

Representing Non-Citizen Survivors of Domestic and Sexual Violence

Presented by
Sonia Parras Konrad
ASISTA

SECTION I

IDENTIFYING DOMESTIC VIOLENCE IN YOUR IMMIGRATION CASE

GOALS

- Who do I need to talk to
- What do I need to know
- How do I talk about it

YOUR TEAM BEFORE YOU START



ASIAN PACIFIC ISLANDER INSTITUTE “THE SPIRAL OF VIOLENCE”

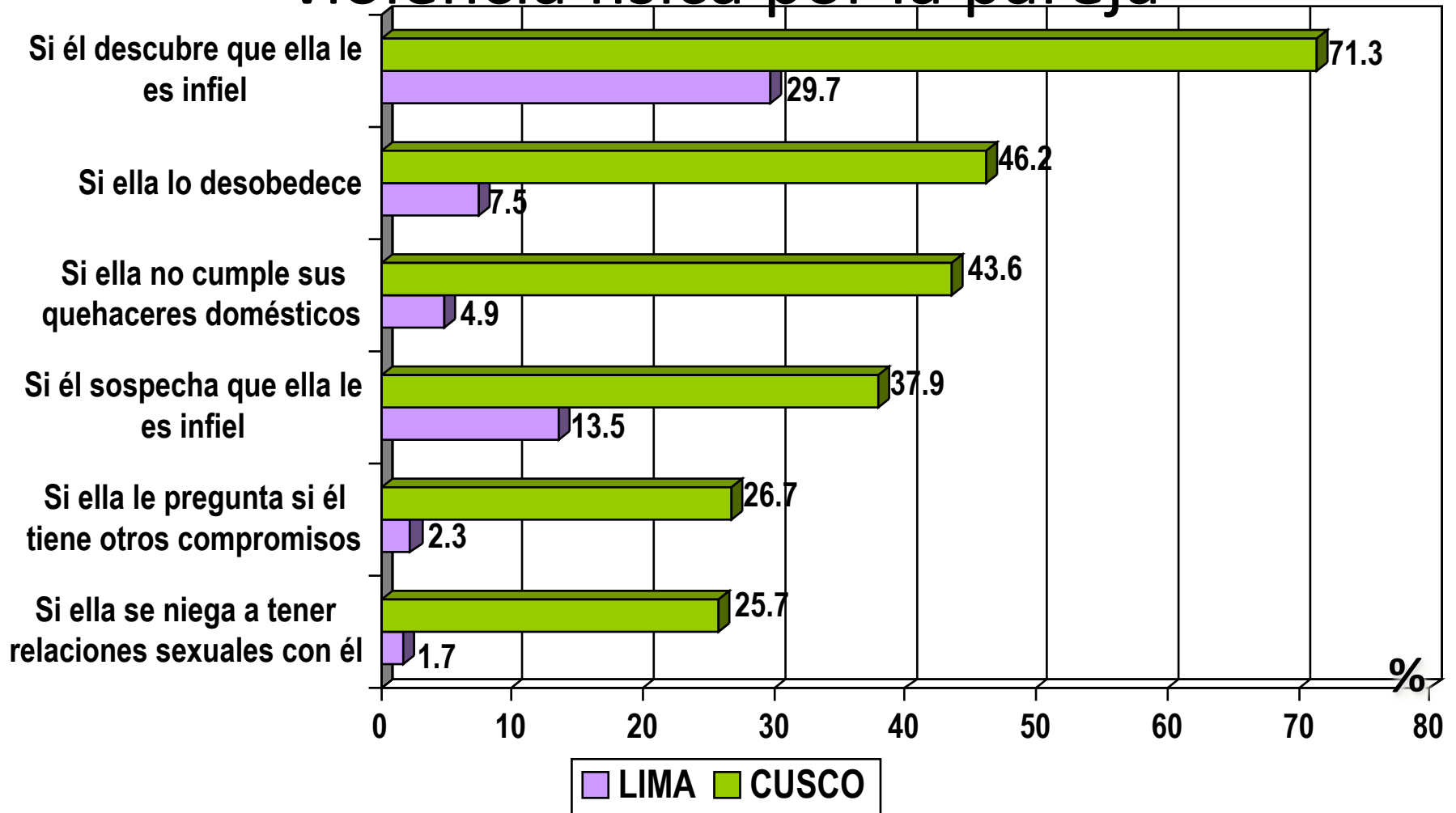




Culture matters

PERU

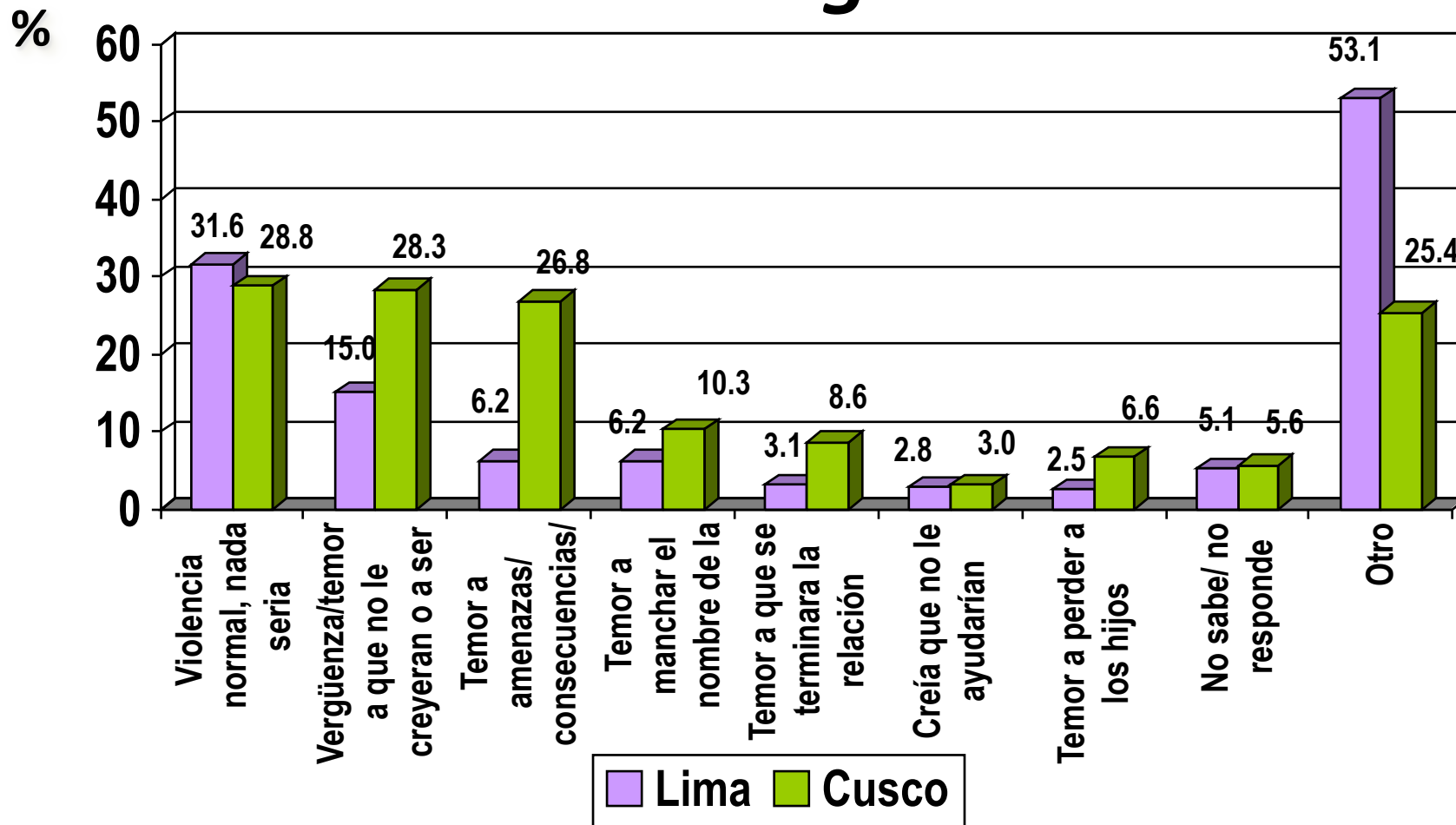
Razones que justifican el uso de la violencia física por la pareja

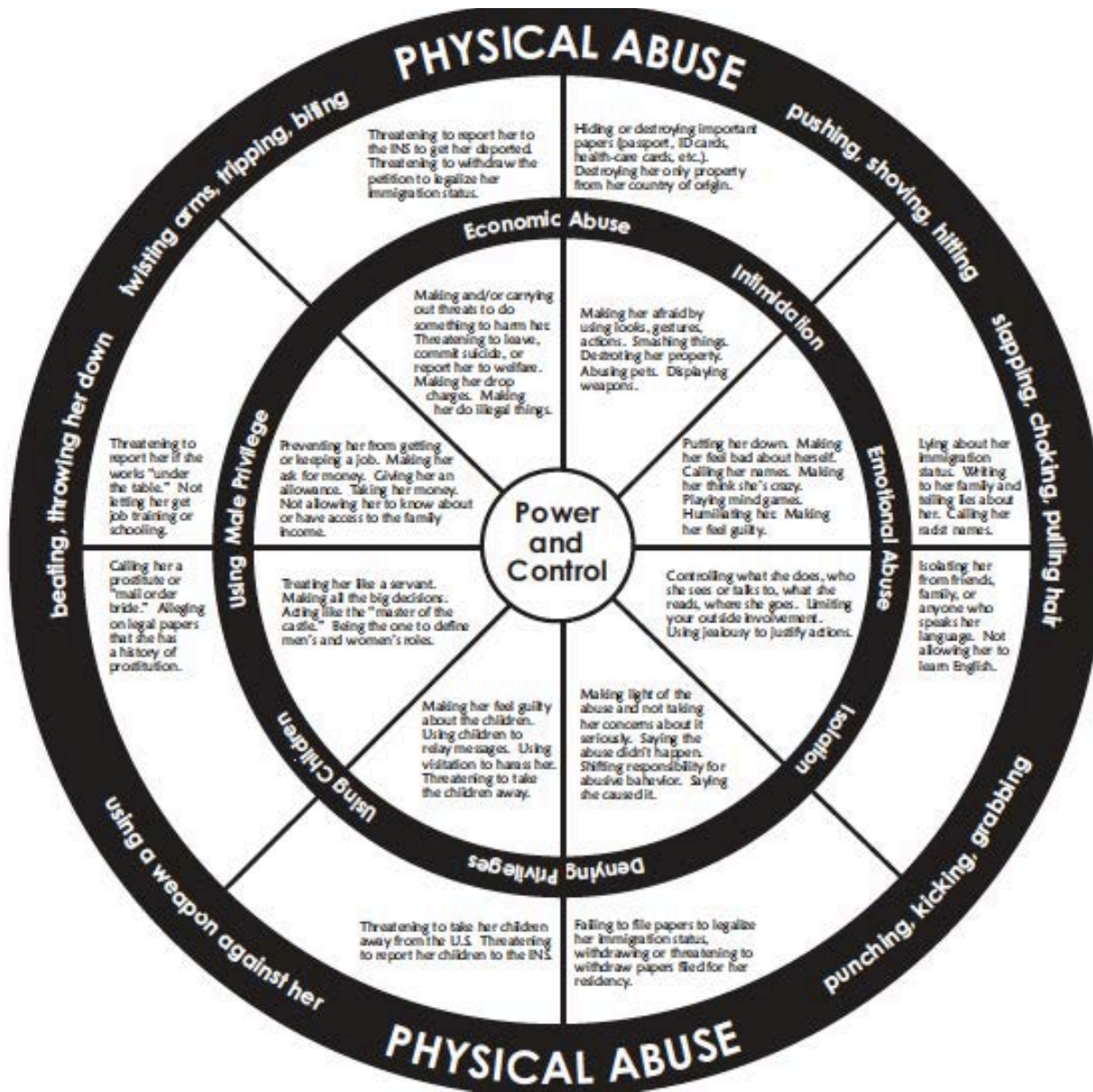


Estudio multicéntrico de la Organización Mundial de la Salud sobre la salud de las mujeres y la violencia en pareja

Razones para no acudir a servicios

Reasons not to go to services





8 CFR 204 (c) (vi) **Battery** or extreme cruelty.

For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any

- act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

- **Other abusive actions** may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a **part of an overall pattern of violence**...

During the marriage...

Your client tells you that her husband was sleeping around. She even caught him in their bed one time.

