

# Barriers and Successes in U Visas for Immigrant Victims: The Experiences of Legal Assistance for Victims Grantees

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## Abstract

This paper examines barriers encountered and successes experienced in the provision of legal representation and advocacy to victims of violence applying for legal immigration status under the Violence against Women Act's U visa protections. The U visa is designed for immigrant victims who have suffered substantial physical or mental abuse as a result of being a victim of criminal activity, and who have helped, are helping or are likely to be helpful to government officials in the detection, investigation or prosecution of criminal activity. This article is based on quantitative and qualitative data reported by grantees of the Legal Assistance for Victims grant program administered by the Office on Violence Against Women, U.S. Department of Justice. Legal Assistant for Victims program grantees provide legal aid to victims of domestic violence, sexual assault, and/or stalking and report semi-annually on services provided. The sample consists of grantees during the years 2007-2008 who reported serving high proportions of immigrant and limited English proficient victims of violence. The paper will focus on problems, successes, and creative solutions reported by attorneys and advocates working with immigrant victims eligible to receive crime victim U visas under federal immigration laws. Victims applying for U visa immigration relief must, under current law, submit a U visa certification signed by the head of a law enforcement agency, prosecutor, judge, or other government official with their U visa application. This research provides information regarding effective strategies and best practices used by grantees that are successful in obtaining U visa certification. The systemic barriers that immigrant victims and their advocates encounter when working with U visa are also discussed, along with creative solutions grantees are using to overcome these barriers.

## Introduction

The relationship between law enforcement and local immigrant communities is often a strained one. The fear of removal (deportation) experienced by many immigrant victims of domestic violence, sexual assault and human trafficking results in an unwillingness to call police for help or a lack of trust in law enforcement officials. Many immigrants, especially those who are undocumented, are fearful of admitting that they have been a victim of a crime in part because they believe they will be removed (deported) from the United States if they report the crime. From this already vulnerable group, undocumented immigrant women are more likely to be subject to domestic abuse and less likely to approach law enforcement [1,2]. In addition, many abusive partners will wield the threat of deportation over the heads of immigrant women to keep them submissive, from leaving, or from seeking help [3]. Immigrants who are victimized by their employers can also face similar threats of deportation in order to keep them from leaving or seeking help from law enforcement [4,5].

Studies published by some of the project partners (Hass and Orloff) reported results from a survey of Latina women in the Washington D.C. area, indicating that the fear of being reported to immigration authorities kept 21.7% of battered immigrants from leaving their abusers [6,7]. It also prevented many of the women surveyed from taking the essential steps that could lead to their escape from a violent relationship. The fear of being reported to immigration officials and deportation were rated as either the first or second most intimidating factor that kept battered immigrants from seeking the services they needed to end the abusive relationship and create a safe and economically viable home apart from the abusers. The threat of deportation is a very powerful tool used by abusers of immigrant women as a means of maintaining power and control, to keep them in abusive relationships, and prevent them from seeking help. In passing

the Violence Against Women Act (hereinafter "VAWA") in 1994 [8], Congress included immigration protections because domestic violence is "terribly exacerbated in marriages where one spouse is not a citizen and the noncitizen's legal status depends on his or her marriage to the abuser (H.R. Rep. No. 103-395 at 26)," because it places full and complete control of the alien spouse's ability to gain legal status in the hands of the abuser.

Congress created U visa immigration relief as a response to these and other alarming statistics regarding vulnerability to, and the incidence of, crimes committed against undocumented immigrant victims (Victims of Trafficking and Violence Protection Act of 2000, hereinafter VAWA 2000) [9]. The U visa was created in 2000 to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status...while offering status protection to victims of such offenses in keeping with the humanitarian interests of the United States (VAWA 2000, Pub. L. No. 106-386, 114 Stat. 1464 §§ 1513(a)(1) & (2))." Congress understood the relationship between fear of deportation and an immigrant victim's reluctance to come forward to assist in the detection, investigation

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or prosecution of crimes committed against them when drafting the legislation for the U visa.

This article examines barriers encountered and successes experienced in the legal representation provision and advocacy to victims of violence against women applying for legal immigration status under the VAWA's U visa protections. The authors reviewed grant reports filed by programs receiving monies from the Legal Assistance for Victims (LAV) program of the Office on Violence Against Women at the U.S. Department of Justice (OVW). Grant reports were reviewed starting with the reports submitted after the Department of Homeland Security (DHS) issued U visa regulations. Two years of grant reports from LAV grantees were reviewed. The findings regarding best practices, creative approaches to work with U visa victims and challenges encountered by grantees working with immigrant victims applying for U visa immigration protections will be discussed in this article. A summary of the main findings of this report entitled *U-Visa Legal Advocacy: Overview of effective policies and practices* (2012), can be found at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/research-reports-and-data/Practice-and-Policy-Brief.pdf>

The following background section will address the purpose of the U visa and the LAV grants.

### The U Visa: An Overview of its History and Purpose

The U visa is a four-year temporary visa which was created to protect victims of certain crimes who have come forward to report the crime that has been committed against them and, in doing so, assist in the detection, investigation, and/or prosecution of crime(s). The U visa enhances the justice system's ability to detect, investigate and prosecute crimes, thereby making communities safer overall. It simultaneously furthers the humanitarian interests of the United States by offering protection to immigrant crime victims who have been brave enough to come forward and report crimes. The U visa allows immigrant victims of crime to: temporarily stay in the United States with legal immigration status for up to four years; help certain family members obtain immigrant status under the U visa; obtain employment authorization; and for those who qualify, eventually obtain lawful permanent residence [9,10].

There is no requirement that the immigrant victim be related to the perpetrator of the crime or that the perpetrator have any specific immigration status. Rather, the focus of the U visa is on the crime itself, its effect on the immigrant victim's life, and their courage in coming forward to report the crime. There is an annual limit of 10,000 U visas per year. The U.S. Citizenship and Immigration Services (USCIS) began hitting the cap on U visas in 2009 and reached the U visa cap by December 11, 2013 [11]. Once the cap has been reached in any given fiscal year, USCIS will continue adjudicating cases and will grant "wait-list" approvals to victims notifying them that they are on the waiting list for a U visa and granting them protection from deportation and an ability to apply for work authorization through deferred action [12]. Once an immigrant crime victim receives their U visa, it will last for four years and it can be extended in certain limited circumstances [13].

For a victim to qualify for a U visa, she is required to prove:

1. That she suffered substantial physical or mental abuse as a result of the crime;
2. That she has information about the crime;
3. That the crime occurred in the United States including territories

or possessions of the United States or was in violation of U.S. law; and

4. That she has been helpful, is being helpful, or is likely to be helpful in detecting, investigating or prosecuting the crime [10].

A victim for the purposes of the U visa has been defined by regulation as either a direct victim or an indirect victim [10,12]. A direct victim is an individual who has suffered direct harm or who is directly or proximately harmed as a result of the criminal activity. An indirect victim can be a family member of the direct victim in certain situations. For example, a situation in which the direct victim of the crime was a victim of murder or manslaughter, or the direct victim is incompetent or incapacitated, possibly as a result of the crime, a family member of the direct victim may apply for a U visa as an indirect victim. According to the Department of Justice Attorney General Guidelines definition, "indirect victim" also includes certain family members of deceased or incompetent or incapacitated victims because while the victim may not be able to sufficiently help law enforcement in investigation or prosecution, the family members may be able to do so. In addition, the category "indirect victims" also include family members of direct victims who are under the age of 21 and are US citizens, as they are "incapacitated" due to their status as a child. The family members that can be included as indirect victims are spouses; unmarried children under 21 years of age; parents of crime victims under 21 year old; and siblings under 18 year old of crime victims under 21 [10,12,13].

When an immigrant victim of crime applies for a U visa, he or she must demonstrate that he or she suffered substantial physical or mental abuse as a result of one or more of a wide range of criminal activities. The list of U visa covered crimes includes: violent crimes such as domestic violence, felonious assault, stalking, sexual assault, incest, torture, murder, manslaughter; crimes that restrict the victim's movement including kidnapping, false imprisonment, peonage, trafficking; being held hostage; coercion crimes of victims and witnesses including extortion, blackmail, witness tampering, obstruction of justice and fraud in foreign labor contracting (INA§101(a)(15)(U)(iii)). It should be noted that the substantial abuse suffered is not limited to physical abuse, but also mental abuse, which has been defined as impairment of emotional or psychological soundness. In determining if the abuse suffered was "substantial," the severity of the injury suffered and the abuse inflicted are both considered. Factors in this review can include: the nature of the injury; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; the permanent or serious harm to appearance, health, physical or mental soundness. No single factor is determinative and instead the review is one in which the totality of the circumstances is considered using the "any credible evidence" standard [14].

Lastly, in order for a noncitizen to qualify for the U visa, the immigrant victim must submit a completed certification form signed by a law enforcement agency, a prosecutor, a judge, DHS, a child or elder abuse agency, the Equal Employment Opportunity Commission, Department of Labor or other state or federal government official that confirms that the immigrant crime victim has provided some form of help to the detection, investigation, prosecution, conviction or sentencing of one of the listed criminal activities [12,13]. There is also no requirement that the criminal investigation lead to prosecution of the case; as such, reporting the crime and cooperating with law enforcement is enough.

A current investigation, the filing of charges, a prosecution or conviction are not required to sign the law enforcement certification.

Many instances may occur where the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials. There is no statute of limitations on signing the law enforcement certification; a law enforcement certification can even be submitted for a victim in a closed case. There is no requirement that an individual serve as a witness at a trial or provide testimony, since the decision about whether to go forward in a criminal prosecution is not in the hands of the victim [12].

With the passage of the U visa, there is a clear recognition of the impact that violent crime can have on a victim's life, especially when the victim is an immigrant who is marginalized within mainstream society, may be limited English proficient (LEP), have little understanding of the U.S. justice system and may fear law enforcement because they believe calling police for help will lead to their own deportation [15]. This fear of law enforcement can result in immigrant victims not reporting crimes, increasing the likelihood that immigrants will be particularly vulnerable and will be targeted by perpetrators of certain crimes. The U visa attempts to lessen the impact of these crimes on not only the victims themselves, but also on the community as a whole [16]. The safety offered by the U visa empowers victims to step forward to report crimes and, in doing so, decrease their vulnerability as potential crime victims and decrease the overall crime rate within the community by increasing the detection of these crimes.

### Legislative History of the U Visa

The legislative history of VAWA 2000 illustrates Congressional intent to lessen the impact of domestic violence, sexual assault, human trafficking and crimes on women, children, and families. VAWA 2000 strengthened the criminal penalties for sex offenses, stalking, and domestic violence [17]. It used to be that victims of domestic violence and sexual assault were ostracized by their communities, ignored by law enforcement, and even shunned by their own families. But VAWA has played a major role in changing that by significantly bolstering criminal penalties for sex offenses, stalking and domestic violence.

