

U-Visa Legal Advocacy: Overview of Effective Policies and Practices

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Overview

A review of the experiences reported by grantee organizations of the Legal Assistance for Victims (LAV) Program, administered by the Office on Violence Against Women (OVW),ⁱⁱ shows that these grantees are making a positive difference in the lives of immigrant victims of crimeⁱⁱⁱ seeking U-visas. This paper looks at the barriers encountered, successes achieved, and lessons learned by Legal Assistance for Victims (LAV) grantees in their advocacy on behalf of these victims. It is based on reviews of narrative data provided by LAV grantees in their semiannual progress reports submitted to OVW between July, 2007 and June, 2009. The most significant finding of these reviews is that the successful collaborations with law enforcement agencies that grantee programs have built over time, working on a range of domestic violence and sexual assault issues, have led to more positive outcomes for immigrant victims seeking U-visas. These collaborations have generally included the following:

1. Training, education, and development of training materials for law enforcement and other U-visa certifiers;
2. Ongoing one-on-one communication between law enforcement and LAV victim advocates and attorneys that often involved collaborative work on cases or projects resulting in relationships of mutual respect and trust;
3. Tools provided to law enforcement to help them inform victims about the U-visa and other VAWA immigration relief.

The LAV grantees also reported that participation in more comprehensive collaborations involving advocates, attorneys, and a wide range of community-based and governmental agencies contributed to success in their U-visa advocacy work.

U-Visa Stories

A farm worker who was the mother of a one-year-old son was brought to this country by the father of her son and her unborn child. After being beaten with an electrical cord and kicked in the stomach, the woman became very ill and later gave birth to a baby girl who died an hour after delivery. The LAV advocate had met this woman on the farm, facilitated her transportation to the hospital, and had referred her for emergency shelter services. The LAV attorney worked on the U-visa case and family offense petition, in conjunction with the criminal order of protection. The LAV grantee worked with the hospital and a local funeral home to arrange for the funeral of the newborn, and also worked with local churches to secure an apartment for the mother and her son. At the time of the report, this U-visa eligible mother was in the process of securing legal work authorization. Her perpetrator received a 12-year prison sentence. The LAV grantee was continuing to provide case management and legal services for the family.

What is the U-visa?

Congress created U-visa immigration relief in response to alarming statistics regarding the vulnerability of undocumented persons to crimes and the incidence of crimes committed against them.^{iv} The U-visa offers immediate protection against retaliation and the ability to access crime victim assistance for noncitizen victims who a) have suffered *substantial physical or mental abuse* from criminal activity; b) who have information about such criminal activity; and c) who have helped, are helping, or are willing to be helpful to government officials in the detection, investigation, or prosecution of criminal activities committed against noncitizens.

Who is a victim?

A victim, for the purposes of the U-visa, can be either a direct victim^v—that is, an individual who has suffered direct harm or who is directly or proximately harmed as a result of the criminal activity^{vi}—or an indirect victim, an individual who is a family member (e.g., a parent, child, or sibling) of a direct victim of murder or manslaughter, or of a victim who is incompetent or incapacitated.^{vii} The U-visa covers the violent crimes of domestic violence, felonious assault or sexual assault, incest, torture, murder, or manslaughter; crimes that restrict the victim's movements, including kidnapping, false imprisonment, peonage, trafficking, or being held hostage; and crimes of coercion of victims and witnesses including extortion, blackmail, witness tampering, and obstruction of justice.^{viii}

Why is the U-visa needed?

In creating the U-visa, Congress understood the relationship between fear of deportation, and an immigrant victim's reluctance to come forward to assist in the detection, investigation, or prosecution of crimes committed against them. Fear of deportation and a lack of trust of law enforcement often prevent immigrant victims of domestic violence, sexual assault, and human trafficking – particularly those who are undocumented – from calling the police for help. Though undocumented immigrant women are more likely to be subjected to domestic abuse and are particularly vulnerable to sexual assault, they are less likely to approach law enforcement.^{ix} Moreover, abusive partners and employers may use the threat of deportation to keep immigrant women submissive and to prevent them from leaving or seeking help.^x

How does an individual qualify for a U-visa?

In order for noncitizens to qualify for the U-visa, they must provide proof that they have helped in the detection of crimes committed against them, or in the criminal investigation or prosecution of the crime. That proof must include certification from one of the following sources: a law enforcement agency, a prosecutor, a judge, the Department of Homeland Security, a child or elder abuse investigator, the Equal Employment Opportunity Commission, the Department of Labor, or other state or federal government official.^{xi} *There is no requirement that the criminal investigation lead to a prosecution of the case; reporting the crime and cooperating with law enforcement is enough. There is no requirement that an individual serve as a witness at a trial or provide testimony*, since the decision about whether to go forward in a criminal prosecution is out of the hands of the victim.

