


Best Practices for Working with Immigrant Crime Victims

International Conference on Sexual Assault, Intimate Partner Violence, and Increasing Access

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Washington College of Law

Thank You to OVW

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Introductions



Officer Michael LaRiviere
Salem Police Department
NIWAP Law Enforcement Consultant
mikelariviere42@gmail.com



Leslye E. Orloff
Director
National Immigrant Women's Advocacy Project (NIWAP)
orloff@wcl.american.edu




USB Drive Materials

- U Visa Toolkit For Law Enforcement Agencies And Prosecutors
- DHS: U and T Visa Law Enforcement Resource Guide
- DHS memos and policies
- Tools for officers to promote language access
- Bluecard Tool Screening Victims for Immigration Protections

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**Participant Introductions,
Goals and Expectations**



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Learning Objectives

- Increase knowledge of policies and practices that build trust and language access with immigrant and Limited English Proficient crime victims
- Identify how U and T visas benefit law enforcement and prosecutors and improve community safety.
- Build collaborations and best practices for working with victim advocates and attorneys with expertise serving immigrant victims.
- Protect immigrant crime victims from immigration enforcement triggered by the abuser or crime perpetrator.

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What countries do immigrants in your jurisdiction come from and what language do they speak?



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US Demographics (2016)*

- ❖ Total foreign born population – 43,739,345
- ❖ 13.5% of the country's – 323.1 million people are foreign born
 - 48.6% naturalized citizens
 - ~31% legal permanent residents (DHS data)
 - ~4.4% temporary visa holders
 - ~16% undocumented (includes pending VAWA, Us, Ts, SIJS)
 - 40.6% rise in immigrant population from 2000 to 2014
 - 21.6% of U.S. population speak a language other than English at home
- ❖ Length of time immigrants have lived in the U.S.
 - 54.7% entered before 1999
 - 26.7% entered 2000 -2009
 - 18.6% entered 2010 or after
- ❖ 25.2% of children under 6 have one or more immigrant parents
- ❖ 25.8% of children under age 18 have one or more immigrant parents
 - 88% of these children are native-born U.S. citizens

*Source: Migration Policy Institute Data Hub (July 2016) and DHS Population Estimates (November 2016)

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US – Countries/Regions of Origin & Limited English Proficiency (LEP)(2017)*

- ▶ Asia – 28.1%
 - ▶ China/Taiwan (6.2%)
 - ▶ India (5.6%)
 - ▶ Philippines (4.4%)
 - ▶ Vietnam (3.1%)
 - ▶ Korea (2.4%)
- ▶ Latin America – 51.0%
 - ▶ Mexico (26.5%)
 - ▶ Other Central America (4.7%)
 - ▶ South America (6.8%)
 - ▶ Caribbean (9.8%)
 - ▶ El Salvador (3.2%)
- ▶ Europe – 10.9%
 - ▶ Eastern Europe (4.9%)
- ▶ Oceania – 0.6%
- ▶ Africa – 4.9%
- ▶ Middle East – 2.7%
- ▶ Non-U.S. North America – 1.8%
- ▶ Language spoken
 - ▶ 21.6% of people in the U.S. speak language other than English at home
 - ▶ 49.1% of foreign born persons are LEP - speak English less than "very well"

*Source: Migration Policy Institute Data Hub (January 2017)

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**U Visas as a
Crime Fighting Tool**

Improving the reporting,
investigation, and prosecution of
violent crime
& keeping everyone safer

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**How Best Practices in Domestic
Violence Investigations Involving
Immigrant Victims Promote
Officer Safety**

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**Challenges in Working with Immigrant
Victims of Domestic and Sexual
Violence**

- Fear of Deportation
- Language
- Isolation
- Lack of knowledge of legal rights
- Do not trust that police/prosecutors will help them
- Lack of reporting and/or cooperation as the case moves forward

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U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law



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Qualifying Criminal Activity

75% of cases filed are domestic and sexual violence

- | | | |
|-----------------------------|--------------------------------------|--------------------------|
| > Domestic violence | > Kidnapping | > False Imprisonment |
| > Sexual assault | > Abduction | > Blackmail |
| > Rape | > Trafficking | > Extortion |
| > Incest | > Involuntary servitude | > Witness tampering |
| > Prostitution | > Slave trade | > Obstruction of justice |
| > Torture | > Being held hostage | > Perjury |
| > Female genital mutilation | > Peonage | > Stalking |
| > Felonious assault | > Fraud in Foreign Labor Contracting | |
| > Manslaughter | | |
| > Murder | | |

*Attempt, conspiracy or solicitation to commit any of these crimes any similar activity



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Who Can Apply?

