The U and T Visa: A Tool to Support Victims, Communities, and Increase Participation in the Criminal Justice System

Law Enforcement-Based Victim Services Program

This webinar is supported by Grant No. 2017-TA-AX-K063 awarded by the Office on Violence Against Women, U.S. Department of Justice and Grant No. 2018-V3-GX-K049 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this webinar are those of the contributors and do not necessarily reflect the official position of the U.S. Department of Justice, Office on Violence Against Women, or Office for Victims of Crime.
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Housekeeping

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• Raise virtual hand if you have a comment or when asked by facilitators. Select the dropdown for other options.
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Chat Box:
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• Use to chat to whole audience and to respond to presenter questions

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Lead Facilitator – TA Track 5
IACP
Who is Participating?

A. Law enforcement
B. Community-Based Victim Services
C. Systems-based Victim Services
D. Other

Other – Please type in the Chat Box
Learning Objectives

1. Identify victims who qualify for the U and T Visa

2. Increase immigrant victim participation in the criminal justice system by promoting the U and T visa as tools to reduce barriers and fears

3. Enhance victim, community, and officer safety by combatting crime perpetrated against immigrant victims
Immigrant Crime Victim Dynamics, & The U and T Visa
General Caveats

- Women, men, and children can qualify for U and T Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U and T Visas

That said, many examples in this presentation will refer to female victims of domestic violence and/or sexual assault because they make up a large majority of the U and T Visa applications filed.
Why is Immigration Relief Available to Victims of Crime?

Please type your answers in the Chat Box.
Legislative Intent

• We want crimes reported to police
• Improved community policing helps everyone
• No one should be a victim of crime
• Offenders prey upon the most vulnerable in our communities, often immigrants
• Without victims reporting crimes, we won’t know about dangerous offenders
  – Domestic violence
  – Sexual Violence
  – Stalking
Primary Immigration Protections for Victims

- U Visas and T Visas are one of many “crime fighting” immigration relief pathways.

- Congress created these humanitarian visas to hold perpetrators accountable who target immigrant communities.

- Immigration relief encourages victims to come forward and report abuse and criminal activities.
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
Goals of Immigration Relief

- Reporting of crime
- Community-police relations
- Increase victim participation in prosecutions
- Safety of victims, communities, and police

Improve
IMMIGRATION RELIEF

Misconceptions

Fear

Barriers

LANGUAGE ACCESS

NIWAP
IACP 2018 Resolution

• Recognizes U and T Visas as significant crime fighting tools and using them as best practice
• Supports training, education, communication and “increased police leadership involvement”
• Committed to increasing collaboration

U Visas are “effective tools for law enforcement agencies that enhance public safety, officer safety and protection of victims nationwide.”
• The U Visa grants a temporary 4-year stay
• Only 10,000 U Visas awarded per year
• Application for a U Visa requires a certification from a designated government official
• Certification is one part of the overall application
  – Victim must submit additional documentation and proof in their full application
• DHS conducts a bona fide determination and provides
  – Work authorization
  – Protection from deportation
# U Visa Requirements

The victim will indicate that they satisfy the three eligibility components in their U visa application.

<table>
<thead>
<tr>
<th>The person is a U visa victim</th>
<th>Victim is “Helpful”</th>
<th>Victim suffered harm</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Victim of a qualifying criminal activity</td>
<td>• Victim “has been, is being, or is likely to be helpful” in “detection, investigation, prosecution, conviction, or sentencing”</td>
<td>• Substantial physical or mental abuse as a result of the qualifying criminal activity</td>
</tr>
<tr>
<td>• Victim possesses information about the crime</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Criminal activity occurred in U.S. or violated U.S. law</td>
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</tr>
</tbody>
</table>
T Visa for Trafficking Victims

• A victim of a severe form of trafficking in persons
  – Sex or labor trafficking involving victim under 18 subject to force, fraud or coercion.
  – Adult subject to force, fraud or coercion
• Victim is physically present in the U.S. on account of trafficking
• Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions
  – Under age 18
  – Physical or psychological trauma impede helpfulness/cooperation
• Removal from the U.S. would cause extreme hardship
## Sex Trafficking


