STALKING: A Qualifying Crime for a U Visa
Presenters

Elaina Roberts, J.D.
Legal Director
Stalking Resource Center

Andrea Carcamo, J.D.
Policy Analyst & Legislative Liaison
National Latin@ Network, a project of Casa de Esperanza
Training

- In person training
- Webinars
- Individual & organizational assistance
- Fact sheets, brochures, manuals, guides
- Policy/protocol development & consultation
- Videos
- Online resources
- Stalking Awareness Month materials

www.victimsofcrime.org/src
As a result of this presentation, participants will be able to:

Analyze the criteria to obtain a U Visa.

Understand what constitutes stalking and how to prove it.

Identify practices that will be helpful in proving substantial emotional abuse.
U VISA Requirements

Criteria:

• Having Suffered Substantial Physical or Emotional Abuse
• Victim of qualifying criminal activity
• Survivor is, was, or could be helpful to law enforcement in the investigation or prosecution of the crime
• Crime occurred in US or otherwise violated US law
• Be admissible or qualify for waiver
U Visa Crimes + Substantial Harm

- Rape
- Trafficking
- False Imprisonment
- Domestic Violence
- Sexual Assault
- Stalking
- Abusive Sexual Contact
- Obstruction of Justice
- Others… INA 101(a)(15)(U)(iii)
- Element & Nature of Crime

Physical Abuse OR
- Photos
- Medical records
- Police reports & Court documents
- Personal statement-required

Psychological Abuse
- Letters from therapist, counselor
- Personal statement-required
Qualifying Crimes

- STALKING
Showing Helpfulness
Law Enforcement Certification

That the victim was, is, OR is likely...

... to be assisting law enforcement in the investigation OR prosecution of the criminal activity.
Law Enforcement Certification

U Visa Certification: Is to the U visa what Oxygen is to Fire

If Fire $\rightarrow$ There is O

If O $\rightarrow$ not necessarily fire
U Visa Certification:

Certification Shows the elements of:
- Helpfulness
- Qualifying crime
U Visa Certification Roulette
Myth Buster on U-Visa Certification

- What law enforcement may say
- What the Department of Homeland Security states

Substantial Physical or Emotional Abuse
Defining Stalking

Behavioral

Stalking Statutes
Stalking Defined

A pattern of behavior directed at a specific person that would cause a reasonable person to feel fear.

Context is critical!
Understanding Stalking - Fear

• Something may be frightening for the victim but not to you

• Stalking behaviors often have specific meaning that is only understood between offender & victim

• Context is critical!
Criminal Charging

- Federal
- State, U.S. Territories, D.C.
- Tribal Codes
- UCMJ
- Creative charging
Prevalence of Stalking

How many people are stalked in one year in the United States?
A. 1.2 million
B. 3.4 million
C. 5.5 million
D. 7.5 million
Prevalence of Stalking

7.5 million stalked in 1 year in U.S.

- By gender
  - 4% of women
  - 2% of men
- Lifetime
  - More than 1 in 7 women
  - 1 in 18 men

- The National Intimate Partner and Sexual Violence Survey (NISVS): 2011
Stalking Dynamics

18 – 24 year olds experience the highest rates of stalking

Women are more likely to experience stalking

Most offenders are male

The majority of victims know the offender

Victim & Offender Relationship

- Current/former intimate partner:
  - Male victims: 44%
  - Female victims: 61%

- Acquaintance:
  - Male victims: 32%
  - Female victims: 25%

- Stranger:
  - Male victims: 20%
  - Female victims: 16%

- Family member:
  - Male victims: 10%
  - Female victims: 6%

- The National Intimate Partner and Sexual Violence Survey (NISVS): 2011
Stalking Behavior
Stalker Tactics

- Sent unwanted emails, instant messages, & messages through social media
- Left strange or threatening items
- Left victim unwanted cards, letters, flowers, or presents
- Sneaked into victim’s car/home; did things to scare
- Watched, followed, or spied on victim
- Left unwanted text or voice messages
- Made unwanted telephone calls & hang-ups
- Approached victim/showed up places where victim was.

- The National Intimate Partner and Sexual Violence Survey (NISVS): 2011
81% of male victims
69% of female victims

NVAW, 1998

50% - 60% of partner stalking victims say others were involved in stalking - Logan et al. (2006)

• Family court
• File false police reports

• Using kids
  • Gather info on non-offending parent
  • Deliver technology to monitor/track non-offending parent

• Legal system harassment

• Proxy stalking

• OP violations
  • 81% of male victims
  • 69% of female victims

• NVAW, 1998

Using kids
Legal system harassment
Proxy stalking
OP violations
Use of Technology to Stalk

- Phones – calls, SMS, MMS
- Fax machines
- Cameras
- Global Positioning Systems (GPS)
- Location based services
- Computers
- Spyware
- Email & IM
- Social networking sites
- Assistive technologies
Pattern of Behavior

2/3 of stalkers pursue their victim at least once per week

78% of stalkers use more than one means of approach

Weapons used to harm or threaten victims in about 20% of cases

- The RECON Typology of Stalking (2006)
Duration of Stalking

- 6 months or less
- 7-11 months
- 1 year
- 2 years
- 3 years
- 4 years
- 5 years or more
- Don't know

-- Stalking Victimization in the United States, BJS (2009)
Recidivism

• Occurs in 60% of stalking cases
  • Time between intervention and recidivism was about 2 months
  • Ranged from 1 day to 6 years
  - The RECON Typology of Stalking (2006)

• Domestic violence reabuse occurs in 24% to 60% of cases
  • The majority of offenders do so within 6 months of beginning probation and/or a batterer program
STALKING AND OTHER CRIMES
Stalking and Other Crimes

• Among stalking cases...
  • 24% involve property damage
  • 21% involve a direct attack on the victim
  • 15% involve an attack on another person or pet

---

Stalking Victimization in the United States, BJS (2009)

Identity theft

- Charged items to credit card: 30%
- Took money from accounts: 52%
- Opened/closed accounts: 54%

---

-- Stalking Victimization in the United States, BJS (2009)
Stalking & Domestic Violence
Stalking and Other Violence

81% of stalking victims who were stalked by an intimate partner reported that they had also been physically assaulted by that partner.

