

Building Law Enforcement Capacity to Serve Immigrant Victims

**The National Immigrant Victims' Access to
Justice for Partnership**

**San Antonio, Texas
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Introduction:

Faculty Introductions
Housekeeping
Pre-Training Assessment

Participant Introductions Goals and Expectations

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

- *Gain an understanding of the U-visa certification process*
- *Identify law enforcement capacity to work with immigrant victims*
- *Understand the benefits of the certification program to law enforcement and to community safety*

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What is your knowledge about the U-Visa?

Sign-In Sheet

Overview of Packet:

- **Agenda**
- **Faculty bios**
- **Participant list**
- **Technical assistance information**
- **Glossary**

U-visa Tool Kit

- **Backgrounder**
- **Quick Reference Guide**
- **U-Visa Certification Instructions**
- **Sample redacted U-visa certification (I-918B)**
- **Sample designee letter**
- **Sample Duties descriptions**
- **Sample Outreach flyer**
- **Sample protocol**
- **News articles Summary**
- **Statutory and regulatory background**
- **Flowchart**
- **Frequently asked questions**



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Introduction: The U-Visa A Tool for Law Enforcement

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

- **Allow victims to report crimes without fear of deportation**
- **Improve community policing and community relationships**
- **Enhance victim safety**
- **Keep communities safe**

The Crime Victim U-visa Requirements

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

U-Visa Facts

- **Maximum number of U-visas that can be approved annually is 10,000**
- **U-Visa is a temporary 4 year visa**
- **Lawful permanent residency only some will qualify – no guarantee**
- **U.S. citizenship: Only after legal permanent residency for 5 years + proof of good moral character**

Dynamics of Crime Victimization Experienced By Immigrants and Refugees

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

- *Understand the immigrant victim's fear of deportation*
- *Identify the barriers that prevent immigrant victims from cooperating with the criminal justice system*

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What country do the victims you have encountered in your jurisdiction come from?

Texas Demographics

- **Foreign born 29% of state population**
- **Naturalized Citizens 31%**
- **Lawful permanent residents 31.9%**
- **Temporary legal residents and undocumented immigrants 37.1%**
- **Region or origin**
 - Asia 17.6%
 - Europe 4.6%
 - Africa 3.1%
 - Latin America 73.4%

Leading Countries of Birth Among Lawful Permanent Residents in Texas

- **Mexico 45.7%**
- **India 5.4%**
- **Vietnam 3.9%**
- **China 3.5%**
- **Philippines 2.9%**
- **Pakistan 2.6%**
- **El Salvador 2.4%**

Keeping Communities Safe: Reporting Crime Vs. Deportation

Undocumented immigrant crime victims are less likely to report a crime because of concern regarding their immigration status

Individual Activity: Immigrant Victim Barriers

Write down 3 reasons why an immigrant victim does not want to be deported back to his/her home country

**Large Group Discussion:
Why does the immigrant victim not want
to be deported to their home country?**

Large Group Discussion: Victim Concerns

- Immigration related abuse/deportation
- Economic survival
- Family/children
- Fear of losing custody /access to children
- Power and control over victim's immigration status
- Victim believes that if he gets deported she has to go with him
- Danger to victim in the home country (retaliation)
- Fear of being ostracized by home country community
- Fear of abandoning the home
- Fear of police/experience in home country
- Religion
- Political instability in home country
- Gender barriers in home country
- Fear of unknown

If an immigrant/refugee victim considers reporting, what barriers are present?

Story Sharing

Barriers to Noncitizens Reporting Crimes

- **Language access**
- **Lack of understanding of U.S. Laws**
- **Enhanced enforcement of immigration laws**
- **Local enforcement of immigration laws**
- **Law enforcement prioritizing cooperation with Homeland Security over criminal investigations`**
- **Abuser's power and control over victim's immigration status**
 - Domestic violence
 - Sexual assault in the workplace or at university
 - Refugees

Department of Homeland Security Immigration Functions

- **United States Citizenship and Immigration Services (USCIS)**
- **Immigration and Customs Enforcement (ICE)**
- **Customs and Border Protection (CBP)**

Civil vs. Criminal Immigration Violations

Civil:

- **Unlawful presence**
- **Working without employment authorization**
- **Unlawful entry into the U.S.**

Criminal:

- **Illegal entry, departure, and subsequent reentry (federal)**

Local Enforcement of Immigration Laws

- **Secure communities**
- **287(g)**
- **Criminal Alien Program (CAP)**
- **Informal partnerships with Immigration and Customs Enforcement (ICE)**

