IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND ICE VICTIM ASSISTANCE

A Critical Analysis

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ABOUT THIS REPORT

This Report has been prepared for ASISTA by Samuel Aden and Julie (Snehal) Mehta as part of the Advanced Immigration Law and Policy Seminar at the University of Iowa College of Law. ASISTA is a national non-profit organization based in Des Moines, Iowa. While ASISTA does not provide direct legal services to immigrants, its mission focuses on providing assistance to attorneys and other advocates facing complex legal issues in their advocacy for immigrant victims of sexual assault or domestic violence. By offering samples, best practices, technical assistance, and training opportunities, ASISTA meets its goal of providing advocates with the tools necessary to offer first-rate help to immigrant survivors of domestic violence and sexual assault. ASISTA is led by Gail Pendleton and Sonia Parras-Konrad, national leaders in immigration remedies for survivors of crimes.

STATEMENT OF THE PROBLEM

This Report focuses on the role of the Immigration and Customs Enforcement Victim Assistance Program (referred to as “ICE VAP”) as it pertains to immigrant victims of domestic violence. ASISTA set two specific objectives for this Report: first, that the Report explain the scope of the ICE VAP as it pertains to immigrant survivors of domestic violence; and, second, that the Report set forth a series of recommendations and best practices that ASISTA can leverage in order to further its advocacy efforts for immigrant victims of domestic violence. The findings of this report are also intended to inform ASISTA’s work with the newly-formed DHS Council on Combatting Violence Against Women (“The Council). The Council “provides a unique forum that brings together experts to identify and build consensus around the best practices to combat violence against women, promote consistency on internal policies, and
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examine how the Department can improve its ability to combat violence against women in the communities we serve and who are impacted by our work.”. ¹

RESEARCH METHODOLOGY

The research for this Report involved cold-calls to approximately fifty ICE field offices across the United States, and approximately ten state and local agencies in Iowa, including local law enforcement agencies and non-governmental organizations. The findings of this Report are based on the facts learned from the field research, reasonable inferences or assumptions drawn therefrom, along with web-based research for additional support or context. Any assumptions we make have been noted as such.

FINDINGS

In practice, the ICE Victim Assistance Program serves a very limited class of victims, primarily because most immigrant victims of domestic violence fall outside of ICE’s definition of the term ‘victim’. This Report details the adverse impact of this approach on immigrant victims of domestic violence, and then proposes measures to increase the ICE Victim Assistance Program’s scope, visibility and its accessibility as it pertains to immigrant victims of domestic violence and their advocates.

More specifically, Part I of the Report provides a brief introduction to the rights of immigrant victims of domestic violence in relation with the ICE Victim Assistance Program (“VAP”). Part II proceeds to provide a background on the ICE VAP. Part II details the operation and implementation of the VAP, the applicable law, and the legal mandate of the ICE VAP. Part III highlights the fact that ICE’s narrow interpretation of the term ‘victim’ undermines the rights

of immigrant victims of domestic violence despite a clear legal mandate to the contrary. Finally, Part IV of this Report concludes that ICE VAP’s current operation results in the disenfranchisement of a large number of immigrant victims of domestic violence deserving of assistance. Part IV further offers recommendations and identifies potential opportunities for ASISTA to advance the rights of immigrant victims of domestic violence within the context of the ICE VAP.
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I. INTRODUCTION

The current scope and operation of the Immigration and Customs Enforcement (ICE) Victim Assistance Program (VAP) ICE VAP limits the benefits of the program to a very specific class of victims: victims of the federal crime of domestic violence. The ICE VAP is responsible for implementing overall ICE policy concerning victim-related issues, and for providing training and technical assistance to Homeland Security Investigations (HSI) Special Agents. The VAP is also charged with informing, educating and providing services to victims encountered in investigations in order to ensure compliance with federal crime victim statutes. The rights of crime victims that are set forth in 18 U.S.C. § 3771, the Crime Victims’ Rights Act, provide victims with rights related to protection, notice, and due process. These rights, however, are reserved for victims of federal crimes. The rights of victims involved in ICE investigations are similarly governed by the Crime Victim Rights Act, which excludes victims of state crimes from the ICE VAP. Consequently, in practice, the class of victims served by the ICE VAP is


4 “A “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.”; Id.

5 According to the ICE VAP Program Manager Donna Hatfield; See Appendix A for additional details on the interview.
significantly narrowed, covering only victims of federal crimes, leaving only very limited and specific types of domestic violence victims under the VAP umbrella.

II. THE ICE VICTIM ASSISTANCE PROGRAM: PURPOSE AND BACKGROUND

The ICE VAP is a program designed to provide wide-ranging assistance to immigrant survivors of crime. Specifically, the ICE VAP provides victims with access to housing, food, medical care, legal assistance, transportation, English language classes and job skills training, among other things. In order to ensure that all victims get the services they need, the VAP works with various governmental, non-governmental and community-based organizations.

The ICE Victim Assistance Coordinators are also responsible for providing “technical assistance on issues such as immigration relief options for foreign national victims of crime.”

Immigration relief options for victims of crime typically include information and counseling on T Visa, U Visa, and VAWA self-petitioning, all of which are described below.

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8 “... Victim Assistance Coordinators... routinely make referrals to nongovernmental organizations and community-based service providers for long-term services as well as coordinate emergency medical, mental health, and shelter services in the immediate aftermath of a rescue or other victim identification. ICE Victim Assistance Coordinators are also available to provide technical assistance on issues such as immigration relief options for foreign national victims of crime”; See Criminal Justice System-Based Victim Assistance, ANTI-HUMAN TRAFFICKING TASK FORCE STRATEGY AND OPERATIONS E-GUIDE https://www.ovcttac.gov/TaskForceGuide/EGuide/WebHelp/9h_3.8d_Criminal_Justice_System_based_victim_assistance.htm (last visited November 27, 2013).

9 Id.

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**T Visa**

The T Visa provides immigration protection to victims of human trafficking.\(^{11}\) Victims do not need to be in legal immigration status to be eligible for the T Visa.\(^{12}\) Rather, a trafficking victim can benefit from the T Visa as long as the victim is physically present in the United States because of the trafficking, cooperates with law enforcement in the investigation of the case, and can show that they will suffer extreme hardship if they are removed from the United States.\(^{13}\)

**U Visa**

The U Visa provides immigration protection to victims of several qualifying crimes if a victim is likely to assist law enforcement in the investigation or prosecution of the crime. U Visa qualifying crimes include several crime but the crime that are most relevant to this Report include domestic violence, sexual assault, abusive sexual contact, rape, sexual exploitation and prostitution.\(^{14}\) Like the T Visa, the victim does not have to be in legal immigration status to be eligible for the U Visa so long as the victim has suffered substantial physical or mental abuse resulting from the crime, possesses reliable information about the crime, and agrees to assist law enforcement during the investigation and prosecution of the crime.\(^{15}\)

**VAWA Self-Petition**

VAWA self-petitions provide protection to victims of domestic violence who are the child, parent, or spouse of a United States Citizen or permanent resident.\(^{16}\) The requirements for VAWA differ from the T Visa and U Visa in several respects. Specifically, to be eligible for

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\(^{11}\) *Id.*

\(^{12}\) *Id.*

\(^{13}\) *Id.*

\(^{14}\) *Id.*

\(^{15}\) *Id.*

\(^{16}\) *Id.*
VAWA, a victim of domestic violence must prove, (1) that he/she is the child, parent, or current/former spouse of a U.S. Citizen or a legal permanent resident who has abused them, (2) that he/she is/was residing with the abuser who subject the victim to extreme cruelty or battery, and (3) that he/she has good moral character.

