

NIWAP

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COLLEGE OF LAW

Strengthening Community and Organization Responses:

Serving Immigrant Victims of Intimate Partner Violence, Sexual Assault, and Stalking

Portland, Oregon
October 4, 2023

For Law Enforcement, Prosecutors, Systems-Based Victim Advocates and Certifying Agency Staff

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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
- Pre-training assessment

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NIWAP
National Immigrant Women's Advocacy Project
Supporting immigrant women and children through education and policy advocacy.

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>

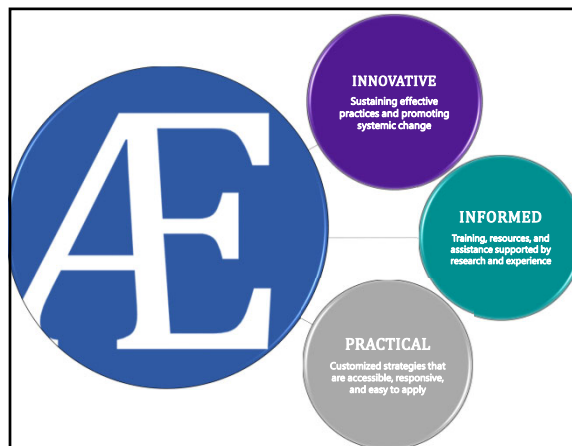


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NIWAP <http://niwaplibrary.wcl.american.edu>

- 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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What We Do

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

Materials Summary

- Materials
 - Agenda
 - PowerPoint presentation
 - Hypotheticals
 - Evaluations
- Web Library
<https://niwaplibrary.wcl.american.edu/law-enforcement-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
- Bluecard Tool Screening Victims for Immigration Protections
- Multilingual Know Your Rights Materials

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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:

- Describe who qualifies for U and T Visas
- Sign U Visa and T Visa applications to increase victim stability and safety
- Collaborate to improve trust with immigrant communities
- Develop strategies to overcome common defenses in cases involving immigrant victims

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DYNAMICS OF INTIMATE PARTNER VIOLENCE, STALKING, SEXUAL ASSAULT, AND HUMAN TRAFFICKING INVOLVING IMMIGRANT VICTIMS

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Learning Objectives

- Describe your community's demographics
- Identify how offenders use immigration status to assert power and control
- Minimize barriers to victim disclosures

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What countries are you seeing immigrant survivors coming from?

Oregon Data (2019)
Sources: Migration Policy Institute Data Hub (August 2021) and Lawful Permanent Resident estimates MPI and DHS (2022)

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Immigrant Population

- ♦ Total foreign-born population = 410,552
- 9.7% of the state's ~4.2 million people are foreign born
- 41% naturalized citizens
- 29% legal permanent residents
- 30% temporary visa holders or undocumented immigrants

Immigrant population rose 41.7% between 2000 to 2019

- 22.3% of children under age 18 have one or more immigrant parents
- 87.8% of these children are native-born U.S. citizens

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Regions of Origin & Limited English Proficiency

- ♦ Latin America - 42.6%
 - ♦ Mexico (33.7%)
 - ♦ Other Central America (4.8%)
- ♦ Asia - 30.8%
 - ♦ Other Southeastern Asia (7.1%)
 - ♦ China/Taiwan (7%)
 - ♦ Vietnam (5.6%)
 - ♦ India (4.4%)
- ♦ Europe - 13.5%
 - ♦ Eastern Europe (6.4%)
- ♦ Africa - 4.2%
- ♦ Middle East - 3.1%
- ♦ Canada - 3.7%
- ♦ Oceania - 2.1%

♦ Language spoken

- ♦ 15.5% of people in Oregon speak a language other than English at home
- ♦ 41.5% of foreign-born persons are LEP

LEP = Individual speaks English less than "very well".