The 287(g) Program

- **Immigration and Nationality Act § 287(g) allows law enforcement officers to perform the duties of an immigration officer.**
- **Partnership must be established by a Memorandum of Understanding (MOU) with the Department of Homeland Security**
- **Exists in limited number of jurisdictions**
- **Basis: 1996 IIRAIRA (allows MOU and voluntary reporting)**

Secure Communities

- **Allows local law enforcement to conduct a biometrics check of the criminal and immigration history of individuals in custody**

Criminal Alien Program (CAP)

- **Allows local law enforcement to check the immigration history of an individual in custody**
- **Provides some amount of financial reimbursement for subsequent custody based on immigration violations**

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**Which of these programs are operating in
your jurisdiction
either formally or informally?**

Immigration Detention Process

Identification/entry into the enforcement system by:

- **Department of Homeland Security**
- **Local law enforcement – await ICE processing, issuance of detainer (48 hours maximum)**

ICE Detention Determination

Immigration Court

- **Court decides whether or not to release individual or detain pending removal proceedings**

U-visa: Purpose and Process

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

- *Explain why Congress created the U-visa*
- *Understand the U-visa application procedure*
- *Identify victims who qualify for U-visas*

Materials: Statutory and Regulatory Background

The U-visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- 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

Materials: Background on the U-visa, U-visa Quick Reference Guide



What criminal activities are covered under the “U” visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- Female genital mutilation
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment



Criminal Activities Covered -- Continued

- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- **Any similar activity**

The U-visa Process

- **Law enforcement certification**
- **Application**
- **Approval**
- **U-Visa status 4 years**
- **Some will qualify for lawful permanent residence**

Which U-Visa Recipients Can Obtain Lawful Permanent Residence?

- Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
 - Humanitarian need; OR
 - Family unity: OR
 - Public Interest
- Homeland Security reviews cooperation or determines whether the victim's non-cooperation was unreasonable

The U-visa Process - Other Issues

- **Employment authorization**
- **Removal proceedings**
- **Immigration detention**
- **After 5 years of lawful permanent residency victim can apply for naturalization**

Role Play: Certifying a U-visa Applicant

U-visa Certification: Considerations For Law Enforcement

- **What criminal activity occurred**
- **Identify the victim**
 - Note injuries observed, if any
- **Helpfulness of the victim**
 - Current or past
 - Willingness to be helpful
- **Any family members implicated in the crime**

Review the U visa Certification Form

**Goal: Identification of the crime, the victim and
initiation of the process**

How will a U-Visa certification request come to you?

- From victim advocate or immigration attorney
- You are the first responder

U-visa Certification: Nuts and Bolts: Considerations For Law Enforcement

- **What criminal activity occurred?**
 - Activity is a crime in the state
 - Is it or is there also a qualifying criminal activity
 - Example: Drugs vs. domestic violence
 - Similar activities
 - Provide details of the crime

U-visa Certification: Nuts and Bolts

Victim or Indirect Victim:

- **Murder/Manslaughter/Incapacitated: Family members (spouses; unmarried children under 21; and for victims under 21, parents and unmarried siblings under age 18)**
- **Next friend: Someone who is assisting a direct victim who is incompetent, incapacitated, or under 16. Must appear in a lawsuit to act for the benefit of the direct victim**
- **Any state laws regarding indirect victims?**

U-visa Certification: Nuts and Bolts

Victim or Indirect Victim:

- **Family members of alien victims**
- **Bystanders or show vicarious victimization resulting from witnessing or having knowledge of the criminal activity**

Materials

- *Instructions for Form I-918*
- *I-918 Supplement B Form*
- *Sample U-visa certification*
- *Sample Designation Letter*

