

PRESENTED BY: U.S. DEPARTMENT OF JUSTICE OFFICE ON VIOLENCE AGAINST WOMEN IN PARTNERSHIP WITH LEGAL MOMENTUM, THE NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (NIWAP) AND THE CALIFORNIA COALITION AGAINST SEXUAL ASSAULT (CALCASA)

Webinar

Lessons Learned from Law Enforcement: How Collaborations That Result in U Visa Certifications Support Safer Communities

We will start soon



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Please Note

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Pete Helein
Police Chief
Appleton, Wisconsin



Michael LaRiviere
Police Officer, Massachusetts

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Webinar Series

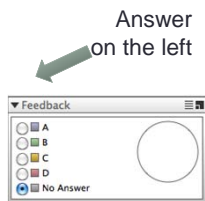


- This the 3rd Webinar in a series of 5 Webinars

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW **NIWAP** LEGAL momentum The Women's Legal Defense and Education Fund CALCASA

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Let's see who is on the call with us. Please check the box that best describes you:



- A. Lawyer or BIA Representative representing victims in family court
- B. Domestic violence/sexual assault victim advocate
- C. Work for a government agency
- D. Other



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Learning Objectives:

- Promote U visa certification practices by
 - effectively communicating with law enforcement
 - Identify common goals and objectives
 - Creating plans to approach law enforcement
- Identify the reasons why law enforcement doesn't always sign U visa certifications
- Anticipate and overcome challenges



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Background Knowledge

- Purpose of the U-visa
- Must be able identify and understand barriers that prevent immigrant and refugee victims from cooperating with the justice system.



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What crimes are you seeing around your community ?



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What barriers are present, if an Immigrant/Refugee victim considers reporting?



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Overview of Barriers for Noncitizens

- Language access
- Lack of understanding of U.S. Laws
- Abuser's power and control over victim's immigration status
 - Domestic violence
 - Sexual assault in the workplace or at university/school
 - Refugee status

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Survivor's Deportation Concerns

- Immigration related abuse/deportation/detention
- Economic survival
- Fear of losing custody/access to children
- Belief that if partner is deported, she has to go with him
- Fear of abandoning the home



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Survivor's Deportation Concerns

- Danger to victim in the home country (retaliation)
- Fear of being ostracized by community in home country
- Fear of police/experience in home country
- Religion
- Political instability/Gender Barriers in home country
- Fear of unknown



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Keeping Communities Safe: Reporting Crime Vs. Deportation


Concerns about immigration status result in undocumented immigrant crime victims being

- **Less likely to:**
 - Report a crime
 - Provide information to police & prosecutors
 - Believe police & prosecutors want to help them
 - Testify
- **More likely to:**
 - Be susceptible to perpetrator's coercion and threats; particularly immigration related threats, coercion and abuse



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Why is legal immigration status important?

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Immigration Status

- Protection from deportation
- Ability to work legally
- Path to lawful permanent residency and ultimately citizenship
- Increased access to public benefits, including housing
- Severs dependence on potential abusers
- Ability to travel to and from the U.S. (with some exceptions)
- Improved access to family law remedies, such as protection orders and custody

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Baseline - DHS has Co-Equal Roles

- Enforcing immigration laws AND
- Identifying and providing immigration law protections to immigrant victims of human trafficking, domestic violence, sexual assault and other violent crimes –
– **DHS Memos**

DHS needs local law enforcement help to identify and protect victims in order to ensure perpetrators of crime are held accountable. We didn't talk about this but I thought I could give you more information and ideas

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Purpose

Congress enacted the U-visa in 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



Other Legal Options for Immigrant Survivors

Immigration relief:

•VAWA self-petition

- Abused spouses/children of US citizens and lawful permanent residents
- Abused parents of U.S. citizens over 21 years of age

•Battered spouse waiver

- Abused spouses of US citizens with two-year conditional permanent residency

•T-visa

- Victims of severe forms of human trafficking

• Asylum

- Persecution based on protected classes

• Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, abandoned or neglected

• Deferred Action (DACA)- Relief based on new DHS policies and for child arrivals

