

Virtual Training
Law Enforcement Best Practices:
Responding to, Investigating
and Prosecuting Cases of Noncitizen Victims
of Domestic and Sexual Violence

In partnership with Welcoming All Nationalities Network (WANN) of the Upper Valley a program of WISE and Lebanon Police Department



September 27, 2022



National Immigrant Women's Advocacy Project at the American University Washington College of Law

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Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) at American University Washington College of Law
- Provide technical assistance and advocacy organization that promotes the implementation and use of:
 - laws, policies, and practices to improve legal rights, services, and assistance for immigrant victims of domestic violence, sexual assault, stalking, human trafficking, child abuse and other crimes.



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Who We Provide Technical Assistance To

- Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals whose aim is to increase immigrant crime victims safety and participation in the criminal justice system



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General Caveats

- Women, men and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas
- *That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault*

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Learning Objectives

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

- Hold offenders more accountable by using the U and T Visa certification process as a crime fighting tool
- Enhance victim safety and participation in the criminal justice system
- Enhance officer/victim/community safety using language access and certification programs

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What countries do the victims in your jurisdiction come from?*

*These slides were produced by The National Immigrant Women's Advocacy Project (NIWAP) at American University, Washington College of Law and Legal Momentum and was supported by Grant Number 2011-TA-AK-R002 awarded by the Office on Violence Against Women, Office of Justice Programs, U. S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

New Hampshire (2019)*

- ❖ Total foreign born population – 86,906
- ❖ 6.4% of the state's ~ 1.4 million people are foreign born
 - 57.1% naturalized citizens
 - 30% legal permanent residents (as of 2016)
 - 12.9% temporary visa holders or undocumented immigrants
- 60.5% rise in immigrant population from 2000 to 2019
- ❖ Length of time immigrants have lived in the U.S.
 - 46.7% entered before 1999
 - 24.9% entered 2000 - 2009
 - 28.4% since 2010
- ❖ 12% of children under age 18 have one or more immigrant parents
 - 84.1% of these children are native-born U.S. citizens

*Source: Migration Policy Institute Data Hub (April 2021) and Lawful Permanent Resident estimates MPI and DHS (2021)

New Hampshire- Countries/Regions of Origin & Limited English Proficiency (LEP)(2019)*

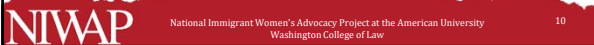
- ❖ Asia – 33.3%
 - > Southeastern Asia (10.3%)
 - > India (9.1%)
 - > China/Taiwan (6.1%)
- ❖ Europe – 23.8%
 - > Eastern Europe (8.8%)
 - > Western Europe (5.8%)
 - > Northern Europe (5.5%)
- ❖ Latin America – 23.7%
 - > Caribbean (9%)
 - > South America (7.8%)
 - > Central America (7%)
- ❖ Canada – 9.1%
- ❖ Africa – 7.5%
- ❖ Middle East – 2.0%
- ❖ Oceania – 0.7%
- ❖ Language spoken
 - ❖ 8% of people in the state who speak a language other than English at home
 - ❖ 29.1% of foreign born persons are LEP - speak English less than "very well"

*Source: Migration Policy Institute Data Hub (April 2021)

New Hampshire-Languages Spoken at Home (2019)*

- ❖ Spanish (30,292)
- ❖ French (including Cajun) (18,153)
- ❖ Chinese (including Mandarin, Cantonese) (5,703)
- ❖ Nepali, Marathi, or Other Indic Languages (4,154)
- ❖ Portuguese (3,987)
- ❖ German (3,253)
- ❖ Arabic (3,078)
- ❖ Vietnamese (2,363)
- ❖ Telugu (2,153)
- ❖ Tagalog (including Filipino) (2,093)
- ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (1,828)
- ❖ Russian (1,812)
- ❖ Hindi (1,789)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (1,717)
- ❖ Tamil (1,464)
- ❖ Italian (1,417)
- ❖ Korean (1,413)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/NIH> (April 2021)