What is U-visa certification and who can certify?

The Department of Homeland Security's (DHS) form for certification (I-918 Supplement B) asks for the following information from the certifying official: the criminal activity that occurred; the state criminal code section violated; the identity of the victim; any injuries observed; helpfulness-- past, present, or likelihood of future --of the victim in the detection, investigation, prosecution, conviction, or sentencing; and the names of any immediate family members involved as perpetrators of the criminal activity. Once completed, the form is provided to the victim and her advocate or attorney.

The U-visa regulations require that the head of the agency may sign certifications or may issue a letter delegating this authority to one or multiple supervisory officers at the agency who are named in the letter. A copy of this letter is provided to victims along with the signed certification.

What are the problems and barriers for individuals seeking U-visas?

Law enforcement practices

Problematic law enforcement responses to incidents of violence against immigrant victims cited by LAV grantees have also historically been problematic for non-immigrant victims of domestic violence, sexual assault, or stalking. For example, grantees reported that some officers and departments engaged in the following practices:

- Did not arrest abusers and/or only issued warnings;
- Arrested both the victim and the abuser or arrested only the victim (often because only the batterer, who spoke English, was interviewed);^{xii}
- Tried to dissuade victims from pressing charges or filing a police report;
- Only interviewed the batterer, who spoke English, and did not interview the victim or used inappropriate persons (e.g., the abuser or family members) to interpret for a limited English proficient victim;
- Wrote incident reports indicating that the batterer had engaged only in disorderly conduct or harassment, neither of which were unlikely to result in charges;
- Did not believe the victim, particularly in cases of sexual assault and stalking;

- Failed to inform immigrant victims of their legal rights, including their rights to pursue VAWA or U-visa immigration relief.

Even where abusers of immigrant victims were arrested and charges brought against them, grantees reported that some law enforcement agencies were slow to respond to requests from those victims and/or from their advocates or attorneys for assistance with the U-visa process (e.g., for U-visa certifications or for copies of police reports and other evidence). Police officers and/or departments that were not knowledgeable about U-visas and the certification process was slow to refer immigrant victims to LAV-funded agencies and were less likely to return calls from them. Some law enforcement agencies had not designated a person to sign the U-visa, which in effect meant that the agency did not sign U-visa certifications.

There were also reports of law enforcement agencies whose practices were inconsistent with U-visa regulations and with the purpose and intent of Congress in designing U-visa protections for immigrant crime victims. Examples included agencies that refused to sign U-visa certifications when:

- The crime was no longer under investigation by the police department;
- The prosecution of the crime was pending;
- There was no prosecution of the crime;
- The U-visa eligible individuals were family members of murder and manslaughter victims;
- The victim had not submitted medical evidence verifying substantial physical or emotional injury; or
- The department's U-visa protocol had not been completed and implemented.

Grantees reported that some law enforcement officers refused to sign certifications because they incorrectly believed that by doing so they were awarding legal immigration status to the victim.^{xiii} Other agencies mistakenly believed that the department had to develop a protocol before U-visa certifications could be signed. In fact, while U-visa regulations and practice encourage the development of protocols,^{xiv} the only requirement is completion of the DHS U-visa certification form.

Certification delays cause economic hardship and high levels of anxiety for the immigrant victims served by LAV grantees. Coupled with U-visa processing times, these delays leave victims vulnerable to ongoing threats and/or retaliation from their perpetrators, ultimately undermining the ability of victims to cooperate in the prosecution of their abusers. Refusing or delaying certification denies victims the early access to protection from deportation that the U-visa sought to provide.^{xv}

Court practices

Grantees noted that certain court policies and practices actually placed victims in increased danger, such as failing to extend temporary civil protection orders when a continuance has been granted to secure assistance from qualified interpreters.

Another example cited was the policy of some civil courts to delay issuing protection orders or making decisions on custody and child support until related criminal cases are resolved. Leaving child custody undecided gives a domestic violence perpetrator a powerful tool with which to coerce the victim to stop cooperating with law enforcement officials investigating the abuser's criminal activities. Grantees reported that when immigrant victims sought and were denied protection orders and custody of their children, or encountered significant problems in securing other relief in civil court proceedings, they were much less likely to file for a U-visa and cooperate in their abusers' prosecution. Victims who filed for U-visas and were not granted protection order and family court relief (such as custody and child support) often returned to their abusers, making it more difficult and dangerous for them to cooperate in criminal investigations or prosecutions against their abusers.

