

**What's Immigration Got To Do With It?  
Prosecuting Cases Involving Immigrant  
Victims Of Crime**

**Lake County, Illinois**



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Hennepin County Attorney's Office





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**This project is 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.**



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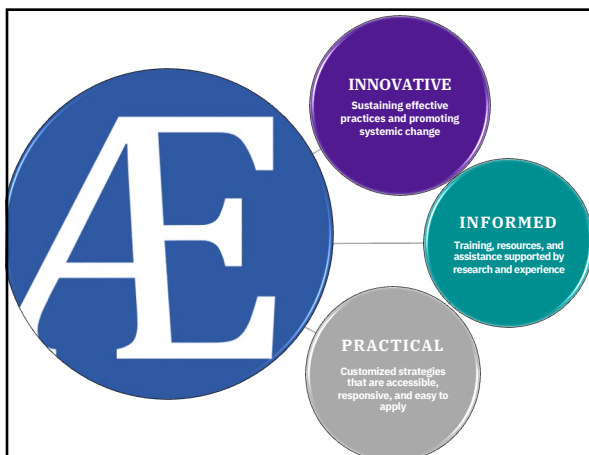
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## What We Do

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| <br><b>Resources</b><br>Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices                       | <br><b>Consultations</b><br>Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions                         |
| <br><b>Training Events</b><br>Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals | <br><b>Partnerships &amp; Initiatives</b><br>Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training |

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## Support

This project was supported by Grant No. 2017-TA-AX-K043 awarded by the U.S. Department of Justice, Office on Violence Against Women (OVW). The opinions, findings, conclusions, and recommendations expressed in this presentation are those of the authors and do not necessarily reflect the views of OVW.



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### Objectives

-  Promote victim safety by certifying that an individual is a victim of a qualifying offenses
-  Comply with ethical duties related to U Visa requests and certifications
-  Develop pretrial and trial strategies to overcome common defenses



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### Lack of Reporting

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### FAQs

- Why can't we just wait to sign until the case is over?
- What if the victim is lying?
- What if I ultimately can't prosecute the case?
- What if the victim stops cooperating?



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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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**Victims “Red Flagged”** 

- Department of Homeland Security (DHS) computer system “red flags” victims who have filed for a U Visa
- 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 carry a signed certification form with them at all times

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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

**Victim-centered**

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12

**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.

*"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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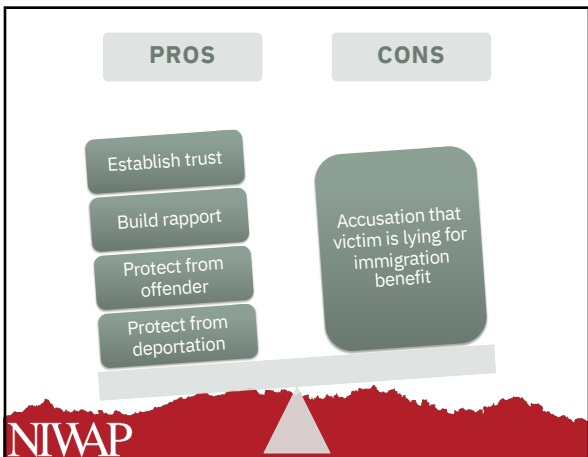
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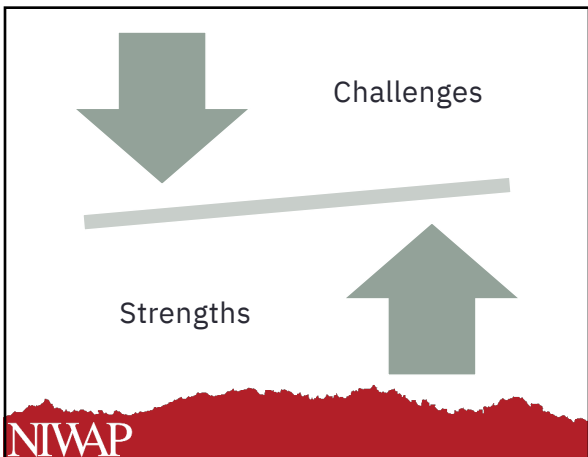
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### Analyze Case

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?




