


***Trauma-Informed, Victim-Centered Responses to Domestic Violence, Sexual Assault, and Human Trafficking:***

**Honolulu, Hawaii  
May 23, 2024**

For Law Enforcement, Prosecutors, and Systems-Based Victim Witness Staff




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American University Washington College of Law

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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.




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## Introduction

- Faculty
- Housekeeping



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**The National Women's Immigrant Advocacy Project**  
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*Our goal is to increase immigrant crime victims' safety, justice system participation, and ability to rebuild their lives and thrive*



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## How We Do It

We provide training and technical assistance to:

Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals	Improve the response to immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, child/elder abuse and other crimes
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## Virtual Roundtables

- Law enforcement & Prosecutors only
- Interactive discussion
  - Strategies to build rapport, establish trust, and ensure safety
  - Ask questions from subject-matter experts and peers
- To register, visit <https://www.surveymonkey.com/r/LERoundtable>

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## NIWAP <http://niwaplibrary.wcl.american.edu>

- Training Materials for:
  - Language Access
  - Law Enforcement
  - Prosecutors
  - Systems Based Victim Advocates
  - Judges
  - Attorneys/Victim Advocates
  - Statutes, Regulations, Policies & Government Publications
- Multilingual Materials
- Immigration
- Family and Criminal Law
- VAWA Confidentiality
- Public Benefits, Legal Services & Economic Relief
- Dynamics, Culture, Collaboration & Safety

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<div style="text-align: center; margin-bottom: 5px;"></div> <p style="text-align: center; font-weight: bold;">R ) 95 ; 8' ) 9</p> <p style="font-size: 8px;">Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices</p>	<div style="text-align: center; margin-bottom: 5px;"></div> <p style="text-align: center; font-weight: bold;">C54 9; 2; \$ : /54 9</p> <p style="font-size: 8px;">Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions</p>
<div style="text-align: center; margin-bottom: 5px;"></div> <p style="text-align: center; font-weight: bold;">T 8\$ /4 /4 + E &lt; ) 4 :9</p> <p style="font-size: 8px;">Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals</p>	<div style="text-align: center; margin-bottom: 5px;"></div> <p style="text-align: center; font-weight: bold;">P \$ 8 : 4 ) 89 . /6 9 g I4 /: / \$ : / &lt; ) 9</p> <p style="font-size: 8px;">Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training</p>

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## Materials Summary

- Materials
  - Agenda
  - PowerPoint presentation
  - Evaluations
- Web Library  
<https://niwaplibrary.wcl.american.edu/pubs/le-prosecutor-training-materials/>
- USB Drives – Tools and resources

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## USB Drive Materials

- U and T Visa Toolkit For Law Enforcement Agencies And Prosecutors
- DHS: U and T Visa Certification Resource Guides
- DHS memos and policies
- Tools for officers to promote language access
- Blue Card Tool Screening Victims for Immigration Protections
- Tools for law enforcement and prosecutors working with immigrant survivors

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## Participant Goals and Expectations

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### Learning Objectives

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

- Identify offender tactics used to assert power and control over victims
- Conduct offender-focused investigations, including co-occurring human trafficking, domestic violence, sexual assault, stalking and child abuse.
- Improve investigations and prosecutions by effectively utilizing immigration relief to enhance victim safety and security, including expanding and improving access to public benefits
- Develop strategies to overcome common defenses in cases involving immigrant victims

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## SURVIVOR VOICE AND EXPERTISE: HUMAN TRAFFICKING, DOMESTIC VIOLENCE, AND SEXUAL ASSAULT

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## DYNAMICS AND INTERSECTIONALITY OF VIOLENT CRIME AND HUMAN TRAFFICKING

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### Learning Objectives

- Identify how various violent crimes intersect
- Describe common tactics traffickers use to recruit, exploit, abuse, and maintain victims
- Minimize barriers to victim disclosures

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### Co-Occurrence of Violent Crime

A Venn diagram with six overlapping circles representing different types of violent crimes: Human trafficking (top), Sexual violence (top-right), Domestic violence (bottom-right), Stalking (bottom), Child abuse (bottom-left), and Gang violence (top-left). The circles overlap in various combinations, illustrating how these crimes often occur together.

