Introduction

• Officer Michael LaRiviere
  • Officer, Patrol Division, Salem Police Department

• Leslye Orloff
  • Director, National Immigrant Women’s Advocacy Project
Materials Summary

• Training Folder
  – Agenda
  – Hard copy of PowerPoint presentation
  – Faculty Bios and Participant List
  – Sample – U Visa Certification Form
  – Sample – T Visa Endorsement Form
  – Evaluation

• USB Drives – Supplementary Tools and Resources
Participant Introductions, Goals and Expectations
Learning Objectives

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

• Understand how investigations can be improved by using language access tools
• Hold offenders more accountable by using the U Visa certification process as a crime fighting tool
• Enhance victim safety and participation in the criminal justice system
• Enhance officer/victim/community safety using language access and certification programs
What barriers and fears exist for immigrant victims of crime to report?
If they report...

• They will be deported
• Offender will retaliate
  • Harm them
  • Harm family members, children
• Nothing will happen
• Cannot communicate with officers
Fears & Misconceptions

- Do not trust police/prosecutors
- Economic survival
- Pressures from both families
- Fear of abandoning the home/community
- Fear of losing children
- Religious factors
- Fear of unknown

- Victim believes that if perpetrator deported she has to go with him
  - Dangers in the home country
    - Retaliation
    - Ostracism
    - Police
    - Political instability
    - Gender barriers
Major Challenges working with Immigrant Victims of Crime

1. Language
2. Fear of Deportation
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
Language Access

Best Practices to successfully investigate and prosecute cases involving non-English speaking victims
DOJ Model Guidance

• Police provide free language access to:
  – LEP persons who request it
  – *When officer decides it is helpful* to the criminal investigation or prosecution

• Police will inform members of the public that language assistance is available free of charge

• Language access provided in persons primary language

DOJ Sample Policy Center City Police Department

DOJ Approach to language access outline in:
  Steps for Obtaining Interpreters
DOJ and Exigent Circumstances

- Use the most reliable temporary interpreter available to address exigent circumstances
  - Fleeing suspect
  - Weapons
  - Life threatening to the officer /victim/or public
Title VI - No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.

LEP Executive Order 13166 (2001)
- Requires all agencies receiving any federal financial assistance to
- Ensure meaningful language access
- Develop and implement language access plans
- “Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith.”
What countries do immigrants in your jurisdiction come from and what language do they speak?
US Demographics (2013)*

- Total foreign born population – 41,348,066
- 13.1% of the country’s ~315.6 million people are foreign born
  - 46.7% naturalized citizens
  - ~25.5%^ legal permanent residents and temporary visa holders (2012 data)
  - 27.8%^ undocumented (Immigration Policy Center 2012 data)
- 32.9% rise in immigrant population from 2000 to 2013
- High proportion of new immigrants
  - 25.4% entered in the 1990s
  - 35.1% entered 2000 or later
- 24.9% of children in the state under age 18 have one or more immigrant parents
  - 87.9% 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

# US – Countries/Regions of Origin (2013)*

<table>
<thead>
<tr>
<th>Region</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asia</td>
<td>29.5%</td>
</tr>
<tr>
<td>China/Taiwan</td>
<td>5.8%</td>
</tr>
<tr>
<td>India</td>
<td>4.9%</td>
</tr>
<tr>
<td>Philippines</td>
<td>4.5%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>3.1%</td>
</tr>
<tr>
<td>Latin America</td>
<td>51.9%</td>
</tr>
<tr>
<td>Mexico</td>
<td>28.0%</td>
</tr>
<tr>
<td>Other Central America</td>
<td>4.7%</td>
</tr>
<tr>
<td>South America</td>
<td>6.7%</td>
</tr>
<tr>
<td>Caribbean</td>
<td>9.6%</td>
</tr>
<tr>
<td>El Salvador</td>
<td>3.0%</td>
</tr>
<tr>
<td>Europe</td>
<td>11.6%</td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>5.1%</td>
</tr>
<tr>
<td>Oceania</td>
<td>0.5%</td>
</tr>
<tr>
<td>Africa</td>
<td>4.4%</td>
</tr>
<tr>
<td>Non-U.S. North America</td>
<td>2%</td>
</tr>
</tbody>
</table>

First Responders –
What do you do when you arrive at a crime scene?
First Response

• Locate and secure the scene
• Are there any weapons?
• Is anyone injured?
• Identify the people involved
  – Victim
  – Offender
  – Witnesses
• If offender is not on the scene
  – Where is the suspect?
  – Are they a continuing danger?
  – Is suspect in possession of weapon?
What do you do when the people at the scene are limited English proficient?

