

Improving Child Welfare Practice for Immigrant Victims of Domestic Violence

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Learning Objectives

As a result of this training, participants will be able to:

- understand how immigration status and immigration proceedings impact families
- recognize the unique challenges domestic violence poses for immigrant families
- identify innovative ways to better serve immigrant families experiencing domestic violence, including when there is child welfare involvement

How is the term “immigrant” defined?

- Lawful Permanent Residents
- Employment and other temporary visas
- Asylees and Refugees
- VAWA, Trafficking victims, victims of crime
- DACA and TPS holders
- Undocumented persons

Key Immigration Agencies and Personnel

DHS: Department of Homeland Security

CBP: Customs and Border Protection (responsible for border enforcement)

ICE: Immigration and Customs Enforcement (responsible for interior enforcement and detention)

ERO: Enforcement and Removal Operations (ICE component agency in charge of detention centers)

DO: Deportation Officer (ICE officer in charge of person's day-to-day immigration case; first line POC)

ICE Field Office Director (supervisory ICE officer responsible for region; contact if DO is not responsive)

Key Immigration Agencies and Personnel, continued

Department of Health and Human Services (HHS)

ORR: Office of Refugee Resettlement (responsible for care and custody of unaccompanied children)

Department of Justice (DOJ)

Agency that houses immigration courts and Executive Office for Immigration Review (EOIR)

IJ: Immigration Judge

Immigration law is federal

Local and state police in some jurisdictions cooperate with ICE, including by honoring detainers

Key Federal Policy Changes Affecting Immigrant Communities

- More people are being arrested, detained, and deported
- Deportations can occur quickly (weeks or even days) with no notice to dependency court, criminal court and/or child welfare agency
- Increase in immigration detention and decreased likelihood of parole or bond
- Increased fear of police and social services
- Decreased likelihood that a deported parent will be able to return to participate in termination of parental rights (TPR) proceeding

You do not have to be undocumented to be arrested by ICE!

Cannot take custody of US citizens

Persons in lawful immigration status can be deported if they violate their status

Survey by Tahirih Justice Center (2017) found that

- 62% of legal service providers working with survivors of violence have seen increase in immigration-related questions
- Three fourths of those surveyed reported immigrants have expressed fear of contacting police and appearing in court

Los Angeles PD data released in March showed (compared to previous year) :

- 10% drop in reports of DV
- 25% drop in reporting of rape

**Result of Policy Changes: Fear is up,
crime reporting is down**

What happens when someone is
apprehended by ICE?

Time of arrest:

- Often traumatic for children; early morning home raids, traffic stops, arrests near schools
- No legally enforceable requirement on allowing calls to make childcare arrangements
- New ICE policy directive on Detention and Removal of Alien Parents or Legal Guardians speaks to this issue

Slide 10

- 2 Can we split this into three separate slides so there are fewer words per page? We can have one for each major bullet.

Melissa Mangiaracina, 5/16/2018

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What happens when someone is detained by ICE?

Detention

- Can be detained anywhere in the country and transferred
- Jails and jail-like facilities with little to no programming
- Phone call access, legal access, and visits are difficult
- Very limited access to release and parole

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What happens when someone is deported by ICE?

Court Processes

- May or may not have hearing (prior orders or expedited processes)
- May take months or even years
 - Court backlogs
 - appeals

Removal

- No advance notification
- Often transferred in days prior to removal

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Slide 11

- 3 Can we split this into three separate slides so there are fewer words per page? We can have one for each major bullet.
Melissa Mangiaracina, 5/16/2018
- 6 works for me!
Emily Butera, 5/18/2018

Slide 12

- 4 Can we split this into three separate slides so there are fewer words per page? We can have one for each major bullet.
Melissa Mangiaracina, 5/16/2018

What are families doing to prepare?