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Languages Spoken at Home

1. Spanish (366,785)
2. Chinese (Mandarin and Cantonese) (33,598)
3. Vietnamese (27,598)
4. Russian (20,823)
5. German (17,161)
6. Korean (13,759)
7. Tagalog (including Filipino) (12,923)
8. French (including Cajun) (11,924)
9. Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (9,467)

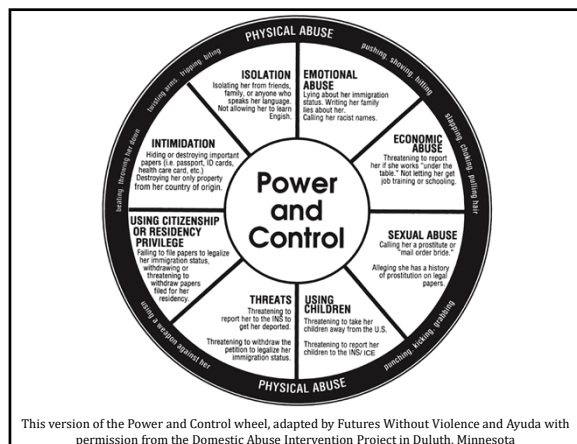
Languages Spoken at Home

10. Japanese (8,465)
11. Arabic (7,417)
12. Amharic, Somali, or Other Afro-Asiatic Languages (6,460)
13. Persian (including Farsi, Dari) (4,608)
14. Hindi (4,532)
15. Nepali, Marathi, or Other Indic Languages (4,270)
16. Thai, Lao, or Other Tai-Kadai Languages (4,250)
17. Yiddish, Pennsylvania Dutch or Other West Germanic Languages (4,103)

Oregon-LEP (2019)*

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 31.1%
 - ❖ Noncitizens – 51.3%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Vietnamese (56.8%)
 - ❖ Thai, Lao, or Other Tai-Kadai Languages (45.8%)
 - ❖ Korean (45.7%)
 - ❖ Chinese (including Mandarin, Cantonese) (43.3%)
 - ❖ Spanish (34.4%)
 - ❖ Tagalog (including Filipino) (33.2%)
 - ❖ Amharic, Somali, or Other Afro-Asiatic Languages (31.9%)
 - ❖ Japanese (31.8%)
 - ❖ Telugu (31.6%)
 - ❖ Arabic (28.7%)
 - ❖ Russian (26.7%)

How can immigration status and LEP affect victimization?



Large Group Discussion


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

Intimate Partner Violence

Sexual Assault

Stalking

Department of Homeland Security



- DHS Video

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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.

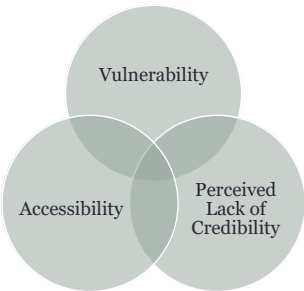
- Threats or attempts to have immigrant partner deported or have case denied
 - 25% of perpetrators actively report the victim for removal
- Using language proficiency to manipulate law enforcement
 - 36% of perpetrators get immigrant and LEP victims arrested for domestic violence*

*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

Sexual Assault & Human Trafficking



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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

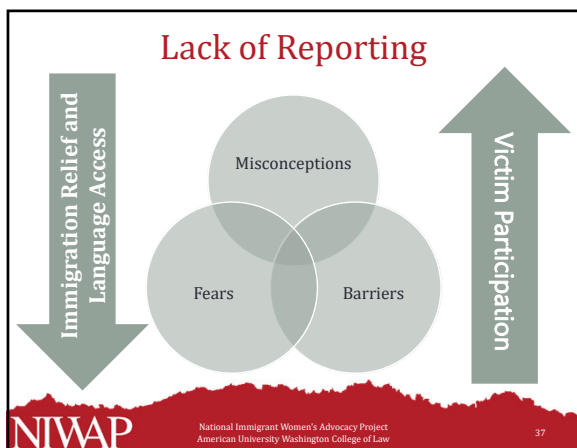
- Lack of knowledge of
 - Crime victim legal rights
 - Laws regarding domestic violence, sexual assault
- Do not trust the police
- Believe police will arrest them
- Local police are immigration officers
- No services are available to immigrant victims
- Police are corrupt
- Criminal justice system will 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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HISTORY AND PURPOSE OF THE U AND T VISA PROGRAMS AND VAWA'S IMMIGRATION PROTECTIONS

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Objectives

- Describe why immigration relief is available to victims of certain crimes
- Articulate differences between various forms of immigration relief
-

