

# SUBJECT TO DEBATE

A NEWSLETTER OF THE POLICE EXECUTIVE RESEARCH FORUM

Highlights from PERF's  
Annual Meeting in Las Vegas  
See pages 16-19

VOL. 31, NO. 2 | JUNE–AUGUST 2017

## U Visas and the Role of Local Police In Preventing and Investigating Crimes Against Immigrants

*With support from the Carnegie Corporation of New York, PERF has conducted research on many immigration-related issues that affect state and local police agencies. This issue of Subject to Debate details PERF's research on one of these critical issues: the role of local police in the federal "U Visa" program.*

*U Visas are a discretionary form of relief that the federal government can offer to victims of certain types of crimes, when the victims have been helpful, or are likely to be helpful, in the detection, investigation, or prosecution of criminal activity. When an immigrant applies for a U Visa, local police have a limited role in the process: they certify to federal authorities whether the applicant was in fact a victim of such a crime and was helpful to the police.*

*A number of police departments have found that their role in making such certifications helps them to build trust in immigrant communities.*

### U Visas: What are they, and how can they help build trust in the police in immigrant communities?

Congress created the U Visa program in 2002 to strengthen the ability of local and state law enforcement agencies to investigate and prosecute serious crimes, while offering protections to victims of such crimes without the immediate risk of being removed from the country.<sup>1</sup>

**To apply for a U Visa, a person must obtain certification from a law enforcement agency that the applicant was a victim of a qualifying crime and that the victim was helpful to the police.**

This certification is the sole aspect of the U Visa program in which local police become involved. The federal government retains the authority to make all decisions about whether to award a U Visa in each case.

PERF spoke with police and immigration advocates across the country to learn about the value of the U Visa program for purposes of reducing crime and investigating and prosecuting criminal offenders. PERF also conducted a site visit with the San Francisco Police Department, which considers the U Visa an opportunity to build relationships of trust with immigrants in its community. This article captures the promising practices and lessons learned that were shared with PERF.

The purpose of the U Visa program has been defined by DHS as follows:

*Congress ... created the U nonimmigrant status program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity.*

*Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including*

### U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial  
Law Enforcement, Prosecutors, Judges, and  
Other Government Agencies



1. Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide*, Jan. 2016. [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf)

*but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.*

*Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but to also strengthen relations between law enforcement and immigrant communities.<sup>2</sup>*

## How do U Visas work?

U Visas allow the victims of serious crimes who are helpful to police to temporarily stay in the United States for up to four years. U Visas are approved and granted by U.S. Citizenship and Immigration Services (USCIS), which is a component of DHS. The U Visa provides recipients with

nonimmigrant status that comes with certain benefits, including the ability to work in the United States.<sup>3</sup> If certain conditions are met, U Visa holders can apply for lawful permanent resident status (i.e., seek a green card),<sup>4</sup> which can provide a pathway to citizenship.

When Congress created the U Visa program, it explained that the purpose of the U Visa is twofold: 1) to provide humanitarian relief to undocumented crime victims, and 2) to provide a mechanism that encourages undocumented immigrants to come forward and report crimes to local police to improve public safety.<sup>5</sup>

The U Visa is especially important for immigrant victims of domestic violence, sexual assault, and human trafficking, who comprise roughly 75 percent of U Visa holders.<sup>6</sup> **This is because abusers often use the threat of**

## Requirements for Applicants to Obtain a U Visa from USCIS

### 1. Eligibility

- a. Applicants must be the victim of a qualifying criminal activity<sup>7</sup> that was committed in the United States.
- b. In most cases, applicants must be the *direct* victim of the crimes. There are limited exceptions for 1) certain indirect victims (family members) when the primary victim was murdered or rendered incapacitated/incompetent and unable to assist police, or 2) bystanders in instances of unusually severe harm (e.g., pregnant women who miscarry as a result of witnessing a crime).

### 2. Harm

- a. Applicants must have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity. (*Note: Police do not have to certify this requirement*).

### 3. Helpfulness

- a. Applicants must currently be assisting law enforcement in the detection, investigation, or prosecution of a crime; or
- b. Must have previously assisted law enforcement in the detection, investigation, or prosecution of a crime; or
- c. Must be likely to be helpful in the investigation or prosecution of criminal activity.<sup>8</sup>

### 4. Admissibility

- a. The applicant must also be admissible to the United States under USCIS's requirements (i.e., in good health, with good moral character, and no concerning criminal background or national security concerns).<sup>9</sup> (*Note: Police do not have to certify this requirement*).

2. *Ibid.*, page 3.

3. *Ibid.*, p. 4.

4. *Ibid.*, p. 5.

5. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 §§ 1513(a)(1) & (2) (2000) (codified at 8 U.S.C. 1184). <https://www.state.gov/documents/organization/10492.pdf>

6. Leslye E. Orloff & Paige E. Feldman, *The National Immigrant Women's Advocacy Project and Legal Momentum, The Women's Legal Defense and Educational Fund*. "National Survey on Types of Criminal Activities Experienced by U-Visa Recipients." Nov. 29, 2011. <http://library.niwap.org/wp-content/uploads/2015/National-Survey-on-Types-of-Criminal-Activities-Updated2011.pdf> .

7. Qualifying criminal activity includes: abduction; abusive sexual contact; blackmail; domestic violence; extortion; false imprisonment; felonious assault; female genital mutilation; fraud in foreign labor contracting; hostage-taking; incest; involuntary

servitude; kidnapping; manslaughter; murder; obstruction of justice; peonage; perjury; prostitution; rape; sexual assault; sexual exploitation; slave trade; stalking; torture; trafficking; witness tampering; and unlawful criminal restraint. These qualifying crimes include attempt, conspiracy or solicitation to commit any of these crimes, and "substantially similar activity" where the underlying conduct meets the general understanding of the crime even if it does not satisfy a specific statute's elements (e.g., an armed robbery that satisfies many of the elements of a felonious assault).

See Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide*, Jan. 2016. [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf).

8. The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

9. See United States Citizenship and Immigration Services, Policy Manual, "Admissibility" Vol. 8 (updated Dec. 14, 2016). <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume8.html>.

deportation as a tool to control victims; for example, abusers often tell their victims that they will contact federal immigration authorities if the victim calls the police to report the abuse.<sup>10</sup>

In fact, research shows that more than a quarter of U Visa applicants were reported to immigration authorities by their abusers at some point during their abuse.<sup>11</sup> Knowing that a U Visa can provide safety and protection allows many domestic violence and sexual assault victims to feel more comfortable seeking help and following through with legal action against their abusers.

## How are U Visas Relevant for Police Agencies?

Crime victims who wish to obtain a U Visa are responsible for submitting their own applications and putting together documentary evidence for USCIS. Victims usually do this with assistance from an immigration attorney.

One part of the application process requires outside certification. An applicant must obtain verification from a law enforcement agency, stating that the applicant was a victim of a qualifying crime and that the victim was helpful to the police.

This certification is documented in an “*I-918 Supplemental B*” form, which is an attachment that accompanies the U Visa application. The head of a police agency, such as the police chief or sheriff, is automatically designated as a certifying official, and law enforcement agencies may also designate other personnel who can perform this role, with a letter to USCIS.<sup>12</sup>

Police agencies are not the only organizations that can certify a *I-918 Supplemental B* form. Prosecutors, judges, and government agencies with investigative functions (e.g., child or adult protective services agencies) may also make these certifications.<sup>13</sup> In practice, however, applicants most often approach police departments for U Visa certification requests.

**Supplement B, U Nonimmigrant Status Certification**  
 Department of Homeland Security  
 U.S. Citizenship and Immigration Services

USCIS  
 Form I-918  
 OMB No. 1615-0104  
 Expires 02/28/2019

For USCIS Use Only

Remarks

▶ START HERE - Type or print in black or blue ink.

**Part I. Victim Information**

1. Alien Registration Number (A-Number) (if any)  
 ▶ A- [ ]

2.a. Family Name (Last Name) [ ]  
 2.b. Given Name (First Name) [ ]  
 2.c. Middle Name [ ]

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)  
 If you need extra space to provide additional names, use the space provided in Part 7. Additional Information.

