Louisiana District Attorneys Association

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

April 22, 2021 WEBINAR



Introductions



Leslye Orloff Director National Immigrant Women's Advocacy Project, American University Washington College of Law

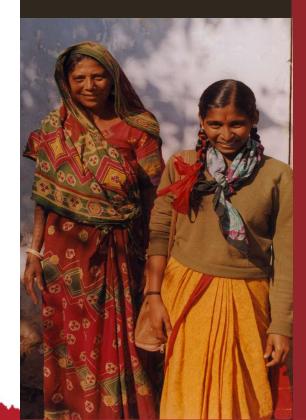


Chris Freeman Senior Assistant District Attorney Hennepin County

The National Immigrant Women's Advocacy Project Brochure

MISSION

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



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

NIWAP BY THE NUMBERS

- 8,500+ personalized answers to technical assistance calls
- 5,500+ legal professionals helped
- 440 training events conducted
- 29,780 people trained by NIWAP
- 11,000+ subscribers to our newsletter
- 665 publications created
- 615,000+ downloads of NIWAP materials from our free web library

**Data reported from January 2012-April 2019

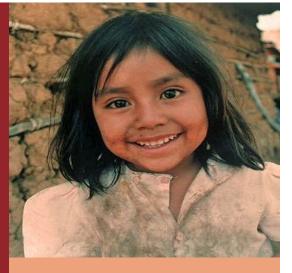
CONTACT US

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🧷 @NIWAP_WCL

in NIWAP





NIVAP

The National Immigrant Women's Advocacy Project

American University Washington College of Law

Who We Are

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

AMERICAN AMERICAN

WASHINGTON COLLEGE OF LAW

What We Do

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

POLL #1: Who is participating?

- A. Law enforcement
- B. Prosecutor
- C. Systems-based Victim Service Professional
- D. Community-based Victim Service Professional
- E. Victim Attorney

Other – Please type in the Chat Box



Learning Objectives

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

- Articulate qualifications for the U Visa program
- Identify how the U Visa program can improve relationships and build trust between immigrant crime victims, law enforcement and prosecutors
- Enhance victim participation in investigations and prosecutions

General Caveats

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

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

Primary Immigration Protections for Victims



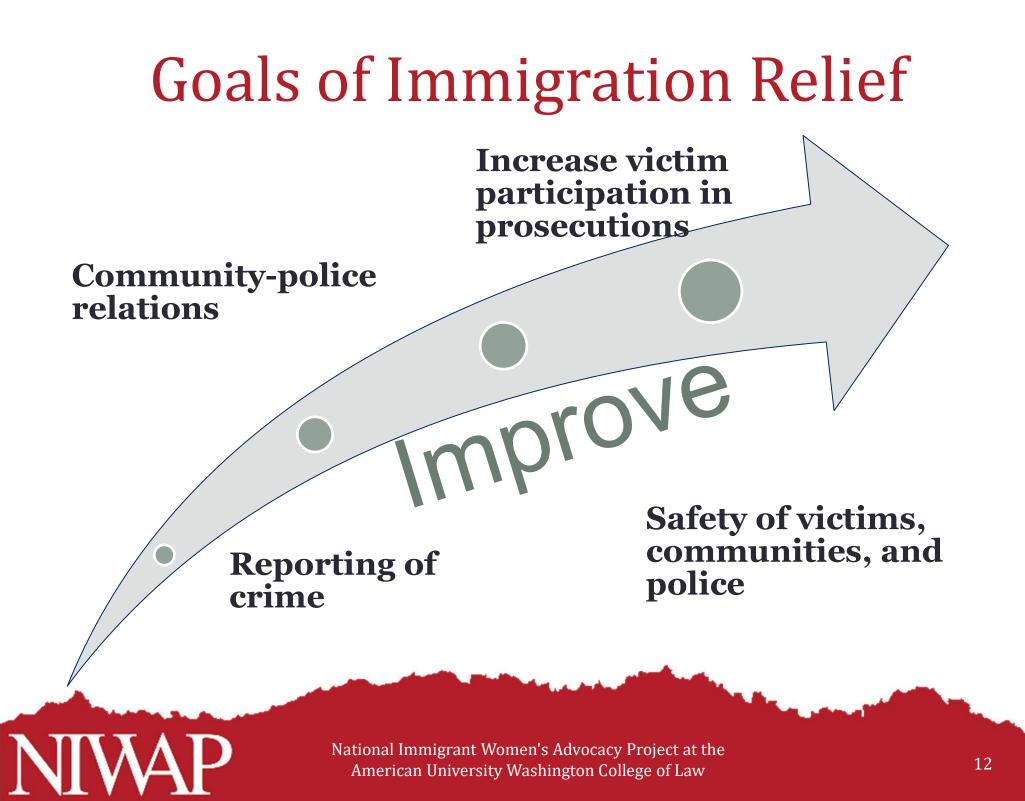
POLL #2: Why is immigration relief available to victims of crime?

