

**Ensuring Access to Services for Limited English Proficient and Immigrant Survivors**

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**Objectives of the Presentation**

- 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

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**Foreign-born Population in U.S.**

- Of the total foreign-born population in U.S. (38.5 million):
  - 53% were born in Latin America
  - 28% were born in Asia
  - 13% were born in Europe
  - 4% were born in Africa
  - 3% were born in other regions of the world
- Foreign-born residents make up 12.5% of the population today, compared to 15% in 1910 at peak of immigration influx.  
(U.S. Census; 2009 American Community Survey)

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### Latin@s in the United States

- Approximately 50.5 million Latin@s living in the U.S. (16.3% population) (2010 U.S. Census)
- 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.

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### Immigration Status

- The challenges immigrant victims face depends on where they fall within the following 5 general categories:
  - 1) **Naturalized Citizens (formerly LPRs)**  
= 11.3 million (32%)
  - 2) **Legal Permanent Residents (LPRs)**  
= 10.4 million (29%)
  - 3) **Unauthorized Immigrants (Undocumented)**  
= 10.3 million (29%)
  - 4) **Refugee Arrivals (Immigrants who fled persecution)**  
= 2.5 million (7%)
  - 5) **Temporary Legal Residents**  
= 1.2 million (3)
- Total= 35.7 million foreign-born (2005)

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### Barriers to Seeking Help

- 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

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The future well-being of this nation is dependent on our ability to:

- embrace diversity
- build cross-cultural understanding
- help each individual to realize his/her own potential
- build a more just, non-violent society that vigorously protects the **human rights** of all individuals.

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Creating a Comprehensive Framework

- 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 at the organizational and individual levels.

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Group Question

**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?**

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### Access to Services for Undocumented Immigrants

- 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.

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### Maintaining Access to Services Critical for Life or Safety

- 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.

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### Criteria to Qualify for AG Exemption

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))

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**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

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**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)

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**Additional Non-profit Exemption**

- Non-profit, charitable organizations are exempted from the welfare law's requirements to verify the immigration status of those seeking public assistance.

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### HUD Guidance on Access to Shelters and Transitional Housing

- 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.”

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### “Meaningful Access”

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)

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### Language Access Issues

- Recipients of Federal funding must ensure “Meaningful Access” to those with Limited English Proficiency (LEP) under Title VI of the Civil Rights Act of 1964.
- Recipients of Federal funds are not allowed to discriminate based on race, color, or national origin.

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### Who is a Limited English Proficient Individual?

- LEP persons are those individuals who do not speak English as their primary language and have a limited ability to read, write, speak or understand English.
- The Census revealed that more than 24 million persons over the age of five living in the United States spoke a language other than English and did not speak English "very well." Of those, 11 million did not speak English at all or spoke it poorly.  
(Source: U.S. Census Bureau, 2006-2008 American Community Survey)
- According to the Census, there are 300 languages spoken in the United States.

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### 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

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### Implementation of Title VI

- 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."

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### Requirements of Exec. 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 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.

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### Group Question

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

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### Who qualifies as a recipient of federal financial assistance?

- Federal financial assistance includes grants and training. Subrecipients 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.

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**What part of an organization's activities are covered under Title VI?**

- 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.

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**What are recipients of federal funds and federal agencies required to do to meet LEP requirements ?**

Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

The starting point is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee
2. The frequency with which LEP individuals come in contact with the program

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**Additional Factors**

3. The nature and importance of the program, activity, or service provided by the program to people's lives
4. The resources available to the grantee/recipient or agency, and costs

See LEP Policy Guidance issued by different federal agencies:  
[http://www.lep.gov/guidance/guidance\\_index.html](http://www.lep.gov/guidance/guidance_index.html)

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Remarks of Assistant Attorney General at Meeting of Federal Interagency Working Group on Limited English Proficiency, 4/20/09

"I want to point out 2 key areas of guidance... that applies across all agencies and recipients:

First, as time goes on, the bar of reasonableness is being raised. The need to show progress in providing all LEP persons with meaningful access increases over time..

The second cross-cutting point is that, even in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a "frill" when determining what to cut in a budget..."

[http://www.lep.gov/Kingremarks4\\_20\\_09.pdf](http://www.lep.gov/Kingremarks4_20_09.pdf)

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Group Question

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?**

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What if my state or local jurisdiction has an "English-only" law?

- 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.

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**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.
- It is important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group.

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**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

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**Group Question**

Has your organization developed an LEP Language Access Plan?

- Yes
- No

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### Do courts have to provide interpreters?

- 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).

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### Court Interpreters (cont'd)

- 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)

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### How to File a Complaint

- If a recipient of federal funds continues to deny meaningful access to LEP individuals a complaint can be filed.
- The Coordination and Review Section of the Civil Rights Division of the U.S. Department of Justice handles complaints.  
<http://www.justice.gov/crt/cor/complaint>

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**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

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