

Assessing potential legal remedies for immigrant survivors

STOP WORKPLACE SEXUAL VIOLENCE!



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Overall project goal

Forge partnerships between labor and anti-violence advocates that create models to challenge and eradicate workplace sexual violence against immigrant women.

About our presenters

- ◆ **Debbie Smith**, Associate General Counsel/
Immigration Law, SEIU
- ◆ **Eunice Cho**, Staff Attorney
ACLU of Washington
- ◆ **Katchen Locke**, Staff Attorney at SEIU Local 32BJ, Greater New York City Area
- ◆ **Lauren Bonds**, Legal Director of the ACLU of Kansas
- ◆ **Monica Guizar**, Attorney and Shareholder with the union-side law firm of Weinberg, Roger & Rosenfeld in Los Angeles, CA
- ◆ **Jeremy O. Simer**, Strategic Researcher with SEIU, Local 49
- ◆ **Sonia Parras Konrad**, Co-Founder President of ASISTA

Today

- Introduction to basic immigration remedies for survivors;
- Organizing around sexual violence in the workplace with the EEOC as an ally;
- How organizing and unions strengthens survivors' protections;
- Best practices

Protecting Immigrant
Survivors
With Immigration Remedies

Eunice Cho, ACLU of Washington

Objectives

- Overview of humanitarian visas available for victims of workplace crimes: U and T visas
- Examples of Workplace Crime for U/T Visas
- Best Practices

Why pursue immigration protections?

- Supports immigrant workers to come forward and report abuse;
- Protects vulnerable immigrant survivors from deportation (and dependent family members);
- Provides work authorization;
- Can strengthen relationships with labor agencies;
- Can help build power in organizing campaigns.

T visas

- Temporary, non-immigrant status
- Enables certain victims of human trafficking to live and work in the U.S. for 4 years
- Can apply to LPR status after 3 years or after completion of case (whichever is shorter)
- Derivative visas for dependents

T visa requirements

- Is or has been a victim of a **severe form of trafficking**, such as:
 - Sex trafficking: inducing a commercial sex act by force, fraud, or coercion
 - **Labor trafficking**: involuntary servitude, peonage, debt bondage, or slavery
- Victim is physically present in U.S. because of trafficking
- Cooperates with law enforcement
- Victim will suffer extreme hardship if removed from U.S.

Trafficking, involuntary servitude, peonage

- Generally: compelling or inducing another person to engage in labor; includes recruiting, enticing, harboring, or transporting another person;
- Look for:
 - Threats of physical, psychological, or reputational restraint or harm;
 - Threats to contact law enforcement/immigration to compel work;
 - Confiscation of identity documents, passports, travel papers;
 - Supporting facts: wage violations, inadequate food, housing, medical care, clothing; verbal/physical abuse; restricted contact; use of locks/fences

U visa

- Temporary, nonimmigrant status for non-citizen victims of crime
- Benefits:
 - Provides lawful status for up to 4 years;
 - Work authorization;
 - Eligibility to adjust to LPR status after 3 years;
 - Includes derivative visas for dependents

U visa requirements

- Must be a victim of a qualifying criminal activity
- Helpful in the investigation or prosecution of a criminal activity
- Must have certification from a law enforcement agency (can include police, judges, EEOC, DOL, NLRB, or state agencies)
- Must have suffered “substantial physical or mental abuse” resulting from the criminal activity

U visa qualifying criminal activities most relevant in workplace crime cases

Abduction

Abusive sexual contact

Being held hostage

Blackmail

Domestic violence

Extortion

False imprisonment

Felonious assault

Female genital mutilation

Fraud in foreign labor
contracting

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

Sexual violence in the workplace

- Crimes include:
 - Abusive sexual contact
 - Rape
 - Sexual assault
 - Sexual exploitation
- Can include attempt, conspiracy, and solicitation
- Look at local statutes
- Reports to local police/EEOC often work best

Extortion, obstruction of justice, perjury, witness tampering

Did an employer ever:

- Intimidate or threaten you to delay or prevent testimony in “official proceeding”;
- Alter, destroy, conceal records?
- Hinder, delay, or prevent communication to authorities;
- Threaten to expose immigration status, damage property or cause bodily harm to delay or prevent witness participation?

