

Assisting Immigrant Victims of Domestic Violence



LAW ENFORCEMENT GUIDE



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Introduction

Approximately 26.2 million immigrants live in the U.S.; therefore almost 18% of the population are immigrants or children of at least one immigrant parent. Of the immigrants residing here, over 85% have legal documentation. Today, immigrants are settling across the U.S. in both urban and rural communities.

State and local law enforcement face challenges communicating with and effectively serving these communities. Additionally, state and federal laws have altered the role of law enforcement with immigrants, placing officers in conflicting roles of enforcing immigration laws and protecting immigrant crime victims. This guide is intended to help law enforcement personnel balance these roles.

By providing a brief overview of the issues law enforcement should consider when working with immigrant communities, and in particular immigrant victims of crime, this guide will:

- Explore various immigration laws and terms that officers need to know.
- Examine the challenges immigrant crime victims face navigating the justice system.
- Identify how officers can protect and assist immigrant crime victims while managing their enforcement role.

KEY DEFINITIONS AND CONCEPTS

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BCIS: Bureau of Citizenship and Immigration Services in the U.S. Department of Homeland Security (DHS). BCIS handles all immigration service and adjudication functions formerly performed by INS, including decisions on immigrant visa petitions, VAWA petitions, and other applications such as T and U visas, asylum and refugee applications.

BICE: Bureau of Immigration and Customs Enforcement is also under DHS. BICE focuses on the movement of goods and people and includes the enforcement and investigative functions previously undertaken by INS, such as immigration inspection and border patrol. It also includes the enforcement and investigative functions of the Customs Service.

United States Citizen: A U.S. Citizen is someone who is either born in the U.S., born abroad to a U.S. Citizen, naturalized as a U.S. Citizen, or automatically becomes a U.S. Citizen when a parent or both parents become naturalized.

Lawful Permanent Resident: An immigrant who has established a permanent right to live and work in the U.S. and to travel outside the country; also referred to as "LPR" status or "greencard" holder. LPR status lasts throughout life and the greencard holder is eligible to apply for U.S. Citizenship after they have held this

status for 3 to 5 years. A Lawful Permanent Resident can be deported if convicted of certain crimes.

Undocumented Persons: An immigrant who has entered the U.S. without detection and without any documentation, or an immigrant who has entered the U.S. with fraudulent documents or with appropriate documentation that has expired. These individuals are sometimes referred to as "illegal aliens."

Non-Immigrant Visas: A document that enables an individual to come to the U.S. for a temporary period and for a specific purpose, including the following visas: tourist, student, business visitor and diplomat.

Deportation: An action undertaken to remove an immigrant from the U.S., also known as "Removal." Deportation usually involves a hearing before an immigration judge, also known as a "Removal Proceeding." Once deported, an individual may not return to the U.S. for five years. However, an individual can decide to leave the U.S. voluntarily, without a hearing. This is considered a "voluntary deportation" and does not have the same five-year ban on returning.

CHALLENGES

Justice System Challenges for Immigrant Crime Victims



Due to their lack of access to culturally responsive services, immigrant victims of domestic violence are at greater risk of longer exposure to and greater impact from domestic violence.

Immigrant victims of domestic violence, sexual assault and other crimes face a number of challenges in accessing and navigating the criminal justice system, including:

- Fear of deportation
- Language barriers
- Misinformation about the police and the U.S. legal system
- Fear of ostracism by their ethnic, religious or cultural community

Additional challenges for domestic violence victims include:

- Need for economic survival
- Fear of losing custody of children

Many documented as well as undocumented immigrant crime victims lack information about the U.S. legal and social service systems and fear that any interaction with these systems will lead to their deportation. This fear is often heightened in domestic violence situations by abusers who may use a victim's immigration status as part

of the abuse. Examples of immigration-related abuse include:

- Threats that the police will report the victim to BICE if she calls for help
- Threats or attempts to have the victim deported
- Interference with the victim's efforts to obtain legal status, such as:
 - Threats to and acts to withdraw the victim's immigration papers
 - Calls to the immigration authorities to turn the victim in or to have the victim's immigration case denied

PREPARE

Prepare to Assist Immigrant Crime Victims and Witnesses



1 Understand Your Department's Policy with Regard to Sharing Information About Immigration Status with BICE.

Federal law does not require law enforcement officers to ask about the immigration status of crime victims, with the exception of a limited number of police officers in Florida and Alabama who are under contract with the U.S. Attorney General to act as immigration officers. Based on departmental policy, officers may voluntarily communicate or cooperate with BICE regarding enforcement of immigration laws, but when officers ask immigration status questions of crime victims, they risk losing the trust and cooperation of the individual witnesses and potentially the assistance of the immigrant communities they serve.