Chat		
Public	Private	

Please type your answers in the Chat Box.

Legislative Intent

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



Immigrant Crime Victim Dynamics & the U Visa



POLL #3: Immigrants are uniquely affected by domestic and sexual violence because ...

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

Immigration Related Abuse

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



Screening Tips

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

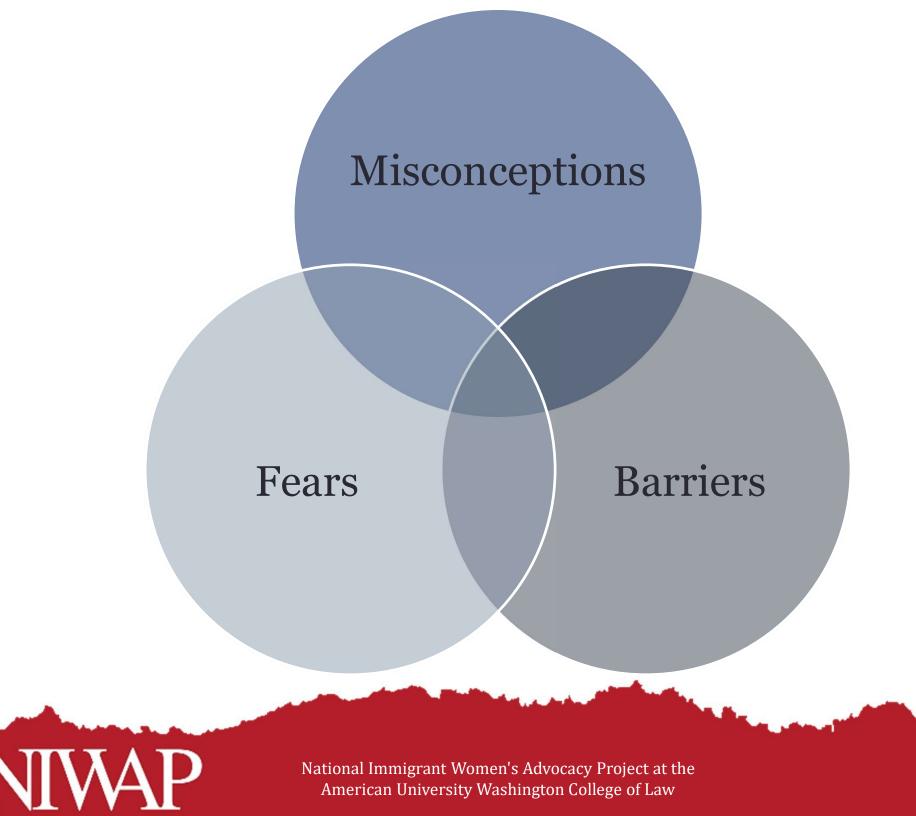
Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

 Document to support claims of physical and sexual abuse

POLL #4: What prevents immigrant victims from reporting crime and/or participating in investigations and prosecutions ?



