Everything Law Enforcement Needs to Know about Forms of Immigration Relief

Iowa Victim Justice Symposium
Des Moines, Iowa
September 11, 2018
Participant Introductions, Goals and Expectations
Learning Objectives

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

• Understand Violence Against Women Act (VAWA) immigration relief available to immigrant victims of crime

• Use the U and T visa programs to effectively to enhance work of law enforcement and prosecutors work with immigrant victims and how it ultimately improves community safety

• Hold offenders more accountable by using the U Visa certification process as a crime fighting tool

• Understand what is the eligibility criteria and best practices for signing U visa certifications
General Caveats

- Women, men and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas
- *That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault*
How Best Practices in Domestic Violence Investigations Promote Officer Safety
PROTECTIONS FOR IMMIGRANT VICTIMS

**T VISA**
For victims of trafficking
- If approved, benefit provides:
  1. Up to four years of temporary nonimmigrant status
  2. Work authorization
  3. Federal social services benefits
  4. Ability to apply for permanent status
- To apply: USCIS Form I-914
- CONSIDERATIONS
  - Must be in the US on account of the trafficking
  - Law enforcement certification is encouraged but not required

**VAWA**
For victims of Domestic Violence, married to US citizens or permanent residents
- If approved, benefit provides:
  1. Protection from removal
  2. Work authorization
  3. Ability to apply for permanent status
- To apply: USCIS Form I-360
- CONSIDERATIONS
  - Perpetrator must be US citizen or Lawful Permanent Resident spouse or parent or US citizen adult son or daughter
  - Qualifying crime must be in the US or have violated US law
  - Must have law enforcement certification

**U VISA**
For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, Other Serious Crimes
- If approved, benefit provides:
  1. Up to four years of temporary nonimmigrant status
  2. Work authorization
  3. Ability to apply for permanent status
- To apply: USCIS Form I-589
- CONSIDERATIONS
  - Victims of a severe form of human trafficking and who may be potential witnesses, or filed a civil action
  - Law enforcement support is required

**SIJS**
Special Immigrant Juvenile Status for child victims
- If approved, benefit provides:
  1. Protection from removal
  2. Work authorization
  3. Federal social services benefits
  4. Ability to apply for permanent status
- To apply: USCIS Form I-360
- CONSIDERATIONS
  - Must have juvenile court order
  - For victims of abuse, abandonment, or neglect by one or both parents

**CONSIDERATIONS**
- Must fear persecution on account of race, religion, nationality, political opinion, or membership in particular social group
- Law enforcement certification is encouraged but not required

**ASYLUM**
For victims of persecution
- If approved, benefit provides:
  1. Asylee status
  2. Work authorization
  3. Federal social services benefits
  4. Ability to apply for permanent status
- To apply: USCIS Form I-589

**CONTINUED PRESENCE**
For victims of trafficking
- If approved, benefit provides:
  1. Protection from removal designation may be granted initially for a period of 2 years and renewed in increments of up to 2 years
  2. Work authorization
  3. Access to federal social services benefits
  4. Ability to apply for permanent status
- To apply: USCIS Form I-914

**ASYLUM**
For victims of persecution
- Must have juvenile court order
- For victims of abuse, abandonment, or neglect by one or both parents
- If approved, benefit provides:
  1. Protection from removal
  2. Work authorization
  3. Federal social services benefits
  4. Ability to apply for permanent status

**CONSIDERATIONS**
- Law enforcement support is required

National Immigrant Women’s Advocacy Project at the American University
Washington College of Law
Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent’s behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor’s behalf
  - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied
Coercive Control Over Immigration Status

• Among abusive spouses who could have filed legal immigration papers for survivors:
  – 72.3% never file immigration papers
  – The 27.7% who did file had a mean delay of 3.97 years.

• 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

What barriers and fears prevent immigrant victims from reporting crime?
If they report...

• They will be deported
• Offender will retaliate
  • Harm them
  • Harm family members, children
• Nothing will happen
• Cannot communicate with officers
Major Challenges in working with Immigrant Victims of Crime

1. Fear of deportation
2. Language
3. Lack of knowledge of legal rights
4. Do not trust that police/prosecutors will help them
5. Lack of reporting and/or cooperation as the case moves forward
What countries do the victims in your jurisdiction come from?

*These slides were produced by The National Immigrant Women’s Advocacy Project (NIWAP) at American University, Washington College of Law and Legal Momentum and was supported by Grant Number 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U. S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.
Iowa Demographics (2016)*

- Total foreign born population – 149,122
- 4.8% of the state’s 3 million people is foreign born
  - 37% naturalized citizens
  - ~58.7%^ legal permanent residents and temporary visa holders (2012 data)
  - ~2.7%^ undocumented (Immigration Policy Center 2012 data)
- 63.7% rise in immigrant population from 2000 to 2013
- High proportion of new immigrants
  - 24.4% entered in the 1990s
  - 53.7% entered 2000 or later
- 9.8% of children in the state under age 18 have one or more immigrant parents
  - 82.6% of these children are native-born U.S. citizens

^ The Department of Homeland Security no longer reports on lawful permanent resident or temporary visa holder statistics