She finally had it when he came drunk one night and told her that he was in love with the babysitter

Your client cannot get over the fact that her husband cheats on her.

He not only does not deny it but blames it on her for not being “good enough in bed.”

During the marriage...

Your client tells you that they have separated economies and argue constantly about who pays what.

He says that his money is his and that her money is hers. Since they have no kids, he makes her pay 1/5 of the expenses.

Your client tells you that they have separated economies. He knows her SS# is not good and when she complains about him not providing he threatens her with reporting her for working with a false number.

She wants him to pay more because he makes more than her and thinks it is not fair.

During the marriage...

She tells you that he calls her crazy to make her mad. He also calls her “fat caw” and criticizes her when she wears skirts.

She tells you that he tells her that she is crazy like her mother and that worries her a lot.

RFE

Extreme cruelty must indicate an intent to control through psychological attacks and/or economic coercion which also includes emotional abuse, humiliation, degradation, and isolation. A pattern of purposeful behavior, directed at achieving compliance from or control over the victim must be demonstrated.

Marital tensions and incompatibilities which serve to place severe strains on a marriage, and in fact may be the root of the marriage disintegration do not by themselves constitute extreme cruelty. The intent of VAWA did not encompass the mental anguish generally associated with marital difficulties, infidelity, separation or abandonment.

Women cope with interpersonal violence by using:

- Denial
- Minimization
- Avoidance
- Freezing
- Ambivalence
- Embarrassment/ Shame
- Dependence/ Attachment
- Self-defense
- Substance Abuse



Conducting the Conversation About Traumatic Events or Emotions

- Your Role During the Discussion
 - You are there to help her articulate her memories and feelings for her declaration
- Staying Focused
 - Avoid legal jargon
 - Use open ended questions
 - Bring her to the relevant events and develop
- Returning to the Present Moment
- Ending the Meeting

Make it visual

- **Credible affidavit**
 - Talk about talking
 - Time line of accounts
 - Draft affidavit with counselor or advocate
 - Secure expert witness (PTSD, etc.)
 - Review, review, review
- **Power and control**
 - Flow charts of process once case is filed

Safety

Environmental safety:

Office or setting

Within or outside client's
community

Presence of support
system

Safety of the overall
environment

Psychological safety:

client will not be:

criticized,

rejected,

dramatically
misunderstood,

needlessly interrupted,

and that boundaries
will not be violated.

Think about it...

- 3 things to help with your client's safety concerns
- 3 things to ensure your staff is safe
- 3 things to ensure you are safe



SECTION II

Filing U Visa Applications for Workplace Crime

U Visa Applications for Workplace Crimes

GOALS

1. What crimes?
2. Who can certify?
3. Identifying and establishing substantial abuse for workplace-based crime
4. Review of inadmissibility waivers

Qualifying Criminal Activities

Most often relevant in workplace crime cases

Abduction

Abusive sexual contact

Being held hostage

Blackmail

Domestic violence

Extortion*(1)

False imprisonment

Felonious assault

Female genital mutilation

**Fraud in foreign labor
contracting*(2)**

Fraud labor*(3)

Incest

Involuntary servitude

Kidnapping

Manslaughter

Murder

Obstruction of justice

Peonage

Perjury

Prostitution

Rape

Sexual assault

Sexual exploitation

Slave trade

Stalking

Torture

Trafficking

**Unlawful criminal
restraint**

Witness tampering

Most Common Workplace U Visa Crimes

- Abusive sexual contact/rape/sexual assault/sexual exploitation
- Blackmail/extortion
- Felonious assault
- Involuntary servitude/peonage/trafficking
- Obstruction of justice/witness tampering
- **New crimes: Fraud in foreign labor trafficking, extortion in labor context and labor fraud- VAWA reauthorization 2013-S.47 — 113th Congress (2013-2014)**

Abusive Sexual Contact, Rape, Sexual Assault, Sexual Exploitation

- Unwelcome sexual contact, sexual assault, rape or attempt to do so by employer, agents, co-workers, or customers.
 - Explore harassment as attempted sexual contact/sexual assault- was there any touching?
- Clients may minimize examples of abusive sexual contact.
- Check state statutes:
National Crime Victim Law Institute:
<http://www.lclark.edu/org/ncvli/clpps.html>

Effective Interviewing Skills

Strengthening your interviewing skills

- What
- When
- How
 - Repeat
 - Conversation starters
 - How are things at work?
 - Do you like your job?
 - What do you do there?
 - How many hours do you work?

Strengthening your interviewing skills

A step removed

- ▶ Money
 - ▶ Are they paying you all your hours, overtime?
 - ▶ How are they treating your co-workers? Any complaints?
 - ▶ What do you see?
- ▶ Supervisors or anyone with perceived power
 - ▶ How does your supervisor/co-workers treat you?
 - ▶ Has anyone mistreated or disrespected your peers? How?
 - ▶ Did any of it ever happen to you?
 - ▶ Has your supervisor/Co-worker ever made you feel uncomfortable? If so, how?
- ▶ Did you complain about it or talked about it to
 - ▶ a trusted person in the office/company or a peer? Human resources representative? Union leader? Nurse? Anyone else?