Please type your answers in the Chat Box.



Fears

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

Misconceptions

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

Barriers

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



American University Washington College of Law

POLL #5: How many cases have you had involving a U Visa?

- A. Fewer than 5
- B. Between 6 and 15
- C. Between 16 and 25
- D. More than 25
- E. Do not know

Chat additional information, if you want to expand your answer

U Visa Basics

- The U Visa grants a temporary 4-year stay
- Only 10,000 U Visas granted per year
- Application for a U Visa requires a certification from a designated government official
- Certification (I-1918B form) is one part of the overall application

-Victim must submit additional documentation and proof in their full application

U Visa Eligibility

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

The person is a U visa victim

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

Victim is "Helpful"

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

Victim suffered harm

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

U Visa Statistics

% of U Visas

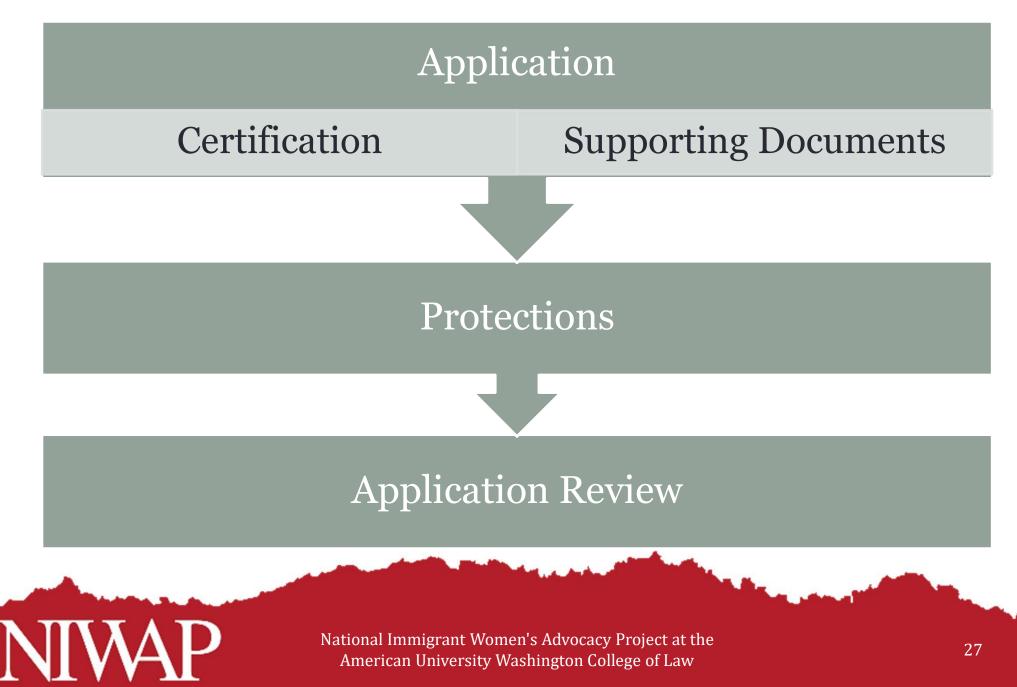
Criminal Activity

76.1% = Domestic Violence & Sexual Violence

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



U Visa Protections



Victims "Red Flagged"



- Department of Homeland Security (DHS) computer system "red flags" victims who have filed for, or have been granted victim-based immigration relief
- Reminds DHS staff of legal obligation not to rely on "tips" from perpetrators regarding victims of – Domestic violence, sexual assault, stalking, human trafficking
- Immigration case brought against a victim can be dismissed for VAWA confidentiality violation

 8 U.S.C. 1367
- Practice tip: Victims should carry a signed certification form with them at all times

VAWA Confidentiality Prongs

Abuser-Provided Information:

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

Location Prohibitions:

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

Non-Disclosure:

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



Rationale

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

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

A closer look at what U Visa Certification attests to:

THIS PERSON IS A VICTIM OF A QUALIFYING CRIME

Types of 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	

Types of Qualifying Criminal Activity

- Commission of criminal activity is not required
 - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.
- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar

Additional Applicants

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

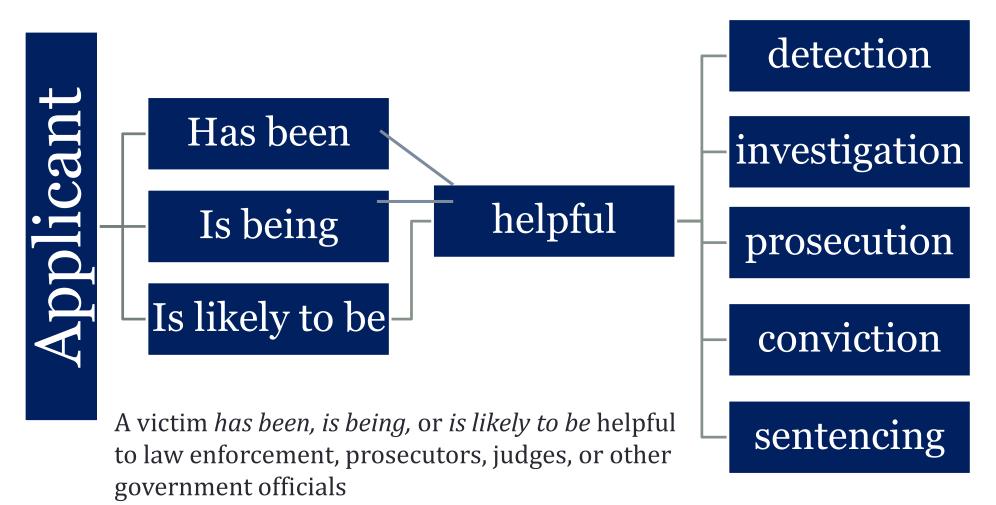
A closer look at what the U Visa certification attests to:

THE VICTIM IS "HELPFUL"

Determining Helpfulness

- Certifying agency determines "helpfulness"
- The degree of helpfulness required is determined by the "totality of the circumstances"
 - -DHS regulations ask the certifying agent to consider what is required of the victim in each specific case.
- Any agency may complete U Visa certification as soon as they assess victim's helpfulness
- The investigation or prosecution can still be ongoing

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



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

- Certification signed within the statute of limitations of the qualifying criminal activity
- Conviction
- Charges filed
- Offender arrested/prosecuted
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive

Victimcentered approach

Examples of "Helpfulness"

Calling 911	Having a Rape Kit performed	Providing a description of offender
Allowing photographs to be taken	Giving information about the offender's whereabouts	Bringing a minor victim to a Child Advocacy Center
Providing a statement about "other bad acts"	Reporting crime in another case against the perpetrator	Testifying at a bond hearing, trial, or sentencing

Who Can Certify?

"law enforcement" & "law enforcement agencies" =

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

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

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



POLL #6: When should you certify?

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

Analyzing Requests for Certification

What criminal activity occurred?

