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June 5, 2019

## NIWAP Newsletter: June 2019

### **ICE Confirms Viability of Policy Memos Protecting Victims**

Today, Searchlight New Mexico published an article titled "[On their own](#)" on the U visa and the effect of increased immigration enforcement, particularly on victims of domestic violence. Lauren Villagran, the journalist who authored the article, secured confirmation from US Immigration and Customs Enforcement (ICE) that two important policy memos designed to offer protection to immigrant crime victims and help law enforcement and prosecutors fight crime are still in effect. ICE sent an [email](#) to Villagran stating that the ICE memos, "Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs" and "Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants" remain in effect. The email was published as part of the article. ICE recognized the importance of these policies remaining in effect, stating:

"These policies are intended to minimize the effect that immigration enforcement may have on the willingness and ability of victims and witnesses to call the police to report crimes or protect their safety. ICE has long recognized the importance of victims and witnesses and the critical role they play in successful investigations and prosecutions."

The Searchlight article illustrates how fear of deportation silences immigrant victims and keeps them from reporting the abuse to law enforcement and seeking help from the courts. Having confirmation from ICE that these victim and witness protection policy memos remain in effect provides important information to the field of professionals who work with immigrant victims. It clarifies ICE policy on prosecutorial discretion for crime victims and witnesses in cases involving domestic violence, human trafficking, and other serious crimes. The ICE policy memo on the adjudication of requests for a stay of removal by U-visa applicants provides a process for granting stays of removal. The process outlined in the memo encourages the Department of Homeland Security (DHS) not to deport victims who are prima facie eligible for U visas so that they can participate in the criminal justice system.

Written affirmation from ICE of its continued commitment to its victim witness policies will be helpful to police, prosecutors, judges, advocates and attorneys in their work with immigrant survivors. Advocates and

attorneys can use this statement and the two policies in their advocacy with ICE to ensure on a case by case basis that the protections these policies promise become a reality. The Searchlight article illustrates how ICE implementation of these important victim protection policies' directives are not uniformly followed at the local level by ICE field officers. This is consistent with NIWAP's findings through the technical assistance calls we receive. Not following these policies is particularly problematic in cases where ICE relies on perpetrator-provided tips to initiate an immigration enforcement action against the victim. It is therefore imperative that professionals working with immigrant victims at risk of or who have become the target of immigration enforcement work with an immigration attorney who is experienced in working with immigrant survivors in removal proceedings. These immigration attorneys can assist advocates, family law attorneys, judges, police, and prosecutors in advocating that the victim is eligible for the protections offered to victims in these policies. Please contact NIWAP for technical assistance for help in addressing any issues.

In the following sections of this newsletter, we first summarize the two ICE policy memos referenced in the article with links to the NIWAP web library for PDFs of the memos. Second, we provide an analysis of how these policies and the email from ICE can be used by each group of professionals who are most often involved in helping immigrant victims in local communities across the country.

#### **Summary of ICE Memos Protecting Victims**

[David J. Venturella, "Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status \(U-Visa\) Applicants \(September 24, 2009\)"](#) : This memo provides guidance on the adjudication of requests for a Stay of a Final Order of Removal by victims with pending U-visa applications. The memo authorizes DHS to grant Stays of Removals to U-visa applicants with prima facie eligibility for the visa. It also explains that Field Office Directors should favorably view a request for a Stay of Removal if USCIS has determined that the applicant has established prima facie eligibility for a U-visa. The Field Office Directors should also favorably consider any humanitarian factors related to the applicant or the applicant's family who rely on the applicant for support.

The memo also explains that a Stay of Removal based on a pending U-visa application is not appropriate when: (1) USCIS has determined the applicant does not have prima facie eligibility for a U-visa; (2) USCIS denied the U-visa application on the merits; or (3) serious adverse factors outweigh the grant of a Stay of Removal. Serious adverse factors include national security concerns, evidence the applicant violated human rights, evidence the applicant has engaged in significant immigration fraud, evidence the applicant has a significant criminal history, or any major public safety concerns.