On sexual violence

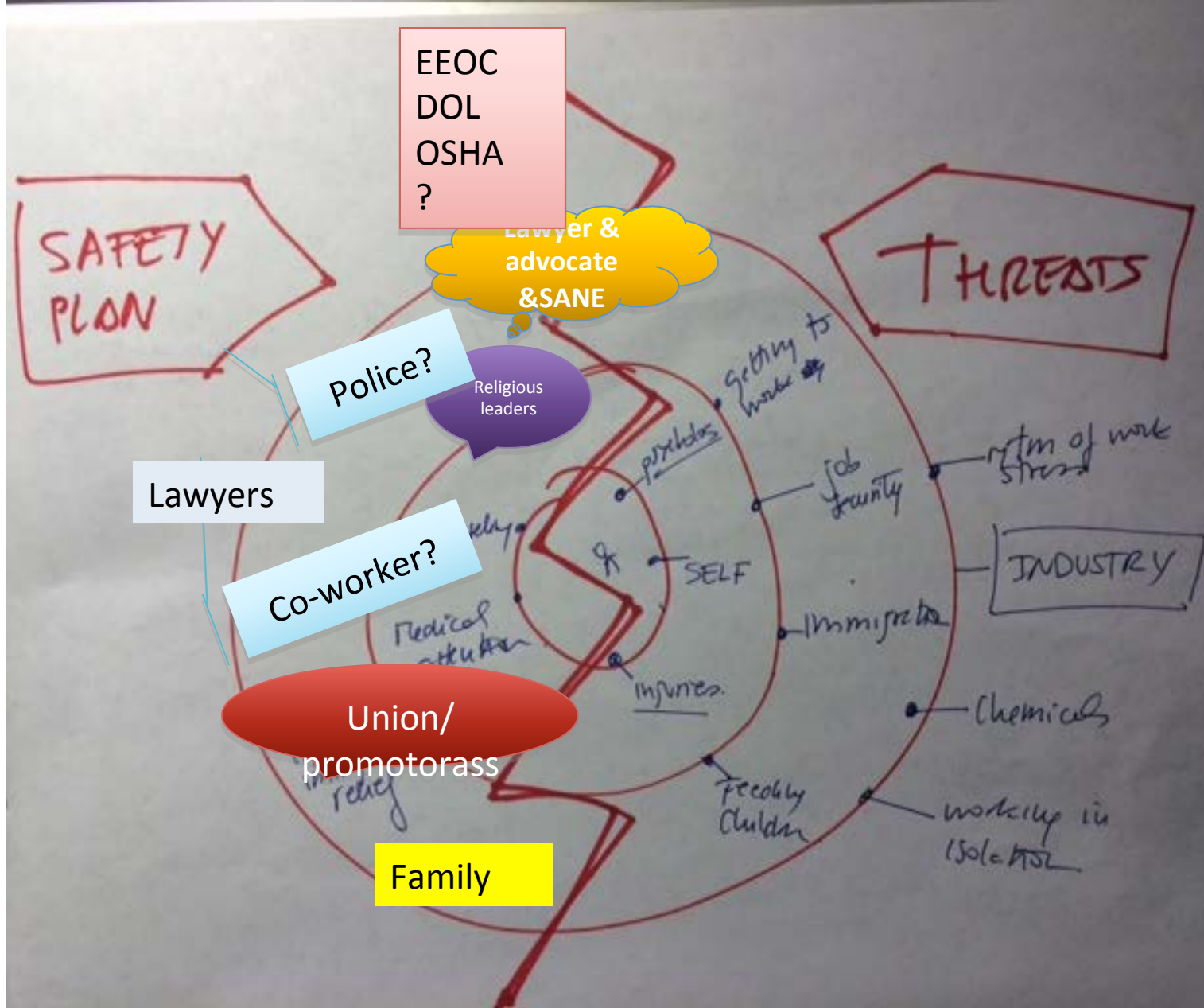
- ▶ Did any of your supervisors/co-workers ever ask you out or offer you to go to lunch, call you outside of work, invite you to give you a ride home before or after work?
 - ▶ What happened if you said no? (potential punishment/retaliation)
 - ▶ Did your supervisor/co-worker ever touch you in an offensive way or in any manner?
 - ▶ How many times did it happen? Did anyone see it?
 - ▶ Did this happen to you ever? Did you tell anyone about it? Did anyone see it?

What does safety look like?

Perceived threats

vs.

Completed threats



Blackmail/Extortion

- Generally—use of a threat or fear to coerce someone to give up something of value
 - Did employer threaten
 - violence,
 - report immigration status, or
 - destroy your reputation to obtain property or money or force to do something you didn't want to do?
- VA and CO: extortion statute specifically includes threat to report immigration status to induce an individual to give up money or item of value

Involuntary Servitude

- The crime of Involuntary Servitude means a **condition of servitude** in which the victim is
 - forced to work by the use or threat of
 - physical restraint or physical injury
 - coercion through law or the legal process
 - *United States v. Kozminski*, 487 U.S. 931, 952 (1988).
 - How
 - Threats of physical, psychological, financial, or reputational restraint or harm
 - Threats to contact law enforcement/immigration to compel work
 - Confiscation of identity documents, passports, travel documents

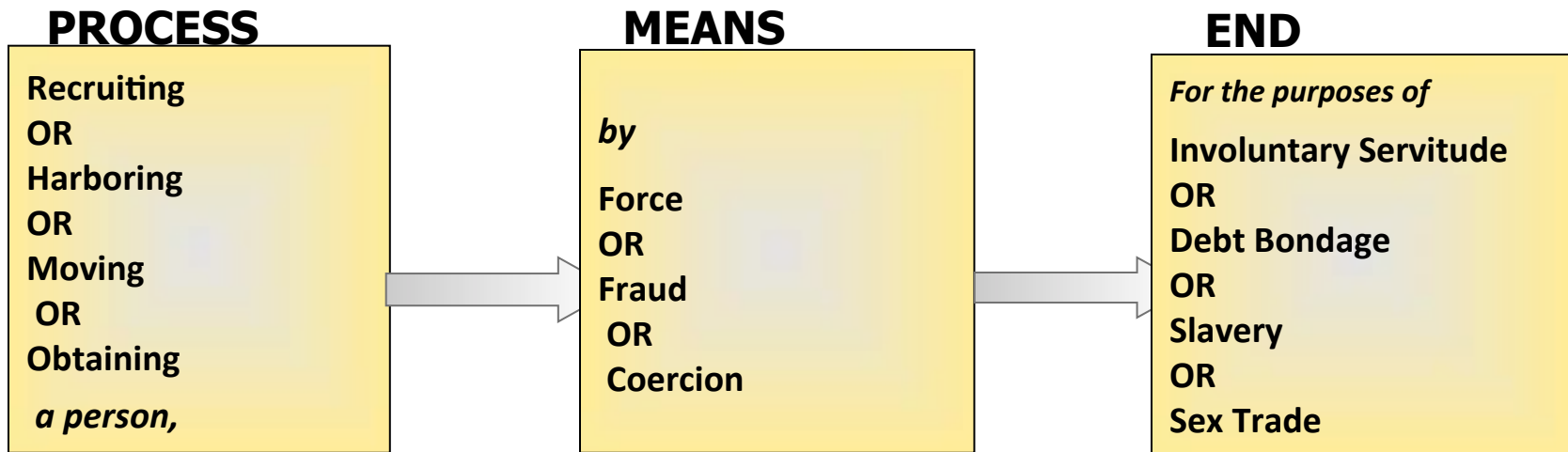
Involuntary Servitude

Supporting facts

Supporting facts:

- **wage violations,**
- **inadequate food, housing, medical care, clothing;**
- **verbal/physical abuse,**
- **restricted contact**
- **use of locks/fences to restrict mobility**

Human Trafficking



Juan was recruited to work at a processing plant for 4 months. He entered legally with an H visa. Upon entry, the employer kept the passport, took him to a forest along with the rest of the workers and explained that before going to the processing plant, they needed to pay for the recruitment expenses, immigration fees and the traveling expenses. His shift is 6am-7pm Monday – Sunday for the next two months.