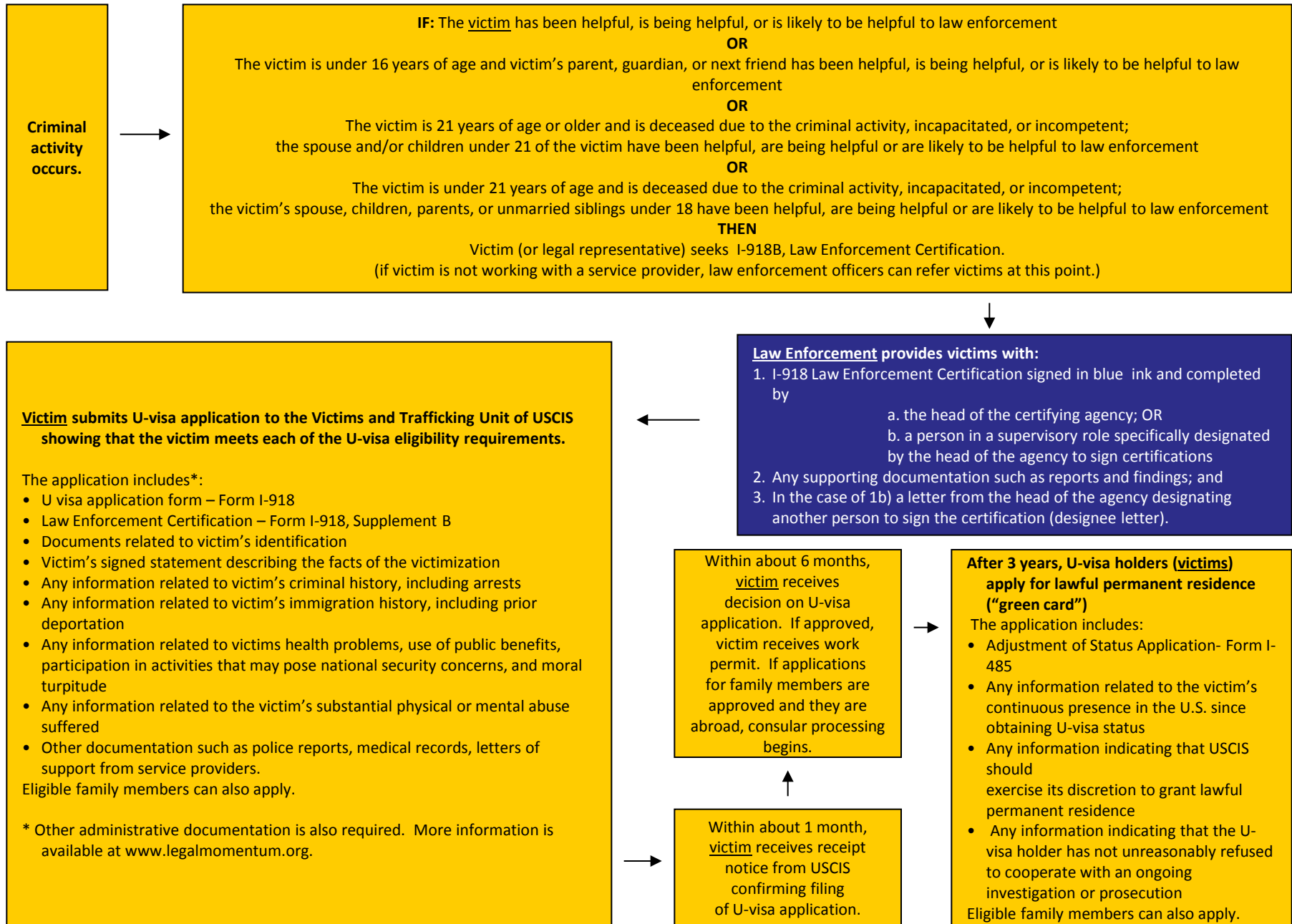
Beyond the Certification

Brainstorm: What is the Victim Required to Prove to
Homeland Security For a U-visa In Addition to the
Certification?

Victim Must Additionally Prove:

- **Physical or mental abuse as a result of the criminal activity**
- **Disclose criminal history, if any**
 - Immigration law definition of “aggravated felony”
 - Discretionary waivers available
 - No waiver if history of espionage or terrorism
 - Victim will be fingerprinted
- **Immigration history including violations, if any**
 - Misrepresentation on an immigration application
 - Removal proceedings
- **Information about family members who may also receive U-visas**
- ***Materials: U-visa I-918 form***

U-visa Application Victim Flow Chart



Prepared by the National Immigrant Victims Access to Justice Partnership (2010). This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

**Group Exercise: In groups discuss how the
U-visa benefits the victim**

Benefits for Victims

- **Protection from deportation**
- **Enhanced safety for Victim**
- **Financial independence from perpetrator**
- **Legal Work Authorization**
- **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, benefits**



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**Group exercise:
How does the U-visa benefit law
enforcement?**

Benefits for Law Enforcement

- **Immigrant victims willing to report crimes**
- **Perpetrators held accountable**
- **Safer for responding officers**
- **Enhanced community safety**
- **Enhanced immigrant community involvement**
- **Victims with protection from deportation will be better witnesses**
- **Reduces repeat calls and recanting because victims have legal status and work authorization**
- **Demonstrates the departments commitment to protecting immigrant community members**

Helpfulness

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

- *Understand the scope of the helpfulness standard; and*
- *Apply the helpfulness standard to U-visa certifications*

Hypotheticals:

Is this person eligible for a U-visa certification?

