


**MULTI-DISCIPLINARY BEST PRACTICES:  
IMMIGRANT DOMESTIC & SEXUAL VIOLENCE VICTIMS,  
LANGUAGE ACCESS AND THE U AND T VISAS**

**Kansas City, Missouri  
October 2, 2019 and  
Columbia, Missouri  
October 3, 2019**


National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---


---

---

---

---

**This project was supported by Grant No. 2017-TA-AX-K063 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.**


National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---


---

---

---

**Introduction**

- Faculty
- Housekeeping
- Pre-training assessment


National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Materials Summary

- Materials
  - Agenda
  - Hard copy of PowerPoint presentation
  - Evaluations
- USB Drives – supplementary tools and resources
- <http://niwap.org/go/lawenforcement>

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## USB Drive Materials

- U Visa Toolkit For Law Enforcement Agencies And Prosecutors
- DHS: U Visa Regulations and 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## General Caveats

- Women, men and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas
- *That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault*

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Participant Introductions, Goals and Expectations



**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Learning Objectives:

By the end of this training participants will be able to

- Identify victims and witness who qualify for crime victim based forms of immigration relief.
- Enhance officer, victim, and community safety and hold offenders accountable by utilizing immigration relief as a crime fighting tool
- Know how investigations and prosecutors can be improved using language access tools and an understanding of immigrant victim/offender dynamics
- Implement pretrial and trial strategies to combat common defenses to cases involving immigrant victims of crime

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## How Best Practices in Domestic Violence Investigations Promote Officer Safety

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

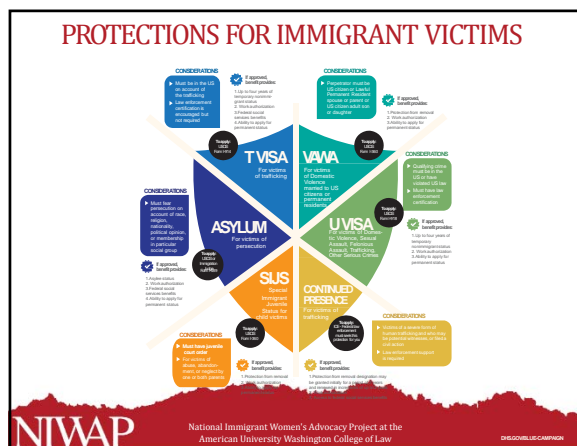
---

---

---

---

---




---

---

---

---

---

---

---

---

### Why do you think these forms of immigration relief exist for victims of crime?

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### 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

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---




---

---

---

---

---

---

---

---

### U Visa Statistics

11/2011

% of U Visas	Criminal Activity
<b>76.1% = Domestic Violence &amp; Sexual Violence</b>	
9.9%	Felonious Assault, Murder, Manslaughter
8.47%	Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture
5.3%	Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation

**NIWAP**  
National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

**NIWAP**  
National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Department of Homeland Security



- DHS Video

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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)

\*Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
  - Lifetime as high as 49.8%
  - Those married to citizens and lawful permanent residents – 50.8%
  - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
  - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
  - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).
- Latina college students
  - Experience the highest incidents of attempted rape compared to White, African American and Asian college students
  - Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000).

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse
  - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse\*
  - May predict abuse escalation
  - Corroborates existence of physical and sexual 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)

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

What prevents immigrant victims from reporting crime?

NIWAP

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

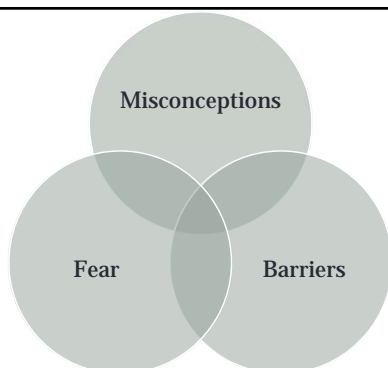
---

---

---

---

---



NIWAP

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### 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

NIWAP

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### 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

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Barriers

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

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

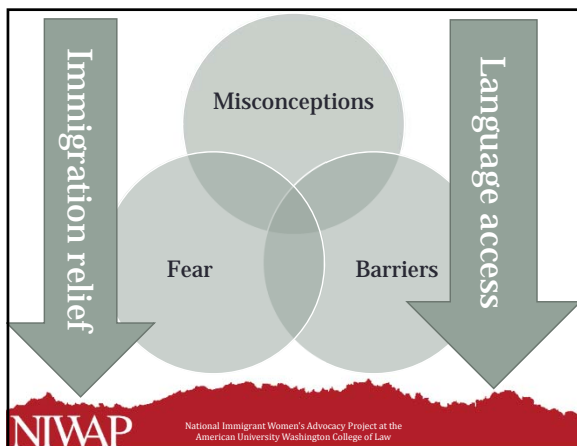
---

---

---

---

---




---

---

---

---

---

---

---

---

## VAWA Confidentiality Protections

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

### When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
  - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
  - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)

Kristina E. Szabo, David Stauffer, Benish Anver, 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)

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

## 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
  - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

### DHS Victim Protections For Whom? Statutes/Regulations/Policies

- VAWA confidentiality
  - VAWA self-petition, cancellation, suspension
  - Battered Spouse Waiver
  - U Visas
  - T Visas
  - Abused spouses of work visa holders who file for VAWA employment authorization
- *All victims abused by a spouse or parent*

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### DHS VAWA Confidentiality Computer System

- DHS “red flag” “384” computer system to identify victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
  - Victims of domestic violence
  - Crime victims
  - Human trafficking victims

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Victim Witness DHS Memo 2011 Continuing Effect Confirmed 4/19

- Goal: “Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”
- “Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”
- Crime victims and witnesses should receive “release from detention and deferral or a stay of removal.”

