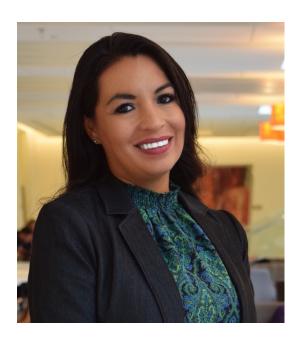
Conference on Crimes Against Women

The U Visa: A Tool to Support Victims, Communities, and Increase Participation in the Criminal Justice System

CCAW 2021







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The National Immigrant Women's Advocacy Project Brochure

MISSION

NIWAP amplifies the voices of immigrant survivors of abuse and their advocates and builds the capacity of professionals to eliminate the systemic barriers faced by survivors.



At NIWAP, we envision a world with equitable access to justice for immigrant abuse survivors and their children to heal and thrive.

NIWAP BY THE NUMBERS

- 8,500+ personalized answers to technical assistance calls
- 5,500+ legal professionals helped
- 440 training events conducted
- 29,780 people trained by NIWAP • 11,000+ subscribers to our newsletter
- 665 publications created
- 615.000+ downloads of NIWAP materials from our free web library

**Data reported from January 2012-April 2019

CONTACT US

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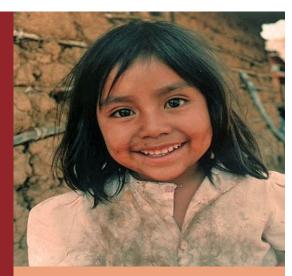
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NIWAP



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NIVAP

The National Immigrant Women's **Advocacy Project**

American University Washington College of Law



Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) at American University Washington College of Law
- Provide technical assistance and advocacy organization that promotes the implementation and use of:
 - laws, policies, and practices to improve legal rights, services, and assistance for immigrant victims of domestic violence, sexual assault, stalking, human trafficking, child abuse and other crimes.

