Office on Violence Against Women (OVW)

National Violence Against Women

Law Enforcement Training and Technical Assistance Consortium (LETTAC)

2023 Conference on Crimes Against Women

The U Visa & Language Access: Tools to Increase Immigrant Victim Participation in the Justice System

May 23, 2023

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We Look Forward to Supporting You!

LETTAC
Serving Victims By Supporting Law Enforcement

LETTAC STRUCTURE AND DESIGN INNOVATIVE AND PROGRESSIVE
LETTAC is unique in the field. It uses innovative and progressive design in its workshops, training, and resources. LETTAC is designed to provide a variety of services to support law enforcement and victims of gender-based violence.

LETTAC PRINCIPLES
- Prioritizing Excellence
- Ensuring Quality and Agility
- Sharing Solutions, Sharing Successes
- Responding and Adapting
- Resilience and Innovation

LETTAC EXPERTS + LETTAC STRENGTH
Because of the consortium’s wide range of expertise, LETTAC has developed innovative and progressive approaches to addressing gender-based violence.

ABOUT OUR FEDERAL FUNDING: CVW
The Office on Violence Against Women (OVW) is a program within the U.S. Department of Justice. It provides federal leadership in the fight against domestic, dating, and sexual violence.

LETTAC RESOURCE CENTER NOW LIVE!
Visit and share www.LETTAC.org. Questions and notes welcomed at contact@LETTAC.org.
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Who We Are

• The National Immigrant Women’s Advocacy Project (NIWAP) at American University Washington College of Law
• Provide technical assistance, training, and advocacy that promote 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.
Who We Provide Technical Assistance To

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

• NIWAP supports professionals in the field working with immigrant crime victims so that they are more effective in helping more victims access all the help for which victims and their children are legally eligible.
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 www.surveymonkey.com/r/RT2022Registration
USB Drive and Web Materials

• U Visa Toolkit For Law Enforcement Agencies and Prosecutors
• DHS: U and T Visa Law Enforcement Resource Guides
• DHS memos and policies
• Tools for officers to promote language access
• Bluecard Tool Screening Victims for Immigration Protections
• Prosecutor’s tools
• Training materials law enforcement and prosecutors

https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials
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*
Learning Objectives

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

• Hold offenders more accountable by using the U and T Visa certification process as a crime fighting tool

• Enhance victim safety and participation in the criminal justice system

• Enhance officer/victim/community safety using language access and certification programs
How Best Practices in Domestic Violence Investigations Promote Officer Safety
Immigration Relief for Crime Victims

T Visa
For victims of trafficking

CONSIDERATIONS
- Must be in the US on account of trafficking
- Law enforcement certification is encouraged but not required

If approved, benefit provides:
1. Up to four years of temporary non-immigrant status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status

U Visa
For victims of Domestic Violence, Sexual Assault, Felfonious Assault, Trafficking, Other Serious Crimes

CONSIDERATIONS
- Perpetrator must be US citizen or lawful permanent resident spouse or parent or US citizen adult son or daughter

If approved, benefit provides:
1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

VAWA
For victims of Domestic Violence married to US citizens or permanent residents

CONSIDERATIONS
- Qualifying crime must be in the US or have resulted in US law
- Must have low enforcement completion

SIJS
Special Immigrant Juvenile Status for child victims

CONSIDERATIONS
- Must file juvenile court order
- For victims of abuse, abandonment, or neglect by one or both parents

If approved, benefit provides:
1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

CONTINUED PRESENCE
For victims of trafficking

CONSIDERATIONS
- Victims of a severe form of human trafficking and who may be potential witnesses, or filed a civil action
- Law enforcement support is required

If approved, benefit provides:
1. Protection from removal
2. Work authorization
3. Access to federal social services benefits

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233732)
Why do you think these forms of immigration relief exist for victims of crime?
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
Goals of Immigration Relief

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

National Immigrant Women’s Advocacy Project at the American University Washington College of Law
IACP 2018 Resolution

• Recognizes U and T Visas as significant crime-fighting tools and using them as best practice
• Supports training, education, communication, and “increased police leadership involvement”
• Committed to increasing collaboration

_U Visas are “effective tools for law enforcement agencies that enhance public safety, officer safety, and protection of victims nationwide.”_
Coercive Control Over Immigration Status

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

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

Immigration-Related Abuse

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

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

Filing and VAWA Confidentiality

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

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

• Case is flagged notifying immigration officials about pending or approved VAWA, U visa or T visa case.
What prevents immigrant victims from reporting crime?
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 childcare
- Community pressure
- Family pressure
- Religious factors
Language Access

Best practices to successfully investigate and prosecute cases involving limited English proficient victims
How do law enforcement and prosecution benefit from the U visa and language access?
U Visa and Language Access 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
Title VI of the Civil Rights Act 1964

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d
Meaning of Title VI

• If an organization receives any federal funds
• All aspects of the organization must take reasonable steps to provide meaningful access to programs, benefits, and services offered by the organization to persons with LEP
What is Meaningful Access?