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
  - A shelter
  - Rape crisis center
  - Supervised visitation center
  - Family justice center
  - Victim services program or provider
  - Community based organization
  - Courthouse in connection with any
    - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### VAWA Confidentiality Violations



- Each violation sanctions against federal government officials
  - Disciplinary action and/or
  - \$5,000 fine for the individual
- Dismissal of the immigration proceeding against the non-citizen

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Large Group Discussion: Multi-Disciplinary Collaboration Strategies

- Based on federal immigration relief and VAWA confidentiality protections for immigrant victims, what role might each of the following play?
  - Law enforcement
  - Prosecutors
  - Victim advocates

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## What countries are you seeing immigrant survivors coming from?

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Missouri Demographics (2017)\*

- ❖ Total foreign born population – 257,102\*
- ❖ 20% of the state's 5.7 million people are foreign born
  - 48.2% naturalized citizens
  - ≈40.5% lawful permanent residents or temporary status\*\*
  - ≈59.5% undocumented\*\*
- ❖ 70.0% rise in immigrant population from 2000 to 2017
- ❖ 8.2% of children in the state under age 18 have 1 or more immigrant parents
  - 92.1% of children with immigrant parents in the state are U.S. native

(Feb. 2018)  
\*Source: <https://www.migrationpolicy.org/programs/na-immigration-policy-program-data-hub/naauthor/na-immigrant-population-profiles>

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Missouri– Countries/Regions of Origin and Limited English Proficiency (2017)\*

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>▶ Asia–35.8%           <ul style="list-style-type: none"> <li>▶ China (7.8%)</li> <li>▶ India (7.6%)</li> <li>▶ Philippines (4.3%)</li> <li>▶ Vietnam (3.3%)</li> <li>▶ Korea (2.8%)</li> </ul> </li> <li>▶ Latin America 28.8%           <ul style="list-style-type: none"> <li>▶ Mexico (16.5%)</li> <li>▶ Brazil (1.6%)</li> <li>▶ El Salvador (1.5%)</li> </ul> </li> <li>▶ Europe –18.9%           <ul style="list-style-type: none"> <li>▶ Germany (2.9%)</li> <li>▶ United Kingdom (2.3%)</li> </ul> </li> <li>▶ Africa – 9.2%</li> <li>▶ Middle East – 4%</li> <li>▶ Canada – 2.0%</li> </ul> | <p>Limited English Proficiency<br/>(Speak English less than very well)</p> <ul style="list-style-type: none"> <li>▶ Naturalized citizens 26.4%</li> <li>▶ Non-citizens 49.3%</li> </ul> <p>Languages Spoken at Home</p> <ul style="list-style-type: none"> <li>▶ Spanish (147,568)</li> <li>▶ Chinese (25,369)</li> <li>▶ German (24,485)</li> <li>▶ Arabic (12,371)</li> <li>▶ Vietnamese (11,132)</li> <li>▶ French (10,008)</li> </ul> |
|--|---|

\*Source: <https://www.migrationpolicy.org/data/nao-profiles/nao-demographics/MO>  
(Feb. 2018)

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---



## Language Access

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




---

---

---


---

---

---


---

---



## 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."




---

---

---


---

---

---

---


---



## 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"




---

---

---

---

---

---

---

---

## Interpretation

**api**gbv  
ASIAN PACIFIC INSTITUTE  
on GENDER-BASED VIOLENCE

The conversion of spoken language into another language verbally

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Translation

**api**gbv  
ASIAN PACIFIC INSTITUTE  
on GENDER-BASED VIOLENCE

- The conversion of written text from one language into the written text of another language

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## DOJ Model Guidance

**api**gbv  
ASIAN PACIFIC INSTITUTE  
on GENDER-BASED VIOLENCE

- 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**

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---


---


---

---

---

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





National Immigrant Women's Advocacy Project at the American University  
Washington College of Law

---

---

---

---


---

---


---


---

### 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?





National Immigrant Women's Advocacy Project at the American  
University Washington College of Law

---

---

---


---

---

---


---

---



What do you do when the people at the  
scene are limited English proficient?

How can you get the information you need  
to secure the scene?



National Immigrant Women's Advocacy Project at the American  
University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Certified Interpreter



- Has been tested through a valid and reliable testing instrument
  - Medical
  - Legal
- Sign Language Interpreters *MUST* be certified



**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

**apigbv**  
ASIAN PACIFIC INSTITUTE  
on GENDER-BASED VIOLENCE

### What is a Qualified Interpreter?

- Different than a certified interpreter
- Category for languages that certification does not exist but the interpreter has:
  - completed interpreter training and
  - has experience interpreting.