Vermont (2019)*

- ❖ Total foreign born population – 29,374
- ❖ 4.7% of the state's ~ 624 thousand people are foreign born
 - 53.3% naturalized citizens
 - 29% legal permanent residents (as of 2016)
 - 17.7% temporary visa holders or undocumented immigrants
- 26.4% rise in immigrant population from 2000 to 2019
- ❖ Length of time immigrants have lived in the U.S.
 - 40.6% entered before 1999
 - 22.9% entered 2000 - 2009
 - 36.5% since 2010
- ❖ 6.9% of children under age 18 have one or more immigrant parents
 - 81.5% of these children are native-born U.S. citizens

*Source: Migration Policy Institute Data Hub (August 2021) and Lawful Permanent Resident estimates MPI and DHS (2021)



Vermont- Countries/Regions of Origin & Limited English Proficiency (LEP)(2019)*

- ❖ Asia -29.1%
 - > Other South Central Asia (9.8%)
 - > Southeastern Asia (7.1%)
 - > India (4.1%)
 - > China/Taiwan (6.9%)
- ❖ Europe - 28.1%
 - > Eastern Europe (13.1%)
 - > United Kingdom (6.2%)
 - > Western Europe (5.8%)
- ❖ Canada - 19.7%
- ❖ Africa - 12 %
 - > Eastern Africa (4.9%)
- ❖ Latin America - 8.8%
- ❖ Middle East - 2.1%
- ❖ Oceania -0.2%
- ❖ Language spoken
 - ❖ 5.8% of people in the state who speak a language other than English at home
 - ❖ 30.8% of foreign born persons are LEP - speak English less than "very well"

*Source: Migration Policy Institute Data Hub (August 2021)



Vermont-Languages Spoken at Home (2019)*

- ❖ French (including Cajun) (8,385)
- ❖ Spanish (6,771)
- ❖ Chinese (including Mandarin, Cantonese) (2,439)
- ❖ German (2,303)
- ❖ Nepali, Marathi, or Other Indic Languages (1,929)
- ❖ Italian (865)
- ❖ Russian (858)
- ❖ Arabic (735)
- ❖ Polish (639)
- ❖ Amharic, Somali, or other Afro Asiatic Languages (553)
- ❖ Vietnamese (545)
- ❖ Tagalog (including Filipino) (507)
- ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (478)
- ❖ Korean (462)
- ❖ Yiddish, Pennsylvania Dutch or Other Germanic Languages (457)
- ❖ Japanese (414)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (236)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state-language-viz> (August 2021)



Immigration Relief for Crime Victims



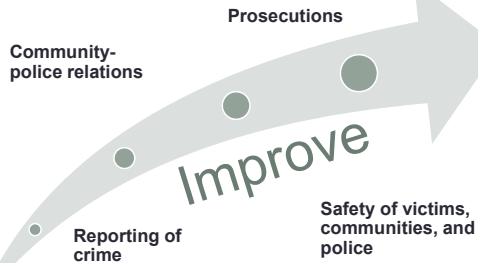
Why do you think these forms of immigration relief exist for victims of crime?



Legislative Intent

- We want crimes reported to police
- No one should be a victim of crime, especially violent crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we don't know about the most dangerous offenders
 - Domestic violence
 - Sexual violence

Goals of Immigration Relief



U Visa Statistics

11/2011

% of U Visas	Criminal Activity
76.1% = Domestic Violence & Sexual Violence	
9.9%	Felonious Assault, Murder, Manslaughter
8.47%	Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture
5.3%	Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation

How Best Practices in Domestic Violence Investigations Promote Officer Safety



DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS



Immigration Related Abuse

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



Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**
- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

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

What prevents immigrant victims from reporting crime?