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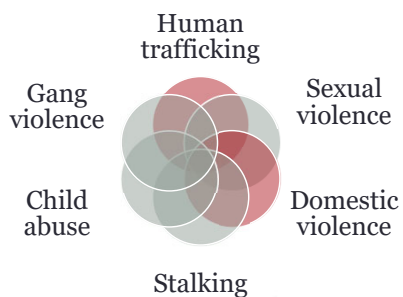
### Co-Occurrence of Violent Crime -2

A Venn diagram identical to the one on slide 17, showing the intersection of six types of violent crimes: Human trafficking, Sexual violence, Domestic violence, Stalking, Child abuse, and Gang violence.

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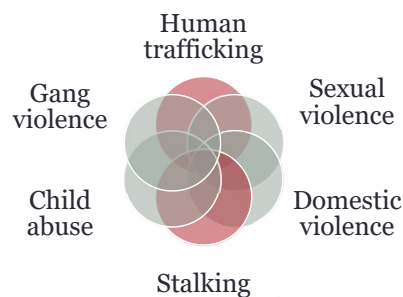
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### Co-Occurrence of Violent Crime-3



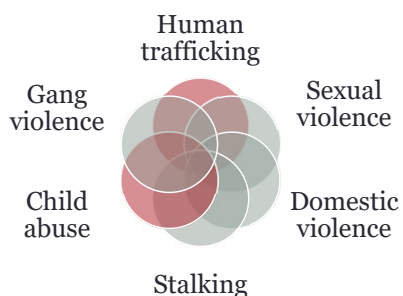
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### Co-Occurrence of Violent Crime-4



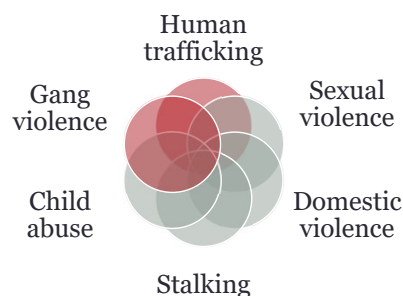
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### Co-Occurrence of Violent Crime-5



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### Co-Occurrence of Violent Crime-6



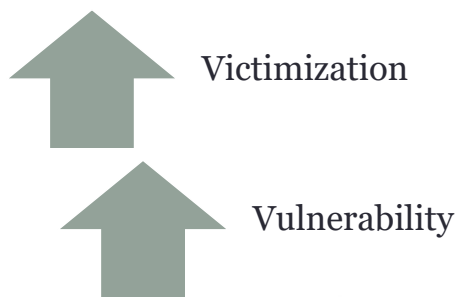
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### Commonalities

- Victim and offender relationship is based on an unbalanced power dynamic
- Criminal behavior is ongoing
- Offenders engage in criminal and non-criminal acts
- Victims often do not disclose their victimization
- Witness intimidation is prevalent

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### Exploitation and Violence



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## Common Vulnerabilities

- Age
- Poverty
- Immigration status
- Non-English speaking
- Unstable home lives
- Prior abuse
- Substance use disorder
- Mental health issues
- Criminal justice system involvement
- Lack of educational or job opportunities
- LGBTQ+
- Disability

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## COMMON OFFENDER TACTICS

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## Power & Control Wheel

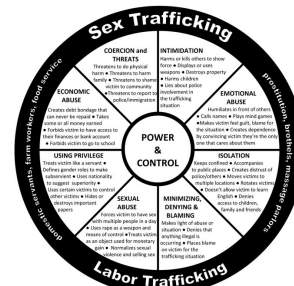
Domestic Abuse Intervention Project, Duluth, MN



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## HT Power & Control Wheel

Adapted from the Duluth Model



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## Large Group Discussion

What are some specific tactics used by offenders seeking to assert power and control over immigrant victims of...

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## Immigration Power & Control Wheel

Adapted by Futures Without Violence and Ayuda



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### Immigration-Related Abuse

- 65% of immigrant survivors report some form of immigration-related abuse (NIJ, 2003)
- Abuse rates among immigrant women is almost three times the national average\*
  - 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%

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

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### Immigration-Related Abuse, cont'd.