Congress also demonstrated its commitment to protecting immigrant victims of violence by closing loopholes in the self-petitioning process and expanding protections through the creation of the U visa to help a broader range of immigrant crime victims [18,19].

VAWA 2000 contained findings regarding the goals Congress intended to accomplish with regard to the VAWA 2000's immigration protections[9]:

(a) FINDINGS—Congress finds that—

(1) The goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

(2) Providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation, allow them to obtain protection orders against their abusers and, free them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control; and

(3) There are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because the victims can be deported as a result of action by their abusers, and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES—The purposes of this title are—

(1) To remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and

(2) To offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes.

The creation of the U visa in VAWA 2000 was a natural extension of the commitment of Congress to strengthen VAWA's dual goals. These goals were to provide relief and protection for immigrant victims of domestic violence, sexual assault, stalking, human trafficking, and other crimes and to facilitate the detection, investigation, and prosecution of the perpetrators of these crimes [9,19] The overarching goal was to enhance the protections available for battered women, abused children, human trafficking victims, and victims of sexual assault while also removing barriers to the detection, investigation, and prosecution of these crimes.

The U visa was designed to protect those immigrant victims who have mustered the courage to report the crime that was committed against them. In doing so, Congress specifically recognized that it is impossible for state, federal, and local law enforcement agency officials to punish and hold perpetrators accountable if these individuals can avoid prosecution by reporting their victims to immigration authorities and having the victims deported [9]. In addition, it is important to note that, in its findings for the U visa, Congress specifically highlighted the importance not only of the investigation and prosecution of domestic violence and other crimes, but also the detection of these crimes.

With regard to the creation of the new U visa immigration relief for immigrant crime victims Congress made the following findings [9] VAWA 2000 at § 1513):

(a) FINDINGS AND PURPOSE

(1) FINDINGS.—Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnapping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.

(2) PURPOSE

(A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section

101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrant to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

The U visa has a dual purpose of offering relief to those immigrants who are victims of certain mostly violent crimes and were targeted because of their vulnerable status in the United States and encouraging law enforcement to better protect traditionally underserved immigrant populations. As the legislative history illustrates, the creation of the U visa was a logical extension of the already recognized harm that immigrant women and children face when they are victims of domestic violence. The Violence Against Women Reauthorization Act of 2013 (hereinafter “VAWA 2013” [20]), noted that immigrant victims of a broad range of criminal activity listed in the legislation, not just domestic violence victims but including also victims of stalking and fraud in foreign labor contracting, can qualify for U visas [9,20]. The law created a remedy for those immigrants who were victims of violent and coercive crimes who had been left out of the protections included in previous VAWA legislation. It affirmed the commitment to reducing and enforcing criminal penalties against those perpetrators who targeted and used immigration status against a victim. The law also makes clear that “criminal activity” and not just “crimes” are what are covered under the U visa. The law recognized that prosecutors and other criminal investigators needed to be able to receive help from immigrant victims with detection of criminal activity as well as help at other stages of a criminal investigation or prosecution [9].

Congress also recognized that U visa eligible crime victims, like VAWA self-petition eligible battered immigrants, often encounter safety risks and can have difficulty gathering documentation in support of their immigration case, particularly documents that an abusive husband, employer, perpetrator, or trafficker may control. For this reason, the U visa has the same standard of evidentiary proof of “any credible evidence” that applies in VAWA self-petition immigration cases [9,10,21].

Although the U visa came into existence with the passing of VAWA on October 21, 2000, it was not until September 2007 that DHS issued regulations establishing the requirements and procedures for filing and adjudication of U visas [12]. Prior to the release of these regulations, U visa applicants who DHS determined had filed bona fide cases, were provided legal work authorization [22-24] and protection from deportation through deferred action status, but were not granted actual U visas [25]. Following issuance of the U visa regulations, DHS began adjudicating cases and awarding U visas. Victims could then receive U visas, along with a work permit (Employment Authorization Document). The U visa granted immigrant victims permission to live in

the United States for 4 years, legal work authorization, and protection from deportation.

## Legal Assistance for Victims Program and Grant Reporting

This article documents the results of a review of grant reports filed by programs receiving LAV grants from the Office on Violence Against Women at the U.S. Department of Justice. The LAV Program is one of several grant programs created and funded by VAWA. LAV grantees are funded to provide legal representation to victims of intimate partner violence, dating violence, sexual assault, stalking and/or human trafficking. Grantees are primarily legal services organizations, victim advocacy programs, or state or territory domestic and/or sexual violence coalitions.

The LAV Program is designed to strengthen civil and criminal legal assistance for victims of sexual assault, stalking, domestic violence, and dating violence through innovative and collaborative programs. These programs provide victims with representation and legal advocacy in family, immigration, administrative, or housing matters, protection or stay-away order proceedings, and other similar matters. The LAV Program is intended to increase the availability of civil legal assistance in order to provide effective aid to victims who are seeking relief in legal matters arising as a consequence of abuse or violence.

The LAV Program provides an opportunity for communities to examine how the legal needs of victims of domestic violence, dating violence, sexual assault, and stalking should be met. By statute [20], funds may be used:

1. To implement, expand, and establish cooperative efforts and projects between domestic violence and sexual assault victim services organizations and legal assistance providers to provide legal assistance for victims of sexual assault, stalking, domestic violence, and dating violence.
2. To implement, expand, and establish efforts and projects to provide legal assistance for victims of domestic violence, dating violence, stalking, and sexual assault by organizations with a demonstrated history of providing direct legal or advocacy services on behalf of these victims.
3. To implement, expand, and establish efforts and projects to provide competent, supervised pro bono legal assistance for victims of domestic violence, dating violence, sexual assault, or stalking, except that no more than 10 percent of the funds awarded under this section may be used for the purpose described in this paragraph (42 U.S. CODE § 3796GG-6(c)).

OVW requires LAV grantees, which are primarily legal services organizations, to partner with victim service agencies that provide training to grant-funded legal staff to increase their understanding of the dynamics of domestic violence, dating violence, sexual assault, and stalking. These partnerships ensure LAV funded attorneys are working together with, receiving training from, and maintaining communication with domestic violence, sexual assault, stalking and dating violence victim services providers with expertise and a documented history of providing effective services to victims in the community they serve. This approach helps build the collaborations needed to ensure that victims served by LAV grantees will also be provided with advocacy to assist them in obtaining needed services, such as housing, shelter, counseling, medical care, and advocacy assistance in interacting with government agencies, including law enforcement.

LAV grant funded programs provide victims with representation and legal advocacy on a broad range of legal matters, including family law matters—e.g., divorce, custody, visitation, child support—as well as immigration, public benefits, housing, and protection orders.

The Muskie School of Public Service of the University of Southern Maine receives funding from OVW to collect and review grant reporting data submitted by programs funded by OVW with funds provided by VAWA and its subsequent reauthorizations. In the 2000 reauthorization of VAWA, Congress mandated that the Attorney General report biennially on the number of people served, people seeking services that were not served, and on the effectiveness of programs funded under VAWA [9]. In fulfillment of this mandate, all grantees, including LAV grantees, report semiannually by answering standardized questions regarding their funded activities. Questions include reporting the number of people served, partially served, and not served; the demographics of people served; and the types of services provided and other activities funded. LAV grantees, in particular, report on legal issues addressed and on the outcomes of those issues.

## Materials and Methods

The Muskie School's contract with OVW includes the review, cleaning, analysis, and reporting of all data provided by grantees. Thus, Muskie staff worked collaboratively with the National Immigrant Women's Advocacy Project (NIWAP) and Giselle Hass to review and analyze the data to learn about the services grantees were providing to immigrant victims. Muskie reviewed the qualitative and quantitative data reported by LAV grantees in 2007 and 2008, and selected and sorted data based on grantees that provided services to significant numbers of immigrants and LEP victims.

For this paper, we studied the prompted and spontaneous narratives in the reports of a sample of LAV grantees from the following reporting periods:

- July to December 2007 (JD 07)
- January to June 2008 (JJ 08)
- July to December 2008 (JD 08)
- January to June 2009 (JJ 09)

As a result of the seven year time period between the passing of the VAWA 2000, which created the U visa, and the issuance of regulations establishing requirements and procedures for filing and adjudicating U visas by DHS, the time periods selected reflect the time period when individuals were able to actually apply for the U visa after September 2007.

There were a total of 585 LAV reports filed during these four reporting periods. These grant reports contained both quantitative data about the services being provided and qualitative information contained in responses from grantees to open-ended questions. A review of the quantitative data on populations served was used to select the grant reports for which the full text of the grant reports (the qualitative data) was read and analyzed to learn about grantees' experiences working with U visa eligible immigrant victims. Our selection criteria were developed to identify those grant reports that had the best likelihood of having worked with a significant number of U visa cases. Selection criteria included:

The proportion of Immigrants served;

The proportion of LEP clients served;

The proportion of ethnically diverse minorities served (a category we created by adding: Asian, Native Hawaiian or Pacific-Islander, and/or Hispanics); and

An effort to ensure programs selected to be included in the analysis included both geographic and rural/urban diversity.

The grantee reports identified were further sorted to rank grantees to determine those with the largest proportion of clients in each of categories 1-3 above. In 2008, the LAV grant report form was changed to collect information about the numbers of clients served in various types of immigration cases, including U visas and the number of U visa cases in which a decision had been issued by DHS. These statistics were never asked for from the grantees until these two reporting periods. Thus, for reporting periods JD 08 and JJ 09, the reports chosen for reading were those in which the grantee reported serving at least 20 U visa eligible clients and reports from programs with geographic diversity not represented in the sample when the agency reported working on at least five U visa cases.

This process culminated in a group of 226 LAV grantee reports for review, which represented 38.6% of all reports from the time periods reviewed. Specifically, we studied 59 reports from JD 07, 63 from JJ 08, 45 from JD 08, and 59 from JJ 09. Because LAV grantees file reports twice a year, 30% of agencies picked for this study had filed reports for at least 2 quarters. Our geographic representation included 43 states (AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, ME, MH, MD, MA, MI, MN, MS, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, SD, TN, TX, UT, VT, VA, WA, WI, WV).

At the conclusion of this process, project partners felt confident that the group of reports reviewed belonged to grantees for whom providing legal representation and assistance with the U visa was a significant professional activity and, thus, the opinions of these grantees were significant as to the practical issues regarding the U visa process and representation of immigrant victims applying for U visas.

