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NIWAP Provides Technical Assistance To

• Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals.

• NIWAP supports professionals in the field working with immigrant crime victims so that they are more effective in helping more victims access all the help for which victims and their children are legally eligible.
• Law enforcement & Prosecutors only
• Interactive discussion
  – Strategies to build rapport, establish trust, and ensure safety
  – Ask questions from subject-matter experts and peers
• To register, visit www.surveymonkey.com/r/RT2022Registration
• Training materials and podcasts
  – USB with materials
Learning Objectives

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

• Promote victim safety and justice system participation by certifying that an individual is a victim qualifying criminal activity
• Develop pretrial and trial strategies to overcome common defenses
• Employ best practices for U visa certification
Immigration Relief for Crime Victims

T VISA
For victims of trafficking

ASYLUM
For victims of persecution

VAWA
For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, Other Serious Crimes

SIJS
Special Immigrant Juvenile Status for Child Victims

CONTINUED PRESENCE
For victims of trafficking

U VISA
For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, Other Serious Crimes
Why do you think these forms of immigration relief exist for victims of crime?
Legislative Intent

• We want crimes reported to police
• No one should be a victim of crime, especially violent crime
• Offenders prey upon the most vulnerable in our communities, often immigrants
• Without victims reporting crimes, we don’t know about the most dangerous offenders
  – Domestic violence
  – Sexual violence
Goals of Immigration Relief

- Increase victim participation in prosecutions
- Safety of victims, communities, and police
- Reporting of crime
- Community-police relations

NIWAP
# U Visa Statistics

**11/2011**

<table>
<thead>
<tr>
<th>% of U Visas</th>
<th>Criminal Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>76.1%</td>
<td>Domestic Violence &amp; Sexual Violence</td>
</tr>
<tr>
<td>9.9%</td>
<td>Felonious Assault, Murder, Manslaughter</td>
</tr>
<tr>
<td>8.47%</td>
<td>Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture</td>
</tr>
<tr>
<td>5.3%</td>
<td>Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation</td>
</tr>
</tbody>
</table>
• Increased justice system involvement
  - 114% increase in willingness to trust the police
  - 36% make police reports regarding future crimes
  - 22% help other victims report abuse and seek help/justice

• Significant reductions in abusers using the victim’s immigration status as a tool to perpetuate abuse
  - 74% decline in immigration related abuse
  - 78% decline in threats to snatch/cut off access to children
  - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

• **VAWA Self-Petitioners**
  - 62% participate in criminal investigations and prosecutions
  - 63% seek civil protection orders
  - 60% turn to the courts for child custody orders

• **U Visa Victims**
  - 70% participate in active criminal prosecutions and investigations
    - 29% willing to cooperate if their criminal cases went forward
  - 67% seek protection orders
  - 64% seek custody orders

How Best Practices in Domestic Violence Investigations Promote Officer Safety
DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS
Coercive Control Over Immigration Status

• Among abusive spouses who could have filed legal immigration papers for survivors:
  – 72.3% never file immigration papers
  – The 27.7% who did file had a mean delay of 3.97 years.

• 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

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
What prevents immigrant victims from reporting crime?
Fears

• Deportation
• Returning to home country
• Separation from children
• Lack of contact with family
• Family in danger in their country of origin
• Ostracism from the community
• Retaliation
Misconceptions

• Lack of 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
- Financial dependence on perpetrator
- Isolation
- Lack of transportation or child care
- Community pressure
- Family pressure
- Religious factors
How do prosecutors and law enforcement benefit from the U visa?
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
U Visas as a Crime Fighting Tool

Improving the reporting, investigation, and prosecution of violent crime & keeping everyone safer
• Law enforcement certification is
  – A required filing requirement
  – Just one part of the overall process it does not = citizenship
• Meant to promote reporting of crime
• Targets offenders who prey on most vulnerable victims
• Offender may be citizen or non-citizen
• Increases immigrant victim justice system participation
  – Rises significantly after the victim receives bona fide determination = work authorization/deferred action
• Bona Fide = protection from deportation and work authorization during wait for U visa
  – 4-5 years (Bona Fide); 21 years (U visa); 24 years (lawful permanent residency); 29 years (citizenship)
Bona Fide Determination Process
Implemented on June 14, 2021

