

# Nuts and Bolts of U Visa for Undocumented Victims of Crime: A Case Study

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# Introductions

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# Learning Objectives

By the end of this session, you will:

- Have a working knowledge of the process of a U visa certification
- Have an understanding of the importance of a U visa certification policy
- Have an understanding of the limited but important role law enforcement has in assisting an undocumented crime victim who seeks a U visa through USCIS (DHS)

# Purpose

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

# U Visa Facts

- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

# U Visa Basics

- Law enforcement certification is just one part of the overall process, it does not = Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Can be “revoked”
- Increases immigrant victim participation in criminal justice system

# How will a U visa certification request come to you?

- From victim advocate or immigration attorney
- As a police officer you are the first responder
- As a prosecutor you might have continued contact with the victim and might be first to identify a victim's U visa eligibility

# Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in Foreign Labor Contracting
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

\*Attempt, conspiracy or solicitation to commit any of these crimes  
any similar activity



# U Visa Criminal Activities (11/2011 data\*)

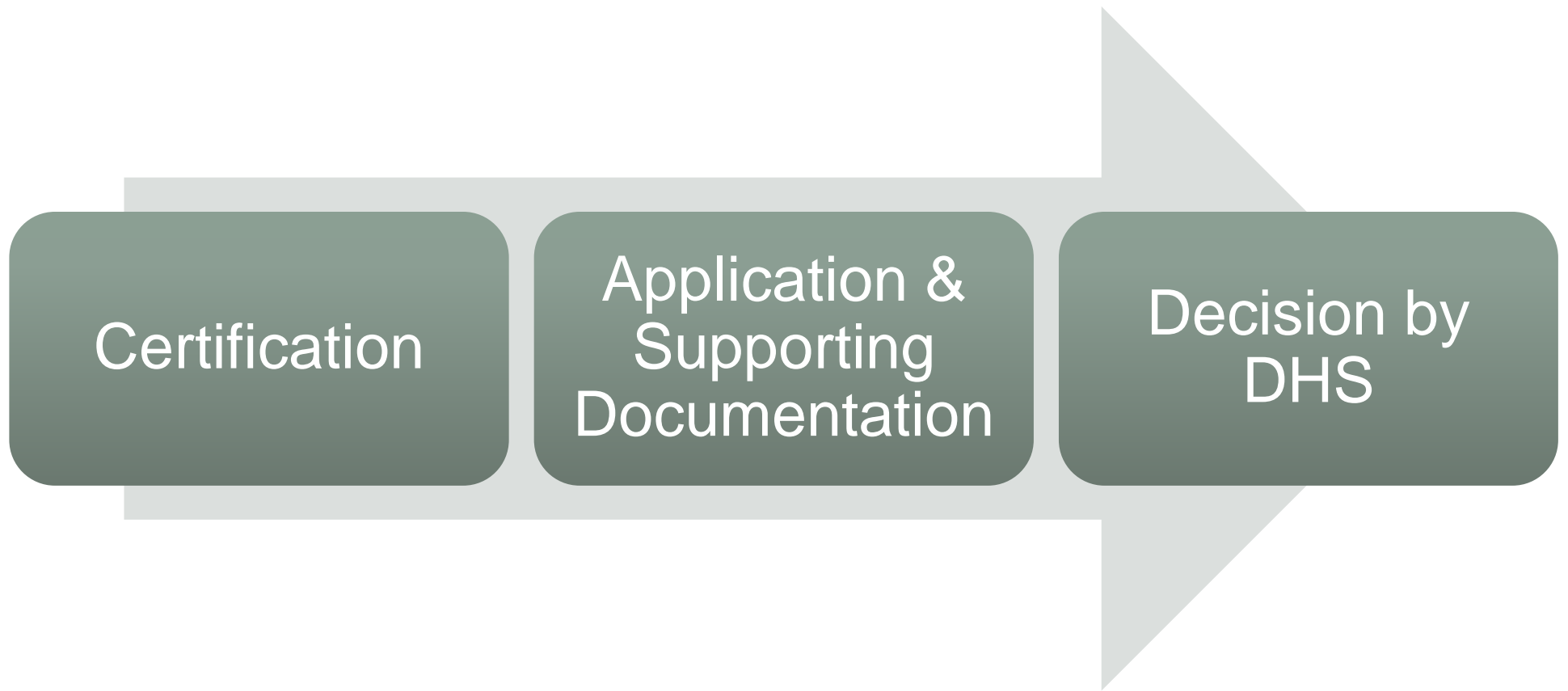
- Domestic violence **45.9%**
- Rape, sexual assault, incest, trafficking **30.4%**
- Felonious assault, murder, manslaughter **9.9%**
- Kidnapping, being held hostage, unlawful criminal restraint, torture **8.47%**
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**