Name of Head of Certifying Agency

4.a. Family Name (Last Name) [ ]  
 4.b. Given Name (First Name) [ ]  
 4.c. Middle Name [ ]

**Agency Address**

5.a. Street Number and Name [ ]  
 5.b.  Apt.  Ste.  Flr. [ ]  
 5.c. City or Town [ ]

Importantly, police agencies are not required under federal law to certify *I-918 Supplemental B* forms.<sup>14</sup> Therefore, U Visa immigration benefits may not be available for crime victims if their local police agencies and other qualified certifying entities choose not to certify these forms.<sup>15</sup>

**Law enforcement agencies should consider the benefits of using U Visa-related certifications as an investigative and community policing tool to improve the delivery of police services to all crime victims.**

USCIS is allowed by statute to grant no more than 10,000 U Visas per year.<sup>16</sup> There has been significant lobbying within the advocacy community urging Congress to increase that cap,<sup>17</sup> but as it stands, the applications for U

10. See National Center on Domestic and Sexual Violence, “Immigrant Power and Control Wheel,” (adapted from the Power and Control wheel developed by the Domestic Abuse Intervention Project). [http://www.ncdsv.org/images/Immigrant%20P&C%20wheel%20NO%20SHADING%20-%20NCDSV-ICE\\_updated2009.pdf](http://www.ncdsv.org/images/Immigrant%20P&C%20wheel%20NO%20SHADING%20-%20NCDSV-ICE_updated2009.pdf)

11. Krisztina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims’ Immigration Cases are Pending*, The National Immigrant Women’s Advocacy Project, June 2014. <http://library.niwap.org/wp-content/uploads/2015/IMM-Qref-SafetyPlanning-06.18.14.pdf>.

12. *U and T Visa Law Enforcement Resource Guide*, January 2016. [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf)

13. *Ibid.*, page 6.

14. However, states may make I-918 Supplemental B certifications required under their law. See Kristina Cooke & Dan Levine, “California Governor Approves Bill to Help Immigrant Crime Victims,” Reuters (Oct. 10, 2015), available at <http://www.reuters.com/article/us-immigration-california-idUSKCN0S40N920151010> (discussing a California law that prohibits blanket refusals to certify I-918 Supplemental B forms, requires police agencies to determine whether to certify I-918 Supplemental B forms within 90 days, as well as other related obligations, like reporting requirements).

15. See University of North Carolina School of Law and ASISTA. “The Political Geography of the U Visa: Eligibility as a Matter of Locale.” June 2014. <http://www.law.unc.edu/documents/clinicalprograms/uvisa/fullreport.pdf>.

See also DePaul University Asylum & Immigration Law Clinic. *Unequal Protection: Disparate Treatment of Immigrant Crime Victims in Cook, the Collar Counties & Beyond*, Oct. 2014. <https://law.depaul.edu/about/news/Documents/unequal-protection---disparate-treatment-of-immigrant-crime-victims-in-cook-the-collar-counties-and-beyond-pdf.pdf>.

16. See United States Citizenship and Immigration Services, “Victims of Criminal Activity: U Nonimmigrant Status,” <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/>

17. See “Safety for Immigration Victims Put on Hold by U-Visa Delay,” The Los Angeles Times. Feb. 1, 2015. <http://www.latimes.com/local/california/la-me-u-visa-20150202-story.html>.



Visas submitted in a given year far surpass the cap number. As a result, the waiting period for U Visas has increased significantly in recent years. USCIS is now reviewing applications that were submitted in 2014.<sup>18</sup>

Once an application is approved, it will be placed on a waiting list, and it may be several more months or years before it can be considered, due to the cap of 10,000 per year. Because the waiting period for an applicant to obtain a U Visa is significant, advocates and legal service providers are increasingly asking police agencies to complete U Visa-related certifications promptly.

## Proactive Use of the U Visa for Community Policing: A Case Study of the San Francisco Police Department's U Visa Program

### *How the Program Began*

The San Francisco Police Department (SFPD) has implemented a proactive U Visa program and reports significant benefits from utilizing U Visa-related certifications, not only as a law enforcement tool to help build cases against criminal offenders, but also as a mechanism to build trust with the community. The department regularly certifies more than 600 *I-918 Supplemental B* forms per year, and it provides technical assistance on U Visas to police agencies across the country.

At the helm of the program is Sgt. Antonio Flores, a human trafficking investigator in SFPD's Special Victims Unit. SFPD deputized Sergeant Flores to act as the department's certifying officer for all U Visa-related requests. Sergeant Flores is in the process of training additional certifiers, but currently he handles all certification requests, in addition to his full-time investigator duties.

Flores first recognized the importance of the U Visa in 2006 when he attended a training held at Catholic Charities. He encountered a woman he had assisted years earlier with a domestic violence case. The woman told Flores that later, she had successfully obtained a U Visa. And she explained that the prosecution of her abuser, and her success

in obtaining a U Visa, had allowed her to escape violence, secure a job, and gain independence.

Sergeant Flores began promoting *I-918 Supplemental B* certifications to SFPD leaders as a means to help domestic violence victims. Since initial implementation in 2006, the department has also seen larger benefits in building trust with undocumented immigrants.

### *Embracing to Build Trust*

*"Everyone in policing wants to find innovative ways to build trust, particularly with community members who are historically inclined not to come to us. U visas are just that."*

—Sergeant Antonio Flores,  
San Francisco Police Department

Though there have not yet been any scientific evaluations of the U Visa's impact on crime reporting, police executives credit U Visa-related certifications with bridging gaps between their agencies and undocumented victims in the community.<sup>19</sup>

The San Francisco Police Department cites the following factors as evidence:

### Positive Feedback from Advocates and Victims

Building on the close relationship that SFPD has fostered with immigration attorneys and advocates, the department

18. United States Citizenship and Immigration Services, "USCIS Processing Time Information," <https://egov.uscis.gov/cris/processTimesDisplayInit.do> (click the drop-down option to the right of "Service Center" for the Vermont Service Center; then click "Service Center Processing Dates," and scroll down to Form I-918, to see how recent the cases are that are currently being processed).

19. Studies have been conducted to assess changing perceptions of police based on other federal immigration programs. For example, the University of Illinois released a study in 2013 discussing Latinos' perception of police following implementation of the federal Secure Communities program. See Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Univ. of Illinois (May 2013), available at [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).



## Aviso Importante Para Inmigrantes.

Si Ud. ha sido víctima de un crimen, debe llamar a la policía y cooperar en la investigación.

- La policía no va a reportar a víctimas de crimen a las oficinas de deportación.
- La policía le ayudará.
- Puede calificar para estatus legal y un permiso de trabajo con la Visa U.



**Marque al “911” y pida “Spanish please.”**

**TRANSLATION:** Important notice for immigrants: If you have been the victim of a crime, you should call the police and cooperate in the investigation. The police will not report crime victims to deportation offices. The police will help you. You may qualify for legal status and a work permit with the U Visa. Dial “911” and ask “Spanish please.”

has received significant qualitative feedback regarding the impact of U Visas. Within immigrant communities, families and friends telling each other about their experiences with the police department has a powerful effect, according to advocates. “When one person gets a law enforcement certification, it spreads like wildfire,” say Jessica Farb, Directing Attorney at the San Francisco Office of the Immigration Center for Women and Children. “That person will tell 10 people and their whole family that yes, you can trust the police. I tell the larger activist community in San Francisco all the time that our immigrant population trusts the San Francisco Police Department.”

Private attorneys also agreed with that statement. “It can take a lot of courage for an undocumented person to walk into a police station. But now we have clients and victims going into the police station because their fellow community members tell them that they can go there,” said Karina Velasquez, a private immigration attorney.

### A Shift Toward Newer Cases

When the SFPD first began certifying *I-918 Supplemental B* forms in 2006, the underlying criminal activity associated with the applications was generally several years old. However, now that the department has built relationships with service providers and the community, U Visa applications have shifted dramatically to cases in which the underlying crime occurred within the past few months.

SFPD has also noted an increase in reports of crimes of domestic violence in neighborhoods where immigrants live in San Francisco. “If you do this right, you are actually going to see a spike in reported crime in immigrant communities,” Sergeant Flores said. “But you have to remember that these victims have been in the shadows, a place where criminals and abusers can take advantage of them.”

The department has also observed anecdotally that trust of the police does not stop after a victim has obtained a U Visa. SFPD reported several instances in which U Visa holders who became victimized again have come forward

promptly to the department, regardless of the outcome of the original case. “For some U Visa holders, we may not have gotten justice in their first case; but if they become victimized again, they will be a strong victim and a strong witness,” said Sergeant Flores.

### *Building Relationships with Advocates and Legal Service Providers*

The San Francisco Police Department conducts outreach and fosters a close, collaborative relationship with immigrant advocates, community-based organizations, and legal service providers who work directly with clients. These providers can serve as important allies in helping immigrant crime victims trust police officers and encouraging them to report crimes. “Referrals from nongovernmental organizations are essential, and once we built a good relationship with them, they started telling their clients, ‘You can talk to the police,’” Sergeant Flores said.

