

**Prosecution Best Practices:  
Immigrant Domestic and Sexual  
Violence Victims, Language Access  
and the U and T Visa**

**St. Paul, MN  
June 24, 2019**



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**This project was supported by Grant No. 2017-TA-AX-K063 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.**



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**Welcome**

- Faculty introductions
- Staff introductions
- Housekeeping
- Pre-training assessment



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### Course Learning Objectives

- Articulate the intent and basic requirements of the U Visa
- Enhance victim and community safety and hold offenders accountable by utilizing immigration relief as a crime fighting tool
- Analyze requests for assistance with immigration relief applications in the context of victim and offender dynamics
- Implement pretrial and trial strategies to combat common defenses to cases involving immigrant victims of crime



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### Participant Introductions, Goals and Expectations



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### Immigration Relief As A Crime Fighting Tool



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### Immigration Relief for Crime Victims

The infographic details six immigration relief options:

- T VISA:** For victims of trafficking. Requirements include being a victim of trafficking, having a law enforcement officer certify the crime, and being available for prosecution.
- U VISA:** For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, and Other Serious Crimes. Requirements include being a victim of a crime, having a law enforcement officer certify the crime, and being available for prosecution.
- VAWA:** Violence Against Women Act. For victims of domestic violence by a U.S. citizen or permanent resident.
- ASYLUM:** For victims of persecution or a well-founded fear of persecution in their home country.
- SIJS:** Special Immigrant Juvenile Status. For victims of abuse, neglect, or abandonment by a parent.
- CONTINUED PRESENCE:** For victims of trafficking who are unable to obtain a T visa.

Source: BLUE CAMPAIGN. 08/06/2014 ... 10

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

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### 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

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### U Visa Statistics

11/2011

% of U Visas	Criminal Activity
<b>76.1% = Domestic Violence &amp; Sexual Violence</b>	
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

**NIWAP** 08/06/2014 ... 14

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### Domestic Violence and Community Safety - Story

- Where are you seeing foreign born populations in the communities you serve?

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### Minnesota Demographics (2017)\*

- ❖ Total foreign born population – 486,243
- ❖ 8.7% of the state’s 5 million people are foreign born
  - 52.4% are naturalized citizens
  - ~26.7 % are lawfully permanent residents\*\*
  - ~20.9 % are undocumented\*\*
- ❖ 86.7% rise in immigrant population from 2000-2017
- ❖ 20.0% of children in the state under age 18 have one or more immigrant parents
  - 85.1% of these children are native-born U.S. citizens

\*Source: <https://www.migrationpolicy.org/data/state-profiles/state-demographics/MN#top> (2018)  
 \*\* Source: (2015 Department of Homeland Security Data)




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### Minnesota - Countries/Regions of Origin (2017)\*

- ❖ Asia – 35.0%
  - Southeast Asia – 18.8%
  - India – 6.0%
  - China/Taiwan – 4.3%
  - Korea – 3.1%
- ❖ Africa – 27.7%
  - Eastern Africa – 18.3%
  - Western Africa – 6.5%
- ❖ Americas – 24.8%
  - Mexico – 12.3%
  - South American 4.5%
  - Canada – 2.5%
  - El Salvador – 1.5%
- ❖ Europe – 9.8%
  - Western Europe – 2.3%
  - Eastern Europe – 5.0%
- ❖ Middle East 2.2%
- ❖ Limited English Proficiency
  - Naturalized citizens – 34.3%
  - Noncitizens – 52.1%
- ❖ Languages Spoken at Home
  - Spanish – 198,773
  - Amharic, Somali - 90,845
  - Hmong – 67,475
  - Chinese – 24,616
  - Vietnamese – 20,184
  - German 19,887
  - Arabic – 15,096
  - French – 14,665
  - Russian – 12,717
  - Swahili – 9,789
  - Khmer – 8,536
  - Thai, Lao, Tai-Kadai – 8,252
  - Tagalog – 8,192

\*Source: <https://www.migrationpolicy.org/data/state-profiles/state-demographics/MN#top> (2018)




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Have you seen immigration status  
 being used as a means to assert  
 power and control in the context of  
 domestic violence?  
 How?