**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---



---

---

**apigbv**  
ASIAN PACIFIC INSTITUTE  
on GENDER-BASED VIOLENCE

### 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.

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

**apigbv**  
ASIAN PACIFIC INSTITUTE  
on GENDER-BASED VIOLENCE

### Using Qualified Interpreters

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

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Case Study - Jose Lopez Meza - 2008



- Charged with first degree murder – Charge was dropped to manslaughter
  - Baby died after Meza shook his 3 week old son so violently the child's brain began to swell, ultimately killing him
  - Detectives used a Spanish speaking officer to assist with the interview
  - Review of the tapes by court appointed certified interpreters revealed that the officer interpreting left out some of the information, misinterpreted several statements made by the suspect and the detective

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### The Investigation Begins



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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## 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



**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Tips for Working with Interpreters



- Control the interview
- Pre-session with the interpreter
  - Where are they located?
  - Establish what your rules are
    - Hand signals
- Interpreter has to interpret everything that you say
  - Example: when you are explaining confidentiality

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Red Flags



- Can you understand the interpreter?
- Does the LEP person look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter summarizing?
- Is there a change in the individual's demeanor?
- Are they using English words?



**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Interpretation Best Practices



- Evaluation systems
- Interpreter uses a dictionary, takes notes
- Interpreter comfortable with subject matter of the case
- Address cultural experiences ahead of time
- Ensure that they do not know the parties
  - If using telephonic interpreters: first ask where they are located
- Team interpreting and interpreter breaks

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## U Visas as a Crime Fighting Tool

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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## What, if anything, do you know about U Visas?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## U Visa Basics

- Increases immigrant victim participation in criminal justice system
- Meant to promote reporting of crime
- Law enforcement certification is just one part of the overall process it does not = citizenship
  - U visa holders can qualify for lawful permanent residency – no guarantee
- Targets offenders who prey on most vulnerable victims
- Only 10,000 U visas awarded annually
- Can be “revoked”

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---


---

---

---

### Major Forms of Relief

- VAWA self-petition
  - Abuse by US citizen or lawful permanent
    - Spouse, former spouse, parent, step-parent, over 21 year old child
- Special Immigrant Juvenile Status
  - Immigrant children abused, abandoned or neglected by one of their parents
    - (U.S. or abroad)
- U Visa
- T Visa



National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---


---

---


---

---

### Department of Homeland Security



- DHS Video 1



National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---


---

---

---

### U Visa Requirements

Victim	Helpful	Harm
<ul style="list-style-type: none"> <li>• Qualifying criminal activity</li> <li>• Possesses information about the crime</li> <li>• Criminal activity occurred in U.S. or violated U.S. law</li> </ul>	<ul style="list-style-type: none"> <li>• Has been, is being, or is likely to be</li> <li>• Detection, investigation, prosecution, conviction, or sentencing</li> </ul>	<ul style="list-style-type: none"> <li>• Substantial physical or mental abuse as a result</li> </ul>



National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

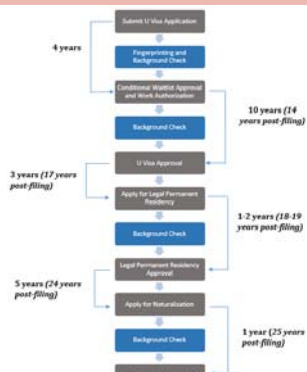
## Qualifying Criminal Activity

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	

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

## U Visa Process Timeline



**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

## U Visa Basics

Cont'd.

- Application for a U Visa requires a certification from a government official
- Certification is one part of the overall application
- Victim must submit additional documentation and proof in full application for U Visa

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## U Visa Application Process

**Filing to decision:**  
**Decision to receipt of U Visa**  
**(4 to 6 years):**



**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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)
  - Review of criminal history
  - Review of immigration history
- Is the victim admissible?

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

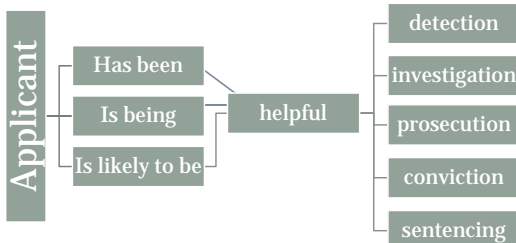
---

---

---

---

## Helpfulness



**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Making Determination

- Certifying agency determines “helpfulness”
- Helpfulness can include:
  - Calling 911
  - Providing a description of offender
  - Allowing photographs to be taken
  - Giving information about the offender’s whereabouts
  - Statement about prior bad acts

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Not Required

- Conviction
- Charges filed
- Offender arrested
- Testimony at trial
- Necessary witness
- Within statute of limitations
- Offender is identified
- Offender alive

Victim-  
centered  
approach

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Analyzing Requests for Certification

What criminal activity occurred?

