

Everything Law Enforcement Needs to Know about Forms of Immigration Relief

**Iowa Victim Justice Symposium
Des Moines, Iowa
September 11, 2018**



NIWAP

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

Participant Introductions, Goals and Expectations



Learning Objectives

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

- Understand Violence Against Women Act (VAWA) immigration relief available to immigrant victims of crime
- Use the U and T visa programs to effectively to enhance work of law enforcement and prosecutors work with immigrant victims and how it ultimately improves community safety
- Hold offenders more accountable by using the U Visa certification process as a crime fighting tool
- Understand what is the eligibility criteria and best practices for signing U visa certifications

General Caveats

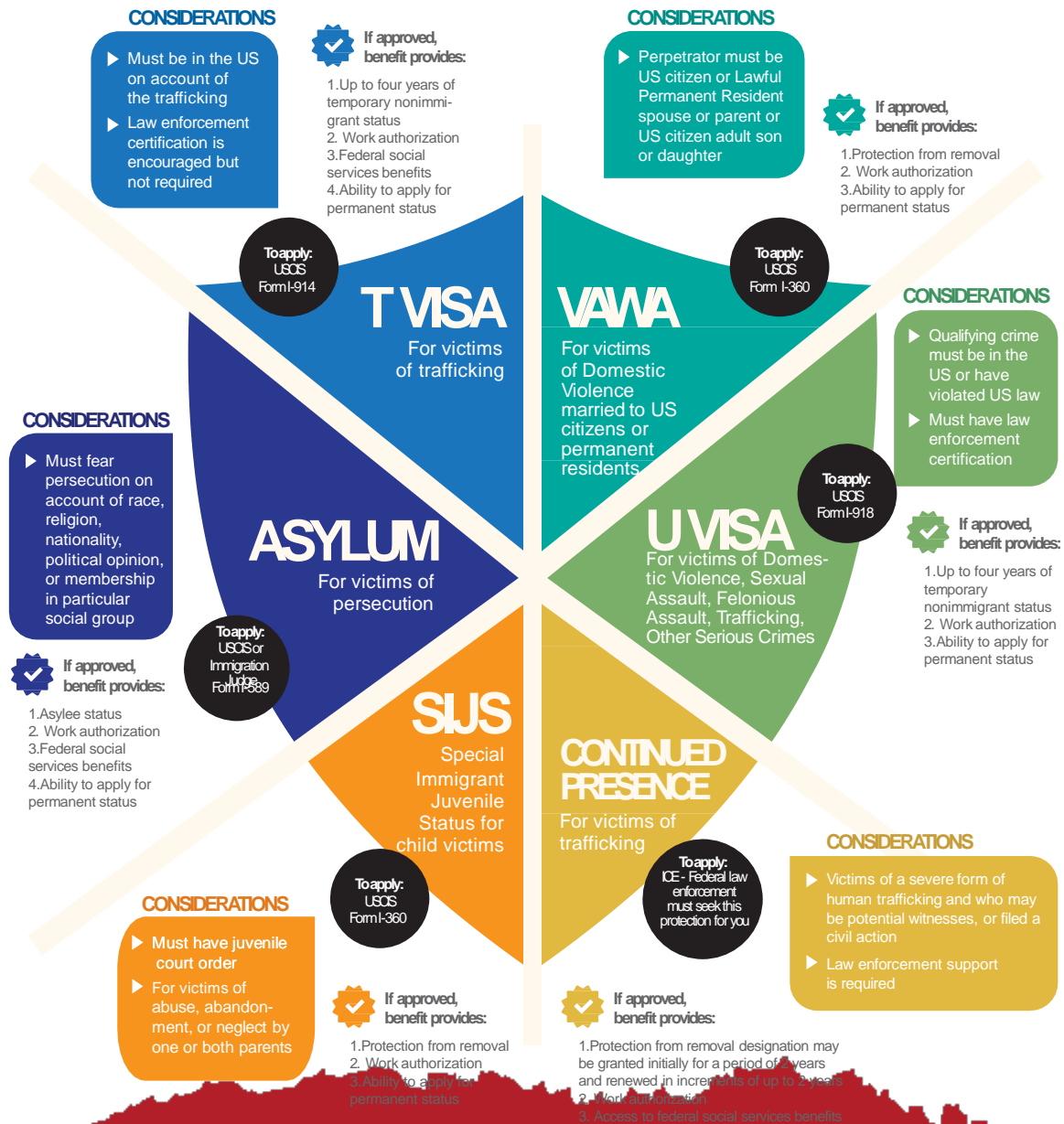
- Women, men and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas
- *That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault*

How Best Practices in Domestic Violence Investigations Promote Officer Safety

Department of Homeland Security



PROTECTIONS FOR IMMIGRANT VICTIMS



Immigration Related Abuse

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

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**
- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

*Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

What barriers and fears prevent immigrant victims from reporting crime?