## Limitations

LAV grantees serve only victims of domestic violence, dating violence, sexual assault, stalking and, to a limited extent, victims of human trafficking, including victims who are US citizens and victims who are immigrants. The report form requires answers to some narrative questions (and some of those only annually) while other questions are optional; some questions are broad and others are more specific. This led to significant variation in the quantity of information contained in the reports of the various agencies reviewed. Grantees who served immigrant victims may or may not have chosen to focus on immigration-related activities in their grant report narratives. Since grantees are asked to limit their responses to LAV funded work, the narratives do not discuss services provided to clients who were victims of other criminal activities not covered under their LAV grant, nor do they discuss the assistance their agency provides to victims or the creative solutions that were developed by agency staff when those activities were supported by sources other than the LAV program.

The core issue of the exploratory data analyzed – the U visa – was not specifically prompted in any of the questions of the grant report for the first two reporting periods. During the second two reporting periods reviewed, specific U visa questions were only included in the quantitative data questions asked of grantees regarding the numbers of U visa clients served. When grantees provided narratives about their experiences with the U visa, the reporting on the U visa was discussed in the context of a general discussion on grant funded activities,

challenges, successes, and effective strategies and outcomes. As will be discussed below, many grantees did discuss the details of the direct and indirect benefits to immigrant victims and grantees' relationships and experiences with law enforcement. As such, our sample is one of convenience in which there was no control that specifically elicited narrative responses specifically about grantees' experiences with the U visa. Further, grantees may have not fully reported on all of their efforts to help U visa victims. Our review was also limited in that it comes from the viewpoint of the grantees/service providers and not the certifying agencies, or the victims themselves.

## Qualitative Data Analysis

Once grant reports were identified based upon the grantees' answers in their reports, questions that provided quantitative data and the text of the qualitative data contained in each of the selected reports were read and analyzed. Reports contained both prompted and spontaneous narratives that LAV grantees wrote in the following open-ended items:

1. Status of grantees goals and objectives.
2. Outcomes achieved for victims and systemic patterns or practices contributing to those outcomes.
3. What have LAV funds allowed your agency to do that you could not do prior to receiving the LAV funding?
4. Effectiveness of services provided (what's working) and other additional information.
5. Remaining areas of need (challenges and barriers).

The grant report form also contained fields labeled "additional information" or "provide additional information" at several locations throughout the form, and we chose to review the spontaneous comments in each of the following categories:

1. Special interests
2. Training
3. Coordinated community response
4. Comprehensive services
5. Victim/Legal services information

The narrative information grantees provided in response to the questions listed above drove the qualitative data analysis and resulted in the initial concrete thematic organization for this paper.

A sample of the full transcripts of the grantees' responses to these open-ended questions was read independently by two of the authors to develop categories, concepts, and properties to analyze the data. Results of each author's review were compared, discrepancies discussed, and concepts to be captured in the text review were further refined. Thematic categories were added as the analysis developed. The authors developed an Excel document that captured information contained in the grant reports, including the following:

- Agency
- Grant reporting year
- City
- State
- Mentions serving immigrant clients.
- U visas being certified?
- Positive relationships with police/other U visa certifiers?

- Problem areas.
- Representation of immigrant victims in immigration matters.
- Immigrant victims' stories.
- Language access information, improvement methods, problems.
- Creative U visa approaches.
- Problems with work authorization.
- Government agency policies/practices regarding immigrants.
- Collaborations enabled.

The responses for each one of these items were entered verbatim into the Excel document by program associate interns who were blind to the project goals.

This thematic analysis followed the method delineated by Braun and Clarke [26] to identify, analyze, and report patterns within a data set. The authors' goal was to obtain an in-depth exploration of grassroots legal assistance providers' experiences in working with U visa victims and in the preparation and processing of U visa cases. Particular attention was paid to the stories told and the language used by grantees to describe their experiences and those of their clients. The manner in which grantees described their particular experiences of success and strategies for overcoming challenges encountered provided meaningful information about the perspectives grantees brought to their work with U visa victims.

The authors' theoretical framework was based on the assumption that success in filing for and obtaining a U visa requires greater community collaboration in securing the certifications from government officials that are needed to fulfill legal requirements for a U visa versus other forms of services provided by LAV grantees to victims of violence against women. The goal was to understand the problems grantees were encountering that impeded immigrant victims' access to the protections offered by the U visa and to highlight the creative and successful approaches LAV grantees were using to overcome these challenges. A second important goal for the project partners was to identify the positive and negative impacts on victim's lives of the process required to obtain a U visa and to assess the success of the U visa in helping immigrant victims.

## Results

Results from our analysis were grouped in the following categories and will be discussed in further detail:

1. Challenges
2. Policies and Practices
3. Personal Values
4. Structural Problems
5. Consequences
6. To Victims
7. To Agencies
8. Creative Solutions

## Challenges

### Law enforcement agency policies and practices

The review of the grantees' reports revealed that grantees considered the collaboration between the victim's legal representative or advocate and local law enforcement to work at its best when law enforcement were responsive from the moment in which a case came to their attention. Grantees reported that law enforcement personnel

were aware and sensitive about the dynamics of domestic violence, when officers called to the scene of a domestic violence incident were able to conduct a predominant perpetrator assessment that correctly identified the victim in the relationship, even when it could appear to the untrained eye that the victim was also a perpetrator, either because the victims defended themselves or when the victims allowed the perpetrator access to the home, despite a stay away order. Grantees reported that sensitive law enforcement officers were successful when they:

- Interviewed victims separately from the perpetrator,
- Conducted interviews in the victim's native language using a qualified interpreter,
- Told victims about their rights,
- Arrested the abuser, and/or
- Took victims to the hospital or a community health clinic.

In some instances, law enforcement officers called the legal aid agency or a shelter and put victims in contact with appropriate legal and social service providers. These officers also wrote more comprehensive and detailed-oriented reports that were extremely helpful to the processing of victims' U visa case.

Grantees cited some policies and practices that were inconsistent with best police practices in work with victims of violence against women and created challenges for service providers assisting immigrant victims of violence against women seeking U visa immigration relief.

#### **Practices inconsistent with law enforcement best practices in violence against women cases**

Police officials:

- Were slow in responding to for help from immigrant and LEP victims.
- Gave warnings to abusers of immigrant victims instead of making an arrest at the scene of a domestic violence incident.
- Did not collect evidence of abuse at the crime scene.
- Tried to convince victims to not press charges or not make a police report.
- Arrived on the scene and only interviewed the batterer.
- Did not believe the victim, particularly in cases of sexual assault or stalking and would not take a police report documenting the crime that the victim wanted to report to police. Failed to inform immigrant victims of their legal rights including information about VAWA self-petitions and/or U visa immigration relief.
- Did not have a history of collaboration with victim services providers.
- Did not refer or were slow to refer victims to victim advocacy or legal services agencies.
- Arrested the non-English speaking victim rather than the perpetrator of the domestic violence.

In sum, grantees reported incidents in which police refused to take a police report from an immigrant victim of domestic violence or sexual assault despite significant efforts by the LAV funded lawyers and/or their victim advocate grant partners. These reports describe a problem that unfortunately is disturbingly common. A survey of victim

advocacy, social service and legal services agencies in 2013 [32] found that in 9.6% of the sexual assault cases involving an immigrant victim, no police report was taken despite the fact that on 60.8% of those cases when the police arrived on the scene the victim had visible injuries or the police saw physical evidence that a crime occurred. In 10.4% of the cases in which battered immigrants called the police for help, the police failed to take a police report. As with immigrant victims of sexual assault in many of these cases (83.4%) the victim had visible injuries, torn clothing or there was visible evidence of property in disarray when the police arrived on the scene.

#### **Practices that undermine criminal investigations and prosecutions**

- No qualified interpreter, bilingual officer or language line used to communicate with the victim at the scene or the police used inappropriate, unsafe and/or untrained persons to interpret for an LEP victim. This led to:
- Police only speaking with the perpetrator resulting in a police report that was unfavorable to the victim.
- Incorrect, incomplete, or misinterpreted police reports.
- Lack of adequate evidence collection at the crime scene.
- Police arresting the victim and the perpetrator.
- Police reports that mischaracterized the criminal offense leading to lesser charges of disorderly conduct or harassment in the second degree that were not serious enough for prosecutors to pursue or led to charges that made access to the U visa more difficult than had the perpetrator been charged with domestic violence.
- Lacked knowledge of how to work with immigrant crime victims.
- Lacked knowledge of how to interact with crime victims who were potentially eligible for immigration relief.

#### **Problems in Attaining U Visa Certification and Documentation Needed for Victim's Immigration Application**

Police departments:

- Did not know about the U visa.
- Had incorrect information about the U visa and U visa certification.
- Had not designated anyone to sign U visa certifications.
- Made it difficult to obtain police reports and other evidence, including photographs taken by officers at the scene.
- Were not responsive to requests for certification.
- Did not return calls to legal services agencies working with victims.
- Had a policy of not signing U visa certifications.
- Had certification policies and/or practices that were not consistent with or were contrary to DHS' published policies, regulations and resource materials on the U visa.

Examples of the types of erroneous policies and practices grantees report encountering in some jurisdictions and that are contrary to DHS positions and policies on the U Visa included departments that would not sign certifications for a variety of reasons. Grantees reported that

these challenges in obtaining certification from police departments caused delay and made it significantly more difficult for the grantee agencies to fulfill their goals of using the U visa immigration relief to help the victims.

- *Denied certification because of a misperception that signing the certification granted the victim legal immigration status.*

DHS Position: The Certifier does **NOT** grant legal status upon signing Form I-918. As stated by DHS in its informational brochure for law enforcement “a signed law enforcement declaration or certification is just one piece of evidence submitted as part of a T or U visa application. Only USCIS has the authority to approve T and U visa applications and provide immigration benefits [27].” DHS further states in its certification guide “USCIS is the federal component of DHS responsible for approving and denying immigration benefits and status, including the U visa. Federal, State and local law enforcement agencies **do not** grant or guarantee a U visa or any other immigration status by signing a U visa certification (Form I-918B). Only USCIS may grant or deny a U visa after a full review of the petition to determine whether all the eligibility requirements have been met and a thorough background investigation [13].”

- *Denied certification because the department incorrectly believed that the crime had to be still under investigation by the police department.*

DHS Position: “[T]here is no statute of limitations on a victim’s helpfulness to law enforcement. A declaration or certification may be provided for cases that are closed or investigations for crimes that occurred months or years ago, as long as the victim was helpful to law enforcement [27].”

- *Department would not certify closed cases*

DHS Position: “An agency may sign a declaration or certification if the case is closed, or if a prosecution, arrest, or conviction was not made. Formal charges or the launching of a formal investigation is not required [27].” On its U-Visa Guide, DHS also establishes that “...law enforcement can still complete Form I-918B for an investigation or case that is closed... A crime victim could be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial whether or not the prosecution resulted in a conviction [13].”

- *Denied certification because the agency believed that they could only certify if the case was being prosecuted*

DHS Position: “An agency may sign a declaration or certification if the case is closed, or if a prosecution, arrest, or conviction was not made. Formal charges or the launching of a formal investigation is not required [13].” In addition, the U-Visa Guide by DHS states that “there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U visa. While there is no requirement for the victim to testify at a trial to be eligible for a U visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with law enforcement. If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed Form I-918B [13].”