Defined in the DOJ’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.”
DOJ Model Guidance

• 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
First Responders: What do you do when you arrive at a crime scene?
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?
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
Who do you choose that speaks English to interpret on the crime scene under exigent circumstances?

- What are the pros/cons of that choice?
What could happen if evidence is incorrectly interpreted in:

- Police reports
- Victim statements
- Witness interviews
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’s legal rights could be adversely impacted”
  – Criminal interrogations
  – Crime witness interviews

• Vital written materials translated into primary language
  – Miranda warnings
Use a Qualified Interpreter

- Writing a police report
- Detective interviews
- Taking initial statements
- Crime scene interviews
- Communication relating to taking photographs
- Formal interviews at the station
- Developing probable cause
- Preparing case for prosecution
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 and misinterpreted several statements made by the suspect and the detective
A Qualified Interpreter Should Be

• Someone who is able to interpret effectively, accurately, and impartially, both:
  – Receptively = understanding what the person who is LEP or with a disability is saying
  – Expressively = having the skill needed to convey information back to that person

• Training includes:
  – Distinct role, professionalism, and ethics

**Different than Certified Interpreter**
“Qualified Interpreter”

“When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer’s dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview.”

U Visas as a Crime Fighting Tool

Improving the reporting, investigation, and prosecution of violent crime & keeping everyone safer
What do you know about or what has your experience been with U Visas?
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

11/2011

<table>
<thead>
<tr>
<th>% of U Visas</th>
<th>Criminal Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>76.1%</td>
<td>Domestic Violence &amp; Sexual Violence</td>
</tr>
<tr>
<td>9.9%</td>
<td>Felonious Assault, Murder, Manslaughter</td>
</tr>
<tr>
<td>8.47%</td>
<td>Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture</td>
</tr>
<tr>
<td>5.3%</td>
<td>Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation</td>
</tr>
</tbody>
</table>
U Visa Basics

- Law enforcement certification is
  - A filing requirement
  - Just one part of the overall process; it does not = citizenship

- Meant to promote reporting of crime

- Targets offenders who prey on most vulnerable victims

- Offender may be citizen or non-citizen

- Can be “revoked”

- Increases immigrant victim justice system participation
  - Rises significantly after the victim receives bona fide determination = work authorization/deferred action

- Bona fide = protection during the wait for U visa
  - Limited to 10,000 per year
U Visa Process Timeline

4 years

1. Submit U Visa Application
2. Fingerprinting and Background Check
4. Background Check
5. U Visa Approval
6. Apply for Legal Permanent Residency
7. Background Check
8. Legal Permanent Residency Approval
9. Apply for Naturalization
10. Background Check
11. Naturalization Approval

10 years (14 years post-filing)

1-2 years (18-19 years post-filing)

5 years (24 years post-filing)

3 years (17 years post-filing)
A closer look at what U Visa Certification attests to:

THIS PERSON IS A VICTIM OF A QUALIFYING CRIME
### Qualifying Criminal Activity

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

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

Examples:
  – Hate crimes
  – Video voyeurism
  – Elder abuse/abuse of adults with disabilities
  – Child abuse
  – Robbery or aggravated robbery could be similar to felonious assault depending on the evidence and state law definition
Indirect Victim and Bystander 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, are being, or are likely to be helpful

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

THE VICTIM’S HELPFULNESS
Determining Helpfulness

• Certifying agency determines “helpfulness”
• No degree (or timing) of helpfulness required
  – *DHS adjudicates helpfulness based on – totality of the circumstances*
• Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
• Victim’s criminal history does not preclude U visa eligibility, particularly when crime connected to the abuse
• The investigation or prosecution can still be ongoing
• Certification can be “revoked”
Definition of “Helpfulness”
INA 245(m)(1); 8 U.S.C. 1255(m)(1) and 8 C.F.R 214.14(b)(3)

A victim has been, is being, or is likely to be helpful to law enforcement, prosecutors, judges, or other government officials.
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
DHS Promotes a Victim-Centered Approach

• Includes practices that build trust, help stabilize victims, and minimize victimization and additional trauma. **Equally values**
  – The identification and stabilization of victims, including providing immigration relief, and
  – The detection, investigation, and prosecution of perpetrators of serious crimes.