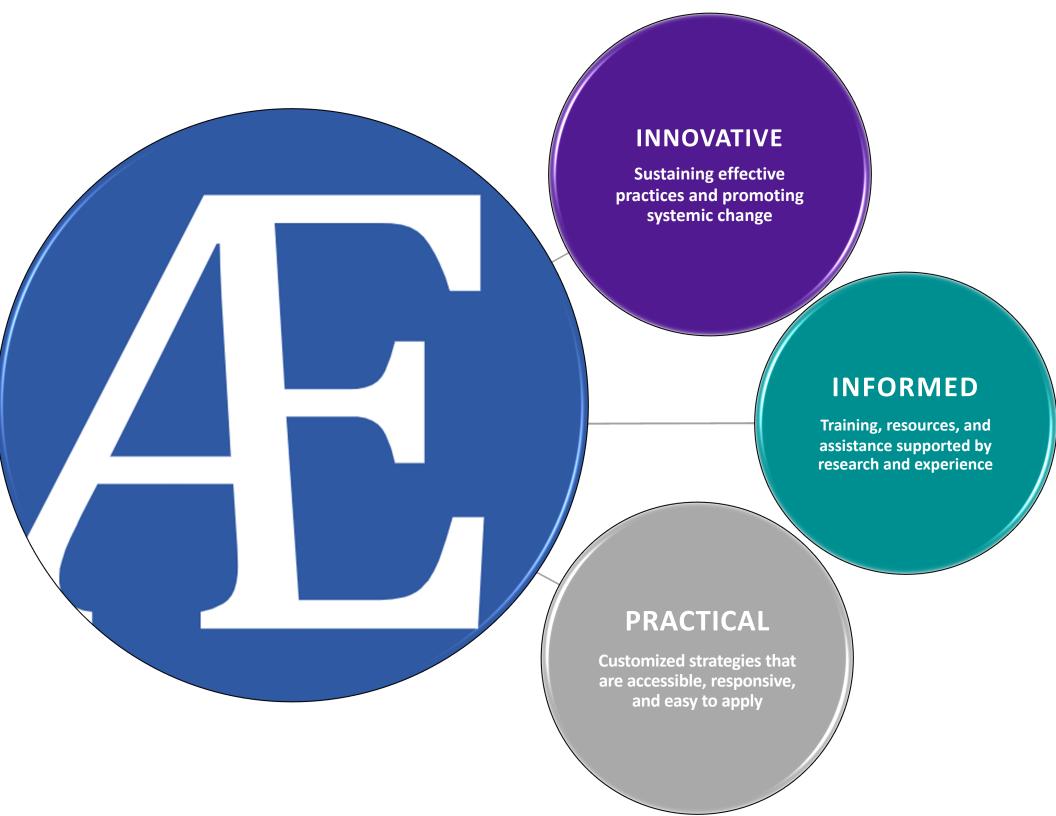




What We Do

- Training: Capacity building to make laws effective
 - Legally accurate resource materials
 - Technical assistance
- Research: Transformation through Documentation
 - Legal and Social Science
 - Web library
 - Publications
- Policy: Amplifying voices through advocacy





What We Do



Resources

Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices



Consultations

Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions



Training Events

Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals



Partnerships & Initiatives

Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training

Examples of Resources

www.aequitasresource.org/resources

- Panel discussion, "Confronting Racial Bias & Implementing Strategies to Ensure Justice in the Prosecution of Sexual Violence, Domestic Violence, Stalking, and Human Trafficking"
- Just Exists Initiative
 - Webinar, "Being Trafficked: What You Need to Know About 'the Life'"
 - Webinar, "Assessing Culpability: Context Before Conviction"
 - Pilot Site Application Process
- Webinar, "Expanding Our Reach: Prosecuting Intimate Partner Violence Against Victims Who Identify As LGBTQ+"
- Webinar, "Responding to Ethical Considerations in Sexual Violence Cases"

Learning Objectives

By the end of this webinar, you will better be able to:

- Identify victims who may qualify for the U Visa
- Identify how the U Visa program can improve relationships between immigrant communities and increase participation in the criminal justice system
- Enhance victim participation in investigations and prosecutions



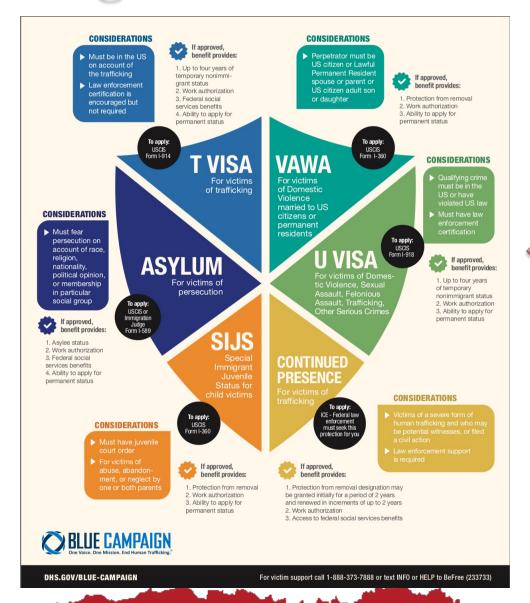
General Caveats

- Women, men, and children can qualify for U Visas
- Victims/Survivors of almost all violent crimes, and many other crimes are eligible to apply for U Visas

That said, many examples in this presentation will refer to female victims of domestic violence and/or sexual assault because they make up a large majority of the U Visa applications filed



Primary Immigration Protections for Victims





Why is Immigration Relief Available to Victims of Crime?



Legislative Intent

- We want crimes reported to police
- Improved community policing helps everyone
- No one should be a victim of crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we won't know about the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking



Goals of Immigration Relief

Increase victim participation in prosecutions

nrov

Community-police relations

Reporting of crime

Safety of victims, communities, and police



IACP 2018 Resolution

- Recognizes U and T Visas as significant crime fighting tools and using them as best practice
- Supports training, education, communication and "increased police leadership involvement"
- Committed to increasing collaboration

U Visas are "effective tools for law enforcement agencies that enhance public safety, officer safety and protection of victims nationwide."