- Victims of qualifying criminal activity
- Parents and guardians can apply as an "indirect victim" if:
 - the victim is a child under 21 years of age and/or
 - is incompetent, incapacitated, or deceased due to murder or manslaughter
- Bystanders victimization - very limited
- For child victims a "next friend" can provide helpfulness



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U Visa Basics

- Law enforcement certification is just one part of the overall process it does not = citizenship
- Long time line –multiple background checks
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Offender may be citizen or non-citizen
- Increases immigrant victim participation in criminal justice system
- Can be “revoked”



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Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - Judges, magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and elder abuse investigators and agencies
- Other government agencies



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IACP 2018 Resolution Promotes U/T Visa Certification As “Significant Crime Fighting Tools” and “Best Practice”


- Training, education, communication and “increased police leadership involvement” needed on U/T visa certification
 - U and T visas are “effective tools for law enforcement agencies that enhance public safety, officer safety and protection of victims nationwide.”
 - These visas increase “trust between law enforcement officials and otherwise reluctant immigrant communities.”
- Model Policy available on USB



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U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime




Things to Know About Certifying

- "Do I believe this person was a victim of a qualifying crime?"
- "Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?"
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor's office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?



Questions

Ask	Do Not Ask
<ul style="list-style-type: none"> • Do I believe this person was a victim of a qualifying crime? • Did the person assist or is willing to assist in the detection, investigation, conviction, prosecution and/or sentencing? 	<ul style="list-style-type: none"> • Can we prosecute? • Can I arrest the offender? • Do I have proof beyond a reasonable doubt? • Will the prosecutor's office file charges? • Is this within the statute of limitations? • Did we get a conviction?



Helpfulness in the Regulations

- Statute and DHS regulations: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or investigation, or
 - Prosecution, or conviction or
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing



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Helpfulness can be satisfied even if:

- Victim reports a crime where there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is subject to immigration removal
- The perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history or is subject to immigration enforcement
- Victim fully discloses story after better understanding rights, the U visa and meaningful language access



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How does law enforcement and prosecution benefit from the U visa?



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U Visa Benefits to Law Enforcement and Prosecutors

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhanced immigrant community involvement
- Makes it easier to identify victim witnesses
- Reduces repeat calls and recanting victims
- Fosters community policing partnerships
- Enhances officer and community safety

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Why would a immigrant victim report sexual assault or domestic violence and then refuse to participate in the ensuing investigation and trial?



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Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Unable to maintain regular contact with available support.
- Pressure from either family
- Financial hardship
- Lesser of two evils

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Ongoing Obligation to be Helpful

- Evaluating whether victim’s refusal to provide assistance/cooperation was “unreasonable”
- **Considerations:**
 - totality of the circumstances, including the nature of the victimization
 - victim’s fear or the abuser
 - trauma suffered
 - force, fraud or coercion



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If you still believe the victim is unreasonably refusing...

- Note on the certification, sign, and return to victim or victim’s attorney
- Burden shifts to victim to prove the refusal is not unreasonable
- DHS makes the ultimate decision