• Promotes use of qualified interpreters
### Example of Helpfulness May Include:

<table>
<thead>
<tr>
<th>Calling 911</th>
<th>Having a Rape Kit performed</th>
<th>Providing a description of offender or their whereabouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowing photographs to be taken</td>
<td>Filing for a protection order</td>
<td>Bringing a minor victim to court</td>
</tr>
<tr>
<td>Providing a statement about “other bad acts”</td>
<td>Providing evidence of abuse in a custody, child welfare, or divorce case</td>
<td>Testifying at a bond hearing, trial, or sentencing</td>
</tr>
</tbody>
</table>
Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
  - Police, Sheriffs, FBI, HSI, 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.
When should you certify?
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 Certification Process

U Visa qualifying criminal activity occurs

Law enforcement or systems-based advocate informs victim about U Visa

Victim is referred to advocate / non-government agency / trusted immigration attorney

U Visa request made by victim, victim advocate or immigration attorney

Applicable certifying agency receives U Visa request

Agency requests for all relevant police records to determine eligibility

Based on provided reports from the police and the victim, the certifier determines the following:

1. All qualifying criminal activities in the case;
2. That criminal activity occurred in the U.S.; and
3. That the victim is/was/ will likely be helpful in the detection, investigation, prosecution or sentencing

If qualified, the agency fills out the required forms and sends all relevant information to a certifying agent

U visa certification signed by chief/sheriff or designee

Agency / victim send the forms and all applicable documents and evidence to USCIS for processing
U Visa Certification (Form I-918B)

What is the U Visa Certification saying?

**Background:** The certification is required evidence in victims’ U visa applications. U.S. Citizenship and Immigration Services (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.
Certification form is available to download at

https://www.uscis.gov/i-918
Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
   - A-

2.a. Family Name
    - (Last Name)

2.b. Given Name
    - (First Name)

2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in Part 7. Additional Information.

3.a. Family Name
    - (Last Name)

3.b. Given Name
    - (First Name)

3.c. Middle Name

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

5. Gender  □ Male  □ Female
In addition to the head of the agency, one or more certifying officials can be designated as a "Certifying Official"
You can & should certify multiple offenses when present in the case, even if not charged.
Dates do not have to be precise – you can use months, seasons or years.

Provide the dates on which the criminal activity occurred.

<table>
<thead>
<tr>
<th>2.a.</th>
<th>Date (mm/dd/yyyy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.b.</td>
<td>Date (mm/dd/yyyy)</td>
</tr>
<tr>
<td>2.c.</td>
<td>Date (mm/dd/yyyy)</td>
</tr>
<tr>
<td>2.d.</td>
<td>Date (mm/dd/yyyy)</td>
</tr>
</tbody>
</table>

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?  □ Yes  □ No

2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above?  □ Yes  □ No

3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above?  □ Yes  □ No

If you answer "Yes" to Item Numbers 1. - 3., provide an explanation in the space below. If you need extra space to complete this section, use the space provided in Part 7. Additional Information.
Because many applications will include domestic violence, this may likely be the defendant.

**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 ______________________
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

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

"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**
Before Filing the U Visa
• Has been helpful *Or*
• Is being helpful *Or*
• Is likely to be helpful
TO.....
• Detection *Or*
• Investigation *Or*
• Prosecution *Or*
• Conviction *Or*
• Sentencing

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

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

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

Is the request for cooperation reasonable?

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

Is the victim’s refusal unreasonable?

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

AND
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
Practice Tips

• Identify tactics used by offender to assert power and control

• Proactively address witness intimidation
  – Monitor jail phone calls
  – Conduct wellness checks when appropriate
  – Recognize changes in communication patterns

What you can do:

• Collaborate with victim service professionals
• Communicate with victim’s immigration attorney
• Establish safe points of contact with friends and family
• Continually safety plan with victim

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 provides the victim an opportunity to explain
• DHS makes the ultimate decision
Prosecutors’ Primary Concern

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

CONS
- Accusation that victim is lying for immigration benefit
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
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

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
Technical Assistance and Training

• NIWAP
  – Call: 202.274.4457
  – Email: info@niwap.org
  – Web library: https://niwaplibrary.wcl.american.edu/

• AEquitas at www.aequitasresource.org
  – Jane Anderson
    janderson@aequitasresource.org
What’s Next & How to Connect

• Connect with the LETTAC team at contact@LETTAC.org.

• Request training and technical assistance at www.lettac.org/TTA.

• Share LETTAC with your colleagues and be our champions!

• Your feedback today will improve and shape future events!
Assistance and Feedback

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National Violence Against Women

Law Enforcement Training and Technical Assistance Consortium (LETTAC)

2023 Conference on Crimes Against Women

The U Visa & Language Access: Tools to Increase Immigrant Victim Participation in the Justice System

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