In addition to the services mentioned above, the ICE VAP is responsible for “develop[ing] and maintain[ing] overall ICE guidance on victim assistance.”\(^{17}\) While the VAP is available to victims of many types of crimes – from human trafficking and child exploitation to human rights abuse and white collar crime – the VAP is most publicized by ICE for its role in assisting the victims of human trafficking.\(^{18}\) As the VAP Section Chief, Marie Martinez, stated, “The lion’s share of our time is spent assisting victims of human trafficking and child exploitation.”\(^{19}\)

The disproportionate focus that the ICE VAP places on combatting human trafficking has resulted in the marginalization of the legitimate needs of victims of other crimes, particularly victims of domestic violence. The needs of domestic violence victims, therefore, have been pushed to the periphery despite a clear mandate to the contrary, discussed in detail, in the following sections of the Report.


\(^{18}\) The ICE brochure for the Victim Assistance Program is titled “Information For Victims of Human Trafficking”; See OFFICE OF INVESTIGATIONS ICE VICTIMS ASSISTANCE PROGRAM, Information for Victims of Human Trafficking (2010), http://www.dhs.gov/xlibrary/assets/ht_ice_victim_assistance_program.pdf;

III. THE OPERATION AND IMPLEMENTATION OF THE ICE VAP AND THE UNDERLYING LEGAL MANDATE

This section of the Report focuses on the operation of the ICE VAP, ICE’s definition of a victim, and law underlying the VAP. The findings set forth here are based on our field research of several federal, state, and local agencies. 20 The findings show that the ICE VAP is available only to victims of a federal crime. Thus, the ICE VAP serves only victims of the federal crime of domestic violence. Part A explains in detail how victims are categorized as either federal victims or state victims for the purpose of determining eligibility for the ICE VAP. Part B analyzes ICE’s legal mandate for victims of domestic violence, and demonstrates that the current operational reality of the VAP falls short of both ICE’s own mandate and the Department of Homeland Security’s commitment to victims of domestic violence. Part C illustrates the legal concepts through hypothetical scenarios that demonstrate that ICE’s interpretation of a domestic violence victim is confined to victims of the federal crime of domestic violence. Finally, Part D demonstrates that effective victim assistance, particularly for the state crime of Domestic violence, is dependent on the strength and quality of the partnerships between ICE and state and local agencies.

20 The field research comprised of cold-calls to several federal, state, and local agencies including ICE, local law enforcement and non-governmental agencies. The research process encompassed federal, state and local agencies to determine and understand the interdependencies and relationships between the various victim assistance services and agencies. A lead from one source was usually corroborated or contradicted by another source, and we followed the process of trial and error till we uncovered consistent and reliable information. Our findings are facts, reasonable inferences or assumptions based on the field research combined with information from web-based research for additional support or context. Any assumptions have been noted as such.
A. Assistance under the ICE VAP is currently available only for victims of the federal crime of domestic violence

The ICE VAP is intended to cover only victims of a federal crime, and therefore victims of domestic violence qualify for the assistance of the ICE VAP only if their victimization is a result of a federal crime.21 Further, a victim in the United States Code is defined as a “person directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia.”22 For the purposes of the ICE VAP, domestic violence can be classified as either a federal crime or a state crime depending on the circumstances and the context of the particular crime. This Section of the report first discusses the situations in which domestic violence may be classified as federal crime. Domestic violence becomes a federal crime if the crime committed either involves an interstate component, or the crime is committed in connection with a separate federal crime. Then, subsection 2 addresses the classification of domestic violence as a state crime, where victims are not entitled to assistance under the ICE VAP but are instead referred to state and local agencies. Finally, subsection 3 details ICE’s mandate for victims of domestic violence. This subsection highlights both the ambiguous nature of the ICE mandate as it pertains to immigrant victims of domestic violence, and the discrepancy between the intent of the ICE mandate and the ground reality of the actual operations.

1. The Classification of Domestic Violence as a Federal Crime

A federal crime is defined as any crime listed in Title 18 of the United States Code.23 Therefore, whether or not a victim of a crime (including domestic violence) qualifies for assistance under the ICE VAP depends on whether the victimization is a result of a federal crime

21 According to ICE VAP Program Manager, Donna Hatfield. See Appendix A.


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or a state crime. There are specific and limited circumstances under which domestic violence may be classified as a federal crime, thereby qualifying victims for assistance under the ICE VAP. The main federal crimes that implicate domestic violence are interstate domestic violence, human trafficking, and child exploitation.

Domestic violence may qualify as a federal crime in two limited circumstances: first, if the violence implicates interstate activities or, second, if the violence relates to a separate, federal crime. Victims of these crimes would unquestionably qualify for the ICE VAP.

2. An Interstate Component Makes Domestic Violence a Federal Crime

The following four forms of domestic violence crimes involve interstate activities and are considered as federal crimes under Title 18 of the United Stated Code. We refer to his category as Interstate DV. The victims of these crimes would therefore be entitled to assistance under the ICE VAP. In the following instances, the immigrant victim may come to the attention of ICE either through the victim’s own actions, or through the actions of a local law enforcement agent who alerts ICE.

a. Travel to Commit Domestic Violence

It is a federal crime for a person to travel across state lines with the intent to injure, harass or intimidate an intimate partner when in the course of (or as a result of) the travel the abuser commits a violent crime that causes bodily injury. The abuser must intend to commit the domestic violence at the time of travel. The definition of partner is broad and includes a person with whom the abuser has cohabited in an intimate relationship (including a current or former spouse) or a person who has a child in common with the abuser. It is also a federal crime to cause an intimate partner to cross state lines, or leave or enter Indian country by force, coercion, 24

duress, or fraud if the abuser intentionally inflicts bodily injury to the partner during, or as a result of, the conduct.

An example of this offense would typically involve an abuser crossing states lines with the intent to harass, or harm his/her immigrant partner who may be residing in or visiting another state. ICE may be alerted to the immigrant partner’s abuse when the partner seeks protection by proactively reporting the abuse to local law enforcement or a local NGO. Alternatively, the victim may encounter a local law enforcement agent as a result of a traffic violation or other routine matter, and the officer may alert ICE about the immigrant victim. In such cases, however, the burden would be on the law enforcement agents to appropriately screen the victim for potential domestic violence issues.

b. Interstate Stalking\textsuperscript{25}:

It is a federal crime to cross a state line with the intent to injure or harass any person if, during the course of or as a result of the travel, the traveler places the person or a member of the person’s immediate family in reasonable fear of death or serious bodily injury. \textsuperscript{26} The definition of immediate family is broad and includes a spouse, parent, child, sibling and all household members related to the primary victim by blood or marriage. \textsuperscript{27}

Interstate stalking in practical terms arises in cases where the abuser intends to cross state lines to harass or harm his/her partner, and the partner is aware of the abuser’s intent. The partner, in anticipation of the abuse, may report the incident to local law enforcement, who in turn may alert ICE. Alternatively, the victim may encounter a local law enforcement agent for a routine matter such a traffic violation, and the local police officer may in turn alert ICE. In such cases:

\textsuperscript{26} Id.
\textsuperscript{27} Id.
cases, however, the burden would be on the law enforcement agents to appropriately screen the victim for potential domestic violence issues.

c. Interstate Violation of an Order of Protection\(^{28}\)

This law basically prohibits interstate travel or leaving or entering Indian country with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. \(^{29}\) The abuser must intend to violate the order at the time of travel and a violation of the order must occur. \(^{30}\) It is also a federal crime to cause an intimate partner to cross state lines, or to leave or enter Indian country by force, coercion, duress, or fraud, if during or as a result of the conduct, the abuser intentionally inflicts bodily injury to the victim in violation of a valid protection order. \(^{31}\)

Similar to the interstate travel and stalking offenses mentioned above, an interstate violation of an order of protection is likely to occur in cases where the court has issued a restraining order against the abuser, and despite this court order, the abuser crosses state lines to contact his/her partner. Like in the cases above, the partner, in anticipation of the abuse, may report the incident to local law enforcement, which in turn may alert ICE. Again, in the alternate scenario that the victim interacts with local law enforcement over a routine matter (a traffic violation, for example), the burden would be on the law enforcement agents to appropriately screen the victim for potential domestic violence issues.


\(^{29}\) Id.

\(^{30}\) Id.

\(^{31}\) Id.
Federal law prohibits an abuser subject to a qualifying order of protection from possessing firearms and ammunition.\textsuperscript{33} When an officer determines that a valid order of protection has been issued against an abuser, the officer should enforce the firearms prohibition.\textsuperscript{34} Seizing weapons subject to the prohibition, if allowed under state law, is essential to victim and community safety. Officers also should be knowledgeable about their own jurisdiction's law authorizing or precluding possession of transfer of weapons to third parties by a person subject to an order of protection.\textsuperscript{35}

An example of this offense would include cases where the court has issued a restraining order against the abuser and the abuser happens to possess a firearm. It is important to note that unlike the examples above, the possession of the firearm, by itself, does not have to involve the interstate component. In such cases, the immigrant partner being abused may report the abuser to local law enforcement, who in turn may alert ICE.

In all the above cases, the victim gets on ICE’s radar either proactively or through the actions of law enforcement. In cases where the encounter is not initiated by the victim, the only way law enforcement may become aware of domestic violence victimization is either if the victim offers the information, or if the law enforcement agent is adequately trained to screen such cases. Since the victim qualifies as a federal victim, the victim is entitled to assistance under the ICE VAP, as depicted in the scenarios in Part B below. It follows, therefore, that the probability of immigrant victims of interstate domestic violence receiving services under the ICE

\textsuperscript{32} 18 U.S.C. § 922(g)(8).
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
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VAP is directly influenced by the ability of the enforcing officer to screen, identify and detect the victimization issues.

3. Domestic Violence with an Actual or Potential Nexus (“Nexus-Based DV”) to another Federal Crime qualifies as a Federal Crime

Victims of domestic violence with a nexus or a potential nexus to another federal crime are also considered victims of a federal crime qualifying for ICE VAP assistance. Nexus in this context implies a connection such that the crime of domestic violence is used in connection with the commission of another federal crime. In such cases, the victimization refers to the coercion, abuse or violence on the part of the abuser in order to facilitate or execute another federal crime such as human trafficking. The victimization through domestic violence is not an end in and of itself but is a means to an end, the end being the commission of the larger federal crime, child exploitation or human trafficking for instance. For example, in such cases the trafficker or the abuser uses their relationship of trust and / or power to their advantage. The trafficker/abuser threatens his / her domestic partner into compliance to carry on the trafficking operation. These are the victims that usually come to ICE’s attention. Although the typical federal crimes implicating victimization through domestic violence are human trafficking and child exploitation, it is possible for any of the other federal crimes to implicate domestic violence. We refer to this category as nexus-based DV victims. All other forms of domestic violence that occur at the state and local level, and are not linked to a federal offense, are classified as state crimes of domestic violence, discussed in subsection 4 below.

4. Domestic Violence as a State Crime (“State Crime of DV”) — Victims Do Not Qualify for ICE VAP

Domestic violence that does not involve an interstate component, and is not connected to another federal crime, typically occurs at the local level, which makes it a state crime within the
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purview of the states’ police power. In such cases, the victimization through domestic violence is not linked with any other federal crime. The incidents of domestic abuse or violence occur at the state and local level, and are investigated and prosecuted by state and local law enforcement authorities. These are the victims that are typically not on ICE’s radar because, realistically, there is no opportunity for crimes at the state and local level to get escalated to ICE unless the escalation occurs post-detention. We refer to this category as the state crime of DV.

Therefore, how and where a victim of domestic violence receives assistance under the ICE VAP depends upon how ICE encounters the victim, as well as the circumstances of the specific case. Part B below details ICE’s legal mandate for victims of domestic violence, and highlights how the implementation of the VAP does not comport with the intent of the ICE mandate. Next, Part C illustrates the operation of the ICE VAP through four practical scenarios in which a domestic violence victim may find him/herself in the immigration enforcement system. Finally, Part D addresses ICE’s state and local partnerships for victims of the “state crime of DV”, highlighting the need for robust partnerships for effective victim assistance.

B. ICE’S LEGAL MANDATE TO SUPPORT ALL VICTIMS OF DOMESTIC VIOLENCE

Despite the fact that ICE publicizes the VAP’s services primarily for victims of human trafficking, there exists a clear mandate for all victims of crime, including domestic violence. For example, ICE leadership has set forth a mandate for victims of domestic violence through several inter-office memoranda, which is discussed in subsection 1 below. Furthermore, the Department

36 The States’ core police powers traditionally include the authority to define criminal law and to protect the health, safety, and welfare of their citizens. See Gonzales v. Raich, 545 U.S. 1, 42 (U.S. 2005).

37 The dispatcher at the local police station in Marshalltown, Iowa, explained that domestic violence incidents reported to the city, involving undocumented immigrants, are not typically reported to ICE. The dispatcher explained that there is no duty on the part of the investigating police to report undocumented immigrants to ICE and any notification to ICE would usually occur only at the detention stage. See Appendix D.
of Homeland Security has taken concrete steps to strengthen the civil rights and liberties of victims of domestic violence, which is discussed in subsection 2 below.

1. Inter-Office Memoranda

This Report concludes that ICE’s mandate to serve victims of crimes other than human trafficking, including domestic violence, is explicitly set forth in three internal ICE memoranda: the Morton Memo, the VAP Directive, and the Torres Memo.\(^ {38}\)

In 2011, John Morton issued the Morton Memo on Prosecutorial Discretion,\(^ {39}\) which set forth ICE’s policy “regarding the exercise of prosecutorial discretion in removal cases” involving the victims and witnesses of crime.\(^ {40}\) The Memo notes that, “[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”\(^ {41}\) The Memo further states that the guidance is intended to cover all “victims and witnesses of crime,” including domestic violence.\(^ {42}\)

Second, the Morton Memo reiterates guidance from the Torres Memo on VAWA,\(^ {43}\) lending further credence to the idea that survivors of domestic violence are part of the population

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\(^{39}\) See The Prosecutorial Discretion Memo of June 17, 2011, supra note 38.