Immigrant Crime Victim Dynamics, & the U Visa



Immigrants are uniquely affected by domestic and sexual violence because ...

- A. The U.S. Constitution does not protect them
- B. Resources to help victims are only available in English
- C. State laws do not require police to help immigrant crime victims
- D. Offenders prey upon immigrant victims' fears and misconceptions, count on barriers to prevent the reporting of crime, and manipulate the legal system to assert power and control



Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in have her case denied



Screening Tips

- Screen for immigration-related abuse
 - More likely to exist in relationships where physical and sexual abuse exist (v. psychological abuse)
- Identify immigration-related abuse as a potential predictor of escalating abuse

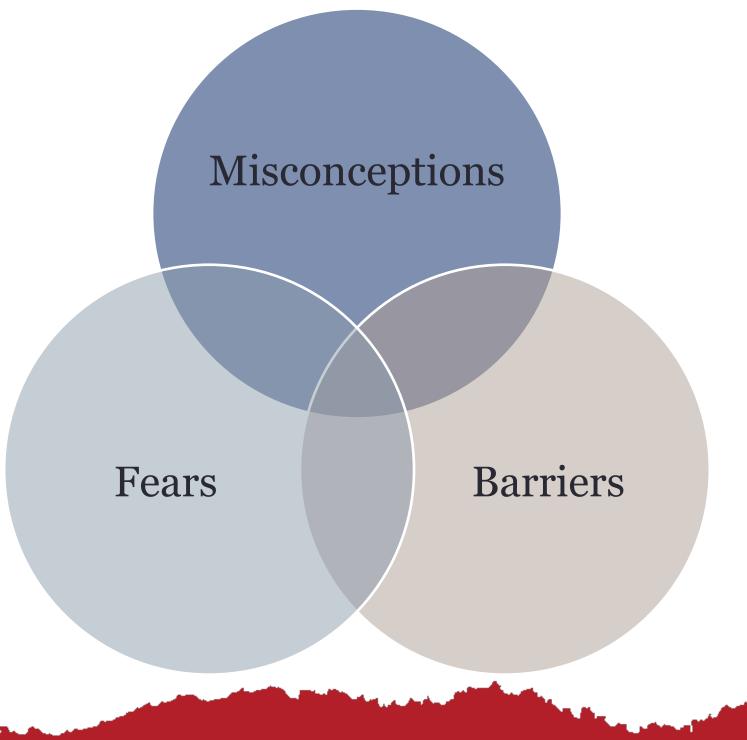
Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

 Document to support claims of physical and sexual abuse



What prevents immigrant victims from reporting crime and/or participating in investigations and prosecutions?







Fears

- Deportation
- Circumstances in their home country
- Separation from children
- Lack of contact with family
- Dangers facing their family in their country of origin
- Ostracism from their community
- Retaliation