Identify the victim or indirect victim

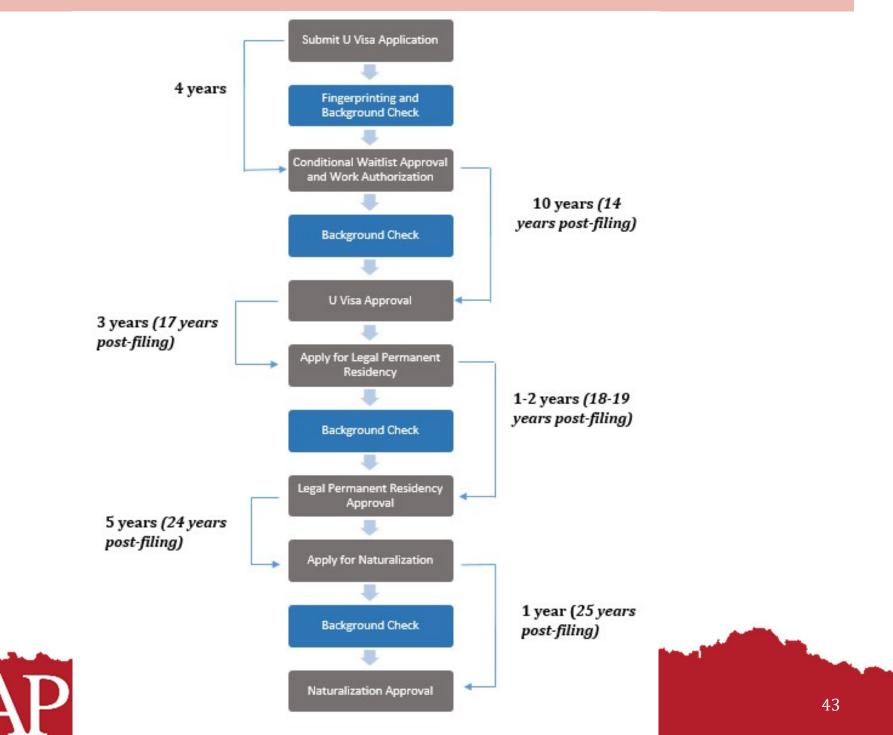
Determine helpfulness

Identify if any family members were implicated in the crime

Note any injuries observed; provide documentation



U Visa Process Timeline



U Visa Certification (Form I-918B)

What is the U Visa Certification saying?

Background: The certification is required evidence in victims' U visa applications. USCIS makes the ultimate determination of whether the victim will receive a U Visa.

- Signing a U visa certification means you are attesting that:
 The individual is a victim of a qualifying crime
 - The victim has been, is being, or will likely be helpful
 - The information you listed in the form is accurate and to the best of your knowledge. You have direct knowledge of the information listed (or have reviewed relevant records)
- A U visa certification **does not confer** immigration status.

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. 1615-0104 Expires 04/30/2021



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

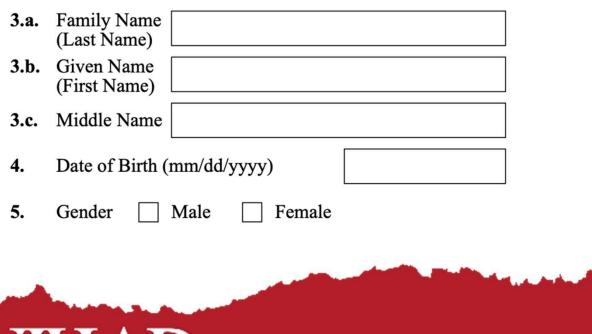


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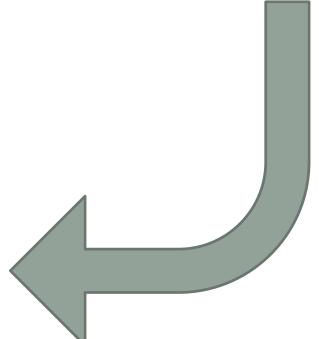
Part 1. Victim Information 1. Alien Registration Number (A-Number) (if any) ► A 2.a. Family Name (Last Name) 2.b. Given Name (First Name) 2.c. Middle Name

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**.



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



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

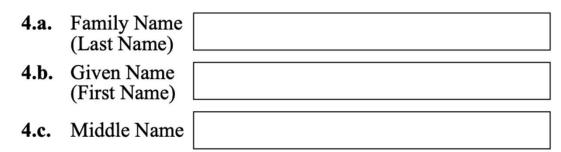
Part 2. Agency Information

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

Name of Head of Certifying Agency





Part 3. Criminal Acts

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

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

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

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

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

Provide the dates on which the criminal activity occurred.