Identify the victim or indirect victim

Determine helpfulness

Identify if any family members were implicated in the crime

Note any injuries observed; provide documentation

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

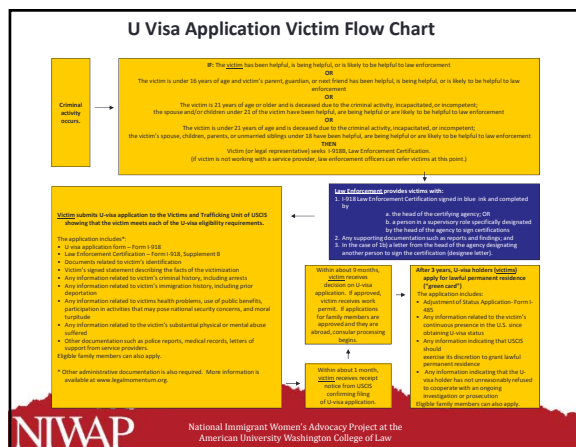
---

## How will a U visa certification request come to you?

- From victim advocate or immigration attorney
- As a police officer you are the first responder
- As a prosecutor you might have continued contact with the victim and might be first to identify victim's U visa eligibility

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law



### Government Official provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by:
  - a. the head of the certifying agency; OR
  - b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b) a letter from the head of the agency designating another person to sign the certification (designee letter).

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

## U Visa Certification Form Highlights



**Supplement B, U Nonimmigrant Status Certification**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**USCIS  
Form I-918**

OMB No. 1615-0154  
Expires 02/28/2019



Certification form is located in your materials.  
Please locate to follow along.



National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

**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)

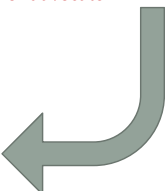
3.b. Given Name (First Name)


3.c. Middle Name

4. Date of Birth (mm/dd/yyyy)

5. Gender ☐ Male ☐ Female

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





National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---


---

---

---

---

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


Name of Certifying Official

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. Title and Division/Office of Certifying Official



National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

**Part 3. Criminal Acts**

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

1. 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)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Manslaughter
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Murder
<input type="checkbox"/> Attempt to Commit Any of the Named Crimes	<input type="checkbox"/> Obstruction of Justice
<input type="checkbox"/> Being Held Hostage	<input type="checkbox"/> Perjury
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Prostitution
<input type="checkbox"/> Conspiracy to Commit Any of the Named Crimes	<input type="checkbox"/> Rape
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Sexual Assault
<input type="checkbox"/> Extortion	<input type="checkbox"/> Sexual Exploitation
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Solicitation to Commit Any of the Named Crimes
<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Stalking
<input type="checkbox"/> Fraud in Foreign Labor Contracting	<input type="checkbox"/> Torture
<input type="checkbox"/> Incest	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Witness Tampering

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

You can & should certify multiple offenses when present in the case.

---

---

---

---

---

---

---

---

---

---

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.

\_\_\_\_\_

\_\_\_\_\_

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

---

---

4.a. Did the criminal activity occur in the United States (including Indian country and military installations) or the territories or possessions of the United States? ☐ Yes ☐ No

4.b. If you answered "Yes," where did the criminal activity occur? \_\_\_\_\_

5.a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? ☐ Yes ☐ No

5.b. If you answered "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction. \_\_\_\_\_

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. \_\_\_\_\_

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

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

Make copies of all reports and photographs and attach.

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

---

---

---

---

---

---

---

---

---

---

Let's skip Part 4 for now  
and go to Part 5

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

**Part 5. Family Members Culpable In Criminal Activity**

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? ☐ Yes ☐ No

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



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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

**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.S. Immigrant 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 ink)   
2. Date of Signature (mm-dd-yyyy)   
3. Daytime Telephone Number   
4. Fax Number

*"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"*

**REMEMBER:** This is merely a certification of the above information and does not confer any immigration relief.

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law



Why would a victim report a crime  
and then refuse to participate in the  
ensuing investigation and trial?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Reasons for Refusal

- Fear
- Threats or intimidation
- Family pressure
- Family unity
- Financial
- Known v. unknown
- Victim-offender dynamics

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

Are you in the best position to  
determine the reasons the victim  
may refuse to assist?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Witness Tampering

- Coordinate to detect signs
  - Change in frequency of contact
  - Missed appointments
  - Recantation or minimization
- Investigate
  - Follow up with victim
  - Contact victim advocate, immigration attorney, others that had contact with victim
  - Interview friends, neighbors, and family
  - Jail calls

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

*"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>

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

What if you still believe the victim has "unreasonably refused" to assist in the investigation or prosecution?

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

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

DHS provides victim an opportunity to explain. If you just don't sign, the victim has no opportunity explain. They are unable to apply.