- Among abusive spouses who could have filed legal immigration papers for survivors\*:
  - 72.3% never file immigration papers
  - Mean delay of 3.97 years with those who did file
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
- Forcing partners to work with false documents

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

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### Immigration-Related Abuse, cont'd.

- Threats or attempts to have immigrant partner deported or have case denied
  - 25% of perpetrators actively report the victim for removal
- Using language proficiency to manipulate law enforcement
  - 36% of perpetrators get immigrant and LEP victims arrested for domestic violence\*

\* 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)

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### The Perfect Plan

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### Sexual Assault and Immigrants

- 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).

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### Screening

Immigration-related abuse...


- 10x 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)

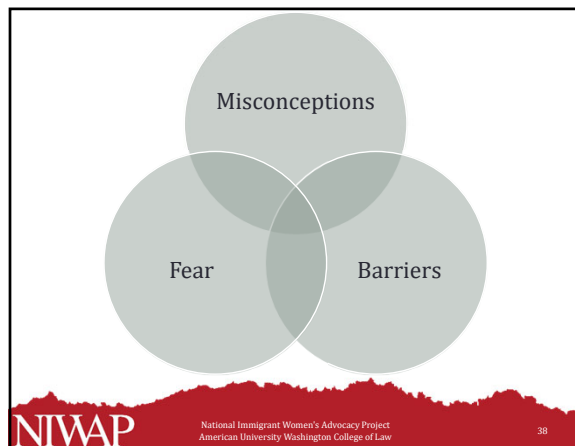
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## What prevents immigrant victims from reporting crime?



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### 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



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### 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



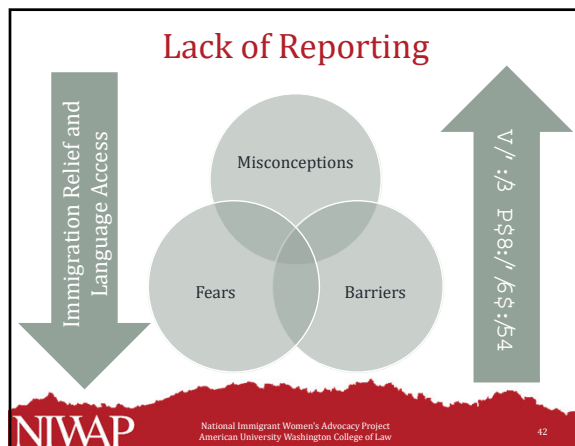
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### Barriers

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



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## Going Forward

- Identify and investigate co-occurring crimes
- Describe common offender tactics used to assert power and control
- Minimize barriers to disclosure

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## IMMIGRATION RELIEF FOR VICTIMS OF VIOLENT CRIMES

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## Objectives

- Utilize immigration relief as a crime fighting tool to identify and prosecute dangerous offenders
- Identify the prosecutor's role where victims are eligible for immigration relief
- Enhance victim safety and stability by providing access to immigration relief and language access

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**U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS**

The infographic details the following categories:

- T VISA:** For victims of human trafficking.
- VAWA:** For victims of domestic violence, child abuse, or elder abuse.
- SIJ:** Special Immigrant Juvenile status for children in need of legal protection.
- U VISA:** For victims of certain crimes who assist law enforcement.
- ASYLUM:** For individuals with a well-founded fear of persecution.

Logos for BLUE CAMPAIGN and Center for Countering Human Trafficking are also present.