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

Attaching state statutory language can be helpful.



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

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

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

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

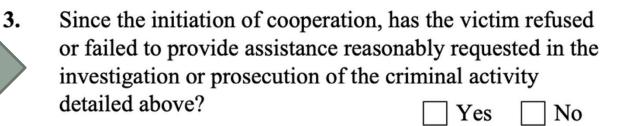


Part 4. Helpfulness Of The Victim

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

- 1. Does the victim possess information concerning the criminal activity listed in Part 3.?
- 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
-----	------



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.



We will

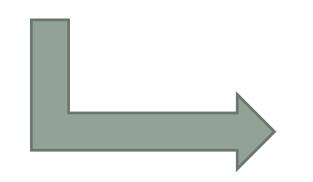
talk

about

this

next

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



Part 5. Family Members Culpable In Criminal Activity

 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



Part 6. Certification

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

- 1. Signature of Certifying Official (sign in 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"

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

"Unreasonable Refuse to Assist"

Part 4:

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

Part 6:

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

POLL #7

"Raise Your Hand" If You Have Ever Had a Case Where the Victim Became "Uncooperative" At Any Point



Two Distinct Requirements "Helpfulness" and "Cooperation/Assistance" **Helpfulness:** For Certification **Cooperation:** After Filing the U **Before Filing the U Visa**

- Has been helpful *Or*
- Is being helpful *Or* •
- Is likely to be helpful • ТО....
- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

- **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 unreasonablely refuse 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?Is the victim's
refusal
unreasonable?8 C.F.R. 214.14(b)(3)
8 C.F.R. 245.24(2)(2)(ii)Scr. 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

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

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

POLL #8

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



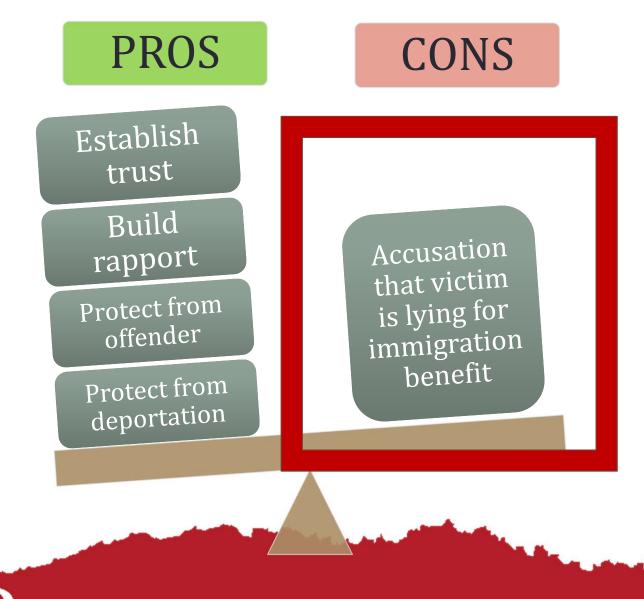
Practice Tips

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

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

Kerry Healey, National Institute of Justice, Research in Action, Victim and Witness Intimidation: New Developments and Emerging Responses (Oct. 1995) https://www.ncjrs.gov/pdffiles/witintim.pdf

Prosecutors' Primary Concern



Cross Examination

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

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

Rebuttal Testimony

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

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

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



Introducing Statements

Establish timeline

- When did the victim learn about the benefit?
- What statements were made before the victim learned about the immigration benefit