- Deferred action for "low priority" survivors, parents, and "dreamers"



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 Application Process

- **Law Enforcement Certification- must have one**
- Complete and submit application, which includes
 - identity documentation
 - evidence of victimization and helpfulness
 - inadmissibility waiver and fees (waived)
 - biometrics
 - background checks
- Decision from USCIS in approximately 9 months



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U-visa Quick Facts

- Only 10,000 U-visas can be granted annually
- Applicant may apply for immediate family members (spouse, children, siblings, *parent)
- 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 legal permanent residency for 5 years + proof of moral character



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How does the U-visa help both law enforcement and survivors?



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Benefits for Law Enforcement

- Encourages victims to report crimes
- Improves law enforcement’s ability to detect, investigate and prosecute crimes in the community
- Demonstrates the department’s commitment to protecting immigrant community members
- Makes it easier to identify victim witnesses and pursue prosecutions of perpetrators
- Fosters community policing partnerships and trust



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Benefits for Survivors

- Protection from deportation
- Enhanced Safety for Victim
- Financial independence from perpetrator
 - Abusive family member
 - Employer
- Legal Work Authorization – Drivers License/SSN
- VAWA Confidentiality
- Temporary legal immigration status
- U-visa protections for vulnerable family members
- Greater ability to gain/maintain custody of her children
- More access to victim services, health care and benefits



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Laying the Foundation for Partnerships: The Department’s Mission and Vision Statements

“We Maintain Open Communication with all the Communities We Serve. Their Input Helps to Determine Police Policies, Priorities and Strategies.”
-Excerpt from San Francisco Police Department’s Mission Statement



“The people of our communities and members of the police Department must be united in their commitment to addressing crime, violence, and quality-of-life issues by engaging one another and all city agencies in problem-solving partnerships.”
-Excerpt from San Francisco Police Department’s Vision Statement



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Frame the Conversation: Focus on Common Goals

These goals include:

- Holding perpetrators accountable
- Increasing public safety
- Providing redress to victims
- Building trust in the community



“It’s not 10,000 visas it is
10,000 tips to get criminals off
our streets”

- Chief Pete Helein, Appleton PD



Strategic Plan

1. “Do Your Homework”
2. “Building Alliances”
3. “Meet and Greet”



1. "Do Your Homework"

Before contacting law enforcement, prepare by conducting research in the following areas:

- Identify a law enforcement ally and learn about current practices
- Collect survivors' stories
- Collect data about current U visa certification practices



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Story Collection

- Collect stories of survivors of crime, illustrative of the impact of current U-visa certification practices on crime victims (positive/negative) :
 - Should be emotionally compelling—focus on victimization and crimes committed by perpetrators
 - Allows advocates to assess and document barriers survivors face when working with law enforcement

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Data Collection and Fact Sheets

- Work with allies and the community to collect data documenting the extent of U visa certification practices:
 - How widespread are the failures to certify?
 - Are the failure to certify particular to one precinct or police chief?
- Prepare talking points that document and articulate the problem

This will help you develop a factual understanding of the nature and scope of any barriers to U visa certification access for survivors


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2. "Building Alliances"

Look for partners and/or coalitions that already have trusting relationships with police departments



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Multidisciplinary Partnerships

- Mainstream partners (e.g. Domestic Violence and Sexual Assault Agencies, Courts, Government, Faith based, and Health Professionals) can help advocates successfully create relationships with law enforcement
- Formulate strategy to approach law enforcement based on allies' past experiences
- Be proactive

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Work with an Ally

- If you do not have access to a mainstream partner or positive relationships with the police:
 - Plan a meeting with the Chief of Police or head of the agency through a trusted ally of the Chief
 - Make sure that the ally frames the issue in a manner that is in line with the Chief's concerns for community safety and perpetrator accountability

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3. "Meet and Greet"

Plan by creating a strategy for contacting, meeting with, and building relationships with law enforcement agencies



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"Meet and Greet"

- To whom is it best suited to **send** a letter and who is it best **from** ?
 - Chief, Sergeant, Sheriff, Mayor, Advocate, Judge, or another ally?

