

***UNEQUAL PROTECTION: DISPARATE  
TREATMENT OF IMMIGRANT CRIME  
VICTIMS IN COOK, THE COLLAR  
COUNTIES & BEYOND***

**DEPAUL UNIVERSITY ASYLUM & IMMIGRATION LAW CLINIC\***

Geraldine Arruela, J.D. Candidate, 2015, DePaul University College of Law  
Cordia Perez, J.D. Candidate, 2014, DePaul University College of Law  
Ana Valenzuela, J.D. Candidate, 2015, DePaul University College of Law  
Katerin Zurita, J.D. Candidate, 2015, DePaul University College of Law  
Sarah J. Diaz, Clinical Instructor, Immigration Advocacy Clinic, DePaul College of Law

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### **\*Asylum & Immigration Law Clinic, DePaul University College of Law**

Since 1996, the Asylum & Immigration Law Clinic (AILC) has continually expanded to better serve the needs of students, the community, and indigent immigrants and refugees. Today, the clinic offers four modules, and has served thousands of refugees and immigrants while partnering with 26 community-based organizations to improve access to justice for low-income foreign-born clients. The clinic continually receives support and assistance from immigration practitioners throughout Chicago. Many clinic alumni are leaders in the field of immigration law and contribute to public interest practices across the country. A map of partner agencies throughout Illinois appears at the end of this report.

This report is dedicated to the memory of **Edgar Guerra**, a young teen who lost his life to a random act of violence, and to his family members who bravely helped law enforcement at every stage of the prosecution, notwithstanding their own fears and heartache. Their efforts have made the community a safer place for us all.

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## EXECUTIVE SUMMARY

The U Visa was created under the Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA 2000) for the dual purpose of strengthening the ability of law enforcement agencies to detect, investigate and prosecute certain criminal activity, while offering protection to the undocumented immigrant victims of such offenses.<sup>1</sup> In passing the U visa provisions, Congress specifically identified several groups of battered women and children who lacked access to basic protections under Violence Against Women Act of 1994 (VAWA 1994) allowing their abusers to go virtually immune from prosecution because victims could be deported as a result of reporting abuse.<sup>2</sup> In attempt to redress under-reporting of criminal activity while protecting the vulnerable victims of such crimes, the U visa was created and enacted under VTVPA 2000.

U Visa eligibility requires these victims to provide certification from local, state, or federal law enforcement officials attesting to the victim's level of participation in the detection, investigation and/or prosecution of a qualifying crime. The certification is submitted through an immigration form, USCIS Form I-918B.<sup>3</sup> While submission of the

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<sup>1</sup> Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 86-106, § 1502, 114 Stat. 1462, 1518 (codified at 8 U.S.C. § 1101 (2000)) (“Congress finds that... there are several groups of battered women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of actions by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.”); § 1512, 114 Stat. at 1533-34 “The purpose of this section is to create a new nonimmigrant Visa classification that will *strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases... while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.*” See also Memorandum of Director, Vermont Service Center William R. Yates, Associate Director of Operations, *Centralization of Interim Relief for U Nonimmigrant Status Applicants* (Oct. 8, 2003), available online at <http://www.uscis.gov/files/pressrelease/UCntrl100803.pdf>.

<sup>2</sup> *Id*

<sup>3</sup> 8 U.S.C. § 1184(p)(1) (“The petition filed by an alien under section 1101(a)(15)(U)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being

Form I-918B law enforcement certification is a mandatory requirement for any victim who wishes to request a U nonimmigrant visa, the certification alone does not provide sufficient evidence of eligibility for U nonimmigrant status. Under the current regulatory scheme, law enforcement agencies are given discretion to decide whether or how to certify in any given case. That discretion, of course, is not unfettered. Rather, it must comport with the federal statutory scheme.<sup>4</sup>

In our survey of Illinois Counties, the *location* of crime has increasingly played a major role in a victim's access to justice as a result of disparate treatment of U certification. Indeed, the lack of uniformity in U certification policy and practice by law enforcement agencies appears to undermine the intent of the U nonimmigrant visa, frustrating Congress' efforts to redress under-reporting of criminal activity and restore victims under U.S. humanitarian obligations. This report identifies some discrepancies between certifying agencies in U certification policy and practice and provides recommendations to bring Illinois back in line with the purpose and intent of the federal U visa scheme.

The data gathered underlines the following findings in relation to U nonimmigrant certification:

- LACK OF UNIFORMITY IN POLICY AND PRACTICE OF U CERTIFICATION LEADS TO DISPARATE ACCESS TO JUSTICE FOR VICTIMS.
- LACK OF OVERSIGHT OF U VISA CERTIFICATION LEADS TO LIMITED RECORD KEEPING & LIMITED ACCOUNTABILITY.

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helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.”).

<sup>4</sup> *Arizona v. United States*, 567 U.S. \_\_\_ (2012) (Explaining that identifying obstacles to the accomplishment and execution of the full purposes and objectives of Congress can “be informed by examining the federal statute as a whole and identifying its purpose and intended effects” (quoting *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000)).

- LACK OF DOCUMENTED POLICY OF U CERTIFICATION LEADS TO CHANGES IN PRACTICE WITHOUT CAUSE OR NOTICE AND UNDERMINES VICTIM RELIANCE ON LAW ENFORCEMENT AGENCIES
- LACK OF DIRECTIVES AROUND U CERTIFICATION LEADS TO STATE AND LOCAL PRACTICES THAT CONFLICT WITH THE FEDERAL U VISA STATUTE
- LACK OF UNIFORMITY IN POLICY AND PRACTICE OF U CERTIFICATION UNDERMINES COMMUNITY TRUST IN LAW ENFORCEMENT & THREATENS PUBLIC SAFETY.

In an effort to redress the inequities highlighted above, this report has also proposed potential recommendations toward alleviating the incongruity of said Illinois practices with congressional intent:

- CREATION AND IMPLEMENTATION OF STATE AND LOCAL LAW ENFORCEMENT TRAINING SESSIONS WITH THE DEPARTMENT OF HOMELAND SECURITY & COMMUNITY BASED ORGANIZATIONS.
- CREATION OF STATEWIDE MODEL U VISA CERTIFICATION POLICY & PRACTICE.
- CREATION OF STATE LEGISLATION MOVING TOWARD UNIFORM CERTIFICATION POLICY AND PRACTICE.

The findings and recommendations herein purport to address disparate treatment of victims of violent crime and rectify resulting breakdowns in community trust to promote efficacious reliance on local law enforcement and symmetry with the federal statutory U visa scheme.

## I. INTRODUCTION

In 2000, Congress created the U Visa classification for immigrant victims of certain crimes through the Battered Immigrant Women Protection Act (“BIWPA”), which was enacted as part of the Trafficking Victims Protection Act (“TVPA”).<sup>5</sup> Congress stated that the passage of the Act was to serve two purposes: (1) to strengthen law enforcement ability to investigate and prosecute crimes that have been committed and (2) to protect victims.<sup>6</sup> In order for an individual to receive a U nonimmigrant visa, the applicant must demonstrate 1) that they have been the victim of a qualifying crime, 2) that they have suffered substantial mental or physical abuse as a result of having been the victim of the qualifying criminal activity, 3) that they possess information concerning the qualifying criminal activity and 4) that the victim *has been helpful, is being helpful, or is likely to be helpful to a Federal, State or local law enforcement official investigating or prosecuting the qualifying crime.*<sup>7</sup>

For an individual to be eligible for the U Visa, they must provide a certification from local, state, or federal law enforcement officials attesting to whether such applicant “has been helpful, is being helpful or is likely to be helpful” in the detection, investigation and/or prosecution of the qualifying crime.<sup>8</sup> While certification is required for the U

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<sup>5</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §§ 1501-13, 114 Stat. 1464, 1518-37 (2006).

