program, what part of the organization's activities are affected by Title VI LEP requirements?

- A. Only that project/program within the organization that receives federal funding.
- B. Only projects specifically focused on immigration services or outreach to underserved communities.
- C. All of that organization's activities, including those not funded with federal dollars.

# What Part of an Organization's Activities are Covered under Title VI?

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- Title VI covers a recipient's entire program or activity.
- This means all parts of a recipient's operations are covered. This is true even if only one part of the recipient receives the federal assistance.

# Group Question

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## True or False?

If my county or city has an “English-only” law, then my organization does not have to comply with Title VI LEP requirements. **True or False?**

# What if my state or local jurisdiction has an “English only” law?

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- Despite a state's or local jurisdiction's official English-only law, Title VI and the Title VI regulations apply. Recipients continue to have a legal obligation under federal law to provide meaningful access for LEP persons (also true regardless of immigration status).
- State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of federal financial assistance to violate Title VI.



# When DO the Courts have to provide interpreters?

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The DOJ Guidance states: ... *[W]hen oral language services are necessary, recipients [of any federal funds] should generally offer competent interpreter services free of cost to the LEP person.*

For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services (67 FR 41455, 41462).

# Court Interpreters (cont'd)

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- Charging LEP persons for interpreter costs or failing to provide interpreters can implicate national origin discrimination concerns.
- DOJ's Guidance goes on to note: *...At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. (67 FR 41455, 41471)*

# Systems Advocacy for Meaningful Access for LEP Individuals

\*Ensuring meaningful language access should be part of a coordinated community response:

- Among DV/SA service providers
- Police
- Prosecutors
- Courts
- Social service providers
- Hospitals

## Ensuring Quality of Language Access

- Accuracy and effective communication are critical in domestic violence situations.
- Do not rely on friends and family members to interpret for the LEP victim in important and sensitive interactions.
- Avoid using children as interpreters, especially in domestic violence cases.
- Being bilingual is not enough; interpreters should be trained, neutral, and abide by confidentiality and ethical standards
- Important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group.

# Elements of an Effective LEP Plan

- Demographic profile of the community
- Process for identifying LEP persons who need language assistance
- Identifying ways in which quality language assistance will be provided (for both oral and written information)
- Training staff and volunteers
- Outreach and Education
- Monitoring and updating LEP policy

# Meaningful Access and Partnerships

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- DV and SA programs should build relationships with local immigration and civil rights organizations to collaborate to address these issues in their communities.
- Expand referral resources for immigrant survivors to faith-based and community organizations that work with immigrants.
- Develop meaningful alliances and partnerships.
- Get the word out in immigrant communities that your services are available regardless of immigration status.

# Community Engagement and Collaboration

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# Community Engagement

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- grounded and guided by the community's expertise
- only happens when community is at the center
- done in partnership with community
- about putting the tools, resources and supports in the hands of community
- about creating leadership opportunities for community to take on the work



# Community Engagement and Collaboration

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- Collaboration requires the following from everyone involved:
  - Flexibility
  - Ability to be open-minded
  - Coordination with partners
  - Ongoing, effective communication
  - Cross-training and networking
  - Intentionality and reflection
  - Established protocols and evaluation processes

# Part IV: Enhanced Safety Planning in Light of Increased ICE Enforcement Programs

# Story of Nelly Fuentes

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- Lived in San Francisco and last year the neighbors called police when her boyfriend was beating her up.
- Due to lack of language access she was not able to explain what had happened and the police arrested both her and her boyfriend.
- Even though no charges were brought against her, she was detained under Secure Communities and placed in detention awaiting deportation for 8 months until able to obtain U visa.
- Significant chilling effect and increased fear for victims or witnesses to call the police

# Importance of Understanding the ICE Programs in your Jurisdiction

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- Significant increase in number of deportations annually to approximately 400,000 per year.
- ICE (Immigration & Customs Enforcement) Cooperation Agreements - encompasses 13 separate programs that permit local law enforcement agencies to partner with ICE in immigration enforcement.
- 3 most widely used programs:
  - Secure Communities – technological presence in jails
  - Criminal Alien Program (CAP) – actual presence in jails
  - 287(g) Agreements – transfer of immigration enforcement authority to local law enforcement

