

How Law Enforcement Is Using the U-Visa

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INTRODUCTION AND BACKGROUND

Immigrants who are victims of crime and helpful to law enforcement may be eligible for the U-visa, which provides temporary legal status in the United States. A growing number of law enforcement agencies that interact with immigrants are recognizing the value of this visa (officially known as “U” nonimmigrant status) as a community-policing and crime-fighting tool. As a partner in the National Immigrant Victims’ Access to Justice Partnership project, the Vera Institute of Justice has found that although law enforcement agencies are increasingly using the U-visa, few do so optimally, in part because the process is relatively new. In many jurisdictions, law enforcement personnel use it neither regularly nor effectively because of misunderstandings and other barriers.

This report describes current use of the U-visa by law enforcement agencies and the obstacles to its use, including confusion among police personnel about what the visa is, and what it means for an officer to sign a certification as part of the application process.

WHAT IS THE U-VISA?

Congress created the U-visa in 2000 through the Violence Against Women Act, which was included in the Victims of Trafficking and Violence Protection Act. The law provides temporary legal status to immigrant victims of crime if they meet the following statutory requirements:

- they have suffered “substantial physical or mental abuse” as a result of being a victim of one or more specified criminal activities;
- they possess information about those criminal activities;
- they help—or are willing to help—with the

detection, investigation, or prosecution of the criminal activities; and

- they were victims of criminal activities that occurred in the United States or that violated the country’s laws.

To qualify for the U-visa, a crime victim must submit an application to the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS). The application must include a certification from law enforcement—either the head of an agency or that person’s designee—stating that the applicant has been a victim of criminal activity and attesting to the victim’s helpfulness or likelihood to be helpful. Local law enforcement agencies play a crucial role in the U-visa application process, not because they have the authority to grant legal status, as officers often believe erroneously, but because they can certify that an immigrant is, has been, or is likely to be helpful and is thus eligible to apply for a U-visa.

Congress conceived of the U-visa as a tool that law enforcement agencies can use to investigate and prosecute criminal activity. Lawmakers recognized that a victim’s cooperation and assistance are essential to the effective detection, investigation, and prosecution of crimes—and acknowledged that victims who fear deportation are unlikely to come forward to assist in these efforts.

PROJECT OVERVIEW

In October 2009, the U.S. Department of Justice’s Bureau of Justice Assistance awarded a three-year grant to Legal Momentum, a nonprofit legal organization, and the Vera Institute of Justice, to train law enforcement officials on how to use the U-visa. Working together as the National Immigrant Victims’ Access to Justice Partnership, Vera and Legal Momentum staff have subsequently interacted with,

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and provided training to, personnel from dozens of law enforcement agencies. Project staff, in developing their training curriculum, also conducted a national search for law enforcement agencies that regularly use the U-visa in their jurisdictions. As of summer 2011, project staff have consulted with personnel from 21 agencies in 18 states and Washington, DC.

As the result of these consultations and subsequent trainings, Vera and Legal Momentum have identified common barriers to using the U-visa, as well as a number of agencies that are completing the certification process regularly and successfully.

CURRENT USE OF THE U-VISA BY LAW ENFORCEMENT

There is great variation in how law enforcement agencies use the U-visa, even in neighboring jurisdictions or within the same state. Agencies that use the tool regularly have found that it strengthens their efforts to protect public safety and has aided community policing, particularly in areas with a significant number of immigrants. Most jurisdictions, however, face obstacles that prevent law enforcement officials from realizing such benefits.

BARRIERS TO USING THE U-VISA

The National Immigrant Victims' Access to Justice Partnership has identified the following common obstacles to more effective use of the U-visa:

> **Most law enforcement agencies lack protocols and policies about their role in the U-visa application process.** U-visa practice varies widely among U.S. jurisdictions. Some law enforcement agencies use it solely in response to domestic violence; others have expanded its use to any immigrant who meets the definition of victims of criminal activity described in the U-visa statute. Some jurisdictions use the U-visa proactively, as part of a larger community policing scheme. Others wait for community organizations or legal services providers to request U-visa certification. Many jurisdictions do not use the U-visa at all. Believing mistakenly that the process requires a crime to be prosecuted or adjudicated, they ask applicants to seek certification from local district attorneys or judges instead.

