

Best Practices for Serving Immigrant Crime Victims: Law Enforcement, Prosecution, and Protection Orders

**Peoria, Illinois
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USB Drive Materials

- U Visa Toolkit For Law Enforcement Agencies And Prosecutors
- DHS: U and T Visa Law Enforcement Resource Guide
- DHS: Policies including victim-witness
- Tools for officers to promote language access
- Bluecard Tool Screening Victims for Immigration Protections

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*

Participant Introductions, Goals and Expectations



Learning Objectives

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

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

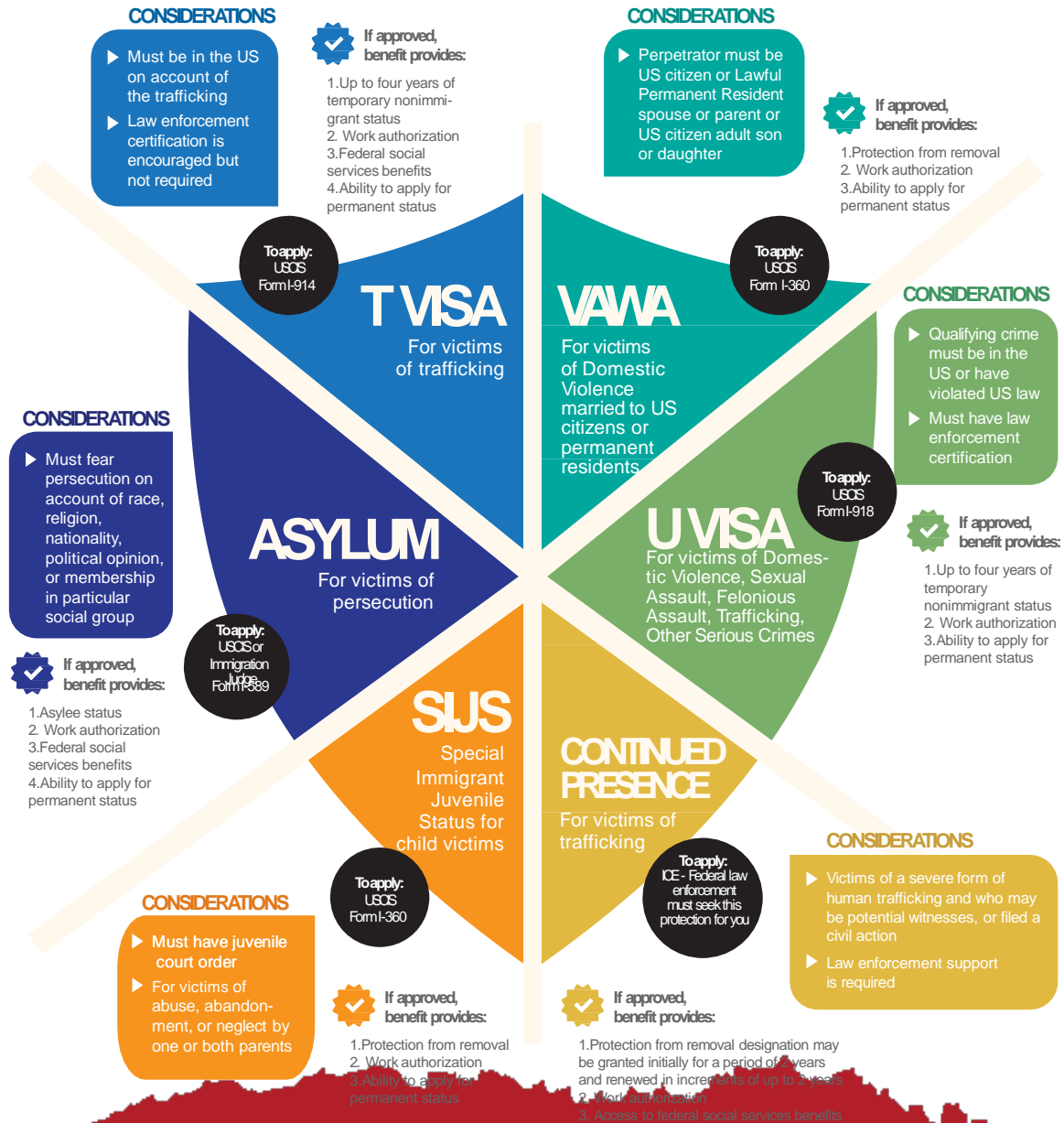
How Best Practices in Domestic Violence Investigations Promote Officer Safety

Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

PROTECTIONS FOR IMMIGRANT VICTIMS

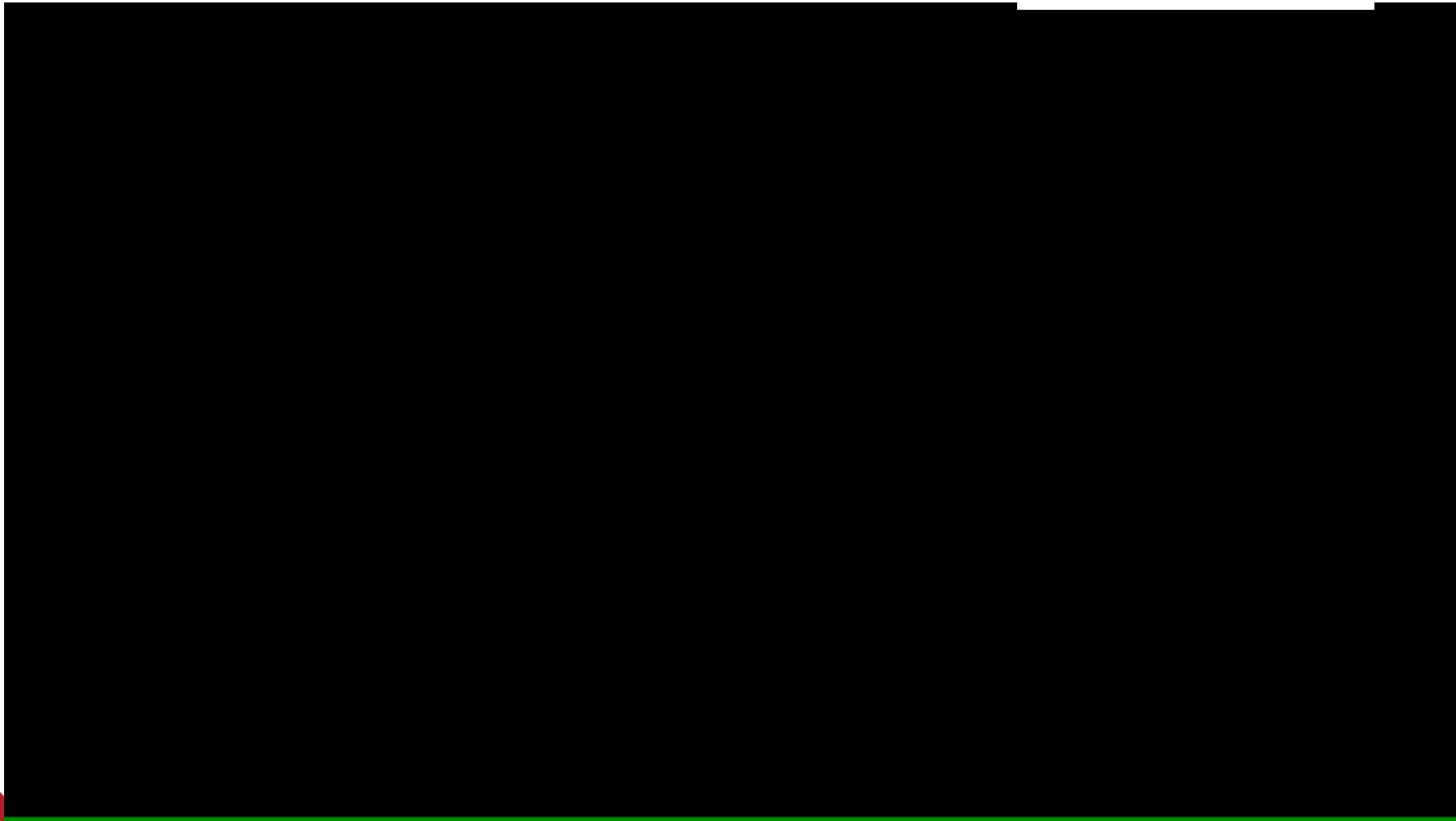


Major Forms of Relief

- VAWA self-petition
 - Abuse by US citizen or lawful permanent
 - Spouse, former spouse, parent, step-parent, over 21year old child
- Special Immigrant Juvenile Status
 - Immigrant children abused, abandoned or neglected by one of their parents
 - (US or Abroad)
- U Visa
- T Visa

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Department of Homeland Security



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)

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
 - 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%
- Almost three times the national average

What barriers and fears prevent immigrant victims from reporting crime?

If they report...

- They will be deported
- Offender will retaliate
 - Harm them
 - Harm family members, children
- Nothing will happen
- Cannot communicate with officers

Fears & Misconceptions

- ▶ Do not trust police/prosecutors
- ▶ Economic survival
- ▶ Pressures from both families
- ▶ Fear of abandoning the home/community
- ▶ Fear of losing children
- ▶ Religious factors
- ▶ Fear of unknown
- ▶ Fear of deportation
- ▶ Dangers in the home country
 - ▶ Retaliation
 - ▶ Ostracism
 - ▶ Police
 - ▶ Political instability
 - ▶ Gender barriers

Major Challenges in working with Immigrant Victims of Crime

1. Fear of Deportation
2. Language
3. Lack of knowledge of legal rights
4. Do not trust that police/prosecutors will help them
5. Lack of reporting and/or cooperation as the case moves forward

Language Access

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

WHAT COUNTRIES DO IMMIGRANTS IN YOUR JURISDICTION COME FROM?



Rafaela replace the following two slides with Illinois information

Maryland Demographics (2015)*