\(^{40}\) Id. at Page 1.

\(^{41}\) Id.

\(^{42}\) Id. (Noting, “This memorandum sets forth agency policy regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime, including domestic violence, and . . . related to the protection of their civil rights and liberties”).

\(^{43}\) See The Torres Memo on VAWA, supra note 38.
that the Victim Assistance Program is intended to serve. Issued by Director John Torres in January of 2007, the Torres Memo on VAWA provides guidance to ICE employees who come into contact with certain immigrants. ICE personnel, for instance, are encouraged to exercise prosecutorial discretion and not to place immigrants in removal proceedings when ICE encounters those immigrants at women’s shelters, rape crisis centers or other “sensitive locations.”

Since a majority of the victims found at “sensitive locations” are likely to be either victims of domestic violence or sexual assault, the Torres memo evidences ICE’s commitment to serving victims of domestic violence.

The Morton Memo and the Torres Memo both address victims of domestic violence in the context of victim rights and victim benefits. The language of the Morton Memo, moreover, appears to create a mandate for victims of domestic violence. The language and drafting of these documents create the impression that any victim of domestic violence involved with ICE is entitled to protection under the ICE VAP. As the Report discussed above, however, the ICE VAP only assists victims of federal crimes involving domestic violence; these crimes typically involve victims of human trafficking who are able to assist ICE in the investigation and prosecution of the crime. If the term ‘victim’ is restricted to victim-witnesses, then the language of both the Morton and the Torres memo does not make this clear.

Finally, the VAP Directive, which guides the implementation of the VAP, further reiterates ICE’s commitment to victims of domestic violence while at the same time adopting the

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44 Id. at Page 5.

45 The Morton Memo, in relevant parts, states, “In addition to exercising prosecutorial discretion on a case-by-case basis in these scenarios, ICE officers, agents, and attorneys are reminded of the existing provisions of the Trafficking Victims Protection Act (TVPA), its subsequent reauthorization, and the Violence Against Women Act (VAWA). These provide several protections for the victims of crime and include specific provisions for victims of domestic violence, victims of certain other crimes, and victims of human trafficking.” The Prosecutorial Discretion Memo of June 17, 2011, supra note 38, at Page 2.
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The federal definition of a victim. The federal definition excludes victims of domestic violence unless the crime is federal in nature (i.e., interstate, or nexus-based DV, as explained above).

Unless one assumes that the ICE inter-office memos use the term ‘domestic violence’ to refer only to federal crimes of domestic violence, there appears to be a discrepancy between the intent of the Morton Memo and the implementation of the Directive.

2. The Department of Homeland Security’s Commitment To Protect Victims of Domestic Violence

The Department of Homeland Security Office for Civil Rights and Civil Liberties “supports the Department's mission to secure the nation while preserving individual liberty, fairness, and equality under the law.” Specifically, the Office for Civil Rights and Civil Liberties has a program branch called the “Immigration Section,” which is dedicated to immigration-related issues. One of the missions of the “Immigration Section” is to foster cross-agency collaboration to “[e]nsure that civil and human rights and civil liberties protections are incorporated into immigration-related programs, policies, procedures, and operations throughout the Department”.

To use a specific example, the Human Rights and Vulnerable Populations program works “closely with federal agencies and departments to ensure that human rights are considered” in

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46 The VAP Directive adopts the federal definition of a victim as set forth in 18 U.S.C. § 3771: “[A] person directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia.”


49 Id. “The Office for Civil Rights and Civil Liberties (CRCL) Immigration Section works collaboratively with U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Patrol (CBP), the Federal Law Enforcement Training Center (FLETC), and other Department offices to ensure that civil and human rights and civil liberties protections are incorporated into immigration-related programs, policies, procedures, . . . throughout the Department.”
immigrant-related policies and programs, and is also active in developing and advancing “protective policies, procedures, and training for victims of torture and persecution, battered immigrants, trafficked persons, and others needing special attention.”

Also, the Civil Rights and Civil Liberties Institute provides high quality Department-wide training on issues at the intersection of homeland security and civil rights/civil liberties. As it pertains specifically to immigration, the Immigration Section of the Civil Rights and Civil Liberties Institute engages with the public about the civil and human rights and civil liberties implications of Department immigration programs and policies in order to “facilitate dialogue between government agencies and immigration and civil rights organizations.”

Specifically, the Quarterly NGO Civil Rights/Civil Liberties Committee Meeting involves extensive collaboration between grassroots networks to identify “the perspectives of organizations and communities across the country concerning civil and human rights issues. . . and systemic and policy concerns.”

In the 2014 Fiscal Year Budget of the Department of Homeland Security, the Department makes a demonstrable commitment to serve victims of domestic violence, noting, “ICE, in consultation with the DHS Office for Civil Rights and Civil Liberties, developed a new policy designed to protect victims of domestic violence and other crimes and to ensure that these crimes continue to be reported and prosecuted.”

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50 Id.

51 Id.

52 Id.


54 We have been unable to make contact with the Office of Civil Rights and Civil Liberties.
It is noteworthy that the Morton Memo on Prosecutorial Discretion similarly employs the language “... protection of civil rights and liberties” in discussing domestic violence victims. The inter-office memoranda, the recognition of the “[c]ivil [r]ights and [c]ivil [l]iber[ties]” as they relate to domestic violence victims, and the clear commitment to fund a program specifically for victims of domestic violence, all are demonstrative of ICE’s commitment to strengthening protections for victims of domestic violence. ICE’s separate categorization of victims of state and federal crimes however, narrows ICE’s scope to a limited class of domestic violence victims, which in turn results in a disproportionate amount of resource allocation to federal victims of domestic violence as compared to state victims. Part C below illustrates the working of the ICE VAP through hypothetical scenarios, followed by Part D, which discusses the cross-agency and collaboration required to ensure effective victim assistance to all immigrant victims of domestic violence victims.

C. CIRCUMSTANCES UNDER WHICH ICE ENCOUNTERS A VICTIM OF DOMESTIC VIOLENCE

Our research revealed that the type and nature of assistance that victims of domestic violence receive depends on the situation and context within which ICE encounters or learns of the victim. In this subsection, the Report lays out four scenarios in which a domestic violence victim might interact with ICE and, further, provides a chart to illustrate each scenario. Then, a chart combining the four scenarios is included to illustrate ICE’s overall process for victim assistance.

1. Scenario One: State/Local Law Enforcement Alert ICE

In this scenario, which is fairly common, state or local police are responding to a domestic disturbance or a traffic violation fingerprint people at the scene of the crime. ICE is

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then alerted to the crime via secure communities. The Morton Memo on prosecutorial discretion contemplates this scenario, and its mandate of prosecutorial discretion requires that the ICE officer make every effort to screen out the victim(s) and ensure that they are informed of available relief. If the crime involves domestic violence, and if that domestic violence has a nexus to a federal crime, then ICE would call in a victim assistance specialist to intervene. If the DV is strictly state domestic violence, then ICE should refer the victim to local services providers or advocates for assistance with domestic violence-related issues. The table below illustrates scenario one.

