



Practice Advisory: **Anti-Blackness and Immigrant Survivors of** **Gender-Based Violence¹**

February 2023

Black immigrant² survivors experience intersecting obstacles to relief that were created by systems of oppression for the benefit and maintenance of patriarchal white supremacy, and have profound impacts on their safety and well-being. Practitioners and service providers must pay particular attention to these systems and their resulting obstacles when providing services, and take steps to ensure that their organizations' policies and practices do not perpetuate anti-Blackness.

Practitioners and service providers serving Black immigrant survivors should recognize the enormous scale of violence against Black women in the United States, including trans and non-binary Black women. In 2019, according to the Violence Policy Center, Black women were murdered by men at more than twice the rate of white women.³ A 2017 study by the Institute for Women's Policy Research found that "[m]ore than four in ten Black women experience physical violence from an intimate partner during their lifetimes," a higher rate than reported by white, Latina, and AAPI

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² For the purposes of this resource, "Black immigrant" includes any noncitizen who identifies as Black.

³ *When Men Murder Women: An Analysis of 2019 Homicide Data*, VIOLENCE POLICY CTR., <https://vpc.org/when-men-murder-women-black-females/> (last visited July 21, 2022). These statistics do not differentiate between immigrant and non-immigrant Black women.

women.⁴ Black transgender and gender nonconforming women are killed at alarming rates: almost 78% of the transgender and gender nonconforming people who were known to have been killed in 2019 were Black transgender women.⁵

This resource is designed for practitioners and service providers of all races who serve immigrant survivors. The resource aims to discuss the systemic obstacles to relief that Black immigrant survivors face, those resulting from bias, and to offer practical tips for practitioners and service providers who want to combat these obstacles and provide truly equitable services to Black immigrant survivors.

I. The impact of anti-immigrant policies

Anti-immigrant policies can lead to insecurity for all immigrants, but pose particular concerns for immigrant survivors of gender-based violence (“GBV”), who may be concerned about seeking help due to fear of negative immigration consequences.⁶ These concerns are particularly heightened in jurisdictions with law enforcement agencies that have partnerships with Immigration and Customs Enforcement (“ICE”).

Law enforcement cooperation with ICE is particularly daunting for Black immigrant survivors who, due to harmful and unjustified stereotypes about

⁴ Susan Green, *Violence Against Black Women – Many Types, Far-reaching Effects*, INST. FOR WOMEN’S POLICY RESEARCH (July 13, 2017), <https://iwpr.org/iwpr-issues/race-ethnicity-gender-and-economy/violence-against-black-women-many-types-far-reaching-effects/>. The statistics on this page do not differentiate between immigrant and non-immigrant Black women.

⁵ See Faith Karimi, *Deadly attacks on Black trans women are going up. This grieving mom is fighting back*, CNN (updated June 13, 2021), <https://www.cnn.com/2021/06/13/us/black-transgender-women-attacks-trnd/index.html>. The article does not differentiate between immigrant and non-immigrant Black women.

⁶ Cf. Natalie Nanasi, *The U Visa’s Failed Promise for Survivors of Domestic Violence*, 29 YALE J.L. & FEMINISM 273, 302 (2018) (“Immigrants’ fear of deportation is a significant factor in their unwillingness to engage with law enforcement. For many undocumented individuals, local police are indistinguishable from immigration enforcement, and concerns that they will be asked about their immigration status when reporting a crime can cause noncitizens to remain in dangerous situations.”).

Black women, may be subjected to police violence⁷ or criminalized⁸ and/or detained by ICE, where they are at increased risk of solitary confinement⁹ and its associated negative mental health outcomes.¹⁰ Anti-immigrant policies, harmful and unjustified stereotypes about Black women that lead to police violence or criminalization, and negative immigration consequences of criminal-legal system contacts all intersect to disadvantage Black immigrant survivors in particular. The intersection of increased chances of criminalization and the immigration consequences of that criminalization makes an abuser's use of immigration status as a tool of power and control especially harmful for *Black* immigrant survivors, for whom contact with the criminal-legal system may be an obstacle to obtaining survivor-based immigration relief.

II. Harms related to gender-based violence

Black immigrant survivors contend with the concerns of all survivors of GBV, including safety, family law interventions, sexual violence and coercion, poverty associated with domestic violence¹¹, and housing instability.¹² Scholars have stated that housing instability may “include multiple unwanted moves, not paying other bills in order to pay rent, eating

⁷ See Rhea Shinde, *Black Women, Police Brutality, and The Violence Against Women Act: How Pro-Arrest Policies Facilitate Racialized and Gendered Police Violence*, 22 GEO J. GENDER & L. 1, 2 (2021), available at

https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2021/01/Final_Black-Women-and-VAWA_Rhea-Shinde_Issue-2.pdf), Nnennaya Amuchie, “The Forgotten Victims” *How Racialized Gender Stereotypes Lead to Police Violence Against Black Women and Girls: Incorporating an Analysis of Police Violence Into Feminist Jurisprudence and Community Activism*, 14 SEATTLE J. FOR SOC. JUSTICE 617, 648-57 (2016), and Kimberlé W. Crenshaw et al., *Say Her Name: Resisting Police Brutality Against Black Women*, AFRICAN AM. POLICY FORUM & COLUMBIA LAW SCHOOL CENTER FOR INTERSECTIONALITY AND SOC. POLICY STUDIES 12 (2015), available at

https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4235&context=faculty_scholarship.

⁸ Cf. Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 WM. & MARY J. WOMEN & L. 39, 88 (2017) and Amuchie, *supra* note 7, at 653.

⁹ Cf. Konrad Franco et al., *Punishing Status and the Punishment Status Quo: Solitary Confinement in U.S. Immigration Prisons, 2013-2017*, 24 PUNISHMENT & SOC'Y 170, 185 (2022) (“Immigrants from Africa and the Caribbean—likely to be racialized minorities—are overrepresented in solitary confinement cases by 680 percent, compared to their share of the detained population.”).

¹⁰ See, e.g., Tiana Herring, *The research is clear: Solitary confinement causes long-lasting harm*, PRISON POLICY INITIATIVE (Dec. 8, 2020), https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/.

¹¹ See, e.g., Mary Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration*, VAWNET APPLIED RESEARCH FORUM 4 (Dec. 2002), available at

https://vawnet.org/sites/default/files/assets/files/2017-08/AR_Incarceration.pdf.

¹² See, e.g., Charlene K. Baker et al., *Domestic violence, housing instability, and homelessness: A review of housing policies and program practices for meeting the needs of survivors*, 15 AGGRESSION AND VIOLENT BEHAV. 430, 438 (2010), Joanne Pavao et al., *Intimate Partner Violence and Housing Instability*, 32 AM. J. OF PREVENTATIVE MED. 143 (2007).

less or skipping meals to pay rent, doubling up with family or friends, being threatened with eviction, or experiencing rental or credit problems.”¹³ The risk of housing instability may be greater for Black immigrant survivors who are undocumented, due to restrictions on eligibility for federal public assistance based on immigration status and the overlap of anti-Black housing discrimination.¹⁴

Further, the association between domestic violence and poverty¹⁵ is heightened for survivors who identify as Black women. Kimberlé Crenshaw and her colleagues emphasized that “[o]verall, Black women are poorer than Black men and white women.”¹⁶ Further, it is particularly likely that female-identified Black *immigrant* survivors may live in poverty. Catherine Labiran has emphasized both the high rates of poverty among Black immigrants and the fact that Black immigrants have lower median salaries than other immigrants.¹⁷ Lack of work authorization may force a Black immigrant survivor into low-wage and/or exploitative work (or prevent the survivor from working entirely.) Further, America’s English-centric society may force non-English speaking Black immigrant survivors who *do* have work authorization into low-wage work. For these reasons, the concerns that Crenshaw and her colleagues highlighted may be even more pronounced for female-identified Black *immigrant* survivors, who may have diminished access to economic opportunities due to their immigration status.

