

## National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access<sup>1</sup>

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This report explores police responses to immigrant victims of crime from the perspectives of various service providers, including legal services, pro bono attorneys, social service organizations, domestic violence/sexual assault programs, law enforcement and prosecutors' offices. The data presented are based on the results of a nationwide survey of organizations serving immigrant victims of domestic violence, sexual assault and human trafficking. We assess the effect that a history of ongoing collaboration between victim and legal services agencies and law enforcement has on U Visa certification practices and language access to the justice system. The paper also examines the experiences of working with Limited English Proficiency (LEP) clients and language access in the field and during legal procedures. A key focus of this paper is to identify factors that support improved access to culturally and linguistically appropriate resources and services, including the identification of systemic barriers that impede access.

The paper is divided into three parts with seven sections: Part one concentrates on providers' experiences as they relate to police responses and the U Visa. Part two focuses on Limited English Proficient clients and their access to the justice system and in particular law enforcement. Part three discusses policy recommendations and conclusions.

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The nationwide survey of organizations serving immigrant victims of domestic violence, sexual assault and human trafficking was completed electronically by 722 non-governmental and governmental service providers from across the United States January 2013 and March 2013. Survey participants provided their experiences from working on over 22,000 cases of immigrant crime victims who were survivors of domestic violence, sexual assault, human trafficking and other crimes covered by the U visa.<sup>3</sup>

The U visa is a form of immigration relief created by Congress as part of the Violence Against Women Act of 2000. It offers temporary legal immigration status to immigrants who have been victims of certain criminal activities. In order to qualify for a U visa an immigrant crime victim must have been, is currently being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a listed criminal activity. Victims applying for a U visa must prove that they suffered substantial harm as a result of the criminal activity. The crime victims' application for a U visa must include a certification from law enforcement or other government official documenting the criminal activity that occurred, that the applicant was a victim and the helpfulness of the applicant.

The survey instrument was divided into the following sections:

1. Background,
2. U Visa certification process,
3. Police response to calls from immigrant survivors and
4. Language access and its impact on police response and the U Visa

The survey data collected was entered and analyzed using SPSS 21 (Statistical Package for the Social Sciences) Stata 10 was used to conduct the analysis of the survey response. The data reported here is based on descriptive statistical analysis.

## **Part One: Providers' Experiences with Police Response and U Visa**

### **Section 1: Characteristics of the Responding Service Providers**

A total of 722 service providers participated in the survey. Most survey participants' responses related to issues about working with immigrant crime victims applying for U Visa immigration protections.

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<sup>3</sup> The U Visa regulations define the crimes for which U visa protection is available as follows: "Qualifying criminal activity is defined by statute to be "activity involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; 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 mentioned crimes... The list of qualifying crimes represents the myriad types of behavior that can constitute domestic violence, sexual abuse, or trafficking, or are crimes of which vulnerable immigrants are often targeted as victims." *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*. Vol. 72, No. 179 Fed. Reg. 53014, 53015 September 17, 2007; The Violence Against Women Act of 2013 added stalking to the list of criminal activities covered by the U visa. Violence Against Women Act, Pub. L. No. 113-4, § 802, 127 Stat. 24 (2013).

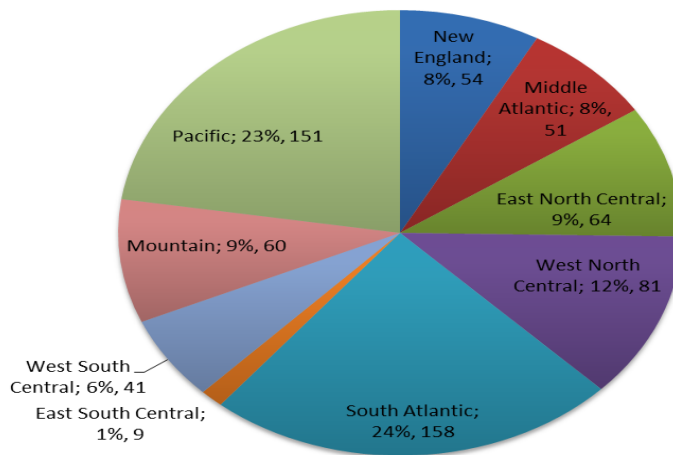
Organizations responding to the survey represented organizations from virtually all states (49 states and D.C.). The only state not represented in the survey was Wyoming. (See Figure 1). States with the highest percentages of respondents (n=669) are California (11.5%, 77), Georgia (8%, 54), Washington (6.1%, 41), New York (5%, 34) and Massachusetts (4.8%, 32).

The survey participants came from all U.S. Census Bureau regions. The Census Bureau divides the country into the following regions and divisions:

- Northeast:
  - Middle Atlantic (NY, PA, NJ)
  - New England (NH, ME, VT, RI, MA, CT)
- Midwest:
  - West North Central (ND, MN, SD, NE, IA, MO, KS)
  - East North Central (WI, MI, IL, IN, OH)
- South:
  - West South Central (OK, TX, AR, LA)
  - East South Central (KY, TN, MS, AL)
  - South Atlantic (FL, GA, SC, NC, VA, DC, DE, MD, WV)
- West Region:
  - Mountain (MT, ID, WY, NV, UT, CO, AZ, MN)
  - Pacific (WA, OR, CA, AK, HI)

**Figure 1**

**Respondents by Census Division (n=669)**

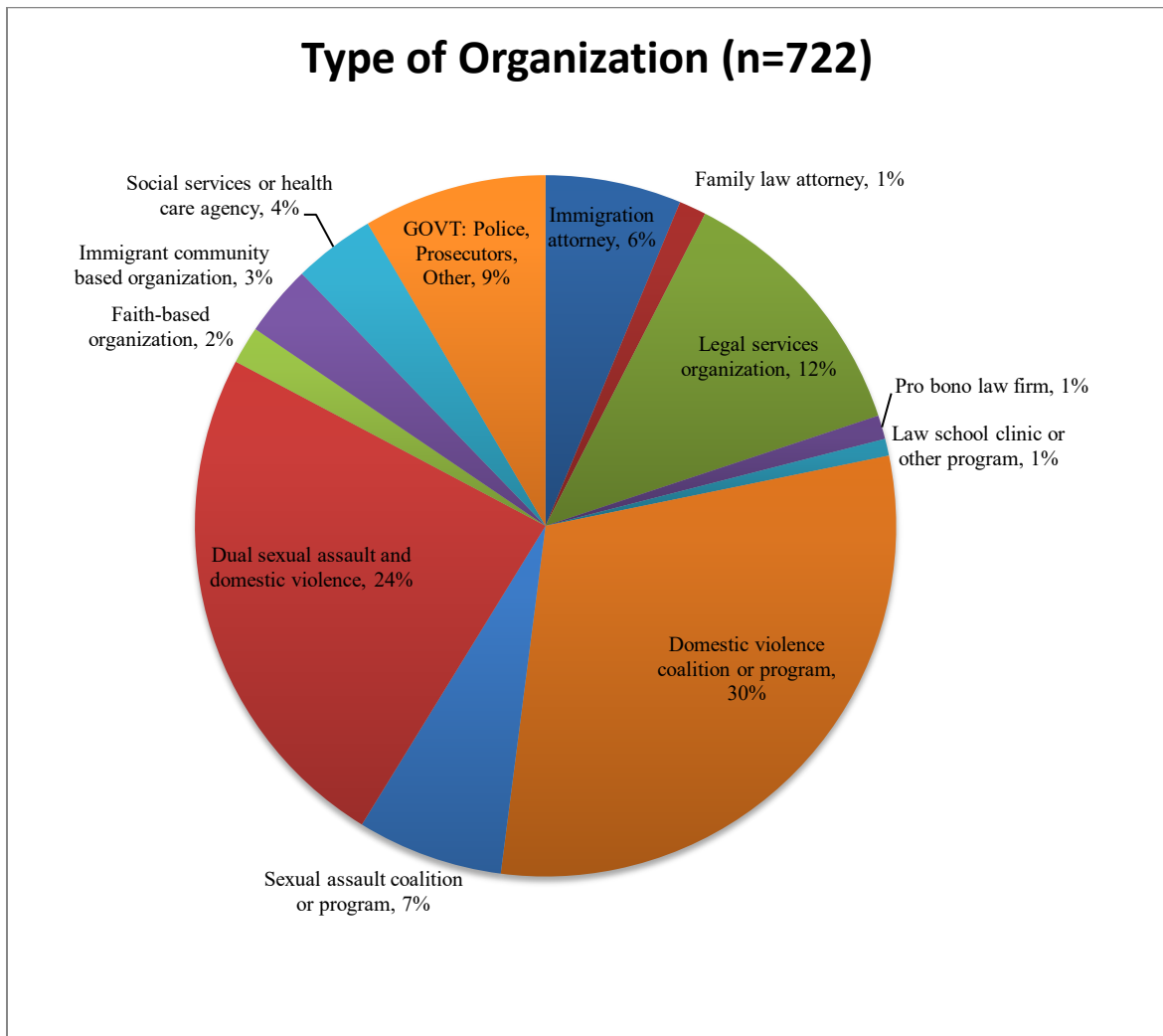


Survey participants were asked to specify the type of organization they represented. Organization type fell into four different categories (See Figure 2):

- Victim Advocacy 56% (n=404)
- Attorney 14.5% (n=150)
- Government 12.7% (n=92)
- Social Service 10.5% (n=76)

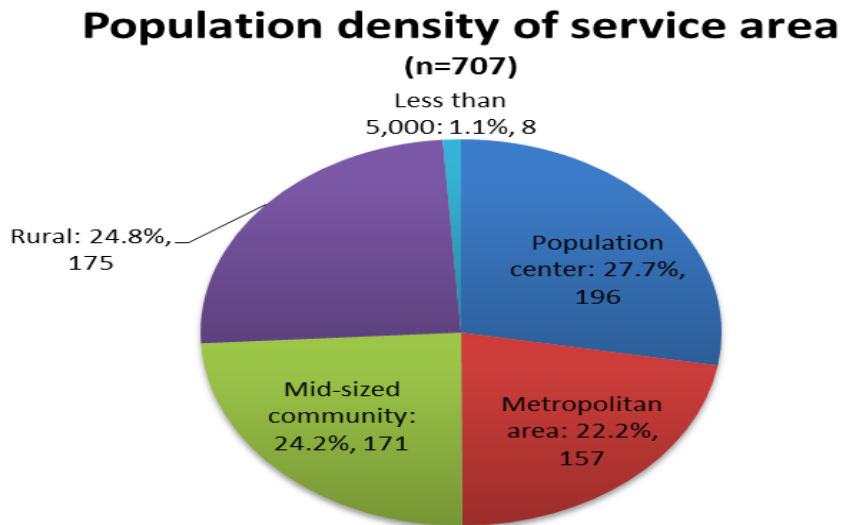
Government agency staff responding to the survey came from a range of government agencies including: police and sheriffs’ departments, prosecutors, district attorneys, state’s attorneys and solicitors’ offices, child welfare agencies, family justice centers, high school English as a second language teachers, juvenile court staff, state and local crime victim assistance agencies, local government human services agency, U.S. military (family advocates and Veterans Centers) and the Consulate of Mexico. Law enforcement agencies alone accounted for 57.6% (n=53) of the government agency staff responding to this survey.

**Figure 2**



Respondents were asked about the number of jurisdictions they serve. Most stated that they served Multiple Counties (35.9%, 255) or One County (34.8%, 247); those serving One State comprised 21% (149) of respondents (See Figure 3). Survey respondents were almost evenly distributed by service areas and no area was either over or underrepresented.

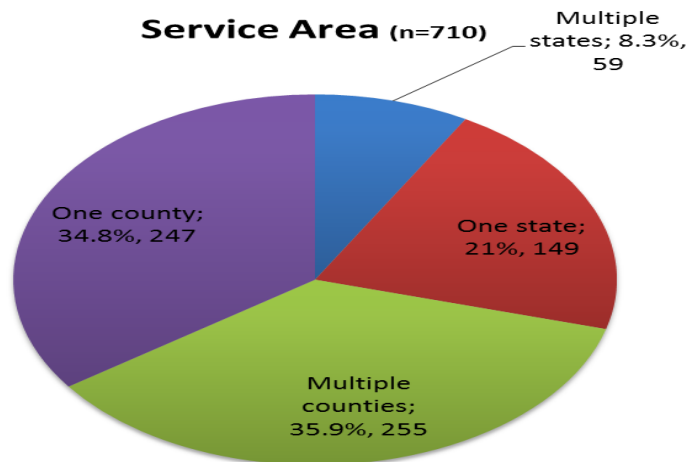
**Figure 3**



Survey participants were also asked to classify their services areas as either –

- “Population center (800,000 or more),”
- “Metropolitan area (400,000 to 799,999),”
- “Mid-sized community (100,000 to 399,999),”
- “Rural (5,000 to 99,000)” and
- “Less than 5,000.” (See Figure 4).

**Figure 4**



Most respondents from population centers were in California, Washington and New York. The majority of respondents from metropolitan areas and mid-sized communities were also located in California. The state of Washington had almost as many respondents from population centers as from rural areas, 11 and 12, respectively. Georgia exhibited a similar trend among all population densities: 14 respondents from population centers, 16 from metropolitan areas and 12 each from mid-sized communities and rural areas. Few survey respondents came from jurisdictions with populations of 5,000 or less.

## **Section 2: Providers' Experiences with Immigrant Victims and Police Responses**

Respondents to the survey (n= 202) reported having worked with 22,924 immigrant crime victims. Of these victims, 60.6% (n= 13,888) contacted the police for help. Respondents indicate that of those who called the police for help, 80% did so before the advocate began working with the victim. The types of criminal activities respondents reported their immigrant clients experienced were:

- 50.9% (n=12,407) domestic violence victims,
- 13.2% (n=3,211) victims of sexual assault,
- 9% (n=2,186) victims of felonious assault, murder or manslaughter,
- 7.3% (n=1,774) victims of child abuse,
- 5.1% (n=1,234) victims of stalking,
- 5.0% (n=1,212) victims of dating violence,
- 2.8% (n=673) victims of kidnapping, unlawful criminal restraint, being held hostage, torture,
- 2.5% (n=618) "other,"
- 1.9% (n=458) victims of blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation,
- 1.8% (n=446) victims of human trafficking, and
- .6% (n=153) victims of elder abuse.