For example, the Oakland office of the Immigration Center for Women and Children (ICWC) appeared on a Univision segment titled, “Las Víctimas de Delitos Deben Llamar a Policía (Victims of Crime Should Call the Police),” which explored the experience of a U Visa holder who suffered a violent beating that resulted in nerve damage, and debated whether to call an ambulance.<sup>20</sup> In it, service providers encourage crime victims to come forward and seek help and explain the possibility of obtaining a U Visa.

Agencies that provide services to immigrants also distribute notices that advise clients to call police and cooperate with investigations. The Immigration Center for Women and Children distributes cards offering that advice to its clients, to share with their family and friends.

>> continued on page 7

20. “Victims of crime should call the police.” July 25, 2011. <https://www.youtube.com/watch?v=1u5nqdy3mUM>.

## Ways in Which Advocates Have Thanked Police: An Oakland Success Story

Immigrant advocates are working to demonstrate to police how life-changing U Visas have been for clients, as a means of thanking police for their efforts. Susan Bowyer, Deputy Director of the Immigration Center for Women and Children (ICWC), an advocacy group with offices in Oakland and other California cities, conducted a survey of clients who obtained U Visas, asking them to assess how their life has changed.

Below are the survey responses demonstrating the impact that U Visas have had on ICWC's clients.

Ms. Bowyer also asks clients to pose with thank-you notes to show support for police, as well as for the USCIS service center that processes U visa applications.



**ABOVE, LEFT:** Susan Bowyer

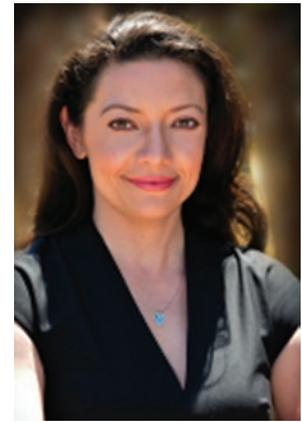
**ABOVE, RIGHT:** A U Visa grantee holds a note thanking the Oakland Police Department, saying, "Because of the U Visa, I feel I have more job security. I also feel more happy overall!"

**RIGHT:** ICWC staff and clients pose with notes thanking the USCIS Vermont Service Center, which processes U Visa applications, and area police departments.



### Survey of U Visa Recipients About the Impact on Their Lives

Client Self-Assessment	# Who Said They Agree	# Who Said They Disagree	No Answer	% of Respondents Who Agree
My life has gotten better.	98	0	3	100%
I feel safer now.	101	0	0	100%
I feel more financially secure now.	95	2	4	98%
My children are safer now.	84	0	17	100%
My children are happier now.	84	1	16	99%
My children are doing well in school.	56	5	49	92%
I have a job that I like.	64	15	22	81%
I'm able to be with my children more.	79	2	20	98%
I feel like life is moving forward.	97	1	3	99%
My children have health coverage.	66	21	14	76%
I have health coverage.	56	36	9	61%



Private attorneys in immigration practices praise these efforts as well. “The U Visa has reduced the gap between the advocacy community and the police,” said Karina Velasquez, an immigration attorney in the Bay Area. “We feel like we’re heard, and we feel comfortable sending our clients to them.”

In order to maintain this close relationship with advocates and legal service providers, Sergeant Flores has put significant effort into ensuring that the U Visa-related determination process is procedurally just. The San Francisco Police Department has shaped its *I-918 Supplemental B* certification process as follows:

- **Applying a presumption that victims will be helpful to the police on *I-918 Supplemental B* determinations, initially as a matter of policy and now as required by California law.<sup>21</sup>**
  - For example, if a domestic violence victim does not want to testify in court, Sergeant Flores will still certify a U Visa-related request, knowing that this is a common occurrence for this type of crime and that the victim may decide to testify later. Simply filing a police report is enough to be considered “helpful,” because it alerts the department to an abuser. In instances where a domestic violence victim lied to police at one point, Sergeant Flores will still certify the U Visa-related request and note his decision-making process in the comments section, recognizing the nature of domestic violence and the cycle of abuse that victims suffer.
- **Employing a broad use of discretion to certify U Visa requests, including:**
  - Applications where the underlying criminal activity happened a long time ago, and instances where the victim may have waited to report the criminal activity.
  - Applications where the criminal case did not move forward. “Cases can often become reactivated if another victim comes forward, so certifying in those instances really helps out in the long run,” said Sergeant Flores.
- **Ensuring transparency and consistency when police decline to sign an *I-918 Supplemental B* form.**
  - This includes providing feedback to attorneys and applicants when police decide not to sign an *I-918*

*Supplemental B* form, explaining the reasoning behind the Department’s decision.

- For cases in which it is difficult to determine the extent to which a victim was helpful to the police, Sergeant Flores sends the application to another authorized certifier (e.g., a captain or the chief of police) for a “blind review,” without saying which way he is leaning. That way, he can ensure consensus in cases where the department denies a request.
- **Completing the *I-918 Supplemental B* form in instances where the certification is not granted, or is given conditionally.** If Sergeant Flores determines that an applicant was not helpful, he will still fill out the form and return it to USCIS so that applicants can contest the determination, or counter with a reason why the lack of helpfulness was to be expected (i.e., a reasonable fear for their safety). And in instances where applicants have not been as responsive as the department would like, Sergeant Flores has also certified the *I-918 Supplemental B* form with conditional requests, such as a request that the victim call the appropriate detective.
- **Working with the District Attorney’s Office to ensure an integrated effort.** Police departments are not the only agencies that can provide a U Visa certification to federal immigration authorities; prosecutors also can do so. Therefore, it is important for police and prosecutors within the same jurisdiction to confer to ensure they are approaching U Visas consistently and are de-conflicting applications.<sup>22</sup>
  - Some prosecutors may be hesitant to certify U Visas before the resolution of a criminal case, to help ensure

21. S.B. 674 (2015) (codified in Sec. 679.10 of the California Penal Code), available at [http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0651-0700/sb\\_674\\_bill\\_20150227\\_introduced.html](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0651-0700/sb_674_bill_20150227_introduced.html).

22. Only one agency is required to sign an *I-918* form. Although police departments and prosecutors’ offices are the most frequent certifying agencies, judges and government agencies with investigative functions (such as departments of labor or child protective services) may also certify.

## Lessons Learned from the San Francisco Police Department's Use of the U Visa as a Community Policing Tool

A successful U Visa program in a police department is not simply about filling out *I-918 Supplemental B* forms. Rather, police departments should embrace the philosophy behind U Visas and integrate their community policing benefits into the agency's culture.

Some successful promising practices employed by the San Francisco Police Department are:

1. Building relationships with immigrant advocates and legal service providers, who help clients trust police and encourage them to report crimes;
2. Employing a broad understanding of what constitutes "helpfulness" by a victim in supporting the police investigation and prosecution of a crime, because there may be reasons why a victim still fears retaliation. Allowing for discretion in certifying U Visa-related requests can contribute to overall confidence in the program on

the part of undocumented immigrants who are crime victims;

3. Ensuring that community members are aware that U Visas are an option available to immigrant crime victims;
4. Educating all patrol officers and others who may come into contact with crime victims about the existence and purpose of the U Visa, and encouraging them to use it a trust-building tool with community members;
5. Implementing procedural justice elements into U Visa-related determinations, such as providing explanations when U Visa-related requests are not certified, administering surveys to measure user satisfaction, and looking for methods to streamline and improve the U Visa-related determination process to ensure it is efficient and unbiased.

that the victim will come to court and because they are nervous about the possibility of a U Visa application being used by defense attorneys for impeachment purposes (to call into question the victim's truthfulness or a motivation to lie in order to obtain a U Visa). In San Francisco, Sergeant Flores connected prosecutors with national technical assistance providers who were able to explain legal strategies for cases that involve a U Visa.<sup>23</sup> Sergeant Flores refers U Visa-related certification requests to the District Attorney's certifiers once a criminal prosecution begins (except in limited instances where the applicant is in deportation proceedings and the District Attorney is too busy to certify immediately).

- **Ensuring review of all U Visa-related requests and completion of I-918 Supplemental B forms within 30 days of receipt.** Under California law, police agencies are required to review and complete *I-918 Supplemental B* certifications within 90 days,<sup>24</sup> but the San Francisco Police Department strives to complete the certification process within 30 days. Fast-tracking of applications builds goodwill with applicants, who face an extremely

lengthy review process once their applications reach the federal government.

- **Collecting data on U Visa-related certification and making it publicly available.** All California police agencies are required to report annual data about U Visa-related certifications to the state legislature under California law.<sup>25</sup> Even before this was mandatory, the San Francisco Police Department collected data to be able to report its denial rate to the community and advocates in the area, helping to improve transparency and build trust. Sergeant Flores implemented a simple survey to measure satisfaction levels of attorneys who submitted requests to certify. "We want people to know their input is valuable, and always seek to improve our processes," Flores said.