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Available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-Interactive-Infographic-on-Protection-for-Immigrant-Victims.pdf>

## Immigration Relief Tools

Law Enforcement Involvement

- U Visa Available to most victims of violent crime
- T Visa Available to victims of human trafficking
- Continued Presence Short-term immigration relief to newly-identified victims of trafficking

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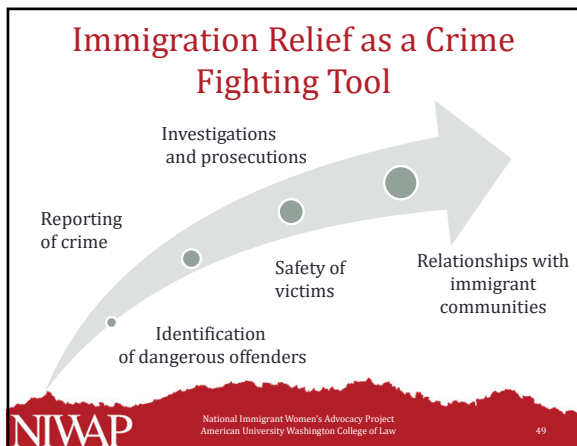
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## Why do you think these forms of immigration relief exist for victims of crime?

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### How do immigration relief and language access promote officer safety?

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### IACP 2018 Resolution

- Recognizes U as a significant crime fighting tool
- Recommends using U Visas as best practice
- Supports training, education, communication and “increased police leadership involvement”
- Commits to increasing collaboration

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

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### Bona Fide Determination Process

Implemented on June 14, 2021

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

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### Why is work authorization important?

Orloff, Magwood, Campos-Mendez, & Hass, Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status (June 2021)

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### Research shows that U visa applicants report future crimes at higher rates

- Increases justice system involvement
  - 114% increase in willingness to trust the police
  - 36% make police reports regarding future crimes
  - 22% help other victims report abuse and seek help/justice
- Significantly reduces abusers using the victim’s immigration status as a tool to perpetuate abuse
  - 74% decline in immigration related abuse
  - 78% decline in threats to snatch/cut off access to children
  - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

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## How much do you know about the U Visa? T Visa? Continued Presence?



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## U Visa Facts

- Only 10,000 U visas can be given annually
- The U Visa grants a temporary 4-year stay
- Some U Visa holders will qualify for lawful permanent residency
- U.S. citizenship may be attained after lawful permanent residency for 5 years + proof of good moral character



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## U Visa Requirements


Victim	Helpfulness	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>• Victim has been, is being, or is likely to be helpful in <i>any of the following</i>:                             <ul style="list-style-type: none"> <li>• Detection</li> <li>• Investigation</li> <li>• Prosecution</li> <li>• Conviction</li> <li>• Sentencing</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Substantial physical or mental abuse as a result</li> </ul> <p style="background-color: #c00000; color: white; padding: 2px; text-align: center;">This is not a part of the certification.</p>



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## Who can apply?

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



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## 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	



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## Similar Criminal Activity

- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
  - Hate crimes
  - Video voyeurism
  - Elder abuse/abuse of adults with disabilities
  - Child abuse
  - Robbery or aggravated robbery could include felonious assault, depending on the evidence and state law definition



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### Who Can Certify?

*“law enforcement” & “law enforcement agencies” = Head of agency or designee*

- Federal, state, and local
  - Law enforcement
  - Prosecutors
  - Judges, magistrates, commissioners, and other judicial officials
- Child and Elder Abuse agencies
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Other government agencies with investigative authority

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### Role of Certifying Official

Certification + Supporting documentation → U Visa Application

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### How are you involved in the certification process?

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### Certification Review

Advocate or Immigration Attorney ↔ Involved Officer or Prosecutor ↔ Designated Certifier

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### Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree (or timing) of helpfulness is required
  - DHS adjudicates helpfulness based on totality of the circumstances
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness

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### Example of Helpfulness

Calling 911	Having a Rape Kit performed	Providing a description or location of offender
Allowing photographs to be taken	Filing for a protection order	Bringing a minor victim to court
Providing a statement about “other bad acts”	Providing evidence of abuse in a custody, child welfare, or divorce case	Testifying at a bond hearing, trial, or sentencing

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### Not Required

- Within the statute of limitations
- Conviction
- Charges filed
- Offender arrested/prosecuted
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive
- Case involving offender is open or closed

Victim-centered approach

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### Ongoing Assistance

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### Analysis

Is the request reasonable?

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

Is the refusal unreasonable?