¹³ See Baker et al., *supra* note 12, at 431.

¹⁴ Cf. Cindy D. Chang, *Social Determinants of Health and Health Disparities Among Immigrants and their Children*, 49 CURRENT PROBS. IN PEDIATRIC AND ADOLESCENT HEALTH CARE 23, 26 (2019) (“Undocumented immigrants are a vulnerable population at risk for housing instability and homelessness”), Abigail Williams & Peace Gwam, *Domestic Violence Survivors Urgently Need Housing Stability and Solutions during the Pandemic*, URBAN INST. (Feb. 2, 2021), <https://www.urban.org/urban-wire/domestic-violence-survivors-urgently-need-housing-stability-and-solutions-during-pandemic> (“Black women survivors often face racial discrimination; research shows Black women renters in many states are more than twice as likely to have evictions filed against them than white renters.”).

¹⁵ Cf. Gilfus, *supra* note 11, at 4 (Arguing that “[b]attering may force women into poverty and homelessness; it can cause women to lose jobs, welfare benefits, housing and educational opportunities” and noting that abusers may steal a survivor’s earnings, force a survivor into debt, or harass a survivor at work until the survivor loses their job).

¹⁶ Crenshaw et al., *supra* note 7, at 12.

¹⁷ CATHERINE LABIRAN, Report, OUR STORIES AND VISIONS: GENDER IN BLACK IMMIGRANT COMMUNITIES, BLACK ALLIANCE FOR JUST IMMIGRATION 34 (2020), available at <https://baji.org/our-stories-and-visions/> (the study’s authors recruited people who identified as Black immigrant women to participate in the study). Labiran’s definition of “Black immigrant” includes Black people whose parents or grandparents migrated to the United States. See *id.* at 6.

III. Crucial need for language access and cultural responsiveness

Organizations serving immigrant survivors—including Black immigrant survivors—must create and maintain robust language access policies. Language access is crucial not only for access to supportive and advocacy services, but also for the mental health of immigrant communities in the United States.¹⁸ A 2013 study from Pew Research found that 74% of Black immigrants were “proficient English speakers.”¹⁹ In the same study, 31% of Black immigrant respondents reported speaking a language other than English at home even if they spoke English “very well.”²⁰ The takeaways from this study are twofold: 26% of Black immigrants are not “proficient English speakers,” and a substantial percentage of Black immigrant respondents spoke a language other than English at home. The Pew study demonstrates that organizations without strong language access policies will have difficulty reaching and equitably serving some Black immigrant survivors.

Organizations providing services in Spanish may help to meet the language access needs of *some* Black immigrant survivors, but not all. Agencies must develop programs for immigrant survivors that speak languages other than English or Spanish, and maintain relationships with interpreters and language access providers that are trauma informed and culturally sensitive.²¹ Similarly, culturally specific organizations serving Spanish speaking immigrant survivors should not assume that language access

¹⁸ See Labiran, *supra* note 17, at 34 (“During this initial adjustment period, the mental health of Black immigrants can also be impacted by...language barriers.”). See also, e.g., The California Endowment, *Giving Voices to the Voiceless: Language Barriers and Health Access Issues of Black Immigrants of African Descent* (March 2005) (describing the negative public health impacts of insufficient language access and culturally competent providers on newly arrived African immigrants in California), <https://www.issueab.org/resources/9466/9466.pdf>.

¹⁹ See Monica Anderson, *Chapter 1: Statistical Portrait of the U.S. Black Immigrant Population*, pew research center (April 9, 2015), available at <https://www.pewresearch.org/social-trends/2015/04/09/chapter-1-statistical-portrait-of-the-u-s-black-immigrant-population/>.

²⁰ See *id.*

²¹ Cf. Asian Pacific Institute on Gender-Based Violence, “*Trauma Informed Language Access: Practices for Effectively Partnering With An Interpreter*”, available at https://dcadv.org/file_download/inline/39182f39-e0af-477f-95d2-752fc0286568, Gulf Coast Jewish Family & Community Servs., *Working with Interpreters: Service Provision with Torture Survivors*, available at <https://gulfcoastjewishfamilyandcommunityservices.org/wp-content/uploads/2018/04/Working-with-Interpreters.pdf>.

alone is sufficient to address the barriers faced by Black immigrant survivors who speak Spanish as a primary language.

Agencies serving Black immigrants who speak English primarily or as an additional language must also endeavor to provide culturally responsive services and linkages to community based support. Moreover, it's important for service providers to be welcoming to Black immigrants, including English-speaking Black immigrants, who may otherwise not feel that the services are available for them. Even if language access is less of a barrier to English-speaking survivors, it is important for providers to be familiar with the diverse cultural contexts of Black immigrant survivors from different regions and countries, and the barriers to relief they face as Black immigrants living in the United States. Practitioners should also understand that Black immigrant survivors who speak English may use African American Vernacular English ("AAVE")²², which has been unjustly discredited in law enforcement or courtroom settings.²³ As discussed in this piece, systems may unjustifiably discount Black immigrant survivors' accounts of violence in varied ways, including by discounting a survivor's use of AAVE to describe their abuse. Practitioners should keep this in mind when learning that a Black immigrant survivor had a negative experience with system(s), rather than assuming that the survivor's negative experience meant the violence did not occur.

IV. Anti-Blackness in the criminal-legal system and its entanglement with the immigration system

²² For more information on AAVE, see, e.g., *What is Ebonics?*, HAMILTON COLLEGE, <https://academics.hamilton.edu/government/dparis/govt375/spring98/multiculturalism/ebonics/whatis.html>.

²³ Cf. Ryan Winter and Claire Scott-Bacon, *Courtroom semantics: The impact of Ebonics*, AMERICAN PSYCHOLOGICAL ASSOCIATION (Oct. 2016), available at <https://www.apa.org/monitor/2016/10/jn> (stating that a juror in the George Zimmerman trial did not consider the testimony of a witness who used AAVE to be credible).

The criminal-legal system in the United States disproportionately arrests and incarcerates Black people.²⁴ In particular, Black immigrant survivors are impacted by a system of mandatory and pro-arrest policies for domestic violence offenses: closely related to the Violence Against Women Act (“VAWA”)²⁵, these policies were enacted despite Black women’s concerns²⁶ and have led to increased arrests of Black women.²⁷ Pro-arrest policies intersect with an immigration system that is extraordinarily harsh to noncitizens with criminal-legal system contacts **(even if the noncitizen was wrongly arrested or convicted)**²⁸, and prevents some Black immigrant survivors of violence from obtaining relief that Congress created for them.

When Congress created the various forms of survivor-based immigration remedies, it included waivers of bars to eligibility for these forms of relief.²⁹ The waivers were designed to allow some immigrant survivors with criminal-legal system contacts to access relief. However, the waivers are

²⁴ Cf. FED. BUREAU OF INVESTIGATION, *Arrests Offense Counts in the United States: 2020, Arrestee Race*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest> (last visited July 21, 2022) and Nicholas Jones et al., *2020 Census Illuminates Racial and Ethnic Composition of the Country*, UNITED STATES CENSUS BUREAU (Aug. 12, 2021), available at <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html> (Black people comprised 26% of arrestees in 2020, more than double their share of the U.S. population.), NAACP, *Toolkit: Criminal Justice Fact Sheet*, NAACP, available at <https://naacp.org/resources/criminal-justice-fact-sheet> (last visited July 21, 2022) (“African Americans are incarcerated at more than 5 times the rate of whites. The imprisonment rate for African American women is 2x that of white women.”).

²⁵ Cf. Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is A Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 *VIOLENCE AGAINST WOMEN* 84, 85 (2021), and Shinde, *supra* note 7, at 1-2.

²⁶ See Jacobs, *supra* note 8, at 87.