Misconceptions

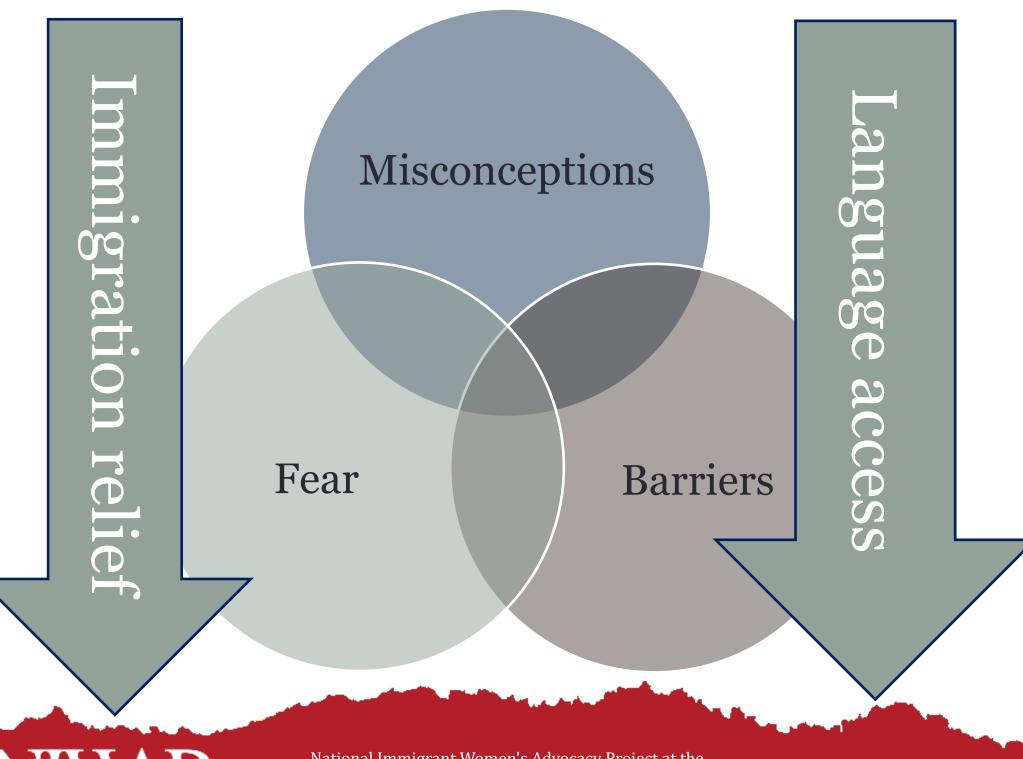
- Lack knowledge of
 - Crime victim legal rights
 - Laws regarding domestic violence, sexual assault
- Do not trust the police
- Believe police will arrest them
- Local police are immigration officers
- No services are available to immigrant victims
- Police are corrupt
- Criminal justice system will do nothing



Barriers

- Do not speak or understand English
- Financially depend on the perpetrator
- Isolation
- Lack of transportation or child care
- Community pressure
- Family pressure
- Religious factors







U Visa Basics

- The U Visa grants a temporary 4 year stay
- Only 10,000 U Visas awarded per year
- Application for a U Visa requires a certification from a designated government official
- Certification is one part of the overall application
 - Victim must submit additional documentation and proof in their full application



U Visa Eligibility

The victim will indicate that they satisfy the three eligibility components in their U visa application (I-918 form).

The person is a U visa victim

- Victim of a qualifying criminal activity
- Victim possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Victim is "Helpful"

Victim "has been, is being, or is likely to be helpful" in "detection, investigation, prosecution, conviction, or sentencing"

Victim suffered harm

• Substantial physical or mental abuse as a result of the qualifying criminal activity



U Visa Protections



Certification

Supporting Documents

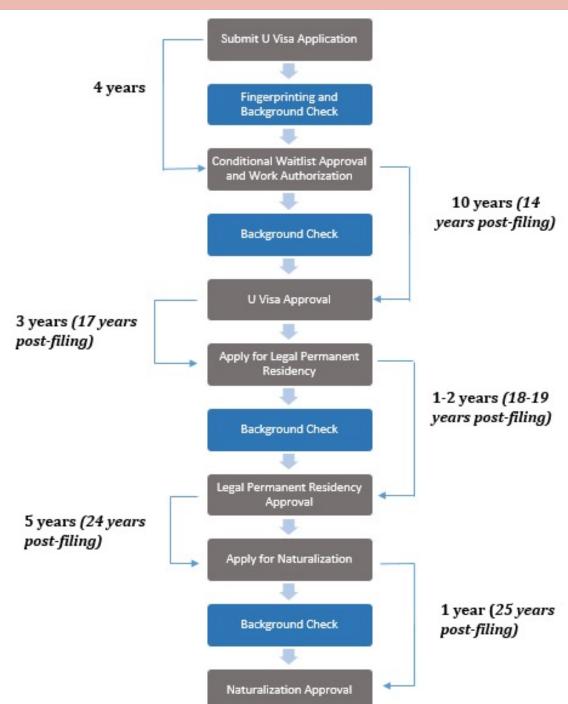




Application Review



U Visa Process Timeline





Victims "Red Flagged"