- *Denied certification when the person seeking certification was the family member of a murder or manslaughter victim*

DHS Position: DHS’ definition of a victim includes certain family members of deceased, incapacitated, or incompetent victims [10-13]. DHS recognized that granting the U visas only to the victims could lead to separation of families, which was never the intent of this regulation [13]. Moreover, family members frequently have valuable information regarding the criminal activity that would not otherwise be available to law enforcement officials because the direct victim is deceased, incapacitated, or incompetent. Thus, DHS encourages these family members to fully participate in the investigation or prosecution, and extends U visa benefits to them.

- *The police department was requiring the victim to prove substantial harm (in one instance by submitting medical evidence verifying that the victim has suffered substantial physical or emotional injury)*

DHS Position: “USCIS will make the determination as to whether the victim has met the ‘substantial physical or mental’ standard on a case-by-case basis during its adjudication of the U visa petition. Certifying law enforcement agencies do not make this determination. Certifying agencies may, however, provide any information the agency deems relevant regarding injuries or abuse on Form I-918B. Form I-918B asks that law enforcement provide information about any injuries the law enforcement agency knows about or has documented. While this provides some of the evidence USCIS will use to make the substantial physical or mental abuse determination, the U visa petitioner has the burden of proving the substantial physical or emotional abuse. USCIS adjudication officers receive extensive training in statutory and regulatory requirements in determining whether a victim has suffered substantial physical or mental abuse. Factors that USCIS uses to make this determination are: the nature of the injury inflicted; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim [27].”

- *Denied certification due to the belief that undocumented immigrants in the country did not deserve certification*

DHS Position: The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000, passed with bipartisan support in Congress encourages victims to report crimes and contribute to investigations and prosecutions regardless of immigration status, and supports law enforcement efforts to investigate and prosecute crimes committed against immigrant victims. Immigrants, especially women and children, can be particularly vulnerable to crimes like human trafficking, domestic violence, sexual assault, and other abuse due to a variety of factors. These include, but are not limited to, language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Congress recognized that victims who do not have legal status may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States. The VTVPA was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country. Congress also sought to encourage law enforcement officials to serve immigrant crime victims [9,27].

## Individual Officials' Personal Views about Immigrants and Immigration

Many grantees reported having good collaborative relationships with law enforcement in their communities. These grantees described how effectively collaborations between law enforcement and LAV funded attorney can and do work. When describing optimal cases, grantees indicated that the presence of shared humanitarian values and common crime fighting goals were important factors in the success of the collaborations between victim advocates and law enforcement. The grantees noted that when police officials and the police department had favorable attitudes toward crime victims, including immigrant crime victims, both in domestic violence cases and in other violent crime situations, police interactions with immigrant victims were respectful, friendly, and cooperative with the community regardless of immigration status or nationality. This in turn made it easier for immigrant victims to call, report, and follow through with the prosecution of crimes that were committed against them and promoted safety for the entire community.

In contrast a number of grantees reported that both the agencies and their immigrant victim clients had more challenging interactions with local law enforcement. Grant reports described the impact that views about immigrant and/or immigration held by individual government officials and/or agencies had on the safety of immigrant victims, on U visa certification practices, and on the overall goal of fighting crime committed against immigrants in the community. Grantees reported experiencing these issues with police, courts and other government officials. Grant reports included examples of the following problems:

### Justice system problems that intimidate the victim into withdrawing her report of a crime for fear that her immigration status will lead to her deportation or loss of the children

Judges asking for victims about their immigration status in family court, protection order, or other civil court proceedings.

Child Protective Services workers asking for immigration status of all parties including the non-abusive parent when doing child welfare investigations.

### Immigration enforcement practices and attitudes about U visas that are inconsistent with Congressional goals of the Violence Against Women Act, the U Visa Program and the Trafficking Victims Protection Act

- Immigration raids, immigration enforcement, and state and local law enforcement involvement with immigration enforcement resulted in:
- Frightened immigrant victims who would not call the police for help when they suffered domestic violence, sexual assault, stalking, human trafficking, or other U visa covered crime,
- Victims believing that if they called police for help, police would ask about the victim's immigration status and turn the victim in to DHS for deportation,
- Fear that if the reported crimes to law enforcement the perpetrator would retaliate by calling DHS or local police to have the victim deported.
- Misunderstanding about the Department of Homeland Security's victim protection priorities and the misinformation about U visa

certification and the U visa program, the details of which were described in the previous section.

In some instances, attitudes about immigrants and immigration among law enforcement officials became an impediment to establishment of positive relationships between law enforcement agencies and LAV funded programs. One grantee described the following example:

When the LAV agency provided educational and training lectures or materials for law enforcement working with immigrant crime victims, some officers devalued the training and information provided. The officers told LAV funded attorneys that the attorneys were only passionate advocates for immigrants and not really knowledgeable about the full range of immigration laws. Such officers discounted the information they were being provided in trainings as "opinions" of the LAV funded agency attorneys rather than accurate statements about the forms of VAWA, the U visa, or any other immigration relief available to help crime victims.

This scenario illustrates how some officers' perceptions and beliefs about immigration and immigration laws can make development of the types of collaborative relationships helpful to immigrant crime victims difficult. A common belief about immigration laws that officers in this example may have held, and that is legally incorrect, is that "immigration law" consists solely of the immigration enforcement provisions contained in U.S. immigration laws. In fact, DHS has multiple legislative mandates that DHS is responsible for implementing under immigration law. These mandates include the following three responsibilities that for DHS are of equal importance:

- Adjudication of applications for legal immigration status;
- Implementation of U.S. immigration law's crime victim protections; and
- Immigration enforcement.

DHS has issued enforcement priorities [28] that balance these responsibilities and help ensure that DHS does not waste enforcement resources on cases of immigrants who are low-priority for removal including immigrant crime victims and witnesses, immigrant parents of children, children, youth [29], the elderly and disabled people.

### Structural Problems

Grantees reported three categories of significant systemic structural barriers that affected immigrant U visa eligible victim's ability to seek help, find safety, and ultimately qualify and file for U visa immigration relief:

- LEP/Services from qualified interpreters;
- Transportation; and
- The interaction of other civil and criminal court processes.

Within the themes surrounding LEP and transportation, rural location often had a significant impact on the grantee's ability to access the resources necessary to work with immigrant victims.

An additional problem here is that there is not one single definition of what constitutes a rural area under U.S. law. Four federal agencies use different measures to define rural and these definitions can help to frame out discussion.

The Violence Against Women Act defines rural in 42 U.S.C. 13925(a) in two ways:

Rural area and rural community: The terms “rural area” and “rural community” mean:

(A) any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget;

(B) any area or community, respectively, that is—

(i) within an area designated as a metropolitan statistical area or considered as part of metropolitan statistical area; and

(ii) located in a rural census tract; or

(C) any federally recognized Indian tribe.

The term “rural State” means a State that has a population density of 57 or fewer persons per square mile or a State in which the largest county has fewer than 250,000 people, based on the most recent decennial census. At the same time, the Bureau of the Census defines an urbanized area (urban area) by population density. According to this definition, each urban area includes a central city and the surrounding densely settled territory that together have a population of 50,000 or more and a population density generally exceeding 1,000 people per square mile.

If the grantee was in a less densely populated or rural area, access to qualified interpreters (qualified under the guidelines of the National Center for State Courts, Judicial Bench Card for Court Interpretation available at [http://niwaplibrary.wcl.american.edu/language-access/language-access-info-for-service-providers/LANGAC\\_NCSCJudicialBenchcard\\_2006.pdf/view](http://niwaplibrary.wcl.american.edu/language-access/language-access-info-for-service-providers/LANGAC_NCSCJudicialBenchcard_2006.pdf/view)), and transportation became major structural barriers. These barriers made it more difficult for grantee agencies to provide services to immigrant victims and undermined the ability of police and prosecutors to communicate with and provide meaningful access.

By Executive Order and the government memoranda implementing the order, it is required of law enforcement and other government agencies who encounter LEP persons, including crime victims, in their work to provide meaningful language access to the agency’s services.

Language and transportation issues also affect the ability of victims, especially indigent ones, to fully access the justice system, social services, and other support resources. LEP victims cannot, as a practical matter, navigate courts and benefits systems without the assistance of advocates, attorneys, and qualified interpreters.

In more rural areas, grantees reported that there were limited resources, including law enforcement assistance, not simply for immigrant victims, but for the entire population in the area. As such, grantees reported that it was a more monumental task asking law enforcement for certifications when completing U visa certifications was seen by law enforcement as a nonessential additional task. This arose particularly when law enforcement was untrained and unfamiliar with the crime fighting benefits of this visa to law enforcement. In all instances of the structural barriers discussed above, grantees reported that their efforts to train courts, law enforcement and other agencies on issues regarding family violence and immigration issues played an important role in helping to alleviate some of these barriers.

### Limited English Proficiency

Large number of grantees reported difficulties in representing LEP clients due to lack of qualified interpreters. These barriers exist not only structurally at the grantees’ agencies, but also within the

various agencies to which immigrant victims turned for help including courts, law enforcement, and other social services providers including mental health professionals. There were repeated statements from grantees about the lack of interpreters within their communities. When interpreters could be located, few were qualified interpreters who were trained professionals. The use of unqualified interpreters and interpreters who did not understand domestic violence, sexual assault and safety issues led to problems with interpreter neutrality and problematic confidentiality issues.

Grantees reported that the lack of interpreters at various agencies often led to immigrant victims not receiving or having a delay in the services they needed. In addition, LEP immigrant victims were often excluded or limited in their ability to use numerous community services due to their lack of English and their indigence. Civil courts often required parties to provide their own interpreters for court hearings, when filing for protection orders, for supervised visitation monitors, and/or for communication with custody investigators. Grantees also noted that various court forms for pro se litigants, such as for child custody, child support, supervised visitation requests and monitoring, and protection orders were only available in English. Language access, cultural awareness, and knowledge about legal options for immigrant crime victims for courts, law enforcement, and public agencies was identified by the grantees as a major focus in need of advocacy for immigrant victims. As one grantee noted, “without bilingual and culturally competent court staff members, and court interpreters for our clients, victims are severely disadvantaged in the system...” where “crucial decisions [are] being made about their lives without full knowledge and understanding.” All of these practices are contrary to the U.S. Department of Justice’s positions on courts’ obligations to provide language access to the courts [31].

Moreover, grantees also noted that counseling services were often limited or non-existent, in some instances, for certain LEP survivors. Services were most available for Spanish speaking immigrant victims. The lack of access to qualified interpreters often resulted in survivors opting out of programs and services that were available to other victims because staff could not effectively communicate with LEP victims. The cost of providing qualified interpreters to facilitate victim’s access to law enforcement, courts or other services that LEP victims needed was discussed by many grantees as providing a significant barrier for U visa victims.