²⁷ See Leigh Goodmark, ‘*Something on Women*’, INQUEST (May 20, 2022), <https://inquest.org/something-on-women-vawa/>, Shinde, *supra* note 7, at 2, Jacobs, *supra* note 8, at 90, and Carolyn West, “*Sorry, We Have to Take You In*”: *Black Battered Women Arrested for Intimate Partner Violence*, 15 *J. OF AGGRESSION, MALTREATMENT, AND TRAUMA* 95, 98, 102 (2007).

²⁸ See, e.g., INA §§ 101(f)(3), (f)(5), (f)(7), and (f)(8) (criminal bars to good moral character), INA §212(a)(2) (criminal grounds of inadmissibility), INA § 237(a)(2) (criminal grounds of deportability). None of these grounds state that they categorically do not apply if the noncitizen was wrongly arrested or convicted.

²⁹ See, e.g., INA § 204(a)(1)(C) (VAWA exception to certain good moral character bars for acts that are “connected to” the abuse), INA §§ 212(d)(13)-(14) (waivers of inadmissibility for T and U visa applicants), INA §212(h)(1)(C) (waiver of certain criminal grounds of inadmissibility for VAWA Self-Petitioners), INA § 237(a)(7) (waiver of the “domestic violence” ground of deportability when the act or conviction is “connected to” the abuse).

discretionary.³⁰ Their discretionary nature means that an immigration adjudicator is not required to grant the waiver, even if the survivor amasses mitigating and sympathetic evidence favoring relief, if the adjudicator disbelieves the survivor's evidence or weighs the equities against the survivor.³¹ The enduring biases associating Black people with criminality and against Black women's believability erect additional barriers to the fair adjudication of these waivers for Black immigrant survivors.

Because of racially disparate policing and prosecution practices, Black people—including Black immigrant survivors—may be particularly likely to have contact with the criminal-legal system. USCIS's frequent denial of immigration cases for noncitizens with criminal-legal system contacts³²—without any consideration of the anti-Blackness that is inherent in many of those contacts—perpetuates the criminal-legal system's anti-Blackness. This perpetuation is its *own* form of anti-Blackness and has particularly negative consequences for Black immigrant survivors of GBV, for whom immigration relief is often necessary for safety, stability, and independence from their abusers.

A. Intersection of racial disparities in drug arrests, self-medication, and barriers to mental health care

Racially disparate criminal-legal system outcomes, self-medication, and barriers to mental health care intersect to create obstacles to relief for Black immigrant survivors. It is well established that Black people are

³⁰ See INA §§ 212(d)(13)-(14) (waiver adjudications for T and U visa applicants are discretionary), INA § 212(h)(1)(C) (waiver adjudication for VAWA Self-Petitioners with certain criminal grounds of inadmissibility are discretionary), 3 USCIS-PM D.2(G)(4) (stating that the determination whether a survivor is a person of good moral character under the exception at INA § 204(a)(1)(C) is "discretionary.").

³¹ See *In re: 17813873* (AAO Nov. 22, 2021) (USCIS denied a waiver of inadmissibility for a U visa petitioner with a criminal history as a matter of discretion, despite the fact that the petitioner was a survivor of domestic violence).

³² See *In re: 19062655* (AAO July 18, 2022) (VAWA Self-Petition denied due to survivor's criminal history), *In re: 17018377* (AAO June 7, 2022) (same), *In re: 21655110* (AAO Apr. 29, 2022) (denial of U-based Adjustment of Status for a domestic violence survivor due to the survivor's criminal history).

disproportionately arrested for drug offenses.³³ Moreover, we know that domestic violence survivors sometimes self-medicate to cope with abuse.³⁴

Black immigrant survivors experience multiple barriers to access to mental health treatment. One barrier is the dearth of Black mental health professionals. Only 4% of psychologists are Black, and “[a] similar disparity exists among...social workers and psychiatrists.”³⁵ The dearth of Black mental health professionals makes it exceedingly difficult for Black immigrant survivors to access treatment with culturally responsive providers. Immigrants who identify as Black women have also reported additional barriers to mental health care.³⁶ Labiran wrote that some participants in her study—all of whom identified as Black immigrant women and femmes—“shared that stigma, as projected by their cultures and families, was a large obstacle” to therapy.³⁷ Other participants in Labiran’s study “shared that within their cultures the concept of mental health either “does not exist” or that it is invisibilized.”³⁸ Further, many noncitizens—particularly undocumented noncitizens—lack health insurance³⁹, due to many factors including barriers to access to government-funded health insurance for noncitizens, and the fear engendered by the previous administration’s enforcement policies.⁴⁰

In Labiran’s study, even immigrants who identified as Black women who *did* have health insurance reported that their insurance did not cover therapy, “did not cover enough of the copay to make therapy affordable,” or “did not

³³ See PEW CHARITABLE TRUSTS, Issue Brief, *Drug Arrests Stayed High Even as Imprisonment Fell From 2009 to 2019*, PEW CHARITABLE TRUSTS (Feb. 15, 2022), available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-a-s-imprisonment-fell-from-2009-to-2019> (stating that Black adults comprised 27% of drug arrests in 2019 despite comprising 12% of the U.S. adult population that year), EZEKIEL EDWARDS ET AL., Report, *A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM*, AMERICAN CIVIL LIBERTIES UNION 29 (2020), available at <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform> (stating that Black people are arrested for marijuana possession at almost three times the rate of white people, despite relatively similar usage rates.)

³⁴ Gilfus, *supra* note 11, at 4.

³⁵ Christina Caron, *It’s Hard to Search for a Therapist of Color. These Websites Want to Change That.*, N.Y. TIMES, July 16, 2021, <https://www.nytimes.com/2021/07/16/well/mind/find-black-latinx-asian-therapist.html>.

³⁶ See Labiran, *supra* note 17, at 50-51.

³⁷ See *id.* at 51.

³⁸ See *id.*

³⁹ See *Health Coverage of Immigrants*, KAISER FAMILY FOUND. (Apr. 6, 2022), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>.

⁴⁰ See *id.*

cover the Black woman therapist they desired to see.”⁴¹ The participants’ experiences are reflective of the barriers to access. Given the dearth of Black mental health professionals, Black immigrant survivors who want to see a Black therapist may be placed on a waiting list, which delays their access to treatment.⁴² The high cost of therapy—along with possible lack of insurance coverage⁴³—may also leave therapy out of reach for Black immigrant survivors. Even when therapy is free or covered by insurance, the survivor may only be entitled to a few sessions. The small number of sessions is likely insufficient for survivors to process and cope with the trauma they have suffered. In sum, accessing therapy is far from simple for Black immigrant survivors. Barriers to access are present at every step of the process, from finding a culturally responsive provider to affording enough sessions to adequately process and cope with trauma.

The unavailability of therapy is damaging for any survivor of domestic violence, many of whom suffer from Post-traumatic Stress Disorder (“PTSD”) and other negative mental health outcomes resulting from abuse.⁴⁴ The combination of obstacles to therapy, PTSD and other mental health impacts of abuse, and the possibility of self-medication in the absence of therapy or other supports presents a particularly difficult combination for Black immigrant survivors who may also be impacted by racially disparate criminalization related to drug use, even though self-medication is not unique to Black survivors.

Self-medication presents a particular risk of criminalization, which is especially concerning due to the negative immigration consequences of drug convictions. For example, survivors convicted of controlled substance offenses may be deemed “inadmissible”⁴⁵ or “deportable.”⁴⁶ A survivor with a controlled substance conviction may also be barred from establishing “good moral character,”⁴⁷ which is necessary for some forms of immigration

⁴¹ See Labiran, *supra* note 17, at 51.

⁴² For example, Free Black Therapy, which serves Black patients “who lack adequate health insurance”, is at capacity. See *See A Therapist*, FREE BLACK THERAPY, <https://www.freeblacktherapy.org/see> (last visited Jan. 26, 2023).

⁴³ See KAISER FAMILY FOUND., *supra* note 39.