Inconsistent use of the U-visa may be related to a lack of policies and protocols. Although most law enforcement agencies have policies and protocols about uniforms, using volunteers, responding to calls for service, and other aspects of policing, departmental guidelines on using the U-visa are rare. When they do exist, these policies and protocols may be inconsistent with the federal statute—and may include requirements not found in the law. Some agencies add one or both of the following conditions that are inconsistent with federal law: time limits for filing a certification request and submission of medical records as documentation proving that the injuries were sustained during a crime.

- > **Law enforcement personnel often misunderstand their role in the U-visa application process.** There is a great deal of confusion about the difference between law enforcement agencies completing a U-visa certification and the U-visa approval process. Many officers believe, mistakenly, that certifying a crime victim's eligibility to apply for a U-visa will automatically result in the person receiving legal status. Some may misinterpret their role in providing certification as recommending that the applicant receive a U-visa. Officers may be unaware that the law enforcement certification is just one step in a process that may culminate in a decision by USCIS to grant or deny a visa. Law enforcement's role in this process is limited to certifying that criminal activity occurred, that the applicant has knowledge of that criminal activity, and that the applicant was helpful—or is willing to be helpful—in the resulting criminal investigation.
- > **Many law enforcement officers fear that using the U-visa may have negative consequences for their agency.** Some officers express concern that they might certify the eligibility of a U-visa applicant who goes on to commit a serious crime, opening the agency and its policies to criticism. Another fear project staff frequently hear is that certifying an applicant's eligibility may be perceived as favoring immigrants and immigration. Many officers worry that the current political climate leaves agencies in a precarious position in which using the U-visa would lead others to portray them as "soft" on undocumented immigrants. Still, officers from agencies that use the U-visa say the benefits it provides to their community-policing and crime-fighting efforts outweigh potential negative repercussions.

> **Law enforcement personnel receive insufficient information and training on using the U-visa.** Local law enforcement agencies are often left to develop their own expertise about using the U-visa because no single clearinghouse of information exists to provide information tailored to police. In many jurisdictions, an agency's personnel became aware of this visa because one officer took initiative, did some research, and informed the agency.

Other law enforcement agencies learn about the option only when local nongovernmental organizations or university legal clinics contact them with information about the U-visa or someone who is applying for one. Although such entities fill an important gap, they often participate in the U-visa process from a victim-centered perspective. Consequently, the information they provide may not cover the day-to-day concerns that law enforcement might have. The statutory requirement that certifications be signed by police chiefs, sheriffs, or their designees, for example, may not be explicit in a victim-centered training conducted by outside advocates.

Officers are also cautious about being misled by attorneys or *notarios*—people working in Latino communities who may misrepresent themselves as lawyers—who would use fraud to obtain a U-visa. They believe that some lawyers and notarios fabricate crimes in which their client was a victim so that the person can submit a U-visa application. Agency officials may be especially skeptical when approached by immigrants who say they were victims of criminal activities that did not occur recently, contrary to what is stated in the statute. Training should address these concerns.

SUCCESSFUL USE OF THE U-VISA

As noted earlier, although many law enforcement agencies use the U-visa, only a few have established good practices. Even in jurisdictions where agencies use the U-visa regularly, the tool is rarely promoted through public information campaigns, ethnic media, or in community policing materials used to disseminate information about related issues (domestic violence, for example). Consequently, in these jurisdictions knowledge about the U-visa is often limited to specific units or programs of a department.

Agencies that use the U-visa regularly have reported a number of benefits from doing so, including the following:

> **The U-visa enhances work with community stakeholders.** Law enforcement agencies that inform people about the U-visa and are willing to sign certifica-

tions can strengthen their work with the communities they serve. One police department that participates in a statewide coalition against domestic violence, for example, has incorporated information about the U-visa into its work with the coalition. In doing so, officers have taught coalition members what they look for in certification requests. One result is that legal services providers prepare more thorough certification requests. They have become trusted partners, easing officers' worries about unethical attorneys and notarios who might try to exploit use of the visa. What's more, through this process the agency has strengthened its reputation within the coalition as a partner in other projects that address domestic violence and assist victims.