Lack of language access to formal systems of help prevent immigrant victims from accumulating the evidence they need to apply for U visas, cooperate with the investigation of the crimes committed against them, or follow up with the tasks of the visa process until completion. The grantees stated that interpretation problems were more acute when immigrants lived in areas that were less populated, and their community was small and isolated.

Grantees worked on efforts to improve language access to the justice system, particularly police, prosecutors and the courts for LEP victims including those who were not Spanish speaking. In rural communities, grantees reported that as law enforcement agencies gained access to qualified interpreters and received training on legal options, including the U visa, available to help immigrant survivors, access to services for and immigrant victim safety improved. This outcome is similar to what law enforcement agencies reported in a survey conducted in 2013. This research found that law enforcement agencies that have ongoing collaborative relationships with victim advocacy and legal services agencies are almost 4 times (79.2%) more likely to be actively signing U visa certifications. Only 20.8% of law enforcement agencies signing U

visa certifications reported not having existing collaborations in place with victim services providers [32].

## Transportation

Similar to the grantee statements regarding access to services for LEP victims, grantees also noted that transportation was a major issue for their clients. Many of the clients did not have access to a car, or a driver's license. Transportation issues are more exacerbated for immigrant victims of domestic violence, sexual assault, stalking, human trafficking and other U visa crimes because few states driver's license and identification laws provide licenses or state issued identification to VAWA, T or U visa applicants until after they receive deferred action and apply for and receive work authorization. The work authorization document is the first document that victims receive that most states recognize as a basis for issuance of a state ID or driver's license. Immigrant victims historically could not obtain work authorization until 6 to 18 months after they have filed their immigration case [33,34].

In order to initiate an immigration case or obtain protection orders, immigrant victims must travel using public transportation or drive without a license to seek services. Lack of access to a state issued ID or driver's license makes it unsafe for battered immigrants and other immigrant victims of violence against women to travel to receive advocacy services, attend court, or meet with police or prosecutors. Research that explored immigration enforcement actions initiated against immigrant survivors with pending VAWA or U visa cases found the traffic stops triggered immigration enforcement actions against 26.8% of battered immigrant VAWA self-petitioners (second only to perpetrators reports) and against 30.1% of U visa victims for whom traffic stops were the number one trigger for immigration enforcement [33]. In many states where proof of legal presence is required to receive a driver's license or in states where DHS enforcement officials monitor public transportation seeking to identify undocumented immigrants, safe transportation to the legal services agency, the courts, and for meetings with police and prosecutors became a significant barrier to justice system services for undocumented immigrant victims.

One grantee reported, for example, the following: *That 54% of the population they served was located in a rural area; that the area served was more than 300 miles between the east and west boundaries with a population of less than three million; that clients often had to drive close to 100 miles to access any kind of services, and that even when there was public transportation or the victim had a car, the cost of purchasing a ticket or a tank of gas often seemed insurmountable for them.*

Transportation was cited as an issue that could delay and impede a victim's ability to cooperate with law enforcement officials investigating or prosecuting criminal cases, particularly in situations that require their ongoing cooperation in the form of meetings with law enforcement or prosecutors, appearances at court hearings, etc. Although early U visa certification in these cases can help remove transportation as an impediment, a significant amount of victim advocacy is needed to secure certifications when victims have limited means of traveling to the police or prosecutor's office.

The barrier of transportation also illustrated a multitude of other problems that grantees reported immigrant victims often experiencing. Grantees noted that clients who were in rural areas who were LEP, had disabilities, or who were indigent were often less able to access transportation. This became an issue not only in accessing and following up with the legal services but also in attending court hearings for protection orders, job interviews, or counseling appointments. As one grantee noted, while providing referrals and information through

hotlines and written materials is helpful, it cannot replace in person contact which often ensures real access to the full range of services that a U visa victim needs in order to safely provide the ongoing cooperation with the investigation and prosecution of the criminal activities committed by the perpetrator generally required of U visa recipients. It is important to emphasize that the cooperation rates of U visa applicants and recipients are quite high. Although victims can refuse to cooperate with law enforcement or prosecutors where their refusal to cooperate is not unreasonable, few victims use this exception to the cooperation requirement and most ultimately cooperate or remain willing to cooperate. In fact, a study found that 70.0% of U visa applicants and U-visa holders provided continued cooperation to law enforcement officers and prosecutors. In 29.45% of the cases, the victim was willing to provide additional cooperation but officials did not seek further cooperation from the victim [35].

## Impact of Family Court Practices on Immigrant Crime Victims

Grantees reported how family and criminal court processes also affected the legal services that they provided to their immigrant clients, including U visa eligible clients. Delays in issuance of protection orders and child support undermine a victim's personal and economic security preventing the victim from seeking help from law enforcement. Leaving child custody undecided provides a domestic violence perpetrator a powerful tool that can be used to coerce the victim to stop cooperating with law enforcement officials investigating the abuser's criminal activities. What happens in family court regarding protection orders and custody proceedings often impacts the ability of grantee agencies to effectively provide representation and advocacy to their U visa eligible clients. The client's success or failure in family court proceedings may increase danger to the client and affect whether a client decides to go forward with a U visa and if the client seeks a U visa what evidence will be available to support the U visa application.

The following problems described by grantees in LAV grant reports provide a window into the range of problems domestic violence victims generally, and immigrant victims specifically experience in family court. While some of these issues are not directly related to accessing U visa relief for clients, their direct impact on victim safety and security is profound for immigrant victims who are involved as witnesses in criminal investigations and/or prosecutions and need family court protections to help ensure their own and their children's safety.

Grantees noted that both formal and informal policies, from certain courts, that were detrimental to battered immigrants. These practices, at best, left victims in limbo. At worst, they placed victims in danger by either delaying access to justice from family courts or by impeding victim access to the state court protections which they needed to be able to access immigration relief, to have the strength and support necessary to participate in the criminal case against their perpetrator, and to empower them to escape the violence.

Practices that grantees identified included:

- Not issuing extensions of temporary civil restraining orders when a continuance had been granted for service or at the request of the perpetrator;
- Allowing immigration enforcement officers into courtrooms despite federal laws that prohibit enforcement actions at courthouses;
- Courts not issuing protection orders to immigrant victims unless

there was a very recent incident of abuse, when non-immigrant victims could receive protection orders without this additional requirement;

- System delays in gaining access to protection orders when cases were transferred to more crowded court dockets;
- Family court judges continuing and not issuing decisions in protection orders, custody or divorce cases until the criminal prosecution of the perpetrator was completed;
- In more rural counties, “circuit rider” judges are rotated to courts throughout various counties resulting in victims seeing different judges for different types of hearings leading to issuance of inconsistent decisions in protection order, custody or child support cases that made enforcement, if needed, nearly impossible;
- Courts that did not have the training, sensitivity or willingness to recognize the existence of family violence in family court cases;
- Courts took children away from abused immigrant parents using court practices that do not further the best interests of children. These included:
  - Courts taking children away from abused immigrants because of the domestic violence in the home.
  - Child Protective Services agencies inquiring into the immigration status of abused immigrant parents and using that information against immigrant parents in reports to the court.
  - Courts taking away children because the battered immigrant parent was undocumented.

### Consequences for Victim Safety and Well-being

#### Delays created fear, anxiety and economic hardship for victims

The delays and uncertainty about when, whether and from whom the victim’s attorney would be able to secure the U visa certification needed to file the victim’s U visa case harms both the victim’s safety and mental health. Grantees reported victims experiencing high levels of anxiety and severe economic hardship as they struggled to survive and to support their children without work authorization. The fact that U visa victims had filed police reports, had cooperated and in many cases continued to cooperate with law enforcement while seeking certification and awaiting adjudication of their case made the anxiety, economic hardship, and the victim’s situation more dangerous.

The process of obtaining certification, filing the case, and waiting for a decision left immigrant victim clients in limbo for long periods of time. Other unintended negative consequences of the process to the victim who came forward included increased community visibility. A grantee explained for example that reporting the crime suffered brought attention for the victim in their cultural community and/or the community at large. This could lead to the victim being ostracized or discriminated against. This occurred in the case of a client who had been abused in a same sex relationship and same sex relationships were considered shameful in her community.

Additionally, the victim’s fear of deportation was not reduced after filing the U visa application. From the time of filing for the U visa through final adjudication awarding the victim a U visa, victims continued to worry and feared deportation as they were doubtful of the outcome and because they have identified themselves to DHS as

undocumented. These fears and concerns had a significant impact on the victim’s emotional health and physical safety because perpetrators can and did continue to use threats of deportation as retaliation for working with law enforcement against the victim. Support from LAV funded attorneys and support from victim advocates was crucial to the safety and wellbeing of victims and their children through these difficult times [36].

Grantees reported encountering three significant difficulties in obtaining U visa certification:

(1) Law enforcement agencies that agreed that they wanted to do U visa certification would not issue certification until the agency developed and implemented a U visa certification policy.

DHS Position: DHS authorizes the head of the certifying agency to sign certifications and to designate any person(s) in the agency with a supervisory role to sign certifications. DHS encourages but does not require certifying agencies to develop internal policies and procedures for vetting certifications DHS does not endorse or recommend any particular practice, acknowledging that the certifying agency has the sole authority on the policies and procedures it will use in signing law enforcement certifications [13].” When the head of an agency designates a supervisor to sign certifications, best agency practices include providing the immigrant victim applying for the U visa a copy of a letter signed by the head of the agency noting that the person signing the U visa in the victim’s case has been designated to be a U visa certifier (A sample designation letter is available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/u-visa-certification-forms-for-law-enforcement/U-Visa-SAMPLE-DESIGNEE-LETTER.doc/view>).

Grantees reported that even when LAV funded programs, victim advocates, and law enforcement agencies had good long standing working relationships with each other, the creation and finalization of U visa certification protocols took several months. In many jurisdictions where these important established relationships did not exist, the process took even longer.

(2) Agencies that were unwilling to sign certifications.

DHS Position: “Although a law enforcement certification is a required part of a victim’s petition for a U visa, law enforcement officers cannot be compelled to complete a certification. Whether a certifying law enforcement agency signs a certification is at the discretion of that law enforcement agency... The law enforcement certification validates the role the victim has had or will have in being helpful to the investigation or prosecution of the case; therefore, it is important that the law enforcement agency complete certifications on a case-by-case basis. Without a completed U visa certification, the victim will not be eligible for a U visa [13].”

When law enforcement agencies were unwilling to sign U visa certifications, grantee agencies were required to devote significant resources to identify an alternate agency from which to attain U visa certification. This resulted in longer waiting periods for immigrant clients who were being represented by grantees.