⁴⁴ See Bushra Sabri et al., *Intimate Partner Violence, Depression, PTSD and Use of Mental Health Resources among Ethnically Diverse Black Women*, 52 SOC. WORK & HEALTH CARE 351 (2013), available at <https://pubmed.ncbi.nlm.nih.gov/23581838/> and Laura Ting, *Out of Africa: Coping Strategies of African Immigrant Women Survivors of Intimate Partner Violence*, 31 HEALTH CARE FOR WOMEN INT’L 345, 346 (2010).

⁴⁵ INA § 212(a)(2)(A)(i)(II) (inadmissibility for a controlled substance conviction.)

⁴⁶ INA § 237(a)(2)(B) (deportability for a controlled substance conviction.)

⁴⁷ See INA § 101(f)(3) (bar to good moral character for noncitizens with controlled substance inadmissibility during the period in which good moral character must be established.)

relief such as a VAWA Self-Petition.⁴⁸ Even if a waiver of the “controlled substance offense” ground of inadmissibility or deportability is technically available, the waiver could be denied as a matter of discretion. As the waivers available to immigrant survivors of abuse or violence are broader than for many other forms of immigration status, denial of the waiver could foreclose the possibility of *any* immigration relief, thus further jeopardizing the survivor’s safety.

Black immigrant survivors may also be barred from shelter programs when programs use judiciary case searches as a condition of admission to the shelter. Survivors with criminal legal system contacts may be denied access to both safety and credible evidence of abuse that could have increased the chances of approval of their U-visa or VAWA Self-Petition.⁴⁹ Therefore, shelter providers should take care not to exclude survivors with a history of controlled substance convictions from their services. Inclusive admission policies preserve Black immigrant survivors’ safety and ensure that pervasive anti-Blackness in the criminal-legal system does not serve as a further obstacle to survivor-based immigration relief.

In sum, it is crucial, in the context of the pervasive anti-Blackness that results in these overlapping barriers to immigration relief for Black survivors and other immigrant survivors with similar experiences, that practitioners and service providers take care not to exclude survivors with criminal legal system contacts. It is also crucial that immigration attorneys, advocates, and organizers work to draw attention to the negative effect of these interlocking systems on Black immigrants.

B. Implications for practitioners and service providers

Practitioners and service providers should remember that contact with the criminal-legal system is not incompatible with being a survivor of gender-based violence. On the contrary, Beth Richie stated in her book

⁴⁸ INA § 204(a)(1)(A)(iii)(II)(bb) (spouse/intended spouse of abusive USC), INA § 204(a)(1)(A)(iv) (child of abusive USC), INA § 204(a)(1)(a)(vii)(II) (parent of abusive USC), INA § 204(a)(1)(B)(ii)(II)(bb) (spouse/intended spouse of abusive LPR), INA § 204(a)(1)(B)(iii) (child of abusive LPR.) VAWA Self-Petitions are available to survivors who have been abused by certain U.S. Citizen (“USC”) and Lawful Permanent Resident (“LPR”) family members.

⁴⁹ Cf. INA § 204(a)(1)(J) (requires USCIS to “consider any credible evidence relevant to” a VAWA Self-Petition), INA § 214(p)(4) (requires USCIS to “consider any credible evidence relevant to” a U nonimmigrant status petition), 8 C.F.R. § 204.2(c)(2)(iv) (in a discussion of evidence of abuse for a VAWA Self-Petition, states that “[e]vidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant”).

Arrested Justice that “68 percent of incarcerated black women had been victimized by intimate-partner violence.”⁵⁰ Thus, organizational policies not required by funders that deny services to survivors who have criminal-legal system contacts could have a disproportionately negative impact on Black survivors. The denial of services to a Black immigrant survivor of gender-based violence, simply because she has criminal-legal system contacts, may prevent her from ever accessing the life-saving relief that Congress created for all immigrant survivors, even if accessing that relief may require tenacious advocacy. With greater attentiveness to systemic inequalities most affecting Black immigrant survivors, providers can also increase access to relief for non-Black immigrants who are also impacted by them.

In particular, service providers should be careful not to conclude that immigrant survivors with criminal contacts are themselves abusers without further examination of the circumstances of their arrests. Instead of automatically denying services to immigrant survivors with criminal-legal system contacts, service providers should conduct a comprehensive intake to determine the larger context of any criminal history that may initially suggest that the survivor is a domestic violence “perpetrator.” This assessment should consider the pervasive and false, harmful stereotypes about Black women that may affect the analysis.⁵¹ Tools like the one created by the Northwest Network,⁵² which considers factors such as the context and reason for any alleged use of violence, will help practitioners and service providers determine whether a potential client should be considered a survivor despite their criminal-legal system contacts.

It is critical that practitioners and service providers engage in a comprehensive assessment like the one described above before denying services to immigrant survivors. If practitioners and service providers

⁵⁰ Beth Richie, *Arrested Justice: Black Women, Violence, and America’s Prison Nation* (2012) at 26 (cited in Kali Nicole Gross, *African-American Women, Mass Incarceration, and the Politics of Protection*, 102 J. AM. HIST. 25, 32 (2015)).

⁵¹ Cf. Jacobs, *supra* note 8, at 88 (“the “primary aggressor” language is particularly problematic for Black women because they are less likely to be seen as victims by the police and more likely to be seen as aggressors.”)

⁵² See *Assessment Tool Overview*, THE NORTHWEST NETWORK OF BISEXUAL, TRANS, LESBIAN & GAY SURVIVORS OF ABUSE, <https://static1.squarespace.com/static/566c7f0c2399a3bdabb57553/t/566c9d4ec21b865cfe782b0d/1449958734621/Northwest-Network-Assessment-Tool-Overview.pdf> (last visited July 22, 2022). Questions in the tool: http://www.oha.state.or.us/caf/NW_Network_Primary_Aggressor_Assessment.pdf (last visited July 22, 2022). While the Northwest Network is an LGBTQ survivor organization, many of the questions in the tool are applicable to all types of intimate relationships.

instead automatically decline services because a survivor has a criminal record that may at first glance appear to make them a domestic violence “perpetrator,” they may perpetuate the anti-Blackness that is inherent in the criminal legal system, especially as it is applied to survivors of GBV who identify as Black women.

IV. Healthcare system discrimination and Black immigrant survivors

Given well-documented concerns about racial discrimination in the healthcare system,⁵³ a Black immigrant survivor may not have the same helpful medical evidence of injuries as other survivor clients. In addition, Black women with darker skin tones may be ignored because the bruises are not as visible or may not show up in ways typically anticipated on white or lighter skin tones. For example, bruises may show up on these survivors as dark brown or purple, rather than green or yellow. The practitioner must be ready to discuss these problems with the client, determine if anti-Black racism by the medical provider played a role in unfavorable medical reports, and be ready to counter with arguments if USCIS issues a Request for Evidence (“RFE.”) Below is an example of how medical stereotyping may impact a Black immigrant survivor’s case.

Shana

Shana is a Black immigrant from Senegal. She is a survivor of domestic violence and sexual assault by her ex-wife, who is a U.S. Citizen. You are representing Shana on a VAWA Self-Petition. You recently received a Request for Evidence (“RFE”) about the “battery or extreme cruelty” element. The RFE mentioned that Shana’s statement discussed multiple

⁵³ See, e.g., Labiran, *supra* note 17, at 53 (stating that participants “shared stories of how they have been” “silenced” and “ignored” “in doctors’ offices”, and “[s]everal of our participants identified that, due to their race, gender, and immigration status, their complaints were minimized. Furthermore, they shared that within the medical field, Black people are treated as if they have higher pain thresholds than others.”), Kelly M. Hoffman et al., *Racial Bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites*, 113 PROC. NAT’L ACAD. SCI. U.S. 4296, 4299-4300 (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4843483/?fbclid=IwAR2LScvr07MiKe3oA-rOAYKCWLY94LBGyU43clz6a-32z09Lf4aNp4elKa4> (finding that “many white medical students” held “false” “beliefs” about biological differences between Black and white people, that those “false beliefs are related to racial bias in pain perception,” and that white medical students who held “false” “beliefs” “showed racial bias in the accuracy of their pain treatment recommendations. Specifically, participants who endorsed more of these beliefs reported that a black (vs. white) target patient would feel less pain and they were less accurate in their treatment recommendations for the black (vs. white) patient.”)

instances of being injured by her ex-wife, but did not contain any evidence of injuries in the form of medical records. USCIS has asked you to explain the discrepancy.

