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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Introduction

- Faculty
- Housekeeping
- Pre-training assessment
The National Women’s Immigrant Advocacy Project
American University Washington College of Law

Our goal is to increase immigrant crime victims’ safety, justice system participation, and ability to rebuild their lives and thrive
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 |

National Immigrant Women's Advocacy Project
American University Washington College of Law
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
NIWAP http://niwaplibrary.wcl.american.edu

- Training Materials for:
  - Law Enforcement
  - Prosecutors
  - Systems Based Victim Advocates
  - Judges
  - Attorneys/Victim Advocates
  - Statutes, Regulations, Policies & Government Publications

- Language Access
  - Multilingual Materials
  - Immigration
  - Family and Criminal Law
  - VAWA Confidentiality
  - Public Benefits, Legal Services & Economic Relief
  - Dynamics, Culture, Collaboration & Safety
INNOVATIVE
Sustaining effective practices and promoting systemic change

INFORMED
Training, resources, and assistance supported by research and experience

PRACTICAL
Customized strategies that are accessible, responsive, and easy to apply
## What We Do

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

• Materials
  – Agenda
  – PowerPoint presentation
  – Hypotheticals
  – Evaluations

• Web Library
  https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials

• USB Drives – Tools and resources
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
Participant Goals and Expectations
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
Dynamics of Intimate Partner Violence, Stalking, Sexual Assault, and Human Trafficking involving Immigrant Victims
Learning Objectives

1. Describe your community’s demographics
2. Identify how offenders use immigration status to assert power and control
3. 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)
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
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”.**
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?
This version of the Power and Control wheel, adapted by Futures Without Violence and Ayuda with permission from the Domestic Abuse Intervention Project in Duluth, Minnesota
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
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%

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

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*

The Perfect Plan
Sexual Assault & Human Trafficking

Vulnerability

Accessibility

Perceived Lack of Credibility
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

• 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).
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

What prevents immigrant victims from reporting crime?
Misconceptions

Fear

Barriers
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
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
Barriers

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

- Misconceptions
- Fears
- Barriers

Immigration Relief and Language Access

Victim Participation
HISTORY AND PURPOSE OF THE U AND T VISA PROGRAMS AND VAWA’S IMMIGRATION PROTECTIONS
Objectives

- Describe why immigration relief is available to victims of certain crimes
- Articulate differences between various forms of immigration relief
U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS
- Must be in the U.S. on account of human trafficking.
- Law enforcement determination is not required.
- [If approved, benefit provides:]
  - Up to four years of temporary nonimmigrant status.
  - Work authorization.
  - Access to federal and state benefits and services.
  - Ability to apply for permanent residency.
  - Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

VAWA CONSIDERATIONS
- Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or lawful permanent resident spouse or parent or your U.S. citizen adult son or daughter.
- [If approved, benefit provides:]
  - Lower priority for removal.
  - Work authorization.
  - Access to federal and state benefits and services.
  - Ability to apply for permanent residency.
  - Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

ASYLUM CONSIDERATIONS
- Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.
- [If in removal proceedings, may need to file Form I-588 with the immigration judge.]
- [If approved, benefit provides:]
  - Asylee status.
  - Work authorization.
  - Access to federal and state benefits and services.
  - Ability to apply for permanent residency.
  - Ability for spouse and children to receive asylum, even if not already in the U.S.

SIJ CONSIDERATIONS
- Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents.
- Must have a juvenile court order with the required determinations.
- [If approved, benefit provides:]
  - Ability to apply for permanent residency.

U VISA CONSIDERATIONS
- For victims of domestic violence, sexual assault, human trafficking, and other qualifying crimes.
- [If approved, benefit provides:]
  - Up to four years of temporary nonimmigrant status.
  - Work authorization.
  - Ability to apply for permanent residency.
  - Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

T VISA
For victims of human trafficking

VAWA
For victims of domestic violence and abuse

ASYLUM
For victims of persecution

SIJ
Special Immigrant Juvenile classification for child victims under 21 years of age

U VISA
For victims of domestic violence, sexual assault, human trafficking, and other qualifying crimes

Why do you think these forms of immigration relief exist for victims of crime?
Immigration Relief as a Crime Fighting Tool