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

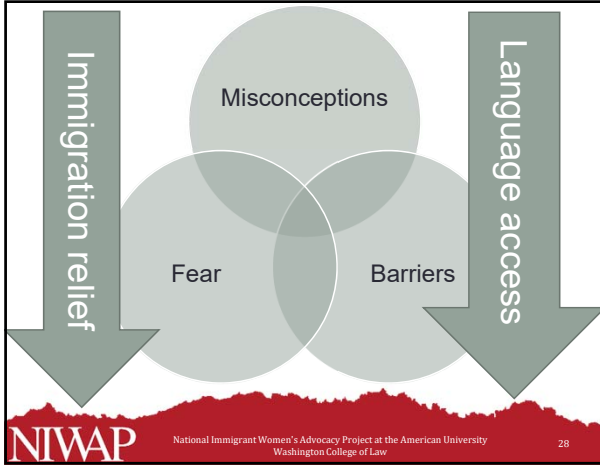
- Lack of knowledge of
 - Crime victim legal rights
 - Laws regarding domestic violence, sexual assault
- Do not trust the police
- Believe police will arrest them
- Local police are immigration officers
- No services are available to immigrant victims
- Police are corrupt
- Criminal justice system will 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





How do law enforcement and prosecution benefit from the U visa?

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U Visa Benefits to Law Enforcement and Prosecutors

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

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U and T Visa Victims "Red Flagged"



- Department of Homeland Security (DHS) computer system "red flags" victims who have filed for, or have been granted victim-based immigration relief
- Reminds DHS staff of legal obligation not to rely on "tips" from perpetrators regarding victims of
 - Domestic violence, sexual assault, stalking, human trafficking

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U Visas as a Crime Fighting Tool

Improving the reporting,
investigation, and prosecution of
violent crime
& keeping everyone safer

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U Visa Basics

- Law enforcement certification is just one part of the overall process it does not = citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Offender may be citizen or non-citizen
- Can be "revoked"
- Increases immigrant victim participation in criminal justice system

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U Visa Requirements

Victim (Certification)	Helpful (Certification)	Harm (Victim's Application)
<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 Admissible to US or granted waiver 	<ul style="list-style-type: none"> Has been, is being, or is likely to be Detection, investigation, prosecution, conviction, or sentencing 	<ul style="list-style-type: none"> Substantial physical or mental harm as a result of having been a victim of criminal activity

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

Who Can Certify?

"law enforcement" & "law enforcement agencies" =

- Federal, state, and local
 - Police, sheriffs, FBI, HIS, ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates, Commissioners, other judicial official
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

There is **NO** statute of limitations on signing a certification. However, U visa application must be filed within **six months** of the certification date.

U Visa Facts

- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency- no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character



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Who can apply?

- Victims of qualifying criminal activity
- Parents and guardians can apply as an "indirect victim" if:
 - the victim is a child under 21 years of age and/or
 - is incompetent, incapacitated, or deceased due to murder or manslaughter
- Bystanders victimization - very limited
- For child victims a "next friend" can provide helpfulness

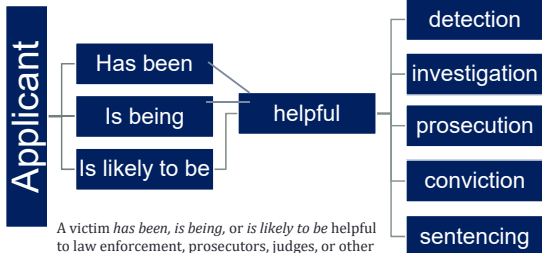


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Definition of "Helpfulness"

8 C.F.R 214.14(b)(3)



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Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree (or timing) of helpfulness required
 - *DHS adjudicates helpfulness based on– totality of the circumstances*
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- Victim’s criminal history does not preclude U visa eligibility, particularly when crime connected to the abuse
- The investigation or prosecution can still be ongoing
- Certification can be “revoked”

Example of Helpfulness May Include:

Calling 911	Having a Rape Kit performed	Providing a description of offender or their whereabouts
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

The following are **Not Required** in order to certify that a victim has been helpful

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



When should you certify?



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Filing and VAWA Confidentiality

- Original signed certification must be included in the victim's U visa application
 - Certifier keeps a record of certification
 - Sealed original recommended
- Once the initial application is processed:
 - Victim's case is flagged in the DHS computer system which generates an alert that victim is protected by VAWA confidentiality (8 U.S.C. 1367)



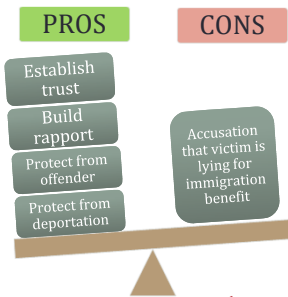
• Case is flagged notifying immigration officials about pending or approved VAWA, U visa or T visa case.