### Iowa – Countries/Regions of Origin (2016)*

<table>
<thead>
<tr>
<th>Region</th>
<th>Percentage</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latin America</td>
<td>38.4%</td>
<td>Mexico (27.9%), El Salvador (2.5%)</td>
</tr>
<tr>
<td>Asia</td>
<td>35%</td>
<td>India (7.5%), China/Taiwan (6.7%), Vietnam (3.6%)</td>
</tr>
<tr>
<td>Europe</td>
<td>15.5%</td>
<td>Eastern Europe (9.5%), Western Europe (3.2%)</td>
</tr>
<tr>
<td>Canada</td>
<td>2.7%</td>
<td></td>
</tr>
<tr>
<td>Oceania</td>
<td>0.3%</td>
<td></td>
</tr>
<tr>
<td>Africa</td>
<td>8%</td>
<td>Northern Africa (1.8%), Western Africa (1.8%)</td>
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**Limited English Proficiency (speaks English less than very well)**
- Naturalized citizens (37.2%)
- Noncitizens (59.3%

**Languages spoken at Home**
- Spanish (51,637)
- French (1,788)
- German (3,234)
- Other Slovic Languages (4,318)
- Chinese (7,066)

Language Access

Best practices to successfully investigate and prosecute cases involving non-English speaking victims
U Visas as a Crime Fighting Tool

Improving the reporting, investigation, and prosecution of violent crime
& keeping everyone safer
What, if anything, do you know about U Visas?
Overview of the U Visa

• What is the U visa?
• Purpose: Why does it exist?
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
• Offender may be citizen or non-citizen
• Can be “revoked”
• Increases immigrant victim participation in criminal justice system
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
Major Forms of Relief

• VAWA self-petition
  – Abuse by US citizen or lawful permanent
    • Spouse, former spouse, parent, step-parent, over 21 year old child

• Special Immigrant Juvenile Status
  – Immigrant children abused, abandoned or neglected by one of their parents
    • (U.S. or abroad)

• T Visa

• U Visa
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 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
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%
### 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*
Who can apply?

• Victims of qualifying criminal activity
• Parents and guardians can apply as an “indirect victim” if:
  – the victim is a child under 21 years of age and/or
  – is incompetent, incapacitated, or deceased due to murder or manslaughter
• Bystanders victimization – very limited
• For child victims a “next friend” can provide helpfulness
Who Can Certify?

“law enforcement” & “law enforcement agencies” =

• Federal, state, and local
  – Police, sheriffs, FBI, HSI, ATF...
  – Prosecutors
  – Judges, magistrates, Commissioners

• Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
• Child and elder abuse investigators and agencies
• Other government agencies
U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
  - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime
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?
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 victim’s U visa eligibility
When should you certify?
Timeline

• Certification must be included in the initial application for a U Visa

• Once the initial application is processed:
  – Victim is entered into a database and flagged as an applicant for a U Visa

• Immigration proceedings will not be initiated
• Offender can not intimidate with threats
The U Visa Application Process

Certification → Application & supporting documentation → Decision by DHS

Typical length of process = 36 - 48 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
How does law enforcement and prosecution benefit from the U visa?
U Visa Benefits to Law Enforcement and Prosecutors

- 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
Helpfulness in 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
What does it mean for a victim to “unreasonably refuse” to provide assistance?
Helpfulness can be satisfied even if:

- Victim reports a crime where there’s no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is subject to immigration removal
- The perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history or is subject to immigration enforcement
- Victim fully discloses story after better understanding rights, the U-visa and meaningful language access
Why would a victim report a crime and then refuse to participate in the ensuing investigation and trial?
Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from either family
- Financial hardship
- Lesser of two evils
Evaluating Whether Victim’s Refusal to Provide Assistance/Cooperation was “Unreasonable”

• Considerations:
  – Totality of the circumstances, including the nature of the victimization
  – Victim’s fear or the abuser
  – Trauma suffered
  – Force, fraud or coercion
Prosecution Specific Issues
Does your agency have a U Visa Policy/Procedure?
Victim Assistance Specialist
SAC St Paul

Deborah Morrison
Phone: 952-858-5427
deborah.morrison@dhs.gov
National Immigrant Women’s Advocacy Project
Resources
Types of Technical Assistance

• Case consultations
• Training materials and practice tools
• Legal research, motions, briefs
• In-person trainings and webinars
• 24/7 web library and training videos
• Help developing policies/protocols
• Strategies for removing systemic barriers
• Community of Practice and Roundtables
• List serves
NIWAP Topics

• VAWA, U and T Visas, Gender based asylum, SIJS
• VAWA confidentiality
• U and T Visa certification
• Language access and legal services access
• Immigration allegations in custody, CPOs, and divorce
• Special Immigrant Juvenile Status (SIJS), child abuse, and protective battered immigrant parents
• Public benefits access for immigrant victims
  – Health care, housing, TANF, SNAP, FAFSA, and more
• Serving victim’s cultural, religious, and immigration needs
• Providing trauma informed help for immigrant survivors
Interested in Joining the Community of Practice or Roundtable

• Application available at: http://niwap.org/go/COPapplication

• To register for the Law Enforcement & Prosecution U Visa Roundtable, visit http://niwap.org/go/LEARoundtables/
Resources

- **Technical Assistance**
  - Call: 202.274.4457
  - Email: niwap@wcl.american.edu

- **Materials on U visa and Immigrant Victims Legal Rights**
  - Visit [http://niwaplibrary.wcl.american.edu](http://niwaplibrary.wcl.american.edu)
  - U Visa Certification Toolkit
  - DHS Answers to Law Enforcement Reasons for Not Certifying
  - USCIS Q & A on U Visa Certification
  - Roll call training videos
  - All available at: [http://niwap.org/lawenforcement](http://niwap.org/lawenforcement)
Technical Assistance and Materials

• Materials for this training:
  – www.niwap.org/go/iowa2018

• NIWAP Technical Assistance:
  – Call (202) 274-4457
  – E-mail niwap@wcl.american.edu

• Web Library:
  www.niwaplibrary.wcl.american.edu
THANK YOU