- Department of Homeland Security (DHS) computer system "red flags" victims who have filed for, or have been granted victim-based immigration relief
- Reminds DHS staff of legal obligation not to rely on "tips" from perpetrators regarding victims of
 - Domestic violence, sexual assault, stalking, human trafficking
- Immigration case brought against a victim can be dismissed for VAWA confidentiality violation
 - -8 U.S.C. 1367
- Practice tip: Victims should carry a signed certification form with them at all times



VAWA Confidentiality Prongs

Abuser-Provided Information:

 DHS, DOJ and the State Department are barred from taking action against a victim based solely upon information provided by abusers and crime perpetrators (and their family members)

Location Prohibitions:

• Locational prohibitions to enforcement unless there is compliance with specific statutory and policy safeguards

Non-Disclosure:

• Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone



Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and LEP victims calling for help arrested for domestic violence
- U visa applicants have higher future crime reporting rates

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff and Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Victims* (2017)



A closer look at what U Visa Certification attests to:

THE PERSON IS VICTIM OF A QUALIFYING CRIME



Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	



Additional Applicants

- Parents and guardians can apply as an "indirect victim" if:
 - -The victim is a child under 21 years of age and/or
 - The victim is incompetent, incapacitated, or deceased due to murder or manslaughter
 - Indirect victims must demonstrate that they were helpful
- Bystander victimization very limited
- When the victim is a child, the helpfulness requirement can be met by a "next friend" being helpful



A closer look at what the U Visa certification attests to:

THE VICTIM IS "HELPFUL"



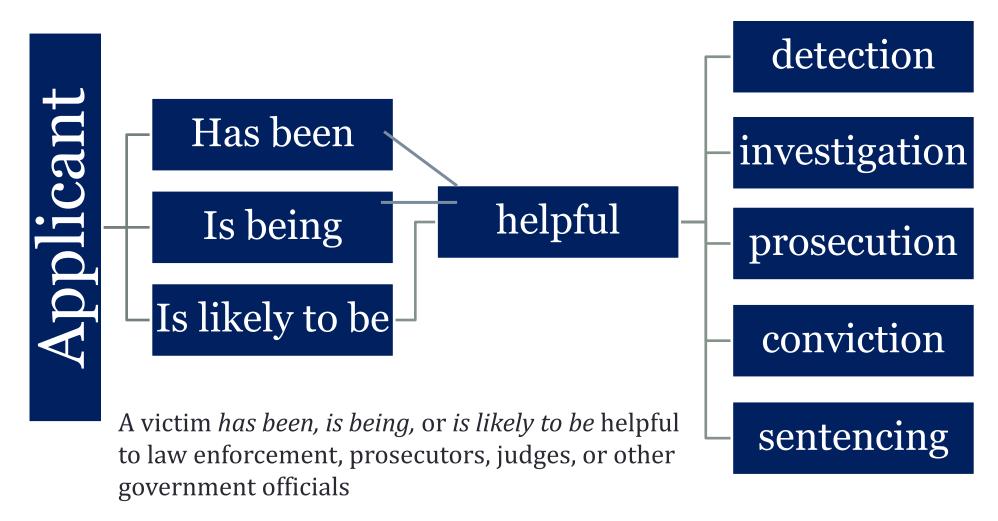
Determining Helpfulness

- Certifying agency determines "helpfulness"
- No degree of helpfulness required
 - -DHS regulations totality of the circumstances
- Any agency may complete U Visa certification as soon as they assess victim's helpfulness
- The investigation or prosecution can still be ongoing
- Certification can be "revoked"