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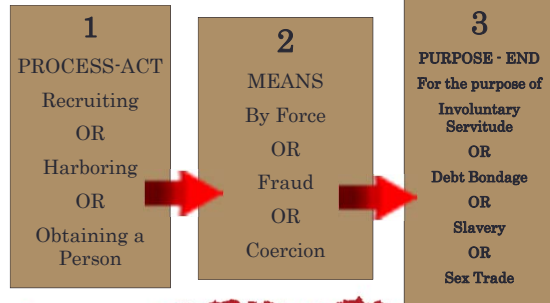
Certifying Early



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Three Federal Elements of Trafficking



Sex Trafficking

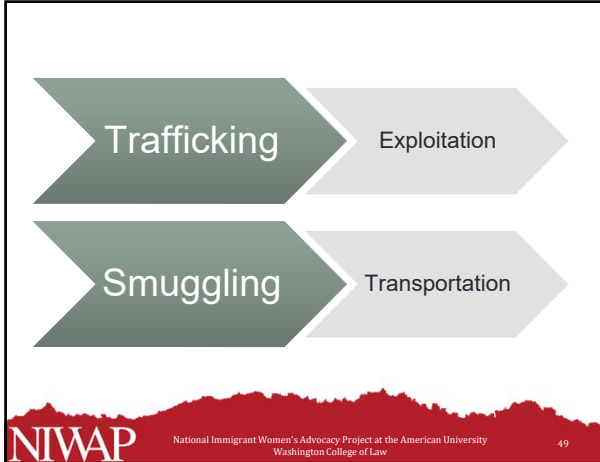
22 U.S.C. § 7102; 18 U.S.C. § 1591

Process -Act	Means	Purpose-End
<ul style="list-style-type: none"> Recruits Entices Harbors Transports Provides Obtains Advertises Maintains Patronizes Solicits Benefits, financially or by receiving anything of value 	<ul style="list-style-type: none"> Force Fraud Coercion <p>• Proof of force, fraud, or coercion not required for sex trafficked children under 18.</p>	<ul style="list-style-type: none"> Commercial Sexual Activity <p>• A commercial sex act is any sexual act for which something of value is given or received</p> <ul style="list-style-type: none"> Money Drugs Food Shelter Clothing Transportation

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Process-Act	Means	Purpose-End
<ul style="list-style-type: none"> Recruits Harbors Transports Provides Obtains Benefits, financially or by receiving anything of value 	<ul style="list-style-type: none"> Force Restraint Threats of harm Abuse or threatened abuse of the legal system Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint • No federal exception for minors 	<ul style="list-style-type: none"> Involuntary servitude Peonage Debt Bondage Slavery



T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
- Victim is physically present in the U.S. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- Can include certain family members

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Continued Presence

- Temporary immigration status for any victim of human trafficking *who may be a potential witnesses*
 - Sex and/or labor trafficking
- Victim (and certain family) remain lawfully in the U.S. during investigation or prosecution into human trafficking
- Granted for 2 years, can be renewed
 - Receive work authorization, public benefits and services
- **Judges should refer victims to federal authorities** who are authorized to file continued presence applications for trafficking victims with DHS

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Large Group Discussion: Where do you think trafficking happens?



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Top Venues/Industries for Sex Trafficking

- Illicit Massage/Spa Businesses
- Pornography
- Residence based commercial sex
- Hotel/motel based
- Escort services
- Online advertising venue unknown
- Street-based

National Human Trafficking Hotline (2015-2019)
<https://humantraffickinghotline.org/states>



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Major Labor Trafficking Venues

- | | |
|--------------------------------------|--|
| • Regulated & unregulated industries | • Private Residence/Domestic Servitude 37% |
| • Low-wage industries | • Agriculture 19% |
| • Hidden & public | • Restaurants 14% |
| • Sexual & non-sexual services | • Hospitality 10% |
| • Gender differences by venue | • Construction 10% |
| • 4% trafficked in multiple venues | • Carnivals/Fairs 7% |
| | • Factories 4% |
| | • Assisted Living 3% |
| | • Strip Clubs 2% |
| | • Massage Parlors 1% |