A key goal of this survey was to understand the experiences of immigrant survivors when they called the police for help. In order to identify patterns of similar or different treatment by police we looked separately at police responses to calls from immigrant victims of sexual assault; domestic violence; and human trafficking. Although percentage of reporting to police by immigrant survivors nationally can be quite low,<sup>4</sup> research has found that immigrant survivors who access service providers (e.g. advocates, attorneys) are more likely to turn to the justice system for help.<sup>5</sup> Prior research found that the rate at which immigrant victims called the police

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<sup>4</sup> Orloff, Leslye E., Mary Ann Dutton, Giselle Aguilar Hass and Nawal Ammar, UCLA Women's Law Journal Fall/Winter 2003 [http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/u-visa-crime-fighting-tool-and-protection-for-immigrant-crime-victims/RSRCH\\_ImmVictims\\_Battered\\_ImmWomen\\_Police.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/u-visa-crime-fighting-tool-and-protection-for-immigrant-crime-victims/RSRCH_ImmVictims_Battered_ImmWomen_Police.pdf/view)

<sup>5</sup> Ammar, Nawal "Researcher's Perspective on Immigration Protections for Immigrant Victims of Domestic Violence and Sexual Assault" December 6, 2012. <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/20120531%20VAWA%20IV%20House%20Researcher%20Data%20Sign%20on%20FINAL.pdf/view>

for help and were helpful or willing to be helpful in the detection, investigation, prosecution, conviction or sentencing of a perpetrator was extremely high (99.45%) among U Visa applicants and recipients.<sup>6</sup>

In order to understand this relationship between immigrant victims and police responses it was essential for the study not only to examine police responses to immigrant survivors but also to focus on the relationships between law enforcement and advocates, attorneys and social service agencies. To accomplish this we focused on gathering information on cases of immigrant crime victims who qualified for immigration benefits under the VAWA, T or U visa programs. This provided us with greater access to information about immigrant victims and their service provider's interaction with the police. Through the survey, we hoped to obtain information about a greater number of crime victims who called the police for help than we would otherwise obtain.

The survey asked advocates, attorneys, and other service providers working with immigrant victims how many victims of each crime whom they had worked with called the police for help. The survey further asked how many times the police carried out certain actions when they responded to a call from an immigrant victim. Finally, since NIWAP, through its technical assistance and training work, had been hearing about instances in which immigrant crime victims called the police for help and no police report was taken, the survey also asked about whether responding agencies' clients had experienced occurrences when a victim called police for help and a police report was not taken. The findings are detailed in the following paragraphs.

### Sexual Assault Victims

Among the 3,211 reported cases of sexual assault survivors reported by the service providers 86.4% (n=2,773) had called the police for help. Police Responses to a call from an immigrant sexual assault victim included the following:

- 44.8% (n=1,243) police referred the victim to victim services;
- 27.6% (n=764) police provided a badge number and contact information of the officer to the victim;
- 23.6% (n=655) police gave the victim legal rights information; and
- 19.7% (n=547) police referred the victim to culturally and linguistically appropriate victim services.

One concerning finding is that in 9.6% of the police responses (n=265) in which an immigrant sexual assault victim called for help, no police report was taken. In over half of these cases the police were not able to communicate with the victim because they did not secure the assistance of a qualified interpreter or language line. In 60.8% (n=161) of the instances in which

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<sup>6</sup> Orloff, Leslye. Levi Wolberg and Benish Anver. "U-Visa Victims and Lawful Permanent Residency" September 6, 2012. P. 5

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/research-reports-and-data/U-Visas%20and%20Lawful%20Permanent%20Residency%20-%20NIWAP%209.6.12.pdf/view>

no police report was taken, when the police arrived on the scene the victim had visible injuries and/or the police saw evidence that a crime had occurred. Among these cases involving immigrant victims of sexual assault, in:

- 51.3% (n=136) of the cases, no police report was taken due to the inability of police to communicate with the victim;
- 60.8% (n=161) of the cases, the victim had visible injuries that the police could observe.
- 33.2% (n=88) of the cases, the police saw property in disarray;
- 24.5% (n=65) of the cases, the victim had injuries that visibly impaired the victim's ability to move; and
- 19.6% (n=52) of the cases, the victim had torn clothing.

The failure to take a police report when immigrant victims of sexual assault call for help is particularly troubling, especially because in a high proportion of the cases the crime scene contained observable evidence of criminal activity, including injuries, torn clothing, and property in disarray.

#### Domestic Violence Victims

Another crime the survey focused on was domestic violence. Agencies participating in the survey reported working with 12,407 immigrant domestic violence victims. A total of 161 agencies reported working with 9,956 (80.2%) immigrant domestic violence victims who had called the police for help. Police response when they answered a call from an immigrant domestic violence victim included the following:

- 44.1% (n=4,392) of the time police referred the victim to victim services;
- 38.9% (n=3,875) the police gave the victim legal rights information;
- 30.1%, (n=2,999) the police gave the victim the officer's badge number and contact information; and
- 29.3%, (n=2,918) police gave a referral to a culturally and linguistically appropriate victim services.

Similar to this survey's findings in the context of sexual assault victims, no police report was taken in 10.4% (n=1,033) of the cases when police responded to a domestic violence call involving an immigrant victim. Here, again the inability of the officer to communicate with the victim through a qualified interpreter or language line contributed significantly to 54.3% of the cases in which the police failed to take a police report. Situations in which police reports were not taken when domestic violence immigrant victims called for help are as follows:



- In 54.3% (n=561) of these cases, the officers were not able to communicate with the victim;
- In 83.4% (n=862) of these cases, police failed to take a report when the victim had observable visible injuries;
- In 49.4% (n=510) of these cases, the police saw property in disarray;
- In 31.9% (n=330) of these cases, the victim had torn clothing; and
- In 22.8% (n=236) of these cases, the victim had injuries that made it visibly difficult for the victim to move.

As with calls for help from sexual assault victims, in 54.5% of the cases in which a police report was not taken, the police could not communicate with the victim and did not secure the assistance of a qualified interpreter or language line. The instances in which police failed to take a police report when responding to a call when there was evidence of a crime was significantly higher than in sexual assault cases. In 83.4% of the cases in which a report was not taken, police arrived on the scene where the victim had visible injuries, clothing was torn, or property was in disarray.

#### Human Trafficking Victims

Finally, these same questions were asked in regards to victims of human trafficking. In the survey 158 agencies reported working with 500 victims of human trafficking who called the police for help. Police actions in human trafficking cases included:

- In 21% (n=105) of these cases police referred victims for victim services;
- In 13.4% (n= 67) the police gave the victim legal rights information;
- In 17.6% (88) of the cases victims were referred to culturally and linguistically appropriate victim services and;
- In 15.6% (78) of the cases victims were given the officer's badge number and contact information.

Respondents reported that a police report was not taken in 11.8% (59) of human trafficking cases. Occurrences in these instances include:

- In 67.8% (n=40) of the cases the officers were not able to communicate with the victim.
- In 91.5% (n=54) the victim had visible injuries that the officer could see with a naked eye.
- In 25.4% (n=15) of the cases no police report was taken, despite the fact that the police saw property in disarray.
- In 18.6% (n=11) of the cases the victim had injuries that made it visibly difficult for the victim to move.
- In 13.6% (n=8) of the cases the victim had torn clothing.

### Additional Information: Why Police Reports Were Not Taken

To better understand why police called to a crime scene did not take police reports survey participants were asked if they had cases in which police officials were asked and told either the agencies or their clients why a police report was not taken in a case where an immigrant victim client had called police for help. Agencies reported 371 instances in which police provided a reason to the advocate and/or the client about why a police report was not taken. The reasons provided were as follows:

- In 72 cases a police report was not taken due to the lack of qualified interpreters to communicate with the immigrant crime victim (this was the most cited reason).
- In 70 cases respondents cited a lack of knowledge about legal rights and options for immigrant survivors.
- In 63 cases the officers did not know about VAWA or the U-Visa.
- In 62 cases the officers were not familiar with resources available to help immigrant victims.
- In 24 cases the victim did not want to bring attention to the family due to potential immigration consequences (this was the least cited reason).

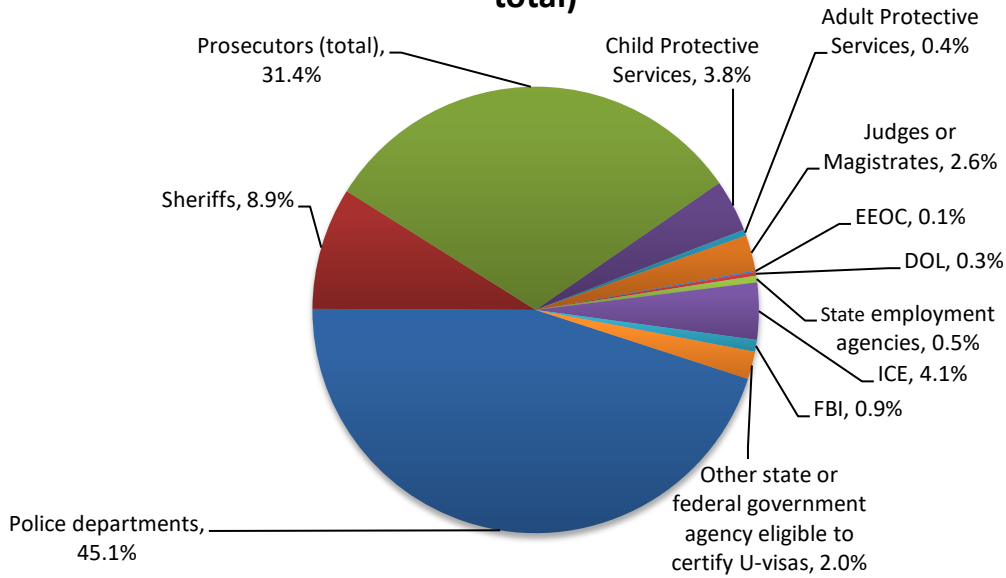
### **Section 3: Experiences of Service Providers with U Visa Certification**

The survey also asked respondents about how many and what types of agencies have signed U Visa certifications for their clients. Police departments (43.1%, n=1,313) and criminal prosecutors (25.7%, n=1,049) were the agencies that most often signed certifications (See Figure 5). Over one-third (36.3%, n=262) of the total service providers responding to the survey reported having collaborative relationships with law enforcement agencies. Law enforcement agencies, specifically police departments, sheriffs, Immigration and Customs Enforcement and the FBI, made up over half of the (58.9%, n=1,716) agencies that sign U Visa certifications. Agencies that signed certifications were almost four times more likely to have on-going collaborative relationships with victim advocate agencies (79.2% vs. 20.8%). The reported relationships were as follows:

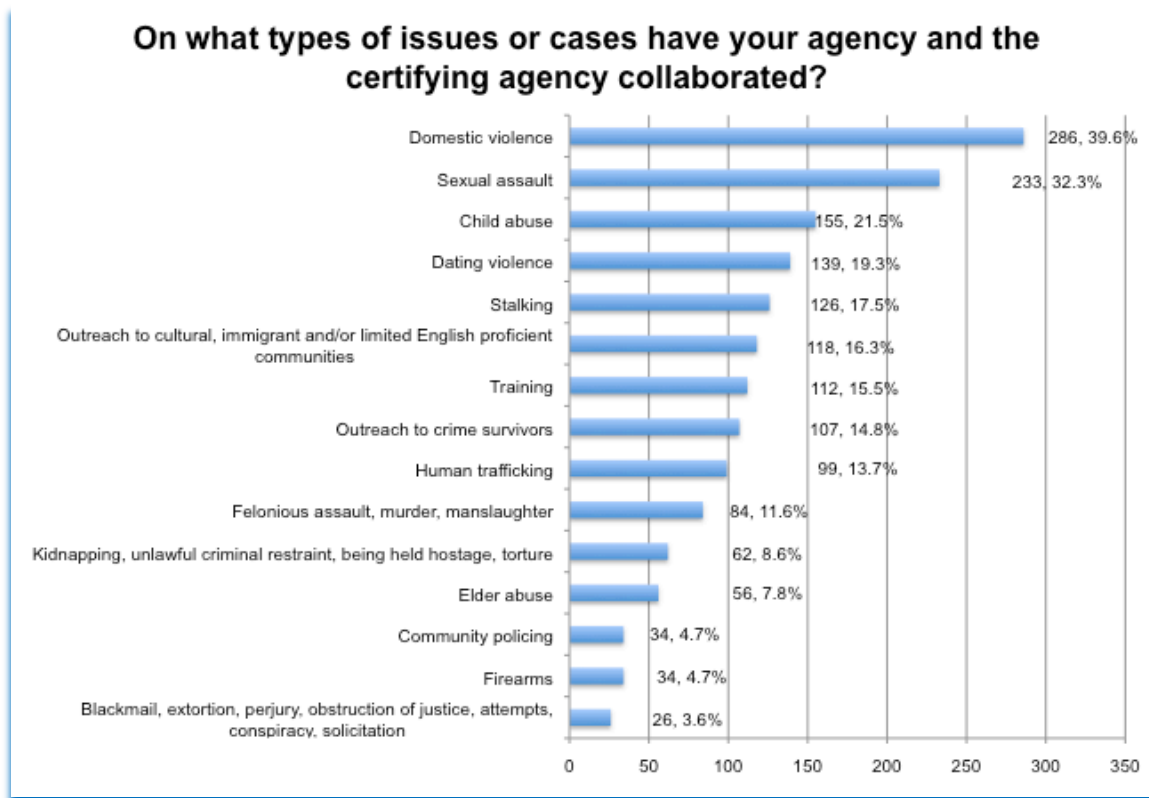
- Nearly 40% (39.6%, n=286) of victim services programs participating in the survey reported having existing collaborations with certifying law enforcement agencies on the issue of domestic violence;
- Nearly one-third of programs serving immigrant crime victims (32.3%, n=233) reported collaborating with certifying law enforcement agencies on sexual assault issues;
- And a fifth of the victim's service providers report collaborating with law enforcement in cases of both for child abuse (21.5%, n=155) and dating violence (19.3%, n=139); and
- Almost 30% (29.9%, n=216) of the victim's services programs participating in the survey reported that collaboration with law enforcement occurred on both issues of sexual assault and domestic violence (See Figure 6) .