- National Violence Against Women Survey (1998)

3/4 of women who experienced stalking-related behaviors experienced other forms of victimization (sexual, physical, or both)

- Stalking acknowledgement and reporting among college women experiencing intrusive behaviors (2007)
Intimate Partner Stalkers: Increased Risk for Victims

- More likely to physically approach victim
- More insulting, interfering and threatening
- More likely to use weapons
- Behaviors more likely to escalate quickly
- More likely to re-offend

*The RECON Typology of Stalking, Mohandie et al (2006)*
Increased Danger

**More Dangerous Times**
- Separation
- Protective order served/criminal arrest
- Offender’s loss of job, other life events
- Multiple incidents in a short period of time – quantity & escalation

**More Dangerous Offenders**
- History of substance abuse, mental illness, violence, esp. towards victim
- Actual pursuit
- Possession and/or fascination with weapons
- Vandalism, arson
- Tendency towards emotional outbursts and rage
- History of violating POs
- Threats of murder/murder-suicide
Impact on Victims
Impact of Stalking

- Minimization; Self-blame
- Guilt, shame or embarrassment
- Frustration, Irritability, Anger
- Shock and confusion
- Fear and anxiety
- Depression
- Emotional numbness
- Flashbacks
- Isolation/disconnection from other people
- Difficulties with concentration or attention
- Feeling suicidal
- Decreased ability to perform at work or school, or accomplish daily tasks
- Post-traumatic stress disorder (PTSD)
- Sleep disturbances, nightmares
- Sexual dysfunction
- Fatigue
- Fluctuations in weight
- Self-medication with alcohol/drugs
- Feeling on guard most of the time - hypervigilance
Impact on Victims

Afraid of:

• 46% not knowing what would happen next
• 30% bodily harm
• 29% behavior would never stop
• 13% harm or kidnap a child
• 10% loss of freedom
• 9% death
• 4% losing one’s mind
1 in 8 of employed victims lost time from work

- More than half lost 5 days or more

- Changing phone number/moving/fixing damaged property (7%)
- Getting a restraining/protection order or testifying in court (12%)
- Fear or concern for safety (13%)
“It’s not easy to describe the fear you have when you see the stalker, or signs of the stalker, everywhere you go. I have given up all hopes of ever having a safe life. For the rest of my life, I will be looking over my shoulder, expecting to see him there.”
Reporting to Law Enforcement

37% of male stalking victims

41% of female stalking victims
Reasons for Not Reporting

- Thought it a minor incident (minimization): 27%
- Private or personal matter: 27%
- Reported to another official: 14%
- Not clear a crime occurred: 11%
- Thought police wouldn't think it was important or would be ineffective: 11%
- Couldn't identify offender/lacked evidence: 10%
- Feared the perpetrator/afraid of reprisals: 6%
Reporting

By the time victims report to police, the stalking behavior has been well established and... victim-initiated countermeasures have failed.

Challenges with Reporting Stalking

• Law enforcement’s response
  • May not recognize the activity as stalking
  • Stalking criminalizes otherwise non-criminal behavior
• May dismiss the seriousness of the crime and the effects on the victim
• May not certify the victim’s involvement
What if law enforcement has not charged a qualifying crime but the totality of crimes charged could be stalking?
Argue that these crimes, when combined, make up the qualifying crime of stalking!
Tips for Advocates

• Violations of Orders of Protection may be stalking
  • In some jurisdictions, a violation of an OP by stalking makes the crime a felony
• Documentation of incidents prior to going to police can help frame the crime as stalking
  • Know your state statute
• Incident reports to record each activity
Responding to Victims

Advise disengagement

- Challenges
- Contact as a safety strategy

Documentation

Advocacy & Support Services
Documentation is Critical

- Victim Logs
- Police Reports
- Evidence Preservation
## STALKING INCIDENT LOG

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description of Incident</th>
<th>Location of Incident</th>
<th>Witness Name(s) (Attach Address and Phone #)</th>
<th>Police Called (Report #)</th>
<th>Officer Name (Badge #)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Technology Documentation

Encourage victims to preserve all evidence

• Audio
• SMS (text) & MMS (photo, video)
• Emails
  • Electronic & print
• Social networking posts
• Victims can get detailed copies of their own cellphone bills
How do you prove **substantial abuse**?

- Affidavits
- Protection Orders
- Photos from the police
- Text Messages
- E-mail
- Letters
- Phone bills (with bills of text messages included)
Affidavits – A powerful tool
Why is the U visa helpful to the victim?

• Financial Independence Work Permit
• No fear from Deportation
• Puts him/her on the path to citizenship
Resources


• National Latin@ Network: [http://nationallatinonetwork.org/](http://nationallatinonetwork.org/)
About: National Latin@ Network: Casa de Esperanza

@casadeesperanza
@NLNTelInvito
@casa_de_esperanza

@casadeesperanzamn

http://www.pinterest.com/casadeesperanza