(3) Once U visas were signed and the victim’s case was filed with DHS, victims faced significant wait times for their cases to be approved of up to or over one year. DHS case processing times for U visa applications prior to 2011 resulted in 63.9% of U visa victims waiting between 7 months and a year to obtain approval and work

authorization and another 30% waiting between 13 and 18 months [37]. As of the winter of 2013, DHS had reduced U visa adjudication wait times down to 6-7 months [38].

Grantees noted that the fear of deportation did not diminish after applying for a U visa.

### **The process is stressful and may aggravate the victim's fragile emotional state**

Implicit in the concerns grantees described regarding the consequences to the victims was that the process could aggravate immigrant victims' already vulnerable mental state. Some grantees noted that their clients would feel as if they were to blame if their case was not sufficiently strong because they did not call the police earlier. For those who did call the police for help, when the police did not certify victims, they felt that the reason for not certifying is that the victim had been unable to convince the police of their sincerity.

It was also noted by the grantees that victims feared for their children and had concerns regarding how the disclosure of abuse and the process of applying for U visa could affect their children. In particular, victims were particularly afraid of anything that might lead to being separated from or losing custody of their children to the abuser. Batterers used threats regarding obtaining custody or keeping the victim from seeing the children to prevent the victim from seeking help or following through with the law enforcement and/or immigration process.

After chronic abuse and violence, victims are often highly traumatized and tend to suffer from a number of symptoms well recognized in the trauma literature [39-43]. In particular, depression and dissociation are symptoms that alter the victim's capacity to be present and engaged in what she does, and also suppress the emotional presentation of the victim [44,45]. Victims often avoid talking about the abuse and stay away from reminders of the abuse in order to prevent re-experiencing the emotional experiences and feelings related to the trauma [47,48]. Grantees reported that these traumatic consequences can interfere with the victim's ability to tolerate the intrusiveness of the process associated with writing their stories for their U visa affidavit. This trauma, and the fear and pain of reliving the abuse, is exacerbated by the uncertainty of the U visa process. The U visa requirement of ongoing helpfulness with criminal investigations and prosecutions further aggravate the victim's emotional distress. These situations place the victim in a difficult and fragile state of mind that may lead her to drop the process or complicate the efforts by legal advocates, and ultimately lead to unfavorable outcomes.

As discussed below in detail, this review found that developing, nurturing and maintaining strong ongoing collaborative relationships between LAV funded attorneys, the victims' advocates that work with LAV attorneys, and law enforcement agencies in the community can and do alleviate the emotional impact the U visa process has on victims. With collaborations in place, delays in obtaining U visa certifications are eliminated and police join with attorneys and advocates to develop and implement a safety plan and criminal justice system case approach that helps ensure victim stability and safety. This approach promotes favorable outcomes for immigrant victim clients of LAV funded agencies.

### **Continued Need for Funding To Support Attorneys Working With U Visa Victims**

Grantees reported that LAV funding was crucial to their ability to

provide assistance to immigrant victims, including those filing for U visas. However, many reported facing increased requests for assistance that did not match their resources. This was exacerbated when DHS issued the U visa regulations in 2007.

Grantees reported that funding was inadequate or insufficient to cover the needs of the agency in processing U visas. The grant reports conveyed a concern by grantees that the processing of U visas cases was more complex and more time intensive than other services offered to victims by LAV grantees. Further, LAV funded legal staff reported that U visa clients had a multiplicity of legal needs that would need to be addressed to stabilize and support the victim and her children. Addressing these needs would provide much needed support while the victim was involved in the criminal justice system and susceptible to threats and retaliation from the perpetrator. U visa victims needed representation to help them obtain domestic violence and sexual assault protection orders, child custody, child support, and for housing issues to help them remain in their home.

Another area of ongoing concern was the need to train more legal staff who can offer immigrant victims assistance in U visa cases and to ensure that LAV funded staff had the access to training they needed to stay current with developments in immigration law and practice in VAWA and U visa cases. Training staff requires an investment of both time and money that some grantee agencies were reticent to make. Finally grantees noted that through collaboration with non-lawyer victim advocates, who assist by accompanying immigrant victims to hearings and to supporting victims through the court and U visa process, they could expand the numbers of immigrant victims they could serve with the limited financial resources available.

### **Successful Collaborations Foster Creative Solutions to Overcome Challenges for U Visa Victim's Cases**

Grantees reported creative approaches that resulted in providing greater language access to the justice system for immigrant survivors and alleviating some of the transportation obstacles immigrant victims encounter. Collaboration promoted the development and implementation of many creative solutions. Collaboration was also crucial to positive outcomes with regard to U visa certification as was an open attitude that facilitated collaborative problem solving and trust.

With regard to language barriers, grantee reports reflected use of creative ideas, existing relationships, and other strategies to assist programs in removing language barriers and opening up their services and assistance to immigrant victims with distinct linguistic and cultural backgrounds. Examples include:

- Developing a language access protocol at a law enforcement agency that often comes into contact with large numbers of LEP immigrants and then disseminating this protocol to other counties and agencies;
- Translating materials regarding sexual assault and family violence into additional needed languages to disseminate to workers at hospitals, law enforcement, and mental health institutions; and
- Partnering to provide training for new interpreters along with education on domestic violence and sexual assault and professional interpreters' ethical canons.

Isolation, a common part of the intimate partner violence dynamic, is made worse by the lack of transportation in rural areas that effectively limits access to any services. Many grantees reported that they were

able to creatively overcome some of these barriers by extending their services outwards with mobile clinics, weekly satellite office hours in more rural areas, and toll-free statewide hotlines where victims could call in to get information and advice, and possible referrals. Immigrant and LEP victims benefited from these services through bilingual staff and the availability of interpreters.

Challenges to providing assistance and representation for victims seeking a U visa were overcome by grantees employing a variety of creative solutions. It was encouraging to read the many examples of how barriers that were identified could and were overcome through developing good working ongoing collaborations that built trust and good will between lawyers, advocates, law enforcement and other government agencies that could issue U visa certifications.

In particular, grantees reported that training and education that was continuous and comprehensive, in both formal and informal settings, often improved relationships between law enforcement and LAV agencies and resulted in increased success in securing U visa certifications. These trainings also resulted in law enforcement officials being better able to secure advocacy services and legal representation for the immigrant victims they encountered in their work. The most effective trainings built upon and then moved beyond basic training on dynamics of domestic violence. Effective trainings addressed issues that included:

- Safety response protocols and designing safety planning that takes into account protection from deportation, federal VAWA confidentiality protections, and dangers of travel for undocumented immigrants pursuing VAWA or U visa immigration relief.
- Range of immigration options available to help immigrant victims and their children including the U visa, VAWA self-petitioning, the T visa and continued presence [49-52].
- Cross training and multi-disciplinary training in which advocates, law enforcement (police, sheriffs, prosecutors, FBI), and attorneys train each other on what they have learned regarding effective approaches to working with immigrant victims and identify commonalities and approaches for future collaboration on cases of immigrant crime victims, including U visa victims. Some jurisdictions included family and criminal court judges and child and adult protective services workers in cross training events.
- Training law enforcement chiefs and supervisory officials on U visa certification and developing training materials that law enforcement trainers can use for ongoing training of both experienced officers (e.g. at roll call) and recruits on the U visa as a tool that helps law enforcement and enhances victim safety.

It is important to note that by 2014, the list of immigration remedies that are available to help immigrant crime victims also includes: work authorization for spouses of A, G, H and E(iii) visa holders (INA Section 106); and children and youth eligible for Deferred Action for Childhood Arrivals (DACA) [49-52].

In general, the common thread throughout the reports of grantees emphasized the need for ongoing communication with law enforcement officials on a wide range of issues that includes but is not limited to U visa certification. Often attorneys and victim advocates assisted law enforcement on domestic violence and sexual assault cases when law enforcement was the first responder to a victim and helped the victim access services from the LAV funded agency and partner domestic violence or sexual assault victim advocacy programs.

Participation in community collaboration projects with community agencies, medical centers, shelters, law enforcement, prosecutors, courts, legal services, victim advocates and other agencies created multi-agency cooperation that also facilitated access to U visa certification. LAV funded lawyers and/or their victim advocate partners that had regular ongoing communication with law enforcement and victim advocate collaborators reported greater success in working together on U visa certifications. Successful approaches included holding ongoing (often monthly) meetings between advocacy and legal services organizations and local police, sheriffs and prosecutors to problem solve and improve access to justice for immigrant crime victims, including access to U visa certification. Grantees reported that these meetings led to an expansion of law enforcement agencies doing U visa certifications both in their local jurisdiction and surrounding jurisdictions. As collaborations and relationships were developed with law enforcement, grantees were more readily and more swiftly able to gain access to 911 recordings, police reports and photographs to support the victim's U visa, VAWA self-petition and/or family law case including requests that were made on short notice.

Moreover, when the contact between the legal service agency and the law enforcement agency was individualized and relied upon personal relationships that were developed earlier, the success in working with law enforcement on the U visa certifications was higher. For instance, grantees that reported success in this area stated that the head of their agency met with the head of the police department on a regular basis, or that staff from both agencies knew each other on first name basis. Agencies also reported that existing partnerships on a range of projects that affect victims, which tapped into issues that both law enforcement and the agency cared about, like firearms control, were used to build successful collaborations and working relationships on the implementation of U visa certification and protocols for certifying. Through this work, law enforcement agencies learned how effective the U visa could be as a tool that fosters not only victim safety but community and officer safety.

Many agencies also reported that they provided tools and resources to law enforcement and to the immigrant community to disseminate information about the U visa. This included, for example, developing fliers in different languages with information about the U visa and VAWA immigration relief for immigrant crime victims for the police department to distribute, and working with law enforcement to develop information about the U visa, which police could access on computers in law enforcement vehicles.

Some grantees reported that they offered assistance to law enforcement agencies in creating protocols for U visa certifications. Grantees reported that these protocols were helpful in that they institutionalized the U visa certification process within the law enforcement agencies. U visa certification protocols helped advocates and attorneys working at grantee agencies to educate individual law enforcement personnel who may have been initially wary of helping a victim gain legal immigration status about the U visa, its purpose, how it helps law enforcement and DHS' interest in having local law enforcement assist DHS in identifying immigrant crime victims. Securing protocols and policies that encouraged U visa certification had the effect of formalizing the informal and personal relationships that had built trust between grantees and law enforcement officials. Many grantees reported that securing written policies was a success that ensured that future clients could be better served as the police agency and non-profit agency developed formal relationships that would last long past those initial individual relationships that led to the

development and implementation of U visa certification policies and/or protocols.