> **The U-visa is a tool for community policing and fighting crime.** Another police department uses the U-visa as part of its broader outreach strategies for communicating with immigrant communities. For example, its detectives often explain the U-visa to victims who report crime or might be willing to share information that can further an investigation. As a result, community members have requested presentations by police officers who have experience with the U-visa—and people have begun contacting those officers to report crimes. Agencies that use the U-visa regularly also report that individuals are more likely to report past criminal activity and immigrant crime victims are more likely to reach out to the police, regardless of whether they will apply for legal status. In sum, use of the U-visa has built immigrants' trust that the police will work with and assist them.

> **Law enforcement agencies can implement the U-visa certification process at low cost.** Some agencies have made a deliberate, strategic effort to incorporate the U-visa into their work. The head of one department that did so, however, was initially reluctant to use the U-visa for fear that such efforts would place extensive demands on officers' time. That chief and other officers using the U-visa found, however, that their role in the application process is not excessively time-consuming. They have incorporated responsibilities and tasks related to the U-visa in their day-to-day investigative duties, and officers who have completed more formal training conduct in-house training for the full force. By providing information about the U-visa and the certification process agency-wide, the department has promoted use of the U-visa by all employees, including civilian staff, who are largely responsible for interacting with immigrant communities.

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CONCLUSION

Law enforcement agencies are gradually increasing their use of the U-visa as an additional tool to protect and improve public safety. The Vera Institute of Justice's work in the National Immigrant Victims' Access to Justice Partnership has shown, however, that many law enforcement officers throughout the country do not fully understand what the U-visa is or how it can best be used. Police and sheriffs' departments need guidance on the U-visa and their role in the certification process when an immigrant crime victim requests this type of assistance. They also need to provide more internal training for staff. Agencies that have embraced the U-visa, on the other hand, have found that using it can strengthen their policing practices overall.

Congress created the U-visa to empower law enforcement agencies to become more effective in solving crime and protecting public safety. In most jurisdictions, the promise of this tool has yet to be realized. Continuing efforts by law enforcement, legal services providers, and the federal government can help maximize the U-visa's benefits as a

community-policing and crime-fighting tool. As knowledge about the U-visa grows, more law enforcement agencies will recognize that this tool can benefit their immigrant constituents and improve public safety overall.

ENDNOTES

- 1 Federal Bureau of Investigation, "The U-Visa: An Effective Resource for Law Enforcement," <http://www.cvsti.org/LinkClick.aspx?fileticket=I3%2Bxcw%2FU%2FU%3D&tabid=145&mid=486&language=en-US> (accessed May 23, 2011).
- 2 Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, § 107, 114 Stat. 1464 (2000).
- 3 VTVPA § 1513; codified at 8 U.S.C. § 1101(a)(15)(U)(i)(I)-(IV) (2006).
- 4 8 U.S.C. § 1101(a)(15)(U)(i)(I), (III).
- 5 See VTVPA § 1513(a)(2)(A), (B).
- 6 As of August 2011, the National Immigrant Victims' Access to Justice Partnership had trained officers from dozens of law enforcement agencies. All told, the project has gathered information and trained officers from Alaska, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New York, Oregon, Pennsylvania, Tennessee, Texas, Virginia, Washington, and Wisconsin.

> For More Information...

In addition to providing training on the U-visa, the National Immigrant Victims' Access to Justice Partnership has developed a curriculum and tool kit for police personnel, as well as webinars and a podcast. The tool kit and other resources are online at <http://www.vera.org/project/immigrant-victims-access> and at iwp.legalmomentum.org.

The partnership is a project of Legal Momentum and the Vera Institute of Justice's Center on Immigration and Justice. The Vera Institute is an independent nonprofit organization that combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

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