Immigrant advocates in the Bay Area have implemented procedural changes to ease the burden on police agencies. For example, attorneys sometimes submit *I-918 Supplemental B* forms with information already filled in, to save police certifiers time, a practice that is common in many other locations as well. The Immigration Center for Women and Children put together an internet-based spreadsheet—giving access permission to all interested legal service providers in the United States—that details the particular requirements and preferences for certifiers, such as how much detail they require and whether they want the I-918 Supplement B form to be pre-filled.

23. Once defense counsel "opens the door" to question a victim or witness's truthfulness, prosecutors may introduce prior consistent statements that would otherwise be prohibited. See Federal Rules of Evidence 801(d)(1) (upon which many state rules of evidence are based).

24. See S.B. 674 (2015) (codified in Sec. 679.10 of the California Penal Code), available at [http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0651-0700/sb\\_674\\_bill\\_20150227\\_introduced.html](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0651-0700/sb_674_bill_20150227_introduced.html).

25. *Ibid.*

*“The U Visa is a tool to discover dangerous criminals and get them off the street.”*  
—Captain Una Bailey, Commander of Special Victims Unit,  
San Francisco Police Department



### *Tangible Results: Increased Public Safety*

One of the benefits that Sergeant Flores noticed after implementing the San Francisco Police Department’s U Visa program was that the applications were a source of information about previously unknown criminal activity. Using information contained in U Visa applications, police and prosecutors have been able to strengthen investigations and charges. For example, a photograph of domestic violence victim submitted with a U Visa application may be used as evidence in a criminal prosecution.

In one case, the San Francisco Police Department investigated a man who was later found guilty of fraudulently posing as a doctor and conducting illegal medical procedures on at least nine victims and sexually assaulting several of the victims.<sup>26</sup> The offender targeted migrant women for victimization, according to District Attorney George Gascón. The case came to the attention of the San Francisco Police Department when a nonprofit service provider asked Sergeant Flores to speak with one of the agency’s clients. The client divulged her experience with the fake doctor. The Police Department certified the woman’s status as a victim for her U Visa application, and built an extensive criminal case against the fake doctor. Police also discovered additional victims in need of services and assistance. **“Without that first victim coming forward and feeling comfortable because of the U Visa process, this man would have continued preying on vulnerable people,”** said Sergeant Flores.

Police officers are sworn to protect all individuals in their community from harm, including undocumented immigrants facing the threat of violence. “Sometimes police see cases of organizations targeting citizens, and we say to ourselves, ‘How did we not know about this?’” Sergeant Flores said. “It is because the criminal organizations started out targeting people who are not going to come forward.” Immigration advocates echoed this sentiment. **“If a victim comes forward and helps police to uncover criminal activity, that protects the entire community,”** said Karina Velasquez, a private immigration attorney who represents U Visa applicants in the Bay Area.

26. “Fake Surgeon Sentenced to 20 Years for Sexual Assault, Other Charges.” *The San Francisco Examiner*, Jan. 8, 2015. <http://www.sfexaminer.com/fake-surgeon-sentenced-20-years-sexual-assault-charges/>.

Because many U Visa applicants are victims of domestic violence, the U Visa process is especially important for reducing the incidence of that type of crime. And there is a growing body of literature about links between domestic violence and other types of violence. For example, researchers have noted a connection between domestic or family violence and mass shootings; 54 percent of recent mass shootings cases involved the murder of a current or former spouse/intimate partner or other family member.<sup>27</sup>

### *Internal and External Outreach: Educating the Community and the Department*

The San Francisco Police Department, to ensure that the U Visa would be an effective outreach and trust-building tool, made its U Visa policy a Class A Bulletin—a classification that ensures that officers are responsible for understanding the policy.<sup>28</sup> This bulletin provides that when a patrol officer encounters an immigrant who is the victim of certain serious crimes, the officer must conduct a preliminary investigation, tell the victim about the possibility of obtaining a U Visa application, and refer the victim to the Domestic Violence Response Unit, which will make a determination of whether the victim is eligible to apply for a U Visa.

>> continued on page 12

27. See Everytown for Gun Safety, “Mass Shootings in the United States: 2009-2016.” <https://everytownresearch.org/reports/mass-shootings-analysis/>.

See also “What Mass Killers Really Have in Common.” *New York* magazine, July 15, 2016. <http://nymag.com/thecut/2016/07/mass-killers-terrorism-domestic-violence.html> ;

“Control and Fear: What Mass Killings and Domestic Violence Have in Common.” *New York Times*, June 15, 2016. [https://www.nytimes.com/2016/06/16/world/americas/control-and-fear-what-mass-killings-and-domestic-violence-have-in-common.html?\\_r=0](https://www.nytimes.com/2016/06/16/world/americas/control-and-fear-what-mass-killings-and-domestic-violence-have-in-common.html?_r=0).

28. San Francisco Police Department, “U-VISA PROTOCOL FOR ASSISTING IMMIGRANT VICTIMS OF CRIME,” No. 11-031 (Feb. 14, 2011), available at <http://library.niwap.org/wp-content/uploads/San-Francisco-11-031-U-visa-protocol.pdf>.

## U Visa Frequently Asked Questions

### 1 Does signing an *I-918 Supplemental B* form mean that a police agency is “vouching for” the applicant, or deciding whether an applicant should have the right to stay in the country?

No. Understandably, many local and state police agencies are uncomfortable with any suggestion that they can play a key role in determining whether individuals should obtain an immigration benefit or be allowed to stay in the United States. **But that is not what the *I-918 Supplemental B* form asks of police agencies.** The form simply asks police to certify that the person was a victim of a qualifying crime and was helpful to police. Only USCIS has the authority to grant or deny a U Visa application. USCIS requires significant additional evidence of eligibility and admissibility (i.e., a background check) in order to make its determination. According to USCIS, the *I-918 Supplemental B* form “is only one piece of evidence USCIS reviews before making a decision on a U Visa petition.”

### 2 In order to be deemed “helpful” to police, must a person be willing to pursue the case to court?

**Not necessarily. The U Visa statute requires that a person be helpful in the investigation, prosecution, or detection of a crime. As a result, police agencies may certify in an *I-918 Supplemental B* form that a victim was helpful, even if the person does not want to pursue a case all the way to court.** Furthermore, USCIS can grant U Visas to applicants who are *not* considered helpful for the investigation or prosecution of a crime if the applicant can demonstrate that the hesitancy to help law enforcement was due to a reasonable fear for his or her safety. The rationale for this decision is that the U Visa was crafted as a valuable way for domestic violence and sexual assault victims to seek help, even though many such victims may be hesitant to go all the way through the judicial process.

Additionally, there are many cases in the criminal justice system in which police may not be able to gather enough evidence for probable cause to pursue an arrest warrant, or a prosecutor may determine there is not enough evidence to prove the case beyond a reasonable doubt. And in some instances, an individual may be a victim of serious criminal activity, but a defendant ends up being charged, convicted, or pleading to lesser offenses. U Visa applicant under those circumstances should not be penalized for the fact that a prosecution did not occur or was lessened.

Finally, even if a police certifier believes that the victim was not helpful enough, it is possible to fill out the *I-918 Supplemental B* form to completion, stating the reasons why the certifier does not believe the victim was helpful. This certification—which provides an important piece of evidence as to whether a U Visa applicant was a crime victim—allows the applicant to contest the helpfulness determination to USCIS.

### 3 Should police agencies certify U Visa-related requests for old cases?

**There is no statute of limitations for the underlying crimes that allow individuals to apply for a U Visa.** From a policy perspective, many police agencies, acting within their discretion, do not certify U visa-related requests where the applicant waited a significant period of time to report the crime or submit the U Visa application. For example, the Charlotte-Mecklenburg Police Department imposes a 5-year time limit for certifying U Visa-related requests for certain crimes (however, homicide, domestic violence, assault with a deadly weapon with intent to kill and/or inflict serious bodily injury, and sexual assault have no time limit).<sup>29</sup>

Establishing a time limitation is understandable, as it can be challenging and time-consuming for police agencies to look through older records to verify that a crime was committed and determine whether the victim was helpful to the police. However, some police agencies have found it useful to make the effort to certify *I-918 Supplemental B* forms in older cases, because it has helped them establish the credibility of their U Visa program. Some states require police agencies certifying U Visa-related requests to use a rebuttable presumption of helpfulness (i.e., an applicant is considered helpful as a matter of policy unless the police department has specific evidence that they were unhelpful), which can help resolve the decision to certify for cases where the certifier cannot speak with the relevant detective or officer handling the case. Also, if a crime victim did not learn about the possibility of obtaining a U Visa until long after a crime was committed, police agencies should consider a policy that accounts for that knowledge gap.

