

# Expanding Your Bag of Tricks III Webinar Series



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# GOAL

- To identify legal protections for survivors of sexual violence in the workplace and responses through collaboration
  - Labor
  - Civil/Criminal
  - Immigration
  - Reaching out to survivors
  - Strategies for collaborating



# Estela

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.

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. When she complaint just once, the owner threatened with firing her and did not pay her hours that night. She is scared and confused.

She comes to your agency because she really needs the money to pay the supervisor that invited her to come.

# Questions

What do you think is going on with Estela in general?  
Identify “red flags”

Identify potential violations of labor rights

Identify potential non-legal responses

What can you do/offer?

Who do you need?

Do you want to know anything else?

Identify potential labor rights responses

Who do you need to contact if she consents?

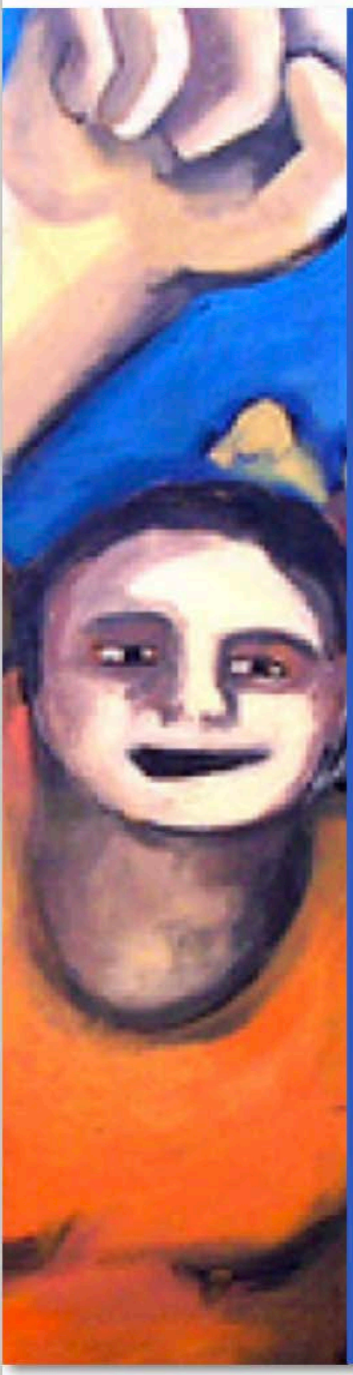
What can they do for her?

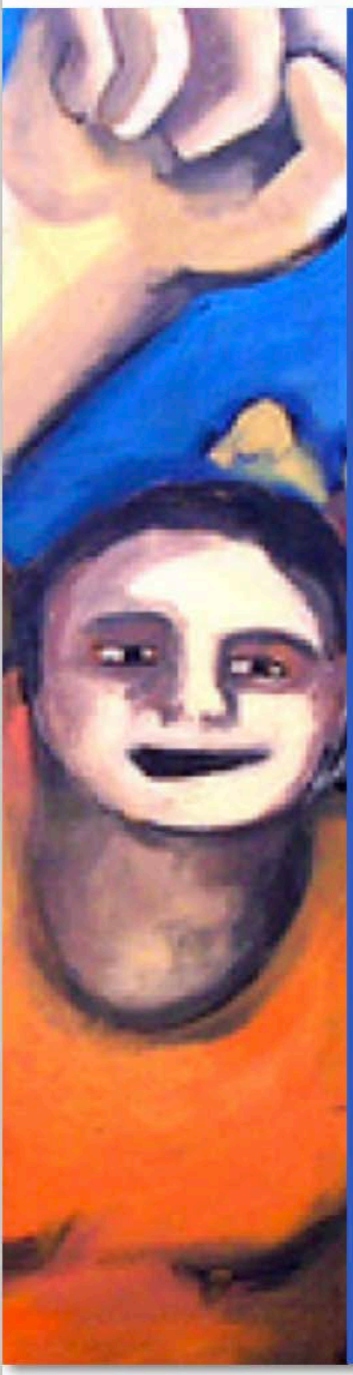
Identify potential immigration/civil relief

Does she qualify for anything?

What can you do for her?

Who else do you need?





# An introduction to the labor agencies and protections for immigrant survivors

# Federal Agencies

## Department of Labor (DOL)

- Occupational Safety and Health Administration
  - Save Lives
  - Prevent injuries
  - Protect the health of America's workers



# Federal Agencies

## Department of Labor (DOL)

- Wage and Hour Division (WHD)
  - Enforce the Fair Labor Standards Act (FLSA)
    - Minimum Wage
    - Overtime Pay
    - Child Labor
    - Recordkeeping