Obstruction of Justice, Witness Tampering

Obstruction of justice:

- Attempts to influence, obstruct, or impede any pending proceeding through use of threats or force;
- Destruction, alteration, or falsification of records, including labor certification, wage/hour records, birth certificates
 - 8 U.S.C. § 1519—prohibits act done with the intent to obstruct investigation of any matter within federal agency's jurisdiction

Fraud in Foreign Labor Contracting

- New qualifying criminal activity:
“*Knowingly and with intent* to defraud, recruits, solicits, or hires a person outside the United States . . . For purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment”
 - Also applies to work outside the United States (U.S. government contracts; military installations)
--8 U.S.C. § 1351

Fraud in Foreign Labor Contracting

- Helpful where employers have provided false representations on:
 - Terms and conditions of employment, housing, fees to labor brokers, food and transportation, ability to work for other employers, material aspects of work arrangement
 - Broader than trafficking or involuntary servitude
- In discussions with DOL to include as Qualifying Criminal Activity (QCA)

Hypothetical

Estela works at the poultry processing plant of “Niceruraltown” from 6am to 8pm Monday through Friday and then at the local Mexican restaurant cooking during the weekend. She got her jobs from a nice supervisor who invited her to come from her village in Guatemala. Although she was hired at 7.50 an hour, between paying for safety equipment. Laundry fees and paying her immigration fees she actually gets paid around \$5.00 an hour.

Her partner assaulted her during the weekend and the neighbors called the police. Estela tells you that she deserves what she got because her partner found out about the sex at the plant.

When you ask her about whether she is being mistreated at work, she tells you that she has become increasingly uncomfortable because the owner of the restaurant often makes crude jokes about her and other employees. He has also started following her around the restaurant and has started making unwanted sexual advances at her. She is scared and confused.

Who can certify a U visa for a workplace based crime?

- Federal Agencies: certification authority specified in 8 C.F.R. § 214.14(a)(2)
- State Agencies
- Local Law Enforcement Agencies
- Judges

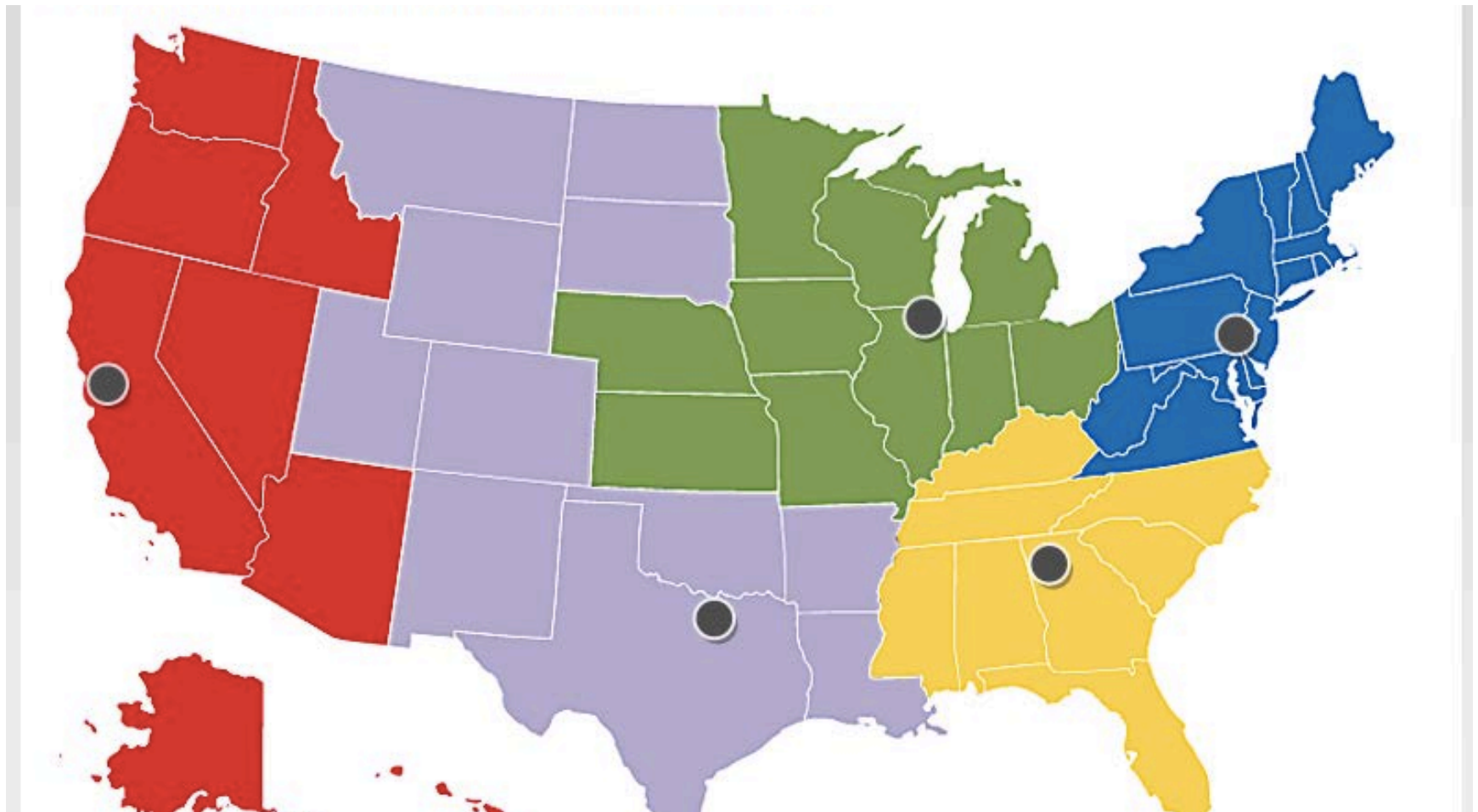


U.S. Department of Labor

- Certification currently limited to ~~5~~ **8** qualifying crimes:
 - Involuntary servitude, peonage, trafficking, obstruction of justice, witness tampering **fraud in foreign labor contracting, extortion and forced labor**. (added to the list of qualifying crimes by the Violence Against Women Act Reauthorization of 2013).
- Can request certification before, during, or after WHD investigation.
- The DOL tries to complete certifications within 3 months of a request.
 - Neither the EEOC nor the NLRB protocols/procedures on certifying U visas specify a time period to complete the certification.