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### Immigration Related Abuse

- Refusal to file immigration papers
- Threats or taking steps to withdraw an immigration case
  - 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



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### Coercive Control

- 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)



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### What prevents immigrant victims from reporting crime?



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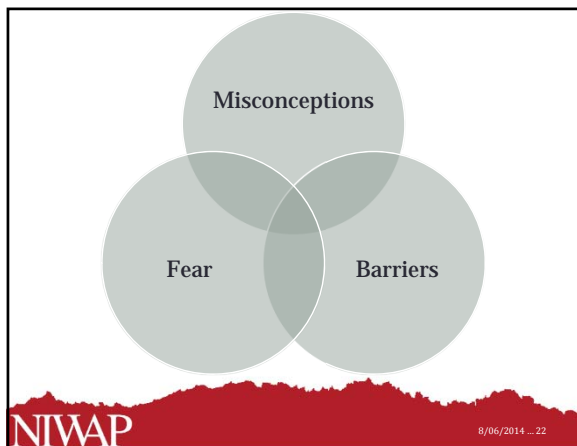
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- ### Fears
- Deportation
  - Returning to home country
  - Separation from children
  - Lack of contact with family
  - Family in danger in their country of origin
  - Ostracism from the community
  - Retaliation
- NIWAP 09/06/2014 ... 23

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- ### Misconceptions
- Legal rights as a victim of a crime
  - The law regarding domestic violence
  - Police will arrest them
  - Local police are immigration officers
  - No services are available
  - Police are corrupt
  - Criminal justice system will do nothing
- NIWAP 09/06/2014 ... 24

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**Barriers**

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

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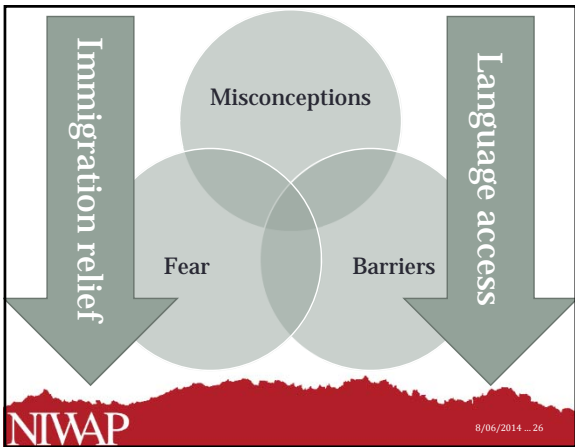
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How do law enforcement and prosecution benefit from the U visa?



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### U Visa Benefits

- 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 Visa: Basics & Best Practices



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### U Visa Basics

- The U Visa grants a temporary 4 year stay for qualified crime victim applicants
  - 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
- Only 10,000 U visas granted annually
- Can be revoked



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### U Visa Basics

Cont'd.

- Application for a U Visa requires a certification from a government official
- Certification is one part of the overall application
- Victim must submit additional documentation and proof in full application for U Visa




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### Who Can Certify?

*“Law Enforcement” & “Law Enforcement Agency” =*

- Federal, state, and local
  - Law enforcement
  - Prosecutors
  - Judges, Magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies with criminal, civil, administrative investigative power




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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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### U Visa Requirements

Victim	Helpful	Harm
<ul style="list-style-type: none"> <li>• Qualifying criminal activity</li> <li>• Possesses information about the crime</li> <li>• Criminal activity occurred in U.S. or violated U.S. law</li> </ul>	<ul style="list-style-type: none"> <li>• Has been, is being, or is likely to be</li> <li>• Detection, investigation, prosecution, conviction, or sentencing</li> </ul>	<ul style="list-style-type: none"> <li>• Substantial physical or mental abuse as a result</li> </ul>