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial  
Law Enforcement, Prosecutors, Judges, and  
Other Government Agencies



[https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf)

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## When should you certify?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Timeline

- 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 intimidate with threats

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Certifying Early

**PROS**

**CONS**



**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

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



**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### T Visa Overview

- Non-Immigrant, 4 Year visa
  - Victim of severe form of trafficking
  - In the US or territories on account of trafficking
  - Respond to reasonable requests for collaboration with investigation and prosecution unless victim is under 18
    - Limited "trauma exception"
  - 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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/](http://www.ojp.usdoj.gov/vawo/laws/vawo2000/))

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

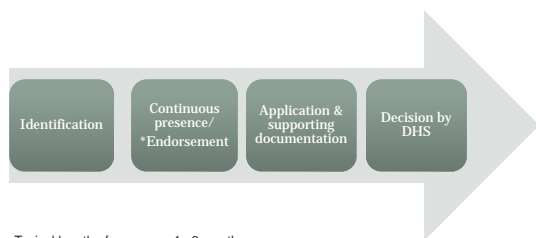
---

---

---

---

## The T Visa Application Process



Typical length of process = 4 - 6 months

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Human Trafficking

- Generally: use of force, fraud and/or coercion to exploit a person for profit.
- Federal statute: TVPA 2000
- Every state now has their own human trafficking statute – (labor trafficking), (sex trafficking)

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Act	Means	Purpose
<ul style="list-style-type: none"> <li>• Recruits</li> <li>• Entices</li> <li>• Harbors</li> <li>• Transports</li> <li>• Provides</li> <li>• Obtains</li> <li>• Advertises</li> <li>• Maintains</li> <li>• Patronizes</li> <li>• Solicits</li> <li>• Benefits, financially or by receiving anything of value</li> </ul>	<ul style="list-style-type: none"> <li>• Force</li> <li>• Fraud</li> <li>• Coercion</li> </ul>	<ul style="list-style-type: none"> <li>• Commercial Sexual Activity</li> </ul>

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Act	Means	Purpose
<ul style="list-style-type: none"> <li>• Recruits</li> <li>• Harbors</li> <li>• Transports</li> <li>• Provides</li> <li>• Obtains</li> <li>• Benefits, financially or by receiving anything of value</li> </ul>	<ul style="list-style-type: none"> <li>• Force</li> <li>• Restraint</li> <li>• Threats of harm</li> <li>• Abuse or threatened abuse of the legal system</li> <li>• Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint</li> </ul>	<ul style="list-style-type: none"> <li>• Involuntary servitude</li> <li>• Peonage</li> <li>• Debt Bondage</li> <li>• Slavery</li> </ul>

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

Most statutes have a broad definition of "coercion" that includes non-physical coercion.

The diagram consists of three overlapping circles. The top circle is labeled 'Force'. The bottom-left circle is labeled 'Coercion'. The bottom-right circle is labeled 'Fraud'. The circles overlap in the center and at the intersections of two circles.

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

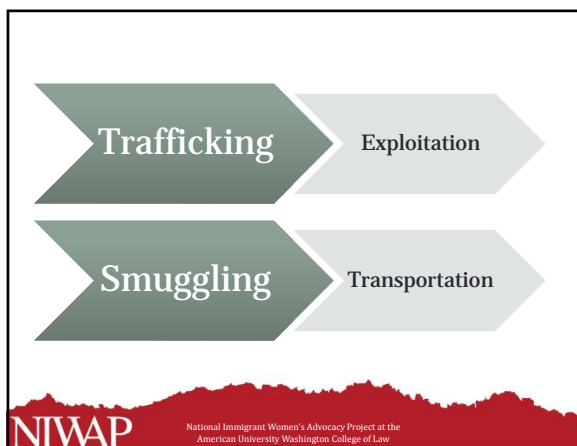
---

---

---

---

---




---

---

---

---

---

---

---

---

**Venues**

Labor Trafficking	Commercial Sexual Activity
<ul style="list-style-type: none"> <li>• Domestic servitude</li> <li>• Hotels &amp; restaurants</li> <li>• Landscaping</li> <li>• Construction</li> <li>• Agriculture</li> <li>• Massage parlors</li> <li>• Criminal activity</li> </ul>	<ul style="list-style-type: none"> <li>• Prostitution                             <ul style="list-style-type: none"> <li>– Online</li> <li>– Street</li> <li>– Brothels</li> <li>– Massage parlors</li> </ul> </li> <li>• Pornography</li> <li>• Stripping</li> <li>• Web cams</li> </ul>

NIWAP National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

**Labor Trafficking Statistics**

<ul style="list-style-type: none"> <li>• 47.5% Men – 52.5% Women</li> <li>• 10% Minors – 90% Adults</li> <li>• 46% Single – 45% Married</li> <li>• 64% had children</li> <li>• 33% some college or higher</li> <li>• Average age = 33</li> <li>• 71% of victims entered the U.S. <u>legally</u></li> </ul>
--

"Understanding the Organization, Operation and Victimization of Labor Trafficking in the United States", Urban Institute and Northeastern University in collaboration with Freedom Network USA (2014)

NIWAP National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Helpfulness

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

- Understand the scope of the helpfulness standard
- Apply the helpfulness standard to U visa certifications



**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Hypotheticals Small Group Activity

- Is this person eligible for a U Visa certification?
- *Stories* *handout*



**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### What does it mean for a victim to "unreasonably refuse" to provide assistance?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### U Visa Statute INA 245(m)(1); 8 U.S.C. 1255(m)(1)

- Allows a U visa to be granted when
  - The victim is, was or list likely to be helpful
- Once the victim's case is filed
  - The victim may not unreasonably refuse to provide assistance 8 C.F.R. 245.24(b)(5)
- U visa regulations 8 C.F.R 214.14(b)(3)
  - Require that requests for assistance be reasonable

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Whose Requests? 8 C.F.R.245.24(a)(5)

- “Official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity”
- That was the basis for the U visa application

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Reasonableness of Request 8 C.F.R. 245.24(a)(5)

- May refuse if the requests for assistance were unreasonable 8 C.F.R. 245.24(e)(2)(ii)
  - Consider general law enforcement, prosecutorial, judicial practices
  - The kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud
  - The nature of the request to the alien for assistance.

