U visas: Your Role in Helping Immigrant Crime Survivors

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Goal
• To provide those who work immigrant survivors of violence with essential information on U visas in order to increase survivor safety.

How
1. Discuss challenges immigrant survivors face working with law enforcement
2. Provide overview of U visa immigration relief
3. Dispel common myths about U visas
4. Working effectively with Immigration and Customs Enforcement (ICE) and local law enforcement agencies on behalf of immigrant survivors
5. Discuss tips for strengthening community collaborations in order to improve safety and develop a coordinated response

Challenges Faced by Immigrant Survivors

Special Vulnerabilities of Immigrant Survivors
• Practical Factors: Survivors face difficulties accessing protection and services due to isolation, lack of knowledge of resources/rights, lack of a support network and language barriers
• Cultural Factors: Survivors may not seek assistance due to cultural perceptions of law enforcement, court system, outside assistance, divorce, or if domestic violence denied/excused in their culture or for fear of disgrace.

Special Vulnerabilities of Immigrant Women to Abuse
• Economic Factors: Survivors are often economically dependent on the abuser or do not possess work authorization
• Legal Factors: Survivors often do not report abuse for fear of deportation, loss of custody of children, or retaliation from the abuser (e.g. withholding filings/documents).
• Immigration-related forms of abuse are pervasive.
Heightened Enforcement Programs Increase Vulnerability

- Secure Communities and DHS 287(g) programs shift the mission of local policing from community safety to immigration enforcement
- Abusers, traffickers, and exploitative employers often use immigration status to keep immigrants in fear
- Specific legislation related to immigration enforcement

Expanding Reach of ICE Programs

- 14 counties in 2008; Currently ICE has reported implementing "Secure Communities" in over 3,000 jurisdictions throughout the United States.
- "Secure Communities" to be operational in jurisdiction in U.S. by end 2013 according to ICE;
  - Fingerprints of those arrested that are entered in FBI database will automatically be shared with ICE database
  - Does not require convictions; only arrest
- U.S. Customs and Border Protection (CBP) can make inquiries of citizenship status and make arrests within 100 miles of border (boarding trains and buses and making traffic stops)

Detrimental Impact on Victims

- After decades of work convincing survivors that police in the U.S. could be trusted, increasing entanglement between local law enforcement and ICE result in immigrant survivors being more fearful to call the police (seen as arm of ICE)
- Undermines community policing and perpetrator accountability if victims and witnesses too afraid to come forward; and police
- May encourage racial profiling or pretextual arrests
- Placed in foster care

Major Cities Chiefs Association Opposition

"Any Congressional action that would require state and local law enforcement agencies to engage in immigration enforcement is strongly opposed by the Major Cities Chiefs. These proposals would undermine the trust and cooperation between police officers and immigrant communities, which are essential elements of community-oriented policing. Such measures would result in fear and distrust of local police, damaging our efforts to apprehend those who prey upon the public. Moreover, they would divert scarce and critical resources away from the core mission of local police - to create safer communities. And the complexity of immigration law, combined with the lack of adequate training and resources, increases the risk of civil liability for local police departments if they were tasked with enforcing immigration law."

Overview of U-visas

Passed with bipartisan support in Congress as part of the Victims of Trafficking and Violence Prevention Act of 2000

1) Encourages victims to report crimes and contribute to investigations and prosecutions regardless of immigration status, and
2) Supports law enforcement efforts to investigate and prosecute crimes committed against immigrant victims
3) Overcome physical and emotional injuries caused by criminal activity
4) Allows victims to support themselves and rebuild their lives in safety while assisting with the investigation or prosecution (especially helpful for DV victims who may depend on the abuser for economic support)
5) Makes communities safer by holding perpetrators accountable for criminal activity that might otherwise go unreported
Who is Eligible for a U-visa?
In order to meet 5 statutory requirements, applicant must:
(1) have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity;
(2) possess information concerning such criminal activity;
(3) have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime (Law Enforcement Certification Form-I-918 Supp B);
(4) have been the victim of a criminal activity that occurred in the U.S. or violated the laws of the United States; and
(5) Is admissible to U.S. or eligible for a waiver

Who can apply for the U-visa?
— A noncitizen victim of a qualifying criminal activity
— However, if the victim is deceased because of murder or manslaughter, or is incompetent or incapacitated, the noncitizen U-visa applicant can be:
- unmarried siblings under age 18 can be the applicants
— If the victim is under 16 years of age and the victim’s parent, guardian, or next friend has been helpful, is being helpful, or is likely to be helpful to law enforcement