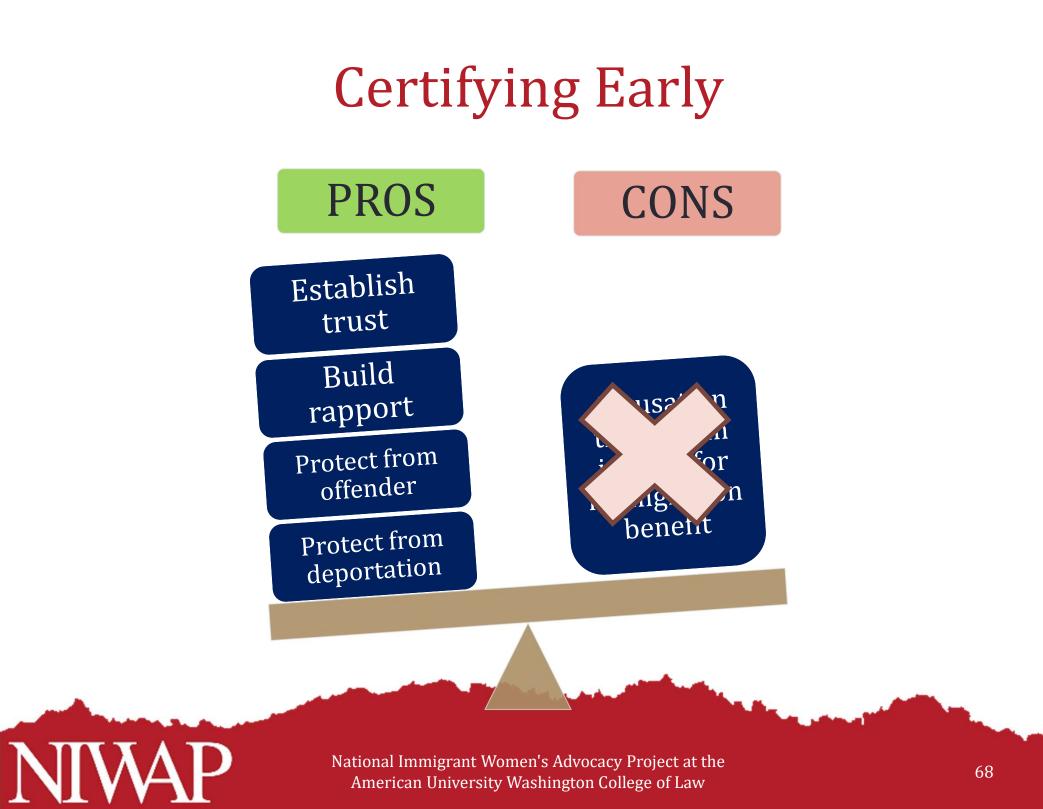
Motive

to lie

Victim statements

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

Rebut charge that victim is lying to get immigration benefit



Moving Forward

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

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

> Develop trial strategies to overcome common defenses

Chat
Public
Private
Type here to send a message

Are there other issues around immigrant crime victims you would like to learn more about ?

Please type your answers in the Chat Box.

Series of Webinar

• Part 2

 –Legal Rights of Immigrant Survivors: Public Benefits, Housing, & Victim Services

• Part 3

–Legal Protections for Immigrant Children and Their Families

Resources, Training and Technical Assistance



Resources

- NIWAP's Library http://niwaplibrary.wcl.american.edu
- Materials and tools for law enforcement and prosecutors available at <u>http://niwaplibrary.wcl.american.edu/la</u> <u>nguage-access-materials-for-police-andprosecutors/</u>



NIWAP Web library

NIWAP Web Library

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Virtual Roundtables

- Law enforcement & Prosecutors only
- Interactive discussion
 - -Strategies to build rapport, establish trust, and ensure safety
 - -Ask questions from subjectmatter experts and peers
- To register, visit <u>http://www.niwap.org/go/LEArou</u> <u>ndtables/</u>







Trainings

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

Technical Assistance

- NIWAP
 - -Call: 202.274.4457 -Email: <u>niwap@wcl.american.edu</u>
- AEquitas at

www.aequitasresource.org

–Jane Anderson

janderson@aequitasresource.org