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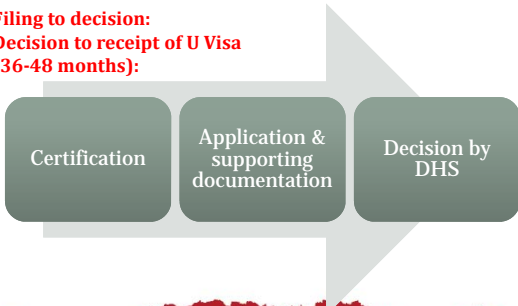
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### U Visa Application Process

**Filing to decision:**  
**Decision to receipt of U Visa**  
**(36-48 months):**



Certification    
 Application & supporting documentation    
 Decision by DHS



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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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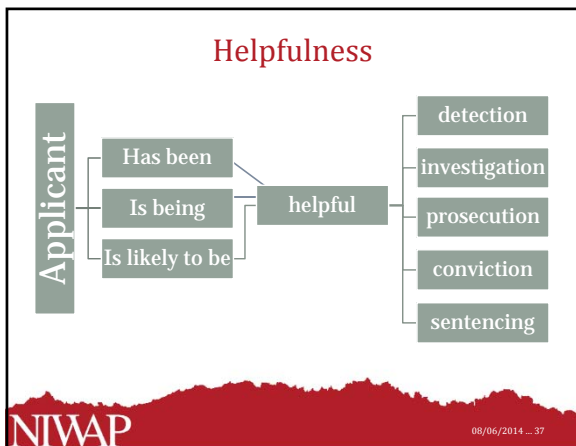
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- ### Making Determination
- Certifying agency determines “helpfulness”
  - Helpfulness can include:
    - Calling 911
    - Providing a description of offender
    - Allowing photographs to be taken
    - Giving information about the offender’s whereabouts
    - Statement about prior bad acts
- NIWAP** 08/06/2014 ... 38

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- ### Not Required
- Conviction
  - Charges filed
  - Offender arrested
  - Testimony at trial
  - Necessary witness
  - Within statute of limitations
  - Offender is identified
  - Offender alive
- Victim-centered approach
- NIWAP** 08/06/2014 ... 39

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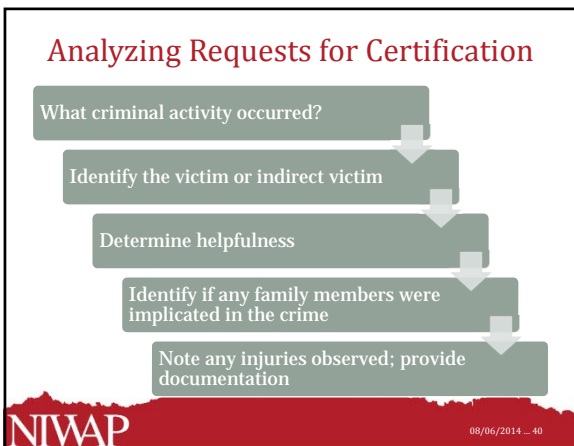
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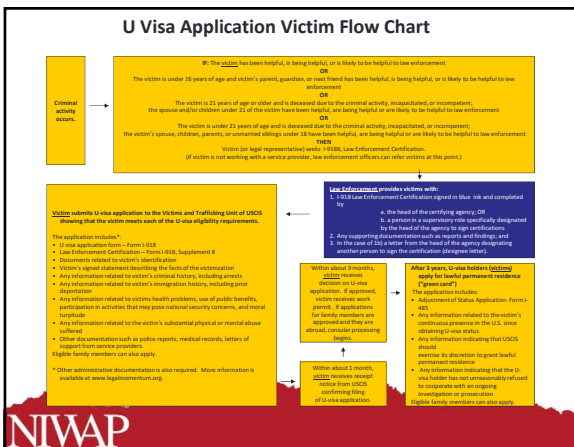
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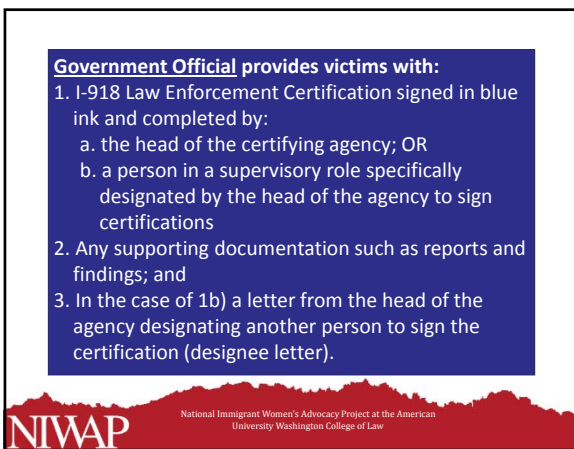
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**U Visa Certification  
Form Highlights**