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

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### Unreasonable Requests

- Subjective, but consider if the request:
  - Endangers victim, witnesses, family members, or others
  - Subjects the victim to greater harm
  - Increases trauma to victim
  - Negatively affects the victim's ability to support their family
  - Is reasonable in light of the perpetrator's force, fraud or coercion of the victim

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

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### Inability to Participate


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## DHS Approach

- DHS promotes a victim-centered approach
  - Implement practices that build trust, help stabilize victims, and minimize re-victimization and additional trauma.
- DHS **equally values** the identification and stabilization of victims, including providing immigration relief, and the detection, investigation, and prosecution of perpetrators of serious crimes.
- DHS promotes the use of qualified interpreters




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## What if after conducting a trauma-informed analysis, you still believe the victim is unreasonably refusing to comply with reasonable requests?



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## Certification Form

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

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




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## FAQs

- What if the victim has a criminal history? This is not a part of the certification process, but USCIS fully reviews applicants' history
- What if the victim later commits a crime? The certifying is not held liable for the applicant's actions
- What if I later find out the victim lied? Ensure you are conducting a trauma-informed analyze, but the certification is revokable
- How long does it take to get a U Visa? There is currently a waiting list, so qualified applicants can wait up to 12 years for their visa, but...



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## T Visa Requirements

- Applicant is a victim of severe form of human trafficking
  - Refers to the federal definition of human trafficking
- Applicant is in the U.S. because of trafficking
  - Not necessary that the victim came to the U.S. because of trafficking; can be in the U.S. for the investigation
- Responds to "reasonable requests for collaboration"
  - Trauma exception in specific cases
- Hardship upon return to home country



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## T Visa Facts

- T Visa is a temporary visa for 4 years
- May apply for lawful permanent residence after either 3 years or after the investigation or prosecution is concluded
- Applicants are encouraged to submit a Law Enforcement Declaration along with their application, *but it is not required*



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## A Severe Form of Human Trafficking

TVPA, 22 U.S.C. § 7102(11)

The term "severe forms of trafficking in persons" means--

(A) 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

(B) 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.



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## Coercion

22 U.S.C. § 7102(3)

Threats of serious harm to or physical restraint against any person;

Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;

The abuse or threatened abuse of the legal process.



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## Serious Harm

18 U.S.C. § 1589(c)(2); 18 U.S.C. § 1591(e)(5)

Any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.



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## Totality of the Circumstances

### Serious Harm

- Physical or nonphysical
- Psychological
- Financial
- Reputational

### Circumstances

- The surrounding circumstances

### Victim

- Same background
- In the same circumstances



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## Continued Presence (CP)

- Temporary immigration status provided to victims of trafficking who are **"sponsored" by federal law enforcement**
- Law enforcement initiates application immediately after identifying victim; cooperation is not required
- Upon approval, Dept. of Health and Human Services allows victim to:
  - Access federal and state benefits
  - Receive work authorization



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## Continued Presence (CP), Cont'd.

- Granted for 2 years; can be renewed
- Does not guarantee any form of long-term immigration relief
- T Visa application is typically filed while the victim has CP
- Can be revoked




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## When should you sign a U Visa Certification or a T Visa Declaration?



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## ANSWER: As soon as you have the information you need to complete the paperwork.



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## Early Certification

Do you have the information you need to determine if the applicant is a victim of the qualifying criminal activity?

- Standard of proof: “Any credible evidence”

Can you make initial helpfulness determination?

- You do not need to determine ongoing helpfulness when you sign
- You can revoke




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**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 3. 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.

- Signature of Certifying Official (sign in ink)
- Date of Signature (mm/dd/yyyy)
- Daytime Telephone Number
- Fax Number


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## Victims “Red Flagged”

- Department of Homeland Security (DHS) computer system “red flags” victims who have filed for victim-based immigration relief
- Reminds DHS staff of legal obligation not to rely on “tips” from perpetrators
- Immigration case brought against a victim can be dismissed for VAWA confidentiality violation – 8 U.S.C. 1367
- Practice tip: Victims should always carry documentation with them



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## Moving Forward

Provide meaningful access to immigration relief to qualified applicants

Be prepared to explain why immigration relief exists for victims of crime



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# VAWA CONFIDENTIALITY AND DISCOVERY