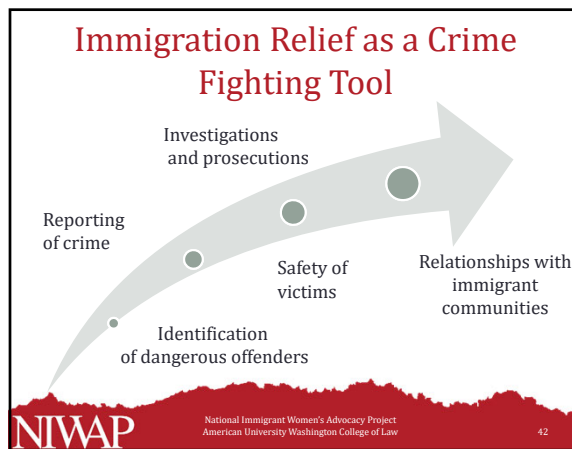
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**U.S. Immigration Benefits for
NONCITIZEN CRIME VICTIMS**


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

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

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How do immigration relief programs promote officer safety?




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U Visa Statistics

NIWAP 11/2011 and USCIS 2020

% of U Visas	Criminal Activity
58% to 76.1% = Domestic & Sexual Violence, Crimes Against Children & Human Trafficking	
50%	Felonious Assault, Murder, Manslaughter
9%	False Imprisonment, Kidnapping, Being Held Hostage, Unlawful Criminal Restraint
4% - 5.3%	Torture, Stalking, Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation, Other U Visa Criminal Activities



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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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RESEARCH SHOWS THAT U VISA APPLICANTS REPORT FUTURE CRIMES AT HIGHER RATES

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



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Increased Participation


- U Visa Victims
 - 70% participate in active criminal prosecutions and investigations
 - 29% willing to cooperate if their criminal cases went forward
 - 67% seek protection orders
 - 64% seek custody orders
- VAWA Self-Petitioners
 - 62% participate in criminal investigations and prosecutions
 - 63% seek civil protection orders
 - 60% turn to the courts for child custody orders



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U VISAS AS A CRIME FIGHTING TOOL



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Objectives

- Articulate U Visa requirements
- Improve investigations and prosecutions by enhancing victim safety and stability
- Analyze “helpfulness” in U Visa cases

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How much do you know about the U Visa?

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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"> • Qualifying criminal activity • Possesses information about the crime • Criminal activity occurred in U.S. or violated U.S. law 	<ul style="list-style-type: none"> • Victim has been, is being, or is likely to be helpful in <i>any of the following</i>: <ul style="list-style-type: none"> • Detection • Investigation • Prosecution • Conviction • Sentencing 	<ul style="list-style-type: none"> • Substantial physical or mental abuse as a result <p style="background-color: #800000; color: white; padding: 5px; 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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Role of Certifying Official

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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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Why did Congress design the U visa to authorize multiple agencies to provide U visa certification?

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Definition of "Helpfulness"

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

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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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ACTIVITY: CASE SCENARIOS

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Small Group Activity

- Review case scenarios
- Determine who, if anyone, qualifies for a U Visa
- Be prepared to discuss the factors you considered

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Helpfulness as a Continuing Obligation

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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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Practice Tips

- Proactively investigate witness intimidation
- Collaborate with systems-based and community-based victim service professionals
- Conduct trauma-informed assessments of reasonableness

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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



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IMMIGRATION RELIEF AND HUMAN TRAFFICKING



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Objectives


- Define Human Trafficking for purposes of immigration relief
- Describe the difference between a T Visa, Continued Presence, and Deferred Action
- Articulate offender tactics to assert "force, fraud, and coercion"



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Immigration Relief Tools

- T Visa Available to victims of human trafficking
- Continued Presence Short-term immigration relief to newly-identified victims of trafficking
- Labor-Based Deferred Action Immigration protection for victims, and witnesses to, violations of labor rights



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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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A Severe Form of Human Trafficking

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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What are common tactics used by traffickers to assert “force, fraud, and coercion”?

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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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The victim's vulnerabilities are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve.

United States v. Kozminski, 487 U.S. 931, 933, 108 S. Ct. 2751, 2755, 101 L. Ed. 2d 788 (1988)

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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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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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Labor-Based Deferred Action

- Decision to defer removal as an act of prosecutorial discretion
 - DHS makes determinations on a case-by-case basis, and it can be terminated at any time
- No statutory or regulatory limit to the length of time
 - Historically, deferred action has been granted for periods of two to three years.
- Individuals with deferred action are eligible for an employment authorization document with a basic showing of economic necessity.