<sup>6</sup> *Id.* § 1513, 114 Stat. at 1533 (“The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking aliens, and other crimes described in section 101(a)(15)(u)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”).

<sup>7</sup> 8 U.S.C. § 1101(a)(15)(U).

<sup>8</sup> 8 U.S.C. § 1184(p)(1) (“The petition filed by an alien under section 1101(a)(15)(U)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being

nonimmigrant visa, the certification alone does not provide sufficient evidence of eligibility for U nonimmigrant status.<sup>9</sup> The certification can be signed by law enforcement officials, prosecutors, judges, or any agency authorized to investigate the criminal activity covered by INA § 101(a)(15)(U)(iii).<sup>10</sup> On the certification, the signer is merely attesting to ***whether or not*** the claimant “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the crime.<sup>11</sup>

Although the statute was passed in 2000, Congress did not release the regulations implementing the statute until 2007.<sup>12</sup> Since then, various stakeholders including immigration practitioners and domestic violence advocates have reported that certain local counties (police departments and State’s Attorney’s offices) have acted on unwritten policies in refusing to review and sign the U Visa certifications, or causing undue delay of review—*even after the victim was fully cooperative in the investigation and prosecution of the crime*. The lack of uniformity in these policies has created inconsistencies and disparities with regard to how victims are treated depending on the location where the crime was committed. In addition, these inconsistent policies have had a negative impact on the trust that undocumented victims of crimes and other immigrants have in their respective law enforcement agencies. These practices undermine the dual purpose of the U Visa statute. This report, published by the Immigration Advocacy Clinic at DePaul

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helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.”); 8 C.F.R. § 214.14(a)(5) (“investigation or prosecution refers to the detection or investigation of a qualifying crime or criminal activity”).

<sup>9</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 179 (proposed September 17, 2007)(codified at 8 C.F.R. § 214.14) (“While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule.”)

<sup>10</sup> 8 U.S.C. § 1101(a)(15)(U).

<sup>11</sup> *Id.*

<sup>12</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, *supra* note 9.

University College of Law, seeks to identify the policy trends in the surveyed Illinois Counties (Cook, DuPage, Kane, McHenry, Lake, Will & Winnebago) and Townships, and to provide recommendations that will ensure equal access to justice for victims of crime, restore community faith in law enforcement processes, and steer Illinois law enforcement agencies away from conflicts with the federal U visa scheme.

## II. METHODOLOGY

The law enforcement agencies surveyed for this report were chosen based on the Illinois Coalition for Immigrants and Refugee Rights' summary of Rob Paral's research on the state's undocumented immigrant population ("Paral's 2013 Research") as well as through anecdotal information offered by stakeholders.<sup>13</sup> Paral's 2013 Research identified the Illinois counties and Townships with the highest number of undocumented immigrant populations. Cook County alongside Lake, DuPage, Kane, McHenry, Winnebago, and Will Counties had the highest reported numbers of undocumented immigrant populations in Illinois.<sup>14</sup> Townships in these counties were selected for our survey based on concentrations of undocumented immigrants as highlighted by Paral's 2013 Research and through anecdotes from stakeholders. Stakeholder reports were obtained over the course of several meetings. With the exception of the State's Attorney Offices and the Chicago Police Department, each police department's response will be kept anonymous.<sup>15</sup> The chart below is a list of all the municipalities the authors surveyed for this report, based on the methodology described above. The terms "township" and "municipality" are used interchangeably throughout the report and are designed to broadly capture the cities (regardless of incorporation) listed below. The data and findings herein are qualitative in nature and do not purport to reflect a quantitative approach to research.

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<sup>13</sup> Fred Tsao, Illinois Coalition for Immigrant & Refugee Rights, Illinois Undocumented Immigrant Population: A Summary of Research by Rob Paral and Associates (2014), [http://icirr.org/sites/default/files/Illinois%20undocumented%20report\\_0.pdf](http://icirr.org/sites/default/files/Illinois%20undocumented%20report_0.pdf).

<sup>14</sup> *Id.* Champaign County was also included in Paral's research but was excluded from this report due to the author's limited interaction with that area.

<sup>15</sup> The decision to do so was made in an effort to protect agencies from possible backlash. In any event, law enforcement township identification has no impact on findings derived from the data.

<b>COOK</b>	<b>DUPAGE</b>	<b>KANE</b>	<b>LAKE</b>	<b>McHENRY, WILL &amp; WINNEBAGO</b>
Alsip	Addison	Aurora*	Gurnee	Aurora*
Arlington Heights	Aurora*	Batavia	Highland Park	Bolingbrook*
Bensenville*	Bensenville*	Carol Stream*	Mundelein	Crystal Lake
Berwyn	Bolingbrook*	Carpenters-ville	North Chicago	Joliet
Chicago	Carol Stream*	Dundee	Round Lake Beach	McHenry
Elk Grove Village*	Downer's Grove	East Dundee	Waukegan	Plainfield
Hanover Park*	Elk Grove Village*	Elgin*	Wheeling*	Romeoville
Mt. Prospect	Glendale Heights	St. Charles*		Rockford
Roselle*	Hanover Park*			Roscoe
Schaumburg	Lombard			South Beloit
Streamwood	Roselle*			Woodridge*
Wheeling*	St. Charles*			
Woodridge*	West Chicago			
	Wooddale			
	Woodridge*			

### III. DATA (Generalized & Illustrative Examples)

#### A. COOK COUNTY

##### *Generalized Data from Cook County*

In addition to the Cook County State's Attorney's Office ("SAO") thirteen municipalities in Cook County were surveyed for purposes of this report. These municipalities were identified based on their high concentrations of undocumented populations and/or as a result of anecdotal reporting of participants. Of the thirteen municipalities, five of the townships are split between multiple counties. Two of the targeted townships failed to respond to any inquiries for information around the U visa.<sup>16</sup>

The Cook County State's Attorney's Office ("SAO") has confirmed that Cook County has developed a U Visa program to assist undocumented victims of crimes with their request for U Visa certifications.<sup>17</sup> Specific to the Cook County SAO, anecdotes reveal that the agency may sign certifications on cases that move forward for prosecution regardless of whether the prosecution resulted in a conviction. The Cook County SAO does not mandate policies for townships under its jurisdiction. Practitioners report access to open dialogue with Cook County SAO for purposes of obtaining certification. Practitioners report timely and equitable certification from the Cook County SAO, a perceived policy of victim/witness assistance as a matter of course.

A survey of the townships' police departments (PD's) reveals that virtually none have a formal written policy that the PDs are willing to share. While written policies are

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<sup>16</sup> This survey was not designed to be a comprehensive evaluation of townships in Cook County but may be indicative of areas in need of more research. Chicago, while among the twelve municipalities, is not kept anonymous due to its unique standing as the third largest city in the United States.