The memo provides a procedure for Field Office Directors when they receive an applicant's request for a Stay of Removal. If USCIS determines the applicant has prima facie eligibility for a U-visa, then the Field Office Directors and Office of Chief Counsel will adjudicate the request. Absent any serious adverse factors, the request for a Stay of Removal should be granted.

[John Morton, "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs \(June 17, 2011\)"](#) : This memo memorializes ICE's policy of exercising prosecutorial discretion in cases involving victims and witnesses of crimes such as domestic violence, human trafficking, and other U visa covered crimes and offers similar protection for immigrant victims who are plaintiffs asserting claims for protection of their civil rights and liberties. The memo encourages ICE officers, special agents, and attorneys to use prosecutorial discretion when managing cases with victims, witnesses, and plaintiffs in order to encourage willingness and ability to cooperate with investigations (e.g. EEOC, state labor agencies) and to appear in court in family, civil, and criminal cases. Absent any severe or aggravating factors, the memo dictates it is against ICE policy to begin removal proceedings against a person who is a known victim, witness, or plaintiff. The memo directs ICE officers, special agents, and attorneys to exercise discretion in a case-by-case basis involving victims, witnesses, and plaintiffs in order to avoid deterring individuals from coming forward to report a crime. It also instructs special attention be paid to victims of domestic violence, human trafficking, or other serious crimes, as well as witnesses in pending investigations or prosecutions, among a few others.

#### **What Do These Policies Mean for Immigrant Victims and the Professionals Helping Them in the Field?**

It is important that advocates and attorneys continue to use these policies and educate others about the existence of the protections these ICE policy memos afford immigrant victims and witnesses. We need to keep reminding ICE that the agency itself has identified this as important. Judges, police officers, and prosecutors can use these memos in their discussions with ICE about limitations on courthouse enforcement against immigrant victims and witnesses. Police and prosecutors can also cite to these memos when notifying ICE that a victim or witness with whom their agency is working in a criminal investigation or prosecution has become subject to an immigration enforcement action or is receiving threats of deportation from the perpetrator.

As the article highlights, ICE maintains its charge to the protection of victims of crime from deportation. It is vital in our work with immigrant victims to emphasize the agency's recognition and commitment to these policy memos.

#### **Courts:**

The ICE email and ICE victim protection policy memos are useful and important for courts. They demonstrate the Department of Homeland Security's (DHS) commitment to implement Violence Against Women Act (VAWA) protections for immigrant victims of domestic violence, child abuse, elder abuse, sexual assault, and human trafficking, among other serious crimes covered by the U visa program. Knowledge of these memos provide courts with greater access to legally accurate information about immigration laws, DHS regulations and policies, and federal immigration law protections for immigrant

crime victims and children. They also promote a fair administration of justice in cases involving immigrant victims, children, and families.

Knowledge about these policies helps courts:

- *Use legally correct information about immigration laws* in adjudicating protection orders, custody, divorce, child/spousal support, criminal and other cases that involve immigrant crime victim litigants and witnesses. When courts better understand that crime victims have paths to legal immigration status under the U and T visa, VAWA and Special Immigrant Juvenile Status (SIJS) programs and the protections from deportation that these immigration statutes and DHS policies create, perpetrators will be less able to use a victim's immigration status and discovery requests that violate VAWA confidentiality protections as a weapon to gain advantage in court cases and immigrant victims will receive more just outcomes in court cases.
- *Issue U and T visa certifications by judges.* The ICE email and policy memos help courts understand how the role Congress created for judges as U and T visa certifiers fits with and supports the goals of DHS and federal immigration laws. Judges are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B. The certification is necessary to establish eligibility for the U visa, but by itself does not grant immigration status to the victim. To obtain a U visa, a victim must meet eligibility requirements, in addition to obtaining a U visa certification. The Department of Homeland Security (DHS) has sole authority to grant or deny a U visa. The U and T visa programs implement federal laws and policies to offer protection from deportation and a path to legal immigration status for immigrant victims who have been willing to turn to the courts for help in civil court cases or whom participate in criminal court cases. These memos can also be used together with [DHS policies and publications on the T and U visa programs](#) to promote U visa certification by individual judges. The ICE victim protection policies also support courts like the Superior Court of California County of San Francisco's implementation of [U-visa certification Protocol](#) based on the DHS U visa Resource Guide, as well as implementation of U visa certification protocols at courthouses.
- *Sign SIJS findings in cases of immigrant child abuse victims.* In most states, protection order and domestic violence laws are written to offer protection to domestic violence victims who suffer either [spouse/intimate partner violence or child abuse](#). Immigrant children who have been victims of child abuse perpetrated by one of their parents qualify for Special Immigrant Juvenile Status (SIJS) but need to obtain findings from a state court as a prerequisite to the child's filing for SIJS. The ICE email and the victim protection memos that explicitly offer protection to domestic violence victims help courts understand how signing SIJS findings in cases of immigrant child abuse victims is consistent with and promoted by federal immigration laws designed by Congress to protect both child and adult victims of domestic violence.
- *Develop and implement state court policies that limit courthouse immigration enforcement.* In January 2018, [ICE issued a policy](#) that significantly limits its ability to conduct immigration enforcement activities at courthouses. This policy serves as the basis from which courts across the country are having discussions with local ICE officials and implementing state court policies that describe the process local ICE officials will use when conducting immigration enforcement at courthouses. Courts can now use the ICE email and the ICE victim witness protection policies together with the [ICE courthouse enforcement policy](#) to secure agreements with ICE regarding courthouse immigration enforcement. For instance, [courts are working with ICE](#) to implement agreements that:
- Bar immigration enforcement in all civil and family court cases unless the immigration enforcement official provides the judge advance notice of the action and presents the judge with a written letter from the Field Office Director or Special Agent in Charge expressly approving the immigration enforcement action to be conducted against a named individual appearing at court in a family or civil court action;
- Restrict immigration enforcement actions to non-public areas of the courthouse, in coordination with court security staff;
- Prohibit immigration enforcement actions in courtrooms and public areas of the courthouse; and
- Limit the timing of any immigration enforcement actions to after the court has completed its work that day on the court case involving the immigrant targeted by ICE for enforcement.

Based on interviews with state court judges and review of ICE policies, the tool describes which steps courts are taking with regard to immigration enforcement at courthouses. It is important to note that [VAWA Confidentiality statutes and policies](#) also significantly limit the ability of immigration enforcement officials to legally conduct immigration enforcement actions at courthouses against immigrant victims of domestic violence, child abuse, sexual assault, stalking, human trafficking, and other U visa covered criminal activities.

**Law Enforcement:**

The DHS recognition of the importance of victims and witnesses and their critical role in successful investigations and prosecutions supports the work of law enforcement agencies across the country. The policies confirmed in the ICE email and the two ICE policy memos are important to the work of law enforcement because they help law enforcement agencies build trust with immigrant crime victims and immigrant communities. These policies can minimize the effect that immigration enforcement may have on the willingness and ability of victims and witnesses to call the police to report crimes or protect their safety. Since the time that DHS first implemented the U and T visa programs, law enforcement agencies across the United States have found U and T visa certifications to be [effective tools for fighting crime](#) while also [building trust with immigrant crime victims and immigrant communities](#) by removing the fear of deportation as an [obstacle to cooperation](#). When immigrant victims are able to report crimes without fear of deportation, law enforcement officials are able to obtain the necessary information to identify, track, and hold more violent offenders accountable. Providing protection from deportation and the ability to offer lawful permanent residency enables the U-Visa to act as an important motivating factor for victims to come forward and communicate with the police.