29. See “U-Visa Application,” Charlotte-Mecklenburg Police Department website. <http://charlottenc.gov/CMPD/Safety/Pages/Community-Programs.aspx>.

## 4 Does certifying U Visa-related requests open up police agencies to liability or scrutiny?

**Police agencies are not liable in instances where an immigrant later commits a crime.** DHS addresses this question in its U Visa resource guide:

*A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa. The U visa certification simply addresses whether the petitioner was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the detection, investigation, prosecution, conviction, or sentencing of that crime.... The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa. USCIS is the only agency that can grant a U or T visa.*<sup>30</sup>

If a police agency or prosecutor makes a certification but the situation later changes (for example, if the U Visa applicant becomes unreasonably unhelpful or commits a serious crime), the police or prosecutor can revoke the I-918 Supplemental B certification easily with a simple notice to USCIS.<sup>31</sup>

One difficult policy question for many police departments is the extent to which they should decline to certify a U Visa-related application if the applicant himself or herself has a criminal record. Many police agencies across the country choose not to certify U Visa-related requests for individuals with criminal backgrounds. This may be for policy reasons, or to preserve the overall credibility of the department's U Visa program. While USCIS conducts an extensive background investigation on U Visa applicants, that process may happen several years after the certification. Some police agencies therefore take the additional step of conducting a criminal background check on an applicant when reviewing an I-918 Supplemental B form.

Advocates encourage police, however, to think about how a criminal background may be part of the cycle of violence for some victims. "Because abusers can withhold money from victims or control the household finances as a method of exerting power, police should keep in mind that misdemeanors like shoplifting may be the result of a larger pattern of victimization," said Gail Pendleton, Executive Director of the nonprofit ASISTA, which provides assistance to legal service providers who represent immigrant survivors of domestic violence and sexual assault.

30. See Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide*, p. 17. [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf).

31. *Ibid.*

Additionally, police agencies that refuse to certify any I-918 Supplemental B forms should be aware of the possibility of opening themselves up to liability. Applicants may pursue lawsuits alleging abuse of discretion,<sup>32</sup> and one legal analysis of the Congressional intent behind the U Visa argues that "agencies should exercise proper discretion when presented with an I-918B certification request," because "when law enforcement agencies abuse their discretion in denying or refusing to sign I-918B certifications, USCIS' authority to adjudicate these applications, in effect, is usurped."<sup>33</sup>

Thus, police agencies should develop policies that can be applied consistently and fairly, and policies should guide agencies' discretion in making decisions about crime victims who themselves have a criminal background.

## 5 Because U Visas are limited in number, should police agencies reserve I-918 Supplemental B certifications for victims of the most serious crimes, or for victims who can provide the most significant assistance to the police in conducting major criminal investigations?

The number of U Visas that USCIS is allowed to grant per year is capped at 10,000. This may lead to a misperception that U Visa-related certifications should only be reserved for the most extreme cases or instances where the crime victim has significant intelligence on a criminal organization. However, this does not account for how USCIS handles applications. Rather than denying applications received in any given year, the agency places applicants on a waiting list for consideration the following year.

**Accordingly, police agencies should certify all U Visa-related requests that satisfy the statutory definition and are consistent with the police department's policies, without regard to the severity of the crime that was committed against the applicant.**

32. "Special Report: U.S. Visa Program for Crime Victims Is Hit-or-Miss Prospect," Reuters, Oct. 21, 2014. <http://www.reuters.com/article/us-usa-immigration-uvisa-specialreport-idUSKCN0IA1H420141021>.

33. University of North Carolina School of Law and ASISTA, *The Political Geography of the U Visa: Eligibility as a Matter of Locale*, June 2014, pp. 70–71. <http://www.law.unc.edu/documents/clinicalprograms/uvisa/fullreport.pdf>.

See also DePaul University College of Law, *Unequal Protection: Disparate Treatment of Immigrant Crime Victims in Cook, the Collar Counties & Beyond* (Oct. 2014), <https://law.depaul.edu/about/news/Documents/unequal-protection--disparate-treatment-of-immigrant-crime-victims-in-cook-the-collar-counties-and-beyond.pdf.pdf>.

Sergeant Flores also attended department-wide roll calls to conduct training on the U Visa, including its purpose and how to use it as a community policing tool. As a result, SFPD patrol officers understand that mentioning the U Visa program to potential applicants can build trust by assuring victims that the police department cares about their well-being. Officers also use it as a tool to encourage victims and witnesses to report crimes and cooperate with investigators.

“In San Francisco, police know about the U Visa program, and they are often the first at the scene of a crime,” said Karina Velasquez, a private immigration attorney practicing in the Bay Area. “Depending on the type of crime, officers often tell victims, ‘You should go ask a lawyer about U Visas.’”

Jessica Farb, Directing Attorney at the San Francisco office of the Immigration Center for Women and Children, recounted a case in which a patrol officer encouraged a victim to seek help through her office. “We had a case where a client was sitting at a bus stop and became dramatically injured—including losing her vision—when a perpetrator threw a rock into the bus window, spraying shattered glass. A patrol officer at the scene told her, ‘You may qualify for the U Visa,’ and gave her our contact information. Through that referral, we were able to get her the help she needed,” Farb said. “As a result of cases like these, most of our clients are not afraid of police. They often tell the rest of the community that the police helped them.”

## Promising Practices for U Visa-Related Certifications from Across the Country

- *When reviewing a U Visa-related certification request, police agencies should ensure that they implement multiple layers of review to improve consistency and mitigate bias.*
  - A system of multiple layers of review can be accomplished in a simple, informal way. For example, in the **Tucson Police Department**, the primary certifier for the agency is a lieutenant who shares his review decisions with multiple commanders to guard against individual bias.
  - Other departments have implemented more formal review processes. For example, the **Austin Police Department** established a U Visa Review Committee that includes multiple stakeholders from the department, including victim services representatives, to ensure that decisions are consistent.

- *In order to ensure that U Visa program is seen as fair and unbiased, police agencies should implement procedural justice procedures.*
  - The **Minneapolis Police Department** issues standardized denial letters that allow the agency’s certifier to provide a brief description of why an *I-918 Supplement B* form was not signed. The department also tracks data on the number of certification requests it receives and approves.
  - The **New York City Police Department** improved its U Visa certification process in 2014 to help ensure fairness, transparency and efficiency. The changes included adding a formal appellate review process. When a certification request is denied by the Department’s U Certification Office, the applicant may appeal the decision in writing. The NYPD’s Legal Bureau, independent of the U Certification Office, reviews requests for appeals, and after a complete reconsideration of the merits of the request, renders a final decision on whether to provide a certification. The NYPD, to its knowledge, was the first agency in the country to formalize this review process.
- *Police agencies should conduct outreach to immigrant communities about the existence and benefits of obtaining a U Visa in order to encourage crime reporting.*
  - Undocumented immigrants who are the victims of crime should know about the possibility of obtaining a U Visa. The **Charlotte-Mecklenburg (NC) Police Department** has an officer in the Community Services Bureau who appears regularly on a Spanish-speaking radio program to discuss U Visas and other issues that may be relevant to the Spanish-speaking community. The department also educated all of its officers about the U Visa so they can inform crime victims about the program. Educational initiatives include conducting training seminars at the Academy (to which command staff from areas with significant immigrant populations are invited), and disseminating a fact sheet to all officers.
  - The **Dayton (OH) Police Department** contracts with a nonprofit legal service provider<sup>34</sup> to provide resources to crime victims and explain how victims may be eligible for U Visas. The nonprofit agency also conducts training to help the police better understand the U Visa process and how it can help police obtain cooperation from immigrant community members during investigations.

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34. See Advocates for Basic Legal Equality, Inc. at <http://www.ablelaw.org/>.

- ***Employing discretion to certify U Visa-related requests has also proved beneficial for departments.***
  - The **Minneapolis Police Department** certifies *I-918 Supplemental B* forms for some witnesses to qualifying crimes. This was useful, for example, in helping the department close a homicide case. (It is important to note that it is the USCIS’s decision whether to a witness suffered unusually substantial harm, a requirement under the statute.<sup>35</sup>)
- ***Explore innovative mechanisms to make the review process faster and more efficient.*** Because it can take a long period of time to obtain a U Visa, police agencies should strive to avoid adding to the delay, by reviewing *I-918 Supplemental B* forms in a timely manner.
  - The **Phoenix Police Department** is working on a process to make all *I-918 Supplemental B* forms electronic and online. That way, all the department must do to sign a U Visa-related request is download the *I-918 Supplemental B* form, review it, electronically sign it, and send it back to the applicant electronically.
  - The **Charlotte-Mecklenburg Police Chief** is working with his Community Services Bureau to streamline the U Visa process in order to certify U Visa-related requests within 45 days. The department also worked with IT professionals to create an online portal that allows applicants to check on their *I-918 Supplemental B* form’s status.
- ***Formalize U Visa-related procedures in a written policy.***
  - Many police departments across the country have written policies related to *I-918 Supplemental B* certifications. The National Immigrant Women’s Advocacy Project released a model policy in May 2016 in conjunction with the Bureau of Justice Assistance that may be helpful for police agencies in drafting their own policies.<sup>36</sup>

## New Federal Immigration Priorities’ Potential Impact on Crime Victims

In the months following President Trump’s inauguration and his Executive Orders on immigration issues, police leaders across the country have been receiving inquiries from community members and immigration advocates,

35. The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

36. The National Immigrant Women’s Advocacy Project, “Proposed Model U Visa Policy,” May 2016. <http://niwaplibrary.wcl.american.edu/pubs/proposed-model-u-visa-policy/>.

asking whether there will be any changes in how local police officers interact with undocumented immigrants.