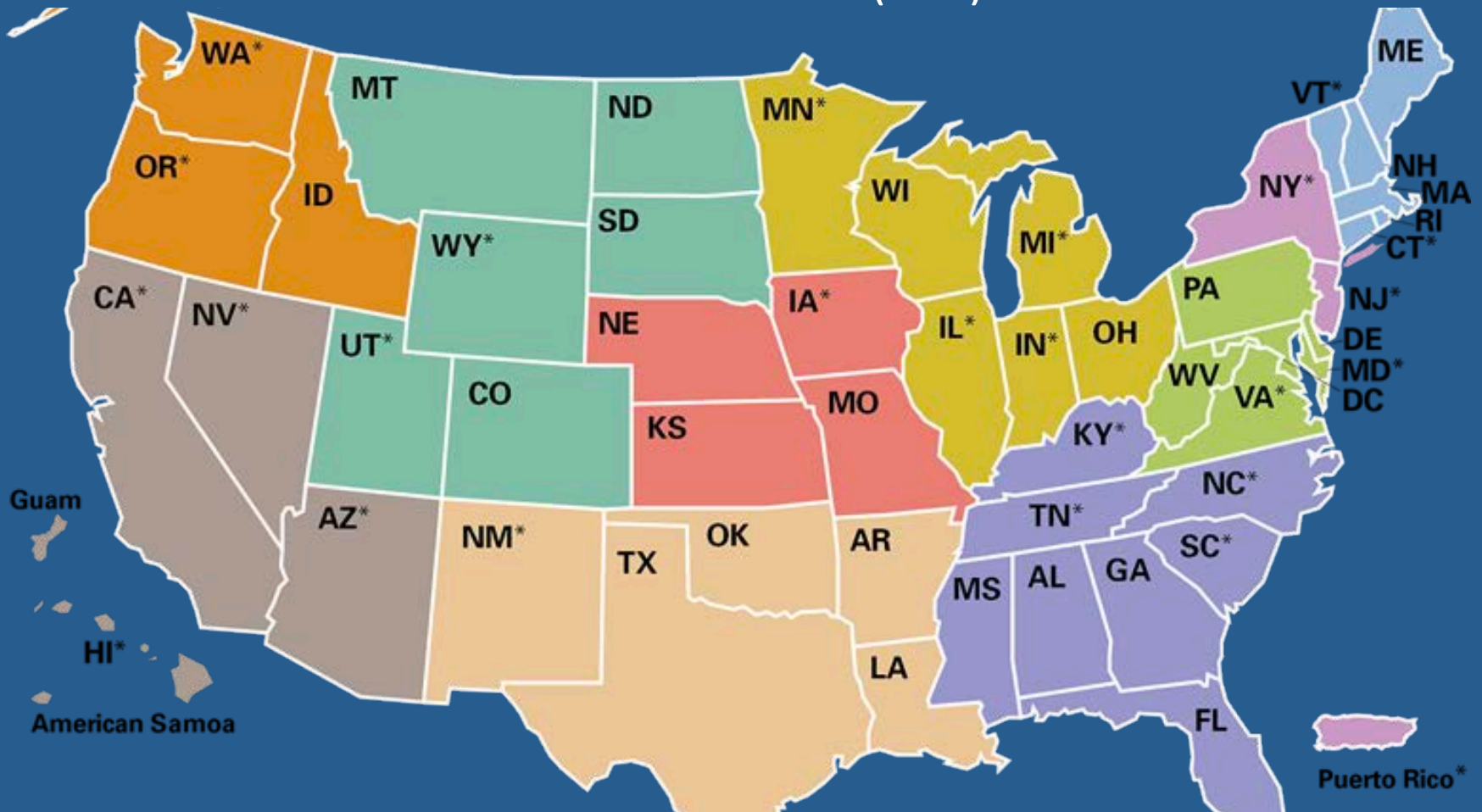


# Where are they Located?

## IOWA

Des Moines, IA 50309 210

Walnut Street Room 643-TEL: (515) 284-4625





# Civil Remedies:

## Wage and Hour Violations

- Federal law provides standards which all employers must obey in order to protect employees under the Fair Labor Standards Act (FLSA)
  - Undocumented immigrant workers are also protected
  - FLSA does not equally apply to domestic or agricultural workers
- Some states have laws which provide additional protections to works.
- All wage and hour claims must be brought within certain time periods of the violation(s).

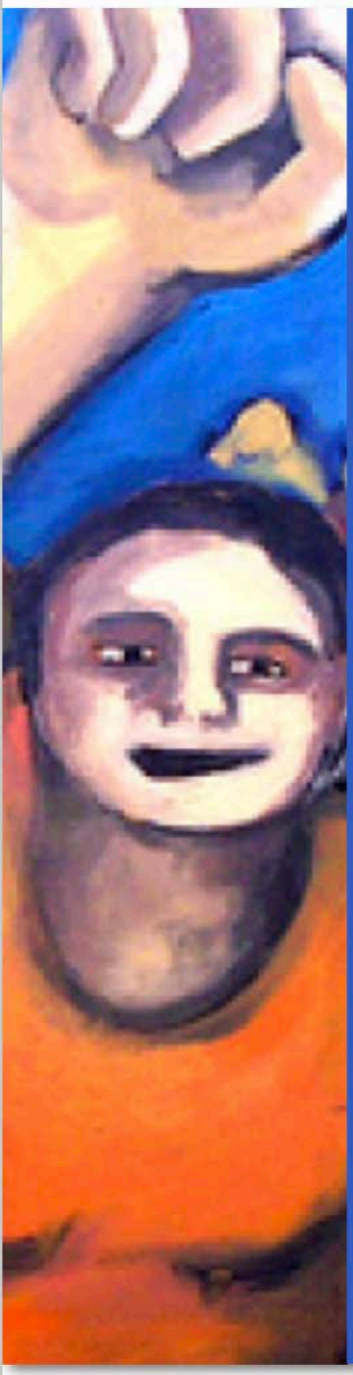
# Civil Remedies: Wage and Hour Violations (Continued)

- Violations can include:
  - Failing to pay minimum wage and/or overtime
  - Lack of meal and/or rest breaks
  - Failure to maintain accurate records
  - Unlawful deductions from wages
  - Child labor
- Agencies include:
  - U.S. Department of Labor
  - State or local Departments of Labor
  - Federal courts
- Claims must be brought within 2 years for most violations, or in the case of willful violations, within 3 years.

