Anti-Bias Based Policing
Immigration 101
&
The U & T Visa
February 14, 2018
Legal Disclaimer

The materials presented are for informational purposes only and not for the purpose of providing legal advice.
Three goals for Today’s Presentation

1. Review the revised policy and officers’ role in providing victim’s services.

2. Build an understanding of core immigration terminology including examples.

3. Discuss the U & T visas and provide the context for practical application.
Policy Section 1.8.4 - Immigration

1. The purpose . . . is to issue guidance on providing services to all persons in our community, including noncitizens.

2. Noncitizen is defined as any person who is not a citizen or national of the United States, whether his or her status is lawful, unlawful, temporary or permanent.

[Map of Non-Citizen Population, by State, 2011]
Policy Section 1.8.4A – Framework of Services for Immigrant Community

1. In some instances, noncitizens do not take advantage of services [provided by the department] because of fear . . . . This makes noncitizens more likely to be victimized.

2. As a general practice, the State College Police do not ask or collect information about immigration status . . . except as necessary to an ongoing criminal investigation, or in the case where there is a criminal warrant signed by a judge.

http://www.psychologyandi.com/25-victim-statements/
Policy Section 1.8.4 A - Framework of Services for Immigrant Community

3. **By and large, immigration is a civil matter, not a criminal one.** For example, when a person overstays a visa, this is classified as a “civil” violation of immigration law.

4. **The Department will preserve the confidentiality** of all information regarding noncitizens to the extent permitted by law.

Immigration Law as Civil Law

*Fong Yue Ting v. United States*, (1893)

“[T]he order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment.”


"Removal is a civil, not criminal, matter. A principal feature of the removal system is the broad discretion exercised by immigration officials."
Immigration 101: Terms

- **Immigrant**: People who come to the U.S. on a **permanent** basis.
- **Non-immigrants**: Foreign born individuals who enter the U.S. on a **temporary** basis.
- **Lawful Permanent Residents**: Individuals accorded the privilege of residing permanently in the United States.
- **Noncitizens**: an individual who is not a citizen or national of the United States.
- **Undocumented**: Noncitizens without immigration status.
- **Deferred Action**: the immigration agency’s choice to defer (or postpone) an action to remove a noncitizen who is otherwise removable.
- **Prosecutorial Discretion**: the choice made by the immigration agency about whether and what kinds of charges to bring against a person or group of persons.
Immigration 101: Agencies

- **Department of Homeland Security (DHS):** Created by Congress after September 11, 2001, DHS manages immigration enforcement and services functions.

- **United States Citizenship and Immigration Services (USCIS):** Agency under DHS which oversees lawful immigration into the United States.

- **Immigration and Customs Enforcement (ICE):** Agency under DHS responsible for interior immigration enforcement.

- **Customs and Border Protection (CBP):** Agency responsible for safeguarding the U.S. border.
Immigration 101: Current Issues

• **Temporary Protective Status (TPS):** TPS refers to temporary immigration relief granted by USCIS for a designated period of time.

• **Deferred Action for Childhood Arrivals (DACA):** – Enacted in 2012, the DACA program has directly benefitted over 800,000 individuals who met certain requirements and came to the United States as juveniles.

Current Immigration Issues

- Who are they?
- Why are they vulnerable?
What is the Role of Local Law Enforcement?

• What can you do when you encounter a non-citizen in violation of traffic regulations on the road?

• What can you do when ICE asks for your cooperation?

• What can you do when you encounter non-citizens who are victims of violence?
What are U & T visas?

• Non-immigrant visa available for **victims** of certain crimes.
• Victims apply for status to **USCIS**.
• They **allow victims to stay** in the United States and assist law enforcement authorities in the investigation.
• Work authorization is available for victims.

http://matthewthomaslaw.com/the-u-visa-for-victims-of-crime/
Why are U and T visas Helpful for Law Enforcement Officers?

- They **encourage victims** to report crimes and work with law enforcement.
- They serve as **tools for law enforcement** to help eliminate crime in local communities.

http://www.lawenforcementsurvivalinstitute.org/
How Do I Identify Potential U Applicants?

- Non-citizen victims of **qualifying crimes**.
- Crime took place **in the U.S.**
- Victims possess **information** about the crime.
- Victims have been **helpful OR are likely to be helpful in the future** in investigation or prosecution of the crimes.