How can you get the information you need to secure the scene?
Using Qualified Interpreters

Benefits

• Safety
• ID offender
• Locate weapons
• Admissible statements (Excited Utterances)

Harms

• Mistaken ID of offender
• Arrest of victim
• Misinterpretation results in inaccurate statements
• Trauma to children
DOJ Requirements for Investigations & Interrogations

• “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
  – Criminal interrogations
  – Crime witness interviews

• Vital written materials translated into primary language
  – Miranda warnings
Now that emergency is over, how do you work with victims, witnesses, and offenders who do not speak English?
Language Resources

• Language Line
• Department interpreters line developed in response to large local refugee population
• Immigrant community based organization partners
• Health care providers
• School systems
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?
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
• Can be “revoked”
• Increases immigrant victim participation in criminal justice system
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
DHS Video Part 1.mpg
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
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 or any similar activity*
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%
DHS Terminology: 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
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
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?
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 cannot intimidate with threats
Certifying early

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

**CONS**
- Accusation that victim is lying for immigration benefit
The U Visa Application Process

Certification

Application & Supporting Documentation

Decision by DHS

Typical length of process = 12 -14 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
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
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
U Visa Certification Overview

U.S. Citizenship and Immigration Services

Form I-918 Supplement B,
U Nonimmigrant Status Certification

Department of Homeland Security
This is usually filled out by the victim’s immigration attorney or advocate.

This should be left blank.
Usually one person within an agency is designated as the “Certifying Official”
### Part 3. Criminal Acts

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. *(Check all that apply.)*

<table>
<thead>
<tr>
<th>Abduction</th>
<th>Female Genital Mutilation</th>
<th>Obstruction of Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abusive Sexual Contact</td>
<td>Hostage</td>
<td>Peonage</td>
</tr>
<tr>
<td>Blackmail</td>
<td>Incest</td>
<td>Perjury</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>Involuntary Servitude</td>
<td>Prostitution</td>
</tr>
<tr>
<td>Extortion</td>
<td>Kidnapping</td>
<td>Rape</td>
</tr>
<tr>
<td>False Imprisonment</td>
<td>Manslaughter</td>
<td>Sexual Assault</td>
</tr>
<tr>
<td>Felonious Assault</td>
<td>Murder</td>
<td>Sexual Exploitation</td>
</tr>
<tr>
<td>Attempt to commit any of the named crimes</td>
<td>Conspiracy to commit any of the named crimes</td>
<td>Solicitation to commit any of the named crimes</td>
</tr>
</tbody>
</table>

You can & should certify multiple offenses when present. Other can include criminal activity present, but not listed specifically; e.g. “stalking”
Dates do not have to be precise – you can use months, seasons or years.

Part 3. Criminal Acts (continued)

2. Provide the date(s) on which the criminal activity occurred.
   Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy)
   
3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.
   
4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States?  
   □ Yes □ No

   a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?  
      □ Yes □ No

   b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.
      
   c. Where did the criminal activity occur?
      
   

NIWAP
Part 3. Criminal Acts (continued)

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

   **Make copies of all reports and attach.**

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

   **Be as specific as possible, highlighting visible injuries observed (even if not photographed). If you are aware of mental injury, include as well.**
## Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated):  

<p>| | | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1. Possesses information concerning the criminal activity listed in <strong>Part 3</strong>,</td>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. <em>(Attach an explanation briefly detailing the assistance the victim has provided.)</em></td>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>3. Has not been requested to provide further assistance in the investigation and/or prosecution. <em>(Example: prosecution is barred by the statute of limitation.)</em> <em>(Attach an explanation.)</em></td>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. <em>(Attach an explanation.)</em></td>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

5. Other, please specify.

**NOTE:** This will be discussed in detail in the next section.
Part 5. Family Members Implicated in Criminal Activity

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim?
   - Yes □  No □

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Relationship</th>
<th>Involvement</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
REMEMBER: This is merely a certification that you believe they were a victim of a crime. This does not automatically mean that the victim will be granted immigration relief.
### Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated):

1. Possesses information concerning the criminal activity listed in **Part 3**.  
   - [ ] Yes  
   - [ ] No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)*  
   - [ ] Yes  
   - [ ] No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.)* *(Attach an explanation.)*  
   - [ ] Yes  
   - [ ] No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)*  
   - [ ] Yes  
   - [ ] No
What does “helpful” mean to you?
Helpfulness

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

• Understand the scope of the helpfulness standard
• Apply the helpfulness standard to U visa certifications
Hypotheticals
Small Group Activity