**Figure 5**

**Agencies That Have Signed U Visa Certifications (2,913 total)**



**Figure 6**

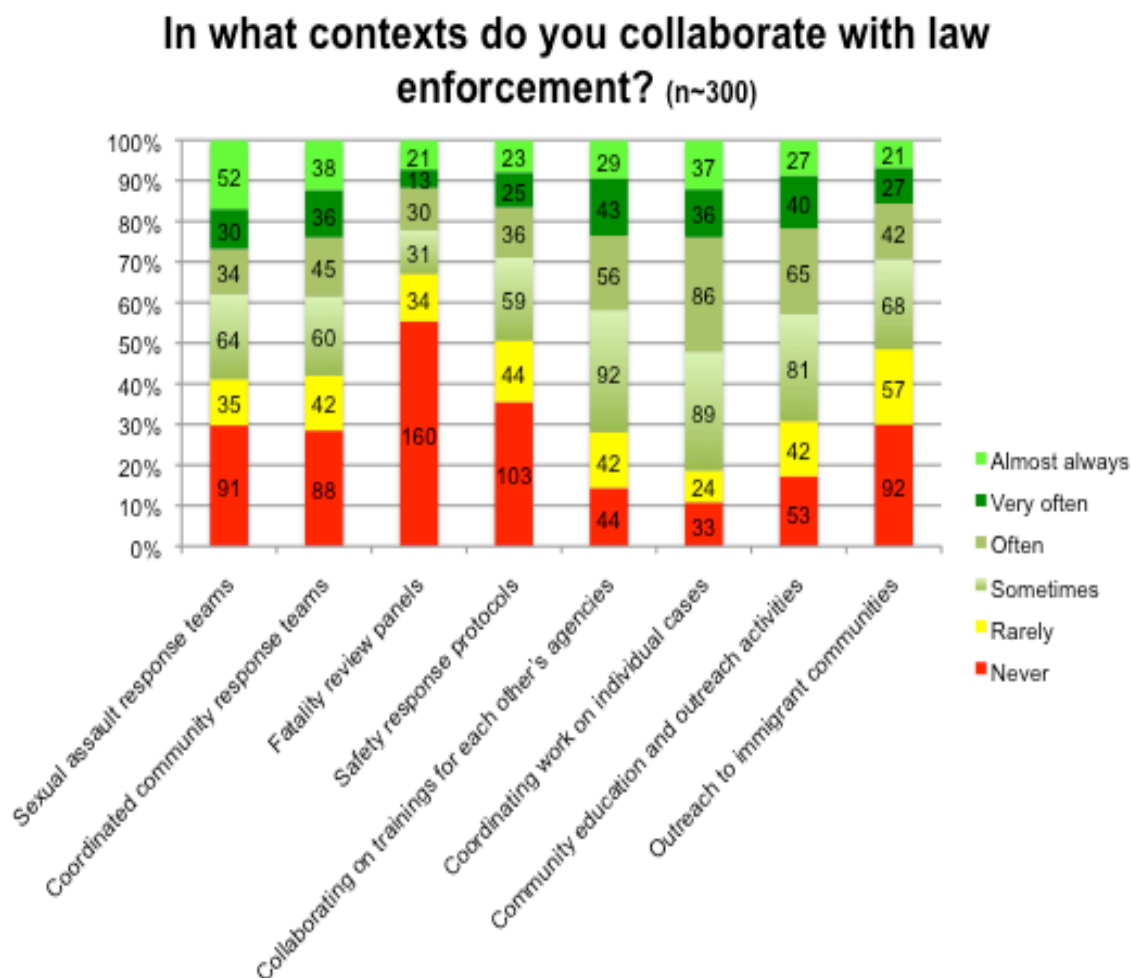


Service providers (n=300) were also asked about the frequency of their collaborations

with law enforcement agencies on a variety of issues. The largest number of collaborations was in the context of individual cases between the service provider and the police. The following were the nature of this and other reported collaborations (See Figure 7):

- 52.1% (159) of collaboration with law enforcement occurs in the context of work on individual cases. This was the only context in which more than half of the respondents reported collaboration “often”, “very often” or “almost always”;
- 37.9% (116) reported collaboration with law enforcement working together on sexual assault response teams;
- 38.5% (119) reported collaborating on coordinated community response teams;
- 41.8% (128) reported collaborating on agency trainings; and
- 42.9% (132) reported collaborating on community education and outreach activities either “often,” “very often” or “almost always.”

**Figure 7**



From the above data it is clear that U Visas benefit law enforcement and victims most when immigrant crime victims are encouraged to work with law enforcement, prosecutors, and courts in the detection, investigation, prosecution, conviction or sentencing of perpetrators of criminal activities against immigrant crime victims. The U Visa is one way to encourage victims to cooperate, thus a victim applying for a U visa can help law enforcement by providing information about a crime and assisting in an investigation or prosecution of serious criminals, making the entire community safer.

In this survey, victim advocacy and legal services organizations responding to the survey were asked to identify the reasons agencies that were authorized by statute and DHS regulations to sign certifications gave for declining to certify. Survey participants were also asked to indicate the number of their cases declined for each stated reason. The following table summarizes the most frequent reasons why certifying agencies choose not to sign certifications. There were 18 reasons that law enforcement gave to the responding agencies for not signing certifications. The frequency reached 100 cases or more. The total number of instances reported in which each of the 18 reasons was given for denial of certification was 4,447. It is important to note that agencies were able to select multiple reasons that were given in any particular case, so the total reflects the number of times a response was given, not the number of cases when certification was denied. The most frequent reasons are listed in Table 1. below, and the percentages are those of all cases reported in response to this question.

**Table 1.**

<b>Reasons Certifiers Give for Not Signing Certifications</b>	
<b>1. The criminal was not prosecuted</b>	536 (12.1%)
<b>2. The crime happening too long ago</b>	534 (12.0%)
<b>3. The criminal was not arrested</b>	346 (7.8%)
<b>4. The victim's case was closed</b>	322 (7.2%)
<b>5. The victim did not show enough assistance to law enforcement</b>	306 (6.9%)
<b>6. Law enforcement has the discretion not to certify</b>	300 (6.7%)
<b>7. The victim did not have any or enough injuries</b>	293 (6.6%)
<b>8. The certifier did not feel comfortable granting legal status</b>	281 (6.3%)
<b>9. The agency does not know they can certify</b>	247 (5.6%)
<b>10. Victim may stop cooperating after U visa certification is signed</b>	225 (5.1%)
<b>11. The criminal was not identified</b>	173 (3.9%)
<b>12. Victim is a child and the parent is seeking certification</b>	139 (3.1%)
<b>13. The criminal has not been convicted</b>	136 (3.1%)

<b>14. The victim never testified</b>	133 (3.0%)
<b>15. Agency did not want to certify due to concern about liability</b>	130 (2.9%)
<b>16. Victim has a removal order or is in removal proceedings</b>	130 (2.9%)
<b>17. Victim no longer in the U.S.</b>	114 (2.6%)
<b>18. Agency has no certification policy</b>	102 (2.3%)

The above listed responses given as reasons for not signing certifications seem to reflect misunderstandings and misperceptions certifying agencies have about legal parameters and requirements about the U Visa and the certification process. None of the reasons listed above are valid under the U Visa statute, U.S. Department of Homeland Security regulations or policies. The following are quotes and/or citations from DHS training materials for law enforcement on U Visa certification that make it clear that each of the reasons for not signing certifications listed above is not a valid reason for failing to sign a U Visa certification. Suggestions as to how to improve access to U Visa protections follow these quotes.

***1. Denial of the certification because the criminal was not prosecuted:***

As stated above, DHS points out that “[a]n agency may sign a declaration or certification if the case is closed, **or if a prosecution, arrest, or conviction was not made.** Formal charges or the launching of a formal investigation is not required.”<sup>7</sup> In addition, the U-Visa Guide by DHS states that “there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U visa. While there is no requirement for the victim to testify at a trial to be eligible for a U visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with law enforcement. If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed Form I-918B.”<sup>8</sup>

***2. Denial of the certification because the crime happened too long ago:***

DHS explains in its guide that “there is no statute of limitations on a victim's helpfulness to law enforcement. A declaration or certification may be provided for cases that are closed or investigations for crimes that occurred months or years ago, as long as the victim was helpful to law enforcement.”<sup>9</sup>

<sup>7</sup> DEP’T OF HOMELAND SEC. *DHS guide on Immigration Relief for Victims of Human Trafficking and other Crimes Information for Law Enforcement Officials*, available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/QA-for-Law-Enforcement.pdf/view>

<sup>8</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 11, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visas\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view)

<sup>9</sup> DEP’T OF HOMELAND SEC. *DHS guide on Immigration Relief for Victims of Human Trafficking and other Crimes Information for Law Enforcement Officials*, available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/QA-for-Law-Enforcement.pdf/view>

### ***3. Denial of the certification because the criminal was not arrested:***

As mentioned above, the U Visa Guide by DHS states that “there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U visa.”<sup>10</sup> The Department of Homeland Security has outlined the requirements needed to gaining certification. The “U Visa Law enforcement Certification Resource Guide” published by DHS clearly states that “a current investigation, the filing of charges, a prosecution or conviction are not required to sign the law enforcement certification,” and that there is no statute of limitations for signing the certification.<sup>11</sup>

### ***4. Denial of the certification because the case was closed:***

The Department of Homeland Security (DHS) states that “[a]n agency may sign a declaration or certification if the case is closed, or if a prosecution, arrest, or conviction was not made. Formal charges or the launching of a formal investigation is not required.”<sup>12</sup> On its U-Visa Guide, DHS also establishes that “...law enforcement can still complete Form I-918B for an investigation or case that is closed... A crime victim could be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial whether or not the prosecution resulted in a conviction.”<sup>13</sup>

### ***5. Denial of the certification because the victim did not show enough assistance to law enforcement:***

The statute that created the U visa and the regulations implementing the U visa make it clear that immigrant crime victims who call the police for help and report criminal activities committed against them qualify for the U visa and can receive certification. Both the U visa statute and regulations specify that assistance with “detection” of a criminal activity is sufficient for both certification and issuance of the U visa.

When Congress created the U visa as part of the Violence Against Women Act of 2000 the statute included Congressional findings about the purpose of the U visa. Section 1513(1)<sup>14</sup> of the VAWA 2000 highlighted the fact that “[a]ll women and children who are victims of these crimes

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<sup>10</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 11, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>11</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 4, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>12</sup> DEP’T OF HOMELAND SEC. *DHS guide on Immigration Relief for Victims of Human Trafficking and other Crimes Information for Law Enforcement Officials*, available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/QA-for-Law-Enforcement.pdf/view>

<sup>13</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 10, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>14</sup> Violence Against Women Act of 2000, Pub. L. No. 106-386 (2000).

committed against them United States must be able to report these crimes to law enforcement.” The U visa was created to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant victims and prosecute crimes committed against aliens.” Congress went on to state that creating the U visa will “facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status.”

The U visa regulations also discuss the fact that helpfulness in “detection” of criminal activity is sufficient for certification and issuance of the U visa. The U visa regulations define the term “investigation or prosecution ... to include the detection of qualifying criminal activity because the detection of criminal activity is within the scope of a law enforcement officer’s investigative duties.”<sup>15</sup> The preamble to the regulations go on to state: “By allowing an individual to petition for U nonimmigrant status upon a showing that he or she may be helpful at some point in the future, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation.”<sup>16</sup>

Additionally, although U visa recipients must continue to cooperate with reasonable requests for cooperation from law enforcement, the state and the regulations contain an exception to this requirement for immigrant crime victims whose refusal to cooperate is not unreasonable. DHS regulations provide “that the determination of whether an alien’s refusal to provide assistance was unreasonable will be based on all available affirmative evidence and take into account the totality of the circumstances and factors such as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant.”<sup>17</sup> Thus, a victim’s refusal to provide ongoing help should not result in denial of a U visa certification if the victim’s refusal was not unreasonable upon consideration of the totality of circumstances in the case.