2 Know the Services Available for Immigrant Crime Victims and Build Relationships with Community-Based Service Providers.

To effectively serve immigrant communities, state and local law enforcement need the ability to affirmatively address key barriers that prevent immigrant crime victims from accessing the justice system and victim services: fear of immigration consequences, language barriers and lack of knowledge about available services. Officers can do this by taking the following steps:

- Securing appropriate language services to ensure communication.
- Communicate that they are there to provide assistance and not to deport the victim.

- Explain that victims have the right to access the justice system and victim services.
- Refer victims to programs that can assist with services.

Law enforcement officers should understand and explain to victims that services available to both documented and undocumented crime victims include:

- Emergency medical care
- Police assistance
- Criminal prosecution of perpetrators
- Community-based services necessary to protect life and safety
- Crime victim services
- Domestic violence services
- VOCA funds
- Emergency shelter
- Protection orders
- Child custody and support
- Public benefits for their U.S. citizen children

By familiarizing themselves with culturally accessible community and immigrant service organizations that provide these services, officers can best refer victims and witnesses to the appropriate programs.

3 Understand the Possible Remedies in Immigration Law.

Battered Spouse Waiver

For: battered immigrants who have conditional permanent residency (conditional green card terminates 2 years after issuance).

Remedy: battered spouse can petition to have conditions removed and obtain lawful permanent residence (green card) without the abusive spouse's knowledge or participation.

VAWA Self-Petitions

For: battered immigrants abused by their U.S. citizen or lawful permanent resident (LPR) spouse or parent.

Remedy: battered immigrant can file her own petition and obtain lawful permanent residency (green card) without knowledge or participation of abuser.

Cancellation of Removal/Suspension of Deportation Under VAWA

For: battered spouses or children of U.S. citizens or LPRs who are in deportation or removal proceedings when abusers threaten to or actually do call immigration officials to attempt to have the battered immigrant deported.

Remedy: battered immigrant can have her deportation/removal proceedings closed and gain lawful permanent residency (green card) without the participation of abuser.

U Visa

For: immigrant victims of crime who have suffered substantial physical or mental injury stemming from criminal activity who fear deportation if they cooperate in charging their abusers with crimes.

Remedy: immigrant victims of crime who participate in the investigation or prosecution of criminal activity may receive a visa and work authorization and may eventually obtain lawful permanent residency (green card). U Visa applicants need law enforcement certification. **A sample U Visa certification form can be found on the back cover.**

T Visa

For: victims of severe forms of trafficking in persons.

Remedy: trafficking victims who cooperate with law enforcement may receive a T visa and work authorization and may eventually obtain lawful permanent residency (green card).

Gender-based Asylum

For: immigrant women fleeing domestic violence, rape, sexual violence, "honor killings," trafficking for prostitution, female genital cutting or forced marriage in their home countries.

Remedy: immigrant women with a well-founded fear of persecution in their home countries based on their political opinion or membership in a gender-based social group may qualify for asylum or refugee status and may eventually obtain lawful permanent residency (green card).

Addendum A - U Visa VAWA 2000 created additional relief for immigrant victims of crime. One of the important innovations to come out of VAWA 2000 was the creation of the U visa. The U visa is a crime victim visa, given to immigrant victims of certain types of crime. The crimes covered under the U visa include:

Rape	Being held hostage, peonage	Witness tampering
Torture	Involuntary servitude	Obstruction of justice
Trafficking	Slave trade	Perjury
Incest	Kidnapping	Attempt, conspiracy or solicitation to commit any of the above crimes
Domestic violence	Abduction	Any similar activity in violation of federal, state or local law
Sexual assault	Unlawful criminal restraint	
Abusive sexual conduct	False imprisonment	
Prostitution	Blackmail	
Sexual exploitation	Extortion	
Female genital cutting	Manslaughter	

RESPOND

Respond Appropriately

1 Understand the Impact of Arrests and Criminal Convictions on Immigration Status and Avoid Improper Arrests of Battered Immigrant Victims.

Immigrant victims and witnesses applying for relief under VAWA (VAWA self-petition and VAWA cancellation of removal) must demonstrate good moral character—an arrest or criminal conviction could negatively affect an immigration case. Criminal convictions can also cause lawful permanent residents to lose their green cards or be denied naturalization. Therefore, it is especially important to determine if an immigrant victim acted in self-defense during an incident in order to avoid an improper arrest that could harm her immigration case.