U Visa Crimes
- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Stalking
- Abusive sexual contact
- Slave Trade
- Prostitution
- Sexual exploitation
- Female Genital Mutilation
- Involuntary Servitude
- Obstruction of Justice
- Perjury

What does the U-visa Provide for Victims?
If application is approved, it provides:
- Temporary legal status for applicant for up to 4 years
- Permission to live and work in the U.S. during that time (but does not grant eligibility for federal public benefits)
- Can file petitions with USCIS to provide immigration status for certain family members (U-visa derivatives)
- At the end of 3rd year, the U-visa recipient may be eligible to apply to adjust his or her status to lawful permanent residence (LPR)

VAWA 2013- Updates
In addition to maintaining all previous VAWA protections for immigrant victims, VAWA 2013 included some enhancements:
- Provides “age-out fix” for derivative U visa applicants: Will continue to be classified as children even if they turn 21 while their parent’s application or their own is still pending (retroactive)
- Adds “stalking” and “foreign labor contracting fraud” to the categories of qualifying crimes for the U visa
- Extends hardship waiver available to battered immigrant spouses where underlying marriage was invalid because of bigamy unbeknownst to the non-citizen victim spouse

VAWA updates - continued
- “beneficiary”
- Expansion of Prison Rape Elimination Act to include detention facilities operated by DHS or under contract with DHS and all HHS facilities that house Unaccompanied Alien Children (UAC)
- Enhancements to International Marriage Broker Regulation Act (IMBRA)
- Reauthorization of Trafficking Victims Protection Act
Myth v. Facts

U visas: Myth v. Fact

- True or False?
- My client may be eligible for a U visa, but has a past criminal conviction, so she shouldn’t even bother filing for one.

- FALSE! The fact that a victim has a criminal history does not automatically preclude approval of a U visa. USCIS has broad authority to waive most inadmissibility issues, including criminal issues. U visa petitions are evaluated on a case by case basis.

- BUT USCIS may deny a petition if the victim’s criminal history has multiple convictions or a serious or violent criminal record.

U visas: Myth v. Fact

- True or False?
- Law enforcement makes the determination as to whether a victim has suffered “substantial physical or mental harm” for a U visa application.

- False. Law enforcement agencies certify the helpfulness of the victim and do NOT make a assessment regarding whether the victim has suffered substantial harm. USCIS officers, with extensive and specific training, makes this determination.

U visas: Myth v. Fact

- True or False?
- Signing a law enforcement certification is tantamount to giving a victim a visa or legal status.

- False. There are other requirements, like substantial harm, a U visa holder must meet that USCIS evaluates, plus a review of the client’s admissibility into the U.S. The certification form is used to asses a victim’s cooperation. Certification enables the victim to meet one of the eligibility requirements in the victim’s application.

- the victim
U visas: Myth v. Fact

- True or False?
- A victim can get a U visa even if there is no prosecution or conviction.
- There is no statute of limitations regarding the time frame in which the crime must have occurred.
- True. Law Enforcement can complete the certification form even for closed cases. Similarly, law enforcement can sign certifications even if there’s no prosecution because the offender fled and/or even whether the case had been referred to prosecution.

- True or False?
- Only the police or prosecutor’s office may sign U visa certifications.
- False. Federal, state and local law enforcement officers, prosecutors officers, judges, family protective services can sign certifications for U visas. Also, the EEOC, Federal and state Departments of Labor and other investigative agencies may certify.

Working with ICE

Harmful Impact of Immigration Detention

- Separates immigrant women from their children
  - Children in foster care or with abuser
- Reduces access to services and legal relief
- Amplifies trauma and exacerbates mental-health needs of survivors
- Vulnerable to sexual victimization in detention

What is ICE?

- Immigration and Customs Enforcement (ICE)
  - Office of Chief Council
  - Enforcement and Removal Operations
  - Office Public Engagement
  - Victim Advocates

Tools for Working with ICE

- 2011 Prosecutorial Discretion Memos
- Familiarity with ICE Guidance and Practice
- VAWA Confidentiality provisions
ICE General Prosecutorial Discretion Memo

- ICE Memo of June 17, 2011 “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency...”
- ICE statement that its limited resources should be focused on higher priority cases
- “The following positive factors should prompt particular care and consideration...:
  - Victims of domestic violence, trafficking, or other serious crimes;
  - Pregnant or nursing women;
  - Individuals who suffer from a serious mental or physical disability;
  - Individuals with serious health conditions”
  (See page 5 of ICE memo)