#### **6. Law enforcement has the discretion not to certify**

“Although a law enforcement certification is a required part of a victim’s petition for a U visa, law enforcement officers cannot be compelled to complete a certification. Whether a certifying law enforcement agency signs a certification is at the discretion of that law enforcement agency... The law enforcement certification validates the role the victim had, has, or will have in being helpful to the investigation or prosecution of the case; therefore, it is

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<sup>15</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule; 72 Fed. Reg. 53014, 53020 (September 12, 2007)

<sup>16</sup>New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule; 72 Fed. Reg. 53014, 53034 (September 12, 2007)

<sup>17</sup> Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75540, 75547 (December 12, 2008); New 8 CFR 245.24(a)(5).



important that the law enforcement agency complete certifications on a case-by-case basis. Without a completed U visa certification, the victim will not be eligible for a U visa.”<sup>18</sup>

#### **7. *The victim did not have any injuries or did not have enough injuries***

“USCIS will make the determination as to whether the victim has met the “substantial physical or mental” standard on a case-by-case basis during its adjudication of the U visa petition. Certifying law enforcement agencies do not make this determination. Certifying agencies may, however, provide any information the agency deems relevant regarding injuries or abuse on Form I-918B.... Form I-918B asks that law enforcement provide information about any injuries the law enforcement agency knows about or has documented. While this provides some of the evidence USCIS will use to make the substantial physical or mental abuse determination, the U visa petitioner has the burden of proving the substantial physical or emotional abuse. USCIS adjudication officers receive extensive training in statutory and regulatory requirements in determining whether a victim has suffered substantial physical or mental abuse. Factors that USCIS uses to make this determination are: the nature of the injury inflicted; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.”<sup>19</sup>

#### **8. *Denial of the certification because the Certifier did not feel comfortable granting legal status:***

The Certifier does NOT grant legal status upon signing Form I-918. As stated by DHS in its informational brochure for law enforcement “a signed law enforcement declaration or certification is just one piece of evidence submitted as part of a T or U visa application. Only USCIS has the authority to approve T and U visa applications and provide immigration benefits.”<sup>20</sup> DHS further states in its certification guide “USCIS is the federal component of DHS responsible for approving and denying immigration benefits and status, including the U visa. Federal, State and local law enforcement agencies **do not** grant or guarantee a U visa or any other immigration status by signing a U visa certification (Form I-918B). Only USCIS may grant or deny a U visa after a full review of the petition to determine whether all the eligibility requirements have been met and a thorough background investigation”<sup>21</sup>

#### **9. *The agency does not know they can certify***

“A federal, state, local law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the investigation or prosecution of a qualifying crime or criminal activity is eligible to sign Form I-918B. This includes agencies with criminal investigative jurisdiction in their

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<sup>18</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 4, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>19</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 11, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>20</sup> DEP’T OF HOMELAND SEC. *DHS guide on Immigration Relief for Victims of Human Trafficking and other Crimes Information for Law Enforcement Officials*, at 1 available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/QA-for-Law-Enforcement.pdf/view>

<sup>21</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 4, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

respective areas of expertise, including but not limited to child and adult protective services, the Equal Employment Opportunity Commission, and Federal and State Departments of Labor.”<sup>22</sup>

#### ***10. Victim may stop cooperating after U visa certification is signed***

Immigrant crime victims who receive U visas “have an ongoing responsibility to cooperate with the certifying official while in U” visa status.<sup>23</sup> The victim “cannot unreasonably refuse to cooperate with law enforcement.”<sup>24</sup> For DHS regulations on unreasonable refusal to cooperate see the discussion in section 5 above.

#### ***11. The criminal was not identified***

“Many instances may occur where the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials.”<sup>25</sup>

#### ***12. Victim is a child and the parent is seeking certification***

“In many cases where a child is the victim of a crime, the child may not be able to provide law enforcement with adequate assistance. This may be due to the child’s age or trauma suffered, among various other reasons. Parents of a child victim play a crucial role in detecting and reporting crimes, providing information and assisting law enforcement in the investigation or prosecution of the crime committed against the child. Recognizing this, an alien parent can apply to be recognized as an “indirect victim” if the principal victim is a child under 21 years of age and is incompetent or incapacitated to provide assistance to law enforcement in the investigation or prosecution of the crime committed against the child or if the child is deceased due to murder or manslaughter. The immigration status of the child victim is not relevant to this determination.”<sup>26</sup>

#### ***13. The criminal has not been convicted***

“A current investigation, the filing of charges, a prosecution or conviction are not required to sign the law enforcement certification.”<sup>27</sup> “There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to be eligible to apply for a U visa.”<sup>28</sup>

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<sup>22</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 9, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>23</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule; 72 Fed. Reg. 53014, 53019 (September 12, 2007)

<sup>24</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 11, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>25</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 14, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>26</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 13, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>27</sup> DEP’T OF HOMELAND SEC. *U Visa Law Enforcement Certification Resource Guide* at 4, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

#### ***14. The victim never testified***

“As mentioned above, there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U visa. While there is no requirement for the victim to testify at a trial to be eligible for a U visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with law enforcement.”<sup>29</sup> If a victim chooses not to testify because she is not requested to do so or because her fear of retaliation from the perpetrator is not unreasonable, the victim can be granted a U visa and can receive certification. See number 5 above for the DHS factors considered in determining whether a victim’s refusal to cooperate was unreasonable.

#### ***15. Agency did not want to certify due to concern about liability***

“A certifying law enforcement agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or to whom DHS granted a U visa. The U visa certification simply states that the person was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the investigation or prosecution of that crime. The certification does not guarantee the future conduct of the victim or grant a U visa. USCIS is the only agency that can grant a U visa. If a victim is granted a U visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues.”<sup>30</sup>

#### ***16. Victim has a removal order or is in removal proceedings***

“Individuals currently in removal proceedings or with final orders of removal may still apply for a U visa. Absent special circumstances or aggravating factors, it is against U.S. Immigration and Customs Enforcement (ICE) policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. To avoid deterring individuals from reporting crimes, ICE has issued guidance to remind ICE officers, special agents, and attorneys to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to victims of domestic violence, human trafficking, or other serious crimes, and witnesses involved in pending criminal investigations or prosecutions.”<sup>31</sup>

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<sup>28</sup> DEP’T OF HOMELAND SEC. U Visa Law Enforcement Certification Resource Guide at 11, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>29</sup> DEP’T OF HOMELAND SEC. U Visa Law Enforcement Certification Resource Guide at 11, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>30</sup> DEP’T OF HOMELAND SEC. U Visa Law Enforcement Certification Resource Guide at 10, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

<sup>31</sup> DEP’T OF HOMELAND SEC. U Visa Law Enforcement Certification Resource Guide at 9, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view)

### **17. Victim no longer in the U.S.**

“While the crime must have occurred in the United States, its territories, or possessions, or have violated U.S. law, victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply from outside the United States.”<sup>32</sup>

### **18. Agency has no certification policy**

DHS authorizes the head of the certifying agency to sign certifications and to designate any person(s) in the agency with a supervisory role to sign certifications. DHS encourages but does not require “certifying agencies to develop internal policies and procedures so that certifications are properly vetted.”<sup>33</sup> “DHS does not endorse or recommend any particular practice, as the certifying agency has the sole authority on the policies and procedures it will use in signing law enforcement certifications.”<sup>34</sup> When the head of an agency designates a supervisor to sign certifications, best agency practices include providing the immigrant victim applying for the U visa a copy of a letter signed by the head of the agency noting that the person signing the U visa in the victim’s case has been designated to be a U visa certifier.<sup>35</sup>

## Improving Access to the U visa for Immigrant Victims of Criminal Activity

The U.S. Department of Homeland Security first began issuing U visas in 2009 following the issuance of implementing regulations on the U visa September 17, 2007 and access to lawful permanent residency for T and U visa holders on December 12, 2008. In fiscal year 2009, DHS issued 5,825 U visas the first year adjudications began. The total number of U visas that can be issued in a fiscal year has been capped by statute at 10,000.<sup>36</sup> Beginning in 2010 DHS has reached the cap issuing 10,000 U visas each year and has required that cases pending at the time that DHS hits the cap wait for receipt of U visa until the beginning of the next fiscal year. In 2010 DHS hit the cap on July 15, 2010.<sup>37</sup> In fiscal year 2011 DHS reached the cap on September 19, 2011<sup>38</sup> and in 2012 DHS reached the cap by August 12, 2012.<sup>39</sup>

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<sup>32</sup> DEP’T OF HOMELAND SEC. U Visa Law Enforcement Certification Resource Guide at 10, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visas\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view)

<sup>33</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule; 72 Fed. Reg. 53014, 53023 (September 12, 2007)

<sup>34</sup> DEP’T OF HOMELAND SEC. U Visa Law Enforcement Certification Resource Guide at 8, available at, [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visas\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view)

<sup>35</sup> I sample designation letter is available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/u-visa-certification-forms-for-law-enforcement/U-Visa-SAMPLE-DESIGNEE-LETTER.doc/view>

<sup>36</sup> INA Section 214(p)(2)(A)

<sup>37</sup> USCIS Reaches Milestone: 10,000 U Visas Approved in Fiscal Year 2010, available at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=749a58a734cd9210VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

<sup>38</sup> Relief Provided to Thousands of Victims of Crimes, September 19, 2011 available at <http://www.ilw.com/immigrationdaily/news/2011.0920-uvisas.shtm>

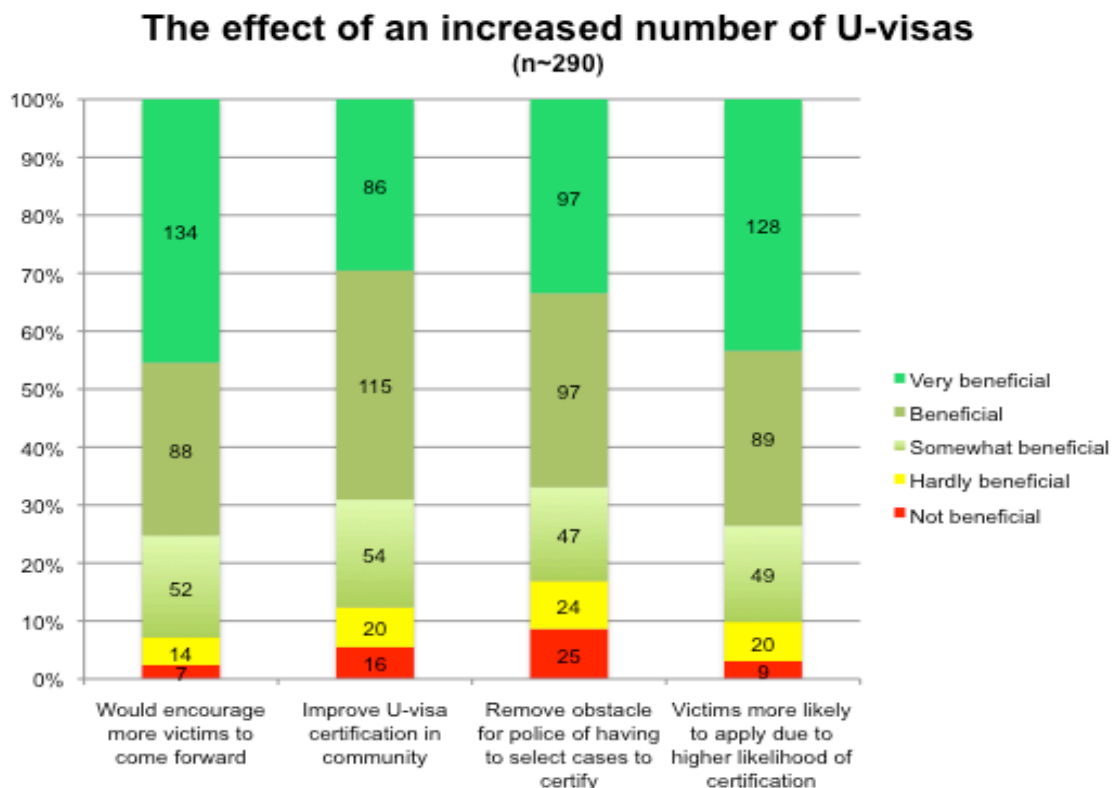
<sup>39</sup> USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012, August 21, 2012 available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextoid=5cd8f03530a49310VgnVCM10000082ca60aRCRD>

The survey asked participants to rank how and to what extent increasing the numbers of U Visas available each year would affect their immigrant victim clients. Participants were asked to pick one of the following choices – “not beneficial,” “hardly beneficial,” “somewhat beneficial,” “beneficial,” and “very beneficial” (See Figure 8). Overall the professionals responding to the survey expressed strong support for increasing the numbers of U visas available on annually. The following reflects these answers in detail:

- 69.1% felt an increase in the availability of U visas would be “beneficial” or “very beneficial” to improving certification in their communities, (39.5% (n=115) said “beneficial” and 29.6% (n=86) said “very beneficial).”
- 66.9% (n=194) considered an increase “beneficial” or “very beneficial” in removing an obstacle for police in having to decide which cases to certify, (33.45% (n=97) said “beneficial” and 33.45% (n=97) also said “very beneficial”).
- 73.6% (n=217) of respondents felt an increase would be “beneficial” or “very beneficial” in terms of victims feeling more confident about applying due to less fear about their case being denied, (30.2% (n=89) said “beneficial” and 43.4% (n=128) said “very beneficial”).
- 75.3% (n=222) of respondents felt that an increase would be “beneficial” or “very beneficial” in terms of more victims being encouraged to come forward and report crimes (29.8% (n=88) said “beneficial” and 45.4% (n=134) said “very beneficial”).

**Figure 8**



The survey also showed that removing the requirement that the certifier be a supervisor would further improve access to U Visa certification. The following section discusses those findings as part of the respondents' suggestions to improve access to U Visa certification.

#### Removing the Requirement That the Certifier be a Supervisor Will Improve Access to U Visa Certification.

More than half of 272 responding agencies (54.4%, n=148) felt that the Department of Homeland Security's (DHS) supervisory requirement for certifiers hinders a victim's ability to obtain certification. Survey participants were asked to explain in depth how the supervisory requirement hindered the certification process. The 98 explanations received fell into one or more of the following six categories:

- The supervisor who is misinformed, disconnected from the client interests or unfamiliar with the client's case (55.1%, n=54)
- The problems with availability of the supervisor (19.4%, n=19)
- Issues with time and process (16.3%, n= 16)
- Other issues that were difficult to understand or did not fit into a specific category (14.3%, n=14)
- Issues with agencies not having a clear understanding of the requirement (9.2%, n=9)

An additional 79.9% (n=213 of 267) felt that the ability for the head of the agency to designate certification to a non-supervisor would increase access to U visa certifications for immigrant crime victims. Respondents were asked to explain how or why this would increase certification. The 98 explanations given fell into one or more of the following five categories:

- The designated officer being more familiar with and invested in the case (40%, n=39);
- Miscellaneous benefits such as the benefits of having input from more than one certifiers and authority being less centralized (22.4%, n=22).
- Increased availability of certifiers (19.4%, n=19)
- Expediting the certification process (14.2%, n=14)
- Explanations citing a higher likelihood of certification (5.1%, n=5)
- More incentive for victims to come forward (2%, n=2)

The findings of this survey support amending DHS U visa regulations to remove the requirement that certifiers be supervisors. This approach would give police chiefs and leaders of other certifying agencies the ability to determine which agency staff are best suited to be U visa certifiers. Such local control would be particularly welcome in rural jurisdictions and smaller communities who have limited numbers of agency staff.