- ❖ Total foreign born population – 911,582
- ❖ 15.2% of the state's 6 million people is foreign born
 - 49.1% naturalized citizens
 - ~27.7% undocumented
- ❖ 75.9 % rise in immigrant population from 2000 to 2015
- ❖ 28.2% of children in the state under age 18 have 1 or more immigrant parents
 - 88.7% of children with immigrant parents in the state are U.S. citizens

<http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/MD>

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MD>
(Oct. 2017)

Maryland– Countries/Regions of Origin and Limited English Proficiency (2015)*

- ▶ **Asia – 33.4%**
 - ▶ India (7.0%)
 - ▶ China (6.1%)
 - ▶ Philippines (4.0%)
 - ▶ Korea (3.9%)
 - ▶ Vietnam (2.3%)
- ▶ **Africa – 16.6%**
- ▶ **Latin America – 39.3%**
 - ▶ El Salvador (13.2%)
 - ▶ Other Central America (7.1%)
 - ▶ Mexico (4.5%)

- ▶ **Europe – 9.3%**
 - ▶ Germany (1.5%)
 - ▶ United Kingdom (1.5%)
- ▶ Canada 1.0%

Limited English Proficiency

(Speak English less than very well)

- ▶ Naturalized citizens 26%
- ▶ Non-citizens 47%

Source: <http://www.migrationpolicy.org/programs/data-hub/us-immigration-trends#lep> (Oct. 2017)

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=MD> (Oct. 2017)

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.”

DOJ Model Guidance

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

DOJ Sample Policy Center City Police Department

DOJ Approach to language access outline in:

Steps for Obtaining Interpreters

First Responders – What do you do when you arrive at a crime scene?

First Response

- Locate and secure the scene
- Are there any weapons?
- Is anyone injured?
- Identify the people involved
 - Victim
 - Offender
 - Witnesses
- If offender is not on the scene
 - Where is the suspect?
 - Are they a continuing danger?
 - Is suspect in possession of weapon?



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*?