ICE Prosecutorial Discretion Memo for Victims and Witnesses

- June 17, 2011 additional ICE Memo “Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs”
- “In these cases [specifically noting domestic violence], ICE officers, special agents and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”
- “Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.” (See page 1 of Memo)

Build Networks

- Requires vigilance and pro-active involvement of DV and SA programs
- Specialized safety planning with immigrant survivors around detention issues
- Trainings and protocols with ICE, local law enforcement and Courts
- Serving as a resource to assist immigrant victims
- Outreach with immigrant communities
- Example of recent New Mexico case – DV immigrant victim detained by ICE in Family Court while seeking Order of Protection
- Use of Prosecutorial Discretion Memo and VAWA Confidentiality provisions

Advocating at the Crossroads

- Get information about how ICE ACCESS programs are being implemented in your state or local jurisdiction
- Work with Coordinated Community Response to address these issues
- Talk to your SART and DART about their interaction with this program and how it harms the goals they are intending to accomplish
- Know the latest ICE Policy Memoranda Assisting Victims and Witnesses (ICE Prosecutorial Discretion Memo of June 17, 2011)
- Propose exceptions for survivors and encourage law enforcement to focus on issues of victimization and safety rather than immigration because of the chilling effect on victims reporting
- Provide enhanced training to law enforcement, ICE officials and judges

One-on-One Advocacy

- Be pro-active; identify internal challenges
- Develop internal protocols to respond effectively to clients at risk of detention and removal including authorization release of portions of her file
- Provide a business card with a direct number
- Train your staff on handling ICE calls
- Keep “positive equities” on file
  - Medical issues for kids and self including trauma counseling
  - Records to sustain potential immigration remedies
  - Pictures, police reports, no contact orders, G-28, signed I-246, birth certificate, notice of receipt (Form I-707), FOIA, etc.

Other Potential Remedies for Immigrant Survivors

- U visa
- T visa
- VAWA self petition
- Cancellation of removal
- Motions to Reopen final orders of removal
- Gender asylum, withholding of removal
- Deferred Action for Childhood Arrivals (DACA)
- Other general remedies
Working with Local Law Enforcement

- Law enforcement should NOT refer survivors to ICE.
- ICE should NOT issue a detainer for victims or witnesses.
- Request ICE or Local Law Enforcement to refer victims to local community-based organizations (CBOs) with expertise in working with such victims (e.g., counseling and other support services).
- Request to allow survivors to contact your agency or the 1-800 hotline.
- Check individual referrals to ICE to ensure that the individual was NOT referred to ICE or law enforcement by a partner with criminal domestic assault record (VAWA Confidentiality provisions).

Getting the Certification-I-918 B

- Work with Victim Advocates Domestic violence and sexual assault advocates have experience negotiating victim access and helpfulness to law enforcement.
- Educate agency about U visa purpose and scope.
- Use DHS resources.
- Reporting problems.

Systems Advocacy

Ensuring Access for Survivors with Limited English Proficiency (LEP)

- Law Enforcement and Courts have an obligation under Title VI of the Civil Rights Act of 1964, as recipients of federal funds, to take reasonable steps to ensure meaningful language access for LEP individuals.
- Lack of language access to law enforcement and court assistance is very detrimental to immigrant survivors.
- Importance of Coordinated Community Response to include language access issues.

Advocacy Strategies on Detainers

- Meet with your local detention facility to ensure they are familiar with the prosecutorial discretion policies.
- Advocate for protocols not to fingerprint individuals in a dual arrest and to properly screen for potential victims and witnesses before fingerprinting.
- Advocate for protocols not to agree to detainer requests when the individual was not charged with a crime or charges were dropped.
- Develop protocols to release survivors after criminal bond.
- Work with your client by informing her of her rights and formulating a plan.

Meaningful Alliances and Partnerships

- DV and SA programs should build relationships with local immigration and civil rights organizations to collaborate to address these issues in your community.
- Expand referral resources for immigrant survivors to faith-based and community organizations that work with immigrants.
- Get the word out in immigrant communities that services are available regardless of immigration status.
Contact Information

- Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
  - www.CasaDeEsperanza.org
  - rhidalgo@casadeesperanza.org

- ASISTA Immigration Assistance:
  - www.asistahelp.org
  - cecelia@asistahelp.org

More Resources

- Immigration Advocates Network: www.immigrationadvocates.org
- Immigration Legal Resource Center Manuals: http://www.dhs.gov/publications