When you first met Shana, you asked for medical records to show evidence of injuries like you do for all clients. Shana told you that she had two medical reports. She said that she went to the emergency room and the free clinic after her ex-wife punched her. At the emergency room, Shana explained what happened and told the doctor that she had a severe headache for several hours after being punched. The doctor refused to prescribe pain medication and suggested that Shana rest. The diagnosis in the report was “mild headache.”

Several days passed, during which Shana took over the counter pain medication and found no relief. She then went to the free clinic. The doctor at the clinic refused to prescribe stronger pain medication and discounted Shana as a drug seeker who was not in severe pain. The free clinic’s report reflected the same diagnosis as the ER report. Shana told you that after this experience, she did not want to see a doctor following any of the subsequent times her ex-wife hurt her. She said that she was very upset and felt like no one believed her after her negative experiences with the previous medical providers. Her ex-wife repeatedly told her that no one would believe that she was hurt. She said that the prospect of going to the doctor reminded her of her ex-wife saying that no one would believe her.

What should the attorney do?

Practice tips:

It is good that this attorney still accepted the case despite the statements in the medical reports. Practitioners should not discount a survivor’s story solely because medical evidence contradicts the story.

In response to the RFE, the attorney should argue that a VAWA Self-Petition cannot be denied due to failure to submit a particular piece of evidence,⁵⁴ including medical records for abuse-related injuries. In addition, the attorney should submit alternative evidence of injuries, including a

⁵⁴ 3 USCIS-PM D.5(B)(2), IMMIGRATION AND NATURALIZATION SERV., MEMORANDUM FOR TERRANCE M. O’REILLY FROM PAUL W. VIRTUE, “EXTREME HARDSHIP” DOCUMENTARY REQUIREMENTS INVOLVING BATTERED SPOUSES AND CHILDREN 7 (1998), *available at*

<https://asistahelp.org/wp-content/uploads/2018/10/Virtue-Memo-on-Any-Credible-Evidence-Standard-and-Extreme-Hardship.pdf>.

detailed statement from Shana about how she was affected by the injuries and her efforts to seek treatment. Shana’s statement should include details about her experience when she attempted to receive medical attention, how her reception by medical providers made her feel, and why that treatment made her not want to seek medical attention again. If other people knew about Shana’s abuse, she should submit letters from those people detailing their knowledge of her injuries and their source of knowledge. The attorney may also wish to argue that Shana’s experiences are likely examples of well-established racial bias in the healthcare system.⁵⁵ The attorney should attach to the submission any articles and social science research they want USCIS to consider. The attorney should also argue that racial bias in the healthcare system should not prevent Shana from obtaining life-saving VAWA relief.

V. False and harmful stereotypes about Black women are creations of systems of oppression and should not be relied upon by service providers or immigration adjudicators.

The stereotypes discussed in this advisory often intersect and are not mutually exclusive. They are a manifestation of intersecting systems of oppression that create barriers to safety and immigration relief for Black immigrant survivors. While these stereotypes are all historically rooted in anti-Blackness, they apply in different forms and to different degrees to all survivors of color.

A. Stereotypes about Black women’s credibility and sexuality harm Black immigrant survivors

Police, prosecutors, judges, and jurors often harbor unjustified doubts about Black women’s credibility.⁵⁶ Michelle Jacobs wrote that “judges and jurors” “will wonder whether Black women are credible such that when they report, either under oath or just at the police station, that they’ve been victimized, their words can have value and be believable.”⁵⁷ As Marilyn Yarbrough and Crystal Bennett say, “...the African-American woman’s racial and gender identity makes her ‘particularly and peculiarly susceptible

⁵⁵ Cf. Labiran, *supra* note 17, at 53, and Hoffman, *supra* note 53, at 4299-4300.

⁵⁶ Cf. Jacobs, *supra* note 8, at 46-48 and 92.

⁵⁷ Cf. Jacobs, *supra* note 8, at 46-48.

to being disbelieved.”⁵⁸ Disbelief of Black women survivors extends to Black survivors of all genders.⁵⁹ Related to tropes about Black women’s credibility are stereotypes about the alleged “deviousness” of Black immigrants. For example, Ujima has encountered the harmful belief that Black immigrants in poverty are trying to “come up” by “using” American citizens.

Practitioners and service providers should recognize that they may disbelieve a Black immigrant survivor—even unconsciously—because of the pervasive stereotypes that Black survivors are not credible or that Black immigrants are particularly “devious” and manipulative. Similarly, they should realize that a Black immigrant survivor may have been denied law enforcement assistance, a protective order, or even been arrested themselves because of law enforcement’s bias against believing Black survivors. Below are some examples of how this may present.

Sandra

Sandra is a walk-in client at a rape crisis center. An intake counselor, who is not Black, relays Sandra’s story to the white intake manager. Sandra is a Black woman from Kenya who is in the United States on a student visa. She told the counselor that she went on a few dates with one of her classmates, Steven. Sandra told the counselor that after a date last week, Steven raped her after she declined his request for sex. The intake counselor told the intake manager that she does not believe Sandra’s story. The intake counselor has met with hundreds of rape survivors at the center, which is near a predominantly white university. She has heard nearly identical stories from white survivors and never expressed any doubt about their credibility. Nevertheless, the intake manager trusted the intake counselor’s years of training and experience. The intake manager did not inquire further and decided not to offer any further services to Sandra.

What should the service provider have done?

⁵⁸ Marilyn Yarbrough & Crystal Bennett, *Cassandra and the “Sistahs”: The Peculiar Treatment of African American Women in the Myth of Women as Liars*, 3 J. GENDER RACE & JUST. 625, 626 (2000) (cited in Jacobs, *supra* note 8, at 49).

⁵⁹ Cf. Maya Finoh & Jasmine Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Violence*, ACLU (Jan. 28, 2019), <https://www.aclu.org/news/racial-justice/legal-system-has-failed-black-girls-women-and-non-binary-survivors-of-violence> (“Black...non-binary people are seldom seen as victims”), Domestic Violence & the Black community, NAT’L COAL. AGAINST DOMESTIC VIOLENCE (2020), https://assets.speakcdn.com/assets/2497/dv_in_the_black_community.pdf (“police, judges, and jurors are less likely to believe Black survivors than White survivors.”) (capitalization in original)).

The intake manager should have investigated whether cultural nuances, language, and cultural norms were underlying reasons why the survivor was not believed. The manager also should have asked the counselor more questions, including: **why** did the counselor disbelieve Sandra? Did the intake counselor just have a “hunch” that Sandra was lying, or could she provide specific examples of how her story did not add up? What made Sandra’s story so different from the other rape survivors the counselor spoke with in the past? If the counselor was unable to explain why she disbelieved Sandra other than a “hunch” or “gut feeling”—and especially if she could not make any meaningful distinctions between Sandra’s story and the stories of the mostly white survivors who sought their assistance—the intake manager should have considered how the pervasiveness of doubts about Black women’s credibility and anti-Black bias may have impacted this otherwise well-trained counselor’s thinking and judgment, resulting in the categorical rejection of a rape survivor’s request for help.

Upon review of their intakes, the organization should acknowledge that Sandra was wrongly turned away and reach back out to her to offer support. The organization should thereafter incorporate regular training on racism, implicit bias, historical stereotypes about Black women, and how they continue to impact Black survivors. Leaders of the organization should also reflect on whether their services are truly accessible to Black and other non-white survivors, and consider what remedial staffing and other organizational changes are necessary. The organization should invite feedback from Black survivors and Black-led organizations about how they can improve their practices. All Black survivors and Black-led organizations should be compensated for their time providing feedback.