- More families are making contingency plans, but they may fall through the cracks
 - Stay with friends and family (stability issues)
 - CPS involvement
 - Reports of homelessness
- Power of Attorney and Guardianship (difficult to get it right)
- Leave the country with their parents?
 - Depends on child's age, immigration status, availability of caregiver
 - Whether parent has retained their rights
 - Legally (is there a child welfare case or custody dispute?)
 - Practically (can a detained or deported parent make/afford needed arrangements?)

How Families Become Dually Involved with Immigration and Child Welfare

- Custody disputes - abuser turns victim over to police or ICE to get "full custody" of the child
- Police investigate a domestic dispute or other crime and notify/involve child welfare
- Abuse or neglect allegation made against one or both parents and children are placed into foster care
- Family already receiving services from child welfare or child already in state care when one or both parents taken into ICE custody
- Temporary care arrangement collapses

What is it like to be a detained parent with a dependency case?

Immigration involvement complicates child welfare cases

- Parents are often confused and terrified
- ICE and child welfare do not communicate or coordinate well, and do not understand the limitations of the other
- Case workers do not know how to locate detained parent
- Parent does not receive, or cannot understand, notices from dependency court
- Detained parents do not have access to programming services needed to participate in case plan
- Difficult (though not impossible) to participate in court hearings

Reunification post removal is even more complicated (but there are success stories!)

Result for the Parent and Children

- Parents and children are unable to communicate
- Visitation is impossible or non-contact
- Parents unable to participate in case plans
- Parents unable to participate in court proceedings
- Family courts and social workers unwilling or unable to work towards reunification following removal

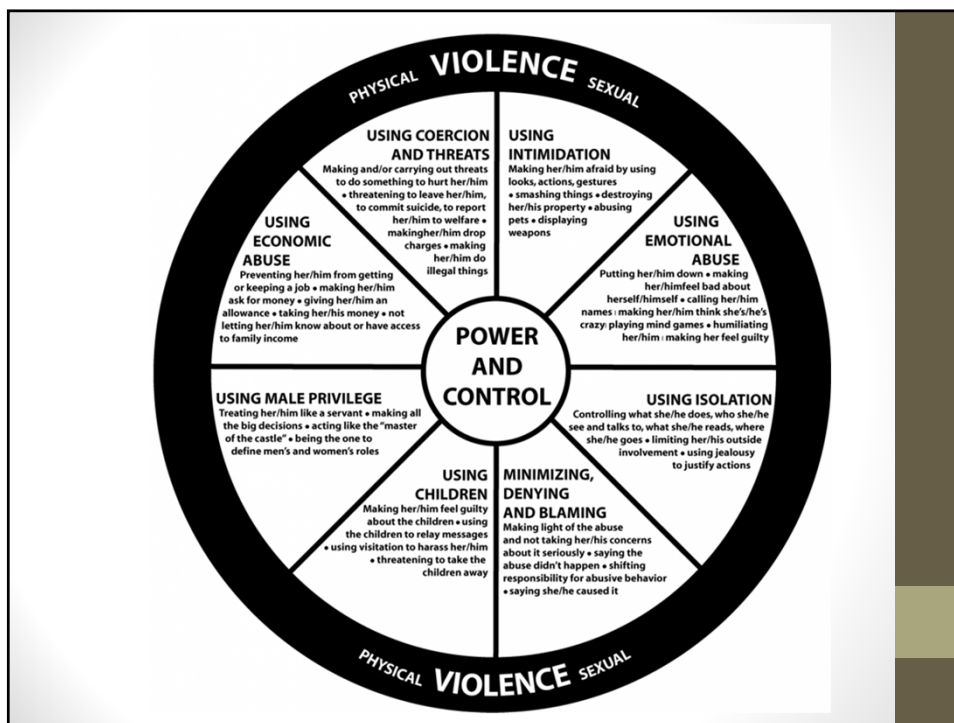
Ultimate Outcome for Families

- De Facto separation - parent is deported and children are unable or choose not to join
- Parental rights are terminated
- High stakes for any family, but when domestic violence is involved in the case, the stakes for children are even higher

Domestic Violence

- Defined:** A pattern of assaultive and coercive behaviors that operate at a variety of levels -- physical, psychological, emotional, financial, or sexual -- that one parent uses against the other parent. The pattern of behaviors is neither impulsive nor "out of control," but is purposeful and instrumental in order to gain compliance or control. It can include assault, destruction of property, isolation, and acts or threats of abuse against the victim parent, children, and pets.

See, Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence, available at http://www.ncjfcj.org/sites/default/files/checklist-to-promote-accountability_0.pdf

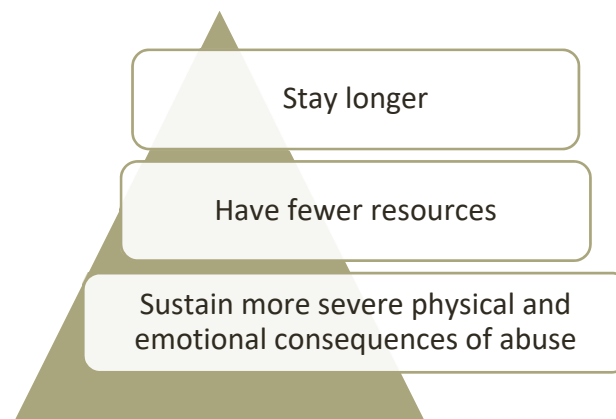


Domestic Violence and Immigrants

1 in 3 women and 1 in 4 men (nationally) are victims of domestic violence

- Rates for immigrant women:
 - Korean: 30-50%
 - Latina: 50-60%
 - Filipina, Indian, and Pakistani: >50%
- Abuse rates rise when U.S. citizen men marry immigrant women
 - 47.8% immigrant victims married to U.S. citizens or LPRs
 - Of those, 52.2% of perpetrators are American born, 9.7% were naturalized, and only 2.2% were LPRs

Research shows that immigrant victims also:



WHY?

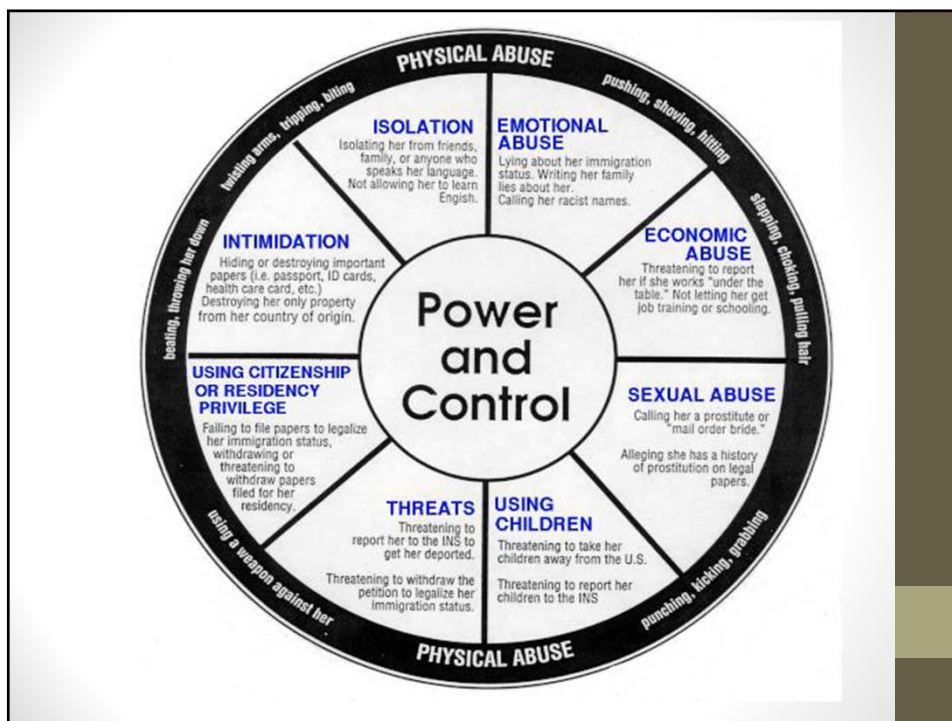
FEAR

The #1 reason that non-citizens stay with an abuser is out of fear that they will be deported!

