

NIWAP AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW

 BATTERED WOMEN'S JUSTICE PROJECT

Webinar
Immigrant Crime Visas: Law Enforcement's Tool to Strengthen Community Policing

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Battered Women's Justice Project

February 18, 2015

National Immigrant Women's Advocacy Project at the
American University Washington College of Law

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Resources and Webinar Materials

- www.niwap.org/go/BWJPUvisa
- PowerPoint
- U Visa Law Enforcement and Prosecutors Toolkit
- Helpfulness Checklists/Bluecard for LE
 - Q & A for Law Enforcement
 - Advocate and Law Enforcement Flowchart
- Articles
- Web library materials
 - www.niwaplibrary.wcl.american.edu

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Learning Objectives

By the end of this webinar you, will be better able to:

- Enhance law enforcement's ability to work with immigrant victims
- Know the benefits U and T certification for victims, law enforcement and community safety
- Build collaborations with victim advocates in working with immigrant crime victims

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Let's see who is on the webinar with us.

- A. Police Officer
- B. Victim Advocate
- C. Lawyer
- D. Prosecutor



Other write
in chat box



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Violence Against Women Act (VAWA) and VAWA's Immigration Protections are Gender Neutral

- VAWA's protections, help and immigration relief are
- Open to ***all victims***
- Without regard to the victim's gender or gender identity.
- Men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault
- In the overwhelming majority of cases the perpetrators are male and the victims are female
- During this presentation we will generally use
 - “**he**” to refer to the perpetrator and
 - “**she**” is used to refer to the victim.

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DHS' U Visa Certification Terminology Used in This Webinar

- The Department of Homeland Security (DHS) uses the terms “***law enforcement***” and “***law enforcement agencies***” to mean federal, state, & local government agencies including:
 - Police departments, sheriffs, state police, FBI, ATF
 - Prosecutors and district attorneys
 - Child and Elder Abuse investigators and agencies
 - Departments of Labor , the Equal Employment Opportunity Commission (EEOC)
 - Courts, Judges, Magistrates, Commissioners
 - Any other government agency that has the authority to detect, investigate, prosecute, convict or sentence based on facts related to criminal activities covered by the U or T visa

Purpose

Congress enacted VAWA self-petitioning (1994) and the U-visa (2000) and other immigration protections for crime victims and children 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

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Historical Context of VAWA Immigration Legislation

“Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic and immigration barriers to their safety. Abusers of immigrants- spouses or children are liable to use threats of deportation to trap them in endless years of violence. Many of us have heard horrific stories of violence in cases where the threat of deportation is used against spouses and children – if you leave me, I’ll report you to immigration authorities, and you will never see your children again.” ...

Senator Kennedy. VAWA 2005 Congressional Testimony

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In addition to the U visa– Immigration Relief for Immigrant Survivors

- **VAWA self-petition**
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- **Battered spouse waiver**
 - Abused spouses of US citizens with two-year conditional permanent residency
- **T visa-Continued Presence**
 - Victims of severe forms of human trafficking
- **Asylum**
 - Protection from certain forms of persecution abroad can include domestic violence and sexual assault
- **Special Immigrant Juvenile (SIJ)**
 - Juveniles that have been abused, abandoned or neglected by one or both parents
- **Deferred Action**
 - Childhood Arrivals (DACA)
 - Parents of citizen and permanent resident children (DAPA)
 - Have been continuously in US since 1/1/10
 - Protection from deportation
 - Work authorization
- **VAWA Cancellation of Removal** (Immigration Court)

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The U Visa Offers Protection to Victims of these categories of criminal activities

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

*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%

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
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- Suffered substantial physical or mental abuse as a result of the victimization

The U Visa Application Process

- Law enforcement/prosecutor certification
- Complete and submit application, which includes
 - identity documentation
 - evidence of victimization and helpfulness
 - inadmissibility waiver and fees (waived)
 - biometrics
 - background checks
- Decision from USCIS within about 7 months to 12 months