2. **Scenario Two: Abusive Partner Calls ICE About Victim**

   In this scenario, a woman’s abusive partner calls ICE to tip ICE off about her illegal presence in the United States. The Torres Memo contemplates this scenario, and lays out two main rules for ICE personnel confronted with such a situation: (1) Do not place undocumented individuals in removal proceedings based solely on information furnished by an abuser and (2)

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56 The Morton Memo states, “... ICE regularly hears concerns that in some instances a state or local law enforcement officer may arrest and book multiple people at the scene of alleged domestic violence. In these cases, an arrested victim or witness of domestic violence may be booked and fingerprinted and, through the operation of the Secure Communities program or another ICE enforcement program, may come to the attention of ICE. Absent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.” The Prosecutorial Discretion Memo of June 17, 2011 at Page 1.

57 Id.
Avoid initiating removal proceedings for people encountered at domestic violence shelters or rape crisis centers. Again, the Torres Memo’s main concern is the situation in which an undocumented woman leaves home to seek help at a shelter and, seeking revenge, her abuser calls ICE to turn her in, telling ICE that the woman can be found at the shelter. The Torres Memo clearly encourages ICE personnel to exercise prosecutorial discretion in such a situation. What the memo does not do, though, is instruct ICE personnel to provide direct assistance to the victims. The table below illustrates scenario two.

3. Scenario Three: Victim Seeks Help from State & Local Resources

In this scenario, a DV victim goes to a state or non-governmental organization seeking help. The organization then screens the victim and identifies the possibility of nexus-based DV. In other words, the organization believes there is a chance that in addition to the DV the individual is a victim of a separate federal crime such as human trafficking. As a result, the organization contacts ICE, which then does screening of its own to determine whether or not the case does, in fact, involve nexus-based DV. If it does, then ICE not only provides assistance with

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58 See The Torres Memo on VAWA, supra note 38.
the federal issue but makes sure that either the local organization who initially called ICE or some other local organization remains involved and continues to provide assistance to the victim for the domestic violence issue. The table below illustrates scenario three.

4. Scenario Four: ICE Investigates Federal Crime

In this scenario, ICE is investigating a federal crime and is providing assistance to its victim(s). During its investigation, ICE determines that the victim(s) is also a victim of domestic violence. The guidance here is clear that ICE should continue to provide assistance for the federal-related offense and refer the victim locally, to a doctor, shelter, or any other services that is necessary, for assistance with the domestic violence issue.\(^5\) It is also clear that ICE should provide assistance for the federal issue up until the point at which an indictment is filed. At that point, ICE turns the reins over to the United States Attorney’s Office, which in turn provides assistance to the victim all the way through sentencing. The table below illustrates scenario four.

\(^{59}\) See Appendix A
Scenario 3 - ICE INVESTIGATES A FEDERAL CRIME

If victim, then ICE VAP

State & Local VAP

U.S.A.O. VAP

Collaboration with Pre-Approved NGOs to Ascertain Victim Services
Collaboration with U.S.A.O. to Ensure Continuity of Victim Services from Investigation to Sentencing
5. A Holistic View of the Working of the ICE VAP

The following chart provides a holistic view of all the scenarios. The chart highlights the overall process and working of the ICE VAP and reiterates ICE’s approach of differentiating between victims of federal and state crimes to determine victim assistance.

Domestic violence victims, especially the victims of the state crime of DV are very likely to fall through the gaps resulting from any deficiencies in the process at the investigative stage. The success of ICE’s current approach depends upon the accurate screening of victims by the ICE agents, timely referrals by ICE agents to state and local resources in appropriate cases, and
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adequate provision of victim services by the state and local agencies, as explained in Part D below.

D. EFFECTIVE VICTIM ASSISTANCE REQUIRES ROBUST PARTNERSHIPS WITHIN ICE, AND BETWEEN STATE AND LOCAL AGENCIES

As the scenarios above illustrate, ICE refers victims of the state crime of DV to the state and local victim assistance services. This process requires strong partnerships between the various law enforcement agencies involved as well as non-governmental organizations. This section provides an overview of various measures adopted by ICE, as well as cross-agency partnerships that are critical to the protection of immigrant victims of domestic violence.

First, ICE has designed a tool kit “aimed at helping prosecutors navigate situations where important witnesses, victims, or defendants may face removal because they are illegally present in the United States.”60 This tool kit provides detailed guidance on U Visas, T Visas and VAWA relief to enable prosecutors to identify eligible victims and refer them to the appropriate resources.

Second, this tool kit mentioned above also makes a brief mention of ICE’s partnerships with non-governmental organizations, but how this operates in reality is not clear. Our field research shows that the local non-governmental organizations are not aware of the referral process.61

Finally, from a funding perspective, The Office for Victims of Crime62 partners with other government agencies to provide innovative services that address the wide range of issues

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61 See Appendix F.

that affect victims. The Office for Victims of Crime also funds federal, state, and tribal victim assistance programs. The federal programs funded are the victim programs under the Department of Justice, such as the FBI Victim-Witness Coordinators, the U.S. Attorney Victim-Witness Coordinators, and the Federal Victim Witness Notification System.63 The community-based organizations funded by the Office for Victims of Crime are domestic violence shelters, rape crisis centers, child abuse programs, and victim service units in law enforcement agencies, prosecutors’ offices, hospitals, and social service agencies.64 It is noteworthy that it is the Department of Homeland Security that funds the ICE VAP. However, the Office for Victims of Crime and ICE are required to work in close partnership with one another to serve victims of crime. In theory, then, the various victim services under the Department of Justice are required to work in close partnership with the ICE VAP to ensure that domestic violence victims’ needs are timely and adequately met. The graphic below represents the interdependent roles that all the various federal, state and local agencies play to ensure that DV victims receive timely and adequate assistance. The outer ring signifies the robust partnerships required to ensure that immigrant DV victims do not fall through the cracks. As part of our field research, we interviewed ICE victim assistance specialists, local law enforcement personnel in Iowa as well as non-governmental organizations in Iowa to understand whether and how these inter-agency partnerships work.65 Whether or not this partnership is effective in practice is not clear. 66


64 Id.

65 See Appendices for details on the interviews.

66 According to the ICE VAP Program Manager Donna Hatfield, any specific information on ICE referrals to the state and local programs can be obtained only through a FOIA request. The local law enforcement and NGOs contacted were not aware of an official referral process. See Appendices for details on the interviews.
Our research made clear that ICE is required to refer victims of the state crime of DV to the state and local agencies. The ICE mandate related to victims of domestic violence however, does not explicitly set forth any guidance to this effect. This gap between what is happening on the ground and the associated mandate signals systemic deficiencies, which create ambiguity for both victims and their advocates. The systemic issues and their consequences form the basis of both our conclusions and our recommendations discussed in detail in Section IV below.
IV. CONCLUSIONS AND RECOMMENDATIONS

Conditioning ICE’s assistance for immigrant victims of domestic violence on the type of crime involved leaves many victims vulnerable and underserved. This Section of the report first details key conclusions based on our research of the ICE VAP. Next, this Section offers recommendations and best practices with regard to immigrant victims of domestic violence. We propose recommendations for both ASISTA and ICE. The recommendations for ASISTA focus on the next steps required to refine ASISTA’s advocacy efforts to create maximum protections for immigrant survivors of domestic violence. The recommendations for ICE are mainly related to the promotion of clear and consistent information both internally and externally (for victims and advocates).