<sup>17</sup> Letter from Anita Alvarez, Cook County State's Attorney, to Mark Kirk, United States Senator, (November 28, 2011) (copy on file with authors). As of the date of this publication, the policy is being redesigned after the Cook County SAO lead certifier was appointed to the bench.

uncommon, virtually all have identified a certifier responsible for handling said requests and have some identifiable mechanism for handling such requests.<sup>18</sup> Only one township is on record as deferring to the Cook County SAO.<sup>19</sup> Nearly all anecdotal reports of the Cook County PDs indicate open communication and access to victim/witness collaboration on certification for U visa. Only three townships failed to respond to our written inquiries.

### *Illustrative Examples of Data from Cook County*

Less consistent with most surveyed Cook County townships, one PD in Township A (Cook) replied to our initial inquiry by explaining that they refused to sign any U visa certifications:

**“Our agency does not assent on signing off on U visa application requests...”**

[U]nder all federally mandated and obligatory guidelines, the [Township A] Police Department as stipulated in the Department of Homeland Security, US Citizenship and Immigrations Services, U Nonimmigrant Status Certification Form I-918, Supplement B, follows the agency’s discretionary decision provision in providing certification: *An agency’s decision to provide a certification is entirely discretionary; the agency is under no legal obligation to complete Form I-918, Supplement B, for any particular alien.* Our current procedures of the [Township A] Police Department fully comply with all DHS guidelines and provisions related to Form I-918, Supplement B applications.”<sup>20</sup> (Emphasis added.)

This is consistent with a FOIA request filed in 2013 stating that the department does not have “any adopted policy” regarding U-Visa applications because it follows “all mandated guidelines as stipulated by the Department of Homeland Security.”<sup>21</sup> After this issue was raised with the Mayor and legal counsel to the city, the PD swiftly enacted a “Departmental

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<sup>18</sup> This is important as it complies with the federal regulations requirement for “head of agency” of certifier designated by the head of agency 8 CFR 214.14.

<sup>19</sup> This might be problematic as the Cook County SAO only takes jurisdiction over cases that have “gone to prosecution” leaving many cases, for example where the perpetrator was never caught, to go without certification.

<sup>20</sup> Email from Responding Officer, Township A (Cook), to authors (Apr. 21, 2014) (on file with authors).

<sup>21</sup> Letter from Responding Officer, Township A (Cook), to authors (Feb. 13, 2013) (obtained through Freedom of Information Act Request) (on file with authors).

Special Order” which now constitutes the only written U visa policy obtained in this survey.<sup>22</sup>

Typical responses of the PD surveyed in Cook County are reflected in the responses of the PD in Township B (Cook) & C (Cook). Township B (Cook) replied to our inquiry by stating that it “[does not] have a [written] policy at this point because [it does not] get many requests.”<sup>23</sup> The responding officer noted that an individual had been identified as authorized to sign and that, “[it has] the right to deny or refuse any application. All cases are reviewed case-by-case.”<sup>24</sup> Township C (Cook) replied to our inquiry indicating that an individual had been authorized to sign the certification and that “all requests for these types of [certifications] are reviewed.”<sup>25</sup>

As indicated above, only one PD surveyed deferred to the Cook County SAO for decisions around certification. The PD in Township D (Cook) responded and informed the authors that it’s “practice is to contact the requestor and refer them to the appropriate State’s Attorney’s Office.”<sup>26</sup> It is unclear whether this means that the police department in Township D (Cook) will still refer requests to the State’s Attorney’s Office even if the underlying criminal case does not go to trial. Given the aforementioned practice of the Cook County SAO, if this is the case, the Cook County SAO will also likely decline certification.

A request from the Chicago Police Department for a copy of its U Visa policy or procedure, revealed the following response:

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<sup>22</sup> In order to maintain confidentiality, we have declined to include a copy of the “Departmental Special Order” with this report (on file with authors).

<sup>23</sup> Email from Responding Officer, Township B (Cook), to authors (Mar. 24, 2014) (on file with authors).

<sup>24</sup> *Id.*

<sup>25</sup> Email from Responding Officer, Township C (Cook), to authors (Mar. 11, 2014) (on file with authors).

<sup>26</sup> Letter from Responding Officer, Township D (Cook), to authors (Jan. 31, 2013) (obtained through Freedom of Information Act Request) (on file with authors).

[T]he Department has no records that dictate a specific “policy” for issuing Form I-918B’s. *Department members authorized by the Superintendent to complete these forms follow the procedures and guidelines provided by the Department of Homeland Security . . . .* We are unable to determine the specific date that the Department first began issuing these forms nor are we able to provide the number of forms issued annually without doing a manual hand-count of several thousand records. We can, however, tell you that in 2012 the Department processed approximately 780 Form I-918B forms.<sup>27</sup> (Emphasis added.)

Anecdotally, while Chicago reflects the general practice of the Townships surveyed in that it does not maintain a written policy (but had identified “department members authorized to [certify]”), it is held out by practitioners as “the bar” for certifications. Specifically, practitioners report open communication with those authorized to sign and equitable practices with regard to certifications as a matter of course. It is important to note, however, that while the practices of the Chicago PD with regard to certification are generally highly regarded, advocates have shared anecdotes in which Chicago PD may refuse certification for reasons the practitioners view as “unreasonable.” These circumstances include notes in the file indicating that the “victim stopped being responsive” when, in fact, the victim may have relocated and/or changed phone numbers but the long-pending, often suspectless investigation was unable to keep up with the change in biographical data.

## **B. DuPage County**

### *Generalized Data from DuPage County*

In addition to the DuPage County State’s Attorney’s Office (“SAO”) fifteen municipalities in DuPage County were surveyed for purposes of this report. These municipalities were targeted based on their high concentrations of undocumented

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<sup>27</sup> Email from Responding Officer, Chicago Police Department, to authors (Jan. 30, 2013) (obtained through Freedom of Information Act Request) (on file with authors).

populations and/or as a result of anecdotal reporting of participants. Of the fifteen municipalities, seven of the townships are split between multiple counties. Two of the targeted townships declined to respond to for information around the U visa.<sup>28</sup>

Quite contrary to the data regarding the Cook County SAO, reports indicate that the DuPage County SAO refuses to certify U visas in virtually all circumstances. The DuPage County SAO responded to our most recent inquiry regarding U certification policy indicating that “[e]very case is reviewed on a case-by-case basis *by an Assistant State’s Attorney.*”<sup>29</sup> (Emphasis added.) This was a slight change from a January 31, 2012, Illinois Freedom of Information Act request in which the DuPage County SAO stated, “ [o]ur office does not have a policy regarding the issuing of I-918B certifications; they are evaluated on a case-by-case basis. We also do not record any statistics or data in regard to the number of requests received or granted. Therefore, we do not have any documents or records responsive to your requests.”<sup>30</sup>

Anecdotal reports, however, paint a very different picture. Reports universally indicate that the DuPage County SAO has not certified a closed U visa case since 2010. Rather, these cases are rejected with the following language: “Please be advised that after a full review of the matter pertaining to your application for a U Visa, our office has declined to provide the certification you are requesting based upon a careful review of statutory factors and discretionary considerations.” This is true of even the most compelling closed cases.

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<sup>28</sup> This survey was not designed to be a comprehensive evaluation of townships in DuPage County but may be indicative of areas in need of more research. Chicago, while among the twelve municipalities, is not kept anonymous due to its unique standing as the third largest city in the United States.

<sup>29</sup> Email from State’s Attorney’s Office, County of DuPage to authors (Mar. 11, 2014) (on file with authors).

<sup>30</sup> Letter from State’s Attorney’s Office, County of DuPage to DePaul’s Clinic (Jan.31, 2012) (on file with authors) (obtained through FOIA request).