Definition of "Helpfulness"

INA 245(m)(1); 8 U.S.C. 1255(m)(1) and 8 C.F.R 214.14(b)(3)





The following are **Not Required** in order to certify that a victim has been helpful

 Certification signed within the statute of limitations of the qualifying criminal activity

- Conviction
- Charges filed
- Offender arrested/prosecuted
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive

Victimcentered approach



Helpfulness

Calling 911

Having a Rape Kit performed Providing a description of offender

Allowing photographs to be taken

Giving information about the offender's whereabouts

Bringing a minor victim to a Child Advocacy Center

Providing a statement about "other bad acts"

Reporting crime in another case against the perpetrator

Testifying at a bond hearing, trial, or sentencing



U Visa Requirements

Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal
 activity
 occurred in
 U.S. or violated
 U.S. law

Helpful

- Has been, is being, or is likely to be
- Detection, investigation, prosecution, conviction, or sentencing

Harm

Substantial physical or mental abuse as a result



Who Can Certify?

"law enforcement" & "law enforcement agencies" =

- Federal, state, and local
 - Police, sheriffs, FBI, HIS,ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates,Commissioners

- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

There is **NO** statute of limitations on signing a certification. However, there is a **six month** window after signing the certification in which the U visa application must be filed.



When should you certify?

- A. Immediately upon receipt of certification
- B. Once your agency has knowledge of a victim's past or present helpfulness or believes a victim is likely to be helpful
- C. When you are certain that the victim will testify at trial
- D. When the defendant is convicted



Analyzing Requests for Certification

What criminal activity occurred?



Determine helpfulness

Identify if any family members were implicated in the crime

Note any injuries observed; provide documentation



U Visa Certification Form Highlights



Supplement B, U Nonimmigrant Status Certification

USCIS Form I-918

Form 1-918 OMB No. 1615-0104

Expires 04/30/2021

Department of Homeland SecurityU.S. Citizenship and Immigration Services



Certification form is available to download at https://www.uscis.gov/i-918

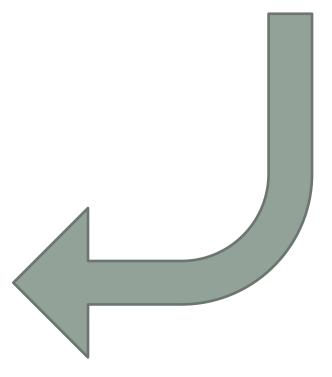


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Part 1. Victim Information		
1.	Alien Registra	tion Number (A-Number) (if any)
		► A-
2.a.	Family Name (Last Name)	
2.b.	Given Name (First Name)	
2.c.	Middle Name	
Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)		
If you need extra space to provide additional names, use the space provided in Part 7. Additional Information .		
3.a.	Family Name (Last Name)	
3.b.	Given Name (First Name)	
3.c.	Middle Name	
4.	Date of Birth (mm/dd/yyyy)

Female

This is sometimes filled out by the victim's immigration attorney or advocate.





Gender

Male

5.

In addition to the head of the agency, one or more certifying officials can be designated as a "Certifying Official"

Part 2. Agency Information				
1.	Name of Certifying Agency			
Nam	e of Certifying	Official		
2.a.	Family Name (Last Name)			
2.b.	Given Name (First Name)			
2.c.	Middle Name			
3.	Title and Divis	sion/Office of Certifying Official		
Nam	e of Head of Ce	rtifying Agency		
4.a.	Family Name (Last Name)			
4.b.	Given Name (First Name)			



4.c. Middle Name

Part 3. Criminal Acts

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

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

Abduction
Abusive Sexual Contact
Attempt to Commit Any of the Named Crimes
Being Held Hostage
Blackmail
Conspiracy to Commit Any of the Named Crimes
Domestic Violence
Extortion
False Imprisonment
Felonious Assault
Female Genital Mutilation
Fraud in Foreign Labor Contracting
Incest

Involuntary Servitude

Kidnapping

Manslaughter Murder Obstruction of Justice Peonage Perjury Prostitution Rape Sexual Assault Sexual Exploitation Slave Trade Solicitation to Commit Any of the Named Crimes Stalking Torture Trafficking Unlawful Criminal

Restraint

Witness Tampering

You can & should certify multiple offenses when present in the case, even if not charged



Dates do not have to be precise – you can use months, seasons or years.