Identifying the primary aggressor in a domestic violence case is always important. When only one of the parties speaks English, be sure to use a neutral interpreter to conduct a thorough interview with both parties and all

witnesses. Do not assume that the person at the scene who volunteers to translate is a safe interpreter to use; s/he may be a party to the abuse. If no impartial interpreter is available, use a language telephone line to obtain an interpreter. Never use children as translators.

2 Explain Services Available to Immigrant Crime Victims and Make Referrals.

Inform victims who may be immigrants that you do not report immigrants to BICE and that all victims have access to the justice system, can get a protection order, shelter and social services assistance regardless of immigration status. Explain that the victim has options to address the violence in her life and may have remedies available to her under immigration laws. Refer victims to community-based organizations with expertise in serving immigrants.

3 Avoid Asking About Immigration Status of Crime Victims or Witnesses.

Crime victims and witnesses are entitled to receive police protection and criminal justice services regardless of their immigration status. Asking the immigration status of crime victims and witnesses may inadvertently intimidate them and is likely to make victims and witnesses afraid to seek help or report the crime in the future.



4 Document Your Response to the Scene Carefully.

To access immigration remedies immigrant victims will need to show battery or extreme cruelty. The best proof is often the police report. The more effectively the incident is documented, the easier it is for the prosecutor to proceed with the case and for the immigrant victim to pursue the immigration relief available. If requested, provide copies of the report.

5 Encourage and Assist Immigrant Victims to Obtain Necessary Documents.

Because a victim's immigration status is often used against her by the abuser, it is important that the victim obtain whatever documentation she can, including the following:

- Children's birth certificates
- Immigration papers filed for the victim or their children
- Identification cards, passports, children's passports
- Marriage license
- Tax returns, utility bills, bank statements
- Family photos
- Love letters

Often the abusive partner or perpetrator holds these documents. Assisting victims to collect these safely is critical for the victims' ability to access services and obtain whatever immigration relief is available to them and their children. Therefore, officers should encourage and assist victims to obtain these documents.

FOR FURTHER ASSISTANCE **For Further Assistance**

For technical assistance on working with battered immigrant women and immigrant victims of crime, sexual assault and trafficking or for referrals in your community to programs with this expertise, contact the National Network to End Violence Against Immigrant Women:

<http://www.immigrantwomennetwork.org>

U VISA CERTIFICATION FORM

I, _____, hereby affirm the following:
(NAME)

1 I am a: (CHECK ONE)

- Federal official
- State official
- Local official (municipal, district, county)
- INS officer* (see 2B below)

Specifically, I am a: (CHECK ONE)

- Law Enforcement Officer
- Prosecutor
- Judge
- Other Investigating Authority

JOB TITLE

NAME OF EMPLOYER

STREET ADDRESS/LOCATION

CITY, STATE & ZIP CODE

TELEPHONE

2A I am responsible or the agency for which I work is responsible for investigating (or overseeing the investigation of) criminal activity involving or similar to violations of (some or all of) the following types of offenses under Federal, State or local criminal laws: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; or attempt, conspiracy or solicitation to commit any of these crimes OR

2B I am an INS officer with information not limited to immigration violations related to criminal activity described above or similar criminal activity.

3 The criminal activity at issue in this case may involve (but is not limited to) possible violations of the following criminal laws: (PROVIDE STATUTE OR CODE CITATION(S) AND OFFENSE NAME(S))

and based on my expertise and understanding of these laws, I have determined that these laws fall within the list of offenses set forth in Question #2 or is similar activity violating Federal, State or local criminal law.

4 It is suspected that this criminal activity occurred on or about: (SPECIFY AS MUCH AS POSSIBLE DATE(S) AND LOCATION(S) OF CRIMINAL ACTIVITY)

5 I affirm that _____:
(NAME OF U VISA APPLICANT)**

(CHECK ALL THAT APPLY)

- has been helpful;
- is being helpful;
- is likely to be helpful

in an/the investigation and/or prosecution of this criminal activity.

6 I affirm that _____
(NAME OF U VISA APPLICANT)**

possesses relevant information relating to this criminal activity. This information includes (but is not limited to) the following: (PROVIDE BRIEF DESCRIPTION OF INFORMATION)

** If the U visa applicant is under the age of 16, please certify that the applicant's parent, guardian or "next friend" meets these requirements.

7 I affirm that this criminal activity occurred:

(CHECK ALL THAT APPLY)

- in the United States (including Indian country and military installations);
- in territories and possessions of the United States; OR
- outside the United States, but violated United States' laws.

Certification for applicant's spouse, child or parent

8 This investigation and/or prosecution would be harmed without the assistance of

(NAME OF APPLICANT'S SPOUSE, CHILD OR PARENT)

who is the _____ spouse _____ child _____ parent of the applicant listed above.

SIGNATURE

DATE