Notwithstanding the practices of the DuPage County SAO, a survey of the townships' police departments (PD's) reveals that, while written policies are uncommon, virtually all have identified a certifier responsible for handling said requests and has some identifiable mechanism for handling such requests. Pursuant to anecdotes and inquiries, twelve of the fifteen townships have some process for obtaining certification presumably including a certifying agent. None have a formal policy or protocol for distribution. Anecdotal information indicates that most townships surveyed participate in U visa certification through open dialogue and equitable practices. However, anecdotal information also indicates that there are at least three townships in DuPage County which decline to sign any and all requests for U visa certification.

#### *Illustrative Examples of Data from DuPage County*

The PD for Township A (DuPage) is illustrative of many of the townships located in DuPage. In response to inquiries surrounding the U visa certification, Township A (DuPage) reported that the head of the agency or designated certifier has been identified and that all “[r]equests are... assigned to appropriate personnel for review.”<sup>31</sup> Township A (DuPage) and B (DuPage) indicated that they have kept track of the approval and denials of I-918 certifications. Those numbers, however, were *de minimis*. It is not apparent that there is a formal process in place for recording requests and disposition of such requests. The anecdotes gathered support the stated practices of the reporting PDs.

The PD for Township C (DuPage) straddles multiple counties. In response to an inquiry, the PD explained “[w]e assist a victim as described in the I-918 Supplement B

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<sup>31</sup> Email from Responding Officer, Township A (DuPage), to authors (Mar. 21, 2014) (on file with authors); Email from Responding Officer, Township B (DuPage), to authors (Mar. 21, 2014) (on file with the authors).

guidelines. To my knowledge, we have not completed these forms in the past, nor has a person who was a victim [(in Township C)] requested our assistance.”<sup>32</sup> Anecdotal evidence, suggests that this is inaccurate. At least one case concerning an act of domestic violence was submitted to Township C (DuPage) for certification. The Chief of Police declined to sign the certification. The criminal act took place in DuPage County. As a result, while the case went to prosecution, the victim was unable to secure protection under the U visa statute because the DuPage County SAO similarly has declined certifications.<sup>33</sup>

The PD for Township D (DuPage) indicated that they do not have a written policy regarding the signing of Federal Form I-918B. However, they go on to explain that the PD does not issue Federal form I-918B. Rather, “all requests are referred to the DuPage County State’s Attorney Office [sic].”<sup>34</sup> Anecdotal evidence supports the admission that the PD for Township C (DuPage) do not certify. As a result, the individual must solicit certification from the DuPage County SAO which, as reported, declines certification.

As indicated above, anecdotal information indicates that the DuPage County SAO has declined to certify on any closed case since 2010.<sup>35</sup> A FOIA of the agency’s information relating to certification was contested and appealed through the IL Attorney General’s Office. The final position of the DuPage County SAO was that, pursuant to IL case law, they were not subject to the jurisdiction of the IL Freedom of Information Act.<sup>36</sup> Anecdotes indicate that many of the most compelling cases that were declined certification involve child victims of predatory criminal sexual assaults.

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<sup>32</sup> Email from Township C (DuPage) Police Department to authors (Apr. 8, 2014) (on file with authors).

<sup>33</sup> Email from Chicago VAWA/U group member A (Sept. 27, 2010) (on file with authors).

<sup>34</sup> Email from Township D (DuPage) Police Department to DePaul’s Clinic (Feb. 4, 2013 (on file with authors) (obtained through FOIA request).

<sup>35</sup> Meeting with non-profit stakeholders on U visa certification in the collar counties (Mar. 13, 2014).

<sup>36</sup> Email from Assistant State’s Attorney, DuPage County, Civil Bureau, to DePaul Clinic (Jun. 10, 2013)(on file with authors). .

Four non-profits organizations that work with child survivors of sexual violence in DuPage County have received denials from the SAO citing the usual justification for failure to sign: “[p]lease be advised that after a full review of the matter pertaining to your application for a U Visa, our office has declined to provide the certification you are requesting based upon a careful review of statutory factors and discretionary considerations.”<sup>37</sup> All cases involved minor victims. It is unclear what adverse discretionary considerations

**Maria Sanchez\* was a 12-year-old victim of predatory criminal sexual assault in DuPage. Maria’s mother and Maria fully cooperated with the investigation and prosecution of the defendant. He was sentenced to 15 years in prison. A DuPage Children’s Center social worker informed Maria’s mother of the possibility of a U Visa. The PD was unable to sign the I-918B certification because they did not investigate the crime. Rather, the DuPage SAO investigates all sex crimes involving children. The DuPage County SAO took over a year to respond to the request for certification. They declined to certify for this child victim despite her cooperation with law enforcement. To date, this child has been unable to access justice in her immigration case.**

\*This child’s name has been changed to protect her identity.

were used to refuse to sign the necessary documentation attesting to their participation in the prosecution of their abusers. In one reported case, the final refusal to certify took up to one year.<sup>38</sup>

Perhaps most concerning on these cases is the inability to obtain certification from any agency other than the DuPage SAO. Specifically, non-profit organizations report that Township PD’s are required to submit the investigation of child sex crimes to the DuPage County Child Advocacy Center, an investigatory arm of the DuPage County SAO. As a result, if the DuPage County SAO declines to certify, then the child cannot easily secure a I-918B

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<sup>37</sup> Standard letter declining request for certification (redacted) (on file with authors).

<sup>38</sup> Emailed anecdote from Private Attorney A to authors (Mar. 18, 2014) (on file with authors).

certification from the Township PD since they will not have “investigated” the crime, *per se*.<sup>39</sup>

### **C. Kane County**

#### *Generalized Data from Kane County*

In addition to the Kane County State’s Attorney’s Office (“SAO”) eight municipalities in Kane County were surveyed for purposes of this report. These municipalities were identified based on their high concentrations of undocumented populations and/or as a result of anecdotal reporting of participants. Of the eight municipalities, four of the townships are split between multiple counties. Five of the targeted townships failed to respond to any inquiries for information around the U visa.<sup>40</sup>

While the Kane County State’s Attorney’s Office (“SAO”) declined to respond to our formal inquiries, it has been confirmed through anecdotal data that Kane County has developed a U Visa program to assist undocumented victims of crimes with their request for U Visa certifications. Anecdotes reveal that the agency may sign certifications on cases that move forward for prosecution regardless of whether the prosecution resulted in a conviction. The Kane County SAO does not mandate policies for townships under its jurisdiction. Practitioners report access to open dialogue with Kane County SAO for purposes of obtaining certification. Practitioners report timely and equitable certification from the Kane County SAO, a perceived policy of victim/witness assistance as a matter of

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<sup>39</sup> Township C (DuPage) has indicated that they will certify in these cases based on “detection” of criminal activity, though the principal investigatory body remains the Child Advocacy Center; Meeting Notes, *supra* at 35.

<sup>40</sup> This survey was not designed to be a comprehensive evaluation of townships in Kane County but may be indicative of areas in need of more research.

course. There have been some reports, however, that the Kane County SAO declines a second, renewed certification in certain cases.<sup>41</sup>

A survey of the townships' police departments (PD's) reveals that none have a formal written policy that the PDs are willing to share. While written policies may be uncommon, it would seem that most have identified a certifier responsible for handling said requests and have some identifiable mechanism for handling such requests.<sup>42</sup> One Township is on record as acknowledging that our correspondence was the first that they had heard of the U nonimmigrant visa.<sup>43</sup> Pursuant to anecdotes, one agency refuses to certify in any circumstances. While many PDs appear to have informal processes in place, anecdotes and responses indicate that certifications are not always easily obtained due to nuanced misunderstandings of federal immigration law.