Provide the dates on which the criminal activity occurred.

- 2.a. Date (mm/dd/yyyy)
- **2.b.** Date (mm/dd/yyyy)
- 2.c. Date (mm/dd/yyyy)
- 2.d. Date (mm/dd/yyyy)
- 3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

Attaching state statutory language can be helpful.



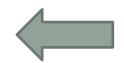
6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.

Discuss the victim's helpfulness. Make copies of all reports and photographs and attach.



7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Be as specific as possible, highlighting visible injuries observed and if you are aware of mental injury.





Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

- 1. Does the victim possess information concerning the criminal activity listed in Part 3.? Yes No
- 2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above?

Yes No

3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above?

If you answer "Yes" to **Item Numbers 1. - 3.**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7.**Additional Information.



Because many applications will include domestic violence, this may likely be the defendant.



Part 5. Family Members Culpable In Criminal Activity

	•				
1.		victim's family me culpable in the crins a victim?	•		
	If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in Part 7 . Additional Information .)				
2.a.	Family Name (Last Name)				
2.b.	Given Name (First Name)				
2.c.	Middle Name				
2.d.	Relationship				
2.e.	Involvement				



Part 6. Certification

I am the head of the agency listed in **Part 2.** or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in **Part 1.** is or was a victim of one or more of the crimes listed in **Part 3.** I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1.	Signature of Certifying Official (sign in link)
\rightarrow	
2.	Date of Signature (mm/dd/yyyy)
3.	Daytime Telephone Number
4.	Fax Number

Signature of Cartifying Official (cign in ink)

"I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS"

<u>REMEMBER</u>: This is merely a certification of the above information and does not confer any immigration relief.



"Unreasonable Refuse to Assist"

Part 4:

Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above?

| Yes | No

Part 6:

I further certify that if

the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.



Have You Ever Had a Case Where the Victim Became "Uncooperative" At Any Point





Analysis

Is the request reasonable?

8 C.F.R. 214.14(b)(3) 8 C.F.R. 245.24(2)(2)(ii)

Is the refusal unreasonable?

8 C.F.R. 245.24(a)(5)



Unreasonable Requests

Subjective, but consider if the request:

- Endangers victim, witnesses, family members, or others
- Subjects the victim to greater harm
- Increases trauma to victim
- Negatively affects the victim's ability to support herself or her family
- Is reasonable in light of the perpetrator's force, fraud or coercion of the victim



Reasonable Refusals

Subjective, but consider if it is reasonable to refuse a request if the victim is:

- In danger
- Unaware of request
- Being intimidated
- Being threatened
- Concerned about the safety of her family
- Under the belief that participating is more dangerous than not



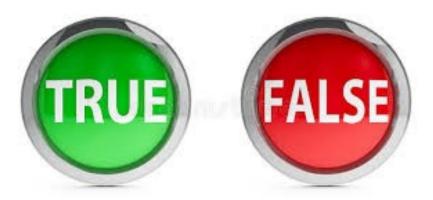
Evaluating Unreasonableness

DHS regulations require affirmative evidence and consideration of:

- Totality of the circumstances
- The nature of the victimization
- Applicable guidelines for victim/witness assistance
- Victim's fear or the abuser
- Trauma suffered (both mental and physical)
- Force, fraud or coercion
- Age, maturity, capacity of the applicant
 - -8 C.F.R. 245.24(a)(5)



You are in the best position to determine the reasons the victim may refuse to assist?