**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 02-28-2019

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Certification form is located in your materials.  
Please locate to follow along.



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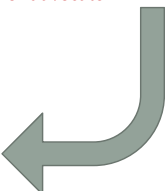
**Part 1. Victim Information**

1. Alien Registration Number (A-Number) (if any)  
▶ A-
- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name

**Other Names Used** (Include maiden names, nicknames, and aliases, if applicable)  
If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

- 3.a. Family Name (Last Name)
- 3.b. Given Name (First Name)
- 3.c. Middle Name
4. Date of Birth (mm/dd/yyyy)
5. Gender  Male  Female

This is sometimes filled out by the victim's immigration attorney or advocate.




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**Part 2. Agency Information**

1. Name of Certifying Agency

Name of Certifying Official

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
3. Title and Division/Office of Certifying Official

In addition to the head of the agency, one or more certifying officials can be designated as a "Certifying Official"



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**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"/> Perjury
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Prostitution
<input type="checkbox"/> Conspiracy to Commit Any of the Named Crimes	<input type="checkbox"/> Rape
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Sexual Assault
<input type="checkbox"/> Extortion	<input type="checkbox"/> Sexual Exploitation
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Solicitation to Commit Any of the Named Crimes
<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Stalking
<input type="checkbox"/> Fraud in Foreign Labor Contracting	<input type="checkbox"/> Torture
<input type="checkbox"/> Incest	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Witness Tampering

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You can & should certify multiple offenses when present.

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

Provide the dates on which the criminal activity occurred.

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

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

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

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

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

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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.  
\_\_\_\_\_

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.

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Make copies of all reports and photographs and attach.

Be as specific as possible, highlighting visible injuries observed and if you are aware of mental injury.

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**Let's skip Part 4 for now  
and go to Part 5**



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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.S. 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 3, 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 Credible 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"*

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



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**Part 7. Additional Information**

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper. Type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet, indicate the Page Number, Part Number, and Item Number to which your answer refers, and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name \_\_\_\_\_

**Petitioner's Name**

2.a. Family Name (Last Name) \_\_\_\_\_

2.b. Given Name (First Name) \_\_\_\_\_

2.c. Middle Name \_\_\_\_\_

3. A-Number (if any) **A-** \_\_\_\_\_

4.a. Page Number	4.b. Part Number	4.c. Item Number	6.a. Page Number	6.b. Part Number	6.c. Item Number
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

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**Let's go back to Part 4 now**

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**Part 4. Helpfulness Of The Victim**

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

1. Does the victim possess information concerning the criminal activity listed in Part 3.?  Yes  No

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

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

If you answer "Yes" to Item Numbers 1. - 3., provide an explanation in the space below. If you need extra space to complete this section, use the space provided in Part 7. Additional Information.