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

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

Using Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements
(Excited Utterances)

Harms

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation results in inaccurate statements
- Trauma to children

How does your investigation proceed with an non-English speaking victim?

Language Resources

- Language Line
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems



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.

Tips for Working with Interpreters

- Control the interview
- Pre-session with the interpreter
 - Where are they located?
 - Establish what your rules are
 - how do you want the interpreter to interpret?
- Interpreter has to interpret everything that you say
 - Example: when you are explaining confidentiality

Red Flags

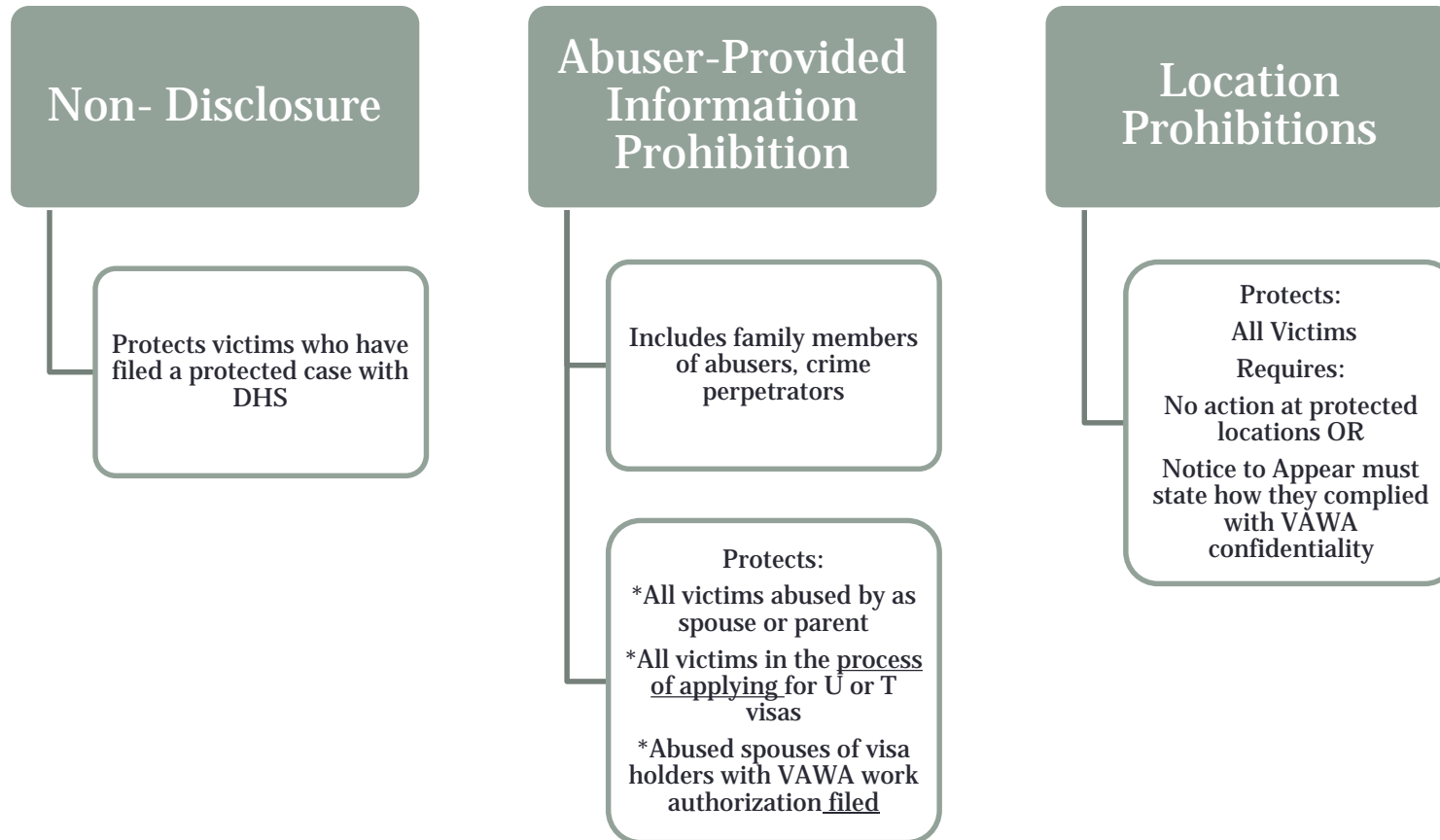
- Can you understand the interpreter?
- Does the LEP person look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter summarizing?
- Is everything being interpreted?
- Is there a change in the individual's demeanor?
- Are they using English words?