For example, when immigrants are considering whether to call the police to report a crime, they want to know whether officers will ask the victims or witnesses about their immigration status, and possibly contact federal immigration authorities if they suspect a crime victim or witness of being in the United States illegally. Many people also have asked local police chiefs whether they work closely with the federal Immigration and Customs Enforcement agency (ICE).

Many police executives have issued statements saying that they are **not** changing their policies or practices based on changes in the federal government’s approach,<sup>37</sup> promising that their officers will not treat community members differently on the basis of their immigration status, and assuring the public that it is still “safe” to report crimes to the police.

For example, shortly after the November 2016 election, Seattle Police Chief Kathleen O’Toole issued a public statement saying:

*... The City of Seattle remains committed to values of equality, inclusion and openness. So does the Seattle Police Department (SPD). I have heard from people in our community who fear that the policies of the SPD with regards to immigration status will soon change. They will not. Throughout my career in policing and as Seattle Police Chief, I have unwaveringly supported the rights of undocumented people, who are vulnerable, too often victimized and exploited, and may not feel safe coming forward when they are victims of crime.*

*The policies of the Seattle Police Department regarding immigration status will not change.*

*It is the intent of the Seattle Police Department to foster trust and cooperation with all people served by the Department. Complainants, witnesses and victims*

37. See, for example: “Flynn Seeks to Reassure Immigrant Community,” Milwaukee Journal Sentinel, Jan. 28, 2017. <http://www.jsonline.com/story/news/politics/2017/01/28/flynn-seeks-reassure-immigrant-community/97184554/?from=global&sessionKey=&autologin>

“LAPD Will Not Help Deport Immigrants Under Trump, Chief Says,” Los Angeles Times, Nov. 14, 2016. <http://www.latimes.com/local/lanow/la-me-ln-los-angeles-police-immigration-20161114-story.html>

“NYPD Commissioner Reminds Cops to Ignore President Trump’s Immigrant Deportation Orders,” New York Daily News, Feb. 23, 2017. <http://www.nydailynews.com/new-york/nypd-won-immigrants-trump-deportation-orders-article-1.2979616>

“Tucson Police Chief Says No Change to Immigration Enforcement,” Arizona Daily Star, Nov. 17, 2016. [http://tucson.com/news/local/tucson-police-chief-says-no-changes-to-immigration-enforcement/article\\_83423d80-acf6-11e6-a814-a3b470ce60f0.html](http://tucson.com/news/local/tucson-police-chief-says-no-changes-to-immigration-enforcement/article_83423d80-acf6-11e6-a814-a3b470ce60f0.html).

*are encouraged to communicate with Seattle Police officers without fear of inquiry regarding their immigration status.*<sup>38</sup>

However, many community members remain on edge because of reports that ICE agents are implementing more stringent enforcement policies than in previous years, such as enacting arrests at U.S. Citizenship and Immigration Services (USCIS) offices where undocumented migrants apply for residency.<sup>39</sup> In one high-profile incident, ICE agents detained a woman for immigration-related violations while she was filing a protective order at an El Paso, Texas courthouse.<sup>40</sup>

This has led to a concern that immigrants who are victims of crime will not come forward to file police reports. In fact, this has already occurred in Denver, where the City Attorney Kristin Bronson recently reported that four women decided to drop or refuse to participate in domestic violence cases against their abusers, citing immigration enforcement concerns.<sup>41</sup>

Possible evidence of this “chilling effect” can also be seen in cities across the country that have reported drops in their crime data for the first quarter of 2017, which they have publicly attributed to underreporting on the part of immigrant crime victims. The Houston Police Department, for example, reported in April 2017 that the numbers of rapes and other violent crimes reported by Hispanic victims have fallen 42.8 percent and 13 percent, respectively, compared with the same time period from last year, while reports from non-Hispanics have increased by 8.2 and 11.7 percent for those same crimes.<sup>42</sup> And in Los Angeles, Chief Charlie Beck said in March of 2017 that reports of sexual assault and domestic violence made by

the city’s Latino residents have significantly dropped for the year, by 25 percent and 10 percent, respectively.<sup>43</sup>

## The Future of U Visas

In 2011, Immigration and Customs Enforcement formally encouraged its officers to use “prosecutorial discretion” in deferring deportation proceedings or other enforcement action against persons who had applied for U Visas. “ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice,” ICE’s Director at that time, John Morton, said in a memorandum to ICE personnel.<sup>44</sup>

It is unclear what the new Administration’s emphasis on immigration enforcement will mean for both deferred action/prosecutorial discretion granted to crime victims and the U Visa adjudication process overall. There has been some indication that Congress may attempt to further tighten limits on the number of U Visas granted or tighten the application requirements for crime victims.<sup>45</sup> With this uncertainty, the number of applications has dropped in 2017 by 269.<sup>46</sup> Legal service providers have also reported that there has been some hesitancy among their clients. Approximately 43 percent of advocates surveyed by the Asian Pacific Institute on Gender-Based Violence stated that they have had some human trafficking and domestic violence survivors drop their applications since January 20, 2017.<sup>47</sup>

Despite rising fear within immigration communities, legal service providers across the country continue to encourage undocumented crime victims to continue applying for U Visas, recognizing the overall value that these

38. Kathleen O’Toole, “Chief O’Toole Statement on Immigration Status,” Nov. 15, 2016. <http://spdblotter.seattle.gov/2016/11/15/chief-otoole-statement-on-immigration-status/>

39. See “Five Arrested at Lawrence Immigration Office,” The Boston Globe, March 31, 2017. <https://www.bostonglobe.com/metro/2017/03/31/five-arrested-lawrence-immigration-office/SUeBGCVTiNxKerc1C84nhM/story.html>

40. “‘This Is Really Unprecedented’: ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse,” The Washington Post, Feb. 16, 2017. [https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm\\_term=.58142382c7e9](https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm_term=.58142382c7e9)

41. “Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver,” NPR, Mar. 21, 2017. <http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver>

42. “HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year,” The Houston Chronicle, Apr. 6, 2017. <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php#photo-12675828>

43. “Latinos Are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says,” The Los Angeles Times, Mar. 21, 2017. <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>

44. <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>

45. See House of Representatives, Judiciary Committee. (2016) Goodlatte, Grassley Probe U Visa, Immigration Parole Practices Following Fraud & Overreach [Press release]. Retrieved from <https://judiciary.house.gov/press-release/goodlatte-grassley-probe-u-visa-immigration-parole-practices-following-fraud-overreach/> (citing concerns of potential fraud in the current U Visa adjudication system).

46. Katie Lindberg, Human Trafficking Victims are Scared to Apply for Visas Under Trump, Vice News (Jun. 12, 2017). <https://news.vice.com/story/human-trafficking-victims-are-scared-to-apply-for-visas-under-trump>

47. “Key Findings,” 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors. <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>

**HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year**  
 Acevedo cites deportation fears, criticizes rhetoric about immigration  
 By Brooke A. Lewis Updated 10:01 am, Thursday, April 6, 2017

**Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says**

visas provide in their clients' lives. To assuage client fears, providers and attorneys in some localities are submitting U Visa applications with their business addresses listed rather than the victims' home addresses.<sup>48</sup> Attorneys filing U Visas are sharing best practices surrounding confidentiality in order to protect applicants from being detained by ICE.

Advocates' message, despite the uncertainty that remains in federal immigration enforcement, is that *victims should not suffer crimes or abuse in silence*. "I want to express our unwavering advice we are giving to clients, which is that they should continue to file U Visas," said Jessica Farb, Directing Attorney at the Immigration Center for Women and Children in San Francisco. "We do *not* want crime victims to be afraid to call the police."