- Reporting of crime
- Identification of dangerous offenders
- Safety of victims
- Investigations and prosecutions
- Relationships with immigrant communities
How do immigration relief programs promote officer safety?
# U Visa Statistics
**NIWAP 11/2011 and USCIS 2020**

<table>
<thead>
<tr>
<th>% of U Visas</th>
<th>Criminal Activity</th>
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<tbody>
<tr>
<td>50%</td>
<td>Felonious Assault, Murder, Manslaughter</td>
</tr>
<tr>
<td>9%</td>
<td>False Imprisonment, Kidnapping, Being Held Hostage, Unlawful Criminal Restraint</td>
</tr>
<tr>
<td>4% - 5.3%</td>
<td>Torture, Stalking, Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation, Other U Visa Criminal Activities</td>
</tr>
</tbody>
</table>

58% to 76.1% = Domestic & Sexual Violence, Crimes Against Children & Human Trafficking
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.”
RESEARCH SHOWS THAT U VISA APPLICANTS REPORT FUTURE CRIMES AT HIGHER RATES

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
U VISAS AS A CRIME FIGHTING TOOL
Objectives

- Articulate U Visa requirements
- Improve investigations and prosecutions by enhancing victim safety and stability
- Analyze “helpfulness” in U Visa cases
How much do you know about the U Visa?
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
# U Visa Requirements

<table>
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<tr>
<th>Victim</th>
<th>Helpfulness</th>
<th>Harm</th>
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| • Qualifying criminal activity | • Victim has been, is being, or is likely to be helpful in *any of the following*:  
  • Detection  
  • Investigation  
  • Prosecution  
  • Conviction  
  • Sentencing | • Substantial physical or mental abuse as a result |
| • Possesses information about the crime | | This is not a part of the certification. |
| • Criminal activity occurred in U.S. or violated U.S. law | | |

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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
## Qualifying Criminal Activity

<table>
<thead>
<tr>
<th>Abduction</th>
<th>Hostage</th>
<th>Sexual Assault</th>
</tr>
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<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>
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
Role of Certifying Official

Certification

Supporting documentation

U Visa Application
Who Can Certify?

“law enforcement” & “law enforcement agencies” = Head of agency or desigee

- 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
Why did Congress design the U visa to authorize multiple agencies to provide U visa certification?
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.
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
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
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
ACTIVITY:  CASE SCENARIOS
Small Group Activity

• Review case scenarios
• Determine who, if anyone, qualifies for a U Visa
• Be prepared to discuss the factors you considered
Helpfulness as a Continuing Obligation
Ongoing Assistance

Initial Helpfulness

File Application

Bona Fide or Wait List Determination

Approval and Receipt of Visa

Lawful Permanent Residency

Continuing obligation to provide assistance when reasonably requested
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)
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
Why would a victim report a crime and then refuse to participate in the ensuing investigation and trial?
Inability to Participate

- Fear
- Inaccessible services
- Lack of resources
- Witness intimidation
- Culture
- Lack of communication
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
Practice Tips

- Proactively investigate witness intimidation
- Collaborate with systems-based and community-based victim service professionals
- Conduct trauma-informed assessments of reasonableness
What if after conducting a trauma-informed analysis, you still believe the victim is unreasonably refusing to comply with reasonable requests?
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
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 analysis, but the certification is revokable.
Immigration Relief and Human Trafficking
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”
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
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
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.
What are common tactics used by traffickers to assert “force, fraud, and coercion”? 
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.
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.
Totality of the Circumstances

**Serious Harm**
- Physical or nonphysical
- Psychological
- Financial
- Reputational

**Circumstances**
- The surrounding circumstances

**Victim**
- Same background
- In the same circumstances
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.

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*
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
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
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.
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
CERTIFICATION
Objectives

- Protect victims from offenders and deportation by certifying early
- Stabilize victims by providing them access to work authorization
- Articulate U Visa review process
When should you sign a U Visa Certification or a T Visa Declaration?
ANSWER:
As soon as you have the information you need to complete the paperwork.
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
Part 6. Certification

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

1. Signature of Certifying Official (sign in ink)

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

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

4 years
- Submit U Visa Application
- Fingerprinting and Background Check
- Conditional Waitlist Approval and Work Authorization
- Background Check
- U Visa Approval

3 years (17 years post-filing)
- Apply for Legal Permanent Residency
- Background Check
- Legal Permanent Residency Approval
- Apply for Naturalization
- Background Check
- Naturalization Approval