Yet another example cited by grantees was immigration enforcement officers showing up in protection order and custody courtrooms, despite federal laws that prohibit enforcement actions at courthouses.^{xvi} When immigration enforcement actions occur at or near courthouses, immigrant victims may be unwilling or unable to seek civil protection orders, or to participate in prosecutions of their abusers.

Other barriers

Grantees reported two other systemic barriers that affected eligible immigrant victims' ability to seek help, be safe, and file for U-visa immigration relief:

- Limited English proficiency (LEP)/governmental entities (police, prosecutors, courts) that failed to obtain qualified interpreters ; and
- Lack of transportation (which compounds isolation, a common element of intimate partner violence);

When the LAV grantee was providing services in a less densely populated or rural area, lack of interpreters, lack of transportation, and limited community resources and support services compounded difficulties with processing U-visa cases. In these instances, language and transportation issues prevented victims, especially indigent ones, from fully accessing the justice system, social services, and other supports.

U-Visa Stories

A woman who came to the United States on a tourist visa from Korea met a man through their mutual friends. Within a couple of months they married in a religious ceremony. While he was a religious man and seemed affectionate when she met him, after the marriage he got mad over small matters, screamed at her on the street, and was verbally abusive. She took her marriage vow very seriously and felt she had no other choice but to pray to God to save the marriage. After a serious incident of physical violence, the woman told him that she wanted to end the relationship. Shortly thereafter the abuser repeatedly punched her face, head, chest and body. He then put his hands around her neck and squeezed it hard until she could not breathe. As a result of this incident, the man was arrested and charged with attempted murder. After being referred to the LAV grantee, the immigrant battered woman cooperated with the investigation and prosecution of the crime, including testifying before the grand jury. A U-visa application was submitted on her behalf. This person has said that she feels she can rely on the police, the prosecutors, and the legal system to secure her safety.

Lessons learned: What contributed to successful outcomes in U-visa cases?

It is clear, based on the LAV grantee reports, that collaboration between the victim's legal representative and/or victim advocate and local law enforcement is essential to successful U-visa cases. In the absence of a successful collaboration, U-visa cases may not be able to move forward, since the victims being represented by LAV grantees must request copies of evidence of the crime committed against them and obtain U-visas certification from law enforcement agencies.

Grantee reports revealed that this collaboration most often led to positive results for their clients when law enforcement officers engaged in the following practices when first responding to the violent incident:

- Conducted a predominant aggressor/perpetrator assessment that correctly identified the victim, even in situations where the victim actively defended herself, or allowed the perpetrator access to the home in spite of a stay-away order;
- Interviewed victims separately from the perpetrator;
- Conducted interviews in the victim's native language, using a qualified interpreter;
- Informed victims about their rights, including their right to a U-visa;
- Arrested the abuser;
- Brought victims to the hospital or referred victims to a community health clinic.

Grantees also described successful collaborations where law enforcement officers called the legal aid agency or a shelter, and put victims in contact with appropriate legal, victim advocate, or social service referrals. Officers who took steps to connect victims with advocates and/or lawyers also wrote more comprehensive and detailed reports that were helpful to the processing of the victims' U-visa.

What are the elements of successful collaboration?

Review of grantees' reports revealed a number of elements common to successful collaboration with law enforcement. Grantees reported that *continuous and comprehensive training*, in both formal and informal settings, often improved relationships between law enforcement and LAV-funded agencies. Training was most effective when it focused on issues other than the dynamics of domestic violence, such as safety response protocols, the dynamics of perpetrators, available services for immigrant victims, and available immigration relief, such as the U-visa.

Ongoing communication with law enforcement officials was also a recurring theme. Often, attorneys and victim advocates assisted law enforcement on domestic violence and sexual assault cases. When the contact between the legal service agency and/or victim advocates and the law enforcement agency was *individualized* and relied upon *personal relationships* that were *developed earlier and sustained over time*, the success in working with law enforcement on the U-visa and certifications was even greater. For instance, grantees reporting success in this area stated that the *head of their agency* met with the *head of the police department* on a regular basis, or that staff from both agencies knew each other on a *first-name basis*. Finally, *participation in community collaboration projects* with community agencies, medical centers, shelters, and other agencies created *multi-agency cooperation* facilitated access to U-visa certification and immigration relief.