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### Disclosures

*"within the State's possession or control"*

- Certification form
- Communication with immigration attorney or advocate
- Accompanying documentation




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### Excluding Evidence

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| <p><b>Arguments</b></p> <ul style="list-style-type: none"> <li>• Irrelevant</li> <li>• Probative value is substantially outweighed by potential prejudice</li> </ul> | <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• Child victims</li> <li>• Time lapse between reporting and applying</li> </ul> |
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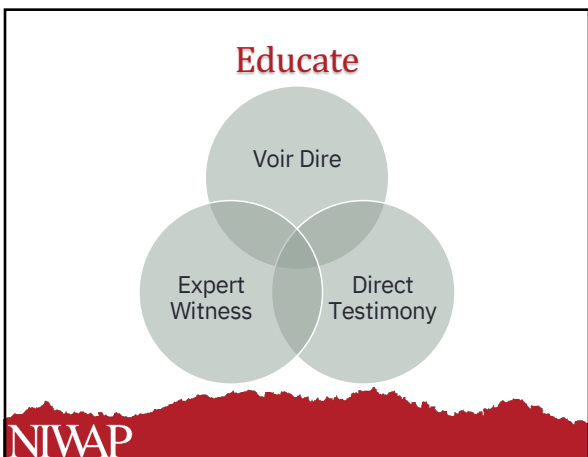
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**Prior Consistent Statement**  
*People v. Harris, 123 Ill. 2d 113, 139, 526 N.E.2d 335, 346 (1988)*

- Court affirms narrow exception to Illinois rule that prior consistent statements are inadmissible hearsay
- Narrow exception:
  - Charge that testimony is recently fabricated or that the witness has a motive to lie
  - Admissible consistent statement was made prior to the motive arising

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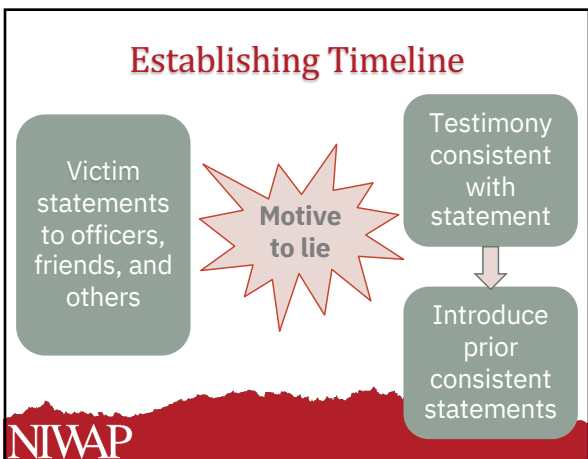
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**People v. Sharp,**  
2021 IL App (1st) 182042-U, ¶ 5

- Defense allowed to ask about the victim inquiring as to the U Visa program
- The court also ruled that if the defense inquired about the U Visa, the State could go into the victim’s “prior consistent statement indicating that he said whatever he said way back when before any motive regarding immigration” arose.



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**State v. Olvera-Guillen**  
No. CA2007-05-118, 2008 WL 4616310 \*5  
(Ohio Ct. App. Oct. 20, 2008)

- Court allowed defense to call an expert witness to explain the U Visa process
- Prosecutor’s comments not condoned by court, but did not lead to a reversal:

*“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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**Going Forward**

- Hold offenders accountable by utilizing immigration relief tools
- Certify early and strategize how to address at trial
- Educate the jury about offenders who target, abuse, and exploit immigrant victims



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### Technical Assistance

- NIWAP
  - Call: 202.274.4457
  - Email: [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- AEquitas at [www.aequitasresource.org](http://www.aequitasresource.org)
  - Jane Anderson
  - [janderson@aequitasresource.org](mailto:janderson@aequitasresource.org)



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### Thank You!



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