Colleen Owens et al., Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States [^a^E.:69HfE = n 28:415848) 9) 5R' .fE jk2' \$.f4fi: 4 () 89:34 (A+158:54 /6S: 64 56) 88: 64154 (kz' /A /6S: 641685 () 9912858188** 1A+1:4 /1 () 98:3] 9



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Task Force Contact for NH VT www.nhhumantraffickingtaskforce.com

- HSI RAC Mike Posanka
 - (603) 629-2724
- NH State Police Tpr. Dave McCormack
 - (603) 419-8208
- NH US Attorney's Office Victim Advocate Jennifer Hunt
 - (603) 230-2527
 - (603) 545 7372



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Language Access

Best practices to successfully investigate and prosecute cases involving non-English speaking victims



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DOJ Model Guidance

- **DOJ Sample Policy Center City Police Department**
- Police provide free language access to:
 - LEP persons who request it
 - When officer decides it is helpful to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in person's primary language

Limited English Proficiency (LEP): A Federal Interagency Website, <https://www.lep.gov>



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Source of Language Access Laws



- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- LEP Executive Order 13166 (2001)
 - Requires all agencies receiving any federal financial assistance to
 - Ensure meaningful language access
 - Develop and implement language access plans
 - "Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith."



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"Meaningful Access"

"Language assistance that results in accurate, timely and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior, as compared to programs or activities provided to English proficient individuals"

Limited English Proficiency (LEP): A Federal Interagency Website, <https://www.lep.gov>



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What do you do when the people at the scene are limited English proficient?


How can you get the information you need to secure the scene?




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DOJ and Exigent Circumstances 

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer /victim/or public

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DOJ Requirements for Investigations & Interrogations 

- "A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness' legal rights could be adversely impacted"
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings

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Using Qualified Interpreters 

<p><u>Benefits</u></p> <ul style="list-style-type: none"> • Safety • ID offender • Locate weapons • Admissible statements (excited utterances) 	<p><u>Harms</u></p> <ul style="list-style-type: none"> • Mistaken ID of offender • Arrest of victim • Misinterpretation results in inaccurate statements • Trauma to children
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Bilingual Officer v. Interpreter



- Bilingual officers
- When they are interpreting, they are not investigating
- Biculturalism v. bilingualism
- Different words have different meanings:
 - e.g.: Variations on the word "highway" depending on what state you're from.
 - "500 feet" many communities don't know what that distance looks like.



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Language Resources



- Language line
- Video remote interpretation
- Video relay interpretation – Dartmouth Hospital System
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems
- Court systems



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Helpfulness

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

- Understand the scope of the helpfulness standard
- Apply the helpfulness standard to U visa certifications



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Helpfulness in the Regulations

- Statute and DHS regulations: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or investigation, or
 - Prosecution, or conviction or
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing



Helpfulness can be satisfied even if:

- Victim reports a crime where there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is subject to immigration removal
- The perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history or is subject to immigration enforcement
- Victim fully discloses story after better understanding rights, the U-visa and meaningful language access



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



Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from either family
- Financial hardship
- Lesser of two evils



Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable"

- Considerations:
 - Totality of the circumstances, including the nature of the victimization
 - Victim's fear or the abuser
 - Trauma suffered
 - Force, fraud or coercion



Witness Tampering

- Work with prosecutors to detect signs
 - Change in frequency of contact
 - Missed appointments
 - Recantation or minimization
- Investigate
 - Follow up with victim
 - Contact victim advocate, immigration attorney, others that had contact with victim
 - Jail calls
 - Interview friends, neighbors, and family



If you still believe the victim is unreasonably refusing...