## Part Two: Access to Justice for Limited English Proficient (LEP) Crime Victims

### **Section 4: Demographics of Limited English Proficient clients**

The 2010 United States Census reports that nearly 40 million people or 13 percent of the total U.S. population are foreign-born. Among this foreign-born population, 51.5% do not speak English “very well.”<sup>40</sup> Despite the large Limited English Proficiency (LEP)<sup>41</sup> population, in many communities immigrant victims of domestic violence and sexual assault have little or no access to help from government or victim services in their native language. The lack of language access severely hinders the ability of LEP victims to report crimes and access to much needed legal and social services.

Under Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” all federally funded programs must improve access to LEP persons by examining the services they provide, identifying the need for services to LEP clients and developing and implementing a system to provide meaningful language access services.<sup>42</sup> The Department of Justice has expressed that failing to do so is “a form of national origin discrimination prohibited by Title VI regulations” and undermines fair, efficient and accurate justice.<sup>43</sup>

Almost one quarter of survey participants (24.5%, n=177) responded to the section of the survey’s questions regarding the experiences that their LEP victim clients had accessing justice system and other services.

Of these 177, 32.3% (n=57) of respondents from mid-sized communities reported working with LEPs, followed by 24.9% (n=44) from population centers, 22% (n=39) of respondents from metropolitan centers, 20.3% (n=36) from rural communities and .6% (n=1) from communities of populations under 5,000. This data confirms the observations of agencies working with LEP clients that the quantity of LEP clients needing linguistically and culturally appropriate services live in more densely populated jurisdictions. However, this data also shows that both rural and smaller communities are encountering immigrant clients needing services.

The numbers of survey participants was not sufficient to produce statistically significant results documenting differences between language access patterns between rural and urban areas. However, the data shows that the issue of available language accessible services, while most chronic in areas of larger population concentrations, is nevertheless reaching a threshold that

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<sup>40</sup> Grieco, Elizabeth M., Yesenia D. Acosta, G Patricia de la Cruz, Thomas Gryn, Luke J. Larsen, Edward N. Trevelyan and Nathan P. Walters. “The Foreign-Born Population in the United States:2010” U.S. Department of Commerce. May 2012 <http://www.census.gov/prod/2012pubs/acs-19.pdf>

<sup>41</sup> “Limited English Proficiency” generally describes persons who are “non-English speaking” or persons who do not speak English with sufficient fluency to function effectively in a particular setting without oral interpretation or written translation assistance. (Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, 2003).

<sup>42</sup> “White Paper: Improving the Courts’ Capacity to Serve Limited English Proficient Persons Seeking Protection Orders.” The National Center for State Courts p.197 <http://niwaplibrary.wcl.american.edu/language-access/language-access-info-for-service-providers/WhitePaperNCSC.pdf/view>

<sup>43</sup> U.S. Department of Justice. LEP Letter, August 16, 2010. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/language-access/government-documents/DOJ\\_LEP%20Perez%20state%20court%20letter-8-16-10.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/language-access/government-documents/DOJ_LEP%20Perez%20state%20court%20letter-8-16-10.pdf/view)

warrants concern in rural and small communities. The data shows that the lack of language access to immigrant victims is generally significant across all regions of the U.S.

The Respondents were asked about the number of LEP clients they served. The 194 agencies answering these questions reported helping 17,132 LEP clients from 2008 to the present. They were also asked about the number of LEP clients they worked with who called the police for help. These agencies reported helping 13,634 LEP victims who called the police for help. Spanish was the predominant language spoken by 86.7% of the clients served by agencies participating in the survey. The diversity of the languages spoken by the remaining 13.3% of clients served illustrates how successful the agencies participating in the survey have been in developing programs that have the capacity to serve LEP survivors who are neither English nor Spanish speaking. The following reports on the languages spoken by the 17,132 immigrant crime victim clients served by 194 of the agencies responding to this survey.

Languages of clients served were:

- Spanish = 14,859
- Portuguese = 294
- Russian = 257
- Korean = 233
- Hindi = 210
- Vietnamese = 155
- French = 139
- Chinese = 138 (Mandarin = 99, Cantonese = 39)
- Urdu = 105
- Filipino (Tagalog and other languages spoken in the Philippines) = 103
- Arabic = 103
- Haitian Creole = 99
- Japanese = 32
- Turkish = 29
- Farsi = 18
- German = 13
- Polish = 10
- Italian = 7
- 28 Other languages were spoken by 328 clients. <sup>44</sup>

The survey also sought to understand the proportion of agencies serving clients who speak a number of different languages. A total of 177 agencies responded who served Spanish speaking clients. Based on the above data, the 10 most frequently encountered languages by service providers were:

- 100% (n=177) Spanish speaking clients;

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<sup>44</sup> The languages specified as “other” included: Albanian, Amharic, Armenian, Bambara, Bangla, Bengali, Burmese, Dinka, Farsi, Gujarati, Hmong, Khmer, Kirundi, Lao, Malayalam, Mam, Micronesian, Mixteco, Pashtu, Polynesian, Punjabi, Q’anjob’al, Quechua, Quiche, Sign Language, Swahili, Thai and Zapotec.



- 19.2% (34) Filipino speaking clients;
- 18.6% (33) Arabic speaking clients;
- 18.1% (32) Russian speaking clients;
- 15.8% (28) Mandarin speaking clients;
- 15.3% (27) Korean speaking clients;
- 15.3% (27) Portuguese speaking clients;
- 14.7% (26) French speaking clients;
- 14.7% (26) Hindi speaking clients;
- 14.7% (26) Vietnamese speaking clients ;
- 13 % (23) Haitian Creole speaking clients;
- 11.9 % (21) Cantonese speaking clients; and
- 7.9% (14) Urdu speaking clients.

### **Section 5: Experiences of LEP Clients with the Police and the Courts**

Agencies participating in the survey reported that 14,341 of their LEP clients had called the police for help. Of these cases, respondents indicated that the officers spoke the victim’s language in 1,637 cases (12%); in less than half (42.6%, n= 5,803) of cases officers identified the language the victim spoke and 30% of the cases (n=4,165) an unqualified interpreter was used. Officers used a language line 960 times (7.0%) and a qualified interpreter on 1,419 occasions (10.4%). Survey participants also provided information about 357 instances (2.6%) when the police took other actions when they responded to calls from LEP victims. These included:

- Officers required a written statement in the native language instead of calling the language line (4 cases)
- Victim spoke some limited English and law enforcement did not seek an interpreter or did not wait for the interpreter. (89 cases). In one of these instances the officer told the victim who had requested an interpreter: ““Come on, you can speak English, just tell me what happened”
- Officers did not use any interpreter at all (45 cases)

One participant offered a story that illustrates the impact on LEP victims when they are not provided with qualified interpreters:

“A U certification request was denied for a client that spoke Zapotec. She was identified as Zapotec speaker by police at scene of crime. But when the follow up investigation done, the officer conducted the interview by phone in Spanish. The victim's knowledge of Spanish extremely limited. The detective concluded that the victim denied abuse, denied the injuries, was uncooperative and did not desire prosecution. The detective refused to submit the U certification to their agency certifier for signature. The victim did not understand reason for denial. The victim desired prosecution. Victim had been attacked, assaulted and seriously injured. This was a very unfortunate case.”

Survey participants provided additional detail about who interpreted in 6,062 of the cases in which a qualified interpreter was not obtained and language line was not used. Looking at police responses more in depth, in 8.34% of the cases (n=806,) the police spoke only with the

perpetrator who spoke English when responding to domestic violence calls. Other persons used as interpreters by police included:

- 24.3% (n=1,472) Children of the victim or the perpetrator
- 22.9% (n=1,391) Friend or neighbor
- 9.9% (n=599) An adult male relative
- 7.9% (n=477) An adult female relative
- 9.8% (n=594) A person who claimed to know the victim's language who was not a friend, neighbor or family member

Participants also reported interpreters from the following sources, most (but not all of whom) of whom were either fluent or bi-lingual.

- 7.2% (n=380) Other law enforcement officers
- 6.4% (n=338) Victim advocates

As discussed in Section 2, police officers responded to calls from immigrant victims in different ways. In response to calls regarding sexual assault (2,763), police spoke only with the perpetrator who spoke English 10.7% (n=297) of the time and were referred to culturally or linguistically appropriate services less than a fifth of the time (19.7%, n=547).

When immigrant domestic violence victims called the police for help (9,956), on 8.1% (n=807) of these calls the police only spoke to the perpetrator who spoke English. . Victims were referred to culturally or linguistically appropriate victim services less than one third of times (29.3%, n=2,918).

Of the 495 calls in which human trafficking victims interacted with the police, the police spoke only with the perpetrator who spoke English 4.84% (n=24) and victims were referred to culturally or linguistically appropriate victim services 17.6% (n=88) of the times.

In total, LEP clients were referred to culturally and linguistically appropriate victim services in a little more than quarter of the cases (27.5%, n=3,553) and on average in 8.72% (n=1,127) of the cases the officers spoke only with the perpetrator who spoke English.

Respondents were asked whether their clients experienced instances in which the police responded to a call from an immigrant victim, and the police did not take a police report. Respondents reported 1,356 cases in which police reports were not taken in cases of immigrant survivors. We asked survey respondents to identify the reasons why police did not take a report when responding to a call from an immigrant crime victim. The results show that the most common reason for not taking a police report in a case involving an immigrant victim was the inability to communicate linguistically with an immigrant. The following are the results in detail in terms of victimization type:

- Domestic violence victim = 54.4% (n=561 of 1,032)
- Sexual assault victim = 51.3% (n=136 of 265)
- Trafficking victim = 67.8% (n=40 of 59)

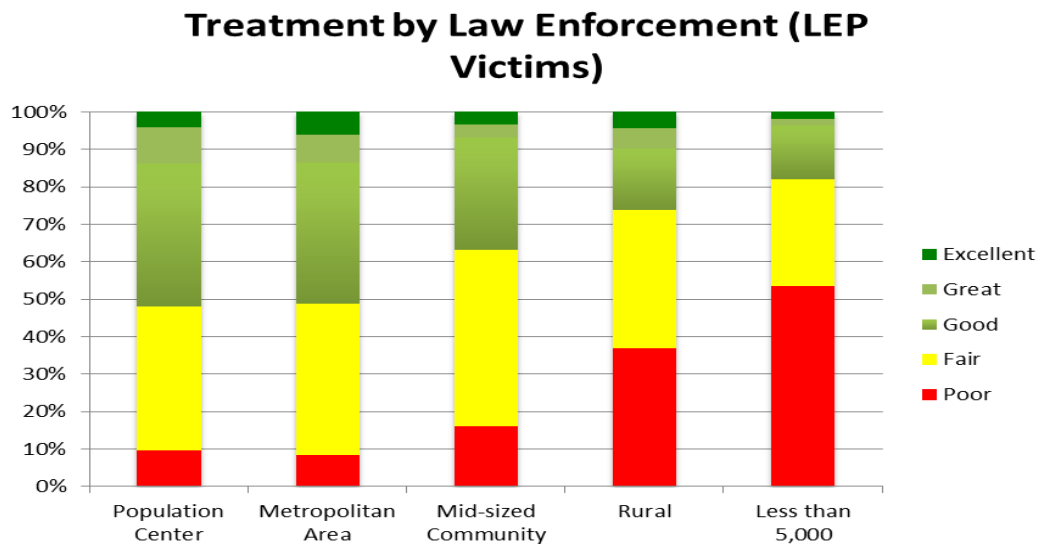
Other common reasons for not taking a police report included:

- “Qualified interpreter not provided” (14%,n= 71);
- “Lack of knowledge about legal rights and options for immigrant survivors” (13.6%, n=69);
- “do not know about VAWA or the U-visa” (12.4%, n=63); and
- “Are not familiar with resources available to help immigrant victims” (12.2%, n=62).

Respondents (n=105) were also asked to rate police officers’ treatment of immigrant and LEP clients in various types of jurisdictions.

- Percentages of more favorable answers, specifically “good,” “great,” and “excellent,” for the most part decreased as jurisdiction type got smaller. The following are the results in details:
  - 52.1% (n=28 “good,” n=7 “great,” n=3 “excellent”) of those responding selected one of those responses in population centers (800,000 or more),
  - 51.2% (n=31 “good,” n=6 “great,” n=5 excellent) in metropolitan areas (400,000 to 799,999),
  - 36.8% (n= 26 “good,” n=3 “great,” n=3 “excellent”) in mid-sized communities (100,000 to 399,999),
  - 26.1% (n=15 “good,” n= 5 “ great,” n=4 “excellent”) in rural areas (5,000 to 99,999), and
  - 17.9% (n=8” good,” n=1 “great,” n=1 “excellent”) in jurisdictions with populations less than 5,000.
- Over one-third (37%, n=34) of respondents rated officers’ treatment of immigrant and LEP clients in rural areas as poor.
  - This percentage jumps to 53.6% (n30) for areas with populations of less than 5,000.

**Figure 9**



As discussed in Section 3, 262 agencies participating in the survey reported having an established collaborative relationship with law enforcement agencies. Of those responding to this question, 45.0% (n=118) reported having collaborations in place with certifying agencies on “outreach to cultural, immigrant and/or limited English proficient communities.”

These respondents reported that police in their area “obtained interpretation assistance from a qualified interpreter to speak with the victim” on 854 occasions (an average of 7.2 times per respondent) and “used a language line to speak with the victim” on 582 occasions (an average of 4.9 times per respondent).