# Elisabeth

Her main complaint- not getting paid

– How can you help Elisabeth?



# W&H division- How can you help?

- To file a complaint,
  - You may either contact your local Wage & Hour Division office or call (866)487-9243 to be directed to the nearest office.
  - When contacting the Division:
    - Be prepared to provide the following information:
      - Name, address, and phone number of complaining worker
      - Name, address, and phone number of the company
      - Name of the owner and manager
      - Small description of the type of work done
      - Description of how and when one was paid (i.e. cash or check, weekly)
- Evidence a worker should provide includes copies of pay stubs or checks, individually
- Advise your client to keep records such as a journal or calendar with hours worked, photographs, and written testimony from co-workers if safe from the moment she contacts you.

# Federal Agencies

## Department of Labor (DOL)

- Equal Employment Opportunity Commission (EEOC)
  - Protect workers to be free from discrimination in the workplace
    - Age
    - Disability
    - Equal Pay/Compensation
    - Genetic Information
    - Harassment
    - National Origin
    - Pregnancy
    - Race/Color
    - Religion
    - Retaliation
    - Sex
    - Sexual Harassment



### Start the administrative process

- File the “charge of discrimination” or complaint against the employer
- Company receives notice
- Decision is made whether to try to mediate the dispute or schedule it for an investigation

### Investigation begins

- The company submits its position statement to the EEOC in response to the charge
- The EEOC sometimes conducts an on-site visit
- The survivor might be interviewed or asked for written responses to the company’s claims (referred to as the rebuttal)
- The EEOC may interview witnesses

### Investigation ends

- If the EEOC does not make a finding because the agency does not have enough information or evidence, it will issue a “no finding” letter which serves as the survivor’s “right to sue” letter. This letter permits the survivor to file a lawsuit, if he/she would like to pursue action in court.

# Anti-Discrimination Violations

- Federal law defines sexual harassment as a form of sex discrimination under Title VII.
  - State law may provide additional protections.
- Title VII protects:
  - Employees who have been subjected to hostile or intimidating behavior that created an abusive work environment
  - Employees who have refused a supervisor's request for sexual favors
  - Employees who have to tolerate a sexually charged work environment and are retaliated against by the employer



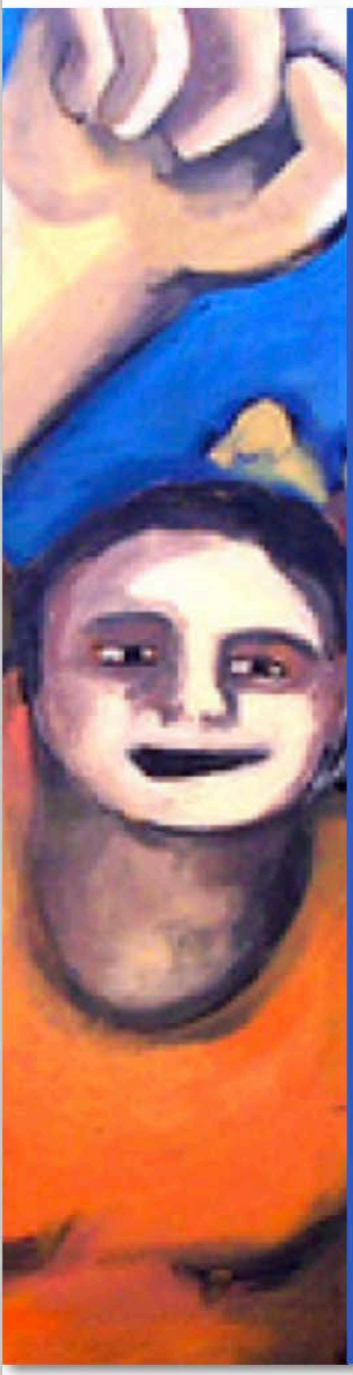
# Anti-Discrimination Violations (Continued)

- Agencies involved:
  - Equal Employment Opportunity Commission
  - State or local agencies which enforce state or local anti-discrimination laws
  - Possibly state or federal courts
- Anti-discrimination claims with the EEOC must be brought within 300 days of the violation(s).
- Claims in state or federal courts must be made within a certain amount of time after the violation(s).

# Teresa

Her main complaint- paying her bills

- Her victimization
- How can you help?



# How can you help?

To file a complaint, you may either contact your local EEOC office or call the National Contact Center at (800) 669-4000.

- When contacting the EEOC, be prepared to provide the following information:
  - The name, address, and telephone number of the person filing the charge
  - The name, address, and telephone number of the company and number of employees
  - A short description of the event with any supporting documents
  - The dates the event took place
  - The names, addresses, and telephone numbers of any witnesses
  - Information on whether a state or local charge was also filed
  - The name, address, and telephone number of a person who can contact the person filing the charges

# She must be ready!

- Credibility is the key many of these cases since the case relies primarily on the testimony of the survivor.
- As a result, it will be important to provide any evidence to support the survivor's charges and testimony.
- Evidence may include a diary or log of events, photographs, letters from witnesses, or records of previously filed complaints.