• Is this person eligible for a U Visa certification?
Hypothetical Case Scenario: 1

Lara
Lara entered the United States seven years ago with a student visa. One night after the visa had expired; she was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the “filthy things” she had done if she told anyone. Four months later, Lara realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss encouraged her to contact the police, and helped her call the police. Lara told the police everything she knew, but said she would not testify in court because she feared retaliation.
Hypothetical Case Scenario: 2

Amelia and Carlos
Amelia and Carlos were living in poverty in their home country. Together they saved, borrowed and planned to pay a “coyote” $3,000 to bring each of them into the United States. Once they arrived in the U.S., the “coyote” demanded an additional $3,000 to release and transport them to family members living in Louisiana. After the “coyote” had held Amelia and Carlos in an abandoned house for 5 days, without food or water, their family was able to send the additional money. The coyote agreed to drive Amelia and Carlos to their family. The coyote had been drinking heavily before the drive, and just before they reached their destination, the coyote’s van crashed into oncoming traffic. Amelia was sitting in the passenger seat and died instantly. The passengers in the other car had minor injuries. Police arrived on the scene, and took both Carlos and the “coyote” into custody. Carlos told the police many details of the coyotes’ illegal business enterprises.
What does “helpful” mean?
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
Helpfulness in the Regulations

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• The investigation or prosecution can still be ongoing
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
What does it mean for a victim to “unreasonably refuse” to provide assistance?
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 or the abuser
  - trauma suffered
  - force, fraud or coercion
Witness Tampering

- Work with prosecutors to detect signs
  - Change in frequency of contact
  - Missed appointments
  - Recantation or minimization

- Investigate
  - Follow up with victim
  - Contact victim advocate, immigration attorney, others that had contact with victim
  - Jail calls
  - Interview friends, neighbors, and family
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 makes the ultimate decision
DHS Video Part 2.mpg
Criminal activity occurs.

U-visa Application Victim Flow Chart

**Victim submits U-visa application to the Victims and Trafficking Unit of USCIS showing that the victim meets each of the U-visa eligibility requirements.**

The application includes *

- U visa application form – Form I-918
- Law Enforcement Certification – Form I-918, Supplement B
- Documents related to victim’s identification
- Victim’s signed statement describing the facts of the victimization
- Any information related to victim’s criminal history, including arrests
- Any information related to victim’s immigration history, including prior deportation
- Any information related to victim’s health problems, use of public benefits, participation in activities that may pose national security concerns, and moral turpitude
- Any information related to victim’s substantial physical or mental abuse suffered
- Other documentation such as police reports, medical records, letters of support from service providers.

Eligible family members can also apply.

* Other administrative documentation is also required. More information is available at www.legalmomentum.org.

**Law Enforcement provides victims with:**

1. I-918 Law Enforcement Certification signed in blue ink and completed by
   - a. the head of the certifying agency; OR
   - b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b) a letter from the head of the agency designating another person to sign the certification (designee letter).

Within about 9 months, victim receives decision on U-visa application. If approved, victim receives work permit. If applications for family members are approved and they are abroad, consular processing begins.

Within about 1 month, victim receives receipt notice from USCIS confirming filing of U-visa application.

**After 3 years, U-visa holders (victims) apply for lawful permanent residence (“green card”)**

The application includes:

- Adjustment of Status Application - Form I-485
- Any information related to the victim’s continuous presence in the U.S. since obtaining U-visa status
- Any information indicating that USCIS should exercise its discretion to grant lawful permanent residence
- Any information indicating that the U-visa holder has not unreasonably refused to cooperate with an ongoing investigation or prosecution

Eligible family members can also apply.

IF: The victim has been helpful, is being helpful, or is likely to be helpful to law enforcement

OR

The victim is under 16 years of age and victim’s parent, guardian, or next friend has been helpful, is being helpful, or is likely to be helpful to law enforcement

OR

The victim is 21 years of age or older and is deceased due to the criminal activity, incapacitated, or incompetent; the spouse and/or children under 21 of the victim have been helpful, are being helpful or are likely to be helpful to law enforcement

OR

The victim is under 21 years of age and is deceased due to the criminal activity, incapacitated, or incompetent; the victim’s spouse, children, parents, or unmarried siblings under 18 have been helpful, are being helpful or are likely to be helpful to law enforcement

THEN

Victim (or legal representative) seeks I-918B, Law Enforcement Certification.

(if victim is not working with a service provider, law enforcement officers can refer victims at this point.)

Within about 1 month, victim receives receipt notice from USCIS confirming filing of U-visa application.

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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](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
Evaluations

- Evaluations are in your training packet
- Certificates
Thank You!