Practice Tips

- Proactively address witness intimidation
 - Monitor jail phone calls
 - Conduct wellness checks when appropriate
 - Recognize changes in communication patterns
- Collaborate with victim service professionals
- Communicate with victim's immigration attorney
- Establish safe points of contact with friends and family
- Identify tactics used by offender to assert power and control
- Continually safety plan with victim



"Only unsuccessful intimidation ever came to the attention of police or prosecutors."

Kerry Healey, National Institute of Justice, Research in Action, Victim and Witness Intimidation: New Developments and Emerging Responses (Oct. 1995)

https://www.ncjrs.gov/pdffiles/witintim.pdf



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 provides the victim an opportunity to explain
- DHS makes the ultimate decision



POLL #8: When should you certify?

- A. Immediately upon receipt of certification
- B. Once your agency has knowledge of a victim's past or present helpfulness or believes a victim is likely to be helpful
- C. When you are certain that the victim will testify at trial
- D. When the defendant is convicted

Ongoing Assistance

Continuing obligation to provide assistance when reasonably requested

Certification

Application

U Visa



Regulatory Requirement

While case is pending and after the victim is granted a U visa

Is the request reasonable?

8 C.F.R. 245.24(b)(5)

Is the refusal unreasonable?

8 C.F.R 214.14(b)(3)



Prosecutors' Primary Concern

PROS

CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit



Cross Examination

Does it go towards the witness' credibility, bias, or motive to lie?

- Courts take a broad view
- Strategize:
 - Take the "sting" out during direct examination
 - Prepare victim for cross-examination
 - Listen for the defense to "open the door" to rebuttal evidence



Rebuttal Testimony

- Once the defendant has alleged that the victim has a motive to lie, the prosecution can introduce the victim's prior consistent statements about the charged crime
- Door to this testimony call be opened at any time, but is likely done during crossexamination

Prior Consistent Statements F.R.E. 801(d)(B)

- Non-hearsay
- Not subject to Crawford
- Any consistent statement
 - offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying
 - to rehabilitate the declarant's credibility as a witness when attacked on another ground

Introducing Statements

Establish timeline

When did the victim learn about the benefit?

What statements were made before the victim learned

about the immigration benefit

Victim statements

- 911 call
- First responder
- Detective
- Friends
- Family
- Victim Advocate
- Others



Rebut charge that victim is lying to get immigration benefit



Certifying Early

PROS

CONS

Establish trust

> Build rapport

Protect from offender

Protect from deportation





Moving Forward

Implement U visa policies that are consistent with the law and legislative intent

Improve victim, community, and law enforcement safety by utilizing the U Visa as a crime fighting tool

Develop trial strategies to overcome common defenses



Resources, Training and Technical Assistance



Resources

- NIWAP's Library
 http://niwaplibrary.wcl.american.edu
- Materials and tools for law enforcement and prosecutors available at http://niwaplibrary.wcl.american.edu/language-access-materials-for-police-and-prosecutors/

Virtual Roundtables and Community of Practices

- Law enforcement, Prosecutors, Systembased advocates, community based advocates

- Interactive discussion
 - -Strategies to build rapport, establish trust, and ensure safety
 - –Ask questions from subject-matter experts and peers
- To register, <u>https://www.surveymonkey.com/r/85</u>





Trainings

- Onsite or virtual training on immigrant crime victim issues and language access
- Available for law enforcement, prosecutors, judges, victim service professionals, allied professionals, and others
- To sign up to have us bring a training to your jurisdiction go to:
 - http://www.niwap.org/requesttraining/



Training Page

- Here is the link to find more resources on using the U-Visa within the Criminal Justice System
 - -https://niwaplibrary.wcl.american.edu/cc aw-21-u-visa

Technical Assistance

- NIWAP
 - -Call: 202.274.4457
 - -Email: niwap@wcl.american.edu
- AEquitas at <u>www.aequitasresource.org</u>
 - -Jane Anderson janderson@aequitasresource.org