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Timeline

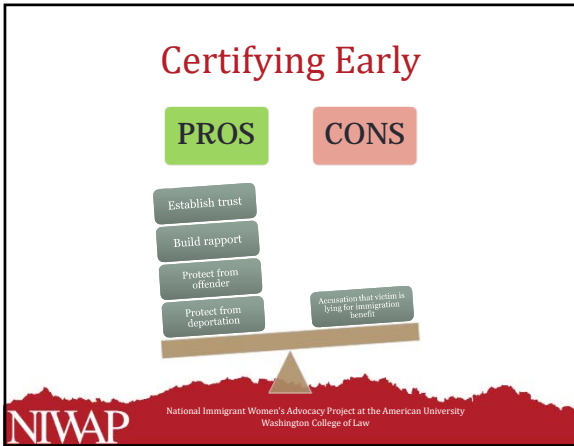
- Signed certification must be included in the initial application for a U Visa
- Once the initial application is processed:
 - Victim is entered into a database and flagged as an applicant for a U Visa

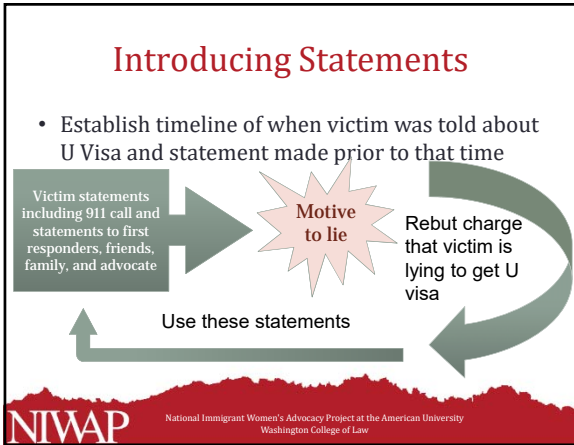


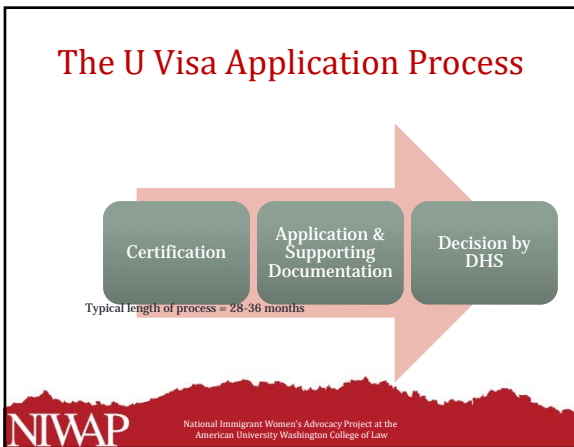
- Immigration proceedings will not be initiated
- Offender can not succeed with deportation intimidation



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DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
 - Review of criminal history
 - Review of immigration history



Additional U Visa Facts

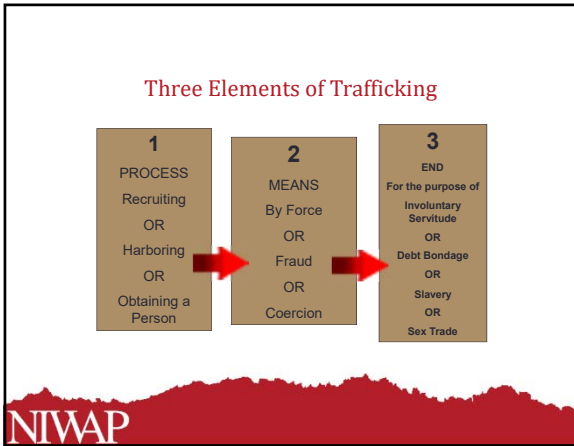
- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency- no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character



T- visa and Human Trafficking



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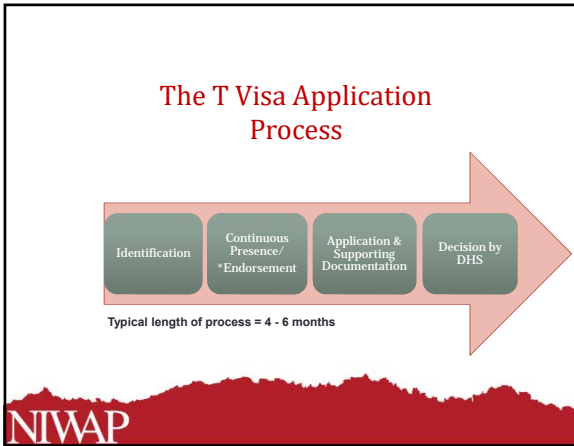
T Visa Overview

- Non-immigrant, 4 Year Visa
 - Victim of severe form of trafficking
 - In the U.S. or territories on account of trafficking
 - Respond to reasonable requests for collaboration with investigation
 - prosecution unless victim is under 18
 - Hardship upon return to home country
- May apply for adjustment of status after investigation/prosecution is over or 3 years, what ever time is shorter

What are Severe Forms of Human Trafficking?