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Large Group Discussion

- What are law enforcement and prosecution best practices for criminal investigations and prosecutions in
  - Domestic violence cases?
  - Sexual assault cases?
  - Child abuse cases?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable" – Regulations 245.24(a)(5)

- Considerations:
  - 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
- Based on affirmative evidence




---

---

---

---

---

---

---

---

### Prosecution Strategies




---

---

---

---

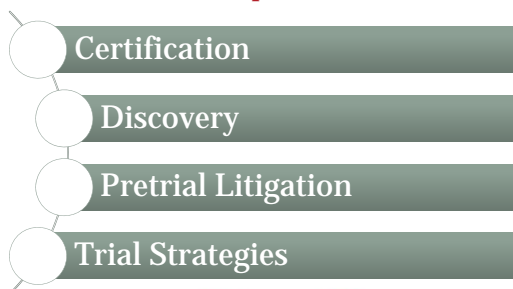
---

---

---

---

### Topics




---

---

---

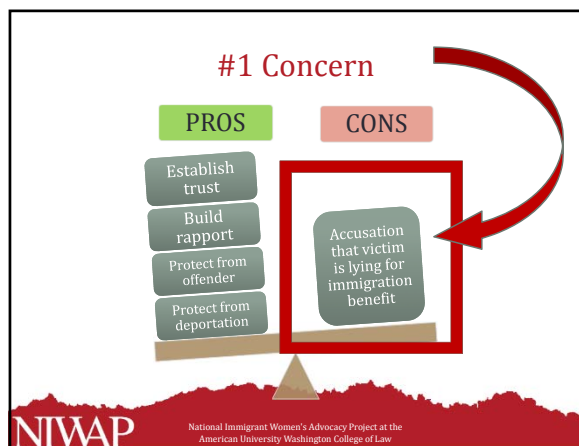
---

---

---

---

---




---

---

---

---

---

---

---

---

**Certification**

- Prosecutors can sign certification forms
  - Must be designee
- Any certifying agency can certify at any time they have probable cause
- Certification policies & practices should be discussed at collaborative partner meetings
  - e.g. CCR, MDT, Task Force
- Certifying prosecutor should consider not being the trial prosecutor

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

**Is the victim's immigration status ever relevant to the prosecution's case?**

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Analyze Case

Victim Selection


- Did the offender chose 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?


National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---


---

---

---

### Victim Selection

- Chose a particular area of town to commit crime
- Target victims working in specific venues; e.g. agriculture, hospitality, or construction
- Victimize known immigrant
- Instill vulnerability by jeopardizing victim's immigration status


National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---


---

---

---

### Criminal Act

- Human trafficking
- Rape by threats
- Power and control within domestic violence relationship
  - Intimate partner, spouse, child, elder abuse
- Threats as part of stalking or harassment
- Witness intimidation or tampering
- Threats in cases of robbery, extortion, felonious assault, or false imprisonment


National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

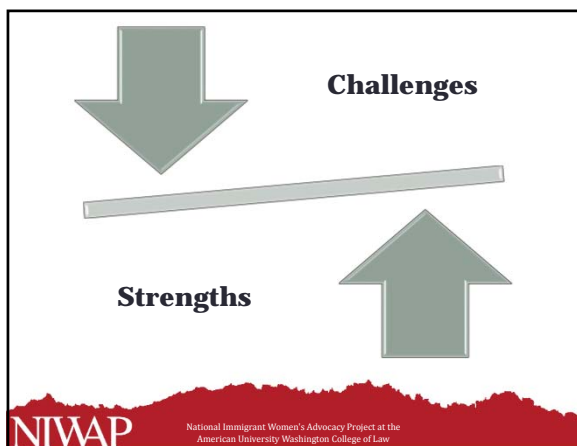
---

---

---

---

---




---

---

---

---

---

---

---

---

### Pretrial Strategies

- Preview evidence for judge
- Brief complex legal issues
- Establish evidence that will and will not be admitted at trial
- Requires thoughtful consideration of case well in advance of trial date

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Motions in Limine

Immigration Status	Other Bad Acts	Experts
<ul style="list-style-type: none"> <li>• Exclusion</li> <li>• Limitation</li> </ul>	<ul style="list-style-type: none"> <li>• Prior threats</li> <li>• Subsequent threats or intimidation</li> </ul>	<ul style="list-style-type: none"> <li>• Victim Dynamics</li> <li>• Immigration Relief</li> </ul>