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

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**Reasons for Refusal**

- Fear
- Threats or intimidation
- Family pressure
- Family unity
- Financial
- Known v. unknown
- Victim-offender dynamics



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**Are you in the best position to determine the reasons the victim may refuse to assist?**



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**Witness Tampering**

- Coordinate 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
  - Interview friends, neighbors, and family
  - Jail calls



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*“Only unsuccessful intimidation ever came to the attention of police or prosecutors.”*

Kerry Healey, National Institute of Justice, Research in Action, Victim and Witness Intimidation: New Developments and Emerging Responses (Oct. 1995)  
<https://www.ncjrs.gov/pdffiles/witintim.pdf>

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What if you still believe the victim has “unreasonably refused” to assist in the investigation or prosecution?

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

DHS provides victim an opportunity to explain. If you just don't sign, the victim has no opportunity explain. They are unable to apply.

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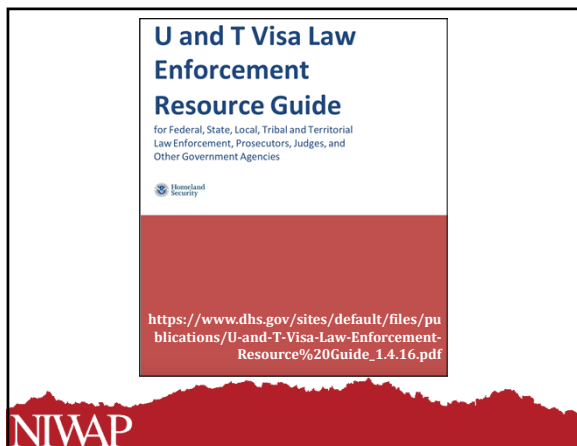
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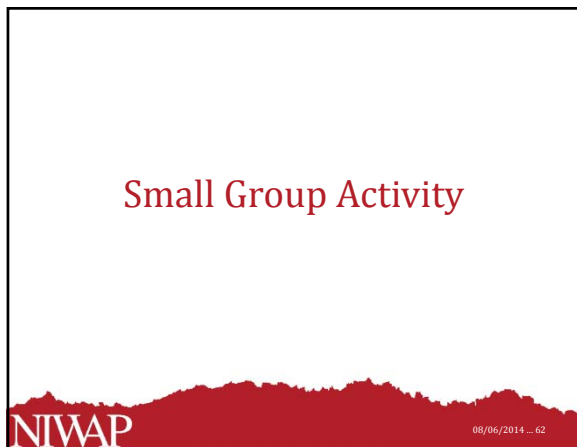
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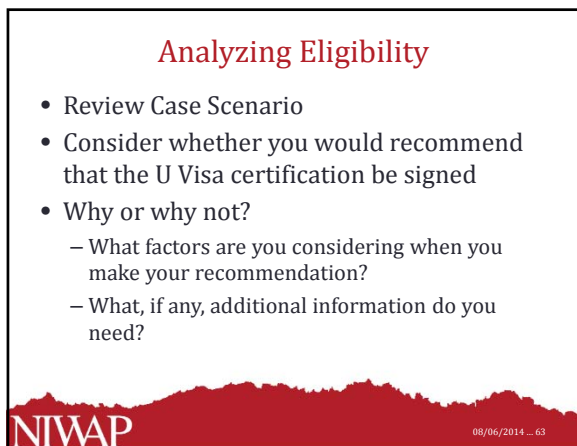
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### Report Back

- Share the basic facts of your Case Scenario
- Would you would recommend that the U Visa certification be signed
- Why or why not?
  - What factors did you consider?
  - Do you need any more information?



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### When should you sign a U Visa Certification?