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To qualify, a worker must...

(1) Witness or experience a violation of labor or employment law or other labor dispute;

(2) File a complaint with a federal, state, or local labor or employment agency or identify an existing agency investigation related to the violation; and


(3) Obtain a Statement of Interest from labor or employment agency; *e.g.*, NLRB, USDOL, EEOC

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CERTIFICATION



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Objectives

- Protect victims from offenders and deportation by certifying early
- Stabilize victims by providing them access to work authorization
- Articulate U Visa review process



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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 reasonable suspicion that the applicant is a victim of the qualifying criminal activity?

- Standard of prove: "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

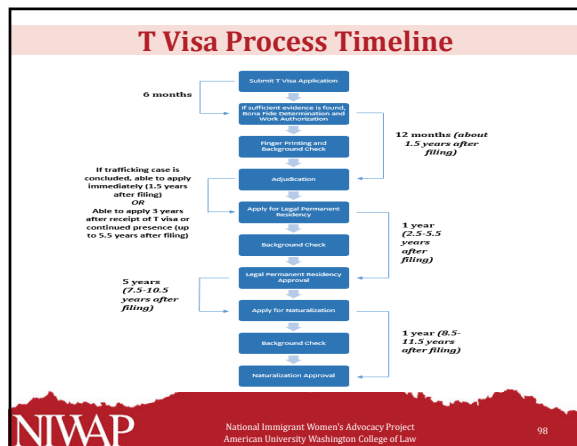
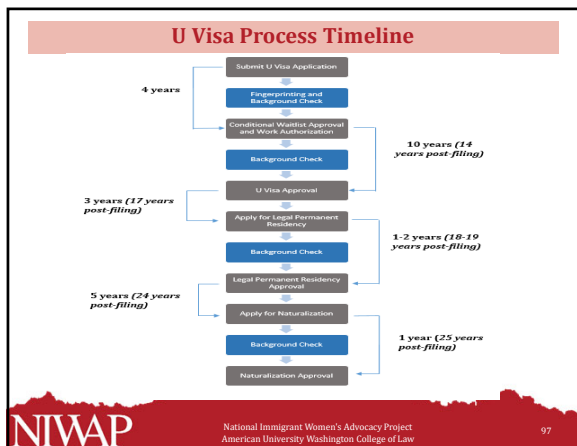
I am the head of the agency listed in Part 2, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in Part 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.

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

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



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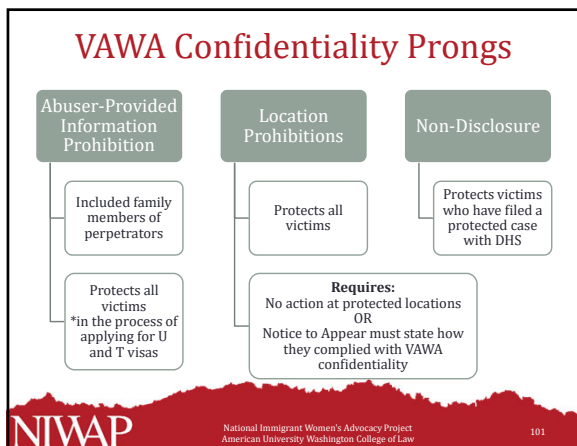
Why does it matter when we sign given that the timeline is so long?

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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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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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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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Work Authorization

- 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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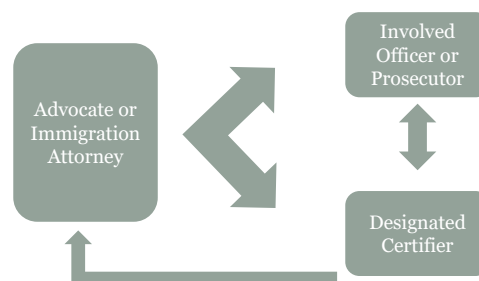
How are you involved in the certification process?