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” 8 U.S.C. § 1351
- 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

Who can certify for a U visa workplace crime?

- Federal agencies: Department of Labor (DOL) Wage and Hour Division; Equal Employment Opportunity Commission (EEOC); National Labor Relations Board (NLRB)
- State agencies: CA DLSE; CA DFEH; NY DOL; IL DOL
- Local law enforcement agencies: San Francisco OLSE; NYC Human Rights Commission; **police departments**
- Judges

Best practices and tips

- If fact pattern emerges, start documenting immediately;
- Consult with immigration and employment lawyers for assistance (may need to encourage to work together);
- Document the physical/psychological impact of the employer's actions on the worker;
- Work with friendly law enforcement agencies to train them about these immigration remedies.



EEOC and Organizing

Lauren Bonds

The Equal Employment Opportunity Commission

The federal agency that enforces sexual Harassment and discrimination laws EEOC is the gatekeeper to federal court

Process:

- Worker signs and files charge
- Charge assigned to an investigator
- The investigator interviews worker and witnesses
- The investigator interviews employer witnesses
- EEOC tries to settle the case through mediation, issues a right to sue letter, or files lawsuit in federal court on behalf of the worker

The Equal Employment Opportunity Commission





Stronger together

2017-2021 EEOC Strategic Enforcement Plan: The EEOC is more likely to allocate resources to an investigation and litigate claims that involve multiple victims or other evidence of a pattern or practice of harassment



How?



Legal 101: Organizing against harassment

Title VII: Opposition clause

- It is unlawful for an employer to discriminate against an employee because the employee has "opposed" any practice made unlawful by Title VII.
- “A person can ‘oppose’ by responding to someone else’s question just as surely as by provoking the discussion.”---
Crawford v. Metro Gov’t of Nashville (2009)
- EEOC 2016 Guidance on Retaliation--Opposition Includes:
 - **complaining or threatening to complain about alleged discrimination against oneself or others;**
 - **accompanying a co-worker to the human resources office to make a complaint;**
 - **picketing or informal public protest**

NLRA- Section 7 Protections

- *Fresh & Easy Neighborhood Market*-an employee engaged in protected concerted activity when she asked her coworkers for assistance in preserving evidence for a sexual harassment complaint she planned to raise with her employer (ultimately unfavorably decided but this principle was recognized)



Workers protection from retaliation

You can organize around sexual harassment happening in your stores. Acceptable actions include:

- Speak-outs
- Petitions
- Social Media

However, lawyers should review any video, social media posts, or event flyers before they are made public.



Will it impact EEOC
investigation?

FAQs

Q: Can workers do in-store actions, petitions, etc. while the EEOC is investigating?

A: Yes, but consult with lawyers to make sure we're not putting workers at risk and protecting viability of their case

- Want to make sure workers aren't providing facts that are inconsistent w/ charge or EEOC interview
- Want to make sure that workers who speak out have filed a charge for an extra-layer of protection

EEOC “Gag Order”

The EEOC investigator may advise a worker not to speak about the harassment

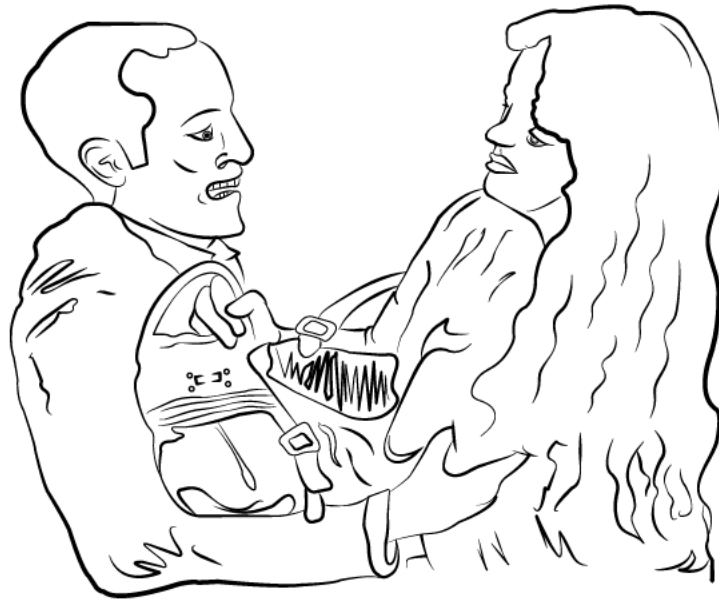
This may be to preserve the integrity of an investigation or maintain confidentiality before litigation

