

U-visa Collaboration and Protocols

U-visa Background and Requirements

The U-visa, along with the T-visa, plays a unique role in immigration relief because the requirements overlap with the criminal justice system. In particular, a U-visa applicant must prove that he or she “has been helpful, is being helpful, or is likely to be helpful”¹ in the investigation or prosecution of a crime. Unlike other humanitarian applications for immigration relief, like VAWA and asylum, U-visa applicants may not merely prove that they are victims of criminal activity. This creates a scenario where advocates, organizers, attorneys and service providers must work collaboratively in order to accomplish the goal of creating a path to immigration relief while protecting crime victims through the criminal justice process.

The U-visa regulations require a U-visa applicant to submit a law enforcement certification with his or her application for a U-visa.² Most attorneys and advocates begin the U-visa process by approaching a law enforcement agent for a certification. While an advocate may be successful the first time and even on subsequent occasions, this approach benefits individuals more than the larger community of immigrants. For example, the crime victim whose neighbor calls the police may hesitate to trust law enforcement, especially in the case where the city's law enforcement has Department of Homeland Security-deputized agents. If the crime victim does not have an advocate or an attorney to advise her, she will not likely know about U-visa protections. The arrest of her perpetrator may create panic and fear of the immigration consequences for the victim. In such a case, an immigrant crime victim may choose not to cooperate and be placed in removal proceedings without self-identifying to law enforcement.

Developing a Collaborative:

In order to ensure that all immigrants, not just those with victim service support, know about the U-visa protections when law enforcement requests their cooperation. The U-visa regulations recommend that law enforcement agencies establish a protocol for dealing with U-visa cases³. The recommendation is not mandatory and many law enforcement agencies will either not know to establish a protocol or decide not to prioritize this recommendation. In other areas, law enforcement may indeed establish a protocol. The ideal protocol will emerge from conversations with all the critical players:

¹ INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III).

² New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

- Organizers
- Advocates
- Immigration attorneys
- Domestic violence/family law attorneys
- Domestic violence advocates
- Police officers
- Prosecutors
- Judges
- Child Protective Services
- Immigrant Rights Advocates

However, without the correct preliminary work, local law enforcement agents may create these protocols in a vacuum with little input from important allies. Ideally, a collaborative relationship will exist even before a law enforcement agent is ever asked to sign a certification. While this is not always possible, it will be more effective for a broader range of immigrants to access U-visa relief if the various key players attempt to collaborate in advance.

The U-visa provision emerged as an extension of the Violence Against Women Act. The law was intended to extend provisions to domestic violence survivors to be able to access immigration protection so that they could feel safe seeking the protection of law enforcement. However, the final U-visa legislation included many other crimes beyond those related to domestic violence. The U-visa follows many of same protocols of the VAWA provisions and applications are adjudicated through the Vermont Service Center, where all VAWA self-petitions are adjudicated. Consequently, the U-visa is more familiar with those immigration attorneys who have worked with domestic violence survivors. It is less familiar to immigrant rights advocates working in the larger immigrant communities. Immigrant rights advocates must be included in these collaborations because they are most likely to encounter eligible U-visa applicants and are best positioned to expose immigrant communities to the U-visa option.

Similarly, domestic violence advocates in community-based organizations can play a critical role in this collaboration. For more than three decades, domestic violence advocates have steadily built relationships with law enforcement in order to improve protections for battered women. As a result, they often already work in law enforcement coalitions and may be able to identify the strongest victim advocates within law enforcement. They are also most likely to encounter domestic violence victims on a daily basis. Law enforcement agents conversely are well versed in domestic violence service agencies and have already developed trusting relationships with these service providers. Including domestic violence advocates has two-fold benefits: it builds on existing relationships and simultaneously exposes domestic violence advocates to the experiences of immigrant crime victims.

Once the appropriate players come together, it is important to understand the dynamics of the participants. Everyone plays a role and if any one group tries to lead the agenda, it may create a power imbalance. Just as law enforcement should understand that advocates and community-based groups play a critical role in connecting immigrant crime victims with victims

services and legal representation, community-based groups and attorneys must also understand that law enforcement's primary duty is to investigate and prosecute crimes and victim services is a secondary consideration. Nonetheless, in the context of U-visas, all these participants share some commonalities. In the end, the U-visa helps crime victims access protection under the law, which in turn allows more immigrant crime victims to help law enforcement investigate and prosecute crimes.

Developing Protocols:

In developing the protocols in the collaboration, several issues should be addressed:

- Identification of victims who may need immigration relief without enforcing immigration laws⁴
- Best practices for service provider referrals
- Language access both in law enforcement proceedings and in service provision
- How to work with medical professionals who may identify crime victims
- Training in U visa certification process
- Cultural Competency Training for law enforcement and victim service providers

Protocols will vary from one jurisdiction to another based on local needs, services, and capacity. There is no one correct method in addressing the above issues. However, a protocol that includes the critical players while understanding participant roles will ultimately protect more immigrant crime victims and allow them a path to obtain U-visa status.

⁴ Law enforcement agencies, unless they have a memorandum of understanding with the Department of Homeland Security, do not and should not be encouraged to screen for immigration status. Screening requires knowledge of federal immigration laws, which local law enforcement agents do not have.