"With the current Administration's focus on deporting undocumented immigrants, it is better for an immigrant survivor of gender violence to have something on file than nothing at all," said Gail Pendleton, Executive Director at ASISTA, a national organization dedicated to providing assistance to legal service providers representing immigrant survivors of domestic violence and sexual assault.

**Conclusion**

In recent months, a number of police departments have

48. See Nora Caplan-Bricker, 'I Wish I'd Never Called the Police,' Slate (Mar. 19, 2017), available at [http://www.slate.com/articles/news\\_and\\_politics/cover\\_story/2017/03/u\\_visas\\_gave\\_a\\_safe\\_path\\_to\\_citizenship\\_to\\_victims\\_of\\_abuse\\_under\\_trump.html](http://www.slate.com/articles/news_and_politics/cover_story/2017/03/u_visas_gave_a_safe_path_to_citizenship_to_victims_of_abuse_under_trump.html).

reported decreases in the reporting of crimes in immigrant communities, particularly crimes of domestic violence.<sup>49</sup> Some believe these changes are a result of the federal administration's focus on stricter enforcement of immigration laws. At the same time, legal service providers are also reporting hesitancy from their clients to move forward with immigration relief that could help them escape from a cycle of violence.

Many state and local police leaders feel that it is not their role to serve as immigration enforcement agents, and they have taken steps to distinguish between their role and that of federal agents (i.e., CBP and ICE). However, police executives have said that immigration policy changes at the federal level directly impact their ability to build trust with migrants in their communities.

To counteract this negative impact on local jurisdictions, there is a need to implement creative means to build trust with *all* community members. One such method is to implement a proactive U Visa program that demonstrates a commitment to crime victims—regardless of their status—and to encourage them to "step out of the shadows." U Visas represent a concrete tool that stands within a police agency's traditional role. Police departments that have fully embraced U Visas credit their role in providing certifications with building trust in their immigrant communities. U Visa applications have the additional benefit of alerting departments to possible criminal offenders preying on the community, thus helping them to allocate resources appropriately to drive down crime.

Some police departments have not fully embraced the idea of establishing a U Visa program, for various reasons. In some cases, certifying applicants' status as crime victims who are cooperating with police is seen as an "unfunded mandate," and other issues that are considered more pressing take a higher priority.

However, U Visas are consistent with the overall approach to immigration that many police agencies have taken over the last decade. Departments should carefully consider whether a strong U Visa program can help them to maintain community trust while also fulfilling the duty of local police to gather information about all crimes that are committed, investigate crime, and prevent crime by sending a message that the mission of police is to protect everyone in the community. Criminal offenders must never be allowed to think that certain groups of people can be victimized without consequences. 

49. "Hispanics 'Are Going Further into the Shadows' Amid Chilling Immigration Debate, Police Say." The Washington Post, May 12, 2017. [https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/?utm\\_term=.617858e79201](https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/?utm_term=.617858e79201).

# David Brown and Sue Riseling Named 2017 PERF Leadership Award Winners

THE PERF BOARD OF DIRECTORS selected two winners of this year's Leadership Award: Retired Dallas Chief David Brown and retired University of Wisconsin-Madison Chief Sue Riseling.

Chief Riseling, who received the award during PERF's 2017 Annual Meeting in Las Vegas, was named chief of the University of Wisconsin-Madison Police Department in 1991 at the age of 30. She was the youngest chief and the first female chief of a Big Ten Conference university police department. Chief Riseling faced a number of critical incidents during her career, most notably being in charge of policing at the state Capitol during the 2011 "Act 10" protests in Madison. Under her leadership, the University of Wisconsin-Madison Police Department has implemented cutting-edge training on a variety of subjects, including preventing and responding to active shooter incidents and improving the police response



PERF President and Camden County, NJ Police Chief Scott Thomson presents the PERF Leadership Award to former Chief of Police Sue Riseling.

demonstrated leadership on challenging issues such as use of force, transparency, and officer discipline. Chief Brown was unable to attend the meeting in Las Vegas. He will be presented his award at PERF's October Town Hall Meeting in Philadelphia. 

to sexual assault.

Chief Brown, who led the Dallas Police Department from 2010 to 2016, has developed a national reputation in the policing profession as a strong leader. Most of the country got to know Chief Brown in the aftermath of the horrific killing of five officers in Dallas in July 2016. Chief Brown emerged as a calm, informative voice as he managed the incident, protected the emotional well-being of his officers, and delivered a moving eulogy for the slain officers, alongside President Barack Obama and former President George W. Bush. Throughout his career, Chief Brown has

# Dermot Shea, NYPD Chief of Crime Control Strategies, Receives PERF's 2017 Gary P. Hayes Award

DERMOT SHEA, CHIEF OF Crime Control Strategies for the New York City Police Department, was presented with the 2017 Gary P. Hayes Award at the Town Hall Meeting in Las Vegas. The award, named for PERF's first executive director, honors an up-and-coming police executive who shows a talent for developing new ideas and testing new concepts in policing.

Throughout his 25-year career, Chief Shea has demonstrated those abilities. As Chief of Crime Control Strategies, he's leading the agency's shift to "CompStat 2.0," overseeing its evolution from a largely numbers-driven approach



PERF President and Camden County, NJ Police Chief Scott Thomson presents the PERF Gary P. Hayes Award to NYPD Chief of Crime Control Strategies Dermot Shea.

to one that is focused on crime reduction, problem-solving, and community building. As Chief Shea is known to say at Compstat meetings, "An arrest is worthless unless we get something out of it."

In coordination with the Manhattan District Attorney's Office, Chief Shea also oversees the NYPD's "RxStat" program. Modeled on CompStat, RxStat addresses the opioid overdose crisis by facilitating information-sharing and accountability among law enforcement, corrections, public health, EMTs, hospitals, treatment providers, and other stakeholders. 

# Annual Meeting Panel Explores Role of Police in Immigration Enforcement

By Maggie Brunner, J.D.  
PERF Research Associate

PERF, IN CONJUNCTION WITH THE NATIONAL Immigration Forum's Law Enforcement Immigration Task Force (LEITF), hosted a panel discussion at the Annual Meeting about the changing federal approach to immigration enforcement. The session was moderated by Houston Police Chief Art Acevedo and included Minneapolis Chief Janée Harteau; Boise, ID Chief Williams Bones; Dallas County Sheriff Lupe Valdez; and Seattle Deputy Police Chief Carmen Best.

Panelists discussed how changes in federal enforcement practices are affecting policing practices within their jurisdictions. They reported that the Administration's increased focus on immigration enforcement has created a false perception in some immigrant communities that reporting a crime—or any police contact—may lead to deportation. This has made their agencies' public safety mission more challenging. Panelists expressed concern that undocumented persons who witness a crime will not come forward and provide actionable, time-sensitive information about urgent cases like child abduction, or even a planned terrorist attack.



**FROM LEFT:** Houston Police Chief Art Acevedo; Minneapolis Police Chief Janée Harteau; Boise, ID Police Chief Williams Bones; Dallas County, TX Sheriff Lupe Valdez; and Seattle Deputy Police Chief Carmen Best.

The panelists agreed that it was important for police executives to stay apprised of federal immigration legislation and policy changes, and that police leaders should emphasize public safety in discussing immigration enforcement. “While I do not believe a police chief should always weigh in on politics, I think we are obligated to speak out when it impacts public safety,” said Chief Bill Bones.

For example, panelists agreed that the term “sanctuary city” is a misnomer that should be retired. Panelists said that their departments have always been committed to pursuing

criminal suspects and protecting victims and witnesses, regardless of their immigration status, so there is no “sanctuary” for criminal activity. “The idea that we are providing a safe haven for dangerous criminals is patently false,” said Chief Janée Harteau. Deputy Chief Carmen Best added, “We do not identify as a ‘sanctuary city,’ but rather a ‘welcoming city.’”

The discussion also centered on state-level immigration legislation that is affecting police departments. For example, Texas’s Senate Bill 4, enacted in May, allows officers to ask about immigration status and provides criminal penalties and civil liability for police executives who decline a detainer request.<sup>50</sup> This bill is seen as a potential catalyst for similar legislation across the country. Panelists discussed how local governments can resist such legislation by working with other interested organizations in their state. The police executives from Texas also discussed strategies for complying with S.B. 4 while ensuring that their agency does not commit racial profiling. These strategies include preparing training scenarios about when asking about a person’s immigration status may be appropriate (e.g., human smuggling cases) and requiring officers to document all immigration-status requests with articulable probable cause.

Police executives also called for an open dialogue about their relationship with the federal government concerning immigration issues. Chief Art Acevedo expressed a desire for more information from federal immigration authorities about the reasons for particular deportations, so that he can assuage fears among the public. “Transparency builds trust,” he said.