Wage and Hour Division (WHD)

Regional Coordinators-Workplace Crimes





U.S. Equal Employment Opportunity Commission

- Qualifying criminal activity must be related to unlawful employment discrimination alleged in EEOC complaint or under investigation by EEOC.
- EEOC will certify for any of U visa qualifying crimes.



National Labor Relations Board

NLRB: conducts elections for labor unions; investigates unfair labor practices against workers organizing/collective bargaining.

- No restrictions on qualifying criminal activity
- Must be **related** to meritorious **unfair labor practice** under investigation by NLRB

State/Local Agencies

- New York Department of Labor
- California Department of Fair Employment and Housing
- Illinois Department of Labor
- *(California Division of Labor Standards Enforcement)*
- Local law enforcement officials

Judicial Certification

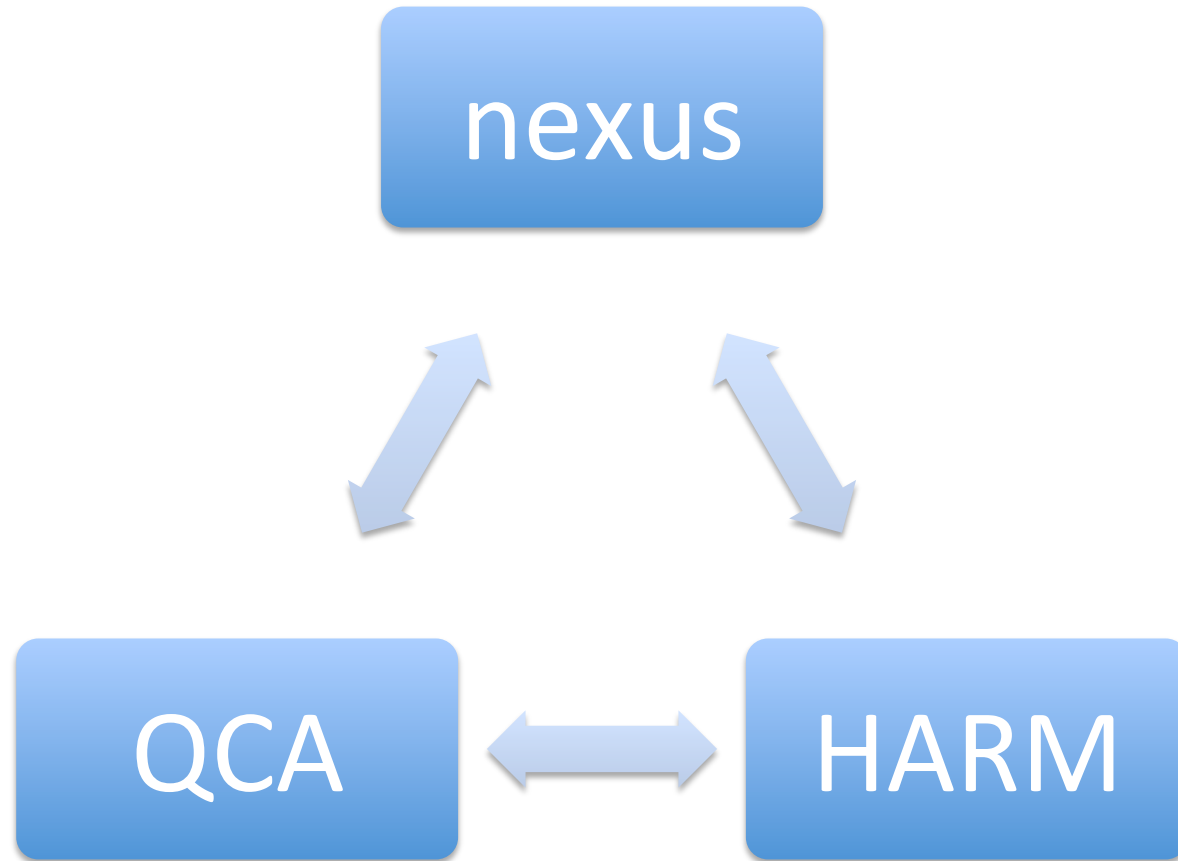
- *Garcia v. Audobon Cmty Mgmt*, 2008 WL 1774584 (E.D. La. Apr. 15, 2008).
- *Prima facie* requirement, detection of qualifying criminal activity
- Motions for judicial certification of workplace-based crimes

Identifying and Establishing Substantial Abuse in Workplace U Visa Applications

Substantial Abuse Issues in Workplace U visas

Power & Control
in the Workplace.





Substantial Abuse Issues in Workplace U visas

- Victim must have suffered “substantial mental or physical abuse” as a result of the *qualifying crime* to qualify for a U visa.
 - USCIS considers:
 - nature of the injury inflicted or suffered;
 - severity of the perpetrator’s conduct;
 - severity of the harm suffered;
 - duration of the infliction of harm;
 - Extent of permanent or serious harm to health of victim, including aggravation of pre-existing conditions.
- 8 C.F.R. § 214.14(b)(1)

ARGUE YOUR NEXUS

QCA-?

Clients tells you that during the employment, she lost her baby because the employer did not allow her to go to the doctor. She has no bathroom breaks, was constantly under stress because the line was working too fast. She got her third non-matching SS# letter and when she refused to get another number and lose all her employment benefits, including overtime and her hours for that month, she was told that the owner would just call immigration for her to clarify the problem with them if she talked to anyone about it.

HARM

- What do you want to know
- What questions do you ask
- Who else do you need to partner with or contact?