#### *Illustrative Examples of Data from Kane County*

As indicated above, one PD in Township A (Kane) reports never having been informed of or encountering the U visa certification process. While Township A (Kane) does not have significant undocumented population, it is located in a County that has the highest undocumented population outside of Cook

**Sr. Mario Guerra lost his son to a random act of violence and received a U nonimmigrant visa as a result of his participation in the investigation and prosecution of his son's murders. When interviewed about his experience with the Elgin PD and Kane Co. SAO, he explained that "the detectives in charge of the case were always nice and always made me feel comfortable speaking to them and gave me courage to speak in court putting myself out there... after receiving the U visa, I feel protected."**

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<sup>41</sup> This can be problematic for individuals who fail to file for a U visa before the certification "expires." Pursuant to 8 C.F.R § 214.14, the certification is only valid for a six month period. *See* 8 CFR § 214.14(c)(2)(i).

<sup>42</sup> This is important as it complies with the federal regulations requirement for "head of agency" of certifier designated by the head of agency. *See Id.*

<sup>43</sup> Email from Police Department A, County of Kane to authors, (Mar. 18, 2014) (on file with authors).

County.<sup>44</sup> PD's Township B & C (Kane) indicated that they review the I-918 B certifications on a case-by-case basis, but do not have a written or a public policy.<sup>45</sup> When asked to identify the circumstances under which they will not sign the certification, PD Township B (Kane) indicated "[w]e have denied certifications on [...] cases in which the applicant was not an actual victim...or those cases that happened so long ago that it was too difficult to determine the [result]."<sup>46</sup> PD Township C (Kane) indicated that since 2010, it had received a total of thirty-seven requests and denied a signature to five.<sup>47</sup> The PD declined to report the reasons for declining certification. However, this represents upwards of a 15% rejection rate.

#### **D. LAKE COUNTY**

##### *Generalized Data from Lake County*

In addition to the Lake County State's Attorney's Office ("SAO") seven municipalities in Lake County were surveyed for purposes of this report. These municipalities were identified based on their high concentrations of undocumented populations and/or as a result of anecdotal reporting of participants. Of the seven municipalities, only one of the townships is split between multiple counties. Three of the targeted townships failed to respond to any inquiries for information around the U visa.<sup>48</sup>

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<sup>44</sup> Tsao, *supra* at 13.

<sup>45</sup> Email from Police Department B of Kane County to authors (Mar. 20, 2014) (on file with authors); Email from Police Department C of Kane County to authors (Mar. 25, 2014) (on file with authors).

<sup>46</sup> Email from Police Department B, County of Kane to authors (Mar. 20, 2014) (on file with authors). This can be problematic for individuals who qualify under 8 CFR 214.14 as "indirect or direct/bystander" victims under federal law as well as for individuals for whom the seven year delay in the 2007 regulatory publication came too late.

<sup>47</sup> Email from Police Department C, County of Kane to authors (Mar. 25, 2014) (on file with authors).

<sup>48</sup> This survey was not designed to be a comprehensive evaluation of townships in Lake County but may be indicative of areas in need of more research.

The Lake County State's Attorney's Office ("SAO") replied to our formal inquiry regarding certification. Specifically, the office indicated that the Lake County SAO has designated individuals responsible for reviewing requests for certification. There is a separate individual designated to sign the certification. The office further indicated that "a criminal background check of the intended beneficiary is completed by [their] office."<sup>49</sup> The SAO further indicated that "the criminal case be concluded before [the Lake County SAO] considers certification."<sup>50</sup> The Lake County SAO explained circumstances in which they would refuse certification. Specifically, "[t]he determination is very fact and case-specific. Generally, however, an individual will not be certified by our office if the applicant has a prior criminal conviction, the applicant has not fully cooperated with the investigation and prosecution, or the underlying criminal case has not been closed."<sup>51</sup>

A survey of the townships' police departments (PD's) reveals that none have a formal written policy that the PDs are willing to share. While written policies may be uncommon, it would seem that most have identified a certifier responsible for handling said requests and have some identifiable mechanism for handling such requests. Pursuant to anecdotes and FOIA responses, two PDs defer to the Lake County SAO. One agency appears to decline certification in some cases, but not others according to anecdotal data.<sup>52</sup>

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<sup>49</sup> Email from Responding Representative, Lake County State's Attorney's Office, to authors (Mar. 19, 2014) (on file with authors).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Email from Chicago VAWA/ U group Member B to ChicagoVAWA/ U group (Jun. 25, 2014) (on file with authors).

### *Illustrative Examples of Data from Lake County*

Anecdotal information obtained from a private practitioner in the Chicago U/VAWA Working Group comports with Lake County State's Attorney office stated policy on U visa certification requests.<sup>53</sup> The attorney indicated that on September 17, 2013, their office sent an I-918B certification request to the Lake County SAO for clients based on having been the victim of battery and physical contact charges. Over the course of three weeks, the attorney followed up with the SAO twice. After a third attempt, the attorney received notice that the SAO would not sign the request for "anyone who has ever been charged himself or herself with a crime in Lake County, even if never convicted."<sup>54</sup> Because the client had a record of "arrests," the SAO refused to certify. The Lake County SAO indicated that the arrests concerned attempting illegal entry at the border.<sup>55</sup> Although the attorney attempted to explain that USCIS would make the determination regarding the implications of the client's violation of immigration laws, Lake County SAO asserted that the "victim must have respected the laws at all levels."<sup>56</sup> In addition, the SAO stated that they would not certify the I-918B "because the State's Attorney's Office does not believe that the crime was severe enough."<sup>57</sup>

As indicated above, two PD in in Lake County, PD Townships A & B, report deferral to the Lake County SAO upon encountering a U visa certification. Specifically, pursuant to a 2013 FOIA of PD Township A (Lake), the PD disclosed that "[Township A (Lake)] does not

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<sup>53</sup> Email from Chicago VAWA/ U group Member C, to authors (Apr. 16, 2014) (on file with authors).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* This is largely problematic because the Federal Statute specifically waives, at the discretion of the Department of Homeland Security, certain immigration violations as well as certain criminal conduct. To decline to certify based on immigration violations or criminal conduct flouts the intended purpose of the U visa statute.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* This is problematic because the determination of whether a crime was "severe" in that it caused "substantial harm" is a determination that remains exclusively within the purview of the federal government, Department of Homeland Security.

have a formal policy concerning issuance of Form I-918B. Instead [PD] follows the guidelines established by the Department of Homeland Security... Prior to 2012, any requests received for Form I-918B were forwarded unopened to the Lake County State's Attorney's Office, per the instructions of that office. In 2012, [Township A (Lake)] received 10 Form I-918B requests. Of those 10, none have been issued to date."<sup>58</sup> Pursuant to a 2013 FOIA, PD in Township B (Lake) also refers certifications to the Lake County SAO.<sup>59</sup>

The PD Township C (Lake), declined to respond to our inquiries, but anecdotal information reflects varying success in obtaining certification. Anecdotes from one practitioner indicated that on two separate occasions she attempted to obtain certification on cases in which the PD in Township C (Lake) declined to sign.<sup>60</sup> In one case, the police department indicated that the case was too old and that they had destroyed the police report. The attorney had copies of all the dispositions and the order of protection related to the case.<sup>61</sup> In the second case, the police department refused because the victim still lived with her abuser.<sup>62</sup>

#### **E. REMAINING COUNTIES (McHENRY, WILL, WINNEBAGO)**

Additional counties were surveyed after identification of elevated levels of undocumented populations. (McHenry, Will and Winnebago counties combine for a total of

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<sup>58</sup> Letter from Records Department of Township A to authors (Feb.1, 2013) (on file with authors) (obtained through FOIA request).