## **You are not alone!**

- Work with your partners and allies to strengthen her credibility and the journey ahead

# Federal Agencies

## Department of Labor (DOL)

- National Labor Relations Board (NLRB)
  - Protect workers' right to organize
    - With a union
    - Without a union



# State Agencies in Nebraska

- Nebraska Department of Labor (NEDOL)
  - Wage Payment and Collection Act
  - Minimum Wage
  - Contractor Registration Act



# State Agencies in Nebraska

- Nebraska Equal Opportunity Commission (NEOC)
  - Be free of discrimination in:
    - Workplace
    - Housing
    - Public Services

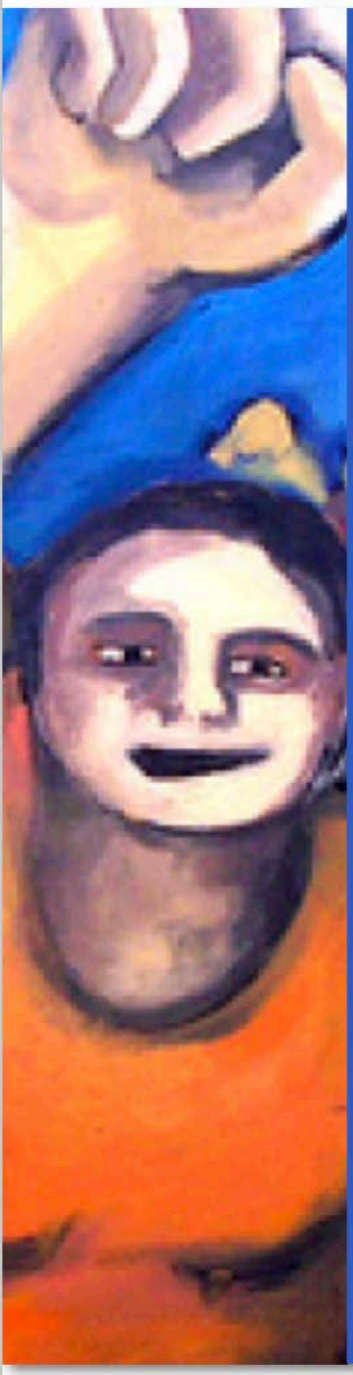




# Local Agencies in Nebraska

- Omaha Human Rights and Relations
  - Investigate, eliminate, and prevent all types of socioeconomic disparities and prohibited discrimination:
    - Housing
    - Employment
    - Public Accommodations
    - Contracting





# An introduction to civil, criminal and immigration main protections for immigrant survivors

www.nebraskacoalition.org

## Nebraska's Network of Domestic and Sexual Violence Programs



1. DOVES Program (Gering)
2. SCIP (Ogallala)
3. DA/SA Services (McCook)
4. R/DAP (North Platte)
5. Parent-Child Center (Lexington)

*en español*

- |   |              |
|---|--------------|
| 6. Healing Hearts and Families (Broken Bow) | 866-95-DOVES |
| 7. SAFE Center (Kearney)                    | 308-284-6055 |
| 8. SASA Crisis Center (Hastings)            | 877-345-5534 |
| 9. The Crisis Center (Grand Island)         | 877-237-2513 |
| 10. Center for Survivors (Columbus)         | 888-534-3495 |
|   | 800-215-3040 |
|   | 866-351-9594 |
|   | 800-942-4040 |
|   | 877-322-7272 |
|   | 866-995-4422 |
|   | 800-658-4482 |

### Crisis Line

11. Bright Horizons (Norfolk)
12. Haven House (Wayne)
13. The Bridge (Fremont)
14. Hope Crisis Center (Fairbury)
15. Voices of Hope (Lincoln)
16. Friendship Home (Lincoln)
17. Project Response (Auburn)
18. Heartland Family Service - Domestic Abuse Program (Papillion)
19. Catholic Charities—The Shelter (Omaha)
20. Women's Center for Advancement (Omaha)

### Crisis Line

- |              |
|--------------|
| 877-379-3798 |
| 800-440-4633 |
| 888-721-4340 |
| 877-388-4673 |
| 402-475-7273 |
| 402-437-9302 |
| 800-456-5764 |
| 800-523-3666 |
| 402-558-5700 |
| 402-345-7273 |

Nebraska Spanish Crisis Line **1-877-215-0167**

# The Role of Advocates with Sexual Violence Survivors

- Providing information regarding options (and referrals if needed)
  - Criminal justice process
  - Civil legal matters (such as protection orders, divorce, custody, etc.)
  - Medical
  - Accessibility to public benefits and/or other community support services
  - Shelter
  - Transportation
  - Safety planning
  - Many more
- Empower survivors through supporting their own decision making

# Different Types of Sexual Assault Advocates... and Why it Matters

- Advocates can work in a variety of places:
  - Law enforcement agency \*\*
  - Prosecutor's office \*\*
  - Domestic violence/sexual assault crisis center

\*\* Advocates do not have advocate/client privilege and the survivor's information is not confidential.

# Other remedies

## Criminal

- Survivors can seek to have criminal action taken against the perpetrator for his/her actions.
- Immigrant survivors often fear involvement with law enforcement.
- It is important to talk to victim advocates within the law enforcement offices to better understand the process that the survivor will navigate should he/she choose to take action under the criminal legal system.