OTHER REASONS INCLUDE...

- **Children**: abusers threaten to have the victim deported and obtain custody of the children
- **Isolation**: Non-citizen survivors are prevented from learning English, cut off from family in their home country, and are kept from others who speak their language
- **Threats**: abusers threaten to call ICE and have the victim or her children deported if they leave or report the abuse
- **Financial dependence**: non-citizens that do not have a work permit are often dependent on their spouse's income and are not in a position to support themselves by obtaining legal employment

- **Control over immigration status:** When abusers control the victim's immigration status, 72.3% never file immigration paperwork; those that do file delay 4 years on average
- **Embarrassment:** Victims may feel embarrassed that they picked an abusive partner or responsible for the abuse
- **Misunderstanding of what constitutes abuse:** Victims may not believe that what they are experiencing is domestic violence until excessive physical and/or sexual force is used
- **Unaware of legal options:** Many immigrant victims are not aware that there are legal forms of relief available to them, including CPOs and immigration relief
- **Fear of court:** Immigrant victims are reluctant to go to court for assistance, worried that they will be detained at the courthouse and deported





What is the purpose of the dependency court system?

- Protect children
- Give them stability
- Keep families together
- Treat everyone with dignity
- Respect diversity, and
- Value every child like their own

The Washington Post

'This is really unprecedented':
ICE detains woman seeking
domestic abuse protection at
Texas courthouse.

By Katie Mettler
February 16, 2017

Los Angeles Times

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

By James Queally, October 9, 2017

*What can we do to improve
outcomes for immigrant victims
of domestic violence that need
the help and support of the
child welfare system and the
dependency courts?*

In the language of dependency proceedings, what constitutes reasonable efforts?

Understand and consider the consequences of requested findings and orders

- Protective orders related to domestic violence can be grounds for removal
- Findings of abuse and neglect could be used against an immigrant parent in deportation proceedings
- Special Immigrant Juveniles (SIJ): requires findings that: (1) The minor is a dependent of the court; (2) it is not in child's best interest to return to his or her home country; and (3) the child cannot be reunited with the parent due to abuse, abandonment, neglect, or a similar state law reason

*Provide services that take into account the
parents' immigration status and culture*

- Translate court reports, health and school records into parents' native language
- Offer services (e.g., parenting classes, therapy, etc.) in the parents' native language
- Do not require parents to comply with plans that are at odds with their culture
- Do not make impossible demands (e.g., requiring "legal gainful employment" of undocumented parent)
- Offer appropriate services (e.g., no anger management or couples counseling for IPV cases)

*Provide services that take into account the
realities of detention and/or deportation*

- Do not order services not available to detained parents
- Work with consulate from parents' country of origin
- Collaborate with the child protection agency in the parents' country of origin
- Look early for relatives and consider placement with relatives, both in the U.S. and outside of the country
- Enable creative means of visitation, whether in person or through Skype, emails and photos
- Work early to obtain legal documentation required for visitation or transition in another country (birth certificates, passports, dual citizenship, etc.)