**NIWAP** National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Immigration Status

- Exclude if irrelevant
  - No immigration benefit provided
  - Not relevant to offender's crime
- Cross-examination will be allowed as to application for immigration benefit
  - Limit scope
  - Opens the door to rebuttal evidence

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## People v. Alvarez Alvarez

No. G047701, 2014 WL 1813302, at \*5  
(Cal. Ct. App. May 7, 2014), review denied (July 16, 2014)

*"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."*

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Other Bad Acts

Fed. R. Evid. 404(b)

- Includes prior and subsequent "bad acts"
- Does not need to rise to the level of criminal activity
- May go to prove motive, knowledge, intent, opportunity, or lack of mistake, self-defense, or accident
- Can be relevant to establish the "nature of the relationship" or explain victim behavior such as delayed reporting or lack of participation

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---


---

---

---

---

When do you start talking about immigration status?



NIWAP National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

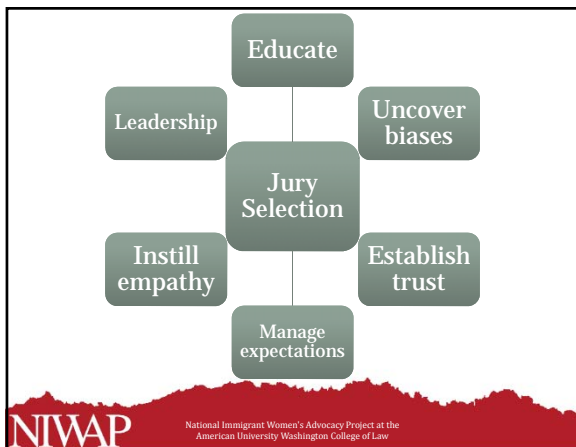
---

---

---

---

---




---

---

---

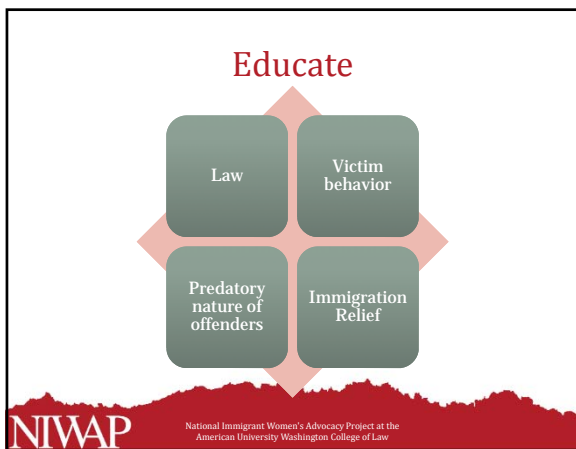
---

---

---

---

---




---

---

---

---

---

---

---

---

## Manage Expectations

- Victim may not have immediately reported the crime
- Victim may be undocumented
- Victim may have engaged in criminal behavior
- Offender may not have used violence, but merely threats of violence or deportation

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Instill Empathy

- Humanize the victim
- Discuss vulnerabilities
- Use jurors to discuss analogous situations involving domestic violence and sexual assault
  - Fears
  - Threats
- Explore what the “American dream” means

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Uncover Biases

- Will the juror be able to “get” ...
  - Victim is not on trial
  - Predatory nature of offenders
  - Equal protection of the law for immigrant victims
  - Intent of immigration relief for victims of crime

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Establish Trust

- Be accurate about the law
- Do not hide “bad facts”
- Be respectful to the judge, defense attorney, defendant, court staff, and jurors
- Establish yourself as the authority in the courtroom

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Leadership

- Inspire jurors
- Be authentic and genuine
- Do not be repetitive
- Use appropriate humor
- Demonstrate professionalism
- Be prepared

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Offender-Focused Theme

**PREYING ON  
THE MOST  
VULNERABLE**

**AMERICAN  
DREAM  
BECAME A  
NIGHTMARE**

**BETRAYAL OF  
TRUST,  
FAMILY, AND  
THE LAW**

**POWER OVER  
THE  
POWERLESS**

**PICKED THE  
PERFECT  
VICTIM**

**KNEW THERE  
WAS NO  
WHERE TO  
TURN**

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Victim Testimony

- Introduce the victim to your jury
- Recreate the reality of the crime
- Illustrate fear and emphasize threats of
  - Deportation
  - Separation from family
  - Loss of employment or financial support
- Address immigration status and application for immigration relief

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

Motive to lie

Rebut charge that victim is lying to get immigration benefit

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Example Questions on Rebuttal

- "Defense counsel asked you about your application for a U Visa, when did you first hear about the U Visa?"
  - "After speaking with detective, I spoke with an advocate at the police station"
- "Prior to speaking with the advocate, did you provide the detective with an recorded statement?"

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## 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?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Custody and Control

### Within

- Certification form
- Accompanying documentation; e.g. police reports, photographs, medical records
- Communications from immigration attorney
- Attachments provided to you

### Not Within

- Materials not provided to you
  - U visa application
  - VAWA application
  - T visa application
  - Attachments to application
  - Other materials submitted
- Immigration file
  - Includes existence of & actions taken in the case

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Strategies to Limit Risk

- Certify based on information the prosecutor/police have
  - Do not need and should not seek additional information or materials
- Work with local attorneys and advocates working with immigrant victims
  - Tell them you will not accept more information
  - Do not accept materials offered/sent

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## 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

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## State v. Marroquin-Aldana

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- Court ruled there was “insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Hawke v. U.S. Dep't of Homeland Sec.