What if the
Employer Policy
Prohibits

NLRA

- Employers often have rules prohibiting workers from discussing an “ongoing investigation”
- These rules are unlawful under the National Labor Relations Act, violating 8(a)(1) for being vague and overbroad--See *Banner Health* and *Verso Paper* Advice Memorandum
- Workers can file NLRB charges for being disciplined under unlawful rules.





Protecting Workers Against Sexual Harassment: The Union Difference

Katchen Locke

Substantive collective bargaining agreement provisions

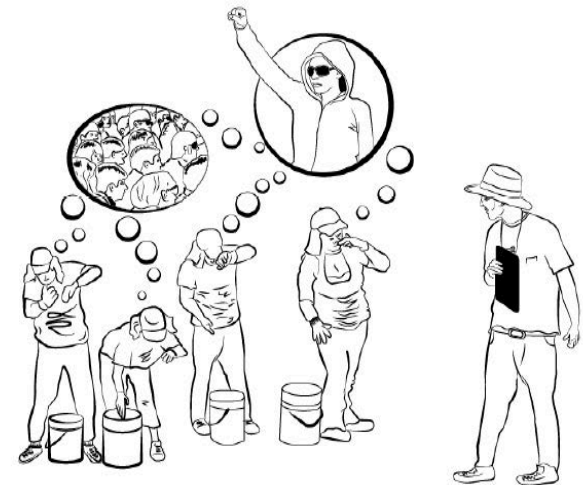
- a. Prohibition against sexual harassment/retaliation, including reporting/investigation protocol
- b. Training requirements
- c. Right to Information
- d. Grievance/arbitration procedure
- e. Language access
- f. Leave of absence provisions
- g. Legal services fund
- h. Health fund, including coverage for counseling/treatment for assault
- i. Exceptions to no-strike provision

NLRA rights

- Anti-harassment protection is a mandatory subject of bargaining
- Unions have a right to information from the employer related to harassment issues
- Workers have a Section 7 right to protest workplace harassment

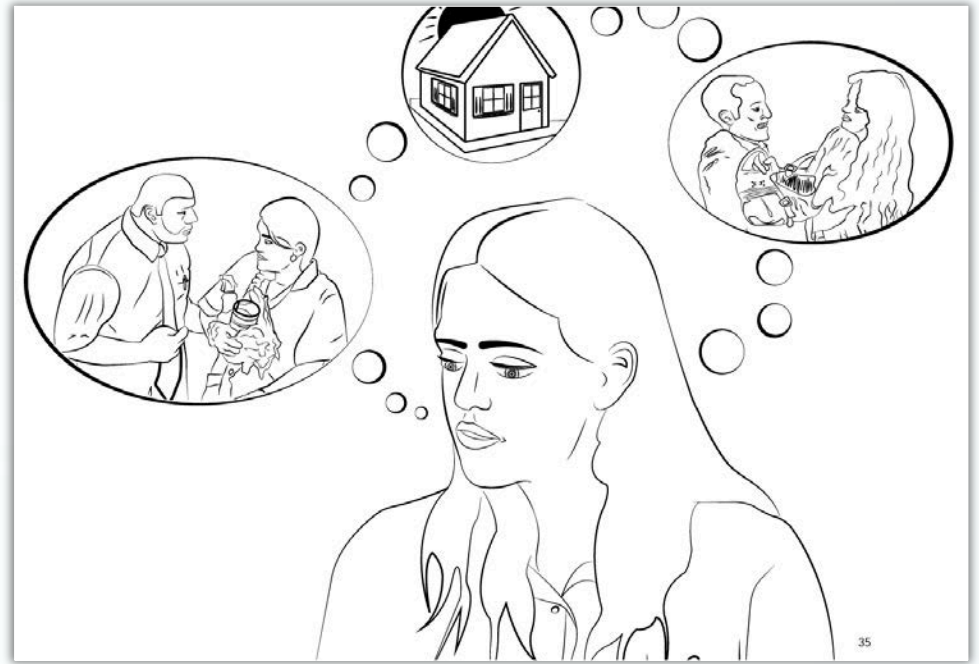
Other strategies

- Rallies, strikes and other campaign activities (including targeting the clients of the employer)
- Assistance in filing administrative and court claims
- Assistance in filing for FMLA or other leave
- Legislative/policy