Develop Local Policies and Procedures

- Develop a local task force and protocols that work in your area
- Build relationships with local ICE and consulates
- Create policies and protocols for serving immigrant families in your area, including prevention services
- Train child welfare workers on best practices for serving dually involved families (address biases)
- Train family courts and children's attorneys on working with ICE to ensure parent's participation

Offer services that help immigrant survivors become more independent

- Education: immigrants must pay foreigner fees to attend college
- Employment: Employers reluctant to hire, even if immigrants have SSN, work them harder & pay them less
- Health: unable to obtain true health insurance for children; CPS can help obtain medicaid and/or discounts
- Government benefits: applications confusing; government employees not helpful
- Housing: Landlords unwilling to rent to family unless everyone has SSN; charge higher deposits
- Legal Assistance: make referrals for CPOs/immigration relief

*Make referrals that will help victims
obtain legal immigration relief*

- **VAWA Self-Petition and Cancellation of Removal** for certain categories of abused spouses, children, and parents
- **Battered Spouse Waiver** for abused spouses with conditional LPR status
- **U-Visa** for certain victims of crime
- **Special Immigrant Juveniles Status (SIJS)** for juveniles found to be abused, neglected, or abandoned by one or both parents.

VAWA Self-Petition

- Victims must establish that they:
 - Have or had a qualifying spousal relationship with the abuser or are the parent or child of the abuser,
 - Have resided with the abuser,
 - Are a person of good moral character, and
 - Suffered battery or extreme cruelty by the U.S. citizen or permanent resident abuser.

VAWA Cancellation of Removal

- Victims must establish :
 - They or their child have/has been battered or subjected to extreme cruelty by a spouse or parent who is or was a U.S. citizen or LPR
 - Continuous physical presence in U.S. for 3 years
 - Good moral character
 - Not inadmissible, not deportable, and has not been convicted of aggravated felony, AND
 - Removal would result in extreme hardship

Battered Spouse Waiver

- Survivor must apply for this and prove:
 - Removal from the United States would result in extreme hardship,
 - The marriage was entered into in good faith,
 - During the marriage, the spouse or the spouse's child was battered by or subjected to extreme cruelty committed by U.S. citizen or permanent resident, and
 - The applicant was not at fault in failing to file a joint petition and request waiver of joint filing requirement

U-Visa: Eligibility

- Applicant is the victim of qualifying criminal activity;
- Applicant has suffered severe physical or mental abuse as a result of being a victim of that criminal activity;
- Applicant has information about the criminal activity;
- Applicant has been, is being, or is likely to be helpful in the investigation or prosecution of the criminal activity;
- The crime occurred in or violated the laws of the United States; and
- Applicant is admissible or qualifies for an inadmissibility waiver.

U-Visa: Certifying agencies

- U-Visa applicants must submit a law enforcement certification (Form I-918B) completed by:
 - Federal, State and Local law enforcement agencies;
 - Federal, State and Local prosecutor's offices;
 - Federal, State and Local Judges;
 - Federal, State and Local Family Protective Services;
 - Equal Employment Opportunity Commission
 - Federal and State Departments of Labor; or
 - Other investigative agencies.

Special Immigrant Juvenile Status (SIJ)

- Applicant must be:
 - Under 21 years of age
 - Not married
 - Inside the United States at time of filing
- State Court Order must find:
 - The minor is a dependent of the court
 - It is not in child's best interest to return to home country
 - Child cannot be reunited with parent due to abuse, abandonment, neglect, or similar state law reason

A Note About Asylum

- Survivors may be eligible for asylum based on abuse in the home country
- Eligibility depends on variety of factors
 - Date of arrival in the US
 - Nexus
 - Administrative changes in asylum law
- Consult a qualified immigration attorney

Maria, Jose & Roberta

What immigration options might have been available to Maria before she was deported?

- A. VAWA self petition
- B. VAWA cancellation of removal
- C. U-Visa
- D. Asylum
- E. All of the above
- F. None of the above

Would Roberta qualify for SIJ?

Remember, the elements for SIJS include:

- Under 21?
- Married?
- Currently inside the United States?
- Dependent of the court?
- Cannot be reunited with parent due to abuse, abandonment, neglect or similar state law reason?

What services should the agency provide to Maria and her family as part of their obligation to make reasonable efforts to reunify her with her children?