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### Timeline

- Certification must be included in the initial application for a U Visa
- Once the initial application is processed:
  - Victim is entered into a database and flagged as an applicant for a U Visa



- Immigration proceedings will not be initiated
- Offender can not intimidate with threats



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### Certifying Early

**PROS**

**CONS**

Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit

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### T Visa Overview

- Non-Immigrant, 4 Year visa
  - Victim of severe form of trafficking
  - In the US or territories on account of trafficking
  - Respond to reasonable requests for collaboration with investigation and prosecution unless victim is under 18
    - Limited "trauma exception"
  - Hardship upon return to home country
- May apply for adjustment of status after investigation/prosecution is over or 3 years, what ever time is shorter

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### The T Visa Application Process

```
graph LR; A[Identification] --> B[Continuous presence/Endorsement]; B --> C[Application & supporting documentation]; C --> D[Decision by DHS];
```

Typical length of process = 4 - 6 months

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## Human Trafficking

- Generally: use of force, fraud and/or coercion to exploit a person for profit.
- Federal statute: TVPA 2000
- Every state now has their own human trafficking statute – (labor trafficking), (sex trafficking)




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## Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Act	Means	Purpose
<ul style="list-style-type: none"> <li>• Recruits</li> <li>• Entices</li> <li>• Harbors</li> <li>• Transports</li> <li>• Provides</li> <li>• Obtains</li> <li>• Advertises</li> <li>• Maintains</li> <li>• Patronizes</li> <li>• Solicits</li> <li>• Benefits, financially or by receiving anything of value</li> </ul>	<ul style="list-style-type: none"> <li>• Force</li> <li>• Fraud</li> <li>• Coercion</li> </ul>	<ul style="list-style-type: none"> <li>• Commercial Sexual Activity</li> </ul>




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## Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Act	Means	Purpose
<ul style="list-style-type: none"> <li>• Recruits</li> <li>• Harbors</li> <li>• Transports</li> <li>• Provides</li> <li>• Obtains</li> <li>• Benefits, financially or by receiving anything of value</li> </ul>	<ul style="list-style-type: none"> <li>• Force</li> <li>• Restraint</li> <li>• Threats of harm</li> <li>• Abuse or threatened abuse of the legal system</li> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• Involuntary servitude</li> <li>• Peonage</li> <li>• Debt Bondage</li> <li>• Slavery</li> </ul>




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Most statutes have a broad definition of "coercion" that includes non-physical coercion.

**Force**

**Coercion**      **Fraud**

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**Trafficking** → **Exploitation**

**Smuggling** → **Transportation**

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### Venues

Labor Trafficking	Commercial Sexual Activity
<ul style="list-style-type: none"><li>• Domestic servitude</li><li>• Hotels &amp; restaurants</li><li>• Landscaping</li><li>• Construction</li><li>• Agriculture</li><li>• Massage parlors</li><li>• Criminal activity</li></ul>	<ul style="list-style-type: none"><li>• Prostitution<ul style="list-style-type: none"><li>– Online</li><li>– Street</li><li>– Brothels</li><li>– Massage parlors</li></ul></li><li>• Pornography</li><li>• Stripping</li><li>• Web cams</li></ul>

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### Labor Trafficking Statistics

- 47.5% Men – 52.5% Women
- 10% Minors – 90% Adults
- 46% Single – 45% Married
- 64% had children
- 33% some college or higher
- Average age = 33
- 71% of victims entered the U.S. legally

"Understanding the Organization, Operation and Victimization of Labor Trafficking in the United States",  
Urban Institute and Northeastern University in collaboration with Freedom Network USA (2014)



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### What are Severe Forms of Human Trafficking?

- **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
- **Labor:** 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

(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at [www.ojp.usdoj.gov/vawo/laws/vawo2000/](http://www.ojp.usdoj.gov/vawo/laws/vawo2000/))



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### Prosecution Strategies



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**Topics**

- Certification
- Discovery
- Pretrial Litigation
- Trial Strategies



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**Certification**

- Prosecutors can sign certification forms
  - Must be designee
- Any certifying agency can certify at any time they have probable cause
- Certification policies & practices should be discussed at collaborative partner meetings
  - e.g. CCR, MDT, Task Force
- Certifying prosecutor should consider not being the trial prosecutor



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

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### Strategies to Limit Risk

- Certify based on information the prosecutor/police have
  - Do not need and should not seek additional information or materials
- Work with local attorneys and advocates working with immigrant victims
  - Tell them you will not accept more information
  - Do not accept materials offered/sent

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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

- Court ruled there was “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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### Hawke v. U.S. Dep't of Homeland Sec.