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

U Visa Certification Important Tips



Supplement B, U Nonimmigrant Status Certification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-918
OMB No. 1615-0104
Expires 03/28/2019

Part 3. Criminal Acts

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 any similar activity). (Select all applicable boxes)

- | | |
|---|---|
| <input type="checkbox"/> Abduction | <input type="checkbox"/> Manslaughter |
| <input type="checkbox"/> Abusive Sexual Contact | <input type="checkbox"/> Murder |
| <input type="checkbox"/> Attempt to Commit Any of the Named Crimes | <input type="checkbox"/> Obstruction of Justice |
| <input type="checkbox"/> Being Held Hostage | <input type="checkbox"/> Peonage |
| <input type="checkbox"/> Blackmail | <input type="checkbox"/> Perjury |
| <input type="checkbox"/> Conspiracy to Commit Any of the Named Crimes | <input type="checkbox"/> Prostitution |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Rape |
| <input type="checkbox"/> Extortion | <input type="checkbox"/> Sexual Assault |
| <input type="checkbox"/> False Imprisonment | <input type="checkbox"/> Sexual Exploitation |
| <input type="checkbox"/> Felonious Assault | <input type="checkbox"/> Slave Trade |
| <input type="checkbox"/> Female Genital Mutilation | <input type="checkbox"/> Solicitation to Commit Any of the Named Crimes |
| <input type="checkbox"/> Fraud in Foreign Labor Contracting | <input type="checkbox"/> Stalking |
| <input type="checkbox"/> Incest | <input type="checkbox"/> Torture |
| <input type="checkbox"/> Involuntary Servitude | <input type="checkbox"/> Trafficking |
| <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Unlawful Criminal Restraint |
| | <input type="checkbox"/> Witness Tampering |

You can & should certify multiple offenses when present.

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 reports 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.

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Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim?
 Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in Part 7. Additional Information.)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship


2.e. Involvement

↑ Because many applications will include domestic violence, this may likely be the defendant.

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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 1. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)


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

3. Daytime Telephone Number

4. Fax Number

REMEMBER: This certification only means that you believe they were a victim of a crime. This does not automatically mean that the victim will be granted immigration relief.

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U Visa Certification Process

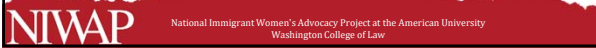


Prosecution Strategies



Rebuttal Testimony

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



Introducing Statements

Establish timeline

- When did the victim learn about the benefit?
- What Statements were made before the victim learned about the immigration benefit

Victim statements

- 911 call
- First responder
- Detective
- Friends
- Family
- Victim Advocate
- Others



Rebut charge that victim is lying to get immigration benefit



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Prior Consistent Statements

F.R.E. 801(d)(B)

- Non-hearsay
- Not subject to Crawford
- Any consistent statement
 - offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying
 - to rehabilitate the declarant's credibility as a witness when attacked on another ground



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Discovery and Due Process

Must provide defense with any materials within the state's control that may effect the credibility of any witness or that goes to any witnesses motive to lie or bias

1. Is it within the state's control?
2. Does it go to the witness' credibility, bias, or motive to lie?



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Custody and Control

Within	Not Within
<ul style="list-style-type: none"> • Certification form • Accompanying documentation; e.g. police reports, photographs, medical records • Communications from immigration attorney • Attachments provided to you 	<ul style="list-style-type: none"> • Materials not provided to you <ul style="list-style-type: none"> – U visa application – VAWA application – T visa application – Attachments to application – Other materials submitted • Immigration file <ul style="list-style-type: none"> – Includes existence of & actions taken in the case



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



People v. Alvarez Alvarez

No. G047701, 2014 WL 1813302, at *5
 (Cal. Ct. App. May 7, 2014), review denied (July 16, 2014)

"The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status of both [the victim] and, potentially, defendant, which was completely irrelevant to this case. The trial court was well within its discretion in excluding reference to the visa."



Collaboration between Law Enforcement and Prosecution

- Maintain victim and witness contact
- Update victims on case status
- Coordinate victim services
- Investigate witness tampering and other co-occurring crimes

Cooperation is key



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 is New Podcast Series



Virtual Roundtables

- Law enforcement & Prosecutors only
- Interactive discussion
 - Strategies to build rapport, establish trust, and ensure safety
 - Ask questions from subject-matter experts and peers
- To register, visit www.surveymonkey.com/r/RT2022Registration



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