Before she is detained/deported:

- Use interpreters and translate all documents into Spanish
- Refer Maria to a legal services provider for immigration relief
- Provide services aimed at keeping Maria safe and together with her children and helping her become more independent, including counseling, housing assistance, etc. in Spanish
- Offer services that are appropriate for domestic violence survivors (i.e., no anger management or couples counseling for IPV cases)

What services should the agency provide to Maria and her family as part of their obligation to make reasonable efforts to reunify her with her children?

After she is detained/deported:

- Offer creative means of participation in meetings, court hearings, and visitation with the children
- Work with consulate from El Salvador
- Contact and collaborate with the child protection agency in El Salvador
- Look for relatives and consider placement with them, both in the U.S. and El Salvador
- Help her and the children obtain legal documentation required for visitation or transition to El Salvador (birth certificates, passports, dual citizenship, etc.)

Practice Tips When A Parent Is Detained or Deported

HELP! I can't find the parent...

- ❖ ICE Online Detainee Locator System: <https://locator.ice.gov/odls/#/index>

Does ICE have to bring the parent to court and allow visitation?

- ❖ ICE Directive on Detention and Removal of Alien Parents or Legal Guardians: <https://www.ice.gov/doclib/detention-reform/pdf/directiveDetainedParents.pdf>
- ❖ ICE Policies and Procedures Involving Detained Parents and Legal Guardians: <https://www.ice.gov/doclib/detention-reform/pdf/factSheetDetainedParents.pdf>

Contact and communicate with ICE

- ❖ Contact ICE field office with jurisdiction over the facility where a parent is detained; ask for the child welfare POC: <https://www.ice.gov/contact/ero> (list of ERO field offices)
- ❖ If field office is unresponsive or unwilling to help, contact ICE Headquarters: Parental.interests@ice.dhs.gov
- ❖ ICE Detention Reporting and Information Line: 1-888-351-4024

Legal Resources

- **National Immigration Law Center:** <https://www.nilc.org>
- **Immigrant Legal Resource Center:** <https://www.ilrc.org>
- **ASISTA:** www.asistahelp.org
- **Directories of Legal Services Providers:**
 - www.immigrationlawhelp.org
 - <https://www.immigrationadvocates.org/nonprofit/legaldirectory>
 - <https://www.justice.gov/eoir/list-pro-bono-legal-esrvices-providers-map>

Resources for Families Facing Separation and Deportation

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- Women's Refugee Commission Resources for Parents Facing Deportation and Separation:
<https://www.womensrefugeecommission.org/rights/gbv/resources/1409-resources-for-families-facing-deportation-separation>
 - Protecting Assets and Child Custody in the Face of Deportation:
<http://www.appleseednetwork.org/wp-content/uploads/2017/03/Custody.first-draft-from-firm.3.8.17-KC-final.pdf>
 - Guide for Practitioners Assisting Immigrant Families:
<http://www.aecf.org/resources/protecting-assets-and-child-custody-in-the-face-of-deportation>
 - Sample Family Preparedness Plan:
https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf

Online Resources for Immigrants

- <https://childwelfare.gov/topics/systemwide/diverse-populations/immigration/helping-immigrant-families-overcome-challenges/>
- <https://www.informedimmigrant.com>
- <https://www.nilc.org/issues/immigration-enforcement/everyone-has-certain-basic-rights/>
- <http://www.lcycwa.com/immigration-safety-plan-and-resources>

Slide 51

- 5 this and the AECF link are links to two versions of the same document
Emily Butera, 5/10/2018

Culturally Specific Resource Centers for Domestic Violence Survivors

- Casa de Esperanza:
<https://casadeesperanza.org>
- Asian Pacific Institute on Gender Based
Violence: <http://www.api-gbv.org>
- Tahirih Justice Center:
<http://www.tahirih.org/what-we-do>
- Ujima, Inc.: www.ujimacommunity.org

Contact us

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