U-Visa Stories

An immigrant woman was referred to the LAV grantee by her medical clinic, after they learned of the years of horrific physical, emotional, and verbal abuse she and her three children had endured from the children's father. He beat her during her pregnancies, kicked her out of their home in the middle of the night in her nightgown, and taunted her by grabbing their two-year-old son and running through traffic. He hit the mother in front of the children and sometimes hit the children just to upset her. Several times he was charged not only with domestic violence but also with child endangerment and each time he promised that he had gotten help. Afraid she could not support their children without him, the immigrant battered woman returned to the relationship. Even though she feared retaliation, she finally disclosed the abuse at the clinic because she was desperate to get some support for the children, who were showing the consequences of the abuse. The LAV grantee helped her file successful applications for U-visas for herself and her oldest son. At the time of the report, this woman was working and her children were recovering while living in a safe and nurturing environment.

LAV agencies' staff reported providing ongoing training and cross-training to law enforcement officers, prosecutors, family and criminal court judges, federal investigators, child and adult protective services workers, advocates, and attorneys on the following topics:

- The purposes of the U-visa and how to identify U-visa eligible victims;
- The dynamics of domestic violence and sexual assault as experienced by immigrant victims;
- The critical role of U-visa certification in an immigrant victim's U-visa case;
- The role of the U-visa as a support for community policing and the detection, investigation, and prosecution of crimes;
- That U-visa certification is only one piece of evidence that the victim must submit in support of her application for a U-visa and does not give the victim legal immigration status;^{xvii} and
- That a U-visa is a temporary visa that lasts for four years and does not lead directly, or necessarily, to lawful permanent residency.^{xviii}

Grantees also reported training law enforcement leaders and supervisors on U-visa certification and developing training materials that law enforcement trainers could use to train both experienced officers and new recruits on the U-visa. Finally, grantees provided training for consulate staff on VAWA immigration relief and the U-visa, in particular so they will provide duplicate passports and identity documents to victims when those documents have been taken or destroyed by perpetrators.

What worked to improve court practices and language and transportation barriers?

Not surprisingly, LAV grantees reported that training judges and other court staff on issues relating to family violence and immigration helped to alleviate some of the issues and barriers presented by court practices that further endangered immigrant victims.

To address language barriers, grantees reported the following strategies:

- Developing a language access protocol for law

enforcement and prosecution agencies and courts^{xix} that frequently come into contact with LEP immigrants and disseminating this protocol to other jurisdictions and agencies;

- Translating materials available in English and Spanish regarding sexual assault and domestic violence into additional needed languages to disseminate to staff at hospitals and law enforcement and mental health agencies; and
- Partnering with other programs to recruit new interpreters, train bi-lingual persons to become interpreters, and provide interpreters training that addresses the dynamics of domestic violence and/or sexual assault and codes of ethics for interpreters.

To address transportation issues, grantees described extending the reach of their services through mobile clinics, weekly satellite office hours in more rural areas, and toll-free statewide hotlines.

What can you or your agency do to assist U-visa eligible victims?

The narratives of LAV grantees and the stories of immigrant victims of violence whose lives have been transformed as a result of the U-visa and related advocacy testify to the importance of this work and to the critical role a coordinated community response and interagency collaboration play in achieving successful outcomes for immigrant U-visa eligible victims.

The following approaches and practices of LAV grantees may also be helpful to you, your agency, and your community partners as you explore how to make U-visas more accessible to eligible victims:

- Take an open, problem-solving approach;
- Listen to law enforcement officers' perspectives;
- Address concerns regarding who can sign U-visa certifications;
- Provide information to support law enforcement officers' ability to respond to questions raised by other officers, supervisors, or the chief within the department with regard to U-visa; and
- Be clear about and respectful of the role that victim advocates, legal services providers, and law enforcement each play in working with victims.

Whether you are an advocate, an attorney, a police officer, a prosecutor, a child or adult protective services worker, or an EEOC investigator, the experiences of LAV grantees can serve as guideposts as you consider your own work with immigrant victims of violence. Whether or not these victims become permanent residents of this country, the goal of providing a safe haven for them and their children – and protecting them from violent criminal activities while they are here – is unquestionably a worthy one.

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ⁱⁱⁱ LAV grantees provide legal representation and advocacy to victims of sexual assault, domestic violence, dating violence, and stalking. In order for these grantees to advocate on behalf of U-visa victims, the crimes must involve one or more of these.

^{iv} The U-visa was created in 2000 to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status," and to this "while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." Section 1513(a) (1) and (2) of the Violence Against Women Act of 2000.

^v 8 CFR §214.14(a) (14).