A. CONCLUSIONS

In this subsection the Report sets forth the four major conclusions based on our research of the ICE VAP and our survey of the program’s offices: (1) The manner in which ICE has implemented the VAP is inconsistent with the legal mandate of the Morton and Torres memos; (2) the VAP’s current approach to victim assistance focuses too heavily on the abuser’s actions rather than the victim’s needs; (3) the current shortage of federal funding for state and local domestic violence shelters leaves the victims that the VAP refers to those shelters in a disadvantaged position; and, (4) there is consistency across the VAP with regard to the definition and interpretation of a “victim”, as well as the practices followed for victim assistance.
1. ICE’s Implementation of the VAP Undermines the Legal Mandate Set Out by the Morton and Torres Memos

The Morton and Torres memos explicitly set forth guidance for immigrant victims of domestic violence. The intent behind both memos is to strengthen the protections for victims of domestic violence regardless of whether the domestic violence occurs at the state or federal level. ICE’s interpretation of restricting aid to victims of federal crimes, therefore, does not comport with the intent of the Morton and Torres memos.

2. The ICE VAP’s Current Approach Bases Victim Assistance on the Abuser’s Actions and Not on the Victim’s Needs

Separating the crime of domestic violence into state and federal categories creates an anomalous system in which assistance for deserving immigrant victims is conditioned on the actions of the perpetrator. This criterion shifts the focus from the victim’s needs to the abuser’s actions, which is not only unjust but also counter-intuitive. For example, an immigrant victim of interstate domestic violence would receive assistance from the ICE VAP simply by virtue of the fact that the abuser violated a federal law. An immigrant victim who suffered identical abuse within a state’s borders, on the other hand, would not have access to the same counsel and services for which the victim of interstate domestic violence in the earlier example would be eligible. This problem is compounded by the funding disparities between federal and state victim assistance agencies, as discussed below.
3. Funding Disparity Creates Inherent Inequities

State and local victims’ services are funded by the Office for Victims of Crime,\(^6^7\) while the ICE VAP is funded by the Department of Homeland Security. The sources of funding create an inherent disparity in the amount of funding, which in turn impacts the quality and level of victim assistance for domestic violence. The ground reality of the ICE VAP shows that ICE refers victims of the state DV to state and local agencies for assistance. Realistically however, federal funding for DV shelters has been consistently decreasing, which has put the survival of many DV shelters at risk.\(^6^8\) Victims of both interstate and nexus-based DV would likely benefit from more reliable services as compared to victims of the state crime of DV, which gives rise to inequitable treatment of similarly situated victims of domestic violence. ICE’s process of referring victims to state and local agencies, therefore, is not the optimal solution for furthering and strengthening victims’ rights.

4. Internal Consistency Exists Within ICE

Our field research shows that the VAP Program Manager’s message has trickled down to the ICE field offices. Specifically, the Program Manager stated unequivocally that it is not ICE’s general practice to provide assistance to victims of state domestic violence.\(^6^9\) If ICE happens to encounter a nexus-based DV victim, then it is the organization’s policy to refer those victims to

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\(^6^8\) See National Network to End Domestic Violence, Funding and Appropriations, http://nnedv.org/policy/issues/funding.html (last visited November 27, 2013) (noting, “[a]ccording to NNEDV’s funding survey, over 71% of coalitions reported that, in the first 8 months of 2012 alone, some domestic violence programs were forced to reduce staff because of funding shortages, and 66% reported that some DV programs had to reduce victim services. Since 2011, at least 19 local DV programs across the country have been forced to close entirely. Victims suffer the consequences of these cuts, and are often left with no alternative other than returning to their abusers or becoming homeless.”).

\(^6^9\) See Appendix A.
appropriate state and local resources for assistance. The victim assistance specialists in the field offices confirmed that the operation of the VAP at the field office level matches the high level mandate. This consistency is certainly preferable to the alternative of disparate practices existing between offices; this, therefore, is a positive finding.

B. RECOMMENDATIONS

In this subsection, we propose a series of recommendations. The first set of recommendations we make are designed to allow ASISTA to obtain more information from ICE about the VAP and what the VAP is actually doing to help victims of domestic violence. The second set of recommendations we offer is for ICE, and is designed to promote the clear, accurate and consistent dissemination of information for the benefit of ICE’s internal employees as well as for external stakeholders such as victims, advocates and law enforcement agencies.

1. Recommendations for ASISTA

In this subsection we propose the following recommendations for ASISTA: (1) file a FOIA request with ICE and (2) partner with the Office of Civil Rights and Civil Liberties to further advocacy for domestic violence-related issues.

a. Submit a FOIA Request to ICE

We first recommend that ASISTA file a FOIA request with ICE, which would allow ASISTA to obtain statistical information concerning the types of victims that the VAP is serving. While Renata Del Moral and Laura Frescas stated that it is (1) not VAP practice to provide assistance to victims of state DV and (2) that it is VAP practice to refer nexus-based victims to appropriate state and local resources, neither of them divulged any statistical information to

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70 See Appendices B and C.
corroborate those two points. And as the survey of organizations across Iowa demonstrated, state and local organizations do not necessarily have that information, either. As a result, a number of important questions remain unanswered: with how many nexus-based victims does the VAP come into contact, for instance? And how many of those victims are sexual assault victims? Domestic violence? To what kinds of organizations does ICE refer these victims? Are they largely state funded? Or are they mostly funded privately? And with how many state DV victims does the VAP really come into contact, if any? And is the VAP response always really to just turn those victims away?

By submitting a FOIA request, ASISTA could find out exactly who the VAP is helping and how (if ICE is keeping track of the information at all). Either way, the more information ASISTA has the better equipped it will be to further its goals of helping victims of domestic violence and sexual assault, and submitting a FOIA request is the best way to gain that information.

b. Engage with the Office of Civil Rights and Civil Liberties To Further Advocacy for Domestic Violence Issues

As discussed earlier in the Report, the Department of Homeland Security, through the Office of Civil Rights and Civil Liberties, is committed to strengthening protections for victims of domestic violence. The Immigration Section of the Office of Civil Rights and Civil Liberties collaborates extensively with grassroots organizations and advocates in their policy-making process. In light of the additional funding earmarked specifically for victims of domestic violence, ASISTA should forge a working relationship with the Immigration Section to

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71 See Appendices B and C.

72 HOMELAND SECURITY, Budget-In-Brief Fiscal Year 2014, 74 (2013), available at https://www.dhs.gov/sites/default/files/publications/MGMT/FY%202014%20BIB%20-%20FINAL%20-508%20Formatted%2084%29.pdf (noting on page 74, “ICE, in consultation with the DHS Office for Civil Rights and Civil Liberties, developed a new policy designed to protect victims of domestic violence (emphasis added) and other crimes and to ensure that these crimes continue to be reported and prosecuted.”)
advance the agenda for immigrant victims of domestic violence. The Immigration Section is an active participant in the Department-wide committee on trafficking issues led by a senior advisor to the Secretary, and plays an integral role in developing a curriculum for training on human trafficking for local and state law enforcement. 73 ASISTA should collaborate with the Immigration Section to highlight the disproportionate visibility and resources for victims of human trafficking as compared to victims of domestic violence. ASISTA can leverage the Department’s financial commitment to advocate for the development of clear and concrete guidelines for victims of domestic violence.