Sandra’s story continues

Undeterred by her experience at the rape crisis center, Sandra decided to report the rape to campus police. The officer Sandra spoke with was a Black woman. She believed her and arrested Steven. Thereafter, the police victim advocate encouraged Sandra to contact Student Legal Services (“SLS”) about a possible U-visa.

Sandra meets with SLS about representation on a U-visa. The law student intern who conducted the intake is not Black, and was not sure whether SLS should take the case even though Sandra had the support of campus police. The student volunteers at the rape crisis center and has nothing but

good things to say about it. If Sandra was really raped, why wouldn't the rape crisis center have helped her? Nevertheless, the law student intern forwarded her intake notes to the managing attorney as required. The managing attorney, who is a Black woman, attended a CLE a few years ago that covered stereotyping in the provision of services to Black survivors, and suspected that the rape crisis center denied Sandra services for illegitimate reasons. SLS's other employees and interns have not received anti-racism training. The majority of SLS's employees are white. Only 10% of SLS employees are Black. The managing attorney decided to interview Sandra herself and eventually agreed to take the case. She also contacted the rape crisis center to inquire about why they had turned Sandra away.

What should the legal services organization have done?

It is helpful that the managing attorney did not take the intern's concerns at face value. It is also helpful that SLS has placed a Black woman in a position of decision-making power and that she received training about anti-Blackness in the provision of sexual assault services. However, the entire organization—including interns and volunteers—should receive regular training on anti-Blackness, stereotyping, and the ways in which racism impacts Black survivors, including immigrant survivors. It is also fortunate that the intern was required to send her notes to the managing attorney—a staff attorney may have been able to make the case-acceptance decision without any oversight, which could have resulted in a very different outcome for Sandra.

All staff at legal services organizations—not just senior staff—need to engage with issues of bias on a regular basis. Black staff should not be the only staff who regularly engage on these issues, nor should they be tasked with “educating” their non-Black colleagues. While maintaining relationships with partner organizations is important, an organization's first priority should be to believe survivors—including, and especially, survivors who have been failed by other organizations and institutions. Finally, it is critical for survivor-serving organizations to prioritize racially diverse hiring. Prioritizing the recruitment, training, and retention of Black staff in particular is crucial to ensuring that the organization is truly accessible to Black immigrant survivors.

Nina

Nina is a Black woman from Guyana who resides in Delaware. Nina is a conditional permanent resident. Nina's wife, who is a U.S. citizen and white, began abusing her shortly after her arrival in the United States. After Nina's wife punched her in the face and strangled her, Nina told her wife that she was calling the police. Nina's wife is familiar with the local police chief's anti-immigrant rhetoric. Enraged that Nina said she would call the police, Nina's wife took the landline out of Nina's hand, broke it, and used her cell phone to call the police. She told Nina that she was going to have the police deport her. When the police officer—who was not Black—arrived, Nina's wife told the officer that Nina slapped her and broke the landline when she tried to call the police. Nina told the officer her side of the story, but the officer did not believe her. The officer remarked that he did not see any injuries on Nina's body. Nina is arrested for domestic battery and interference with emergency communication.

Nina agreed to talk to the prosecutor. She again explained her side of the story. The prosecutor, a non-Black man, said the story seemed implausible. However, he offered Nina a deal: plead to Disorderly Conduct, the lowest class of misdemeanor⁶⁰, and receive no jail time. Discouraged that multiple system actors disbelieved her, Nina agreed to take the deal instead of trying to convince the judge of her side of the story. She now has a guilty plea on her record.

Nina found an attorney at an immigrant advocacy organization who agreed to represent her on a battered spouse waiver. How should the attorney handle this case?

Practice tips:

Practitioners representing noncitizens who have had contact with the criminal-legal system should first assess whether the form of relief the noncitizen is applying for considers inadmissibility, deportability, or good moral character in the eligibility determination. If one or more of these factors are considered, the practitioner should assess whether the client's

⁶⁰ Disorderly Conduct is an "unclassified misdemeanor" in Delaware. See 11 Del. C. § 1301(2). However, Disorderly Conduct is a violation in New York State, see N.Y. Penal Law 240.20, and the AAO has said in at least one non-precedent decision that Disorderly Conduct under New York law is not a "conviction." See *Matter of M-S-O-M*, at 3 (AAO May 7, 2018) ("She notes that her guilty plea to a disorderly conduct charge in 2015 did not qualify as a conviction, but was instead a violation under N.Y. Penal Law Section 240.20, and she is correct that we did not properly acknowledge that distinction in our decision on appeal."). Practitioners should always review whether a client's disposition is considered a "conviction" for immigration purposes. "Conviction" is defined at INA § 101(a)(48).

disposition is a ground of inadmissibility or deportability and/or a bar to good moral character.

In addition, regardless of whether a criminal conviction is a bar to *eligibility* for immigration relief, USCIS will consider the conviction in the exercise of *discretion* (if the relief is discretionary.) In all circumstances, the practitioner should expect that USCIS will require an explanation of the arrest and disposition.

In this case, the attorney should speak to Nina about why she took the guilty plea and incorporate that explanation into Nina's statement. If they are not already familiar, the attorney should research the phenomenon of abusers manipulating the criminal-legal system as a tool of power and control⁶¹. To the extent they are unfamiliar with harmful and unjustified stereotypes about Black women involved in the criminal legal system, the attorney should research them and determine whether and how they may have impacted Nina. The attorney should consider how Nina's conviction will impact a discretionary determination—because battered spouse waivers are discretionary.⁶² USCIS will almost certainly consider this conviction in its discretionary determination of whether to grant the battered spouse waiver.

The attorney may wish to speak to Nina about USCIS's expectation of a showing of "rehabilitation"⁶³ as part of the waiver application, and consider how claims of racism in the criminal legal system may be received by USCIS. The attorney should then present the pros and cons of Nina raising it in her statement. If Nina does not want to address racial bias in her statement, but wants it addressed in the submission, the attorney can follow her direction. In the waiver application, the attorney can include research on the tendency of abusers to manipulate the legal system, law enforcement and prosecutors' deeply rooted doubts about Black women's credibility, racial disparities in plea bargaining⁶⁴, and how these intersecting dynamics may have led the police and prosecutor to disbelieve Nina's story.

⁶¹ Cf., e.g., Gilfus, *supra* note 11, at 5.

⁶² INA § 216(c)(4)(C).

⁶³ See *In re: 20612292* (AAO Mar. 7, 2022) (citing *Matter of Marin*, 16 I&N Dec. 581, 588 (BIA 1978) for the proposition that "an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation.")

⁶⁴ See generally Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea Bargaining*, 59 B.C. L. REV. 1187 (2018).

In addition to addressing racial bias, the attorney should present substantial evidence of positive equities to counteract the conviction, including letters of support. The letters of support should demonstrate knowledge of Nina’s arrest and conviction, as the Administrative Appeals Office (“AAO”) has discounted letters of support that do not reflect an awareness of the noncitizen’s criminal history.⁶⁵ The attorney may wish to argue that discretionary analysis is about character, that the conviction is not probative of Nina’s character because it likely resulted from anti-Blackness, and that such a conviction should not prevent Nina from obtaining immigration relief. The attorney may also wish to incorporate research about racial disparities in plea bargaining⁶⁶, in order to mitigate the impact of her admission of guilt before the criminal court. Finally, the attorney should include evidence of homophobic animus or persecution in Nina’s country of origin, if applicable, to underscore the effectiveness of her wife’s threats of deportation and as additional positive equities evidence.