- USCIS exercises its discretion to grant Employment Authorization Documents and deferred action
- Applies to victims and qualifying family members with pending, bona fide applications
  - “Bona fide” generally means made in good faith, without fraud or deceit
## U Visa Requirements

<table>
<thead>
<tr>
<th>Victim (Certification)</th>
<th>Helpful (Certification)</th>
<th>Harm (Victim’s Application)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Qualifying criminal activity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Possesses information about the crime</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Criminal activity occurred in U.S. or violated U.S. law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Admissible to US or granted waiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Has been, is being, or is likely to be</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Detection, investigation, prosecution, conviction, or sentencing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Substantial physical or mental harm as a result of having been a victim of criminal activity</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Qualifying Criminal Activity

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

**Similar activity: Hate crimes, video voyeurism, elder or child abuse**

These are general categories, and not specific crimes or citations to a criminal code.
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, other judicial official

- 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, U visa application must be filed within six months of the certification date.
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
Definition of “Helpfulness”
8 C.F.R 214.14(b)(3)

A victim *has been, is being, or is likely to be* helpful to law enforcement, prosecutors, judges, or other government officials.
• Certifying agency determines “helpfulness”
• No degree (or timing) of helpfulness required
  – *DHS adjudicates helpfulness based on– totality of the circumstances*
• Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
• Victim’s criminal history does not preclude U visa eligibility, particularly when crime connected to the abuse
• The investigation or prosecution can still be ongoing
• Certification can be “revoked”
Example of Helpfulness May Include:

- Calling 911
- Having a Rape Kit performed
- Providing a description of offender or their whereabouts
- Allowing photographs to be taken
- Filing for a protection order
- Bringing a minor victim to court
- Providing a statement about “other bad acts”
- Providing evidence of abuse in a custody, child welfare, or divorce case
- Testifying at a bond hearing, trial, or sentencing
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
- Case involving offender is open or closed
DHS Promotes a Victim-Centered Approach

- Includes practices that build trust, help stabilize victims, and minimize victimization and additional trauma. Equally values:
  - The identification and stabilization of victims, including providing immigration relief, and
  - The detection, investigation, and prosecution of perpetrators of serious crimes.
- Promotes use of qualified interpreters

National Immigrant Women’s Advocacy Project at the American University
Washington College of Law
When should you certify?
Why Not Wait Until Case is Over?

- 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

Filing and VAWA Confidentiality

- Original signed certification must be included in the victim’s U visa application
  - Certifier keeps a record of certification
  - Sealed original recommended

- Once the initial application is processed:
  - Victim’s case is flagged in the DHS computer system which generates an alert that victim is protected by VAWA confidentiality (8 U.S.C. 1367)

  Case is flagged notifying immigration officials about pending or approved VAWA, U visa or T visa case.
Certifying Early

**PROS**
- Establish trust
- Build rapport
- Protect from offender
- Protect from deportation

**CONS**
- Accusation that victim is lying for immigration benefit
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
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
- Protection order = Victim’s only contact with the justice system
Two Distinct Requirements
“Helpfulness” and “Cooperation/Assistance”

Helpfulness: **For Certification Before Filing the U Visa**
- Has been helpful *Or*
- Is being helpful *Or*
- Is likely to be helpful

TO.....
- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

Cooperation: **After Filing the U Visa until Permanent Residency**
- Ongoing obligation to provide cooperation or assistance
  - Reasonably requested by law enforcement or prosecutors
- Exception: Victim *may show that refusal to cooperate or assist was not unreasonable*
Did the victim unreasonably refuse to cooperate?

Although a case does not require prosecution or conviction, DHS still requires the victim to cooperate from filing, to receipt of the U visa, until receipt of lawful permanent residency.

The requirement to cooperate is modified when the victim’s refusal is reasonable. Look at totality of the circumstances.

Is the request for cooperation reasonable?

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

Is the victim’s refusal unreasonable?

8 C.F.R. 245.24(a)(5)
Is the victim's refusal to help unreasonable? 8 C.F.R. 245.24(a)(5)

Analyze this question from the victim’s point of view. Does the victim have a good reason for saying “no” to law enforcement’s request?