Preparing a Winning Claim

- Make simple arguments
- Chose the proper Qualifying Criminal Activity (QCA)-
easier to prove
 - Focus certification and declarations on the QCA itself, not on underlying workplace violations
- Include information that only corroborates with qualifying crimes;
 - avoid distracting arguments and information
- Use corroborating, individualized declarations from outside counselors unaffiliated with agency with factual details of patient, and draw nexus between harm and QCA as cause

Preparing a Winning Claim

- Preparing the declaration:
 - Identify facts that are directly related to the QCA;
 - When establishing substantial harm, remember:
 - Highlight effects of the qualifying crime itself.
 - Particularly for obstruction of justice/witness tampering, **emphasize harm that flowed from the criminal activity in question itself.**
 - Include factual detail, but only details that are relevant to the crime and harm

Inadmissibility Issues

INA Section 212 a

Identify them clearly

- Cite the statute
- Cite (d)(14) – form says (d)(3)
- Provide documents they may want up front
 - Avoid surprises and supplement right away!
 - Rehabilitation-KEY and ongoing

Waiver arguments

- National or public interest
- **Unlawful presence related to fear of reporting and crime itself in workplace cases**
- Immigration violations similar plus think good moral character, VAWA extreme hardship factors
 - Children and victim needs for judicial systems, services, support networks
 - Lack of above in home country

Section III

Advance Parole and Travel Issues

GOALS

- Snap shot of consular process and selected topics
- Processing U visa applicants overseas
 - Fingerprints
 - Visa interview
 - Travelers
- Top challenges and strategies for traveling and parole requests

Processing U Visa Applicants Overseas

- Instances in which U non-immigrant may require processing in a consular section overseas:
 - Ppal abroad
 - Ppal U visa approved now travels overseas
 - Derivative abroad I-918A approved now applying for U non-immigrant visa
 - Derivative approved now traveling overseas
 - Biometric collection, fingerprint

Biometrics

- No fee
- No U if 14 yrs or older without your bios
- Electronic or ink depending on counter service
- Card sent to VSC for FBI and checks
- If close to missing appointment, reschedule
- If appointment missed, case will be terminated due to abandonment
 - May be able to reopen

Snapshot of Consular Process

Your I-918 or I-918a has been approved by the VSC what happens to your case now when your client is abroad?

- **From VSC to KCC to the Consulate to CBP:**
 - Kentucky Consular Center
 - U.S. Department of State's Kentucky Consular Center (KCC) is responsible for creating an electronic record of approved nonimmigrant visa petitions to allow tracking of nonimmigrant visa petitioner and petition information, which is accessed by consulates abroad in the adjudication of visa applications.
 - The consulate must verify the approved petition through the KCC's system, known as "PIMS." (petition information management system).

Where to find consulates and embassies?

- <http://www.usembassy.gov/>
- Find a U.S. embassy and instructions, contact information under the U.S Department of State
- <http://travel.state.gov/visa/embassy>

Where to Find Documents Overseas

- **Foreign Affairs Manual Volume 9 App C**
- www.travel.state.gov/visa/reciprocity/index.htm
 - Where documents found, what documents available
 - Ex: Ethiopia – many docs only available if resident of Ethiopia; divorce difficult to obtain, lengthy, must arbitrate

Ready to go?

- Completed the DS-160
- Print and keep the DS-160 barcode page
- Visit the [U.S. Embassy or Consulate website where you will apply for additional country-specific instructions.](#)
[Schedule an interview appointment; and](#)
- [Pay the visa application processing fee.](#)

Evidence Forming Basis for U Visa Issuance

- Post use PIMS created by KCC to verify approval
- Form I-797 Notice of Action may be sufficient proof to schedule appointment
- Instructions:
 - *In the event PIMS does not yet contain the record, send an e-mail to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.*

Oh but...she is leaving!!!



Why is Traveling not Recommended?

- Increased law enforcement and intelligence agency coordination (data sharing)
- Intense security clearances which increases potential delays
- Interviews are mandatory including minors
- Several biometric requirements before visa is approved and before the interview
- **EASSY TO GET STUCK ABROAD!**

Dangers of Travel

- Consulates are not well-educated about how to process U visas so you may have to wait weeks to get back in while we get CIS to explain it to them;
- Triggering new bars
 - If you are going to travel, make sure you have previously prepared a package with a request for the bars to re-entry. Contact the VSC once you have left the country to ensure the waiver is approved and that you are going to be able to re-enter without problems.
- Need for a new waiver
- Paying additional fees
- Losing U visa for lack of continuous presence

Consular Process & I-929

Apply for Immigrant Visa (IV) from U.S. Embassy/ Consulate (DOS).

NVC contact

Must travel BEFORE visa expires

- Passport stamped by CBP upon entry.
- This is the LPR's date of admission.

LPR card issued and mailed to applicant *after* arrival in U.S. (only if \$165 Immigrant Fee has been paid)

Forms:

- DS-3032 (or DS-261)
- DS-230 (or DS-260)
- DS-2001
- I-864W (Do not submit Form I-864)
- Medical Examination

Email

NVCAttorney@state.gov

if no contact by NVC after I-929 approval.



Fees (no fee waiver available):

- \$220
- \$165 USCIS Immigrant Fee (*NEW*) before departing to U.S.

No waivers needed – Discretionary

So your client made it!

- Will need EAD, SS#, Drivers license, work, etc
- EAD
 - I-765
 - Pictures
 - Approval notice
 - I-912
 - Record of entry into USA- I-94 stamped “admitted”
 - 3-5 months approval

More traveling issues?

- U Backlog – Life on the Waiting List
- Strategies:
 - Applying for Advance Parole
 - Applying for Parole
 - Traveling with another Status
- Tools and Practice Tips for Practitioners



Life on the Waiting List

What We Know

- 💡 10,000 cap on U principal per fiscal year
- 💡 **95,000 U petitions pending as of October 2015**
- 💡 Waitlist is into cap FY 2019

What We Don't Know

- 💡 Breakdown of pending U cases between those for principals and those for derivatives
- 💡 Application period included in cases currently being approved for this fiscal year



Life on the Waiting List

- ☀ Viviana from Mexico applied for U status on February 27, 2014 and received a conditional approval on June 3, 2015. Viviana also applied for her 15 year-old daughter and 10 year-old son to be derivatives, and those applications were conditionally granted as well. Viviana's children live in Mexico and she hasn't seen them in three years. Can she get permission to visit them? Can they get authorization to come to the U.S. to be with their mother?



Parole to the rescue?

Parole in U.S.