Closely related to stereotypes about Black women’s credibility are harmful stereotypes about Black women’s sexuality. Nnennaya Amuchie has written that the so-called “jezebel” stereotype of Black woman as “hyper-sexualized” and “promiscuous” has its origins in slavery.⁶⁷ An example of the jezebel stereotype as enshrined in U.S. law is the colonial rape statute. All colonies with rape statutes defined rape as a crime against white women—Black women were excluded from the very definition of a rape victim.⁶⁸ Due to the largely unexamined legacy of racial sexualization used to justify Black enslavement in the U.S., law enforcement, prosecutors, judges, and jurors are more likely to believe that a Black woman is responsible for being sexually assaulted, or that a Black woman is actually incapable of being sexually assaulted.⁶⁹ As bell hooks has argued, “[a] primary reason rape of black women has never received what little attention rape of white women receives is because black women have always been seen by the white public as sexually permissive.”⁷⁰

⁶⁵ See *In re: 19235574*, at 6 (AAO Jan. 27, 2022) (“Finally, the letters of support submitted by the Applicant do not acknowledge or discuss his criminal background and, therefore, they are insufficient to establish his rehabilitation.”) The AAO provided no support for this statement.

⁶⁶ See generally Berdejó, *supra* note 64.

⁶⁷ Amuchie, *supra* note 7, at 636, 638.

⁶⁸ Jacobs, *supra* note 8, at 47.

⁶⁹ *Cf. id.* at 46-48.

⁷⁰ BELL HOOKS, AIN’T I A WOMAN? 52 (1981) (cited by Amuchie, *supra* note 7, at 664.)

Indeed, there is evidence that prosecutors may be less likely to pursue a rape case if the victim is a Black woman.⁷¹ Lisa Rosenthal and Marci Lobel's study demonstrates that the jezebel stereotype persists.⁷² Specifically, study participants stated that they thought a Black woman had sex with more partners in the past month than a white woman.⁷³ The hypersexual stereotype is particularly harmful for immigrant survivors of rape and sexual assault who identify as Black women seeking immigration relief based on that victimization, but whose accounts are disbelieved by police, prosecutors, judges, and juries. Practitioners and service providers may also (perhaps unconsciously) disbelieve that an immigrant survivor who identifies as a Black woman has been raped or sexually assaulted. Practitioners and service providers must be conscious of this stereotype and ensure that it has no effect on whether they believe or serve a survivor.

B. False and harmful stereotypes about Black women's anger impact Black immigrant survivors

False, unjustified, and harmful stereotypes about Black women's anger are pervasive and devastating. The trope, alternatively cited as the "sapphire," or the "angry Black woman"⁷⁴ stereotype, promotes a negative view of Black women as "angry" and "fearless," and unable to be dominated.⁷⁵ The trope also promotes a view of Black women as physically and emotionally strong, such that Black women are responsible for any violence they have experienced. Scholars have noted that this stereotype causes Black women to be deemed incapable of fear and pain⁷⁶ and to be "unworthy of compassion."⁷⁷ Roxanne A. Donovan's 2011 study considered white undergraduate students' opinions about Black women, and found that

⁷¹ See *id.* at 42 and 77-78.

⁷² See generally Lisa Rosenthal and Marci Lobel, *Stereotypes of Black American Women Related to Sexuality and Motherhood*, 40 *PSYCHOL. OF WOMEN Q.* 414 (2016).

⁷³ See *id.* at 421.

⁷⁴ See Terressa A. Benz, *Black Femininity and Stand Your Ground: Controlling Images and the Elusive Defense of Self-Defense*, 46 *CRITICAL SOC.* 1093, 1094 (2020).

⁷⁵ See *id.* at 1100, and Amuchie, *supra* note 7, at 636.

⁷⁶ Benz, *supra* note 74, at 1094-95 ("[d]ominant mainstream cultural stereotypes of...the 'angry Black woman' exclude Black people from the presumption of being law-abiding citizens who are capable of the fear of harm") and Richie, in Benz, *supra* note 50, at 1103 ("[i]t is almost as if Black women in the court system are seen to not have a full range of emotions and only act out of anger, aggression, vindictiveness—not fear, pain, or terror.")

⁷⁷ Benz, *supra* note 74, at 1100 ("...the Sapphire, through her anger, is deemed unworthy of compassion or aid.")

“loud”, “tough,” and “strong” were three of the six most common traits that study participants used to describe Black women.⁷⁸

The “angry Black woman” stereotype may be particularly damaging for Black immigrant survivors of GBV who are interacting with the criminal-legal system. Law enforcement, prosecutors, judges, and jurors may consider Black female-identified immigrant survivors to be inappropriately “aggressive” and disbelieve that they are survivors of intimate partner violence.⁷⁹ The false assumption that Black women “act out of anger, aggression, vindictiveness—not fear, pain, or terror”⁸⁰ may lead to disbelief and criminalization of Black immigrant survivors of GBV. For the reasons explained earlier in this advisory, this criminalization may lead to the denial of life-saving immigration relief.

This bias may be further heightened if the Black immigrant survivor possesses characteristics that place her outside the “mainstream.” Kimberlé Crenshaw and her colleagues noted that “problematic perceptions are further amplified and reinforced when the Black woman in question is poor, transgender, gender-nonconforming, or alleged to be engaged in criminalized activity.”⁸¹ Practitioners and service providers should pay particular attention to the concerns of Crenshaw and her colleagues if their client is within one of the groups listed above.

Below are examples of how the stereotype of Black women as hyper-aggressive may impact Black immigrant survivors.

Carrie

Carrie is a Black woman from Nigeria. She has been a victim of domestic violence by her ex-husband, a Lawful Permanent Resident, for several

⁷⁸ Roxanne A. Donovan, *Tough or Tender: (Dis)Similarities in White College Students' Perceptions of Black and White Women*, 35 *PSYCHOL. OF WOMEN Q.* 458, 461-62 (2011).

⁷⁹ Jacobs, *supra* note 8, at 46-48 (system actors “may believe that Black women are overly aggressive and accustomed to violence within their environment, such that when they report an incident of intimate partner violence, the police, prosecutors, judges, and jurors are more likely to see them as mutual combatants and not as victims...” and 51 (“[i]n contemporary times, judges still view Black women as aggressive and prone to violence”), Crenshaw et al., *supra* note 7, at 22 (“[t]he reflexive criminalization of Black women seems at times to heighten the perception that they are threatening, foreclosing the possibility in officers’ minds that they are simply survivors of violence”), and Donovan, *supra* note 78, at 465 (“[b]eing perceived as innately tough, strong, and domineering may also lead to a minimization of Black women’s...sexual assault and domestic violence experiences by health care, government, and judicial officials.”)

⁸⁰ Richie, in Benz, *supra* note 74, at 1103.

⁸¹ Crenshaw et al., *supra* note 7, at 7.

years. She never called the police because she was afraid of having a negative encounter with police and because many of her friends had negative encounters with the police. However, Carrie asked your agency to represent her in a protection order case because her ex-husband's violence has recently escalated and she is afraid of continued violence.

Carrie presented copious evidence of domestic violence during the protection order hearing, including testimony from her treating physician, her therapist, and her children who have witnessed the acts of abuse. Carrie's ex-husband, who is white, told the judge about an incident when Carrie yelled "I'm sick of this!" and slapped him. On redirect examination, Carrie provided more context: her ex-husband strangled her earlier that day and later continued to smack her on the head. She testified that he had a look on his face that he had in the past before he strangled her. Carrie said she was afraid and slapped her ex-husband to try to prevent him from hurting her. However, the judge denied the protection order. In his decision from the bench denying the order, the judge said "[i]t seems to me like you were angry. You were yelling. I do not think you were afraid; I think you were angry. If you were afraid, you would not have yelled or slapped—you would have been crying, you would have been trying to get away."

The judge's statement is similar to the statement the prosecutor made in Marissa Alexander's case. Marissa Alexander, a Black woman, was convicted in Florida for firing a warning shot from a gun, in an effort to protect herself from her abusive husband.⁸² The prosecutor said that Alexander was "angry" and "not in fear." The prosecutor in Alexander's case discounted her fear and pursued her prosecution by exploiting the deeply embedded preconception of Black women as intrinsically aggressive.