10 years (14 years post-filing)

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

1 year (25 years post-filing)
T Visa Process Timeline

- Submit T Visa Application
- If sufficient evidence is found, Bona Fide Determination and Work Authorization
- Finger Printing and Background Check
- Adjudication
- Apply for Legal Permanent Residency
- Background Check
- Legal Permanent Residency Approval
- Apply for Naturalization
- Background Check
- Naturalization Approval

6 months

12 months (about 1.5 years after filing)

If trafficking case is concluded, able to apply immediately (1.5 years after filing)
OR
Able to apply 5 years after receipt of T visa or continued presence (up to 5.5 years after filing)

5 years (7.5-10.5 years after filing)

1 year (2.5-5.5 years after filing)

1 year (8.5-11.5 years after filing)
Why does it matter when we sign given that the timeline is so long?
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
VAWA Confidentiality Prongs

**Abuser-Provided Information Prohibition**
- Included family members of perpetrators
- Protects all victims *in the process of applying for U and T visas

**Location Prohibitions**
- Protects all victims

**Non-Disclosure**
- Protects victims who have filed a protected case with DHS

**Requires:**
- No action at protected locations OR
- Notice to Appear must state how they complied with VAWA confidentiality
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
“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.”
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
Why is work authorization important?

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
How are you involved in the certification process?
Certification Review

Advocate or Immigration Attorney

Involved Officer or Prosecutor

Designated Certifier
U Visa Process

1. U Visa qualifying criminal activity occurs
2. Law enforcement or systems-based advocate informs victim about U Visa
3. Victim is referred to advocate / non-government agency / trusted immigration attorney
4. U Visa request made by victim, victim advocate or immigration attorney
5. Applicable certifying agency receives U Visa request
6. Agency requests for all relevant police records to determine eligibility
7. 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
8. If qualified, the agency fills out the required forms and sends all relevant information to a certifying agent
9. U visa certification signed by chief/sheriff or designee
10. Agency / victim send the forms and all applicable documents and evidence to USCIS for processing
Criminal activity occurs.

Victim submits U-visa application to the Victims and Trafficking Unit of USCIS showing that the victim meets each of the U-visa eligibility requirements.

The application includes:
- U visa application form – Form I-918
- Law Enforcement Certification – Form I-918, Supplement B
- Documents related to victim’s identification
- Victim’s signed statement describing the facts of the victimization
- Any information related to victim’s criminal history, including arrests
- Any information related to victim’s immigration history, including prior deportation
- Any information related to victim’s health problems, use of public benefits, participation in activities that may pose national security concerns, and moral turpitude
- Any information related to the victim’s substantial physical or mental abuse suffered
- Other documentation such as police reports, medical records, letters of support from service providers.
- Eligible family members can also apply.

* Other administrative documentation is also required. More information is available at www.legalmomentum.org.

IF: The victim has been helpful, is being helpful, or is likely to be helpful to law enforcement OR
The victim is under 16 years of age and victim’s parent, guardian, or next friend has been helpful, is being helpful, or is likely to be helpful to law enforcement OR
The victim is 21 years of age or older and is deceased due to the criminal activity, incapacitated, or incompetent; the spouse and/or children under 21 of the victim have been helpful, are being helpful or are likely to be helpful to law enforcement OR
The victim is under 21 years of age and is deceased due to the criminal activity, incapacitated, or incompetent; the victim’s spouse, children, parents, or unmarried siblings under 18 have been helpful, are being helpful or are likely to be helpful to law enforcement

THEN
Victim (or legal representative) seeks I-918B, Law Enforcement Certification.
(if victim is not working with a service provider, law enforcement officers can refer victims at this point.)

Law Enforcement provides victims with:
1. I-918 Law Enforcement 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
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).

Within about 9 months, victim receives decision on U-visa application. If approved, victim receives work permit. If applications for family members are approved and they are abroad, consular processing begins.

Within about 1 month, victim receives receipt notice from USCIS confirming filing of U-visa application.