## Civil action against the perpetrator

- Certain state laws might allow the survivors to sue the perpetrator for damages or other relief
- Survivors should consult with lawyers in their state about the available protections and filing deadlines

## Civil action against the company

- In addition to Title VII, other laws might also allow survivors to pursue a legal action against the employer.
- These might be based on state anti-discrimination laws or other laws that protect individuals.
- Survivors should consult with lawyers in their state about available protections and filing deadlines

# Civil Remedies:

## Protection Orders

- This is a type of court order which can be issued to help protect a victim of various types of crimes, including sexual violence
- Different types in Nebraska:
  - Domestic Abuse Protection Order
  - Sexual Assault Protection Order
  - Harassment Protection Order
  - Restraining order (only issued when there is a pre-existing case filed, as it is not a stand alone order)
- Agencies involved:
  - County or District Court judge
  - County or District Court staff
  - Sheriff (for service of order on respondent)



# Advocate's Role:

## Assisting in the Filing of Protection Orders

- Typically, advocates cannot directly assist with legal matters because they are not attorneys
- Nebraska allows domestic violence/sexual assault advocates to help survivors:
  - Select the type of protection order which is best for them
  - Assist the completion of the protection order affidavit
  - Accompany the survivor to court

# Tort Claims

- A “tort” is a wrongful act or the infringement of a right that allows the wronged person to sue the bad actor for damages. They can include:
  - Intentional or negligent infliction of emotional distress
  - False imprisonment
  - Assault
  - Battery
  - Negligence
  - Violation of contract terms
- Agencies involved:
  - State Courts
- The injured person must file their lawsuit within a certain amount of time.
  - This amount of time varies by state.

# The Advocate's Role: Labor Violations, Discrimination, or Tort Claims

- An advocate does not need to know details of each type of remedy
- An advocate's role in these situations is to potentially “issue spot” and provide referrals to other agencies

# Immigration Remedies

- There are several different types of remedies which may be options for survivors. The most common affirmative remedies include:
  - U Visas
  - T Visas
  - VAWA Self-Petitions
- Primary Agency Involved:
  - United States Citizenship and Immigration Services (USCIS)

# U Visa Eligibility

- Must be a victim of a qualifying criminal activity
- Suffered substantial physical or mental abuse as a result of the crime
- Possess information about the crime
- Has been, is being, or is likely to be helpful to the investigation and/or prosecution of the crime
- Crime must have occurred in the U.S. or violated a U.S. law

**\*\*Must have a signed certification from law enforcement, prosecutor, or judge.\*\***

# U Visa Crimes

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Abusive sexual contact
- Prostitution
- Sexual exploitation
- FGM
- Being held hostage
- Peonage
- Involuntary servitude
- Fraud in foreign labor contracting
- Slave trade
- Kidnapping
- Abduction
- Unlawful criminal restraint
- False imprisonment
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

# U Visa Certification

- Agencies which can sign U Visa Certifications include:
  - Law enforcement
  - Prosecutors
  - Judges
  - Federal Bureau of Investigation (FBI)
  - Department of Homeland Security (DHS)
  - **U.S. Department of Labor**
  - **Some state Departments of Labor**
  - **Equal Employment Opportunity Commission (EEOC)**
  - **National Labor Relations Board (NLRB)**



# U Visa Benefits

- Do not need a sponsor to apply
- Broad waivers of inadmissibility
- Can apply for certain family members
- Eligible to work in the U.S.
- 4 year duration of status
- Can adjust status to that of lawful permanent resident after 3 years

# Immigration Status and U Visa

- Investigator will not ask about immigration status; don't volunteer it
- Discovery: EEOC will seek protective order in litigation
- U-Visa: EEOC can certify if “serious criminal activity” is involved, e.g. rapes, threats to harm, extortion, slave-like conditions
- U-Visa: contact Regional Attorney (may share attorney-client privilege)

# T Visa Eligibility

- Be a victim of a severe form of trafficking in persons
- Be physically present in the U.S. as a result of the trafficking
- Comply with any reasonable requests for assistance in the investigation and/or prosecution of the human trafficker
- Suffer extreme hardship involving unusual and severe harm upon removal from the U.S.

# T Visa Benefits

- Applicant does not need a sponsor
- Applicant does not need a law enforcement certification
- Can apply for certain qualifying family members
- Eligibility to work in the U.S.
- 4 year status duration
- Potential ability to adjust status to that of lawful permanent resident
- May be eligible for federal refugee benefits