**Important**

USCIS is the agency that grants the U visa.

Qualifying Crimes - INA 101 (a)(15)(U)(iii):

Rape, torture, trafficking, domestic violence, sexual assault, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, and fraud in foreign labor contracting ... and more.
What Should I Know About the U Visa?

- Conviction of crime? NO, any similar criminal activities.
- Ongoing Case? NO.
- Timeline for Application? NO Statute of Limitation.
- Helpfulness? Tool to encourage cooperation.
- Law Enforcement Certification
What is Law Enforcement Certification?

- Form I-918 Supplement B.
- Proof of “COOPERATION.”
- No grant of status.
- No statute of limitation.
- Who signs the certification?
  - Chief or designated officer.
- Who completes the certification?
  - Policy of your department
- The form should be filed **WITHIN 6 MONTHS** from signing the certification.
- More pros if certifying early.

Filling out the Certification
### Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in Part 7. Additional Information.

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select all applicable boxes)

- [ ] Abduction
- [ ] Abusive Sexual Contact
- [ ] Attempt to Commit Any of the Named Crimes
- [ ] Being Held Hostage
- [ ] Blackmail
- [ ] Conspiracy to Commit Any of the Named Crimes
- [ ] Domestic Violence
- [ ] Extortion
- [ ] False Imprisonment
- [ ] Falsifiable Assault
- [ ] Female Genital Mutilation
- [ ] Fraud in Foreign Labor Contracting
- [ ] Incest
- [ ] Involuntary Servitude
- [ ] Kidnapping
- [ ] Manslaughter
- [ ] Murder
- [ ] Obstruction of Justice
- [ ] Pecora
- [ ] Perjury
- [ ] Prostitution
- [ ] Rape
- [ ] Sexual Assault
- [ ] Sexual Exploitation
- [ ] Slave Trade
- [ ] Solicitation to Commit Any of the Named Crimes
- [ ] Stalking
- [ ] Torture
- [ ] Trafficking
- [ ] Unlawful Criminal Restraint
- [ ] Witness Tampering

Provide the date on which the criminal activity occurred.

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.
The victim called the police because her husband was beating her. The officer responded to the scene and found drugs. The perpetrator ended up being arrested for drug charges and simple assault, and the responding officer reports the crime as a domestic dispute. The victim wants to apply for U visa and asks for certification. Does the crime qualify for a U visa?

(A) Yes. The crime can qualify as domestic violence if you investigated the crime as a domestic dispute.

(B) No. Simple assault is not in the list of qualifying crime.

Gail Pendleton, Winning U Visa
• Part 6, Item 1. Read the certification block carefully, and sign and date the supplement.
U Visa Hypothetical

Lara entered the United States seven years ago with a student visa. One night after the visa had expired; she was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the “filthy things” she had done if she told anyone. Four months later, Lara realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss encouraged her to contact the police, and helped her call the police. Lara told the police everything she knew, but said she would not testify in court because she feared retaliation.

Source: National Immigrant Women’s Advocacy Project (NIWAP)
http://niwaplibrary.wcl.american.edu/
Was Lara helpful or was likely to be helpful in the future in investigation or prosecution of the crime?

A. Yes. She has cooperated in the investigation of the crime by providing information about the crime to the police.
B. No. She will not testify at the court.
Does Lara possess information about the crime?

A. Yes. She is a useful witness for the crime and possesses information about the crime.

B. No. She did not see the face of the perpetrator.
How Do I Identify Potential T Visa Applicants?

- Victim of severe form of trafficking
  - Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or involving a minor under the age of 18 years; or
  - The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- Physical presence in the U.S. because of trafficking or being allowed to enter the U.S. for participation in the investigation.

- Assistance for any reasonable request in the course of investigation or prosecution.
  - BUT NOT if traumatized or minor.

- Extreme hardship involving unusual and severe harm upon removal in the future

** USCIS is the agency which grants the T visa.**
Declaration by a Law Enforcement Officer

- I-914 Supplement B
- Proof of cooperation
- Not required but useful
  - If no, affidavit by the applicant
- No statute of limitation
- No conviction requirement
- Discretion by the law enforcement officer
- Who can sign?
  - Supervising officer in charge
Stories of DACA Recipients

Source: Vanity Fair
https://youtube/9M2H98wb0Es
Thank you!

Questions?