Respondents who did not collaborate with a certifying agency on outreach to cultural, immigrant and/or LEP communities (n=604) reported that police in their area used a qualified interpreter much less frequently (on 542 occasions for an average of .90 times per respondent) and similarly, a language line on 357 occasions (an average of .59 times per respondent).

Respondents who reported collaborating with law enforcement partners on “outreach to immigrant communities” “often,” “very often,” or “almost always” (n=90) reported that police officers in their area used a qualified interpreter on 749 occasions (an average of 8.3 times per respondent) and a language line on 463 occasions (an average of 5.1 times per respondent). Those who collaborated with law enforcement partners on outreach to immigrant communities only “sometimes,” “rarely” or “never” (n=217) reported that police officers in their area only used a qualified interpreter on 650 occasions (an average of 3 times per respondent) and a language line on 381 occasions (an average of 1.8 times per respondent).

**Figure 10**

**Outreach to cultural, immigrant or limited English proficient communities and language access (number of cases)**

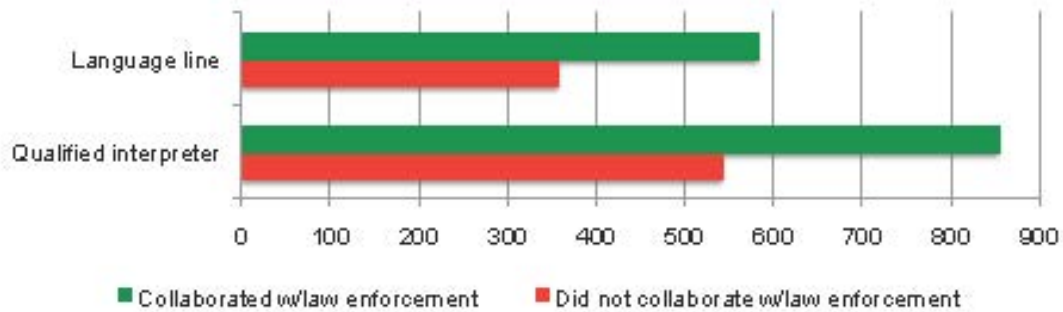
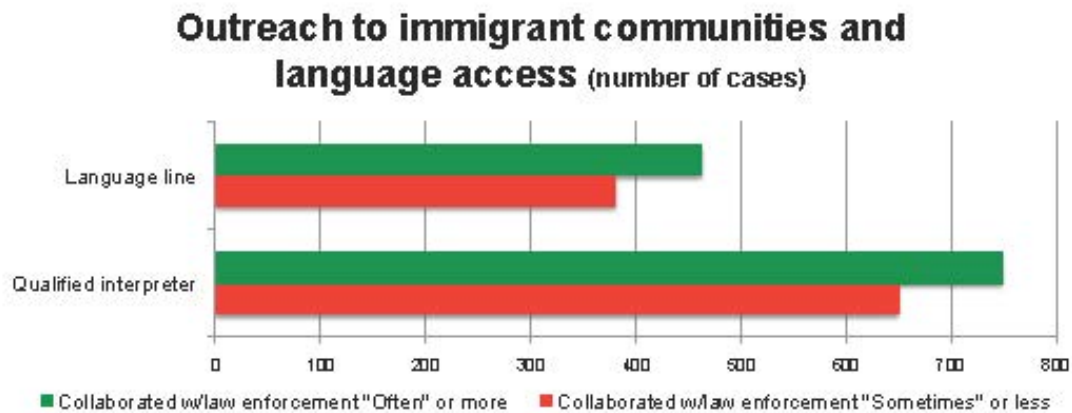


Figure 11



### Section 6: Law Enforcement Use of Qualified Interpreters

Survey participants were asked to describe how police communicated with immigrant victim clients when the police did not secure assistance from a qualified interpreter or language line. Officers used an unqualified interpreter 6,062 times of the reported results. The following are the persons used instead of qualified interpreter:

- A child of the victim and/or perpetrator (24.3%, 1,472 times)
- A friend or neighbor (22.9%, 1,391 times)
- Other (16.2%, 981 times)
- The perpetrator (10.7%, 648 times)
- A person who claimed to know the victim's language, other than a friend, family member or neighbor (9.8%, 594 times)
- An adult male relative (9.1%, 549 times)
- An adult female relative (7%, 427 times)

There were a total of 9,276 reported cases in which clients communicated with the police (n=4,191), prosecutors, (n=2,326) and court officials (n=2,759) without the help of a qualified interpreter or language line.

The Department of Justice has stressed that law enforcement should not rely on friends and family members to interpret for the LEP victim. These individuals may be untrained, biased, or can pose confidentiality and safety risks. Law enforcement should especially avoid relying on children as interpreters as they can suffer from psychological harm from having to recount details of the crime.<sup>45</sup>

Qualitative data from this survey shows that respondents from 17 states<sup>46</sup> also reported language access problems specifically regarding the court system. Most commonly, these issues

<sup>45</sup> Tips and Tools from the Field on Executive Order 13166. Department of Justice. P. 42  
[http://niwaplibrary.wcl.american.edu/language-access/government-materials/LANGAC\\_DOJTips\\_9.21.2004.pdf/view](http://niwaplibrary.wcl.american.edu/language-access/government-materials/LANGAC_DOJTips_9.21.2004.pdf/view)

<sup>46</sup> States include: AZ, CA, CO, GA, ID, KS, LA, MO, NY, OH, OK, PA, SD, TN, TX, WA, WV.

included court documentation not being translated, clients not understanding how the court process works, court proceedings not being interpreted and victims not being able to afford interpreters.

Title VI of the Civil Rights Act of 1964 prohibits “practices that have the effect of charging parties, impairing their participation in proceedings, or limiting presentation of witnesses based upon national origin.<sup>47</sup> Courts must provide interpreter assistance to all court proceedings, (hearings, trials, motions and administrative court proceedings) as well as court functions outside of courtroom proceedings, such as filing offices, alternative dispute resolution programs, records rooms, and probation and parole offices.

### **Section 7: Factors Influencing LEP Immigrant Victims’ Reporting Crimes**

Service providers participating in this survey were asked a number of questions calling for narrative responses. The qualitative results of this survey provide some important insight into issues that immigrant crime victims face with regard to crime reporting. Respondents identified various problems emanating from language access that they face outside of the courtrooms or police departments. Multiple respondents cited language barrier as a key problem to access of health care in hospitals because of failure to provide interpreters or bilingual personnel who speak the victim’s language. Hindered access to public resources, such as housing, education and medical access due to lack of information in their language were other common issues reported by the respondents. Therapy and victim counseling were cited as resources that could not be provided to the victims because there were no professionals who could speak their language or interpreters that could aide professionals in providing services and care to the immigrant victims.

Bias also played an important role in problems faced by LEP victims. Many respondents reported that when justice system officials relied upon inappropriate, unqualified interpreters, victims often could not report their crime or were ignored. Unqualified interpreters would generalize statements due to misunderstanding, lack of patience with the victims or because they did not understand the victim’s dialect. Other times, limited English proficient victims suffered when authorities would side with the perpetrator because he (or she) spoke more English. This occurred both in the courts and in police departments.

For many immigrants, sex is a taboo subject and immigrant victims of sexual assault require special considerations when reporting their sexual violence crimes.<sup>48</sup> Data from the survey reflected a need to address these considerations and increase the efforts to accommodate female and sexual assault victims. Respondents indicated that immigrant women faced significant challenges when reporting crimes due to the nature of the crimes they have suffered.

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<sup>47</sup> U.S. Department of Justice. LEP Letter, August 16, 2010. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/language-access/government-documents/DOJ\\_LEP%20Perez%20state%20court%20letter-8-16-10.pdf/view?searchterm=doj%20letter](http://niwaplibrary.wcl.american.edu/reference/additional-materials/language-access/government-documents/DOJ_LEP%20Perez%20state%20court%20letter-8-16-10.pdf/view?searchterm=doj%20letter)

<sup>48</sup> Orloff, Leslye, Amanda Baran and Martha Cohen. “Ensuring Language Access to Immigrant Victims of Sexual Assault” Empowering Survivors: Legal Rights for Immigrant Victims of Sexual Assault. Ch.2 p. 11 <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/july-31-2012-denver-co/dynamics/ch-2-ensuring-language-access-to-immigrant-victims-2009/?searchterm=ensuring%20language%20access.pdf/view>

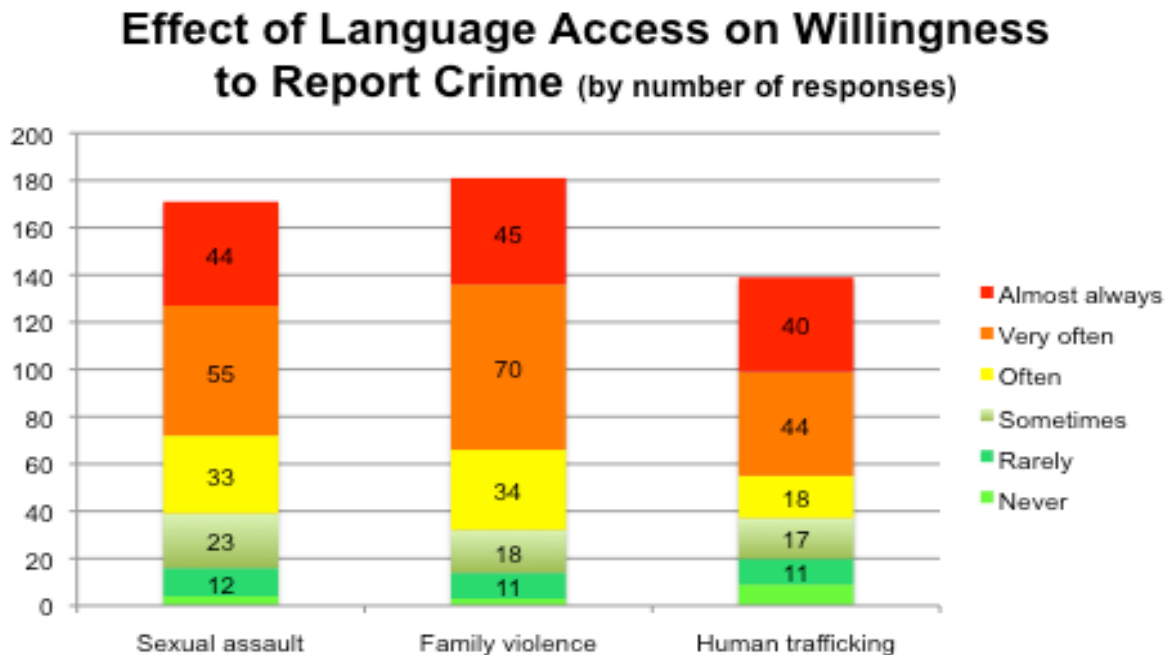
Respondents report female victims not feeling comfortable reporting sexual assault or domestic violence to male interpreters, and reporting that female interpreters were rarely or never available. In other cases male interpreters would not believe the victim’s statements, and generalize or leave out crucial information in the translation due to their own biases regarding issues of domestic violence or sexual assault.

The International Association of Chiefs of Police has emphasized the importance of building trust and outreach to immigrant communities in preventing and investigating crimes. *The Police Chief’s Guide to Immigration* states that “[w]hen an immigrant population does not [...] speak the language and distrusts the government, they will not or simply cannot report crimes and thus their victim status remains largely unknown to the police.”<sup>49</sup> Narrative data from the survey corroborates this statement and suggests the need to increase efforts to build trust and exchange between police and immigrant communities and overcome language barriers to better serve them.

The survey asked respondents how the lack of language access affects immigrant victims’ willingness to report crimes of sexual assault, family violence, (domestic, child and elder) and human trafficking.

For family violence, 63.5% of respondents indicated that lack of language access affected immigrant victims’ willingness to report crimes either “very often” or “almost always.” The percentages for human trafficking and sexual assault were 60.4% and 57.9%, respectively.

**Figure 12**



<sup>49</sup> “Police Chiefs Guide to Immigration Issues” The International Association of Chiefs of Police. July 2007 p.21 <http://www.theiacp.org/Portals/0/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>

Responding agencies were asked to rate the level of influence certain factors had on clients' willingness to call the police for help. The 12 factors are shown in the chart below.

As evidenced by this chart, several factors stood out as having the greatest impact on a client's decision. A victim's concern for her children's safety was considered most influential by 41% (n=66) of participants. The severity of the abuse suffered by the victim was considered most influential by 30% (n=48).

A quarter of service providers (25.2%, n=36) found the work done between advocates and police to be the most influential factor and nearly a fifth (18.3%, n=48) found safety planning they had done with their clients to be most influential.

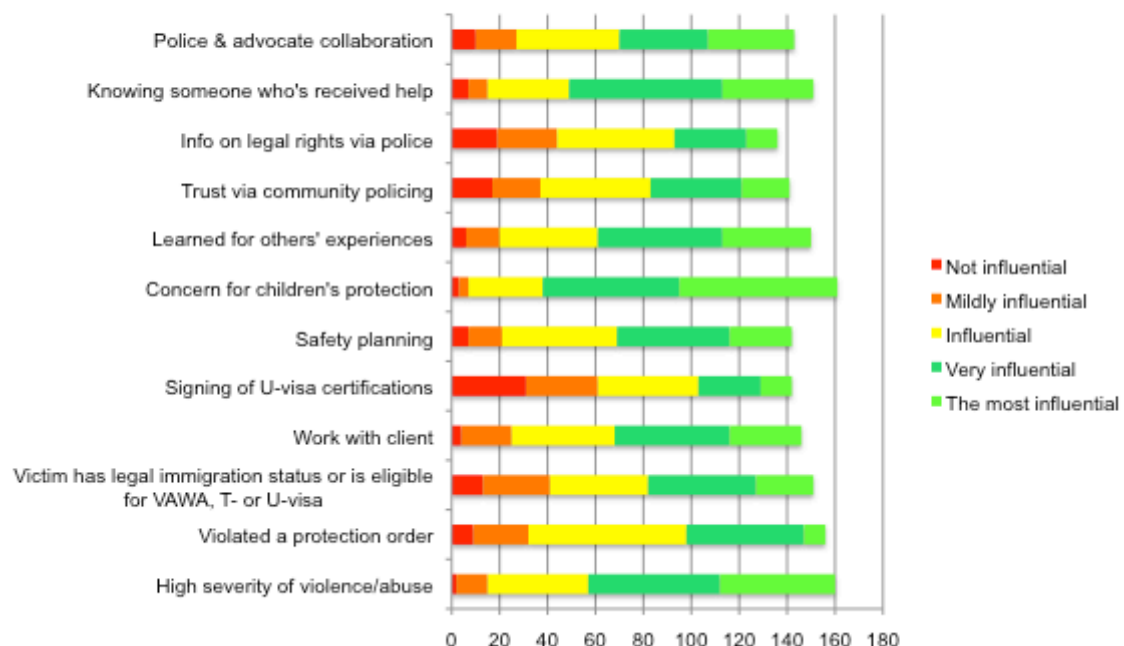
A quarter of the respondents (25.2%, n=38) considered "the victim knows another immigrant victim who received help" and 24.7% (n=37) considered "what the victim learned from other immigrant women who have received help" as the most influential factor. For all of these determinants, the numbers increase dramatically when taking into account "influential" and "very influential" ratings.