^{vi} *Id.*

^{vii} See 8 CFR §214.14(a) (14) (i). See Q&A from CIS Ombudsman's Teleconferences (October 17, 2008).

^{viii} See INA§101(a) (15) (U) (iii). Listed crimes also include: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, hostage taking, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above crimes, or any similar activity in violation of federal state, or local criminal law.

^{ix} G.A. Hass, et. al.. *Battered Immigrants and U.S. Citizen Spouses* (June 30, 2006) available at <http://www.mincavaumn.edu/cgi-bin/documents/>; Leslye Orloff,et. al. *Battered immigrant women willingness to call for help and police response*.13 UCLA Women's Law Journal, 2 (2003); Jessica Mindlin, et. al., , *Dynamics of Sexual Assault and the Implications for Immigrant Women*, in "Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault" (Legal Momentum 2011) available at <http://iwp.legalmomentum.org/cultural-competency/dynamics-of-violence-against-immigrant-women/1%20Dynamics-%20OVW%206.25.2010.pdf>/view.

^x In passing the Violence Against Women Act in 1994 Congress included immigration protections because domestic violence is "terribly exacerbated in marriages where one spouse is not a citizen and the noncitizens' legal status depends on his or her marriage to the abuser" because it places full and complete control of the alien spouse's ability to gain legal status in the hands of the citizen or permanent resident. H.R. REP. No. 103-395, at 26.

^{x1} See INA §101(a) (15) (U) (i) (II). The proof of helpfulness is a certification which is signed by law enforcement using Form I-918, Supplement B.

^{xii} In communities that are participating in the DHS's Secure Communities program, the arrest of the victim will include taking and turning over the victim's fingerprints to DHS which will result in undocumented victims being turned over to DHS for detention and removal.

^{xiii} Under the U-visa statute and regulations, certification is just one piece of evidence that victims must submit to the Department of Homeland Security (DHS). Other requirements include proof of substantial physical or emotional injury, proof of any criminal history, and proof of cooperation or willingness to cooperate with government officials investigating or prosecuting criminal activity. DHS is the sole agency responsible for granting or denying U-visa applications.

^{xiv} A sample model certification protocol has been developed and is being used and adapted in jurisdictions across the country; it is available at: http://iwp.legalmomentum.org/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/U-Visa%20Law%20Enforcement%20Model%20Protocol%20_OVW-BJA_2.11.11.pdf/view?searchterm=model

^{xv} Once a victim has obtained a certification and filed the U-visa case and DHS has agreed that the case is valid, DHS policies require that the U-visa case be "red flagged" to notify DHS enforcement officials not to detain, deport, or initiate an enforcement action against the victim and to dismiss without prejudice any cases pending before immigration judges. If the victim has an open case before an immigration judge, DHS will adjudicate her U-visa within 45 days (30 days if the victim is detained). John Morton, Guidance Regarding the Handling of Removal Proceedings of Aliens With Pending or Approved Applications or Petitions (DHS, August 20, 2010). Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/aliens-pending-applications.pdf>/view.

^{xvi} Immigration and Nationality Act Section 239(e); John P. Torres, Interim Guidance Regarding Officer Procedure Following Enactment of VAWA 2005, Department of Homeland Security January 22, 2007. Available at: http://iwp.legalmomentum.org/vawa-confidentiality/government-memoranda-and-factsheets/VAWA%20CONF_Torres%20ICE%20VAWA%20Confidentiality%20Memo_1.22.07.pdf/view?searchterm=torres.

^{xvii} Victims must also provide the following: evidence of substantial physical or emotional injury; the victim's criminal history, if any; the victim's history of contacts with DHS; and the steps the victim has taken to cooperate with government officials in the detection, investigation, or prosecution of the U-visa listed crime.)

^{xviii} To attain lawful permanent residency, victims must first prove that they were helpful or made efforts to be helpful to law enforcement or did not unreasonably refuse to cooperate in the detection, investigation, prosecution, conviction or sentencing of the perpetrator of the criminal activity. After meeting this criterion, only those who can also prove humanitarian need, family unity, or public interest will be able to attain lawful permanent residency as U-visa victims.

^{xix} The National Center for State Courts has issued model practices and recommendations for courts regarding development of court policies and protocols that facilitate access to protection orders by limited English proficient immigrant victims. See National Center for State Courts, Serving Limited English Proficient Battered Women: A National Survey of Courts' Capacity to Provide Protection Orders (2006) available at http://www.ncsconline.org/d_research/Documents/LEP_NIJFinalReport.pdf