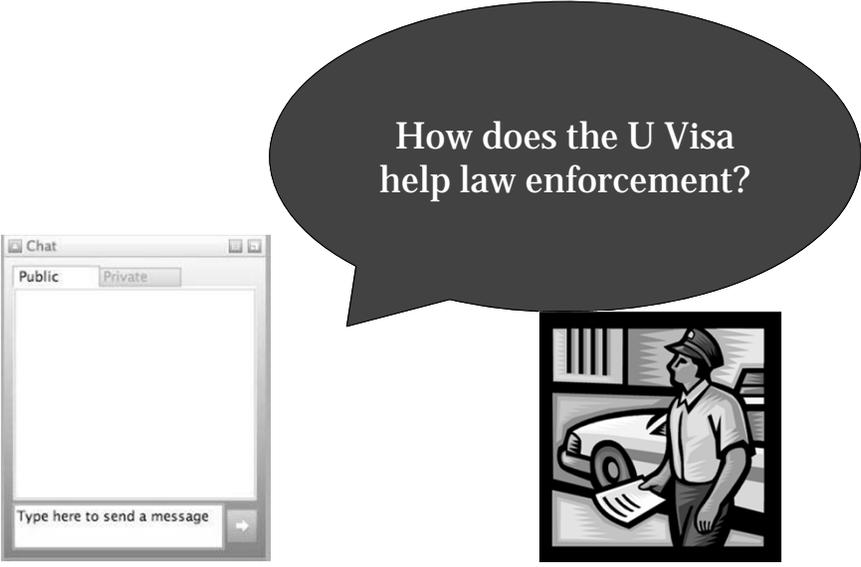
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Quick U Visa Facts

- 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 legal permanent residency for 5 years + proof of good moral character
- U visa applications are protected by VAWA confidentiality

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How does the U Visa help law enforcement?



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U Visa Benefits to Law Enforcement

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhanced immigrant community involvement
- Makes it easier to identify victim witnesses
- Reduces repeat calls and recanting victims
- Fosters community policing partnerships
- Enhances Officer and Community Safety

How does the U
Visa help survivors?




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Benefits for Crime Victims/Survivors

- Protection from deportation
- Enhanced Safety for Victim
- Financial independence from perpetrator
 - Abusive family member
 - Employer
- Legal Work Authorization – Drivers License/SSN
- VAWA Confidentiality
- Temporary legal immigration status
- U visa protections for vulnerable family members
- Greater ability to gain/maintain custody of her children
- More access to victim services, health care and benefits

What barriers are present, if an immigrant victim considers reporting?





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Barriers to Reporting

- Threat of deportation
- Perpetrator's power and control over victim's immigration status
- Took her valid documents
- Valid documents replaced with fake documents
- Shame
- Perpetrator was a gang member- victim feared violence
- No access to money
- Made to feel powerless
- Subject to total power and control
- Language barriers
- Lack of knowledge about legal rights and U.S. system

Immigration status concerns result in immigrant victims being

- **Less likely to:**
 - Report a crime
 - Provide information to police & prosecutors
 - Believe police & prosecutors want to help them
 - Testify
- **More likely to:**
 - Be susceptible to perpetrator's coercion and threats; particularly immigration related threats, coercion and abuse

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Law Enforcement Collaboration with the Federal Government

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Civil vs. Criminal Immigration Violations

- **Civil Violations**
 - Unlawful presence in the U.S.
 - Working without employment authorization
- **Criminal Violations**
 - Illegal entry, departure, and subsequent reentry (federal)
 - Reentry after removal following conviction

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DHS Enforcement and Victim Protection Priorities DHS Memos – Guidance

- DHS victim witness memo
- Humanitarian release
- 384 DHS computer system (VAWA, T visas, U visas)
- VAWA confidentiality
- Detainer asks for help identifying victims
- DHS law enforcement Q & A on T and U visas
- U Visa Law Certification Resource Guide
- DHS Roll Call Videos
- Blue Campaign
- DHS immigration enforcement focus on high priority targets

U Visa Certification Considerations For Law Enforcement

- Is the person of a qualifying criminal activity?
- Have they been helpful?
- Do they have information?
- Did it happen in the U.S.?
- Are any family members were implicated in the crime?

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Identify the Victim or Indirect Victims

- Victim was killed or is incapacitated
- Next friend
- Family members of immigrant victims
- Bystanders

ON/B No. 1615-G104; Expires 06/31/2016
U Nonimmigrant Status Certification

Department of Homeland Security
 U.S. Citizenship and Immigration Services

START HERE - Please type or print in black ink.

Part 1. Victim information.

Family Name: Orloff Given Name: Leslye Middle Name: E
 Other Names Used (Include maiden name/nickname):
 Date of Birth (mm/dd/yyyy): 08/28/1956 Gender: Male Female

Part 2. Agency information.