Nusheen

Nusheen entered the United States five years ago on a tourist visa. Well after her tourist visa expired, she met Ali, through a friend at her mosque. After a brief period, they married and bought a home together. Nusheen was living a very happy life with Ali until one day, during a home invasion robbery, Ali was murdered in the couple's living room while Nusheen was sleeping in their bedroom. Nusheen never saw the perpetrator. However, several neighbors did see him. Nusheen was contacted by the police and she told them everything she knows but could not describe the perpetrator. The police also spoke with the neighbors and they gave the police a description of the perpetrator.

Li

Li is an 18 year old Chinese national. A friend introduced him to a “snakehead” who would take him from China to the United States for a fee of \$75,000. Through the snakehead, Li was taken from China to Hong Kong and then given a fake passport, which he used to enter the United States. Li now works in a Chinatown restaurant. Li works seven days a week and most of his wages are taken from him to pay the snakehead, room and board, and other “fees”. When Li asked to work fewer hours so he could go to school, his employer shoved him against a wall and told him to never ask again. Li has made contact with a Chinatown-based police officer who is fluent in Mandarin. The officer has encouraged Li to report the restaurant to the Department of Labor and work with his department’s trafficking unit to report the snakeheads. Li has agreed to do both.

Maricela and Diego

Maricela and Diego paid a “coyote” to take them to Kansas where they now work at a poultry plant. After payday, they were both robbed by three gang members who think of immigrants like Maricela and Diego as “walking ATMs” because they don’t have bank accounts and carry a lot of cash on them. In addition to losing their wages, both were beaten and Maricela was sexually assaulted. Upon encouragement by their friends, they reported the incident to their local police. Maricela and Diego were able to give the police descriptions of the assailants and the police were successful in apprehending three people who matched the descriptions a few days later. However, Maricela and Diego refuse to press charges because they fear retaliation.

Large Group Discussion:

What constitutes helpfulness?

Helpfulness -- Regulations

- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once assess victim's helpfulness
- Investigation need not be complete to certify
- Statute: Has been helpful, is being helpful or is likely to be helpful in the
 - detection, or
 - investigation or
 - prosecution

Past, Present OR Future Helpfulness Examples

- **Calling 911 to report a crime**
- **Providing a statement to the police**
- **Filing a police report**
- **Seeking a protection order**
- **Witness in a prior prosecution OR investigation**

Helpfulness

- **Reporting a crime with no further investigation**
- **Past crime when victim did not know/feel safe to report**
- **Perpetrator absconds or is subject to immigration removal**
- **Prosecuted for a different crime**
- **Not needed as a witness**
- **Victim is dead (indirect victim qualifies)**
- **Perpetrator is dead**
- **Victim has a criminal history**
- **Victim is subject to immigration enforcement**
- **Victim fully discloses story after better understanding rights and meaningful language access**

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Lunch

Identifying and Addressing Difficult Issues for Law Enforcement on U-visa Certifications

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

- *Identify the reasons why law enforcement agents are not always signing U-visa certifications*
- *Anticipate and overcome such challenges*

Small Group Discussion

When you consider taking the information you are learning today back to your agency, what concerns do you think your Chief/Sheriff or other officers will have?

Large Group Discussion

Report back and discuss the small group responses

Responding to Certification Concerns

- Do not want to confer citizenship on victim
- Believe that undocumented immigration status is a federal offense
- Not police officer's responsibility
- It is the responsibility of Homeland Security
- Victim is uncooperative
- Victim no longer helpful
- Crime occurred a long time ago
- Case closed
- Perpetrator is dead
- Perpetrator cannot be found or identified

Materials: Frequently Asked Questions

Small Group Discussion

What will you do regarding the U-Visa when you return after this training?



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Large Group Discussion

Report back on steps they would like to take when they return back to their agencies to facilitate U-visa certifications at their agency

Protocols and Community Partnership

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

- *Draft an effective certification protocol*
- *Identify community outreach tools to improve your department's protection of undocumented victims*

Small Group Discussion Protocols

**Review City of X the law enforcement certification
protocol**

- **What is missing?**
- **How could the protocol be improved?**
- **Other problems with the protocol?**

Large Group Discussion Protocols

**What should a U-visa certification protocol
include?**

Materials: Sample Protocol

Large Group Discussion

- **How could you build meaningful relationships with immigrant victims and immigrant communities using this policy?**
- **How could you share information about this tool with other law enforcement colleagues?**
- **How could your agency help other law enforcement agencies that do not yet have a U-visa policy or protocol?**

Discussion with Advocates

- **What services are available to help immigrant victims?**
- **Who are the agencies to whom law enforcement can refer victims they identify who may be eligible for immigration relief?**



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Evaluations

Award Certificates to Attendees

For follow-up, contact:

For technical assistance:

202/326.0040 or iwp@legalmomentum.org

For materials on U-visa and immigrant victims legal rights www.iwp.legalmomentum.org