# VAWA Self-Petition

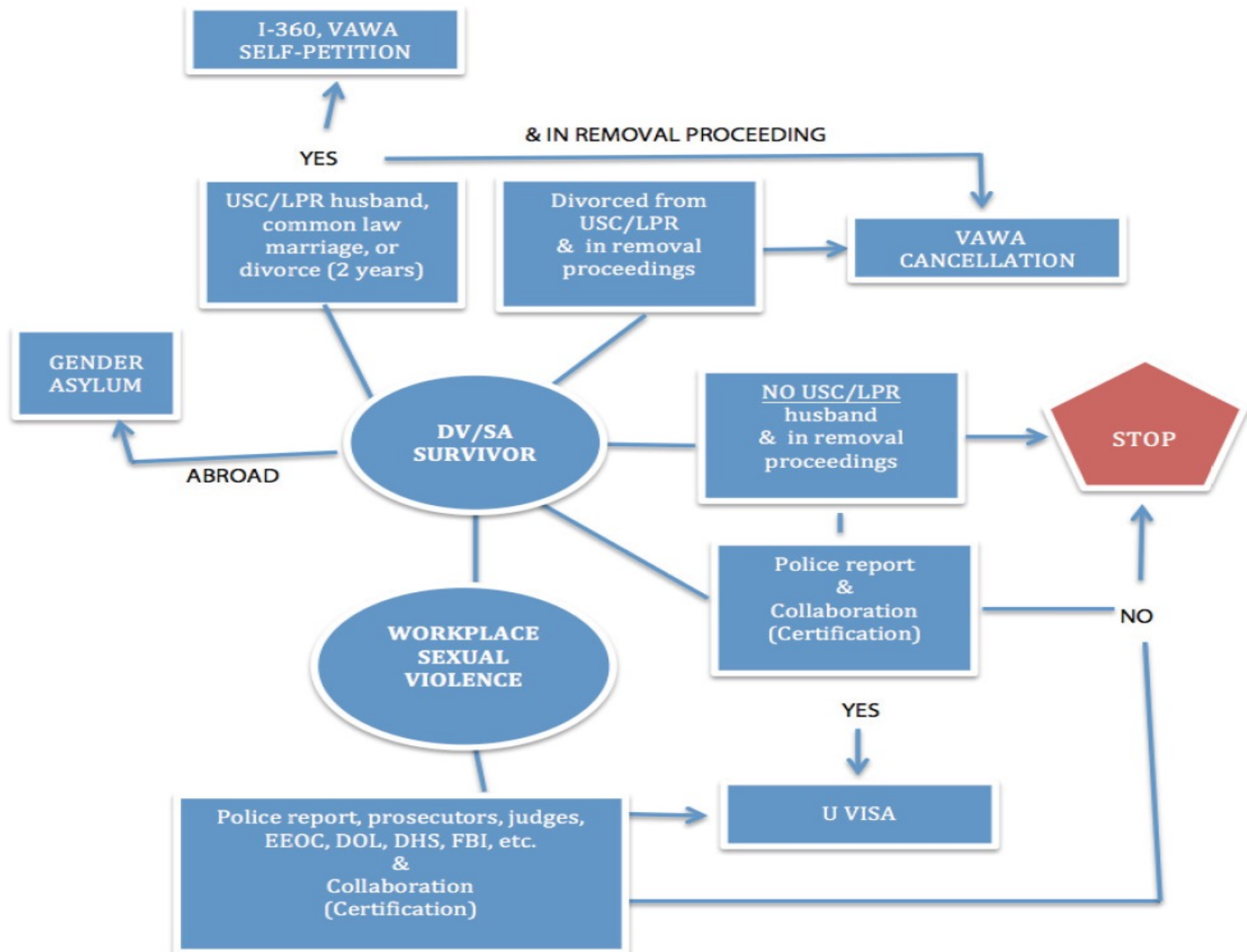
- Provides immigration relief to victims of domestic violence or extreme cruelty
- Many victims of domestic violence remain in an abusive marriage or relationship because immigration status is often tied to their abuser
- Allows victim to petition without the requirement of a sponsor (as in family based immigration)

# VAWA Self-Petition Relationship Requirements

Requires specific relationship between perpetrator and victim

- Spouse or child of USC or LPR
- Non-abused parent of a child abused by USC or LPR
- Abuse child of a USC or LPR
- Abused parent battered or subjected to extreme cruelty by an adult USC child

# A Flowchart for Advocates



# Advocate's Role: Immigration

- Again, an advocate do not need to know details of each type of remedy
- An advocate's role in these situations is to potentially “issue spot” and provide referrals to other agencies



Remember Estela?

# Estela

What do you think is going on with Estela in general?

Identify “red flags

Identify potential violations of labor rights

Identify potential labor rights responses

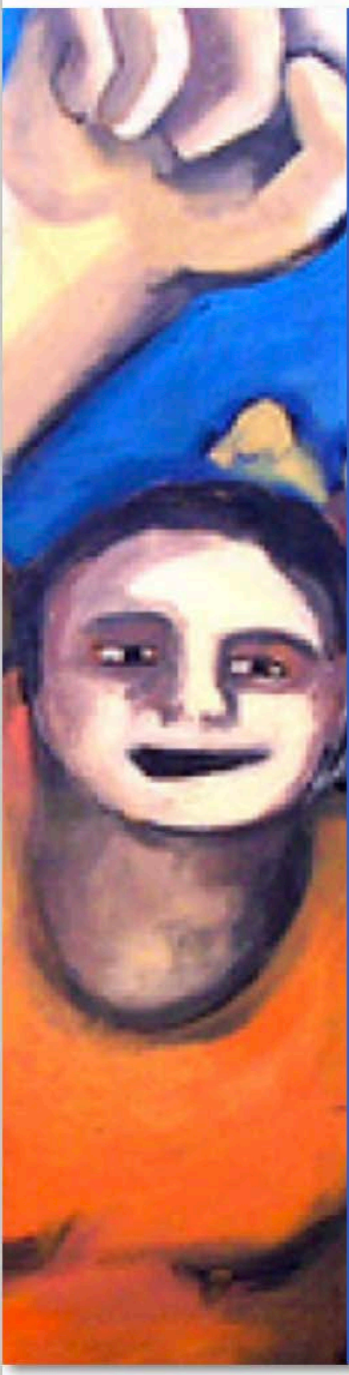
- Who do you need to contact if she consents?
- What can they do for her?