Name of Certifying Agency: Sheriff's Office
 Name of Certifying Official: Captain Mike Title and Division/Office of Certifying Official: Supervisor/D.V.U.
 Name of Head of Certifying Agency: Sheriff Ric Bradshaw
 Agency Address - Street Number and Name: 3228 Gun Club Road Suite #:
 City: Atlanta State/Province: GA Zip/Postal Code: 33406
 Daytime Phone # (with area code and/or extension): (561) 688-3000 Fax # (with area code): (561) 688-3000
 Agency Type: Federal State Local
 Case Status: On-going Completed Other
 Certifying Agency Category: Judge Law Enforcement Prosecutor Other
 Case Number: H-62632-11 FBI # or SID # (if applicable):

Part 3. Criminal acts.

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking
<input checked="" type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input checked="" type="checkbox"/> Other: (If more space needed, attach separate sheet of paper) stalking
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	

Form I-918 Supplement B (08/31/07)

Part 3. Criminal acts. (Continued.)

2. Provide the date(s) on which the criminal activity occurred.
 Date (mm/dd/yyyy): 12/19/12 Date (mm/dd/yyyy): Date (mm/dd/yyyy): Date (mm/dd/yyyy):

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.
sec. 741.28 Domestic Violence

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States? Yes No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? Yes No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

c. Where did the criminal activity occur?
Atlanta, GA

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.
Husband strangled Mrs. Orloff during a domestic dispute and has been following her wherever she goes.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.
As a result of Mrs. Orloff being assaulted and strangled she suffered injuries to her neck. (see attached photographs)

Part 4. Helpfulness of the victim.
 The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated):

1. Possesses information concerning the criminal activity listed in Part 3. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided) Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.) Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.) Yes No

Form I-918 Supplement B (08/31/07) Page 2

Part 4. Helpfulness of the victim. *(Continued.)*

5. Other, please specify.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck.

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	Involvement
William Orloff	Husband	Defendant

Part 6. Certification.

I am the head of the agency listed Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2: Date *(mm/dd/yyyy)*

Form I-918 Supplement B (08/31/07) Page 3



Can helpful be satisfied when a victim makes a police report, and no criminal charges are pursued by law enforcement?

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Helpfulness by the Regulations

- Statute and DHS Regulations: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or Investigation, or
 - Prosecution, or Conviction or
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U-visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing



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Some Examples of Helpfulness

- Calling 911 to report a crime
- Providing a statement to the police
- Filing a police report
- Seeking a protection order
- Providing information to prosecutors
- Serving as a witness in a prior prosecution or investigation
- U visa Helpfulness List



Laying the Foundation for Partnerships: The Department's Mission and Vision Statements

"We Maintain Open Communication with all the Communities We Serve. Their Input Helps to Determine Police Policies, Priorities and Strategies."

-Excerpt from San Francisco Police Department's Mission Statement

"The people of our communities and members of the police Department must be united in their commitment to addressing crime, violence, and quality-of-life issues by engaging one another and all city agencies in problem-solving partnerships."

-Excerpt from San Francisco Police Department's Vision Statement



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Frame the Conversation: Focus on Common Goals

These goals include:



- Holding perpetrators accountable
- Increasing public safety
- Providing redress to victims
- Building trust in the community

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**“It’s not 10,000 visas it is
10,000 tips to get criminals off
our streets”**

**- Chief Pete Helein, Appleton PD
(retired)**

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Strategic Plan

- 1. “Do Your Homework”**
- 2. “Building Alliances”**
- 3. “Meet and Greet”**

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1. “Do Your Homework”

Before contacting law enforcement, prepare by conducting research in the following areas:

- Identify a law enforcement ally and learn about current practices, mission of agency
- Collect survivors’ stories
- Collect data about current U visa certification practices



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Story Collection

- Collect stories of survivors of crime, illustrative of the impact of current U-visa certification practices on crime victims:
 - Should be emotionally compelling—focus on victimization and crimes committed by perpetrators
 - Positive how U visa helps fight crime and how victim’s lives change
 - Negative illustrate harm to victim/criminal investigation
 - Allows advocates to assess and document barriers survivors face when working with law enforcement
 - Should connect with “protect and serve” mission

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Data Collection and Fact Sheets

- Work with allies and the community to collect data documenting the extent of U visa certification practices:
 - Demographics document need
 - Who is and is not certifying
 - How widespread are the failures to certify?
 - Are the failure to certify particular to one precinct or police chief?
 - Collect information about polices, sheriff's and state police in the jurisdiction
- Prepare talking points that document and articulate the problem
- Develop a factual understanding of the nature and scope of any barriers to U visa certification

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2. "Building Alliances"

Look for partners and/or coalitions that already have trusting relationships with law enforcement