<table>
<thead>
<tr>
<th>Act</th>
<th>Means</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recruits</td>
<td>Force</td>
<td>Commercial Sexual Activity</td>
</tr>
<tr>
<td>Entices</td>
<td>Fraud</td>
<td></td>
</tr>
<tr>
<td>Harbors</td>
<td>Coercion</td>
<td></td>
</tr>
<tr>
<td>Transports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provides</td>
<td></td>
<td></td>
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<tr>
<td>Obtains</td>
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<tr>
<td>Advertises</td>
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<tr>
<td>Maintains</td>
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<tr>
<td>Patronizes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solicits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits, financially or by receiving anything of value</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NIWAP
Labor Trafficking

**Act**
- Recruits
- Harbors
- Transports
- Provides
- Obtains
- Benefits, financially or by receiving anything of value

**Means**
- Force
- Restraint
- Threats of harm
- Abuse or threatened abuse of the legal system
- Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint

**Purpose**
- Involuntary servitude
- Peonage
- Debt Bondage
- Slavery
Continued Presence and the T Visa Application

Typical length ~30 days
U Visa Protections

Application

Certification | Supporting Documents

Protections (Include VAWA Confidentiality)

Application Review
U and T Visa Victims “Red Flagged”

• Department of Homeland Security (DHS) computer system “red flags” victims who have filed for, or have been granted victim-based immigration relief

• Reminds DHS staff of legal obligation not to rely on “tips” from perpetrators regarding victims of
  – Domestic violence, sexual assault, stalking, human trafficking
Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and LEP victims who called police for help arrested for domestic violence
- U visa applicants have over 70% cooperation rates in criminal investigation and prosecutions and have 36% higher future crime reporting rates

## U Visa Qualifying Criminal Activity

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<tr>
<th>Abduction</th>
<th>Hostage</th>
<th>Sexual Assault</th>
</tr>
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<tr>
<td>Abusive Sexual Contact</td>
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<td>Felonious Assault</td>
<td>Obstruction of Justice</td>
<td>Witness Tampering</td>
</tr>
<tr>
<td>Female Genital Mutilation</td>
<td>Peonage</td>
<td>Unlawful Criminal Restraint</td>
</tr>
<tr>
<td>Fraud in Foreign Labor Contracting</td>
<td>Perjury</td>
<td>Prostitution</td>
</tr>
<tr>
<td>Rape</td>
<td><strong>Attempt, conspiracy or solicitation to commit crime or similar activity</strong></td>
<td></td>
</tr>
</tbody>
</table>
Additional U Visa Applicants

• Parents and guardians can apply as an “indirect victim” if:
  – The victim is a child under 21 years of age and/or
  – The victim is incompetent, incapacitated, or deceased due to murder or manslaughter
  – Indirect victims must demonstrate that they were helpful

• Bystander victimization – very limited

• When the victim is a child, the helpfulness requirement can be met by a “next friend” being helpful
Family Members Can Also Be Protected

• U and T visa victims can also apply for certain family members:
  – If victim under the age of 21:
    • Spouse
    • Child under 21
    • Parent
    • Unmarried siblings under the age of 18
  – If victim is over the age of 21
    • Spouse
    • Child under 21
A closer look at what the U Visa certification attests to:

THE VICTIM’S HELPFULNESS
Definition of “Helpfulness”
INA 245(m)(1); 8 U.S.C. 1255(m)(1) and 8 C.F.R 214.14(b)(3)

Applicant
- Has been helpful
- Is being helpful
- Is likely to be helpful

A victim has been, is being, or is likely to be helpful to law enforcement, prosecutors, judges, or other government officials

detection
investigation
prosecution
conviction
sentencing
Certifying agency determines “helpfulness”
• No degree of helpfulness required
  – DHS regulations – totality of the circumstances
• Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
• The investigation or prosecution can still be ongoing
• Certification can be “revoked”
The following are **Not Required** in order to certify that a victim has been helpful

- Certification signed within the statute of limitations of the qualifying criminal activity
- Conviction
- Charges filed
- Offender arrested/prosecuted
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive
Helpfulness

- Calling 911
- Having a Rape Kit performed
- Providing a description of offender
- Allowing photographs to be taken
- Giving information about the offender’s whereabouts
- Bringing a minor victim to a Child Advocacy Center
- Providing a statement about “other bad acts”
- Reporting crime in another case against the perpetrator
- Testifying at a bond hearing, trial, or sentencing
Who Can Certify?

Head of the agency or someone in a supervisory role who is specifically designated by the head of the agency:

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
  - Police, sheriffs, FBI, HIS, ATF
  - Prosecutors
  - Head of agency or designee
  - Judges, Magistrates, Commissioners

- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

There is NO statute of limitations on signing a certification. However, there is a six month window after signing the certification in which the U visa application must be filed.
When should you sign the U Visa certification?

