

## Law Enforcement and Prosecution Virtual Roundtable

Demystifying the U-Visa:  
A conversation about myths and realities

December 9th, 2021

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## Introductions



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The following slides are intended to be a guide to lead our discussion on this topic and to provide substantive material for your future reference.

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state and the  
weather?



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How many of you have  
been in a situation  
where you've had to  
explain the U Visa to a  
colleague?

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## Case Example (1 of 4)

- A victim of domestic violence has requested a U Visa certification
- The offender was arrested and the misdemeanor case is pending trial

*If you wanted to get the certification signed, what do you think people might ask you?*

## Frequently Asked Questions

- |  |   |  |
|--|---|--|
| <ul style="list-style-type: none"><li>• Doesn't it have to be a felony?</li></ul>            | <ul style="list-style-type: none"><li>• How can I determine whether the victim suffered serious harm?</li></ul> | <ul style="list-style-type: none"><li>• What counts as DV?</li></ul> |
| <ul style="list-style-type: none"><li>• What if the victim is lying to get a visa?</li></ul> | <ul style="list-style-type: none"><li>• Shouldn't we wait until after the trial?</li></ul>                      | <ul style="list-style-type: none"><li>• Who should sign?</li></ul>   |

## Case Example (2 of 4)

- The victim in the DV case has a prior shoplifting charge
- The prosecutor has had difficulty getting ahold of the victim at times
- The victim recanted at some point, but appears to be willing to testify, if needed

*What do you think people might be worried about at this point?*

## Common Concerns

- |  |   |   |
|--|---|---|
| <ul style="list-style-type: none"><li>• I don't know if I want to give this person citizenship</li></ul> | <ul style="list-style-type: none"><li>• I don't want to be responsible for the victim</li></ul> | <ul style="list-style-type: none"><li>• Shouldn't a jury first decide if the defendant is guilty beyond a reasonable doubt?</li></ul> |
| <ul style="list-style-type: none"><li>• What if the victim doesn't appear at trial?</li></ul>            | <ul style="list-style-type: none"><li>• What if the victim recants at trial?</li></ul>          | <ul style="list-style-type: none"><li>• If I sign now, won't it ruin my case?</li></ul>   |

## Case Example (3 of 4)

- The prosecutor decides to give the defendant diversion
- If the defendant successfully completes the batterer's intervention program, the case will be dismissed
- If the defendant is not successful, the case will be set back for trial
- The defendant enters the program

*What may someone be concerned about at this point?*

## Common Issues

- The defendant is not convicted
- The case is technically still "alive"
- The victim did not testify
- What if the case is set for trial in the future?

## Case Example (4 of 4)

- The defendant did not complete diversion and the case is set for trial
- The victim did have the U Visa certification signed while the defendant was in the diversion program
- It has been over six years since the DV incident

*What do you think the prosecutor is worried about?*

## Typical Worries

- Do statute of limitations apply?
- What do I have to provide in Discovery?
- What if I can't find the victim?
- Will this ruin my case?
- How can I combat the defense that she is lying for a U Visa?
- What if the defendant is acquitted?

## Ethics and the U Visa

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## Ethics and the U-visa

- According to the Department of Homeland Security (DHS), the standard of proof for U Visas is “reasonable suspicion”
- Prosecutors must comply with all Discovery rules as well as Due Process
  - Relevant
  - Material
  - Exculpatory

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## Case Scenario

- The victim asked law enforcement to sign a U Visa certification
- Law enforcement declined to sign and told the victim to ask the prosecution when the case is over

*What if anything does the prosecutor need to disclose to the defense?*

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## Key Factors

- The prosecution is responsible for knowing about the request to law enforcement
- The request for a U Visa will be deemed relevant to the victim’s motive to lie
- If signed, the U Visa certification is discoverable
- The full U Visa application is typically not discoverable

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## Questions?

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## Technical Assistance

- NIWAP
- Call: 202.274.4457
  - Email: [info@niwap.org](mailto:info@niwap.org)

*Contact NIWAP for training for your department or agency*

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## AEquitas Resources

[www.aequitasresource.org](http://www.aequitasresource.org)

- Webinars
- Prosecution Resources
- Statutory compilations
- Case consultations

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## Thank You!



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