# Expanding Reach of ICE Programs

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- Evolution of “Secure Communities”: Started as a pilot project in 14 counties in 2008;
  - When individuals are arrested and fingerprints are entered in FBI database will automatically be shared with ICE database.
  - ICE can issue a Detainer, placing a 48 hour hold on the individual, even if no charges filed and no conviction.
- “Secure Communities” became operational in **every** jurisdiction in U.S. by 2013 according to ICE;
- U.S. Customs and Border Protection (CBP) can make inquiries of citizenship status and make arrests within 100 miles of border (boarding trains and buses and making traffic stops).
  - 60% of U.S. population lives within 100 miles of U.S. land and coastal borders

# Detrimental Impact on Victims

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- After decades of work convincing survivors that police in the U.S. could be trusted, in states in which Secure Communities and similar programs are being enforced survivors are more fearful to call the police.
- Increasing fear of calling the police if viewed as arm of Immigration agency, rather than focused on public safety.
- Undermines community policing and perpetrator accountability if victims and witnesses too afraid to come forward.

# ICE General Prosecutorial Discretion Memo

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- ICE Memo of June 17, 2011 “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency..”
  - ICE statement that its limited resources should be focused on higher priority cases
- “The following positive factors should prompt particular care and consideration.....:
  - Victims of domestic violence, trafficking, or other serious crimes;
  - Pregnant or nursing women;
  - Individuals who suffer from a serious mental or physical disability;
  - Individuals with serious health conditions”(See page 5 of ICE memo)

# ICE General Prosecutorial Discretion Memo for Victims and Witnesses

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- June 17, 2011 additional ICE Memo “Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs”
  - “In these cases [specifically noting domestic violence], ICE officers, special agents and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”
  - “Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.” (See page 1 of Memo)



# ICE Memos not Self-Implementing

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- Requires vigilance and pro-active involvement of DV and SA programs
  - Specialized safety planning with immigrant survivors
  - Trainings and protocols with ICE, local law enforcement and Courts
  - Serving as a resource to assist immigrant victims
  - Outreach with immigrant communities
- Example of recent New Mexico case – DV immigrant victim detained by ICE in Family Court while seeking Order of Protection
  - Use of Prosecutorial Discretion Memo and VAWA Confidentiality provisions

# Preparing for Safety Planning Plus -

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Abusers use the current policies and protocols to further control victims by:

- Using their immigration status or lack of to further their control and abuse
- Accusing them of crimes to different authorities that may result in police intervention such as DHS, DOT, etc..
- Filing protective orders against them so they have to show up in court
- Calling the police and falsely accusing them of crimes
  - Once police are called, the intervention may result in ICE being called

# Safety Planning – an Enhanced Approach

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- Safety for survivors takes on a new look
  - Beyond physical safety from abuser
  - Must include trying to stay safe from a system that should be protecting survivor and her family
- Safety requires becoming used to asking difficult questions
- More than ever, our ability/willingness to listen carefully to what survivors want and building TRUST becomes central to our work

# One-on-One Advocacy

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- **Avoid a crisis**, identify issues on day one
- Your work with her around safety planning must also **include** how to address situations where she is arrested and:
  - Her children are alone at home or daycare
  - She did not pick up her last paycheck
  - The perpetrator has her passport and access to her money
  - There is a question regarding her ability to pay her bond (criminal or immigration)
  - The abuser may be neglecting children
  - Medical concerns, trauma issues, memory gaps
- These may be some of her immediate concerns but it is helpful to have her think about all other potential issues and address them in advance. This will **avoid her signing her removal** without first defending her rights.

# Potential Remedies for Immigrant Survivors

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- **U visa** (if helpful in investigation or prosecution of qualifying crime)
- **T visa** (for victims of trafficking)
- **VAWA self-petition** (if married to abusive spouse who is U.S. citizen or Legal Permanent Resident; and some other qualifying relationships)
- **Cancellation of removal**
- **Motions to reopen final orders of removal**
- **Gender asylum, withholding of removal,**
- **Deferred Action for Childhood Arrivals (DACA) and other general remedies**

# U-visa Certification

- Identify who is a recognized certifier in your jurisdiction
  - Any agency with investigative capacity
  - Staff person assigned within that agency with the responsibility of signing the U visa certification of cooperation (I-918B)
- Can include not only police and prosecutors, but also child protective services, judges, Equal Employment Opportunity Commission (EEOC) and others

# Contact Information

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