Sheriff Lupe Valdez discussed statistical evidence that immigrants are less likely to commit crimes than others. At the same time, “for the victims of these crimes, it is incredibly significant,” Sheriff Valdez said. “So we need to be cognizant of their pain, while at the same time putting crime committed by immigrants in context.”

Overall, panelists emphasized that local police should focus on public safety issues and should treat suspects, victims, and witnesses appropriately regardless of immigration status. Panelists all reiterated their commitment to upholding the Constitution and protecting civil rights of all people in their jurisdiction. IIII

50. See, for example, “Will Texas’s Crackdown on Sanctuary Cities Hurt Law Enforcement?” *The Atlantic*, June 6, 2017. <https://www.theatlantic.com/politics/archive/2017/06/texas-sb4-immigration-enforcement/529194/>

# Experts Discuss Improving the Police Response To Sexual Assault

By Sarah Mostyn, PERF Senior Research Assistant

AT ANOTHER PANEL SESSION AT PERF'S ANNUAL Meeting, experts discussed strategies for more effective outcomes in the criminal justice response to sexual assault. The session brought together police and prosecutors' strategies as well as academic perspectives on helping sexual assault victims. Chief Chris Magnus of the Tucson Police Department moderated the panel, which included Salt Lake City Police Chief Mike Brown, Dr. Melissa Morabito of the University of Massachusetts-Lowell, Attorney Advisor John Wilkinson of AEquitas, and Senior Research Assistant Sarah Mostyn of PERF.



FROM LEFT: Sarah Mostyn, John Wilkinson, Chief Mike Brown, and Melissa Morabito

The panelists agreed that it was important to evaluate the current criminal justice response to sexual assault. One area of concern is the high degree of attrition in sexual assault cases. Dr. Morabito discussed preliminary findings from her team's recent research on "*Decision-Making in Sexual Assault Cases: Multi-Site Replication Research on Sexual Violence Case Attrition in the U.S.*"

Preliminary findings indicate that only a small percentage of sexual assault incidents reported to the police result in arrest, and of those arrested, even fewer are charged and found guilty. Next steps for the project include evaluating at which stages of the process victims decide to stop participating, in order to better understand how and why these cases fail to move forward.

From the police perspective, Chief Mike Brown discussed the Salt Lake City Police Department's (SLCPD) involvement in a PERF project on improving the law enforcement response to sexual assault. PERF conducted an assessment of the department's response and made recommendations, and from these recommendations the department developed and provided new training to officers on a victim-centered approach to sexual assault. Additionally, SLCPD hired social workers who are based in a local homeless shelter, allowing the department to better connect with underserved sexual assault victims who are homeless. Chief Brown also discussed the department's commitment to analyze previously untested sexual assault kits. These actions have enabled SLCPD to better respond to its community and to sexual assault victims.

As part of PERF's project, which was supported by a cooperative agreement with the Department of Justice's Office

on Violence Against Women, PERF assessed and made recommendations to the police departments in Chattanooga, TN; Fayetteville, NC; and Scottsdale, AZ; in addition to Salt Lake City. From these assessments, the project team identified four key recommendations applicable across departments:

1. First, departments should have a stand-alone **policy** outlining the department's protocols for responding to sexual assault, which includes a commitment to a victim-centered approach. Doing so sends a consistent message across the department about how victims of sexual assault should be treated.
2. Victim-centered and trauma-informed **training** should accompany the policy changes to ensure that officers and investigators are given the tools they need to respond to victims of sexual assault.
3. Another key aspect of a victim-centered approach is limiting the **first interview of the victim** to the basic facts of the crime. Allowing the victim to rest between the attack and an in-depth interview will allow for greater recall.
4. Finally, the project team found that **coding guidelines** were not always clear, resulting in the misclassification of cases—particularly unfounded cases. Having investigators include justification for unfounding in the case file and having a supervisor review unfounded cases for proper coding can help address the issue.

Panelists also emphasized the need to work closely with criminal justice partners in handling sexual assault cases. Attorney Advisor John Wilkinson noted that it is important that like police, prosecutors are trained in a trauma-informed approach, and they work closely with police in investigating and prosecuting sexual assaults. Specifically, investigators and prosecutors should focus on understanding the reality of the crime from the victim's perspective, as opposed to questioning victims' actions. Wilkinson also said that additional measures of success in prosecuting sexual assault cases are needed beyond conviction rates. For example, harm reduction and victim satisfaction should also be counted as measures of success in prosecuting sexual assault cases.

Overall, panelists recommended that researchers, police, and prosecutors work together to establish a victim-centered and trauma-informed approach to improve the response to victims of sexual assault. PERF will continue to work in this area to provide additional resources. This fall, PERF will release a guidebook on how law enforcement agencies can assess and improve their response to sexual assault. Additionally, PERF has begun work on a project funded by the Department of Justice's Office on Violence Against Women to identify

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# Chiefs Provide Updates On Their Body-Worn Camera Programs

By James McGinty, PERF Assistant Director of Communications

IN A THIRD PANEL DISCUSSION AT PERF'S Annual Meeting, police officials and a PERF researcher discussed recent developments in body-worn camera (BWC) policy and research. The panel, moderated by PERF President Scott Thomson, included Todd Fasulo, Assistant Sheriff with the Las Vegas Metropolitan Police Department (LVMPD); Arif Alikhan, Director of the Los Angeles Police Department's Office of Constitutional Policing and Policy; and Dr. Sean Goodison, Deputy Director of PERF's Center for Applied Research and Management.

Chief Thomson discussed how the Camden County Police Department (CCPD) gathered community input about its body-worn camera program. To include the community in the decision-making process, CCPD did traditional face-to-face meetings with community stakeholders, and partnered with the NYU Policing Project to develop a website where community members could provide feedback on the agency's policies and programs. While the Police Department couldn't follow all of the community's wishes, its policies were influenced by the feedback, and many community members had a say in the process.

Much of the conversation centered on two challenging policy issues: (1) when to release body camera footage to the public or the news media; and (2) whether officers are allowed to review footage prior to making a statement.

The panelists' agencies have taken different approaches to releasing footage. The LVMPD releases footage of officer-involved shootings within 72 hours of the incident. "When we release that video after a shooting or in-custody death, community members can still protest the circumstances of the incident, but they can't protest that we're withholding information," said Assistant Sheriff Fasulo.

The LAPD believes that BWC footage is critical evidence in criminal and administrative investigations and should be treated like all other evidence and remain confidential. "Law enforcement does not conduct criminal or administrative investigations transparently, because releasing evidence during an investigation makes it much more difficult to find out what actually occurred," Director Alikhan said. "Releasing evidence during an investigation skews perceptions, taints witnesses, taints juries, all of which make it even more difficult to hold an officer accountable if he or she committed a crime or otherwise acted inappropriately."

Another contentious issue is whether to allow officers to review footage of a critical incident before making a statement about the incident. CCPD, like all New Jersey agencies, is prohibited by the state attorney general from allowing officers to view video footage before making a statement. But the police in Las Vegas and Los Angeles do allow officers to review



FROM LEFT: Dr. Sean Goodison, Arif Alikhan; Todd Fasulo; and Chief Scott Thomson.

footage. "I'd much rather have an officer know what he did and be able to process what he did before making a statement, because he can't take away what we're watching on that TV screen," explained Assistant Sheriff Fasulo.

The LAPD allows officers to review BWC footage, as it has done for several years with digital-in-car video. "Allowing officers to view video before their interviews has been a controversial issue, but we have learned from our experience with digital in-car video that it is the best way to learn what occurred and why as part of our administrative investigations," Director Alikhan said. "Viewing video before being questioned in an administrative investigation does not affect criminal prosecutions in our cases, because they are compelled statements that cannot be used in a criminal proceeding. Consequently, in our situation in Los Angeles, showing video to officers does not help an officer escape any criminal liability, as critics often claim."

Dr. Goodison presented the recent findings of a PERF study conducted with the Arlington, Texas, Police Department. The study, *Citizen Perceptions of Body-Worn Cameras: A Randomized Controlled Trial*, examined the relationship between body-worn cameras and citizen perceptions of the police. The study found that there were fewer citizen complaints filed against officers outfitted with body-worn cameras, but there was no significant difference between citizens' perceptions of the legitimacy and professionalism of officers wearing cameras and citizens' perceptions of officers who were not wearing cameras. The full study is available at <http://www.policeforum.org/assets/bodyworncameraperceptions.pdf>. 

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and reduce gender bias in the law enforcement response to sexual assault and domestic violence. PERF will select up to five police departments to receive technical assistance. More information about this project can be obtained by emailing [OVWsites2017@policeforum.org](mailto:OVWsites2017@policeforum.org). 



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## U Visas and the Role of Local Police In Preventing and Investigating Crimes Against Immigrants

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