On the lower end of influence, 14.2% (n=20) of responding agencies rated "trust built through community policing" as the most influential. Lower still, 9.6% (n=13) reported that the "police provide information to immigrant victims about legal rights" as the most influential factor.

Similarly, respondents considered "the fact that law enforcement/other government agencies in your community are signing U Visa certifications" as mostly influential 9.2% (n=13) of the time. Having a protection order that was violated was considered to be the most influential factor, with 5.8% (n=9) of the respondents.

**Figure 13**

**Factors most influence your immigrant or LEP clients' willingness to call the police for help (number of responses)**





The importance of advocacy and safety planning work done with immigrant victims of violence cannot be understated, as research published in the *Criminal Justice Review* demonstrates. Advocacy has been cited by immigrant women as a catalyst in the process of learning about and seeking a protection order from abusive partners. Safety planning and lethality assessments conducted by advocates and attorneys leads to a significant increase in the willingness of immigrant victims to go to the police for help. Additionally, most immigrant victims of violence who had gained a form of temporary legal status were able to do so because of the help by advocates and attorneys.<sup>50</sup>

Further research affirms the importance of community on the immigrant victims' decision-making process. Studies in the *Georgetown Journal on Poverty Law and Policy* identify women immigrant victims speaking to other women as a key force in influencing them to seek help. In the vast majority of cases victims talked to a female friend or relative about the abuse, who then encouraged her to seek help and offered emotional support.<sup>51</sup> These women were more willing to seek help after this exchange. Further, of the victims, the women who spoke to more than one person about the abuse were more likely to call the police for help.<sup>52</sup>

The level of exposure of an immigrant victim's children to the violence also played a significant role in calling the police for help. A study published in the *International Journal of Police Science and Management* found that mothers whose children had been exposed to domestic violence called the police for help nearly twice as often as battered immigrants who did not have children.<sup>53</sup> It is also important to note the effect immigration status has on an immigrant woman's decision to call the police for help. The same study found that women with stable immigration status had a significantly higher (10 times) likelihood of calling the police for help.<sup>54</sup>

## **Section 8: Policy Recommendations and Conclusion**

It is important to note that many respondents were not able to provide all the information requested. Many did not keep detailed records, due to lack of time or resources. This led respondents to give estimations or prevented them from answering questions. Regardless, the data obtained permits a preliminary analysis of patterns regarding immigrant victims' access to linguistically and culturally appropriate services.

### **Enhancing Collaborations**

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<sup>50</sup> Ammar, Nawal, Leslye E. Orloff, Mary Ann Dutton and Giselle A. Hass. "Batter Immigrant Women In the United State and Protection Orders: An Exploratory Research (August 2012) p. 350 <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/AmmaretalCPO.pdf/view>

<sup>51</sup> Dutton, Mary Ann, Leslye Orloff and Giselle Hass. "Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications. (2000) p. 266 <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Characteristics%20of%20Help-Seeking%20Immigrant%20Battered%20WomenOVW%2010.23.01.pdf/view>

<sup>52</sup> Ammar, Nawal, Leslye Orloff, Mary Ann Dutton and Giselle Hass. "Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA. *International Journal of Police Science and Management*. Vol. 7 No. 4. 2005 p. 237 <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/u-visa-crime-fighting-tool-and-protection-for-immigrant-crime-victims/int%20journal%20of%20police%20science%20and%20mgmt%20ammar%20orloff.7.4.230.pdf/view>

<sup>53</sup> Id, 237

<sup>54</sup> Id, 237

This research found that existing and ongoing collaborations between law enforcement agencies and agencies serving immigrant crime victims leads to both U visa certification practices and use of qualified interpreters and language lines to provide language access to LEP crime victims. Almost 4 times more (79.2%) of law enforcement agencies that sign U visa certifications have on-going collaborative relationships with victim advocate agencies. Only 20.8% of law enforcement agencies signing certifications were not reported by survey respondents to have collaborations with victims' services providers in place.

These findings are consistent with the findings and recommendations of other reports and research. In the context of U visa certification, the Office on Violence Against Women (OVW) at the U.S. Department of Justice supported a collaboration between the Muskie Institute at the University of Southern Maine, NIWAP staff and Dr. Giselle Hass that reviewed grant reports filed by OVW grantees receiving funding from the Legal Assistance for Victims grant program. That review found that programs with good working relationships and collaborations with law enforcement on other issues including domestic violence cases, work on policies (e.g. firearms, sexual assault responds teams, in coordinated community response teams working on domestic violence issues generally) fostered better U visa certification policies and practices in the communities where the collaborations were underway.<sup>55</sup>

Similar findings were an important result of National Institute of Justice funded research on access to protection orders for LEP survivors conducted by the National Center for State Courts (NCSC).<sup>56</sup> They found that when courts increased collaborations with community based immigrant and LEP serving organizations, these relationships let to battered LEP victims gaining enhanced access to protection order courts and increased use of qualified interpreters both in the courtroom and in all of the other interactions that LEP victims had with the courts (e.g. clerks offices, information signage in multiple languages).

Responding agencies collaborate with law enforcement agencies on a regular basis on a range of issues. Most collaboration 52.1% consisted of collaborating on cases of immigrant victims. The next largest areas of collaboration were collaborating at presentations at each other's trainings, and community education and outreach. Collaborative work also extended to domestic violence issues (39.6%) and sexual assault issues (32.3%). In their comments, many respondents called for more training for both, police officers and the service providers, on the resources available to immigrant victims of crime. A working partnership between the law enforcement agencies and victim services programs is essential in ensuring that all parties are familiar with immigrant rights, and to ensure that immigrants have access to justice system assistance.

### Promoting U Visa Certification: Increasing the U Visa Cap

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<sup>55</sup> Giselle Hass, Karen Monahan, Edna Yang and Leslye E. Orloff, U-Visa Legal Advocacy: Overview of Effective Policies and Practices, (December 17, 2012) pending publication on file with author; Giselle Hass, Edna Yang, Karen Monahan, and Leslye E. Orloff, Barriers and Successes in U Visas for Immigrant Victims: The Experiences of Legal Assistance for Victims Grantees (2012) pending publication on file with author.

<sup>56</sup>Brenda K. Uekert, Tracy Peters, Wanda Romberger Margaret Abraham, Susan Keilitz, Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity To Provide Protection Orders 197-204 (National Center for State Courts, June 30, 2006)

The vast majority, approximately three-quarters of the 722 agencies responding to this survey felt that increasing the number of U visas available annually would be beneficial or very beneficial to crime victims in a number of ways. These included encouraging immigrant crime victims to come forward and report crimes to the police (75.3%) and that victims would feel more confident in coming forward due to less fear that the certification would be denied (73.6%). More than two-thirds of agencies stated that increasing the numbers of U visas per year would increase certification in their communities (69.1%) by removing obstacles to law enforcement certification (66.9%).

Empirical data on the availability of U Visas, specifically that the annual cap has been reached by July, September and August in 2010, 2011 and 2012, reflects a need for additional visas. As the Chief of the Appleton Wisconsin Police Department strongly urged Congress in October 2011, “an increase in the number of U visa’s granted on an annual basis so that more violent criminal offenders can be arrested and held accountable. Law enforcement will identify and investigate 10,000 more criminals a year if the cap on U-visas is increased leading to more prosecutions and ultimately more convictions.”

#### Eliminating the Requirement That All Certifiers Must Be Supervisors

The results of this survey with regard to use, processes and benefits of U Visa show a number of important facts. The data also showed that most U Visa certifications were signed by police departments (43%) and criminal prosecutors (26%). Almost 80% (79.9%) of responding agencies believed that removing the restriction that all U visa certifiers be persons with supervisory authority and granting the Chief, Sheriff or agency head the discretion to appoint any staff member to be the agency certifier would increase U visa certification. This approach would allow the Chief to designate the officer from the domestic violence, sexual assault or special victims unit to be the certifier whether or not that officer was a supervisor. Chiefs could choose an officer with the most expertise working with immigrant crime victims or with most expertise working with victims of domestic violence, sexual assault or human trafficking. The officer designated could be one more familiar with and invested in immigrant crime victim cases (40%), including the officer the community trusts. Survey participants suggested that having the Chief being able to exercise more local control would provide opportunities to increase the availability of certifiers (19.4%), and would expedite the certification process (14.2%).

As law enforcement, prosecutors and courts have learned over the years, effective justice system intervention in violence against women cases requires specialized training, expertise, experience and community relationships. The officers with specialized training working in domestic violence, sexual assault, human trafficking or special victims units may in many communities be the best certifiers. Certification requires many of the same skills and knowledge that officers serving in these specialized units employ every day. Supervisors do not necessarily have these skills, unless they rose out of the ranks of officials that served in one of these specialized units.

The fact that the only option the head of a police agency today has if they want to designate responsibility for certification is to choose a supervisor may be contributing to the high

proportion (55.1%) of cases in which certifying supervisors were misinformed, disconnected from the client or unfamiliar with the case in which the certification is being requested. This survey identified 17 reasons for not signing certifications being frequently (4,147 instances; over 100 instances for each reason) given by supervisory law enforcement officials responsible for U visa certifications that are not legally correct under the U visa statute, DHS regulations and DHS policies.

DHS regulations impose a regulatory requirement, not required by the U visa statute mandating that designated certifiers must be supervisors. Designated supervisors may not have any expertise working with the immigrant community or with domestic violence or sexual assault victims who make up the majority of U visa certification requests nationally.<sup>57</sup> This regulation was imposed by DHS believed that limiting certifications by certifiers was “reasonable and necessary to ensure the reliability of certifications. It also should encourage certifying agencies to develop internal policies and procedures so that certifications are properly vetted.” This goal fully accomplished by police chiefs, sheriffs and other heads of agencies the sole authority to either certify all cases themselves or designate an official in their agency to certify. This approach that does not require that the designated officer be a supervisor accomplishes DHS’ stated accountability goals.

The findings of this survey support amending DHS U Visa regulations to remove the requirement that certifiers be supervisors. This approach would give police chiefs and leaders of other certifying agencies the ability to determine which agency staff is best suited to be U Visa certifiers. Such local control would be particularly welcome in rural jurisdictions and smaller communities who have limited numbers of agency staff.

#### Promoting Access to Justice System Help for LEP Crime Victims

One of the most profound findings of this survey was the extent to which language access to law enforcement was a significant barrier that limited access to police protection and assistance for immigrant victims of domestic violence, sexual assault and human trafficking. This research found that officers were able to communicate effectively with LEP crime victims in only 29.4% of the cases in which immigrant victims called the police for help. Effective communication occurred when: the responding officer spoke the victim’s language (12% of cases); when the officers used a language line (7% of cases) and when the officer obtained assistance from a qualified interpreter (10.4% of cases).

When LEP victims called police for help, officers were able to identify the language that the victim spoke in less than half of the cases (42.6%). When police identify the victim’s language too often (30% of the cases) law enforcement officials used unqualified interpreters to communicate with the victim. These interpreters lacked both objectivity and interpretation skills and many the police used to interpret were persons in a role that either conflicted with the victim’s complaint (e.g. the perpetrator, or relative or friend of the perpetrator), or that placed an

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<sup>57</sup> Leslye E. Orloff and Paige E. Feldman, National Survey on Types Of Criminal Activities Experienced By U-Visa Recipients (November 29, 2011) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/U-visa-recipients-criminal-activity-survey.pdf/view> (Domestic violence and rape, sexual assault, incest, trafficking 30.4%) 45.9%

undue burden and was potentially harmful to the person interpreting (e.g. the child of the victim). Respondents to this survey reported that when police used the following unqualified interpreters they often used the following persons: children of the victim or perpetrator (24.3%), friend or neighbor (22.9%), a relative (27.9%), and the perpetrator (10.7% in sexual assault cases, 8.1% in domestic violence cases and 4.8% in human trafficking cases).

The lack of language access leads to loss of trust between authorities and immigrants, unreported crimes, and thus more criminals on the street. It also hinders the victim's willingness to report to the police. The data shows that lack of ability to communicate with law enforcement hinders the willingness of 63.5% of the victims who suffer family crimes from reporting the crime, 60% of those who were victims of trafficking and 57.9% of those who suffered sexual assault.

Equally as disturbing were the findings regarding the rate at which police failed to take a police report when they responded to calls from immigrant crime victims. In 9.6% of immigrant victim sexual assault cases the police did not take a police report, despite the fact that in 60.8% of these cases the immigrant victim had visible injuries. Similarly in 10.4% of the domestic violence cases involving an immigrant victim police failed to take a police report although the victim has visible injuries in 83.4% of those cases the victim had visible physical injuries. These rates were even higher in human trafficking cases. In 11.8% of human trafficking cases reported by agencies in this survey police did not take a police report, even when in 91.5% of these cases the trafficking victim had visible injuries.