VAWA Confidentiality Protections

VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

VAWA Confidentiality Prongs



Immigration Options for Immigrant Crime Victims and Children

(Red = VAWA Confidentiality Protected Case)

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
- VAWA suspension of deportation
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Abused Spouse of Visa Holders
 - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Australian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers
- Asylum
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender based asylum

DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

Relying on Information Provided by Abuser

- The government cannot gather and/or use information provided solely by:
 - A domestic violence or child abuser;
 - A sexual assault or stalking perpetrator
 - A trafficker;
 - The perpetrator of any U visa listed crime
 - The perpetrator's family member
 - Other persons associated with the perpetrator
- To take an adverse action against a victim
- The victim not required to have filed an immigration case to be protected
 - All spouse and child abuse victims protected no filing needed
 - Includes abused spouses of work visa holders
 - Victims in the process of filing T or U visa cases

Adverse Actions Include Using Perpetrator Provided Information To...

- Deny a victims immigration case
- Detain a victim
- Deport a victim
- Initiate an immigration enforcement action against a victim
- Seek out, question or detain a victim at a prohibited location

When Does VAWA Confidentiality Protection End?

- Protections applies from the time of filing permanently unless
 - Case denied on the merits and
 - All appeal options have been completed

Victims for Which VAWA Confidentiality Will Offer Less Protection

- Victims with criminal histories
 - Including arrests
- Victims with outstanding deportation orders
- Victims eligible for VAWA, T or U who have not filed their immigration case

VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Violations also include making a false certification in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)

VAWA Confidentiality Violations Effect on Immigration Court Proceedings

- Can result in dismissal of the immigration proceeding against the non-citizen (VAWA 2005 legislative history)



U Visas as a Crime Fighting Tool

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

**What, if anything, do you know
about U Visas?**

Overview of the U Visa

- **What is the U visa?**
- **Purpose:** Why does it exist?

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

[DHS Video Part 1.mpg](#)

<http://niwaplibrary.wcl.american.edu/2014/04/dhs-roll-call-videos/>

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

U Visa Criminal Activities (11/2011 data)

- Domestic violence **45.9%**
- Rape, sexual assault, incest, trafficking **30.4%**
- Felonious assault, murder, manslaughter **9.9%**
- Kidnapping, being held hostage, unlawful criminal restraint, torture **8.47%**
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**

Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- **Fraud in Foreign Labor Contracting**
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- **Stalking**

*Attempt, conspiracy or solicitation to commit any of these crimes
any similar activity

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

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - 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

U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime

Things to Know About Certifying

- “Do I believe this person was a victim of a qualifying crime?”
- “Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?”
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor’s office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?

How will a U visa certification request come to you?

- From victim advocate or immigration attorney
- As a police officer you are the first responder
- As a prosecutor you might have continued contact with the victim and might be first to identify victim's U visa eligibility

When should you certify?