Identify potential immigration/civil relief

Identify potential non-legal responses

- Does she qualify for anything?
- What can you do for her?
- Who else do you need?

- What can you do/offer?
- Who do you need?
- Do you want to know anything else?



# Questions

What do you think is going on with Estela in general?  
Identify “red flags”

Identify potential violations of labor rights

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What can you do/offer?

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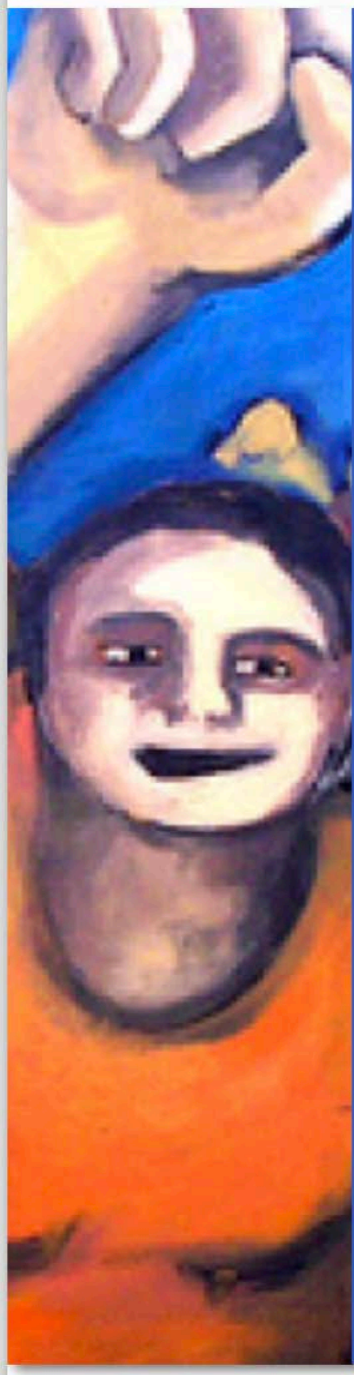
Identify potential immigration/civil relief

Does she qualify for anything?

What can you do for her?

Who else do you need?

# We must join efforts!



# Strategies for Working with Survivors



# Finding Common Ground; Advocacy at the Crossroads



# Working at the crossroads...

Race class gender age ethnicity language country of origin immigration status level of education religion health status	Employers unions immigration advocates consumers law enforcement hospitals clinics schools churches counseling agencies	Neighbors pastors priests friends attorneys politicians teachers co-workers partners children



# Advocacy at the crossroads:

# Integration or confusion?

# Cohesion or gaps in service?

# Complimentary or contradictory?





# Step 1: Your own agency, its mission and role

- Take a moment to consult with members of your agency (or to think individually) about the core mission and roles your agency plays as an advocate for workers and/or survivors.
- List the name of your agency and a few of these roles in the discussion box.

## Step 2: Estela's case: My role

- Thinking now about the specifics of Estela's situation, what services or assistance could your agency provide?
- State these services to people around you or list them in the dialogue box.

# Step 3: The commonalities of our capabilities

- As you look at the ways individual agencies can contribute, where is there overlap in services? (Note these in the dialogue box.)
- Is this overlap beneficial to survivors? Can it create confusion?

## Step 4: Facing our limits

- Where can we identify gaps in the services we provide? Are there issues that we cannot address? Note these verbally with those around you or in the dialogue box.
- Thinking of survivor's needs (those of their families, significant others, etc.), who do we, as an agency, need to work with? Note these.

# Debriefing: What have I added to my toolbox?

- Thinking about how our work overlaps, intersects and where there are potential gaps in the services we can provide, what do I know now that I didn't know before today?
- What would I still like to learn more about as I look toward the future?