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Communication Goals

- Communicate U-visa certification goals in the context of law enforcement goals:
 - Victim safety
 - Lessening fear to enhance crime reporting and tips
 - Improving law enforcement's ability to hold perpetrators accountable

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Bring Something to the Table

- Collaborate with other advocates to create a packet of information, pocket sized cards and resource materials to hand out to victims containing:
 - names of advocates and/or shelters
 - victims' rights
 - names and numbers to call for assistance and counseling
 - medical information



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Work with a Cross Discipline Team

- Determine who comprises the best cross-discipline team to attend any such meetings with law enforcement
- Set up regular meetings with advocates and provide the other agency with updated information
- Celebrate successes and develop a plan for improving shortcomings



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As an Advocate ...

The advocate's role in the meeting is to be an expert, who is an **honest broker** on the effect of current practices or policies on immigrant survivors, whom law enforcement can work with to improve U-visa certification practices.




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Conduct Training

- Conduct trainings in the context of community policy and safety, rather than batterer/victim framework, and partner with another professional
- Create helpful tools for law enforcement, e.g.:
 - Toolkits
 - Flyers for victims
 - Agency protocols and procedures for U-visa certification



Putting Relationships with Law Enforcement into Practice



Building Advocate-Law Enforcement Relationships Result in U-Visa Certification



U-Visas Presentation - JFVC - 2010 - Hass & Morahan



Encountering an Immigrant Victim: VAWA, U-visa, T-visa

Advocates can assist law enforcement by:

- Helping survivors apply for VAWA/U-visa/T-visa protections
- Providing survivor's demographic information
- Locating survivors
- Encouraging clients to maintain contact with law enforcement
- Getting client to office for interviews safely
- Making sure there is language access for client
- Educating clients about their rights so they are not further victimized in another context

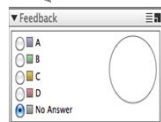


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What are the most common challenges you anticipate or have experienced in obtaining the U-visa certification from law enforcement ?

Answer on the left



- A. Immigration is a complicated federal matter, we don't really understand the U visa and we don't want to give citizenship or be liable for anyone
- B. She wasn't helpful enough, she didn't even testify, no conviction
- C. She has violated our laws, why should we help her, what if she making this up just to stay in U.S.
- D. We don't think the crime was serious enough, can you show us more proof of how she was harmed?



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Overcoming Challenges



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Challenges Usually Stem from

1. Misunderstanding of the helpfulness
2. Bias or fear of the unknown
3. Fraud concerns
4. Quantifying substantial harm or helpfulness
5. Systematic Problems



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Challenges Address Earlier

- No active investigation/case closed
- There is no prosecution/conviction
- She wasn't helpful enough, she didn't even testify, no conviction
- Immigration is a complicated federal matter we don't want to confer any benefits or be liable for the beneficiaries
- She has violated our laws, why should we help her

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Challenges Continued

- How do we know she is not just making this up so she can gain immigration status.
- We need more proof that she was really harmed.
- There are only 10,000 visas and we need to save them for those that really deserve them.
- But she was arrested too !
- What do you mean indirect victim?

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Challenges Continued

- We haven't developed a policy, come see us when we do
- There are no records, so we don't know if she was helpful
- We let the DA's office handle certifications
- We know she is still with the abuser so what's the point
- We will wait to sign it when the case is closed

Helpfulness by the Regulations

- Statute and DHS Regulations state: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or Investigation,
 - 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

True
Helpfulness can be satisfied even when a survivor makes a police report, and no criminal charges are pursued by law enforcement.

Feedback

<input type="checkbox"/>	True
<input type="checkbox"/>	False
<input type="checkbox"/>	No Answer

X

Will not certify because there was no conviction or prosecution ?