The victim may refuse in cases where:

• In danger
• Unaware of request
• Being intimidated
• Being threatened or subjected to force, fraud or coercion
• Concerned about the safety of her family
• Under the belief that participating is more dangerous than not
• Increased trauma to the victim
• Due to the victim’s age, maturity or capacity
• What if I ultimately can’t prosecute the case?
  - Not a factor with regard to certification
• What if the victim stops cooperating?
  - Was your request for cooperation reasonable?
  - Did the victim unreasonably refuse to cooperate
• What if the victim is lying?
  - Can be revoked
• Identify tactics used by offender to assert power and control
• Proactively address witness intimidation
  – Monitor jail phone calls
  – Conduct wellness checks when appropriate
  – Recognize changes in communication patterns

What you can do:
• Collaborate with victim service professionals
• Communicate with victim’s immigration attorney
• Establish safe points of contact with friends and family
• Continually safety plan with victim
U Visa Certification
Form Highlights

Supplement B, U Nonimmigrant Status Certification
Department of Homeland Security
U.S. Citizenship and Immigration Services

Certification form is available to download at https://www.uscis.gov/i-918
**START HERE - Type or print in black or blue ink.**

**Part 1. Victim Information**

1. Alien Registration 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)
   - 

5. Gender  □ Male  □ Female
In addition to the head of the agency, one or more certifying officials can be designated as a "Certifying Official"
You can & should certify multiple offenses when present in the case, even if not charged.
Attach state statutory language can be helpful.

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.

_____________________________________

_____________________________________

_____________________________________
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? □ Yes □ No

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.
REMEMBER: This certification only means that you believe they were a victim of a crime. This does not automatically mean that the victim will be granted immigration relief.
Prosecution Strategies
Analyze Case

Victim Selection
- Did the offender choose the victim because of a real or perceived vulnerability?

Criminal Act
- Did the offender use the victim's immigration status to commit a criminal act?

Escape Detection
- Was the victim prevented from reporting the crime to police because of their immigration status?
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 can be opened at any time, but is likely done during cross-examination
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
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
Defense allowed to ask about the victim inquiring as to the U Visa program

The court also ruled that if the defense inquired about the U Visa, the State could go into the victim’s “prior consistent statement indicating that he said whatever he said way back when before any motive regarding immigration” arose.
Discovery and Due Process

Must provide defense with any materials within the state’s control that may effect the credibility of any witness or that goes to any witnesses motive to lie or bias

1. Is it within the state’s control?

2. Does it go to the witness’ credibility, bias, or motive to lie?
# Custody and Control

<table>
<thead>
<tr>
<th>Within</th>
<th>Not Within</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Certification form</td>
<td>• Materials not provided to you</td>
</tr>
<tr>
<td>• Accompanying documentation; e.g. police reports, photographs,</td>
<td>– U visa application</td>
</tr>
<tr>
<td>medical records</td>
<td>– VAWA application</td>
</tr>
<tr>
<td>• Communications from immigration attorney</td>
<td>– T visa application</td>
</tr>
<tr>
<td>• Attachments provided to you</td>
<td>– Attachments to application</td>
</tr>
<tr>
<td></td>
<td>– Other materials submitted</td>
</tr>
<tr>
<td></td>
<td>• Immigration file</td>
</tr>
<tr>
<td></td>
<td>– Includes existence of &amp; actions taken in the case</td>
</tr>
</tbody>
</table>
Response to Motions to Compel

• Concede existence of certification
• Provide copy of certification and only accompanying documents that are in your custody and control
• Move to quash subpoena for immigration file:
  – Confidentiality protections
  – Impermissible “fishing expedition”
  – Case law
“The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status of both [the victim] and, potentially, defendant, which was completely irrelevant to this case. The trial court was well within its discretion in excluding reference to the visa.”
Resources

- **Technical Assistance**
  - Call: 202.274.4457
  - Email: niwap@wcl.american.edu
  - Web Library:
    https://niwaplibrary.wcl.american.edu/
- **Materials for certifying agencies on best practices for working with immigrant victims**
  - [https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials](https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials)
  - U and T Visa Certification Toolkit
  - DHS U Visa Certification Resource Guide
  - Roll call training videos
  - DHS Victim Centered Approach
Thank You!