2. Recommendations for ICE

In this subsection, we propose the following recommendations for ICE based on our field research: (1) Increased visibility and awareness about the VAP in the public domain; (2) Increased awareness among ICE personnel about the program; (3) consistent use of terminology by ICE personnel; and, (4) provision of assistance, whether direct or indirect, to all victims of domestic violence.

a. Increased Visibility in the Public Domain

The ICE VAP lacks visibility in the public domain in a few significant ways. First, ICE raises awareness about little more than the human trafficking component of the VAP. Second, ICE does not make available much information about the location of the VAP field offices or the officers that people them. Third, ICE’s website is difficult to navigate, which makes it difficult to find information about the VAP. Relatedly, ICE’s automated telephone system makes no mention of the VAP. All of these things represent areas that need improvement.

We first recommend that ICE take steps to increase awareness in the public domain about the VAP. Currently, nearly all information about ICE’s VAP-related efforts focuses exclusively on victims of trafficking. The only VAP brochure that ICE has on its website, for instance, deals with victims of trafficking, which promotes the misconception that ICE serves that type of victim exclusively. To alleviate this problem, ICE should publish information and statistics relating to the assistance it provides to victims of domestic violence – or at least make clear the fact that it is ICE VAP practice to refer domestic violence victims to available state and local resources. Doing so would allow both victims and advocates to be aware of the remedies and relief that VAP provides to victims of domestic violence.

ICE should also publish a list of VAP field offices and agents, complete with contact information. There are many organizations – governmental and non-governmental – throughout the country whose mission it is to assist victims of domestic violence and sexual assault. If each ICE field office were to distribute the contact information of its key personnel to those advocacy and relief organizations in its respective community, then ICE’s goal of working in concert with those organizations would be much easier to accomplish.

ICE should revamp its website, making the VAP more visible to victims and their advocates. The current version of the ICE website contains no explicit information about how to reach VAP field offices. Thus, when a victim or an advocate visits the website in search of help they are likely to come up empty-handed. If victims are to receive the help they deserve, then advocates seeking information about the VAP should have some idea of how to access the VAP when they log onto ICE’s website; it is our recommendation that changes are made to the website to make that possible.
ICE should also add the VAP to its menu of options in its automated telephone system. The telephone system as currently constructed provides callers with a limited list of options, none of which have anything to do with the VAP. Oftentimes, there is no option for an operator, either. As a result, when we conducted our survey there were many offices that we were simply unable to reach. And we knew what we were looking for. For a victim of a crime who may not know exactly what they are looking for and who may not have great English language proficiency, the telephone system situation would present an even greater dilemma. This is a situation that needs to be addressed.

b. Increased Awareness for ICE Personnel

In this subsection we make three recommendations for ICE that will improve awareness about the VAP among ICE personnel: First, that ICE train personnel about the VAP and the way it functions on an annual basis; second, that ICE provide mandatory refreshers for its employees on updates in the law of domestic violence/sexual assault/human trafficking and its application; and, third, that ICE add clear information about the VAP and its leadership structure to its website.

ICE should train personnel about the VAP on an annual basis. As the Directive states, having a robust training operation in place is part of the legal mandate. The results of our survey do not necessarily suggest that there is no training whatsoever in place, but based on the general tenor of confusion we encountered when asking about the VAP, it does appear that ICE personnel – both in the enforcement and investigations offices – do not have a crystal clear understanding of the VAP and its scope. Without that understanding, it is difficult for ICE employees to coordinate with victims and advocates, to make sure they get in touch with the

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74 The Directive, supra note 38, at Pages 5-6.
right people; a standard training program designed to inform employees about the functioning of the VAP would go a long way toward solving this problem.

We also recommend that ICE provide mandatory refreshers for its personnel at regular intervals such that personnel are updated on the current law and its application. As the three internal memoranda mentioned above make clear, the field of law involving domestic violence/sexual assault/human trafficking is dynamic and ever-evolving. Those changes, in turn, affect the duties and obligations of ICE VAP employees. If ICE employees answering calls from victims and advocates are to be effective conduits between callers and the VAP, they should be informed about the current state of the law. So, too, should the VAP employees themselves if they are to adequately meet their duties and obligations. By providing refreshers on changes in the law at regular intervals, ICE would ensure that those things take place.

Finally, we recommend that the ICE website provide clear information regarding the leadership and structure of the VAP. This recommendation is closely related to the recommendation about revamping the phone system above. To illustrate, on numerous occasions during our survey, we made contact with ICE employees who were confused about what the VAP was and who we wanted to speak with. The initial response of the confused employee was often to refer us to the ICE website. The problem with that, though, is that there is no information about contacting the VAP on the ICE website. If that kind of information were on the website, then when an advocate or victim calls ICE looking for assistance and the employee answering the phone is initially unsure about where to direct the call, the employee could then go to the website herself and relay the information found there to the victim/advocate. Or, just as easily, she could direct the victim/advocate to the website where the information would be readily accessible to the victim/advocate.
c. Consistent terminology

We also recommend that ICE create a clear and consistent terminology across all victim services programs at the federal, state and local level. One of the main issues we had in making contact with the field offices throughout the country is that many ICE personnel did not refer to the VAP by that name. As a result, when we conducted our survey the employees with whom we spoke often were either totally unable to respond to our requests to be transferred to the VAP or only realized what we were talking about after lengthy explanation. One of the main problems with this lack of uniformity is that it significantly hampers the VAP’s ability to fulfill its duty of working in conjunction with state and local agencies to provide relief to victims. A uniform terminology would go a long way toward alleviating that problem.

d. Assistance for All Victims of Domestic Violence

The final recommendation we make is that ICE take a more active role in assisting victims of domestic violence, regardless of whether or not a particular victim has a nexus to a federal crime. As the report discussed above, internal ICE memoranda is ambiguous about whether or not victims of state domestic violence fall under the umbrella of the VAP. As the Appendix below illustrates, ICE personnel from the top down has answered that question in the negative.

There are numerous problems with ICE’s decision to limit the program in such a manner. First, ICE internal memoranda clearly refer to victims of domestic violence as people that the program is designed to protect, and they do so without limiting the discussion to nexus-based DV. Second, limiting the program’s protections is inconsistent with the program’s overall purpose: ensuring “that victims of crime are advised of their legal rights and treated in a just and
Immigrant survivors of domestic violence represent a highly vulnerable population, and if ICE is to take the mission of the VAP seriously, then it should work to protect all of those survivors, regardless of whether they have been victimized by a state or federal crime.

Third, for ICE to limit its definition of “victim” to individuals who have been victims of federal crimes is for ICE to ignore the reality that among governmental organizations it is ICE that is largely responsible for dealing with the immigrant population. And it is ICE – maybe not the VAP, but ICE, nevertheless – who comes into contact with victims of state DV when an undocumented victim’s abuser calls ICE to tip them off that she is in the country illegally. And for ICE to fail to funnel those kinds of victims to the VAP, instead leaving them to fend for themselves, is for ICE to skirt an important responsibility.