By confirming the purpose of ICE victim protection policies and that these policies are still in effect, ICE helps state, local, and federal law enforcement officials promote the development of U and T visa certification policies, practices, and training on education about the U and T visa programs at police departments and sheriff offices across the country. Nationwide training of law enforcement and promoting U and T visas as important crime fighting tools was recently (November 2018) called for in a resolution of the [International Association of Chiefs of Police](#) that also encourages police leadership on U and T visa best practices. The ICE e-mail and victim protection policies can be used to support expansion of the number of law enforcement agencies adopting U and T visa certification practices and policies. See, sample model law enforcement agency U and T visa certification [policies](#) and [discussion paper](#). The U and T visa certification programs and the ICE victim/witness protection policies provide important tools that help law enforcement hold perpetrators accountable and simultaneously enhances the ability of law enforcement agencies to preserve officer safety.

**Prosecutors:** The ICE policy memos on prosecutorial discretion for certain victims, witnesses, and plaintiffs and guidance for adjudicating stay requests filed by U visa applicants are beneficial to prosecutors in many ways. First, with encouragement from ICE to exercise discretion, prosecutors can assure immigrant victims or witnesses that they are not a priority for ICE immigration enforcement and that it is ICE policy to not initiate removal proceedings against victims or witnesses. This helps reduce crime victims' and witnesses' fears that cooperating in a criminal investigation or prosecution will lead to an immigrant victim or witnesses deportation. With ICE's formal recognition in the ICE email that the victim witness prosecutorial discretion memos remain in effect, victim witness staff working at prosecutors offices and prosecutors will be better able to encourage crime victim survivors to be more willing to come forward to report crimes and cooperate with prosecutors, including testifying in court.

The memos highlight the need for prosecutors to collaborate with the victim's attorney and/or advocate to ensure that U visa certification is signed and filed early. Certifications are critical in a determination of prima facie qualification for a U visa, should the need arise. Once a prosecutor signs the U visa certification form and the victim is able to file the U visa application, the victim's case is assigned a special code in the DHS computer systems that red flags the case and informs immigration enforcement officials that the immigrant against whom they are considering an enforcement action is a victim. This system was developed to cut off the ability of perpetrators to enlist the support of immigration enforcement officials in detaining or removing the victim from the U.S. and undermining the ability of state and local prosecutors to secure a conviction of the perpetrator. Signing U visa certifications as early as possible after helpfulness is established is a key piece in helping survivors assert their rights and protections. It allows the victim to feel a modicum of safety against deportation and threats from the defendant, and promotes the ability of immigrant victims to participate in criminal cases.

[Here](#) is a link to our resources that provide prosecutors with the strategies they need to be comfortable with having immigrant victims receive protections under U.S. immigration laws while the criminal case is pending.

**Advocates/Attorneys:**

Advocacy Using the ICE Memos: These ICE policy memos are beneficial to advocates and attorneys who can use them to calm their immigrant victim client's fears of deportation. Advocates and attorneys working with immigrant victims who have become the target of an immigration enforcement action can use the email quoted in the article together with the memos in advocacy to ensure that the policies are followed in their client's case. In the majority of cases when the victim has filed a U visa case that contains sufficient evidence to secure a prima facie determination with good advocacy these memos can be used to protect the immigrant survivor from removal, detention, and immigration enforcement. Local ICE officials need to be given a copy of the email together with the two policies and be asked by the victim's advocate or attorney to follow the policies in your clients case. They should be reminded of the [ICE public statement](#) that:

"ICE has long recognized the importance of victims and witness and the critical role they play in successful investigation and prosecutions."

It is critical that the victim have an immigration lawyer with expertise serving immigrant victims involved in this advocacy and national technical assistance is available from NIWAP to support your advocacy. (Contact NIWAP at 202-274-4457 or by email at [info@niwap.org](mailto:info@niwap.org)).