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## Learning Objectives

- Identify victims who are eligible for VAWA confidentiality protection
- Ensure that discovery in criminal and family court case is consistent with immigration law VAWA confidentiality requirements
- Anticipate and respond to discovery requests that violate VAWA confidentiality laws

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Available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-Interactive-Infographic-on-Protection-for-Immigrant-Victims.pdf>

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## VAWA Confidentiality Prongs

**Abuser-Provided Information Prohibition**

- Included family members of perpetrators
- Protects all victims \*in the process of applying for U and T visas

**Location Prohibitions**

- Protects all victims
- Requires:** No action at protected locations OR Notice to Appear must state how they complied with VAWA confidentiality

**Non-Disclosure**

- Protects victims who have filed a protected case with DHS

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## 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 or 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

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## Victim Witness DHS Memo 2011

Continuing Effect Confirmed 4/19

- “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.”

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.”

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### Ethical Duties and Due Process

Prosecutor Obligations

Is it exculpatory?

Is it confidential?

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### Disclosure of Information

- “State and local prosecutors are not constitutionally required under the Brady line of cases to seek out, obtain or disclose the existence of or any information contained in an immigration case that is maintained in federal immigration case files”
  - U Visa Certification and T Visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors (August 30, 2021)

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### 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

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### State v. Marroquin-Aldana

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “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

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### Senate Congressional Record

*“The single most important provision we add to the Violence Against Women Act is the battered immigrant women provision” Ensuring abusers “are brought to justice and the battered immigrants also escape abuse without being subject to other penalties.”*

Senator Biden 10/11/2000

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### DHS Policies and Regulations

VAWA Confidentiality

- Protects all information about the victim's VAWA confidentiality protected immigration case
- Prohibits disclosure of any information about
  - The existence of a VAWA, T or U Visa application
  - Decisions made in the case
  - Information contained in the #A file
- Disclosure is prohibited to all persons, not just the perpetrator
- Each violation sanctions against federal government officials
  - Disciplinary action and/or
  - \$5,000 fine for the individual

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**If a victim requests a U Visa certification, but you do not sign, what, if anything, do you need to disclose?**

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**Considerations**

- When does a motive or bias arise?
- What is the impact of having testimony come out that the victim will only have a signed certification/endorsement *if they testify the way the prosecutors want?*
- Whose responsibility is it to present the case to the court?

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**Moving Forward**

- Uphold VAWA confidentiality and protect victim privacy
- Comply with your ethical and due process obligations
- Provide access to the immigration relief for which crime victims qualify

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**DEVELOPING YOUR CASE STRATEGY**

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**Learning Objectives**

- Develop an offender-focused theme strategies to strengthen prosecution of violent crimes
- Analyze case facts and dynamics to determine any relevance of immigration status and relief
- File pretrial motions to improve victim safety and privacy, educate the judge on novel evidentiary issues, and introduce relevant evidence of immigration-based abuse

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**PROS      CONS**

Establish trust

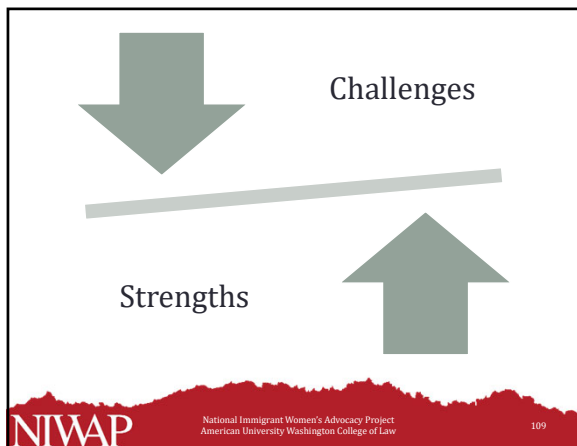
Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit

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### Analyze Case

- Victim Selection**
  - Did the offender choose the victim because of a real or perceived vulnerability?
- Criminal Act**
  - Did the offender use the victim's immigration status to commit a criminal act?
- Escape Detection**
  - Was the victim prevented from reporting the crime to police because of their immigration status?