A. Immediately upon receipt of certification
B. Once your agency has knowledge of a victim’s past or present helpfulness or believes a victim is likely to be helpful
C. When you are certain that the victim will testify at trial
D. When the defendant is convicted
Analyzing Requests for Certification

What criminal activity occurred?

Identify the victim or indirect victim

Determine helpfulness

Identify if any family members were implicated in the crime

Note any injuries observed; provide documentation
U Visa qualifying criminal activity occurs

Law enforcement or systems-based advocate informs victim about U Visa

Victim is referred to advocate / non-government agency / trusted immigration attorney

U Visa request made by victim, victim advocate or immigration attorney

Applicable certifying agency receives U Visa request

Agency requests for all relevant police records to determine eligibility

Based on provided reports from the police and the victim, the certifier determines the following:

1. All qualifying criminal activities in the case;
2. That criminal activity occurred in the U.S.; and
3. That the victim is/was/will likely be helpful in the detection, investigation, prosecution or sentencing

If qualified, the agency fills out the required forms and sends all relevant information to a certifying agent

U visa certification signed by chief/sheriff or designee

Agency / victim send the forms and all applicable documents and evidence to USCIS for processing
U Visa Certification
Form Highlights

Certification form is available to download at https://www.uscis.gov/i-918
You can & should certify multiple offenses when present in the case.

<table>
<thead>
<tr>
<th>Part 3. Criminal Acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you need extra space to complete this section, use the space provided in Part 7. Additional Information.</td>
</tr>
<tr>
<td>1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select all applicable boxes)</td>
</tr>
<tr>
<td>□ Abduction</td>
</tr>
<tr>
<td>□ Abusive Sexual Contact</td>
</tr>
<tr>
<td>□ Attempt to Commit Any of the Named Crimes</td>
</tr>
<tr>
<td>□ Being Held Hostage</td>
</tr>
<tr>
<td>□ Blackmail</td>
</tr>
<tr>
<td>□ Conspiracy to Commit Any of the Named Crimes</td>
</tr>
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<td>□ Domestic Violence</td>
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</table>
“Unreasonable Refuse to Assist”

Part 4:

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

Part 6:

I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.
Have you ever had a case where the victim became “uncooperative” at any point?

Please check the box that best describes you:
A. Yes
B. No

If yes, type in the chat what you know about why
Ongoing Assistance

Continuing obligation to provide assistance when reasonably requested

Certification  Application  U Visa
Two Distinct Requirements
“Helpfulness” and “Cooperation/Assistance”

Helpfulness: *For Certification Before Filing the U Visa*

- Has been helpful *Or*
- Is being helpful *Or*
- Is likely to be helpful

TO.....

- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

Cooperation: *After Filing* the U Visa until Permanent Residency

- Ongoing obligation to provide cooperation or assistance
  - Reasonably requested by law enforcement or prosecutors
- Exception: *Victim may show that refusal to cooperate or assist was not unreasonable*
Victim Does Not Unreasonably Refuse to Cooperate

Although a case does not require prosecution or conviction, DHS still requires the victim to cooperate from filing, to receipt of the U visa, until receipt of lawful permanent residency.

The requirement to cooperate is modified when the victim’s refusal is reasonable. Look at totality of the circumstances.

Is the request for cooperation reasonable?
8 C.F.R. 214.14(b)(3)
8 C.F.R. 245.24(2)(2)(ii)

Is the victim’s refusal unreasonable?
8 C.F.R. 245.24(a)(5)

AND
Is the victim's refusal to help unreasonable? 8 C.F.R. 245.24(a)(5)

This question is analyzed from the victim’s point of view. Does the victim have a good reason for saying “no” to law enforcement’s request?

The victim may refuse in cases where they are:

• In danger
• Unaware of request (e.g. language barrier)
• Being intimidated
• Being threatened or subjected to force, fraud or coercion
• Concerned about the safety of their family
• Under the belief that participating is more dangerous than not
• Increased trauma to the victim
• Due to the victim’s age, maturity or capacity
If you still believe the victim is unreasonably refusing...