*Advocacy When VAWA Confidentiality Has Been Violated:*

NIWAP has had good success in working with advocates and attorneys in the field on cases where immigrant U visa and VAWA self-petitioner victims involved a VAWA confidentiality violation. In cases where the victim's perpetrator may have triggered or contributed to bringing the victim to the attention of ICE or Customs and Border Patrol (CBP) immigration enforcement officials who relied upon this information to target a victim, the officials may have violated federal VAWA confidentiality laws. In these cases, the victim witness memos can be used in conjunction with VAWA Confidentiality laws to strengthen the likelihood that advocacy efforts will lead to positive outcomes for the immigrant victim client. If you are working on a case in which you believe the perpetrator may have provided information to immigration enforcement officials about the victim call NIWAP for technical assistance and support for your advocacy to help your client. (Call 202-274-4457 or email [info@niwap.org](mailto:info@niwap.org)). More on VAWA confidentiality is available at: <http://niwaplibrary.wcl.american.edu/vawa-confidentiality-materials-tools/>

*Other Ways the Memos Can Support Victim Advocacy:*

Advocates and attorneys can use the ICE public confirmation that the victim witness policies are still supported by ICE and are still in effect in other important advocacy. Examples include:

- Preventing Courthouse Enforcement Against Victims. When perpetrators are served with papers in state protection orders, custody, divorce, or other family court proceedings and when perpetrators must attend court as defendants in criminal cases, perpetrators' retaliation against immigrant victims can include reporting immigrant victims for immigration enforcement. Advocates and attorneys working with immigrant victims seeking help from the family, civil or criminal courts should take to court with them copies of the ICE email, the ICE victim witness memos discussed above, the [ICE courthouse enforcement memo](#), and Department of Homeland Security (DHS) VAWA confidentiality memos [VAWA Confidentiality Protections for Immigrant Crime Victims](#) (February 23, 2017). Advocates and attorneys can also encourage courts to take [steps consistent with ICE policies that limit courthouse immigration enforcement](#) against immigrant victims coming to court seeking protection in [family, civil, and criminal court cases](#).
- Promoting U Visa Certification: Advocates and attorneys may use the memos and the ICE email to show to a judge, law enforcement officer or prosecutor who may be wavering about U visa certification showing them that DHS and ICE policies protect victims of crime and U-visa certification promotes both ICE policies and important access to justice and crime fighting goals.
- Promoting Issuance of SIJS Findings In Child Abuse Cases: As discussed above, the state laws governing family violence include protections for child abuse victims including when the perpetrator is one of the child's parents. Attorneys representing immigrant child abuse victims can use the ICE email and ICE victim protection policies together with training materials like NIWAP's SIJS Bench Book to secure court issuance of SIJS findings for immigrant children filing for SIJS. The ICE email and the victim protection memos that explicitly offer protection to domestic violence victims can be submitted to the court to demonstrate that the issuing of SIJS findings offers protection for immigrant child abuse victims is consistent with and furthers the of purpose federal immigration laws and policies.
- Persuading ICE Not to Initiate Immigration Enforcement Against a Survivor: Attorneys and advocates can use the [ICE email statement](#), [the ICE victim witness](#), [the ICE U visa memo](#), together when appropriate with the [VAWA confidentiality memos](#) in a range of important circumstances:
  - To persuade ICE not to initiate immigration enforcement against a survivor;
  - In seeking bond for a survivor in detention; and/or
  - To urge ICE to request an expedited adjudication of the victim's U visa case.

However, it is important to note that the existence of and confirmation of the continuing effectiveness of the ICE Victim Protection Memos does not prevent Notices To Appear (NTA's) in Immigration Court from being issued if a victim's immigration case is denied and also may not prevent the removal of a U visa victim pending adjudication of their U visa case if the U visa case filed by the victim does not contain sufficient evidence to prove the victim's prima facie eligibility for a U visa. As practitioners, we can explain ICE's Victim Protection Policies to calm survivor's fears, however, it important that we also explain the risk of NTA and removal to survivors that might not have had any previous contact with ICE.