No. C-07-03456 RMW, 2008 WL 4460241, at \*7  
(N.D. Cal. Sept. 29, 2008)

*“[T]he strict confidentiality of the Violence Against Women Act still applies to any petitions filed by Mrs. Hawke. While Mr. Hawke's Sixth Amendment right to Compulsory Process permits him access to some information held by the government, it does not permit him to receive absolutely privileged information like any records held by DHS here.”*

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Expert Witness

- Victim responses to trauma
- Dynamics of domestic violence experienced by immigrant victims
- Relationships between offenders and victims in human trafficking cases
- Victim protections under immigration law
- Other subjects that may be outside the common jurors understanding

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Fed. R. Evid. 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data...

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

Where can you find an expert?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Possible Experts

### Dynamics

- Experience working with immigrant victims
  - DV Shelter
  - Advocates
  - Rape Crisis Center
  - Investigators
- Scholars

### Immigration

- Immigration attorney
- Law Professors
- Other attorneys that have experience with immigration issues; e.g. family law, legal aid

**Best Practice: Do not use any expert that is involved with the case or has worked with the victim**

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Victim Advocates and Attorneys as Witnesses

- What could they provide?
- What are the precautions you would want to take?
- Have you served or used victim advocates/attorneys as expert witnesses?
- What would you want to know to prepare this expert testimony?

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## State v. Olvera-Guillen

2008-Ohio-5416

- Court allowed defense to call an expert witness to explain the U Visa process
- Prosecutor's comments not condoned, but not reversible:

*"You know there is a very good reason why that U-visa program is in place because without it, people like him, can have free rein. They rape, pillage and plunder a whole underclass of people in this country simply because they are illegal aliens, knowing full well that they in their perpetual fear factor and their state of paranoia are not going to go running to the police."*

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Certifying Early

PROS


CONS


Establish trust

Build rapport

Protect from offender

Protect from deportation





National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---


---

---

---

### Going Forward

- When probable cause exists, certify early to ensure victim safety and enhance victim participation
- Focus on the offender's actions throughout the investigation and prosecution
- Litigate discovery and pretrial motions to ensure just results
- Turn challenges into strengths



National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### How does language access and U visa certification improve policing in immigrant communities?



National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

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

- IACP supports training, education, communication and “increased police leadership involvement” in U/T visa certification
- IACP committed to increasing collaboration and ongoing efforts to promote U and T visa certification
  - To highlight that U and T visas are
  - “effective tools for law enforcement agencies that enhance public safety, officer safety and protection of victims nationwide.”

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### IACP 2018 Resolution – U/T Visa Certification --

- Improves cooperation between law enforcement and immigrant communities
- Are significant crime fighting tools
- Increases “trust between law enforcement officials and otherwise reluctant immigrant communities who fear that contacting police will lead to their deportation”
- Provides an opportunity to increase collaboration with victim advocacy groups

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

### Small Group Discussion

- Discuss best practices for and benefits of collaboration between law enforcement/prosecution and victim advocacy groups who work with immigrant victims.
- Provide examples of benefits of these collaborations for
  - Law enforcement
  - Prosecutors
  - Victim advocates

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

Does your agency have a  
U Visa policy/procedure ?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### In Your Resources and Materials

- IACP Resolution
- Model Policy
- Model Policy Discussion Paper
- NIWAP provides technical assistance on U visa policies

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

### Large Group Discussion

- City of X, Law Enforcement Certification Protocol
- Are these true or false?
  - Identify any problems with the protocol
    - Note provision numbers
  - How could the protocol be improved?
  - What is missing?

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

---

---

---

---

---

---

---

---

## Small Group Discussion

**Based on the training today, what will you take back when you return to your agency?**

- What might you want to implement?
- Questions you want to ask?

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## DHS Resources



**U.S. Immigration  
and Customs  
Enforcement**

### Victim Assistance Specialist

SAC Kansas City  
Name: Tereasa Brown  
Phone: (816) 802-8572  
Email: Tereasa.Brown2@ice.dhs.gov

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Resources

- › **Technical Assistance**
  - › Call: 202.274.4457
  - › Email: niwap@wcl.american.edu
- › **Materials on U visa and Immigrant Victims Legal Rights**
  - › Visit <http://niwaplibrary.wcl.american.edu>
  - › U Visa Certification Toolkit
  - › DHS Answers to Law Enforcement Reasons for Not Certifying
  - › USCIS Q & A on U Visa Certification
  - › Roll call training videos
  - › All available at: <http://niwap.org/lawenforcement>

**NIWAP**

National Immigrant Women's Advocacy Project at the American University Washington College of Law

---

---

---

---

---

---

---

---

## Evaluations

- Evaluations are in your training packet
- Certificates



---

---

---

---

---

---

---

Thank You!



---

---

---

---

---

---

---