\*Percentages are from 4.034 cases reported in a national survey. Leslye E. Orloff & Paige Feldman, National Survey on the Types of Criminal Activities Experienced by U Visa Recipients (Nov. 2011)

# Things to Know About Certifying

- “Do I believe this person was a victim of a qualifying crime?”
- “Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?”
- Question is **NOT**:
  - Can we prosecute the crime?
  - Can I arrest the offender?
  - Do I have proof beyond a reasonable doubt?
  - Will the prosecutor’s office file charges?
  - Is this within the statute of limitations?
  - Did we get a conviction?

# The U Visa Application Process



Typical length of process = 25 months

# DHS Decision

- *Were they a victim of a qualifying crime?*
- **Did they suffer substantial harm as a result of victimization?**
- **Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)**
- **Is the victim admissible?**
  - **Review of criminal history**
  - **Review of immigration history**

# U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
  - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

# Scenario 1: Responding to a DV Call

You receive a call for a past domestic. Upon arrival you make contact with a female party who speaks broken English. You ask her why she called police and she says her husband hurt her. She is very reluctant to speak with you and says “please, no immigration” You observe slight red marks on her neck and her shirt is torn on the sleeve. Upon further questioning, she states her name is Nasheen and she came into the US on a student Visa in 1999. Her two children are sleeping in the other room and states she met her husband Phillip at school and they married in 2001. Shortly after that, he became abusive and threatened to have her “sent back to my country” if she told police. She states he “has friends” in law enforcement and threatened to tell them about her status. Upon further investigation you find Nasheen has several involvements for shoplifting and an open court case for driving without a license. Nasheen agrees to have photographs taken of her neck and shirt but refuses medical attention. Your partner pulls you aside and suggests you should contact immigration about Nasheen.

# Scenario 2: Follow-Up Investigation



You receive a report for follow up on a domestic. Responding officers report a past domestic involving an undocumented victim. There are three photographs of minor injuries to the victim's neck and the report states the victim reported her husband assaulted her and threatened her. The victim's husband was arrested overnight and held on bail. You respond to the victim's home and make contact with her. Her name is Nasheen and she reluctantly lets you into her home. After speaking with her for 30 minute and advising of her rights under the abuse law she states she does not wish to go forward. She relates that she is afraid of what will happen if she does. Nasheen thanks you and politely asks you to leave. A few months later you get summonsed to court to testify regarding the case. You meet with the district attorney who advises the DA's office is dropping the case due to the victim not cooperating.

# Scenario 3: The Request for Certification

You receive a call from an immigration attorney who relates he is looking for you to sign a U visa certification (918-b). The attorney advises his client, Nasheen, was a victim of domestic violence in 2003 and is seeking a U Visa. Upon investigating the case you find that Nasheen reported a domestic in 2004 but upon follow up investigation she refused to cooperate with investigators or the district attorney's. The case was dismissed due to lack of victim cooperation.

# U Visa Model Policy

- Highlights of Policy

# Technical Assistance and Materials

- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library:  
[www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)
- Materials for Law Enforcement:  
<http://niwaplibrary.wcl.american.edu/topic/law-enforcement>
- PowerPoint:  
[www.niwap.org/go/NSASummer2016](http://www.niwap.org/go/NSASummer2016)

# Questions