If they report...

- They will be deported
- Offender will retaliate
 - Harm them
 - Harm family members, children
- Nothing will happen
- Cannot communicate with officers

Major Challenges in working with Immigrant Victims of Crime

1. Fear of deportation
2. Language
3. Lack of knowledge of legal rights
4. Do not trust that police/prosecutors will help them
5. Lack of reporting and/or cooperation as the case moves forward

What countries do the victims in your jurisdiction come from?*

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Iowa Demographics (2016)*

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

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

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=IA>
(January 2015)

Iowa – Countries/Regions of Origin (2016)*

- Latin America – 38.4%
 - Mexico (27.9%)
 - El Salvador (2.5%)
- Asia – 35%
 - India (7.5%)
 - China/Taiwan (6.7%)
 - Vietnam (3.6%)
- Europe – 15.5%
 - Eastern Europe (9.5%)
 - Western Europe (3.2%)
- Canada – 2.7%
- Oceania – 0.3%
- ▶ Africa – 8%
 - ▶ Northern Africa (1.8%)
 - ▶ Western Africa (1.8%)

Limited English Proficiency
(speaks English less than very well)

- Naturalized citizens (37.2%)
- Noncitizens (59.3%)

Languages spoken at Home

- Spanish (51,637)
- French (1,788)
- German (3,234)
- Other Slavic Languages (4,318)
- Chinese (7,066)

**Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/IA>
(January 2015)*

Language Access

Best practices to successfully investigate and prosecute cases involving non-English speaking victims

U Visas as a Crime Fighting Tool

Improving the reporting,
investigation, and prosecution of
violent crime
& keeping everyone safer

**What, if anything, do you know
about U Visas?**

Overview of the U Visa

- **What is the U visa?**
- **Purpose:** Why does it exist?

U Visa Basics

- Law enforcement certification is just one part of the overall process it does not = citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Offender may be citizen or non-citizen
- Can be “revoked”
- Increases immigrant victim participation in criminal justice system

Purpose of Crime Victim Protections

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

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

Major Forms of Relief

- VAWA self-petition
 - Abuse by US citizen or lawful permanent
 - Spouse, former spouse, parent, step-parent, over 21year old child
- Special Immigrant Juvenile Status
 - Immigrant children abused, abandoned or neglected by one of their parents
 - (U.S. or abroad)
- T Visa
- U Visa

U Visa Facts

- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

U Visa Requirements

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

U Visa Criminal Activities (11/2011 data)

- Domestic violence **45.9%**
- Rape, sexual assault, incest, trafficking **30.4%**
- Felonious assault, murder, manslaughter **9.9%**
- Kidnapping, being held hostage, unlawful criminal restraint, torture **8.47%**
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**

Qualifying Criminal Activity

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

*Attempt, conspiracy or solicitation to commit any of these crimes
any similar activity

Who can apply?

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

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - Judges, magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and elder abuse investigators and agencies
- Other government agencies

U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime

Things to Know About Certifying

- “Do I believe this person was a victim of a qualifying crime?”
- “Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?”
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor’s office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?

How Will a U visa Certification Request Come to You?

- From victim advocate or immigration attorney
- As a police officer you are the first responder
- As a prosecutor you might have continued contact with the victim and might be first to identify victim's U visa eligibility

When should you certify?