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Multidisciplinary Partnerships

- Mainstream partners can help advocates successfully create relationships with law enforcement
 - (e.g. Domestic Violence and Sexual Assault Agencies, Courts, Government, Faith based, and Health Professionals)
- Formulate strategy to approach law enforcement based on allies' past experiences
- Be proactive

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Work with an Ally

- If you do not have access to a mainstream partner or positive relationships with the law enforcement:
 - Plan a meeting with the Chief of Police or head of the agency through a trusted ally
 - Make sure that the ally frames the issue in a manner that is in line with the Chief's concerns for community safety and perpetrator accountability

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3. “Meet and Greet”

Plan by creating a strategy for contacting, meeting with, and building relationships with law enforcement agencies



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Work with a Cross Discipline Team

- Determine who comprises the best cross-discipline team to attend any such meetings with law enforcement
- Set up regular meetings with advocates and provide the other agency with updated information
- Celebrate successes and develop a plan for improving shortcomings

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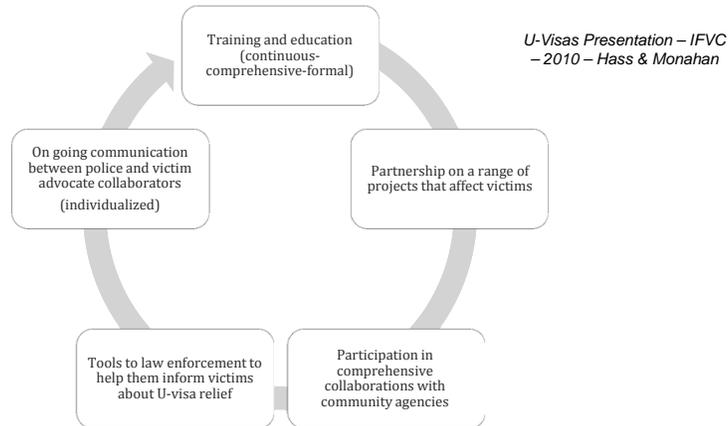
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Share Resources

- Identify significant language minority populations in your community
- Collaborate with other advocates to identify information handouts for victims being used by law enforcement:
 - names of advocates and/or shelters
 - victims' rights
 - names and numbers to call for assistance and counseling
 - medical information
- Work together to obtain translations of these vital documents

Putting Relationships with Law Enforcement into Practice

Building Advocate-Law Enforcement Relationships Result in U Visa Certification



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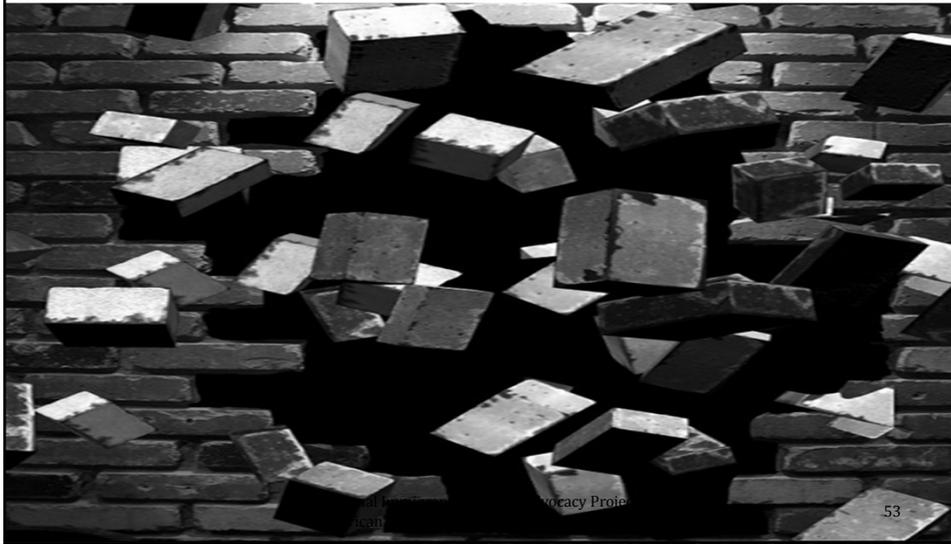
Advocates can assist law enforcement by

- Assisting survivors apply for VAWA/U visa/T visa protections
- Collecting demographics on immigrant and LEP populations
- Locating survivors
- Encouraging clients to maintain contact with law enforcement
- Getting client to office for interviews safely
- Planning so that language access is provided for client
- Educating clients about their rights so they are not further victimized in another context

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Anticipate Challenges and Develop a Plan to Overcome Them



What reasons for not certifying are you encountering?