- **Sex Trafficking:** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- **Labor:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)



Language Access

Best practices to successfully investigate and prosecute cases involving non-English speaking victims

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Source of Language Access Laws

- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- LEP Executive Order 13166 (2001)
 - Requires all agencies receiving any federal financial assistance to
 - Ensure meaningful language access
 - Develop and implement language access plans
 - "Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith."

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What is Meaningful Access?

- Meaningful access is defined in the US Department of Justice's own Language Access plan as:

"Language assistance that results in accurate, timely and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior, as compared to programs or activities provided to English proficient individuals"

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DOJ Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - *When officer decides it is helpful* to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language

**DOJ Sample Policy Center City Police Department
DOJ Approach to language access outline in:
Steps for Obtaining Interpreters**


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First responders –
What do you do when
you arrive at a crime
scene?





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First Response




- Locate and secure the scene
- Are there any weapons?
- Is anyone injured?
- Identify the people involved
 - Victim
 - Offender
 - Witnesses
- If offender is not on the scene
 - Where is the suspect?
 - Are they a continuing danger?
 - Is suspect in possession of weapon?







DOJ and Exigent Circumstances



- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer /victim/or public




DOJ Requirements for Investigations & Interrogations




- "A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness' legal rights could be adversely impacted"
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings





Using Qualified Interpreters 

<p><u>Benefits</u></p> <ul style="list-style-type: none"> • Safety • ID offender • Locate weapons • Admissible statements (excited utterances) 	<p><u>Harms</u></p> <ul style="list-style-type: none"> • Mistaken ID of offender • Arrest of victim • Misinterpretation results in inaccurate statements • Trauma to children
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Bilingual Officer v. Interpreter 


- › Bilingual officers
- › When they are interpreting, they are not investigating
- › Biculturalism v. bilingualism
- › Different words have different meanings:
 - › e.g.: Variations on the word "highway" depending on what state you're from.
 - › "500 feet" many communities don't know what that distance looks like.

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First responders –
Now that emergency is over what are the next steps in the investigation ?

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The Investigation Begins 


- Call detective
- Call fire/rescue
- Take initial statements
- Call crime scene
- Photograph
- Formal interviews at the station
- Develop probable cause
- Prepare case for prosecution

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On Scene Considerations 

- Separating parties
- Use of two interpreters
- Is the abuser threatening in a different language or making intimidating gestures?
- Headset and background noise
- Consider cultural differences (ex. matriarchal vs. patriarchal)
- Be aware of the perception of an implicit bias

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Language Resources 

- Language line
- Video remote interpretation
- Video relay interpretation
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems
- Court systems



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Resources on Language Access

- Contact Technical Assistance provider **Asian and Pacific Institute on Gender-Based Violence**
- Tools, resources and links to webinars available through
 - Asian and Pacific Institute on Gender-Based Violence
 - NIWAP
- Language Access Plan development and updating
 - Asian Pacific Institute on Gender-Based Violence



Resources for Law Enforcement

- Direct TA with a peer
- Onsite training on immigrant crime victim issues and language access
- U Visa Law Enforcement and Prosecutor Toolkit
- Language access tools for law enforcement



Training for Law Enforcement in Your Community

- Onsite training on immigrant crime victim issues and language access
- To sign up to have us bring a free training to your jurisdiction go to:
 - <http://www.niwap.org/requesttraining/>



Virtual Roundtables for Law Enforcement and Prosecutors

- Discussion on a various topic and strategies that will improve ways departments can build rapport, establish trust, and ensure safety
- Interactive call with opportunity to ask questions about case challenges and strategies.



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