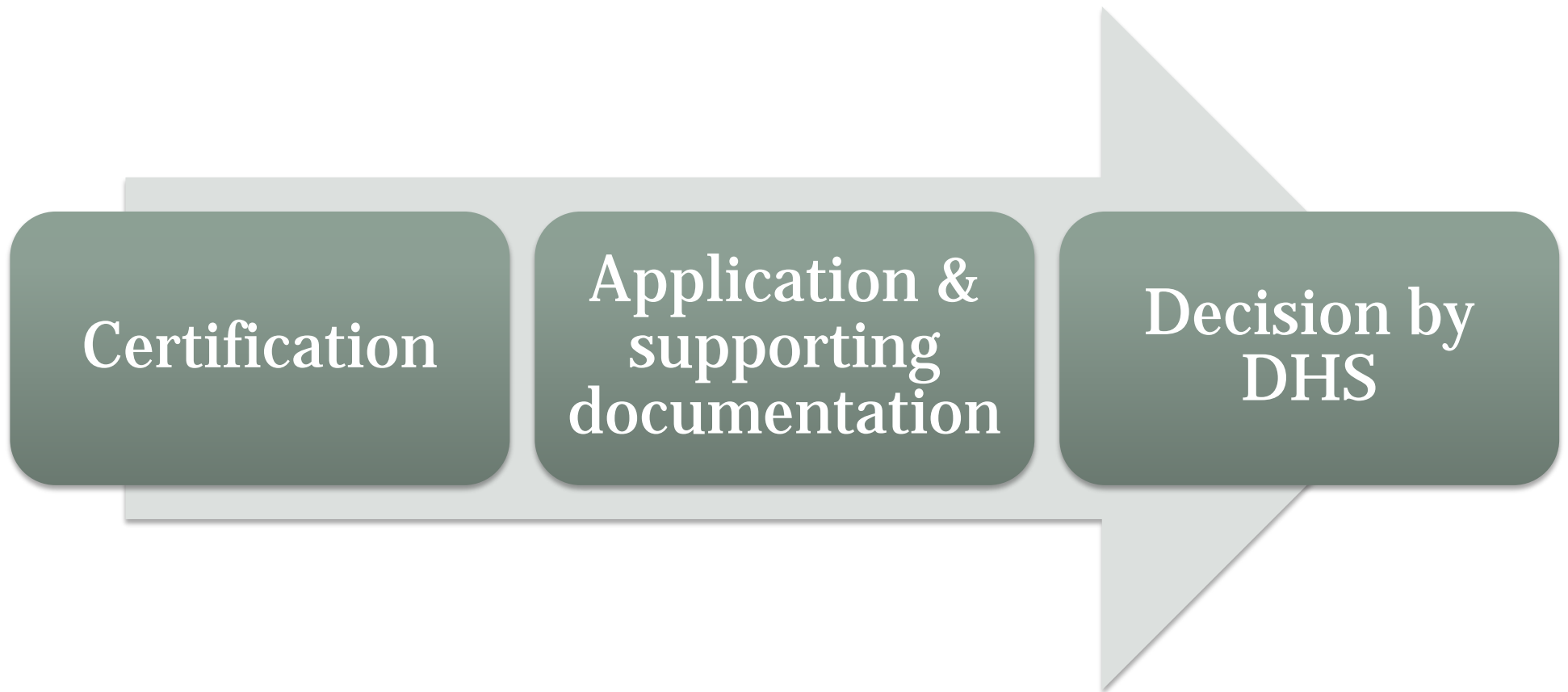
Timeline

- Certification must be included in the initial application for a U Visa
- Once the initial application is processed:
 - Victim is entered into a database and flagged as an applicant for a U Visa



- Immigration proceedings will not be initiated
- Offender can not intimidate with threats

The U Visa Application Process



Typical length of process = 36 - 48 months

DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
 - Review of criminal history
 - Review of immigration history

How does law enforcement and prosecution benefit from the U visa?



U Visa Benefits to Law Enforcement and Prosecutors

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

Helpfulness in the Regulations

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

3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above? Yes No

What does it mean for a victim to “unreasonably refuse” to provide assistance?

Helpfulness can be satisfied even if:

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

**Why would a victim report a crime
and then refuse to participate in the
ensuing investigation and trial?**

Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from either family
- Financial hardship
- Lesser of two evils

Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable"

- Considerations:

- Totality of the circumstances, including the nature of the victimization
- Victim's fear of the abuser
- Trauma suffered
- Force, fraud or coercion

Prosecution Specific Issues

Does your agency have a
U Visa Policy/Procedure ?

DHS Resources



U.S. Immigration
and Customs
Enforcement

Victim Assistance Specialist

SAC St Paul

Deborah Morrison

Phone: 952-858-5427

deborah.morrison@dhs.gov

NIWAP

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

National Immigrant Women's Advocacy Project Resources

NIWAP Web library

niwaplibrary.wcl.american.edu



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Types of Technical Assistance

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

NIWAP Topics

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

Interested in Joining the Community of Practice or Roundtable

- Application available at:
<http://niwap.org/go/COPapplication>
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit
<http://niwap.org/go/LEARoundtables/>

Resources

- ▶ **Technical Assistance**

- ▶ Call: 202.274.4457
- ▶ Email: niwap@wcl.american.edu

- ▶ **Materials on U visa and Immigrant Victims Legal Rights**

- ▶ Visit <http://niwaplibrary.wcl.american.edu>
- ▶ U Visa Certification Toolkit
- ▶ DHS Answers to Law Enforcement Reasons for Not Certifying
- ▶ USCIS Q & A on U Visa Certification
- ▶ Roll call training videos
- ▶ All available at: <http://niwap.org/lawenforcement>

Technical Assistance and Materials

- **Materials for this training:**
 - www.niwap.org/go/iowa2018
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- **Web Library:**
www.niwaplibrary.wcl.american.edu