After 3 years, U-visa holders (victims) apply for lawful permanent residence ("green card")
The application includes:
- Adjustment of Status Application- Form I-485
- Any information related to the victim’s continuous presence in the U.S. since obtaining U-visa status
- Any information indicating that USCIS should exercise its discretion to grant lawful permanent residence
- Any information indicating that the U-visa holder has not unreasonably refused to cooperate with an ongoing investigation or prosecution
- Eligible family members can also apply.
Certification provides victims with:
1. I-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).
Holding Offenders Accountable
Objectives

Ethically protect victim privacy

Litigate admission of evidence pretrial

Develop offender-focused trial strategies
How do law enforcement and prosecution benefit from victims receiving immigration relief?
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
**PROS**
- Establish trust
- Build rapport
- Protect from offender
- Protect from deportation

**CONS**
- Accusation that victim is lying for immigration benefit
Ethical and Due Process Obligations

Is it exculpatory?

Is it confidential?
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)
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
• “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
“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
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
If a victim requests a U Visa certification, but you do not sign, what, if anything, do you need to disclose?
Challenges

Strengths
## Analyze Case

<table>
<thead>
<tr>
<th>Victim Selection</th>
<th>• Did the offender choose the victim because of a real or perceived vulnerability?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Act</td>
<td>• Did the offender use the victim’s immigration status to commit a criminal act?</td>
</tr>
<tr>
<td>Escape Detection</td>
<td>• Was the victim prevented from reporting the crime to police because of their immigration status?</td>
</tr>
</tbody>
</table>
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
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
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
Educating the Judge and Jury

Pretrial Motions

Closing Argument

Jury Selection

Expert Testimony

Witness Testimony

National Immigrant Women's Advocacy Project
American University Washington College of Law
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
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
Motions in Limine

Immigration Status
- Exclusion
- Limitation

Other Bad Acts
- Prior threats
- Subsequent threats or intimidation

Experts
- Victim Dynamics
- Immigration Relief
## Excluding Evidence

### Arguments
- Irrelevant
- Probative value is substantially outweighed by potential prejudice

### Examples
- Child victims
- Time lapse between reporting and applying
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...

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.
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.”
“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.”
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
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

- 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

Victim statements to officers, friends, and others

Motive to lie

Testimony consistent with statement

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?”
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

- Experience working with immigrant victims
  - DV Shelter
  - Advocates
  - Rape Crisis Center
  - Investigators
- Scholars

Immigration

- 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
• 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

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

CONS

- Accusation that victim is lying for immigration benefit
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
Victim Centered Collaboration

Law enforcement

Courts

Prosecutors

Legal Services

Victim Services

Victim
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
WORKING TOGETHER FOR A COMMON GOAL

ADVOCACY SERVICES

LAW ENFORCEMENT

COURTS

PROSECUTORS

VICTIMS SAFETY
WORKING TOGETHER FOR A COMMON GOAL

LANGUAGE ACCESS

ADVOCACY SERVICES

COURTS

LAW ENFORCEMENT

PROSECUTORS

National Immigrant Women's Advocacy Project
American University Washington College of Law
WORKING TOGETHER FOR A COMMON GOAL

EVIDENCE & STATEMENT

ADVOCACY SERVICES

COURTS

LAW ENFORCEMENT

PROSECUTORS
WORKING TOGETHER FOR A COMMON GOAL

ADVOCACY SERVICES
RESOURCES
LAW ENFORCEMENT
COURTS
PROSECUTORS
Consulate Resources

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

• Technical Assistance
  – Call: 202.274.4457
  – Email: niwap@wcl.american.edu
  – Web Library: https://niwaplibrary.wcl.american.edu/

• Materials for certifying agencies on best practices for working with immigrant victims
  – https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials
  – U and T Visa Certification Toolkit
  – DHS U Visa Certification Resource Guide
  – Roll call training videos
  – DHS Victim Centered Approach
NIWAP's Podcast Series

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

- 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
Evaluations

• Evaluations are in your training packet
• Certificates

Thank You!
U Visa Certification Overview

Can be drafted by the victim’s advocate or attorney.

Head of certifying agency not applicable to judicial certifications.
Dates do not have to be precise – you can use months, seasons, or years.

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.
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.

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.
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.
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.

Make copies of all court orders, photographs, police reports in court record 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 (even if not photographed).
   If you are aware of mental injury, include as well.

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
Why do you think #3 is set up this way?
The form asks about family members because DHS wants assistance identifying the perpetrator’s family members.
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

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.