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### 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

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### 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

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### Escape Accountability

- Threaten victim with arrest and/or deportation if police are involved
- Manipulate law enforcement to arrest LEP victims
- Use financial manipulation to prevent victims from participating in investigation or prosecution
- Isolate the victim from support services
- Misuse culture to dissuade victim from participating

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### Offender-Focused Theme

Preying on the most vulnerable	Power over the powerless	American dream became a nightmare
Picked the perfect victim	Betrayal of trust, family, and the law	Knew there was no where to turn

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### 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

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### Motions in Limine

Immigration Status	Other Bad Acts
<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>

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### Excluding Evidence

Arguments	Examples
<ul style="list-style-type: none"> <li>• Irrelevant</li> <li>• Probative value is substantially outweighed by potential prejudice</li> </ul>	<ul style="list-style-type: none"> <li>• Child victims</li> <li>• Time lapse between reporting and applying</li> </ul>

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*Ultimately, though, the court ruled that defendant had failed to establish a sufficient foundation to show that the victim's knowledge of the U visa had any bearing on her credibility in this case, and that ruling was correct. Because of the way that defendant limited his offer of proof, the record does not include even basic facts about the victim's potential eligibility for a U visa...*

*State v. Alvarez-Lopez*, 316 Or. App. 106, 108, 501 P.3d 1141, 1142-43 (2021), [review denied](#), 369 Or. 785, 511 P.3d 400 (2022)

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*Without those minimal foundational facts, the record does not allow for the nonspeculative inference that the victim's knowledge about U visas would supply a motive for the victim to testify in a particular way. The trial court, therefore, did not err in excluding the evidence.*

*Id.*

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### State v. Valle,

255 Or. App. 805, 811, 298 P.3d 1237, 1241 (2013)

- Court found it was error to exclude the fact that the victim had applied for a U Visa and that the prosecutor's office had "signed off" on it.
- "Thus, it is error for a trial court to exclude evidence from which a jury could reasonably infer that the witness has a motive to testify in a certain manner."


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### State v. Del Real-Galvez

270 Or. App. 224, 232, 346 P.3d 1289, 1294 (2015)

*"The jury was not fully informed about X's potential motive to fabricate allegations against defendant and X's potential interest in testifying in a certain manner. Further, X's credibility was central to the state's case, and the prosecutor argued that X had "no motive to fabricate a disclosure against [defendant.]" Thus, under the analysis set forth in Valle, we conclude that the error in this case was not harmless."*




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### Other Bad Acts

Haw. Rev. Stat. § 626-1, Rule 404

- 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 recantation; See State v. Asuncion, 110 Haw. 154, 129 P.3d 1182 (Ct. App. 2006)



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### Moving Forward



Develop offender-focused trial strategies



Educate the judge about novel issues




Recreate the reality of the crime




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### TRIAL STRATEGIES FOR PROSECUTING VIOLENT CRIMES




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### Learning Objectives




Educate potential jurors about the reality and dynamics of cases involving violent crime



Prepare for direct, cross and rebuttal questioning of victims, including immigrant and LEP victims

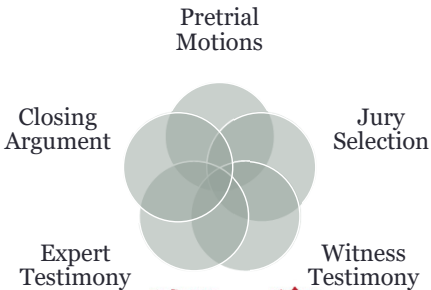



Utilize prior consistent statements to combat common defenses



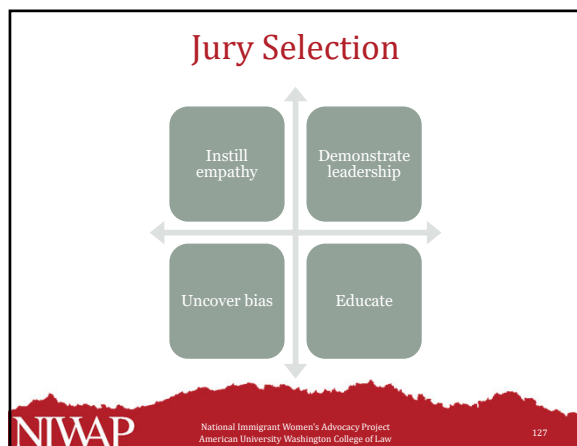
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### Educating the Judge and Jury





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### 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

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### Cross Examination

- Take the “sting” out during direct examination
- Prepare victim for cross-examination
- Listen for the defense to “open the door” to rebuttal evidence

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### 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

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### Prior Consistent Statements, cont'd.