This review found a significant difference between grantees that had been successful in building collaborative relationships that led to implementation of U visa certification practices and grantees that had not. Implicit in the narratives of the grantees was a qualitative difference in the language used by grantees to describe their relationships with law enforcement. This qualitative difference in the tone of the grant report language coincided with the quality for the attorney-law enforcement relationship. It appears that LAV program's lawyer's attitudes and expectations regarding law enforcement officials may have played a role in the quality of the working relationships that were possible to develop. Some of the grantees who reported experiencing difficulties with law enforcement used the following terms in their federal grant reports. Examples include grantees reporting:

- That they "continue to preach" to law enforcement about the U visa; or
- That law enforcement are not certifying "[i]n spite of continuous efforts to enlighten them."

On the other hand, grantees who reported successful collaborations would say:

- "we continuously interact with and support,"
- "we share," and
- "we collaborate."

This difference in tone may reflect a fundamental difference in approach between programs that are successful and those that are unsuccessful in building collaborations that result in U visa certification and result in other benefits to law enforcement, attorneys, advocates, victims and the community. It appears that grantees' success with regard to building collaborations that lead to U visa certification by law enforcement may stem from:

- Grantee advocates taking an open, problem solving approach;
- Listening carefully to law enforcement officers' perspectives;
- Addressing concerns raised by law enforcement;
- Providing information that supports a law enforcement official's ability to respond to questions raised by other officers, by department leadership and within the department with regard to U visa;
- Clarity about and respect for the role that victim advocates and law enforcement each play in working with victims of domestic violence, sexual assault, stalking and dating violence; as well as
- Working together with law enforcement on U visa cases to promote victim safety and offender accountability.

Grantees' creative work to help immigrant and LEP victims and their collaborations with law enforcement included the following activities:

- Working with local law enforcement and local television news on a story that advertised to the community the benefits of the U visa for law enforcement, for victims, and for overall crime fighting efforts in the community.
- Once collaborative relationships are underway, the police departments that were signing U visa certifications began to

directly refer increased numbers of immigrant victims who the police encountered in their work to LAV funded agencies for assistance.

- Develop partnerships with pro bono law firms as well as individual attorneys offering services pro bono to help meet the growing need of services for immigrant victims.
- Some programs sought permission from the Office on Violence Against Women to obtain a Grant Adjustment Notice (GAN) to shift more of existing LAV funds into representation of immigrant victims in U visa cases.
- Grantee agencies conducted trainings for Consulates from immigrant victims' countries on VAWA immigration relief and the U visa in order to involve them in assisting with VAWA and U visa cases. One important role Consulates could play was assisting in providing victims with duplicate passports and identity documents taken or destroyed by perpetrators.
- Grantees reported also developing collaborative relationships with the medical and mental health professionals in their region in order to obtain counseling services for victims helped with trauma treatment and client's other mental health needs. Mental health professionals were also enlisted to assist in providing evidence of substantial harm that grantees could use to support client's U visa applications. Grantees found that when victims received mental health treatment, their willingness to trust and use the justice system increased. Victims who received treatment were more able to participate in criminal investigations and prosecutions and were reportedly more successful in their healing process.

## Discussion

### Legal assistance, advocacy and justice system engagement

The U visa was created as a crime fighting tool that would encourage immigrant crime victims to come forward and report criminal activities they suffered to law enforcement officials by protecting victims who were helpful in the detection, investigation, prosecution, conviction or sentencing from deportation and providing victim's access to work authorization. Congress understood that police could not solve crimes and hold perpetrators accountable without information that immigrant crime victims could provide, particularly in cases of recidivist crimes including domestic violence and sexual assault. The goal was to provide protection early so that law enforcement and prosecutors receive all the information possible to build cases against perpetrators. The victim's eligibility for the U visa was based on helpfulness provided. What police or prosecutors were able to or chose to do with the information provided have no effect on a victim's U visa eligibility. A victim can receive certification and a U visa if they provided helpful information. Once the U visa is granted, victims are required, with limited victim safety exceptions, to provide ongoing helpfulness to law enforcement and prosecutors should the criminal case go forward. Research has found that the U visa program promotes high levels of cooperation by immigrant crime victims (70%) and that another 29.45% were willing to be helpful but were not asked for further cooperation [35].

The importance of victim advocacy provided by LAV funded attorneys and the advocates they partner with cannot be over emphasized. By and large, immigrant and LEP victims attain access to VAWA, U visa and T visa immigration protections only with the help of an attorney or advocate with training on the dynamics of working with immigrant victims and immigrant victims' legal rights

and options. Although the rate of reporting to police by immigrant survivors nationally can be quite low [2], research has found that immigrant survivors who receive services from attorneys and advocates with training and expertise on legal options for immigrant crime victims are significantly more likely to turn to the justice system for help [53,54]. In the context of protection orders, trained lawyers and advocates were the catalyst in the process of learning about legal relief available to immigrant victims [36]. Research has found that the safety planning and lethality assessments conducted by advocates and attorneys experienced in working with crime victims leads to a significant increase in the willingness of immigrant victims to seek protection orders [36] and to call the police for help, especially when the severity of the abuse or violence was high [54,55]. Most immigrant victims of violence who had gained a form of legal immigration status were able to do so because of the help by advocates and attorneys.

### **Building and Sustaining Long Term Collaborations Between Law Enforcement, Attorneys, and Advocates Results in The U Visa Being Used As A Crime Fighting Tool by Law Enforcement**

#### **Challenges encountered by grantees**

The grant reports reviewed revealed LAV funded agencies encountered challenges in their work with immigrant victims eligible for U visa immigration relief. Several of these challenges are a variation on themes that the Violence Against Women Act, the domestic violence and sexual assault victim advocacy movements and enlightened law enforcement leadership on violence against women issues have been working and making progress on for years. These challenges include isolation in rural communities, problems victims encounter in family court, transportation and other difficulties victims face in rural communities, and law enforcement practices.

The challenges with law enforcement practices reported by grantees in this study include many that are essentially immigrant victim versions of generally recurring problems for domestic violence and sexual assault cases. The problem for LEP victims seems to be consistently an issue that needs improvement. This problem raised by a number of OVW grantees in 2007-2009 has been found to be a continuing problem in 2013 [32]. Victim advocacy and legal services providers participating in a national survey conducted by the National Immigrant Women's Advocacy Project, American University, Washington College of Law, reported that 14,341 of their LEP clients had called the police for help. Of these cases, respondents indicated that the officers spoke the victim's language in 1,637 cases (12%); in less than half (42.6%, n= 5,803) of cases officers identified the language the victim spoke, and 30% of the cases (n=4,165) an unqualified interpreter was used. Officers used a language line 960 times (7.0%) and a qualified interpreter on 1,419 occasions (10.4%). Survey participants also provided information about 357 instances (2.6%) when the police took other actions when they responded to calls from LEP victims. These included:

- Officers required a written statement in the native language instead of calling the language line (4 cases);
- Victim spoke some limited English and law enforcement did not seek an interpreter or did not wait for the interpreter (89 cases). In one of these instances the officer told the victim who had requested an interpreter: "Come on, you can speak English, just tell me what happened."
- Officers did not use any interpreter at all (45 cases).

These and many other issues reported by grantees and discussed earlier in this document are inconsistent with best practices in domestic violence and sexual assault cases and are contrary to or inconsistent with VAWA and many state laws. Other troubling practices grantees reported included:

- Discounting victim's reports of domestic violence and sexual assault including occasions when police arrive on the scene of a domestic violence case and speak only with the English speaking perpetrator and never with the immigrant LEP victim who called the police for help;
- Minimizing the violence, not collecting evidence at the crime scene, and not taking police reports from battered immigrants or immigrant victims of sexual assault;
- Not taking seriously the abuse perpetrated against immigrant crime victims;
- Instead of following pro or mandatory arrest policies, batterers of immigrant victims were given perpetrators warnings and not arrested.
- Victims were encouraged by police to drop charges against the abuser.
- Police not informing immigrant survivors of potential legal options, including immigration relief and not referring victims to advocacy and legal services programs.

These practices have long been understood to be inappropriate and ineffective responses in domestic violence, sexual assault, and stalking cases that do not promote victim or community safety. These particular practices are similar to the challenges battered immigrants historically experienced when they called the police for help [54].

VAWA was created to reverse these practices and open up access to justice and police assistance for all victims without regard to race, ethnicity, immigration status, sexual orientation, age, rural location and other factors (42 U.S.C. § 13925(a)(39)(underserved population definition under VAWA). The Violence Against Women Act in 1994 and each of its reauthorizations in 2000, 2005 and 2013 and the Trafficking Victims Protection Act (TVPA) and its reauthorizations in 2003, 2005, 2008, 2011 and 2013 have been inclusive of and continued to expand immigration protections for immigrant survivors of domestic violence, sexual assault, stalking, human trafficking, and other U visa covered crimes. However, in communities across the country there continue to be too few law enforcement officials that are aware of and familiar with VAWA's and the TVPA's immigration protections. LAV grantees in their reports recognize, lead, participate in, create, and call for more training of law enforcement, prosecutors, courts, and other systems personnel on the legal rights of immigrant crime victims including immigration remedies, immigrant victims' treatment in family courts, and access to life saving victim services, legal representation, and public benefits.

The lack of knowledge that grantees report among some law enforcement and other justice system personnel about immigration remedies, the U visa, and U visa certification specifically is similar to what national research has found is unfortunately prevalent in communities across the country. NIWAP conducted a nationwide survey of organizations that serve immigrant victims of domestic violence, sexual assault, and human trafficking and asked these organizations to identify "the reasons agencies that were authorized by statute and DHS regulations to sign certifications gave for declining to

certify [55 at 1-2].” In the survey, governmental and non-governmental service providers identified 22 reasons that law enforcement agencies gave them when they refused to sign U visa certifications. Of the 22 reasons given, the following top ten reasons given to the victim’s advocates and attorneys by law enforcement agencies for not signing U visa certifications are markedly similar to those reported by LAV grantees:

1. The criminal was not prosecuted.
2. The crime happened too long ago.
3. The criminal was not arrested.
4. The victim’s case was closed.
5. The victim did not show enough assistance to law enforcement.
6. Law enforcement has the discretion not to certify.
7. The victim did not have any or enough injuries.
8. The certifier did not feel comfortable granting legal status.
9. The agency does not know they can certify.
10. Victim may stop cooperating after U visa certification is signed.

Only one of these reasons for not certifying is consistent with DHS policies and positions on the U visa – agencies do have the discretion not to certify (#6). The remainder are legally incorrect misunderstandings or misperceptions of U visa immigration laws by law enforcement officials. For instance, U visa certification does not confer legal status on the victim as explained earlier. Since 1990, only federal immigration authorities and not state judges or other state authorities are allowed under federal immigration laws to adjudicate and decide cases awarding immigrants immigration visas or any form of immigration relief [56].