<sup>59</sup> Telephone Interview with Responding Officer, Township B (Lake) (Feb. 11, 2013), (notes on file with the authors).

<sup>60</sup> Email from Chicago VAWA/ U group Member D, to authors (Apr. 3, 2014) (on file with authors).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* This is particularly egregious as it flies in the face of federal statutes carefully crafted to reflect the nuanced cycle of violence inherent in domestic abuse and, furthermore, flouts the scheme of the U visa statute.

37,000 whereas DuPage county is identified at 36,000, Lake County 39,000, and Kane County 43,000).<sup>63</sup>

*Generalized Data from McHenry, Will & Winnebago Counties*

In addition to the respective State's Attorney's Offices ("SAOs") eleven municipalities in these counties were surveyed for purposes of this report. These municipalities were identified based on their high concentrations of undocumented populations and/or as a result of anecdotal reporting of participants. Of the eleven municipalities, four of the townships are split between multiple counties. Six of the targeted townships failed to respond to any inquiries for information around the U visa.<sup>64</sup>

The McHenry County State's Attorney's Office ("SAO") replied to our formal inquiry regarding certification. Specifically, the office indicated that the McHenry County SAO has designated an individuals responsible for reviewing requests for certification. There is a separate individual designated to sign the certification. The office indicated that "the vast majority of applications [sic] we receive are approved, signed and returned."<sup>65</sup> The Will County and Winnebago County SAOs failed to respond to inquiries around the U nonimmigrant visa. However, anecdotal information, and pursuant to reports of other law enforcement, Winnebago County SAO requests that all certifications be forwarded to their office for certification.<sup>66</sup>

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<sup>63</sup> Tsao, *supra* at 13.

<sup>64</sup> This survey was not designed to be a comprehensive evaluation of townships of McHenry, Will & Winnebago Counties but may be indicative of areas in need of more research.

<sup>65</sup> Email from Responding Representative, McHenry County State's Attorney's Office, to authors (Apr. 23, 2014) (on file with authors).

<sup>66</sup> Email from Chicago VAWA/ U Group Member E to the Chicago VAWA/U group (Apr. 24, 2014) (on file with authors).

### *Illustrative Data from McHenry, Will & Winnebago Counties*

The police department in Township A (Winnebago County) stated that it has only received “one U Visa request over the past 2½ years.”<sup>67</sup> The responding officer indicated that the requests are forwarded to the Winnebago State’s Attorney’s Office for review.<sup>68</sup> The responding officer further indicated that the department does not know whether the one request that was submitted was granted or denied.<sup>69</sup>

In addition, an attorney practitioner provided an anecdote requesting certification for a domestic violence victim with Township A (Winnebago County). The Chief of Police informed her that he “forwarded the certification request to the Winnebago County SAO, and was sending all certification requests that he received to the SAO's office at the State's Attorney's request.”<sup>70</sup> While that victim was cooperative with the police and provided both oral and written statements regarding their domestic abuse case, the Winnebago County SAO refused to sign the certification form because the client had failed to go to court.<sup>71</sup>

## **IV. FINDINGS**

### **A. LACK OF UNIFORMITY IN POLICY AND PRACTICE OF U CERTIFICATION LEADS TO DISPARATE ACCESS TO JUSTICE FOR VICTIMS.**

As highlighted throughout the data, there is no uniformity in U visa certification. As a result, victims have disparate access to justice depending on a variety of factors, most significantly, where the individual was victimized. Disparate access to justice generally

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<sup>67</sup> Email from Responding Officer, Township A (Winnebago County), to authors (Apr. 24, 2014) (on file with authors).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Email from Private Attorney A, to authors (Apr. 24, 2014) (on file with authors).

<sup>71</sup> *Id.* This is problematic as the determination of helpfulness falls upon the CIS and statutory scheme investigates reasonable refusal to cooperate at the time of AOS.

violates American Constitutional principles of equal protection and due process. The University of North Carolina recently issued a national report entitled “The Political Geography of the U Visa: Eligibility as a Matter of Locale” which indicates that such practices may be actionable under the U.S. Constitution, Title VI of the Civil Rights Act and the varying State Administrative Procedures Acts.<sup>72</sup>

The data includes examples of such disparities by virtue of locale. One such example includes the PD for Township C (DuPage) which straddles multiple counties.<sup>73</sup> In the anecdote cited above, the victim of domestic violence experienced the criminal incident with her abuser in the part of Township C located in DuPage. As a result, she was unable to secure a U visa certification. This is because the PD for Township C (DuPage) declined to certify and the DuPage County SAO does not certify. Thus, even within a given township, where the victim of a crime is located could determine whether or not they have comprehensive access to victim remedies.

#### **B. LACK OF OVERSIGHT OF U VISA CERTIFICATION LEADS TO LIMITED RECORD KEEPING & LIMITED ACCOUNTABILITY.**

The overwhelming data shows that law enforcement agencies do not keep records regarding requests for certification. As a result, there is no way to determine with any certainty the objective of their certification programs. The failure to track this data leads to questions around the intent of these programs raising community suspicions about equal access to the service and protection of local law enforcement. Without adequate recordkeeping and accountability, the public is left to determine the actual practice of law

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<sup>72</sup> Jean Abreu, et. al., Univ. of North Carolina School of Law, *Visa Denied: The Political Geography of the U Visa: Eligibility as a Matter of Locale* (2014), <http://www.law.unc.edu/documents/clinicalprograms/uvisa/fullreport.pdf>

<sup>73</sup> Email from Chicago VAWA/U group member A, *supra* at 33.

enforcement through “rumor.”<sup>74</sup> The lack of accountability that flows from the failure to keep records allows for insidious practices to proceed covertly and unimpeded.

**C. LACK OF DOCUMENTED POLICY OF U CERTIFICATION LEADS TO CHANGES IN PRACTICE WITHOUT CAUSE OR NOTICE AND UNDERMINES VICTIM RELIANCE ON LAW ENFORCEMENT AGENCIES.**

The data also highlights the universal lack of documented U certification policies. The lack of public and set guidance for obtaining U visa certification undermines a victim’s ability to rely on law enforcement because these policies are subject to change. For example, prior to 2010, difficulty in victim access to U certification from DuPage County SAO was not reported.<sup>75</sup> At some point, this policy changed dramatically to exclude participation in the U visa program for any cases as reported by stakeholders.<sup>76</sup> This change occurred without stated cause and without notice to victims. These types of changes undermine the ability to rely on law enforcement for consistent and equal protection.

**D. LACK OF DIRECTIVES AROUND U CERTIFICATION LEADS TO STATE AND LOCAL PRACTICES THAT CONFLICT WITH THE FEDERAL U VISA STATUTE.**

The data contained herein is peppered with instances in which the local practices around certification are in direct conflict with the federal statutory scheme of the U visa. These practices lend themselves to contentious disputes amongst practitioners and law enforcement over the certification process on any individual case. State and local practices that defy the federal statutory scheme invite litigation.