No. C-07-03456 RMW, 2008 WL 4460241, at \*7 (N.D. Cal. Sept. 29, 2008)

*“[T]he strict confidentiality of the Violence Against Women Act still applies to any petitions filed by Mrs. Hawke. While Mr. Hawke's Sixth Amendment right to Compulsory Process permits him access to some information held by the government, it does not permit him to receive absolutely privileged information like any records held by DHS here.”*



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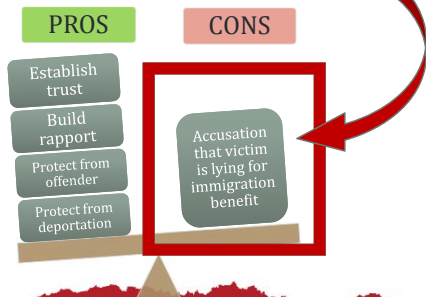
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### #1 Concern



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Is the victim's immigration status ever relevant to the prosecution's case?



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Analyze Case

- Victim Selection**
  - Did the offender chose the victim because of a real or perceived vulnerability?
- Criminal Act**
  - Did the offender use the victim's immigration status to commit a criminal act?
- Escape Detection**
  - Was the victim prevented from reporting the crime to police because of their immigration status?



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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 Detention

- Delayed reporting
- Lack of reporting
- "Uncooperative" during investigation or prosecution
- Threats:
  - Deportation
  - "No one will believe you"
  - "You will never see your children again"
  - Financial



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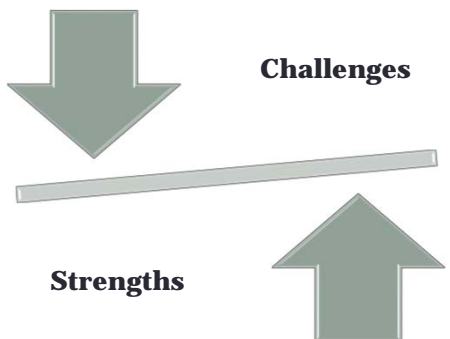
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### Pretrial Strategies

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



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### Immigration Status

- Exclude if irrelevant
  - No immigration benefit provided
  - Not relevant to offender's crime
- Cross-examination will be allowed as to application for immigration benefit
  - Limit scope
  - Opens the door to rebuttal evidence



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**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.”*



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**Other Bad Acts**  
Fed. R. Evid. 404(b)

- 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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**Expert Witness**

- 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



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### Fed. R. Evid. 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data...



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### Where can you find an expert?



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### Possible Experts

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

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



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**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."*

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**When do you start talking about immigration status?**

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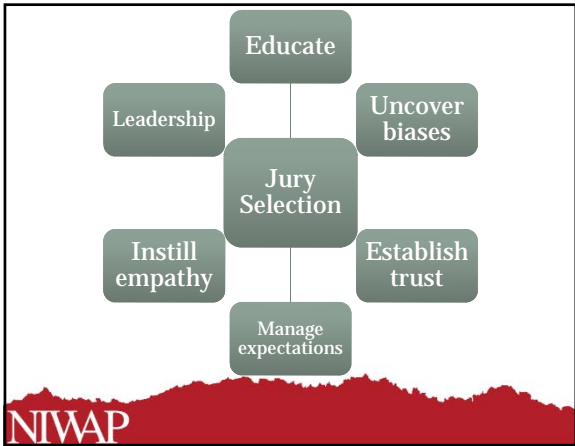
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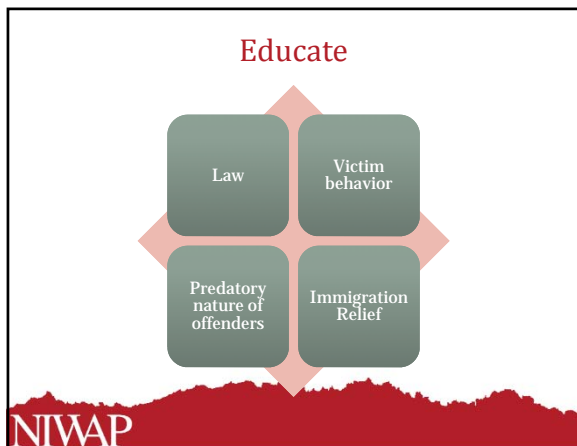
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- ### Manage Expectations
- Victim may not have immediately reported the crime
  - Victim may be undocumented
  - Victim may have engaged in criminal behavior
  - Offender may not have used violence, but merely threats of violence or deportation
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- ### Instill Empathy
- Humanize the victim
  - Discuss vulnerabilities
  - Use jurors to discuss analogous situations involving domestic violence and sexual assault
    - Fears
    - Threats
  - Explore what the “American dream” means
- 
- 08/06/2014 - 108