Finally, the most fundamental problem with ICE’s decision to limit the VAP’s protection to victims of federal crimes, though, is that it has caused ICE personnel to believe that the wellbeing of state DV victims is not ICE’s responsibility at all. That notion is corroborated by our survey, which demonstrated that ICE VAP officers rarely, if ever, come into contact with state DV victims. The solution to the problem is not necessarily for ICE to provide direct services to state DV victims. Instead, ICE must do a better job of ensuring that the personnel who come into contact with state DV victims (and there are certainly plenty ICE employees who do) refer those victims to the VAP rather than absolving themselves of responsibility as soon as it becomes clear that a DV victim has no nexus to a federal crime. The VAP, in turn, will then be able to refer the victim(s) to appropriate state and local resources. We recommend, therefore, that ICE create a clear protocol requiring its personnel to refer any state DV victims they encounter to the VAP program. By doing so, ICE will ensure both that state DV victims will not continue to

75 The Directive, supra note 38, at Page 1.

76 See Appendix B.
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fall through the cracks and that ICE is able to serve as the essential link between those victims and the assistance they deserve.

In sum, this Report highlights the operational complexities, interdependencies, and conflicting priorities involved in effective victim assistance by ICE for immigrant victims of domestic violence. However, the renewed commitment by the Department of Homeland Security to protect victims of domestic violence, presents a promising opportunity for ASISTA to collaborate with The Council and other stakeholders to bring to the forefront, the issues, challenges and proposed recommendations, in order to advance the rights of immigrant victims of domestic violence, and make domestic violence advocacy an integral part of the ICE agenda.
APPENDICES
Appendix A

Name: Donna Hatfield
Title: ICE VAP Program Manager
Office: Fairfax, Virginia
Date Interviewed: November 6, 2013
Contact Information: 703-877-3245

Summary of Interview

Donna Hatfield is the Program Manager for the ICE Victim Assistance Program. She agreed to provide us with a generalized overview of the ICE VAP process. Ms. Hatfield informed us that the ICE VAP serves only victims of a federal crime like human trafficking or any other crime listed under Title 18 of the United States Code. This is because Homeland Security Investigations is only concerned with violations of federal law. She added that a victim is eligible for assistance under the ICE VAP only if the victim is associated with a federal crime. She noted that the ICE VAP is governed by the Crime Victim Rights Act and that the ICE VAP does not assist victims of domestic violence because domestic violence is a state crime. She further added that in the rare situations that ICE does come into contact with a domestic violence victim, ICE refers the victim to the concerned state and local law enforcement agencies at the city, county or state level, and also refers the victim to state and local shelters, advocates or agencies for further assistance. When asked about specific details on the number of referrals by ICE to state and local agencies, Ms. Hatfield responded that any detailed information could only be obtained through a FOIA (Freedom of Information Act) request. She also recommended that we reach out to the ICE Office of Public Affairs. This information from Ms. Hatfield prompted us to contact state and local agencies to research how / whether immigrant victims of domestic violence received assistance.
Appendix B

Name: Renata Del Moral
Title: Victim Assistance Coordinator
Office: San Francisco Investigations Field Office
Date Interviewed: November 7, 2013

Summary of Interview

Renata Del Moral was the first ICE employee to shed light on ICE’s involvement with victims of domestic violence. Ms. Del Moral confirmed the fact that ICE does not investigate domestic violence unless it meets the definition of a federal crime. In fact, the San Francisco field office (as far as Ms. Del Moral knows) has never assisted victims of domestic violence. Instead, the majority of victims the San Francisco office serves are victims of crimes like human trafficking and various gang-related crimes. Ms. Del Moral did state, however, that she is adequately trained to handle a domestic violence victim with a nexus to a federal crime, and to refer that type of victim to the appropriate state and local resources. Additionally, Ms. Del Moral confirmed that the standard operating procedure in the event of encountering such a victim is to refer the victim to state and local organizations for further assistance.
Appendix C

Name: Laura Frescas  
Title: Victim Assistance Specialist  
Office: El Paso Investigations Field Office  
Date Interviewed: November 8, 2013

Summary of Interview

According to Ms. Frescas, the El Paso office, much like the San Francisco office, does not directly assist victims of domestic violence (again stating the fact that domestic violence is a state crime), instead assisting victims of human trafficking, child exploitation and occasionally victims of other types of crimes like murder. Unlike its San Francisco counterpart, however, the El Paso office does actually interact with domestic violence victims on some level, referring such victims to state and local agencies which whom the office has well-established relationships. Ms. Frescas may, for instance, take victims to shelters or schedule counseling appointments for them. The circumstances under which the El Paso office encounters domestic violence victims are very limited, though, and they all involve either a nexus or possible nexus to a federal crime(s).

First, Ms. Frescas may encounter a woman who is part of a trafficking ring but who is also being abused by her trafficker/partner. In that case, the El Paso office refers the victim locally for assistance with her DV issue and provides its own assistance for the trafficking issue. Second, a local NGO may call Ms. Frescas and express concern that a woman who has come to it for assistance with a DV issue may also be a victim of a federal crime like trafficking. In that situation, Ms. Frescas brings the victim into the field office to investigate whether or not a federal issue does in fact exist. The El Paso office does not, in other words, get involved with DV victims unless there is at least some possibility that the DV victim has a nexus to a federal crime as well. Put another way, the office does not assist, or even encounter, victims of state DV.
Appendix D

Name: Unknown
Title: Dispatcher
Office: Marshalltown, IA Police Department
Date Interviewed: November 7, 2013

Summary of Interview

The dispatcher for the Marshalltown PD stated that ICE never contacts the police department with information about victims of domestic violence. Because domestic violence takes place on such a local scale, she stated, there would be no reason for ICE to ever get involved in a crime like that. The only situation in which the officer is aware of local or state agencies contacting ICE is if / when a jailor contacts ICE regarding an inmate.
Appendix E

Name: Unknown
Title: Dispatcher
Office: Des Moines, IA Police Department
Date Interviewed: November 8, 2013

Summary of Interview

The Des Moines Police Department largely corroborated the information that the Marshalltown Police Department had already provided: the dispatcher was unaware of ICE ever contacting Des Moines PD with victim referrals. She did surmise, though, that ICE might refer victims of domestic violence to local non-governmental organizations. She had no direct knowledge, however, of ICE actually doing so.
Appendix F

Name: Unknown
Title: Unknown
Office: Waypoint Services for Women, Children & Families
Date Interviewed: November 8, 2013

Summary of Interview

We made contact with Waypoint Services for Women, Children & Families, located in Cedar Rapids, Iowa. An employee of that organization stated that the local police refer DV victims to her shelter but that, as far as she knows, ICE does not do so.
Appendix G

Name: Nikki Romer
Title: Victim Service Specialist
Office: Iowa State Victim Assistance Division
Date Interviewed: November 8, 2013

Summary of Interview

We also spoke with an employee of the Iowa State Victim Assistance Division, which is part of the Iowa Attorney General’s office. The person with whom we spoke told us that she had no knowledge of ICE contacting her office with victim referrals. She thought that the Iowa Coalition Against Sexual Assault might have more information on the matter.
Appendix H

Name: Unknown
Title:
Office: Iowa Coalition Against Sexual Assault
Date Interviewed: November 8, 2013

Summary of Interview

The woman with whom we spoke at the Iowa Coalition Against Sexual Assault informed us that ICE does not call her organization with domestic violence/sexual assault referrals. She was unaware of ICE calling any other local organizations for that purpose, either. She did suggest that Sonia Parras might have more information. Because Ms. Parras is a founding member of ASISTA, though, that piece of advice represented a dead end in terms of finding any information on a local level in the state of Iowa.