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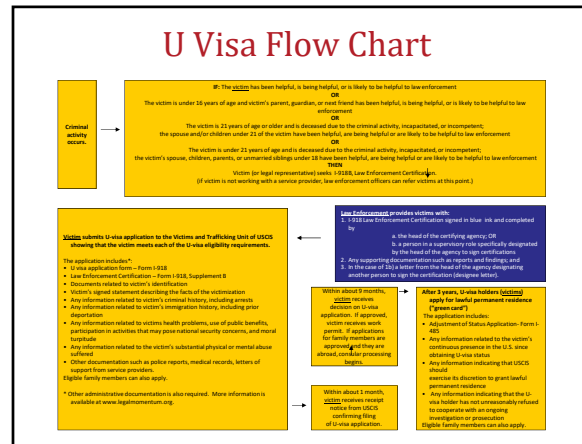
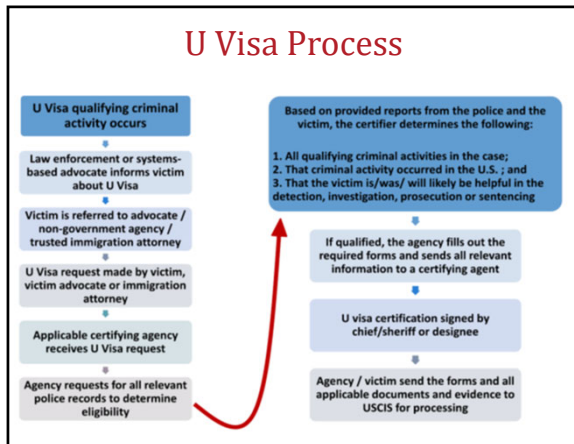
Certification Review



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Certification provides victims with:

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

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HOLDING OFFENDERS ACCOUNTABLE

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Objectives

- Ethically protect victim privacy
- Litigate admission of evidence pretrial
- Develop offender-focused trial strategies

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How do law enforcement and prosecution benefit from victims receiving immigration relief?

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Benefits

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Enhances officer and community safety
- Increases potential to convict dangerous offenders
- Demonstrates commitment to protecting immigrant community members
- Fosters community policing partnerships
- Makes it easier to identify victims and witnesses
- Reduces repeat calls and recanting victims

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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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Ethical and Due Process 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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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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Educating the Judge and Jury

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

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Excluding Evidence

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

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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

Or. Rev. Stat. § 40.170

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

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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




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



Rebuttal Testimony


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



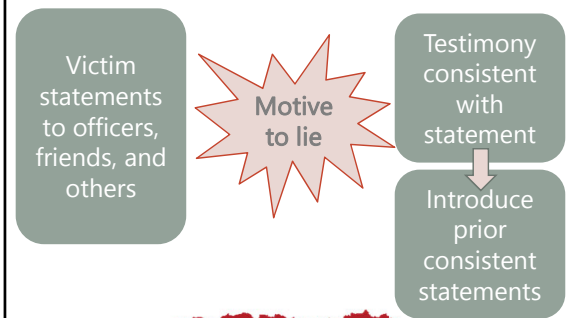
Prior Consistent Statements

Or. Rev. Stat. Ann. § 40.450

- 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




Establishing Timeline




```

    graph LR
      A[Victim statements to officers, friends, and others] --> B((Motive to lie))
      B --> C[Testimony consistent with statement]
      C --> D[Introduce prior consistent statements]
    
```



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?”



Testimony by Experts


Or. Rev. Stat. § 40.410

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.



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



Possible Experts

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

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




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:

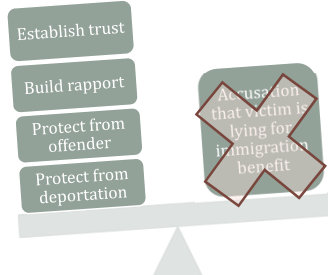
“You know there is a very good reason why that U-visa program is in place because without it, people like him, can have free rein. They rape, pillage and plunder a whole underclass of people in this country simply because they are illegal aliens, knowing full well that they in their perpetual fear factor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




PROS


CONS

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





ENHANCING OUR WORK THROUGH COLLABORATION



Objectives

- Identify collaborative partners
- Collaborate to increase victim identification and participation
- Provide victims with meaningful access to services and resources

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Victim Centered Collaboration

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Collaborative Efforts

- Maintain victim and witness contact
- Update victims on case status
- Coordinate victim services
- Investigate witness tampering and other co-occurring crimes
- Ensure language access
- Provide meaningful access to appropriate services

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WORKING TOGETHER FOR A COMMON GOAL

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WORKING TOGETHER FOR A COMMON GOAL

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WORKING TOGETHER FOR A COMMON GOAL

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- ## Consulate Resources
- Outreach and awareness opportunities
 - Language access (dialects)
 - Explain culture and traditions
 - Legal assistance from country of origin
 - Emits passports and consular IDs
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What is an example of how collaboration has enhanced your work?