This research also found that that the treatment LEP crime victims received when they called the police for help was significantly worse in rural jurisdictions and jurisdictions with less than 5,000 inhabitants, than in population centers, metropolitan areas and mid-sized communities. These findings were similar to those found in NIJ funded research conducted by the National Center for State Courts (NCSC) on access to protection order courts for LEP victims. NCSC conducted a national survey of protection order courts and found that language access declined dramatically as population decreases. Additionally, NCSC found that 79% of rural courts whom the research found were not serving LEP victims claimed they have sufficient resources to do so.<sup>58</sup> This NCSC research also found that interpreter availability for protection order courts in many communities outside of larger populations centers often relied on unqualified interpreters to interpreter for LEP victims in protection order cases. The proportion of courts in non-rural communities using adult family members and friends to interpreter was 30% and 7% of all courts nationally used minor children to interpret in protection order cases.<sup>59</sup>

The data in this survey also shines a light on how treatment of immigrant crime victims is significantly better in jurisdictions with populations over 400,000 than in rural areas and small towns. Treatment of immigrant crime victims was rated "good," "great," or "excellent" in over 50% of the jurisdictions with more over 400,000 inhabitants. Conversely, 37% of respondents

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<sup>58</sup> Brenda K. Uekert, Tracy Peters, Wanda Romberger Margaret Abraham, Susan Keilitz, *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity To Provide Protection Orders 5-6* (National Center for State Courts, June 30, 2006)

<sup>59</sup>Brenda K. Uekert, Tracy Peters, Wanda Romberger Margaret Abraham, Susan Keilitz, *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity To Provide Protection Orders 3-4* (National Center for State Courts, June 30, 2006)

rated treatment of their immigrant and LEP clients as poor in rural areas and poor ratings rose to 53.6% in jurisdictions with fewer than 5,000 inhabitants.

One of the most positive findings of this research was the positive effect that collaborations between law enforcement agencies and agencies serving immigrant victims have on language access. Law enforcement agencies collaborating with organizations serving immigrant victims are 9 times more likely to use qualified interpreters and 8.5 times more likely to use language lines than law enforcement agencies that have no ongoing collaborations with immigrant crime victim's advocates.

## **Policy Recommendations**

### Legislation

- **Increase U Visa Cap:** Raise U visa cap to 20,000 U visas per year by recapturing up to 10,000 visas per year from U visas that were not issued in previous years, (See e.g. Section 203(d)(1) of H.R. 5331, 112<sup>th</sup> Cong. Second Session Schakowsky).
- **Remove U Visa Supervisor Requirement:** Remove the requirement that U visa certifiers be supervisors. This requirement was imposed by DHS regulation and is not required by statute. The statute should be amended to overrule this DHS imposed requirement. Allow the head of the certifying agency the local authority to determine which agency officials to designate as U visa certifiers without the limitation that the designee be a supervisor. (See e.g. Section 203(d)(4) of H.R. 5331, 112<sup>th</sup> Cong. Second Session Schakowsky).
- **Language Access Enforcement:** Amend Title VI of the Civil Rights Act of 1964 to enhance enforcement of language access laws by creating a right of action for injunctive relief (see e.g. Sec 206 S. 3322 112<sup>th</sup> Cong Second Session Brown and Section 404 of H.R. 5331, 112<sup>th</sup> Cong. Second Session Schakowsky).
- **Violence Against Women Research:** Add to research on victimization by domestic violence, sexual assault, stalking, dating violence and elder abuse, including victim's access to services and protections and needs of underserved, immigrant and limited English proficient victims as an authorized purpose and permitted use of Federal research funding for 12 research grant programs administered by the U.S. Departments of Justice and Health and Human Services (See e.g. Section 504 of H.R. 5331, 112<sup>th</sup> Cong. Second Session Schakowsky).

### Regulations

- **Remove U Visa Certification Supervisor Requirement:** DHS should amend its regulations to remove the requirement mandates that when the head of a certifying agency designates U visa certification to an agency employee that the designated certifier be a supervisor. This approach maintains the requirement that (except in the case of judges) the head of the agency must certify or designate an agency official to be a certifier thereby accomplishing the goal of assuring that certifiers are vetted by the Chief. Removing the

supervisor requirement will provide local police chiefs, sheriffs and prosecutors the flexibility they need to designate the person they deem best in their department to be a certifier and will particularly help smaller agencies with fewer staff, those in rural jurisdictions and those that cover large geographic areas to carryout certifications for immigrants in their communities.

- Improve Access to Legal Representation: by amending Legal Services Corporation Regulations to conform with VAWA 2005 statutory requirement that LSC funded programs are authorized to provide legal representation to battered immigrants, immigrant victims of sexual assault and human trafficking and other immigrant who are victims of U visa criminal activities without regard to the victim's immigration status. The regulations should include a requirement that programs screen for crime victimization before asking immigration status questions and be prohibited for screening for immigration status when the person seeking services is an immigrant crime victim.

### DHS Implementing Policies or Regulations

There are a number of statutory protections for immigrant crime victims that have been created in Violence Against Women Act legislation that has yet to be implemented by DHS. The findings of this research regarding treatment of immigrant victims of domestic violence, sexual assault and human trafficking, particularly those relating to police failures to issue police reports, use of perpetrators as interpreters and the poor quality of police treatment of immigrant crime victims in rural communities increase the urgency for DHS to ensure that the VAWA protections listed below are fully implemented. Doing so will increase the protections from deportation for immigrant crime victims whose risk of becoming subject to DHS enforcement actions are heightened when victims call police for help, police arrive and only talk with the perpetrator, or arrive and do nothing, not even taking a police report.

There is also concern that the poor treatment of immigrant crime victims in rural and small communities may include calling DHS to report victims or making dual arrests that results in immigrant crime victims' fingerprints being sent to DHS under the Secure Communities program. When crime victims statutorily eligible for VAWA protections cannot access protections because DHS has not issued policies or regulations the likelihood of harm to immigrant victims is greater and perpetrators can use threats of deportation to more effectively manipulate victims to keep them from making police reports and helping law enforcement in criminal investigations or prosecutions. Legal protections without implementing policies or regulations include:

- VAWA self-petitioning for elder abuse victims (VAWA 2005 § 816)
- Employment Authorization for Abused Spouses of Certain Non-Immigrant (A), (E)(iii), G, or H) Professionals (VAWA 2005 § 828) (implementation is pending- comment period ended on January 10, 2013 and comments are currently under review)
- Removal of two-year custody and residency requirement for abused adopted children (VAWA 2005 § 805(d))
- VAWA, T and U-visa victims not subject to reinstatement of removal (VAWA 2005 § 813(b))

- Employment authorization for victims with approved VAWA self- petitions (VAWA 2005 § 814(b))
- Exemption from public charge (VAWA 2013§ 804)
- VAWA confidentiality referrals for victims to victim and legal services providers with expertise working with immigrant victims (VAWA 2000 § 1513(c))

Additionally, DHS could make deferred action determinations within 90 days after a VAWA self-petition or a U visa case is filed this would provide immigrant crime victims access to the protection from deportation victims need that will help provide the enhanced protection immigrant victims need because when they lack access to law enforcement as LEP victims and when police treatment of immigrant and LEP victims in their community is substandard as is the case when children and the perpetrator are used to interpret, when police do not talk to the victim who called for help and when police reports are not taken. Issuing deferred action status as early as possible in crime victims' cases will further DHS policies designed to ensure that DHS officials do not waste enforcement resources and undermine safety for immigrant victims of domestic violence, sexual assault and human trafficking. Since deferred action status leads to work authorization and with work authorization immigrant crime victims in all states can obtain driver's licenses and state issued ID, this approach will help protect immigrant crime victims from falling victim to state and local law enforcement agencies who following the decision in *Arizona v. U.S.* can continue to stop immigrants and ask for papers. The first piece of immigration documentation an immigrant crime victim will be able to attain that state and local law enforcement may recognize as legitimate proof that the victim is lawfully present will be the employment authorization document. All other forms of documentation a VAWA, T or U visa applicant receives by DHS is not documentation that would be deemed "acceptable" by local law enforcement who have chosen to devote resources to checking for immigration status.

#### DHS Should:

- Ensure That VAWA, T and U Visa Applicants Are Granted Early Access to Work Authorization. Currently 73.9% of VAWA self-petitioners wait between 7 months and 2 years and 93.9% of U visa applicants wait between 7 and 18 months before receiving work authorization.<sup>60</sup> DHS should exercise the discretion DHS currently has to grant deferred action status to VAWA, T and U visa applicants who DHS believes have set forth a prima facie case for crime victim based immigration relief. Taking this step will protect immigrant crime victims from state and local immigration enforcement efforts, will provide them access to a valid state ID so they can travel as needed to enhance safety for themselves and their children, will provide access to drivers licenses<sup>61</sup> and will give crime victims the access to work authorization they need to support themselves and their children severing their economic dependence on crime perpetrators and making it safer for victims to be helpful in the detection, investigation, prosecution, conviction or sentencing of their trafficker, abuser or perpetrator.

<sup>60</sup> Leslye E. Orloff, National Survey on Timing of Access to Work Authorization by Immigrant Victim VAWA Self-Petitioners and U-Visa Applicants (September 28, 2011) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Timing-of-Access-to-Work-Authorization-6.4.12.pdf/view>

<sup>61</sup> For as state-by-state chart of drivers' licenses immigration documentation requirements see, Amanda baker and Leslye E. Orloff, Acceptable Forms of Identification for State Drivers' License/Identification Cards (March 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-issued-drivers-licenses-and-identification/Copy%20of%20Drivers%20License%20Access%20for%20Immigrant%20Survivors%203%2013%2013%20-2.xlsx/view>



## Department of Justice Grant Requirements

- DOJ Grants to Police and Prosecution Agencies: All law enforcement agencies (e.g. police, sheriffs, prosecutors) receiving funding from Burn, OVW, BJA, or other DOJ funding should be required to:
  - Include census and other data on LEP and foreign born populations in their jurisdiction in the grant application;
  - Include a line item for qualified interpreters or language line for LEP crime victims or if such a line item is excluded from the grant proposal explain in the grant why inclusion of funds for language access should not be required;
  - Certify that the law enforcement agency is in practice certifying U visas for immigrant crime victims or will begin certifying U visa cases within 6 months of receipt of grant funding and that their U visa practices and any policies or protocols issued are consistent with and do not undermine or contradict DHS memo and guidance on U visa certifications or the U visa statute and its legislative purpose and certify that they have shown DHS' roll call videos on VAWA, U and T visas during the course of the grant to law enforcement agency staff and managers;
  - Certify that the law enforcement agency has a language access plan described in Executive Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000), or will implement such a plan within 6 months of receipt of grant funding;
  - Certify that the agency receiving funding is not using children or alleged or potential perpetrators as interpreters;
  - Include in the grant reports that DOJ grantees and programs with collaborative agreements must complete twice a year questions:
    - About language access plan development and the date it was last updated; and
    - That require reporting about the number of U visa certification requested, issued and denied in during the reporting period
  - Law enforcement agencies with language access plans and U visa certification practices could be given a point advantage in the competitive grant application process and programs that receive grants but do not implement a language access plan or a U visa certification program that results in issuance of certifications would not be eligible for ongoing funding.
- Grants Funding Collaborative Community Response (CCR) Teams: Add to allowable and priority purposes for CCR funding inclusion of advocates and attorneys with expertise working with immigrant crime victims on CCR teams. Include an allowable or priority purpose funding for CCR work on improving language access to justice system assistance for immigrant crime victims and for promotion of U visa certification;

- Technical Assistance Providers: Encourage the International Association of Chiefs of Police, the National Sheriff's Association and other law enforcement agencies and prosecution agencies with model policy programs to adopt a model U visa certification policy or protocol that is consistent with the U visa statute, DHS regulations and DHS policies and training materials on U visa certification. Technical assistance provider should distribute these policies widely to their members.
- All DOJ and HHS Grantees: Must sign certifications included in their grant applications and grant conditions that they comply with VAWA 2013's anti-discrimination requirements.

### Training

- Federal Law Enforcement Training Center: Incorporate U Visa certification and T Visa endorsement training as a module into all FLETC sponsored endorsed trainings on domestic violence, sexual assault, child abuse and elder abuse issues.
- The U.S. Department of Justice (e.g., OVW, BJA, OVC): Should invest a portion of its existing grant funding for training and technical assistance in trainings led by law enforcement trainers working together with VAWA, T and U visa experts on U visa certification, T visa endorsement, building collaborations between law enforcement and immigrant victims' advocates and attorneys that improve law enforcement response to calls from immigrant and LEP crime victims.

### Promotion of U Visa and Language Access Policies By State and Local Governments

- Statewide U Visa Certification Requirements: State governments should follow the lead of Connecticut, that issued a statewide policy requiring police and prosecution offices to establish U-visa certification polices. Polices adopted must be consistent with DHS regulations, policies and training materials on U visa certification;
- City and Local Resolutions On U Visa Certification: City governments should pass resolutions and issue reports encouraging and directing and Mayors offices should direct law enforcement agencies operating within the local jurisdiction to implement U visa certifications policies and practices. All polices adopted must be consistent with DHS, regulations, policies and training materials on U visa certification.
- State and Local Governments Should Take Actions to Improve Language Access to Help from Law Enforcement: State and local governments should pass laws, ordinances, resolutions promoting use of qualified interpreters and language lines, hiring and promotion of bilingual officers, and adoption of language access plans by all law enforcement receiving funding from the state or local government. States and local governments should also promote and fund language lines and qualified interpreters that are made available to all law enforcement agencies in the jurisdiction. These resources can supplement services that should be developed and funded locally, particularly with the language spoken is not common in the jurisdictions. Examples of state language access laws include: the D.C. Language Access Statue. *D.C. Code § 2-1903* (2006) and the Hawaii Language Access Statute. Hawaii Revised Statutes § 371 (2006).