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### Uncover Biases

- Will the juror be able to “get” ...
  - Victim is not on trial
  - Predatory nature of offenders
  - Equal protection of the law for immigrant victims
  - Intent of immigration relief for victims of crime

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### Establish Trust

- Be accurate about the law
- Do not hide “bad facts”
- Be respectful to the judge, defense attorney, defendant, court staff, and jurors
- Establish yourself as the authority in the courtroom

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### Leadership

- Inspire jurors
- Be authentic and genuine
- Do not be repetitive
- Use appropriate humor
- Demonstrate professionalism
- Be prepared

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### Offender-Focused Theme

PREYING ON THE MOST VULNERABLE	AMERICAN DREAM BECAME A NIGHTMARE	BETRAYAL OF TRUST, FAMILY, AND THE LAW
POWER OVER THE POWERLESS	PICKED THE PERFECT VICTIM	KNEW THERE WAS NO WHERE TO TURN

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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

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### Cross Examination

*Does it go towards the witness' credibility, bias, or motive to lie?*

- Courts take a broad view
- Strategize:
  - Take the "sting" out during direct examination
  - Prepare victim for cross-examination
  - Listen for the defense to "open the door" to rebuttal evidence

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### 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




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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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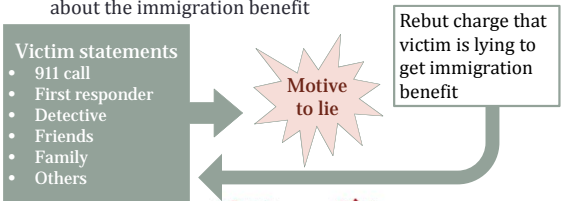
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### Introducing Statements

Establish timeline

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




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### 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?”



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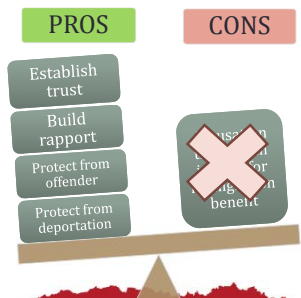
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### Certifying Early



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### Going Forward

- When probable cause exists, certify early to ensure victim safety and enhance victim participation
- Focus on the offender's actions throughout the investigation and prosecution
- Litigate discovery and pretrial motions to ensure just results
- Turn challenges into strengths



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**Resources**  
<http://niwaplibrary.wcl.american.edu>

- Technical Assistance
  - Call: 202.274.4457
  - Email: niwap@wcl.american.edu
- Materials
  - Certification and Prosecutor Toolkits
  - DHS Answers to Law Enforcement Reasons for Not Certifying
  - USCIS Q & A on U Visa Certification
  - Roll call training videos



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**Evaluations & Closing**

- Evaluations are in your training packet
  - Please include comments so that we can continue to improve
- Certificates will be provided once you have turned in your evaluations
- Contact us with any questions or concerns
- Be safe!



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**Thank You!**



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