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- ## Collaboration is Best
- Ensures effective delivery of services to people most in need
 - Builds trust and confidence in the criminal justice system
 - Allows for the identification of the best resources to solve problems
 - Improves policies and practices to better service communities
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- ## Resources
- Technical Assistance
 - Call: 202.274.4457
 - Email: niwap@wcl.american.edu
 - Web Library: <https://niwaplibrarywcl.american.edu/>
 - Materials for certifying agencies on best practices for working with immigrant victims
 - <https://niwaplibrarywcl.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
- NIWAP** National Immigrant Women's Advocacy Project
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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
- 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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U Visa Certification Overview

<https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf>

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Can be drafted by the victim's advocate or attorney

Head of certifying agency not applicable to judicial certifications

NIWAP 167

Certify all that you can detect from the evidence presented or in court records

No criminal case filing required

Not limited to the criminal charges, if any, filed

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

NIWAP 168

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

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

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

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

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

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

Under Department of Homeland Security Regulations and form instructions, "being investigated and/or prosecuted" here means = "Detection, investigation, prosecution, conviction or sentencing"

Judges: detect in criminal, civil and family court cases, convict, and sentence

Be as specific as possible, highlighting visible injuries and any emotional injuries observed (even if not photographed).

Make copies of all court orders, photographs, police reports in court record and attach.

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Part 3. Criminal Act

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

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or one similar activity) (check all applicable items):

- Abuse
- Abuse of Social Contact
- Attempt to Commit
- Day of the Month
- Child
- Drug-Related
- Blackmail
- Computer or Internet
- Any of the Above
- Domestic Violence
- Extortion
- False Imprisonment
- False Personation
- False Statement
- Fraud
- Fraud in Foreign Labor Contracting
- Harassment
- Identity Theft
- Kidnapping
- Mail
- Murder
- Obstruction of Justice
- Passport
- Peppery
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Substitution to Counter Act of the Natural Citizen
- Taxation
- Trafficking
- Unlawful Control
- Unlawful Entrustment
- Unlawful Importation
- Unlawful Transportation

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

3. List the statutory citation for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

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

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

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

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

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

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

Certify all that you can detect from the evidence presented or in court records

No criminal case filing required

Not limited to the criminal charges, if any, filed

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

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

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

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

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

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

Under Department of Homeland Security Regulations and form instructions, "being investigated and/or prosecuted" here means = "Detection, investigation, prosecution, conviction or sentencing"

Judges: detect, convict, and sentence

Make copies of all court orders, photographs, police reports in court record and attach.

Be as specific as possible, highlighting visible injuries observed (even if not photographed).

If you are aware of mental injury, include as well.

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Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 18 years of age, incorporate in your answer, when a parent, guardian, or other family member is not available, the name of the person who is acting on behalf of the victim.

1. Have the victim's personal belongings, including the criminal activity listed in Part 3.1? Yes No

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

3. Since the initiation of cooperation, has the victim refused or failed to provide accurate information requested for the investigation or prosecution of the criminal activity described above? Yes No

If you answer "Yes" to Item Number 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.

4. Other. Include any additional information you would like to provide.

Why do you think # 3 it's set up this way?

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Part 5. Family Members Culpable in Criminal Activity

1. Are any of the victim's family members culpable or liable to be liable for 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. First Name

2.c. Middle Name

2.d. Relationship

2.e. Involvement

3.a. Family Name (Last Name)

3.b. First Name

3.c. Middle Name

3.d. Relationship

3.e. Involvement

4.a. Family Name (Last Name)

4.b. First Name

4.c. Middle Name

4.d. Relationship

4.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 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

The form asks about family members because DHS wants assistance identifying the perpetrator's family members

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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 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

Judges can amend the form

Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case
- Judges may cross out the last sentence due to judicial ethics

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim immigration relief.

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