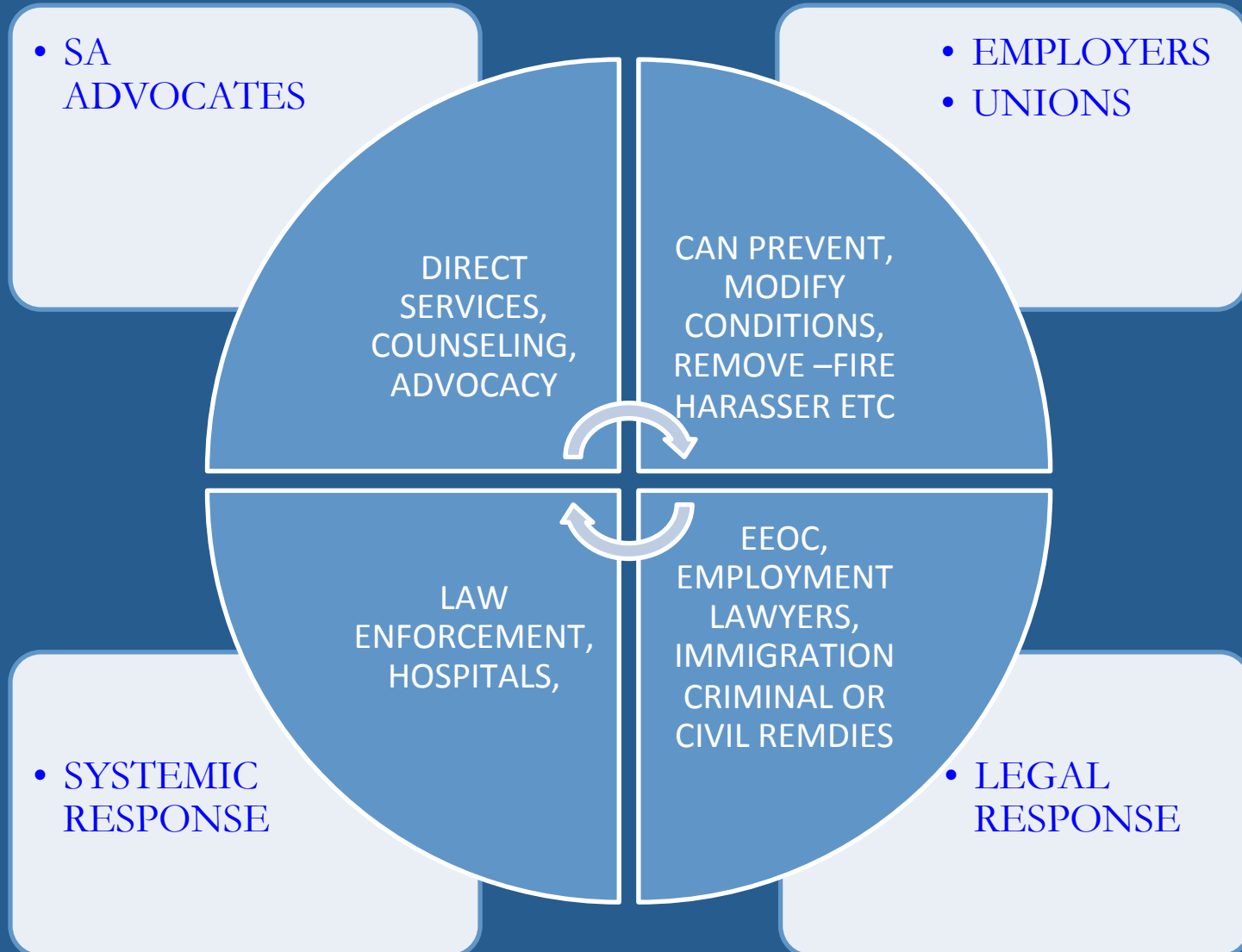
# Preparing for an ICE encounter; Things to know



# What do I need to Know?

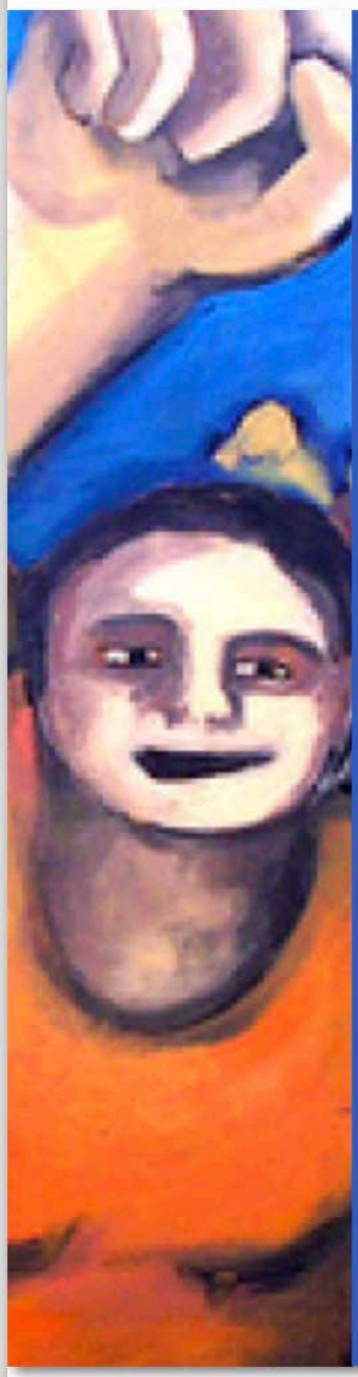
- Prior encounters with ICE
  - Prior orders of removal
  - Severe prior immigration violations
- Encounters with the criminal system
  - Arrests
  - Charges
  - Convictions of certain crimes (aggravated felonies)
- Encounters with DOT or Gov' Agencies
  - Using false papers to obtain license
  - Attempting to use false papers to obtain drivers license
  - Renewing license with REAL identity after obtaining immigration relief
  - I-9!!!! Employer verification

# INFORMAL HELP SEEKING BEHAVIOR MUST INVOLVE THE COMMUNITY





# QUESTIONS?



Coming up!

# ROUND TABLE IN PERSON MEETING



# NEXT STEPS

- Selection Process by
  - Region
  - Discipline
  - Deadline November 7th
- Commitment
  - Pre-meeting work
    - Meet partners (phone, skype, in person)
    - Environmental scanning of your region
    - Identify gaps, needs
    - Bullet point steps to respond to gaps & needs
  - One day meeting
    - December 1, 2017
    - 8:30-4:30
  - Progress Report back February 28th