### ***UPCOMING IN-PERSON TRAINING ON LANGUAGE ACCESS IN PORTLAND, OR.***

Access to Justice for All Victims: Language Access and Meaningful Collaborations (In person training)  
Portland, OR, June 5, 2019 from 12:30 PM to 5:00 PM (PDT)

The [National Resource Center for Reaching Victims \(NRC\)](#), a project funded by [The Office of Victims of Crime](#), in partnership with the [National Crime Victim Law Institute \(NCVLI\)](#) and the National Immigrant Women's Advocacy Project (NIWAP) are offering a half-day pre-institute training on language access. This training is designed for attorneys, victim advocates, paralegals, law enforcement, criminal justice professionals, and policy makers.

The session will provide a deeper understanding on why language access is necessary when working with all victims of crime and what it means to be culturally responsive. It will also cover the obligations that

service providers have in the community regarding the provision of language access for those who are Limited English Proficient or for those who identify as Deaf and hard of hearing. Attendees are expected to receive practical tools for examining their language practices within their own jurisdiction or organization. Additionally, they will learn how to conduct more meaningful collaborations with other stakeholders in their communities as well as how to adapt their services to be more culturally responsive. The presenters for this pre-institute will include:

- Leslye Orloff – Director - National Immigrant Women's Advocacy Project (NIWAP)
- Aparna Bhattacharyya – Executive Director – Raksha
- Leo Martinez – Project Manager – Casa de Esperanza – National Latin@ Network

Those attending NCVLI's [2019 Crime Victim Law Conference](#) are encouraged to attend this training and will receive an additional 10% discount on Conference registration.

**Register here for the Portland Training:** <https://www.eventbrite.com/e/access-to-justice-for-all-victims-language-access-and-meaningful-collaborations-tickets-60097673760>

### **Contact NIWAP for Free Technical Assistance for those Serving Immigrant Survivors**

NIWAP offers free technical assistance and training to advocates, attorneys, judges, court administrators and staff, police, prosecutors, justice system personnel, STOP, VOCA and FVPSA grant Administrators, social services, health care providers, and other professionals who encounter battered immigrant survivors, abused immigrant children, or immigrant victims of crime, sexual assault or trafficking in their work. We do not provide direct services to individuals; instead we refer them to local programs in their state or community.

NIWAP provides technical assistance on the following issues:

- Immigration relief including VAWA self-petition and cancellation, U visas, and T visas
- U visa certification
- Access to public benefits
- Family law and protection orders
- Working with the criminal justice system
- Access to services for victims of domestic violence, sexual assault, stalking, and trafficking
- Access to culturally competent services
- Language access
- Dynamics of domestic violence experienced by immigrants
- Trafficking in persons

For these and all other technical assistance questions, or to requests training on these issues, please contact NIWAP at [info@niwap.org](mailto:info@niwap.org) or at (202) 274-4457.

### **Direct Officer to Officer & Prosecutor to Prosecutor Technical Assistance**

We provide free direct technical assistance and training for police, sheriffs and prosecutors, and other professionals whose work affects immigrant women, children, and immigrant crime victims at the Federal, State and local levels funded by Office on Violence Against Women (OVW). Topics include: immigration law (VAWA, T and U visas), VAWA confidentiality, legal services and language access.

**Join our Virtual Roundtable! For Prosecutors and Law Enforcement Officers:** Discussion on various topics and strategies that will improve ways departments can build rapport, establish trust, and ensure safety for immigrant crime victims. This is an interactive call using a webinar platform technology with opportunity to collaborate with peers around the country and share strategies for best practices. To register for the Law Enforcement & Prosecution Monthly U Visa Roundtable, visit: <https://site.niwap.org/tools/law-enforcement-prosecution-roundtable/>

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