### **Collaborations the Key to U Visa Certification, Language Access and Improved Access to Law Enforcement Assistance for Immigrant and LEP Victims**

This review of grant reports found that LAV grantees that had the most success with U visa certification had established collaborations and were working with law enforcement officials on a range of violence against women related issues. These relationships built upon common goals that both the victims services agencies and law enforcement sought to achieve. Goals included helping crime victims, preventing future crimes, protecting the community, and holding offenders accountable. The ability of law enforcement officials to fight crime in communities across the country is enhanced when, because of the U visa, immigrant crime victims, with the support of trained attorneys and advocates, are able to muster the courage to come forward and report crimes to law enforcement officials. Police and sheriffs who find the U visa to be a useful tool in their communities describe how the U visa helps them and victims.

Chief Pete Helein of the Appleton Police Department (Appleton, Wisconsin) describes the benefits as follows: “The real benefit of the U-visa, in addition to temporary status, is the fact that law enforcement can build trust between the immigrant community and the police department. It opens up that line of communication to where people who have been victimized in the past are feeling more comfortable coming forward. Those who have historically been preyed upon now come to the police without fear of deportation. They are coming forward to help. Most of our cases come from old cases that have gone unsolved or unreported. People come forward now because trust has been established. The victims are also reporting new crimes [57].”

The Assistant Police Chief in Burlington, North Carolina states: “Whether [crime victims] are here legally or not, these are things we

need to know about. They are still victims of crime. And these criminals aren’t just targeting immigrants. They are targeting all of us [58].”

Lieutenant David Moss of the Palm Beach Sheriff’s Office discusses the U visa benefits to law enforcement as “The people committing these crimes [against immigrants] commit them everywhere. Today it might be a Guatemalan, but tomorrow it might be a senior citizen [59].”

The International Association of Chiefs of Police has emphasized the importance of building trust and outreach to immigrant communities in preventing and investigating crimes. *The Police Chief’s Guide to Immigration* states that “[w]hen an immigrant population does not [...] speak the language and distrusts the government, they will not or simply cannot report crimes and thus their victim status remains largely unknown to the police [60].”

Immigrant crime victims turn to LAV funded and other trained attorneys and advocates for help to end domestic violence and recover from trauma and victimization. Attorneys and advocates help immigrant victims learn about their legal rights and options and provide the support that victims need to turn to police, prosecutors and the courts for help. The ability of law enforcement and prosecutors to detect, investigate, and prosecute crimes committed in the community improves as a result of collaboration between service providers and law enforcement. When trusting relationships are created between victim advocates/attorneys and law enforcement, advocates are more successful in helping vulnerable immigrant victims muster the courage to overcome their fears and seek help from police. Law enforcement, victims, and community safety all benefit when attorneys and advocates build strong on-going trusting relationships with law enforcement officials. Sergeant Inspector Antonio Flores of the San Francisco Police Department describes the relationship this way: *In San Francisco, we have built a great liaison with the nonprofits that assist in the applications for visas. They tell people they can approach the police; they can come forward with any crime they were involved with even if it’s not prosecuted. This opens up the dialogue not only with the victims who are reporting these crimes, but also sets up a dialogue with the advocates and nonprofits who will then say that they trust the police department [57].*

Research on effective collaborations found that law enforcement agencies that certify U visas had established collaborative relationships with crime victims’ attorneys and advocates addressing a range of issues that most often including working together on domestic violence (39.6%), sexual assault (32.3%), child abuse (21.5%), and dating violence (19.3%). Almost 30% (29.9%) of these collaborations involve work on both sexual assault and domestic violence issues [55]. Just over half (52.1%) of these collaborations involve work with crime victims on individual cases. The second most common area of collaboration involves collaborating on community education and outreach efforts (42.9%) that educate community members about their rights and help law enforcement build trust with various community members, including crime victims, in a range of immigrant communities. The third most prevalent forum for collaborative work involves jointly working on developing and delivering trainings (41.8%). Many effective working relationships involve work on sexual assault response teams (SARTs) (37.9%) and on coordinated community response to domestic violence teams (38.5%). This work focuses on responding to domestic violence and sexual assault in the community at large, without an exclusive or particular focus on immigrant victims.

Effective ongoing collaborations resulted in both greater access to U visa certifications and police more often securing the assistance of

qualified interpreters to help police communicate with LEP victims. Whether or not law enforcement had existing collaborations in place with local victim attorneys and advocates also has a dramatic impact on whether local law enforcement provided language access to police services using qualified interpreters [55]. The frequency of collaboration in outreach to immigrant communities impacted the likelihood that law enforcement officers would enlist the services of a qualified interpreter when they encountered an LEP immigrant victim of crime, with constant collaboration resulting in a higher likelihood and a lack of collaboration resulting in a lower likelihood. Specifically, respondents who reported collaborating with law enforcement partners on “outreach to immigrant communities” “often,” “very often,” or “almost always” (n=90) reported that police officers in their area used a qualified interpreter on 749 occasions (an average of 8.3 times per respondent) and a language line on 463 occasions (an average of 5.1 times per respondent). Those who collaborated with law enforcement partners on outreach to immigrant communities only “sometimes,” “rarely” or “never” (n=217) reported that police officers in their area only used a qualified interpreter on 650 occasions (an average of 3 times per respondent) and a language line on 381 occasions (an average of 1.8 times per respondent).

The National Center on State Courts’ nationwide survey on access to protection orders for LEP battered immigrants came to a similar conclusion. There was a significant positive relationship between courts that collaborated with community based organizations that served LEP communities and courts’ provision of language accessible services to immigrant domestic violence victims [61].

The LAV grantees reports reviewed, the experiences of law enforcement officers, and the findings of research conducted nationally concur that collaboration between a victim’s lawyer and/or victim advocate and local law enforcement is the key to the ability of immigrant victims of domestic violence, sexual assault, and human trafficking to access U visa protections. This review of grant reports filed by LAV grantees revealed important details of successful collaborations. These include:

- Continuous and comprehensive training delivered both formally and informally involving victim advocates and law enforcement as faculty.
- Ongoing communication between law enforcement and victim’s attorneys/advocates regarding individual cases, developing best practices, and training.
- The contacts between agencies were individualized and based on personal relationships (on a first name basis) between law enforcement and legal/victim services agency staff over a sustained period of time.
- Meetings between law enforcement and victim services/legal services agency leadership created a sound foundation for ongoing sustained collaboration.
- Participation in multi-agency community collaboration projects on a range of issues involving crime victims also facilitated access to U-visa certification and access to immigration relief for crime victims.

### When Law Enforcement Certification is Not Possible – Alternative Certifiers

In designing the U visa, Congress understood that there would be jurisdictions in which agencies authorized to certify U visas would

resist or be reticent to do so for a range of reasons. The drafters of the Violence Against Women Act were well aware that although great progress has been made over the years, some law enforcement agencies continued to employ practices in domestic violence and sexual assault cases that endangered victim and community safety. The range of law enforcement and justice system services and protections for crime victims were not fully available to immigrant and LEP victims when agencies did not provide qualified interpreters or misunderstood DHS policies and played a role in immigration enforcement that led to stopping, arresting, and detaining immigrants who are low priority for removal by DHS, including immigrant crime victims and witnesses.

To address this issue and further Congress’ stated goal of ensuring that immigrant crime victims are “able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes (VAWA 2000, § 1513)[9],” Congress authorized a variety of government agencies involved in detecting, investigating, or prosecuting criminal activities to have U visa certification authority. The U visa statute findings state that Congress was seeking to “encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens (VAWA 2000, § 1513(a)(2)(A)).”

To accomplish this goal, multiple certifiers were authorized by the statute (INA § 214(p)(1)). DHS’ U visa regulations further explained that judges “detect” criminal activities [22]. For judges detection is akin to probable cause [62]. The U visa regulations also confirm that other agencies including the U.S. Department of Labor, the Equal Employment Opportunity Commission, the National Labor Relations Board, and state agencies including child abuse and state labor boards are also authorized certifiers based on their detection of criminal activities and because they have criminal investigative jurisdiction in their areas of expertise [12]. The U visa statute and the DHS implementing regulations authorize multiple federal and state government agencies to sign U visa certifications. Thus, there are multiple potential certifiers LAV grantees can and should approach for U visa certification when one agency in their jurisdiction chooses not to certify U visas or continues to deny U visa certification based on grounds that are inconsistent with published DHS policies and positions on U visa certification.

The LAV grant reports revealed that several of the grantees working in jurisdictions in which local law enforcement refused or severely limited its willingness to sign U visa certifications, did report success with law enforcement in other jurisdictions. However, few grantees reported looking beyond a resistant local law enforcement agency for certification. It is important for attorneys and advocates working with U visa eligible crime victims to know the full range of agencies they can turn to for U visa certification. Agencies eligible to certify include but are not limited to:

1. **Law enforcement agencies:** This includes police departments, sheriffs, and state police. These three agencies often have overlapping jurisdiction. Advocates and attorneys working with U visa applicants have been successful in obtaining certifications from sheriffs or from state police in jurisdictions where the police will not certify and from local police in jurisdictions where sheriffs will not certify.
2. **Prosecutors [15]:** This can include state and federal prosecutors, local district attorneys, and other state agencies with prosecution authority.

### 3. Judges [62]:

- Civil court protection order or family court judges and magistrates who hear evidence and make findings about criminal activities are authorized to sign certifications. Civil court judges generally sign certifications based on having made findings or issued orders in family or civil court cases.
- Criminal court judges could sign certifications following a grand jury proceeding, at arraignment, and at various other points in the criminal court case; or
- Administrative law judges, e.g. military or university based judges who hear cases of sexual assault on campus or in the military.
- Immigration officials** who may have had contact with a victim of a U visa crime in the context of an investigation of human trafficking or smuggling or when immigration officials were called to assist local law enforcement with interpretation or crime scene back up in rural communities. In that context immigration officers may observe and identify U visa eligible immigrant victims;
- Child and adult protective services workers** who often detect and investigate the perpetration of criminal activities committed against minor children or elder abuse victims [63]; and
- Labor Enforcement Agencies:** The Equal Employment Opportunity Commission, the National Labor Relations Board, the U.S. Department of Labor and state labor law enforcement agencies that may detect and investigate criminal activities committed against employees as a crucial part of their labor violation investigations and prosecutions.

### Conclusion

U visa certification and the assistance provided by LAV grantees in filing U visa applications opens the door to help victims overcome the trauma of victimization, to heal and to move on to safe and productive lives for themselves and their children. Of equal importance is the enhanced community and law enforcement officer safety that occurs when perpetrators of crimes against immigrant victims are held accountable by the criminal justice system for their crimes. It is important to emphasize that the most important achievement of the U visa is its ability to provide these victims, who have few other resources available to them, with the safety they need for their healing, a new perspective in life to recover meaning for their lives, and a sense of fairness and justice in life. In the end, this report demonstrates how when advocate, attorneys and law enforcement collaborate to help immigrant crime victims U visa laws and policies translate into community projects that make life altering changes in individual lives.

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