Note on the certification, sign, and return to victim or victim’s attorney

Burden shifts to victim to prove the refusal is not unreasonable

DHS provides the victim an opportunity to explain

DHS makes the ultimate decision
Practice Tips

• Identify tactics used by offender to assert power and control including immigration related abuse
• Work with law enforcement to address witness intimidation
  • Check in on victims when appropriate
  • Recognize changes in communication patterns
• Collaborate with victim service professionals
• Communicate with victim’s immigration or family law attorney or victim advocate
• Establish safe points of contact with friends and family
• Continually safety plan with victim
U Visa and T Visa Policies
IACP 2018 Resolution

• Improves relationship between law enforcement and immigrant communities
• Increases “trust between law enforcement officials and otherwise reluctant immigrant communities who fear that contacting police will lead to their deportation”
• Provides an opportunity to increase collaboration with victim advocacy groups
What are some benefits of having U and T visa certification policies?

Please type your answers in the Chat Box.
Benefits of a Written Certification Policy

- Ensure consistency throughout the agency
  - Provides certifiers with clear guidance on how to handle these requests
- Ensure continuity through changes in personnel
- Memorialize and make accessible the certification process
- Informs the public about the process and protocol they must follow to have their requests reviewed
- Streamline that process to ensure agency resources are utilized in the best way possible
- Enhances community policing and public safety
Elements of an Effective Certification Policy

• Assignment of agency certifying officials
  • (supervisors of specialized units recommended)
• Defines the “helpfulness” requirement clearly
• Gives guidance for unique circumstances
  • (Delayed request, no criminal charges, no official report)
• Identifies the mechanisms for responding to a request
• Follows the spirit of the role DHS intended for law enforcement in the certification process
Implementing a Certification Policy: Tips

• Train designated certifiers and their direct colleagues who may assist with the U visa requests
• Identify a trusted resource to assist with policy implementation and answer specific on-going questions
• Periodic review your policy and practice to look for opportunities for improvement
• Partnering with legal service providers or law enforcement agencies/prosecutors with successful U visa policy
True or False

A. DHS requires law enforcement to complete the U visa or T visa certification.

B. Signing the certification gives the U visa and T visa victim citizenship.

C. U visa certifiers are not required to determine substantial physical or mental abuse.

D. Certifiers cannot sign a U visa or T visa certification for victims with criminal histories.
Are there times it is not appropriate for a certifier to sign the U visa or T visa certification?
Addressing Safeguards Against 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 lawful permanent residency and U.S. Citizenship
Certifying Early

**PROS**
- Establish trust
- Build rapport
- Protect from offender
- Protect from deportation

**CONS**
- Interferes with the natural flow of legal due process
Elynne Greene

Victim Services Supervisor,
Las Vegas Metro Police Department
Las Vegas Metropolitan Police Department
Response to U-Visa Certification Requests

• Policies & Procedures
• Official Letter Authorizing Signer/s
• Provide Training Department wide to Address the Myths
Lessons Learned

- Develop a Tracking System
- Prepare Letters of Denial on Letterhead
- Have Multiple Authorized Signers
Resources, Training and Technical Assistance
• Model Policies and IACP Resolution: https://niwaplibrary.wcl.american.edu/iacp-resolution-u-t-visa-certification-nov2018

• NIWAP’s Library:
  https://niwaplibrary.wcl.american.edu/iacp-june-21

• Materials and tools for law enforcement and prosecutors available at:
  http://niwaplibrary.wcl.american.edu/language-access-materials-for-police-and-prosecutors/

• Annual Report on Immigration Applications and Petitions Made by Victims of Abuse – FY19:
OVC Resources

• Coalition to Abolish Slavery & Trafficking (CAST) TTA Program: https://casttta.nationbuilder.com/

• CAST Program Ends-Means-Purpose Model: https://casttta.nationbuilder.com/emp_model

Virtual Roundtables

• Only law Enforcement & Prosecutors
• Interactive discussion
  – Strategies to build rapport, establish trust, and ensure safety
  – Ask questions from subject-matter experts and peers
• To register, visit https://www.surveymonkey.com/r/85FM5NV
Trainings

• Onsite training on immigrant crime victim issues and language access
• Available for law enforcement, prosecutors, judges, victim service professionals, allied professionals, and others
• To sign up to have us bring a training to your jurisdiction please email: molina@wcl.american.edu
Technical Assistance

NIWAP
• 202.274.4457
• niwap@wcl.american.edu

IACP
• LEVProject@theiacp.org
Reminders

- **Program Staff Webinars**: July 2021
- **Quarterly Meetings**: August 2021
- **LEV Network**: *Getting Started Guide* available!
Questions