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<sup>74</sup> Email from non-profit advocate, (Ap. 17, 2014) (on file with authors) (“[w]e work in small communities and once the word is out that a police department is not willing to help in this process, victims decide it's better to not call the police because they feel they will not be protected.”)

<sup>75</sup> Meeting Notes, *supra* at 35.

<sup>76</sup> *Id.*

Example 1:

PD for Township B (Kane) indicated “[w]e have denied certifications on [...] cases in which the applicant was *not an actual victim*...or those cases that happened so long ago that it was too difficult to determine the [result].”<sup>77</sup> (Emphasis added.) The U visa statute has been drafted to include *actual and indirect victims* of criminal activity.<sup>78</sup> In implementing the federal regulations in 2007, the USCIS explained:

USCIS believes that the U nonimmigrant classification contemplates encompassing certain indirect victims in addition to direct victims. This is because the list of qualifying criminal activity at section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), includes the crimes of murder and manslaughter, the direct targets of which are deceased. The list also includes witness tampering, obstruction of justice, and perjury, which are not crimes against a person. Therefore, this rule extends the definition of victim beyond the direct victim of qualifying criminal activity in certain circumstances. See new 8 CFR 214.14(a)(14)(i) & (ii).<sup>79</sup>

The regulations explain adherence to principles and definitions derived from the Department of Justice's (DOJ's) Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) which adopts a similar definition of the term “victim.”<sup>80</sup> The State effort to restrict the federal statutory scheme presents complications for all parties.

Example 2:

The Lake County SAO indicated that arrests concerning attempting illegal entry at the border would be a disqualifying factor for purposes of certification.<sup>81</sup> Interestingly, the question of “illegal entry” is a civil immigration matter handled exclusively under federal

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<sup>77</sup> Email from Police Department B, County of Kane to authors (Mar. 20, 2014) (on file with authors).

<sup>78</sup> 8 C.F.R. § 214.14

<sup>79</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, *supra* note 9.

<sup>80</sup> *Id.* (citing the Attorney General Guidelines for Victim and Witness Assistance at 9 (May 2005),

<http://www.ojp.usdoj.gov/ovc/publications/welcome.html>

<sup>81</sup> Email from Responding Representative, Lake County State’s Attorney’s Office, to authors (Mar. 19, 2014) (on file with authors).

jurisdiction.<sup>82</sup> In fact, the U visa statute has been written broadly to “waive” certain civil immigration infractions, most notably being “present in the United States without inspection.”<sup>83</sup> Upon implementing the regulations, the Department of Homeland Security explained

[t]he BIWPA created a waiver specific to U nonimmigrant status. Under this waiver, the Secretary of Homeland Security has the discretion to waive any ground of inadmissibility with respect to applicants for U nonimmigrant status, except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings. INA sec. 212(d)(14), 8 U.S.C. 1182(d)(14).<sup>84</sup>

A determination by state or local law enforcement that an immigration violation should preclude eligibility for the U nonimmigrant visa categorically defies the explicit instruction of Congress in drafting the U visa statute and allows local enforcement to act as adjudicators of immigration benefits pursuant to their own interpretation of federal law.

### Example 3:

In another instance of conflict, the Lake County SAO stated that they would not certify “because the State's Attorney's Office does not believe that the crime was severe enough.”<sup>85</sup> Again, this determination flouts the federal statutory scheme which preemptively sets aside determinations around “severity” for the Department of Homeland Security.<sup>86</sup> Specifically, the DHS has set out by regulation that the applicant must have

suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of

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<sup>82</sup> See, *Arizona v. U.S.*, *supra* at 4.

<sup>83</sup> 8 U.S.C. § 1182(a)(6)(A)

<sup>84</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, *supra* note 9; see also 8 U.S.C. § 1182 (d)(14)

<sup>85</sup> Email from Responding Representative, Lake County State’s Attorney’s Office, to authors (Mar. 19, 2014) (on file with authors).

<sup>86</sup> 8 U.S.C. § 1101(a)(15)(U)

factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

This nuanced determination is left to the adjudicatory judgment of a branch within USCIS that receives significant training around victimization.<sup>87</sup> Allowing local law enforcement to make these determinations, defies the carefully crafted program of the federal government.

#### Example 4:

As highlighted in an anecdote above, the PD in Township C (Lake) declined to sign a request for certification on a domestic violence because the victim still lived with her abuser.<sup>88</sup> This is possibly the most egregious conflict with the U visa statute. Indeed, one of the most paramount purposes of the statute was to protect a broader range of victims of domestic violence that had been left out of the Violence Against Women Act of 1994 (VAWA).<sup>89</sup> A recent CRS Report on the Violence Against Women Act explains that “the shortfalls of legal response and the need for a change in attitudes toward violence against

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<sup>87</sup> The Battered Immigrant Women Protection Act of 1999: Hearing on H.R.3083 Before the House S. Comm. on Immigration and Claims Comm. on the Judiciary, 106<sup>th</sup> Cong (1999)(statement of Barbara Strack, Acting Exec. Assoc. Commr, Office of Policy & Planning, Immigration & Naturalization Serv, Dept. of Justice).

<sup>88</sup> Email from Chicago VAWA/ U group Member D, to authors (Apr. 3, 2014) (on file with authors).

<sup>89</sup> Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 86-106, § 1502, 114 Stat. 1462, 1518 (codified at 8 U.S.C. § 1101 (2000)) (“Congress finds that... there are several groups of battered women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of actions by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.”)

women were primary reasons cited for the passage of VAWA [1994].”<sup>90</sup> The type of policy that requires a victim of domestic violence to leave her [or his] abuser shows a fundamental misunderstanding, on the part of law enforcement, of the nature and cycles associate with intimate partner violence. These patterns, of course, have been documented for years by the NIH and CDC, among a myriad of others.<sup>91</sup>

**E. LACK OF UNIFORMITY IN POLICY AND PRACTICE OF U CERTIFICATION UNDERMINES COMMUNITY TRUST IN LAW ENFORCEMENT & THREATENS PUBLIC SAFETY.**

Where potential U visa applicants are unable to obtain certification, we have observed that these practices are known to the community, internalized by the community, and potentially threaten public safety within communities by deterring contact and adversely affecting trust of the public with law enforcement. One non-profit advocate explained,

“[w]e work in small communities and once the word is out that a police department is not willing to help in this process, victims decide it's better to not call the police because they feel they will not be protected. We have spoken to several victims who feel this way. Unfortunately what is forgotten is that domestic violence is not only a crime against the victims but also against our communities. By offering to assist victims, we are making a statement that domestic violence will not be tolerated and we will support victims who come forward.”<sup>92</sup>

Indeed, the increasing collaboration between the Department of Homeland Security and local law enforcement has already affected the perception of certain communities and law enforcement. The undermining of trust between Latino communities and local law enforcement in Chicago was recently documented in an article entitled “Insecure

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<sup>90</sup>Sacco, Lisa N. “The Violence Against Women Act: Overview, Legislation and Federal Funding” 16 March 2014, available online at <http://fas.org/sgp/crs/misc/R42499.pdf> .

<sup>91</sup> David A. Katerndahl et. al., *Complex Dynamics in Intimate Partner Violence: A Time Series Study of 16 Women* (2010) available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2983457/>; See also generally, CDC Publications on Intimate Partner Violence available at <http://www.cdc.gov/violenceprevention/pub/main.html#ipv>.