- 💡 Advance Parole = Permission for someone in the U.S. to travel and return
- 💡 Parole in Place = Grant of parole to certain categories of foreign nationals while present in U.S.. Examples:
 - Military spouses and kids
 - VAWA Cancellation Grantee
 - EWI Cubans

Parole from Abroad

- 💡 Parole based on humanitarian or significant public benefit concerns including medical and family issues, attending court proceedings
- 💡 Central American Minors program
- 💡 Cuban and Haitian Family Reunification

What Does Parole Mean?

- Used as tool to allow entry, when visa not available
- NOT an Admission: INA 101(a)(13)(B)
 - Person paroled into the U.S. subject to grounds of inadmissibility **under 212(a)**
 - Person paroled into the U.S. qualifies to adjust under INA **Sec. 245(a)** if otherwise eligible

Parole: Legal Authority

- INA Sec. 212(d)(5)
- 8 CFR 212.5
- 8 CFR 214.14(d)(2)
- AFM Ch. 54



What Does the Statute Say?

The Attorney General may...in his **discretion** parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for **urgent humanitarian reasons or significant public benefit** any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.





What Do the U Regulations Say?

- 👉 8 CFR 214.14(d)(2): Waiting list . USCIS **will grant** deferred action or **parole** to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list.

Advance Parole: Watch out for....

- Outstanding removal order
- Pending immigration court proceedings
- Pending criminal charges

Advance Parole Mechanics

- I-131
- Fee (\$360) , unless filing as adjustment applicant
 - Check filing location – varies depending on category of eligibility

Parole for Waitlisted Applicants Abroad

- 👉 Humanitarian Parole
- 👉 Significant Public Interest Parole
- 👉 Parole because the regs say so Parole



Parole Mechanics

Form I-131 – application for a travel document

- Check Part 2 – 1(e) or 1(f) for humanitarian parole

Filing fee – currently \$360

Fee waiver available if qualify- demonstrated inability to pay

Generally need an I-134 Affidavit of Support

Supporting Documents:

detailed statement re basis for parole

evidence of identity, relationship

medical evidence if applicable

Favorable Discretionary Factors

RESOURCES

- WWW.asistahelp.org
- <http://icwclaw.org>
- www.travel.state.gov/visa/reciprocity/index.htm
- <http://www.usembassy.gov/>
- Free website = asistahelp.org
- questions@asistahelp.org
- For interventions
 - Gail Pendleton = gailpendleton@comcast.net

Section IV

VSC updates and Practice pointers

VAWA Unit Hotline Practice Pointers

- **Preferred method-** to ensure that a record of communication is established.
 - Every time VSC receives an inquiry, an officer is assigned to it. VSC only replies to representatives with G-28s on file
- VAWA email address:
hotlinefollowupi360.vsc@dhs.gov.
- U visa and T visa
hotlinefollowupi918i914.vsc@dhs.gov.

Hotline e-mails

Caption

- “Outside Normal Processing Time”
- “Correcting Notice”
- “Amending Petition Information”
- “Expedite Request”
- “Change of Address”
- “New Material for Filing, attached to email”

Include

- G-28 scanned
 - Client(s) name(s)
 - and Date(s) of Birth
 - A#
 - Case receipt number(s)
 - Brief case summary and then your question or request.

Order of documents

- a. G-28: Notice of Appearance
Application or Petition
If U visa, Supplement B

- a. I-192 documents: Keep I-192 and related evidence together. The I-192 ends up being at the bottom but it doesn't matter where it goes in the filing.

Include separate dividers, index, keep docs relating to derivatives together.

Road Map Cover Letter

- Bullet point how your client meets eligibility requirements
 - Imagine facing a pile of thick cases; which would you do first?
- Highlight any urgent issues
 - In detention and need prima facie/expedited
 - Derivatives abroad

Detailed Document Index

- Organize by eligibility category
 - Name and describe what each document shows
 - Highlight within document
- Substantial Harm
 - Applicant declaration, discussing psychological impact: sleep problems, fear of going outside, [insert details]
 - Corroborating declaration from counselor, showing facts above related to experiencing the crime

U visa Cap Processing and Waitlist:

- VSC stated that the waitlist is into cap year FY 2018. (Sept 2015)
- VSC indicated there are now 95,000 pending cases, of which 45,000 have been reviewed and placed on the waitlist.
- Starting October 1, 2016, VSC will start updating the applications to issue visas for FY 2017 cases.
 - because it is an all-hands- on-deck effort to get those visas out to those on the waitlist.

Avoiding RFEs: Other Tips

- If your client mentions accessing a system, you MUST either supply documents from that system or explain why you don't have them
 - If exist but not helpful, explain why not helpful (i.e., applicant too afraid to reveal crime)
 - If don't exist, provide what you can and explain why credible
 - “Credible evidence” is standard but “best evidence” is what's most credible

Check for credibility issues

- Any discrepancies at all?
 - Among documents you are supplying
 - Tax returns, addresses, dates
- If yes, explain up front
 - If there was confusion, why
 - If not “material” why not material

Responding to RFEs

- Is it boilerplate?
- Did they address each piece of evidence and say why it was insufficient?
- Does the adjudicator seem uneducated about this kind of crime and how victims experience it?
- Are they dismissing evidence individually rather than looking at totality?

What to do

- Reply to RFE
- Send email to hotline once you know VSC received your reply, ccing Gail, asking for supervisor review and explaining why
- Send to joint ASISTA/AILA RFE project
- Gail takes to heads of unit and CIS HQ if it's a legal, policy or procedural issue

What if the U visa applicant is in removal proceedings?



In proceedings

- Motion to continue
- Motion to administratively close proceedings
- Motion to re-calendar and terminate
 - If mandatory detention
 - Ask for PD and for OCC not to issue the NTA based on the pending U
 - Morton Memo 2011

Final order and arrested

- Basis for motion to reopen?
 - Minor
 - Due process rights
 - Matter of Lozada
 - Other?
 - Post conviction relief?
- I-246
 - File with your local ICE in person
- Deferred action while the case is pending

USDOL 2011 Revised Memorandum of Understanding with DHS

- “Deconflicts” enforcement of labor and employment and immigration laws.
- Designed to prevent manipulation of potential enforcement threats by other parties.
- Limits ICE civil enforcement actions in ongoing labor disputes.
- **Provides an avenue for deferred action for cooperating workers.**
- ICE agrees not to represent itself as DOL

QUESTIONS?