Best practices around organizing

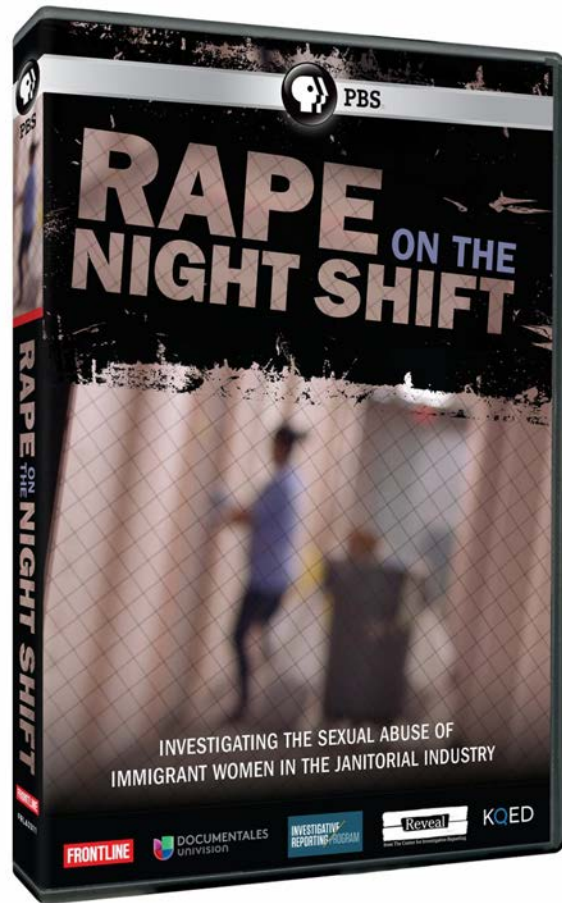




Campaign to Combat On-the-Job Sexual Violence and Harassment

Monica Guizar

Rape on the night shift



- PBS/FRONTLINE documentary
- Janitors exploited by supervisors – “and the solitude of the night - to violently harass them at work”

Contract survey: Sexual harassment = Concern

“This was just alarming. As a union that represents predominantly immigrant janitors and 70 percent of them are women, I just said, ‘We can’t be a janitors union if we don’t do anything about this.’ We have to take on this issue that is rampant in this industry.”

Alejandra Valles, SEIU-USWW secretary-treasurer

Ya Basta coalition

- Formed in 2015
- SEIU USWW, MCTF, East L.A. Women's Center, California Coalition Against Sexual Assault (CALCASA), Peace Over Violence
- Worker and member education
- Empowerment
- Promotora Model
- Change the industry

Contract campaign



2016 – Settle contract

- Policies on Sexual Harassment and Assault
- Third Party policies
- Investigation procedures
- Hotline for workers to seek help
- Non retaliation
- Supervisor may not date workers they supervise

Legislative campaign



AB 1978



Property services workers protection act



- 5 day hunger strike
- Governor signs bill on October 15, 2016 – 4th day of strike
- Creates janitorial contractor registry
- Requires in-person sexual harassment training

Workers changing the industry

“We have made history. I feel very proud that all of us opened up this space and we broke that silence. We made history, being that we are poor, we are humble, we come from the bottom. It doesn't matter what your status is, it doesn't matter the color of your skin – nobody should harm your body because no means no.”

Martha Mejia, janitor and hunger striker

Making Things Happen

Jeremy O. Simer

Changes in the landscape

January 1, 2018, Oregon House Bill 3279 (2017) requires that certain property services contractors which provide janitorial labor to another for remuneration will need to obtain a labor contractor license.