<sup>92</sup>Email from non-profit advocate, (Ap. 17, 2014) (on file with authors).

Communities: Latino Perceptions of Police Involvement in Immigration Enforcement.”<sup>93</sup>

That article explains that

“[s]urvey results indicate that the increased involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, contributing to their social isolation and exacerbating their mistrust of law enforcement authorities. **[Seventy]** percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime.” [Emphasis added.]

This very statistic is the reason for the federal U visa program. The U visa was specifically designed to strengthen the connection between law enforcement and the undocumented community.<sup>94</sup> Lack of uniformity in policy and practice around U visa certification undermines the trust of the immigrant community to come forth and report criminal activity to law enforcement. Failure to report criminal activity raises significant public safety considerations for all of society not simply the individuals victims of crime.

## V. RECOMMENDATIONS

### A. STATE AND LOCAL LAW ENFORCEMENT TRAINING SESSIONS WITH THE DEPARTMENT OF HOMELAND SECURITY & COMMUNITY BASED ORGANIZATIONS.

The data indicates that local law enforcement agencies are often unaware of the nuances of the U nonimmigrant visa or their role in certification. Uniform training for state and local law enforcement might allow these agencies to better understand the U Visa, its

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<sup>93</sup> Nik Theodore, Department of Urban Planning and Policy, University of Illinois at Chicago. *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (2013). [https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure\\_Communities\\_Report\\_FINAL.pdf](https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf)

<sup>94</sup> Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 86-106, § 1512, 114 Stat. at 1533-34 “The purpose of this section is to create a new nonimmigrant Visa classification that will *strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases... while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.*” See also Memorandum of Director, Vermont Service Center William R. Yates, Associate Director of Operations, *Centralization of Interim Relief for U Nonimmigrant Status Applicants* (Oct. 8, 2003), available online at <http://www.uscis.gov/files/pressrelease/UCntr1100803.pdf>.

purpose, and their own role in the certification process. Uniform training has the potential to alleviate discrepancies between individual access to justice based on locale.

The Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) provides training sessions covering the U Visa and U Visa certification.<sup>95</sup> Uniform and mandatory statewide training could be implemented alongside USCIS to ensure that law enforcement agencies are properly instructed on the purpose and possible impact of the U nonimmigrant certification. Including community-based organizations in this process facilitates transparency and promotes community access to accurate information around the role and attitude of law enforcement toward certification and immigrant communities.

## **B. STATEWIDE MODEL U VISA CERTIFICATION POLICY & PRACTICE**

The state of Illinois could develop a model U visa certification policy and practice. Such resources already exist among communities throughout the nation.<sup>96</sup> Model policy could clearly describe for law enforcement the requirements under the U visa statute, including a list of the qualifying crimes. Additionally, it could provide law enforcement agencies with clearly stated policy that sets forth a process and standard for U visa certification. This might help local governments avoid federal preemption issues by avoiding practices that run afoul of the federal statutory scheme.

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<sup>95</sup> Law enforcement and other certifying agencies can contact the USCIS for information regarding how to handle U Visa cases and information about receiving training sessions for their agencies by emailing requests to [T-U-VAWATraining@dhs.gov](mailto:T-U-VAWATraining@dhs.gov).

<sup>96</sup> One such example is a U visa directive developed by the National Immigrant Women's Advocacy Project, Legal Momentum, available online at : <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/protocols-and-policies/Law-Enforcement-U-Visa-Model-Protocol.pdf>.

### **C. STATE LEGISLATION MOVING TOWARD UNIFORM CERTIFICATION POLICY AND PRACTICE**

Another mechanism to prevent conflicts with the federal statutory scheme is to carefully draft uniform policy and practice for U visa certification. State legislation offering uniform guidance on U Visa Certification could create a uniform statewide practice limiting the disparities in access to justice based on locale. State law guidance on certifications by state and local law enforcement could be carefully crafted so as to complement the federal statutory U visa scheme. Such legislation might contemplate training and record keeping to ensure some level of accountability for government actors. This type of legislative action would facilitate enhanced community relations between immigrant populations and law enforcement agencies.

### **VI. CONCLUSION**

In light of the foregoing, it would be beneficial for the state of Illinois to act uniformly in responding to requests for victim assistance in the context of U nonimmigrant certification. In this way, it may be possible to prevent the ongoing disparate access to justice for victims of crime in IL. It could serve to restore the relationship between law enforcement agencies and the public. This type of action would bring Illinois back in line with the purpose, spirit and intended statutory scheme of the Violence Against Women Act of 2000.

## Summary of Data\* around U visa Certification in Cook & Collar Counties

COUNTY	WRITTEN U-VISA POLCY	DESIGNATED CERT. OFFICIAL (S)	OTHER AVAILABLE DATA (some derived from anecdotes)
<b>Cook County</b> - <b>SAO</b>	SAO appears to have uniform, uncodified policy	SAO has designated certifying officials	SAO has open relationship with advocacy community and updates are addressed in person with feedback from the community.
- <b>Police Dept. (13 surveyed)</b>	Only one PD reports codified policy	12 PDs appear to maintain designated certifying official(s)	1 PD openly refused to certify any cases until the city attorney reviewed the law and issued a formal written policy.
<b>DuPage County</b> - <b>SAO</b>	SAO does not report formal written policy	SAO has designated a certifying official	Since 2010, advocates have been unable to secure certification from SAO; even on cases of extremely violent crime.
- <b>Police Dept. (15 surveyed)</b>	No PDs report codified policy	4 PDs appear to maintain designated certifying official(s)	3 PDs decline to sign certification in any and all requests for certification.
<b>Kane County</b> - <b>SAO</b>	SAO appears to have uniform, uncodified policy	SAO has designated certifying official	1 PD indicated that they had never heard of the U visa.
- <b>Police Dept. (8 surveyed)</b>	No PDs report codified policy	5 PDs appear to maintain designated certifying official(s)	1 PD indicated refusal to sign certification in any circumstance.  1 PD reports requestor must be actual victim (not indirect victim which runs counter to the statutory scheme).
<b>Lake County</b> - <b>SAO</b>	SAO appears to have uniform, uncodified policy	SAO has designated certifying official	SAO has not certified where: (1) requestor has <u>any</u> criminal history including immigration violations; (2) where victimization was not “severe enough,” (3) where victim of DV continued to reside with abuser. These examples indicate clear conflict with the federal statutory scheme.
- <b>Police Dept. (7 surveyed)</b>	No PDs report codified policy	4 PDs appear to maintain designated certifying official(s)	
<b>McHenry, Will &amp; Winnebago Counties</b> - <b>SAO(s)</b>	SAO appears to have uniform, codified policy	2 SAOs have a designated certifier	Anecdotes suggest that Winnebago will not certify if victims of DV fail to attend court.
- <b>Police Dept. (11 surveyed)</b>	No PDs report codified policy	7 PDs appear to maintain designated certifying official(s)	Anecdotes suggest that Winnebago SAO requires all PD to forward requests for certification to their office.

\*Data was gathered through June of 2014; specific dates of data gathered included in full text of report.

Undocumented populations in selected Illinois regions	
Selected Illinois counties	Estimated undocumented population
Kane County	43,000
Lake County	39,000
DuPage County	36,000
Will County	22,000
Champaign County	11,000
McHenry County	8,000
Winnebago County	7,000



