

# Access to DV Services for Immigrant Survivors and Individuals with Limited English Proficiency

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# Objectives of the Presentation

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

# Foreign-born Population in U.S.

- Of the total foreign-born population in U.S. (35 million):
  - 51% were born in Latin America
  - 25.5% were born in Asia
  - 15.3% were born in Europe
  - The remaining 8.1% were born in Africa and other regions of the world.
- Foreign-born residents make up 13% of the population today, compared to 15% in 1910 at peak of immigration influx

## US Population Projections by Race and Ethnicity

	2000	2020	2030	2050
<b>White, not Hispanic</b>	<b>69.4%</b>	<b>61.3%</b>	<b>57.5%</b>	<b>50.1%</b>
<b>Black</b>	<b>12.7%</b>	<b>13.5%</b>	<b>13.9%</b>	<b>14.6%</b>
<b>Asian</b>	<b>3.8%</b>	<b>5.4%</b>	<b>6.2%</b>	<b>8.0%</b>
<b>Hispanic (of any race)</b>	<b>12.6%</b>	<b>17.8%</b>	<b>20.1%</b>	<b>24.4%</b>
<b>All other races</b>	<b>2.5%</b>	<b>3.5%</b>	<b>4.1%</b>	<b>5.3%</b>

Source: U.S. Census Bureau, 2004, "U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin,"  
<http://www.census.gov/ipc/www/usinterimproj/>

# 2013 Idaho Population

White persons, percent, 2011 (a)	93.9%	78.1%
Black persons, percent, 2011 (a)	0.8%	13.1%
American Indian and Alaska Native persons, percent, 2011 (a)	1.7%	1.2%
Asian persons, percent, 2011 (a)	1.3%	5.0%
Native Hawaiian and Other Pacific Islander persons, percent, 2011 (a)	0.2%	0.2%
Persons reporting two or more races, percent, 2011	2.1%	2.3%
Persons of Hispanic or Latino Origin, percent, 2011 (b)	11.5%	16.7%
White persons not Hispanic, percent, 2011	83.6%	63.4%

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# Idaho Statistics

- **1805** - Captains Meriwether Lewis and William Clark Idaho at Lemhi Pass, and cross into north Idaho over the Lolo Trail August 12.
- **In 1837-** First school in Idaho opens for Indian children at Lapwai and first white child born in Idaho is Eliza Spalding born at Lapwai.
- **1846** - Idaho becomes part of the United States. The United States acquires all land south of 49 degrees longitude by a treaty with Great Britain.
- **1849** -Over 20,000 emigrants who join the gold rush come through southeastern Idaho on the California Trail.

# Additional Idaho Demographics

- 5.9% of the population is foreign born. By country of origin, the largest groups of foreign born residents in Idaho are:
- 10.2% speak a language other than English at home.

# 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, and
- build a more just, non-violent society that vigorously protects the **human rights** of all individuals



# 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
- Economic and Employment challenges
- Isolation from family and community

# 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 level

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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
- Recipients of Federal funds are not allowed to discriminate based on race, color, or national origin

# 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

# 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."

# 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.

# 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. Recipients of federal funds range from state and local agencies, to nonprofits and other organizations
- 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.



# 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;

## Additional Factors:

3. the nature and importance of the program, activity, or service provided by the program to people's lives; and
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)

## Remarks of Asst Atty Genl at Meeting of Fedl 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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# 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.
- State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of federal financial assistance to violate Title VI.

# 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.
- It is very important to 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 /Community Collaboration
- Monitoring and updating LEP policy

# 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).

## 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)



# Minnesota Court Interpreter Laws

- Minnesota has a statewide statutory requirement that an interpreter must be appointed in all proceedings involving individuals with limited English proficiency.
  - Minn. Stat. secs. 546.42, 546.43
- There is no charge for interpreters in civil and criminal proceedings

# Advocacy for Meaningful Access for LEP Individuals

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

# Minnesota Agencies with LEP Plans

- A number of agencies have developed LEP Access Plans that are available on the internet. For example:
  - MN Dept. of Human Services LEP Plan
  - Ramsey County District Court LEP Plan
  - Hennepin County Human Services LEP Plan
  - City of Minneapolis LEP Plan (“Minneapolis in Any Language”)

# Access to DV Services for Immigrants

- Title VI of the Civil Rights Act provides a right for individuals with Limited English Proficiency to have meaningful language access.
  - This is different than meeting eligibility requirements for specific federal public benefits
  - There are different restrictions to access public benefits/cash benefits
- However, there are exceptions for services critical for life and safety, such as DV shelters and transitional housing that must be made available to all regardless of immigration status

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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 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 for Life and Safety

- The welfare reform law passed in 1996 created new requirements affecting access to federal public benefits for immigrants
- The federal law created exceptions that maintain access to services critical for life and safety
- 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 non-profit agencies;
- 2) Do not condition the provision, amount, or cost of the assistance provided on the individual recipient's income or resources: and
- 3) The Services are necessary for the protection of life and safety of the individual  
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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



# 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

- 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.”

# How to File a Complaint

- 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>

*“All of life is interrelated. We are all caught in an inescapable network of mutuality, tied to a single garment of destiny.*

*Whatever affects one directly affects all indirectly”.*

*- Martin Luther King*