Oregon already licenses other types of labor contractors (farm, forestation and construction labor contractors) under Oregon Revised Statute (ORS) 658.405 to 658.991.

Generally, labor contractors are required to:

- Apply for and maintain a current labor contractor license;
- Furnish a written summary of certain rights and the terms and conditions of employment offered to each worker at the time of hiring, recruiting, soliciting or supplying, (whichever occurs first);
- Execute a written agreement with the worker at the time of hiring and prior to the worker performing any work for the contractor which containing the terms and conditions of employment; and
- Submit certified payroll reports to the Bureau of Labor and Industries (BOLI) every 35 days for work done as a labor contractor when paying employees directly

Strategies

- Incorporated Property Services Contractors (PSCs) into a preexisting licensing requirement for labor contractors in the farm, forestry, and construction industries.
- PSCs defined as *“for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another person to provide services that include janitorial services.”*

Sexual harassment training

PSCs must train annually all employees in the prevention of sexual harassment and discrimination, and in cultural competency and whistleblower rights.

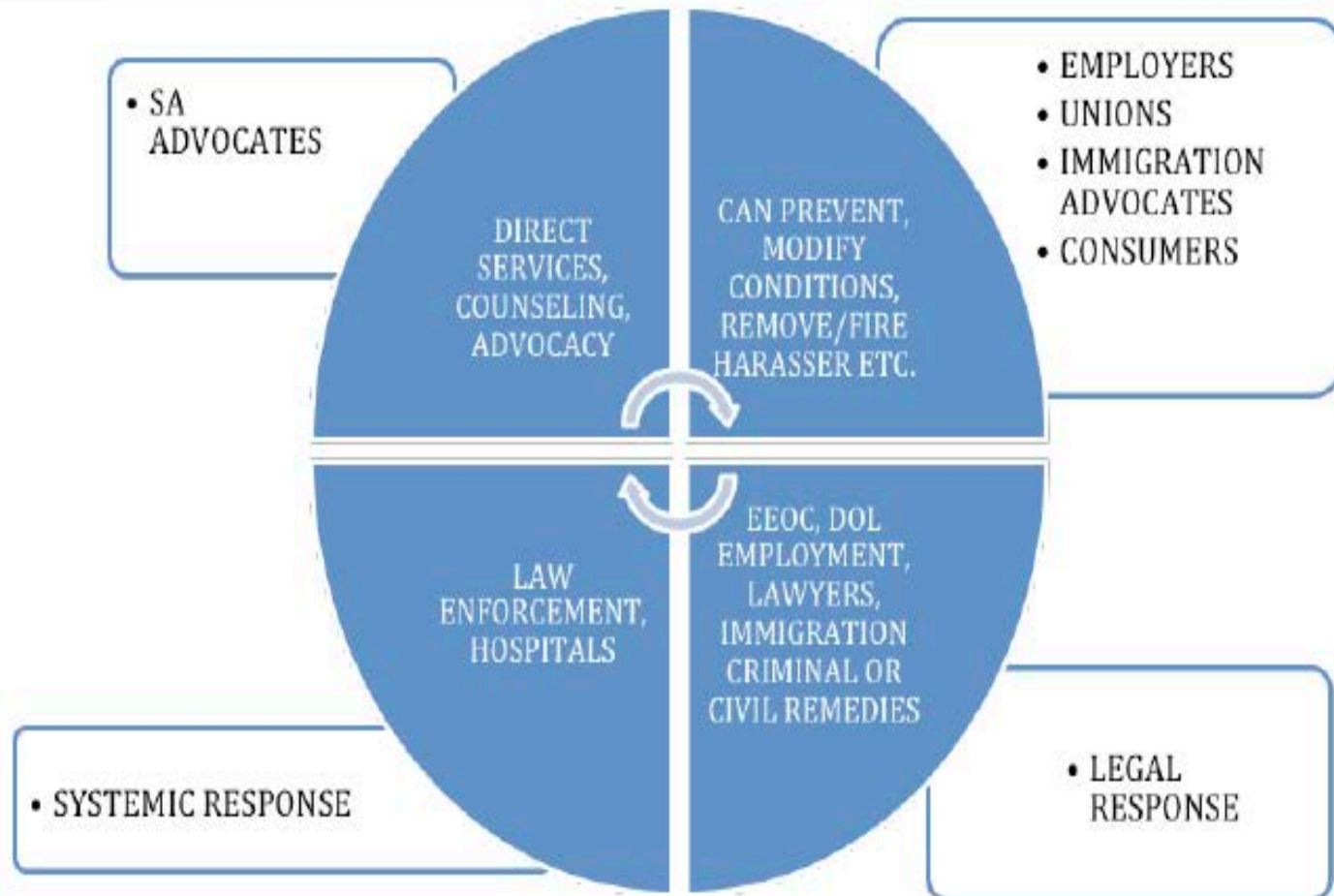
Enforcement mechanisms:

- Actual damages or \$1000, whichever is greater, plus attorneys' fees.
- State Bureau of Labor and Industries can impose civil penalties on PSCs for operating without a license or not providing trainings.
- Clients can be held jointly and severally liable for some violations

The Key to Promising Practices

Sonia Parras Konrad

Inclusive collaboration cross-disciplines



Labor organizers and workers centers

- AFL -CIO: <http://www.aflcio.org/About/Worker-Center-Partnerships>
- ARISE Chicago: <http://arisechicago.org>
- Coalition Against Workplace Sexual Violence (“CAWSV”): <https://www.facebook.com/cawsv.chicago>
- Coalition of Immokalee Workers: <http://www.ciw-online.org>
- Interfaith Worker Justice: <http://www.iwj.org>
- Latino Union: <http://www.latinunion.org>
- National Day Laborer Organizing Network: <http://www.ndlon.org/en>
- National Domestic Workers Alliance: <http://www.domesticworkers.org>
- SEIU - <http://www.seiu.org/>
- SEIU 32BJ - <http://www.seiu32bj.org/>
- SEIU USWW - <http://www.seiu-usww.org/>
- SEIU Local 49 - <http://www.seiu49.org/>

Anti-violence (sexual assault) organizations

- Arte Sana: http://www.arte-sana.com/arte_sana_first.htm
- Asian Pacific Islander Institute on Domestic Violence <http://www.apiidv.org>
- Casa de Esperanza: <https://www.casadeesperanza.org>
- Futures Without Violence: <http://www.futureswithoutviolence.org>
- IowaCASA: <http://www.iowacasa.org>
- Resource sharing project: <http://www.resourcesharingproject.org>
- National Center on Domestic and Sexual Violence: <http://www.ncdsv.org>
- National Sexual Violence Resource Center: <http://www.nsvrc.org>
- Link for their workplace project:
<http://www.nsvrc.org/projects/sexual-violenceworkplace/>
- VAWnet: <http://www.vawnet.org>
- Victim Rights Law Center: <http://www.victimrights.org>

Resources for survivors

- Casa de Esperanza:
<https://www.casadeesperanza.org>
- 24-hour crisis line, Spanish and English
651-772-1611
- Houston Area Women's Center:
<http://www.hawc.org/en/sexual-assault-services/>
- Sexual Assault Hotline: 713-528-RAPE (7273) or
1-800-256-0661
- National Center for Victims of Crime:
<http://www.victimsofcrime.org>
- Connect Directory: This directory helps victims find
local assistance: <https://www.victimsofcrime.org/help-for-crime-victims/find-local-assistance---connectdirectory>
- National Center on Domestic and Sexual Violence:
<http://www.ncdsv.org>
- 1-800-799-SAFE (7233), national DV hotline
- National Domestic Violence Hotline:
<http://www.thehotline.org>
- 1-800-799-SAFE (7233), 1-800-799-7233 or
1-800-787-3224 (TTY)
- National Hotline: Rape Abuse and Incest National
Network:
<http://www.rainn.org/get-help/national-sexual-assault-hotline>
- 1-800-656-HOPE
- National Latin@ Network:
<http://www.nationallatinonetwork.org>
- National Organization for Victim Assistance:
<http://www.trynova.org/>
- Office for Victims of Crime:
<http://ovc.ncjrs.gov/findvictimservices>
- Safe Horizon: <http://www.safehorizon.org>

Thank you for your participation!

Link to ASISTA national w
<https://youtu.be/GZqFsw8XWTs>