Haw. Rev. Stat. § 626-1, Rule 802.1; Haw. Rev. Stat. § 626-1, Rule 613

- Exception to hearsay
- Not subject to Crawford
- Admissible if...
  - (1) Evidence of the witness' prior inconsistent statement has been admitted for the purpose of attacking the witness' credibility, and the consistent statement was made before the inconsistent statement; or...

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### Prior Consistent Statements

Haw. Rev. Stat. § 626-1, Rule 802.1; Haw. Rev. Stat. § 626-1, Rule 613

- (2) An express or implied charge has been made that the witness' testimony at the trial is recently fabricated or is influenced by bias or other improper motive, and the consistent statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen; or
- (3) The witness' credibility has been attacked at the trial by imputation of inaccurate memory, and the consistent statement was made when the event was recent and the witness' memory fresh.

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### Establishing Timeline

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### 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 a recorded statement?”

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### Testimony by Experts

Haw. Rev. Stat. § 626-1, Rule 702

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. In determining the issue of assistance to the trier of fact, the court may consider the trustworthiness and validity of the scientific technique or mode of analysis employed by the proffered expert.

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### Possible Experts

Dynamics	Immigration
<ul style="list-style-type: none"> <li>• Experience working with immigrant victims                             <ul style="list-style-type: none"> <li>– DV Shelter</li> <li>– Advocates</li> <li>– Rape Crisis Center</li> <li>– Investigators</li> </ul> </li> <li>• Scholars</li> </ul>	<ul style="list-style-type: none"> <li>• Immigration attorney</li> <li>• Law Professors</li> <li>• Other attorneys that have experience with immigration issues; e.g., family law, legal aid</li> </ul>

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

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### Expertise

- 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

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### 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.”

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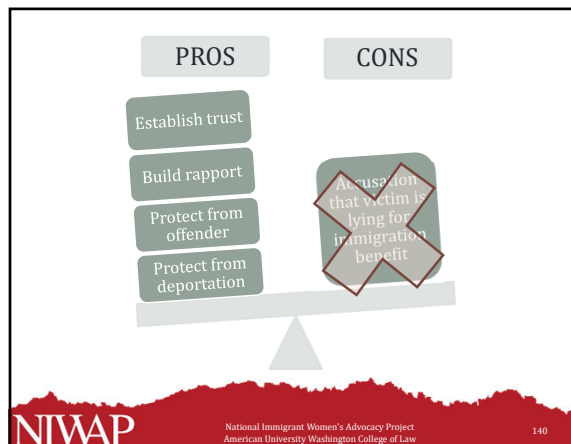

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## Closing Arguments

- Focus on what the defendant did
  - *e.g.*, The Perfect Plan
- Do not apologize for the victim
  - The victim qualified for immigration relief
- Explain the evidence that corroborates the victim’s disclosure



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## Moving Forward




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## Resources

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



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## NIWAP’s Podcast Series

<https://niwaplibrary.wcl.american.edu/niwap-podcast-series>




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## Join a Roundtable or Community of Practice

- Community of Practice for Family Law Attorneys  
[www.surveymonkey.com/r/FamCOP2023](http://www.surveymonkey.com/r/FamCOP2023)
- Community of Practice for Victim Advocates  
<https://www.surveymonkey.com/r/VictimAdvocateCOApp>
- Roundtable for Law Enforcement, Prosecutors and System-based Advocates -  
<https://www.surveymonkey.com/r/LERoundtable>
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)  
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>





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**Evaluations**

- Evaluations are in your training packet
- Certificates

**Thank You!**



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