- What's the Rule ?
 - 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
 - As long as the victim has been **helpful** in the detection, investigation or prosecution of the qualifying **criminal activity**, AND
 - Victim has not unreasonably refused to cooperate in the investigation or prosecution of the crime



Examples of Helpfulness

- Calling 911 to report a crime
- Providing a statement to the police
- Filing a police report
- Seeking a protection order
- Providing information to prosecutors
- Serving as a witness in a prior prosecution or investigation
- Providing information at sentencing/victim impact statement
- Probation violation report or Parole




Helpfulness can be satisfied even if:

- Victim reports a crime and there is no further investigation
- Report is of a past crime, where victim did not know or feel safe to report at the time
- Perpetrator absconds or is subject to immigration removal
- 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
- Victim is subject to immigration enforcement
- Victim fully discloses story after better understanding rights, the U visa and meaningful language access



Responding to Challenges

1. What is the Regulation or Rule?
2. What was the Congressional intent behind the regulation?
3. What is the benefit for law enforcement?
4. What is the benefit for the victim of the crime ?
5. What is the benefit for our community?



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Law Enforcement will only certify when there is an active investigation?

- What's the Rule:
 - There is no statute of limitations regarding the time frame in which the crime must have occurred.
 - Federal legislation specifically provides that a victim may be eligible for a U-visa based on having been **helpful** *in the past* in an investigation or prosecution a crime.



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Law Enforcement benefits in signing certification under these circumstances


- May lead to tips on new crimes especially those that are serial in nature (e.g. rape)
- Survivor may feel safe to report future crimes
- Builds trust with immigrant community
- Brings stability to the survivor of the crime



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Reasons for Certification

- Victim nevertheless came forward and was **helpful** in detection and investigation of criminal activity
- Congress did not want to interfere with the discretion of investigators and prosecutors
- There are many factors to consider when there is not a conviction or prosecution unrelated to a victims willingness to be helpful
 - Pleas
 - Perpetrator flees
 - Unable to ID perpetrator



Anticipate Addressing Safeguards Against Fraud

- Agencies that investigate and prosecute are in the best position to address fraud
- Applications are adjudicated by a specialized unit
- USCIS conducts FBI fingerprint and background checks, and review of inadmissibility issues
- USCIS may ask for further evidence -supporting evidence
- Additional fraud checks when applying for LPR status



Addressing Bias Against Undocumented Persons or Fear of the Unknown


- DHS has dual policies of enforcement and victim protection
- DHS encourages certification practices and protocols
- Signing the U-visa certification is only one of several requirements
- Reasons why Congress created the U-visa
- Show law enforcement how U-visa is a tool to keep our communities safe, foster relationships and protect victims



Addressing Substantial Harm

- USCIS determines “substantial physical or mental harm on a case-by-basis
- Cite DHS materials that clarify that certifying agencies do not make this determination
- Congressional intent behind not leaving this to Law Enforcement
- Unique manifestation of harm and dynamics in victims of sensitive crimes

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QUESTIONS

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Technical Assistance for Law Enforcement

- PowerPoint and materials from this training
 - www.niwap.org/go/collaborating-with-le
- Technical Assistance for Law Enforcement by a Peer
 - (202) 274-4457 or niwap@wcl.american.edu
- DHS Contact Information
 - Scott Whelan (202) 272-4457
- Web Library NIWAP and Legal Momentum
 - niwaplibrary.wcl.american.edu
 - Training materials
 - Screening Tools for law enforcement

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National TA Providers

- National Immigrant Women's Advocacy Project
niwap@wcl.american.edu (202)274-4457
- Web Library NIWAP and Legal Momentum
– iwp.legalmomentum.org
 - Training materials and Tools for advocates
 - Multi-lingual materials for immigrant survivors
 - National online directory of programs serving immigrant survivors
- ASISTA questions@asistahelp.org (515)244-2469
- National Immigration Project of the National Lawyer's Guild
www.nationalimmigrationproject.org 617.227.5495

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Thank you!

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