Given the copious evidence of domestic violence presented, including Carrie's testimony about her ex-husband's facial expression and the fact that he previously strangled her, the judge may have similarly discounted Carrie's fear and viewed her aggression as extreme and unprovoked. He also appeared to penalize Carrie for fighting back, which Carolyn West

⁸² See Benz, *supra* note 74, at 1099, Christine Hauser, *Florida Woman Whose 'Stand Your Ground' Defense Was Rejected Is Released*, N.Y. TIMES (Feb. 7, 2017), <https://www.nytimes.com/2017/02/07/us/marissa-alexander-released-stand-your-ground.html>.

noted may happen to Black women “who use active resistance” in response to domestic violence.⁸³

Despite losing the protection order case, Carrie wants to proceed with a VAWA Self-Petition. Your agency is representing her, and the attorney is concerned that Carrie’s VAWA Self-Petition will be denied because she lost the protection order case. How should the attorney on the case proceed?

Practice tip:

It is a judgment call whether the attorney wishes to highlight upfront that the protection order was denied, or to wait for an RFE asking why no protection order was included (or why the protection order was denied). One factor to consider is that USCIS may still issue an RFE even if the attorney addresses the issue upfront. Any discussion of the lack of a protection order should start with the rule that a VAWA Self-Petition cannot be denied due to failure to produce a particular piece of evidence.⁸⁴

The attorney may also wish to directly address the ways in which the judge’s interpretation of events draws from stereotypes of Black women as hyperaggressive. The attorney may wish to highlight the judge’s emphasis on anger and disbelief that Carrie was afraid, despite her credible and copious evidence of abuse and her ongoing fear. The attorney may wish to include social science research on the impact of misogynistic anti-Blackness to support these claims. The attorney should argue that Carrie’s otherwise well-documented victimization should prevail over the judge’s denial of her protective order, and should not prevent her from achieving the safety and stability that Congress intended victims like her to receive when they created the VAWA Self-Petition.

Monique

Monique is a Black woman from Haiti. She has Temporary Protected Status (“TPS”) and called a legal aid office seeking help with a U-visa. She reported that her partner had been beating her for years, and that she recently decided she could not take it anymore. She said she is determined to escape her partner because he recently threatened to report her to ICE and have her TPS terminated.

⁸³ Cf. West, *supra* note 25, at 112.

⁸⁴ See note 54.

Monique recently called a local legal services provider for assistance. A non-Black Latina receptionist took Monique's call to conduct an intake screening. After the call, the receptionist spoke with a non-Black Latina staff attorney about whether to accept the case. The receptionist complained that Monique talked loudly and seemed more angry than afraid. The receptionist said she is used to victims crying and sounding frightened. All staff have been trained on trauma and are aware that survivors present in multiple ways. The staff attorney, however, is also aware of how anti-Blackness can manifest, from time spent listening to her friends' and family members' experiences and interrogating her own biases. She has also attended institutions and organizing spaces where systemic racism and stereotypes were frequently analyzed and discussed. Concerned that the receptionist's reaction may reflect negative stereotypes of Black women, the staff attorney decided to meet with Monique and accepted her case for representation. After agreeing to represent Monique, the staff attorney advised the receptionist of her concern that Monique was almost turned away because of bias, and suggested to her leadership staff the need for anti-Blackness training for the office.

What should the legal aid office have done?

The staff attorney's awareness and vigilance of anti-Blackness demonstrates the importance of recruiting and retaining explicitly anti-racist staff in survivor-serving organizations, particularly staff who have engaged in inquiry and analyses of the ways that racism, and particularly anti-Blackness, can affect their work. The organization's employment of the staff attorney may have made the difference between Monique receiving services and being turned away. However, it is unclear whether the office intentionally sought to hire a staff attorney with this approach. It is possible that the result would not have been the same if the practitioner assigned to Monique's case was not alert to the ways that anti-Black bias can exclude eligible clients from services, with cascading results for the survivor. The staff attorney in this hypothetical approached her organization's leadership to suggest additional training to address the harm caused by anti-Blackness in her workplace.

This hypothetical shows that all practitioners **and** frontline staff should be trained on racism, stereotypes, and how those stereotypes may impact relationships with clients. All staff must be mindful of these stereotypes, must not discount a client's fear or the fact of their victimization because of

preconceptions based on anti-Black stereotyping, and take proactive measures to avoid different manifestations of anti-Blackness.

VI. Lessons from the hypotheticals

We hope these hypotheticals demonstrate the importance of listening to and believing survivors—all survivors. We also hope these hypotheticals demonstrate the necessity for close inquiry, research, willingness to challenge initial thoughts and assumptions, and genuine consideration of how false, harmful, and unjustified stereotypes created by systems and society may impact decision-makers' treatment of Black immigrant survivors.

These hypotheticals also demonstrate that staff who have trauma training and experience with survivors of gender-based violence may still maintain these stereotypes and allow them to impact their work. Staff simply understanding the dynamics of gender-based violence and trauma, and the intersection of immigration and gender-based violence, is not enough. It is critical that organizations prioritize racially diverse hiring, training, and retention of Black staff and staff that is deeply engaged in dismantling anti-Blackness within themselves and their work.

If readers are unsure of where to start with organizational training and policies, we suggest partnering with a Black-led organization and compensating them for their work.

VII. Police violence and Black immigrant survivors

Practitioners and service providers must recognize the well-established phenomenon of police violence against Black women.⁸⁵ Rhea Shinde has noted that anti-Black stereotypes likely lead to increased rates of police violence against Black women and girls.⁸⁶ Police violence against Black women must be considered as one reason why a Black immigrant survivor may not want to work with law enforcement.

Some Black immigrant survivors will want to work with law enforcement. Other Black immigrant survivors may not want to work with law

⁸⁵ See generally Amuchie, *supra* note 7 and Crenshaw et al., *supra* note 7.

⁸⁶ Shinde, *supra* note 7, at 2.

enforcement for the reasons that were discussed in this advisory. Both choices are valid, and it is important that practitioners and service providers respect Black immigrant survivors' choices.

If a survivor chooses not to involve law enforcement, and that choice makes it more difficult or impossible to obtain certain types of immigration relief, the survivor should be advised of the possibility of denial so she is fully aware of the risks of not cooperating with the police. Practitioners should be creative in these cases and attempt to find alternative avenues to relief whenever possible. This may involve screening a survivor for a form of relief that requires minimal or no law enforcement involvement, such as T nonimmigrant status, a VAWA Self-Petition, VAWA Cancellation of Removal, or waiver of the joint filing requirement for removal of conditions on permanent residence. If U nonimmigrant status is the survivor's only viable form of relief, the practitioner should consider alternative certifiers, such as judges issuing domestic violence protective orders or departments of labor. Practitioners will need to successfully argue that these agencies are responsible for investigating qualifying criminal activity in order to ensure the certification will be sufficient.⁸⁷ This will take some research and creativity. In sum, if there is an alternative avenue to obtain the relief the survivor seeks and the survivor wishes to pursue that avenue despite the risks, the practitioner should pursue that avenue.

As an alternative, practitioners should ensure that Black immigrant survivors who want to work with law enforcement but who fear negative treatment are accompanied by culturally responsive advocates when making a police report. While accompaniment does not guarantee a successful outcome, the presence of a witness may make violence, harassment, and discrimination less likely and will also be helpful in providing a third-party account of the situation if needed. This is one way that practitioners can ensure they are providing truly holistic and client-centered services to Black immigrant survivors of gender-based violence.

VIII. Conclusion

When we apply an analysis that considers the interaction of a Black immigrant survivor's multiple identities, we see that Black immigrant

⁸⁷ Cf. 8 C.F.R. § 214.14(a)(2) (definition of "certifying agency.")

survivors may experience several obstacles to relief due to society's harmful treatment of their multiple identities. A solid understanding of this harmful treatment and its effect on Black immigrant survivors, along with racially diverse hiring, training, and consultation with Black-led organizations, is critical to ensuring that organizations are equitably serving Black immigrant survivors.

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