Challenges Usually Stem from

1. Misunderstanding of the helpfulness
2. Bias or fear of the unknown
3. Fraud concerns
4. Quantifying substantial harm or helpfulness
5. Systematic Problems



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Discussion with Law Enforcement about Challenges

- No active investigation/case closed
- There is no prosecution/conviction
- Victim wasn't helpful enough, they didn't even testify, no conviction
- By signing the certification we are conferring immigration benefits
- Victim has violated our laws, why should we help them
- Need to save certifications for the most serious crimes since only 10,000 visas

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Challenges Continued

- We have no certification policy so we cannot sign
- Why am I being asked to certify an old case from many years ago
 - Its hard to find the records from the old case
- The DA has the case so law enforcement cannot certify
- We know the victim is still with the perpetrator
- We will wait to sign it when the case is closed
- The victim is making up the crime to stay in the US

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Responding to Challenges

1. What are the DHS policies and regulations?
2. What was the Congressional intent behind the U visa and T visa laws?
3. What is the benefit for law enforcement?
4. What is the benefit for the victim of the crime ?
5. What is the benefit for our community?

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Reasons for Certification

- Victim came forward and was **helpful** in detection, investigation, or prosecution of the criminal activity
- Congress did not want to interfere with the discretion of investigators and prosecutors
- There are many factors to consider when there is not a conviction or prosecution unrelated to a victims willingness to be helpful
 - Pleas
 - Perpetrator flees
 - Unable to ID perpetrator

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Addressing Bias Against Undocumented Persons or Fear of the Unknown

- DHS has dual policies of enforcement and victim protection
- DHS encourages certification practices and protocols
- Signing the U visa certification is only one of several requirements
- Reasons why Congress created the U visa
- U visa is a tool for law enforcement to keep our communities safe, foster relationships and protect victims

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Addressing Substantial Harm

- USCIS adjudicates and determines “substantial physical or mental harm on a case-by-basis
- DHS
 - Certifying agencies do not make this determination
 - Can provide helpful evidence
- Congressional intent promoting early certification
- Unique manifestation of harm that includes focus on perpetrator’s actions

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Anticipate Addressing Safeguards Against Fraud

- Certifying agencies detect, investigate and prosecute based on probable cause;
- Applications are adjudicated by a specialized DV, SA, Human Trafficking unit at the US Citizenship and Immigration Service (USCIS);
- USCIS conducts FBI fingerprint and background checks, and review of inadmissibility issues;
- USCIS may ask for further evidence –supporting evidence;
- Application for lawful permanent residency requires proof
 - of helpfulness or
 - proof that the victim did not unreasonably refuse to cooperate with reasonable requests for help

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VAWA Specialized Unit Effective

- The non-partisan Congressional Research Service noted that DHS has incorporated safeguards for adjudicating these cases and there is no empirical evidence of fraud.
- DHS uses a high degree of diligence and vigilance in adjudicating these cases
 - Requests for further evidence rate (DHS 2007-2011)
 - 74% VAWA cases
 - 18.3% family visa petition cases
- Denial rate (DHS 2007-2011)
 - 31.4% VAWA self-petitions
 - 21% U visas
 - 11.2 % family members of citizens
 - 14.2% family members of lawful permanent residents

Importance of Collaborations

- Barriers and Successes in U Visas for Immigrant Victims: The Experiences of Legal Assistance for Victims Grantees (2014)
- The most significant finding presented is that comprehensive collaborations with law enforcement agencies contribute to success in U visa program.

Comprehensive Collaboration With Law Enforcement

- Elements of successful collaboration
 - Continuous and comprehensive training for law enforcement
 - Ongoing, individualized communication with law enforcement, and building personal relationships
 - Providing U-visa certification training tools to law enforcement
 - Multi-agency cooperation through community collaboration projects

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QUESTIONS

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Technical Assistance for Law Enforcement

- NIWAP
 - Technical Assistance for Law Enforcement by a Peer
 - U Visa Local Training
- Recourses from the Department of Homeland Security
 - To ask a question about a specific case or to rescind a signed certification :
LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. (Please note that this e-mail address is for law enforcement personnel only)
 - To ask specific policy questions about T and U visa certifications, call USCIS at (202) 272-1470.

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Technical Assistance and Materials

- PowerPoint presentations and materials for this webinar at www.niwap.org/go/BWJPUvisa
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library:
www.niwaplibrary.wcl.american.edu

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