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

Certifying early

PROS

CONS

Establish trust

Build rapport

Protect from offender

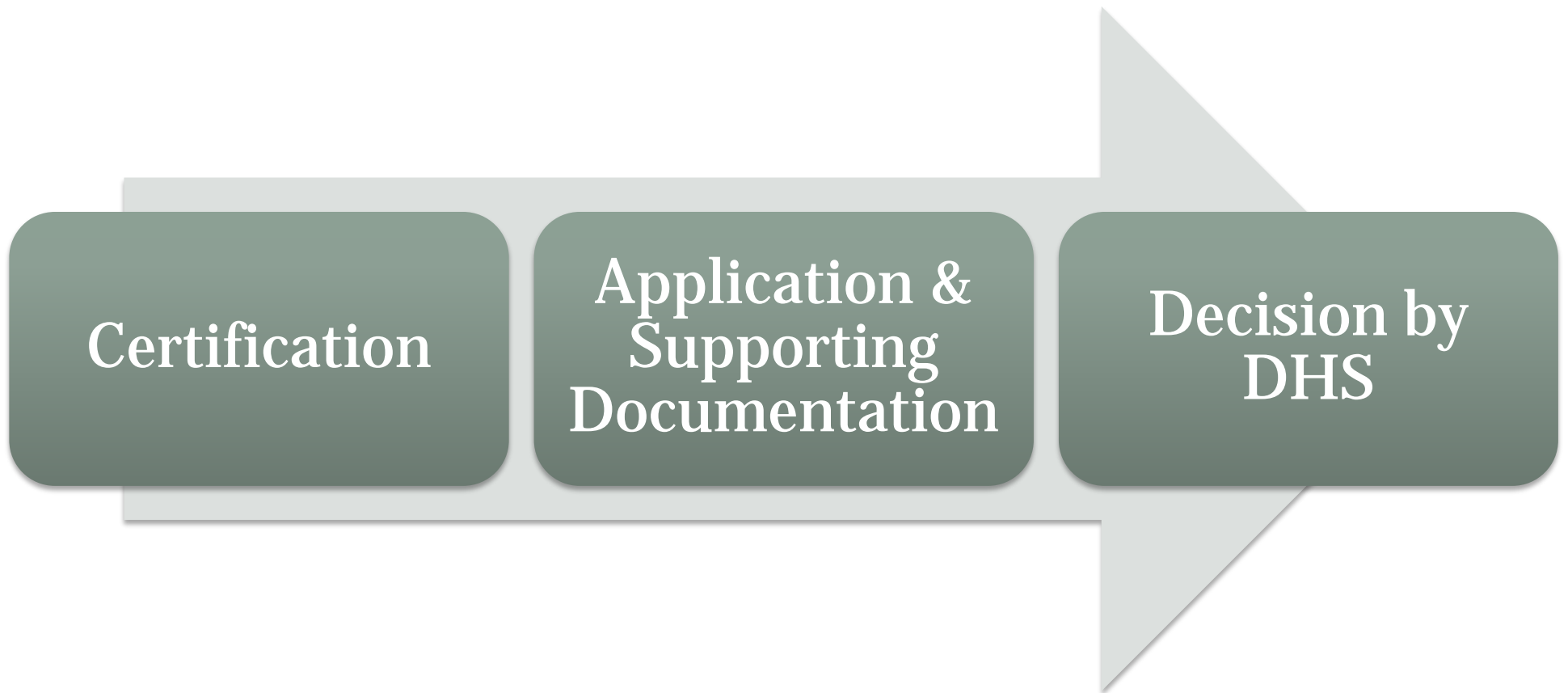
Protect from deportation

Accusation that victim is lying for immigration benefit

Beyond the Certification

- *Brainstorm*
- In addition to the certification, what else is a victim required to prove to Homeland Security in order to receive a U Visa?

The U Visa Application Process



Typical length of process = 12 -18 months

DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
 - Review of criminal history
 - Review of immigration history

U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 62,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 28 months)
- Benefits for family members applicants
 - Under 21: spouse, children, parents, unmarried siblings under age 18
 - Over 21: spouse and children
- Lawful permanent residency after 3 years if
 - Cooperation or not unreasonably refuse to cooperate
 - + humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency+ proof of good moral character

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



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

Prosecution Specific Issues

Discovery

- 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?

#1 Concern:

Explicit or implicit accusation
that the victim is lying to stay in
the country

Cross-Examination

- It goes to the witness' credibility, bias, or motive to lie – they can be asked about it.
 - Discuss during *voir dire*
 - Identify jurors with anti-immigrant attitudes and get them off the jury
 - Prepare victim for cross-examination

Rebuttal Testimony

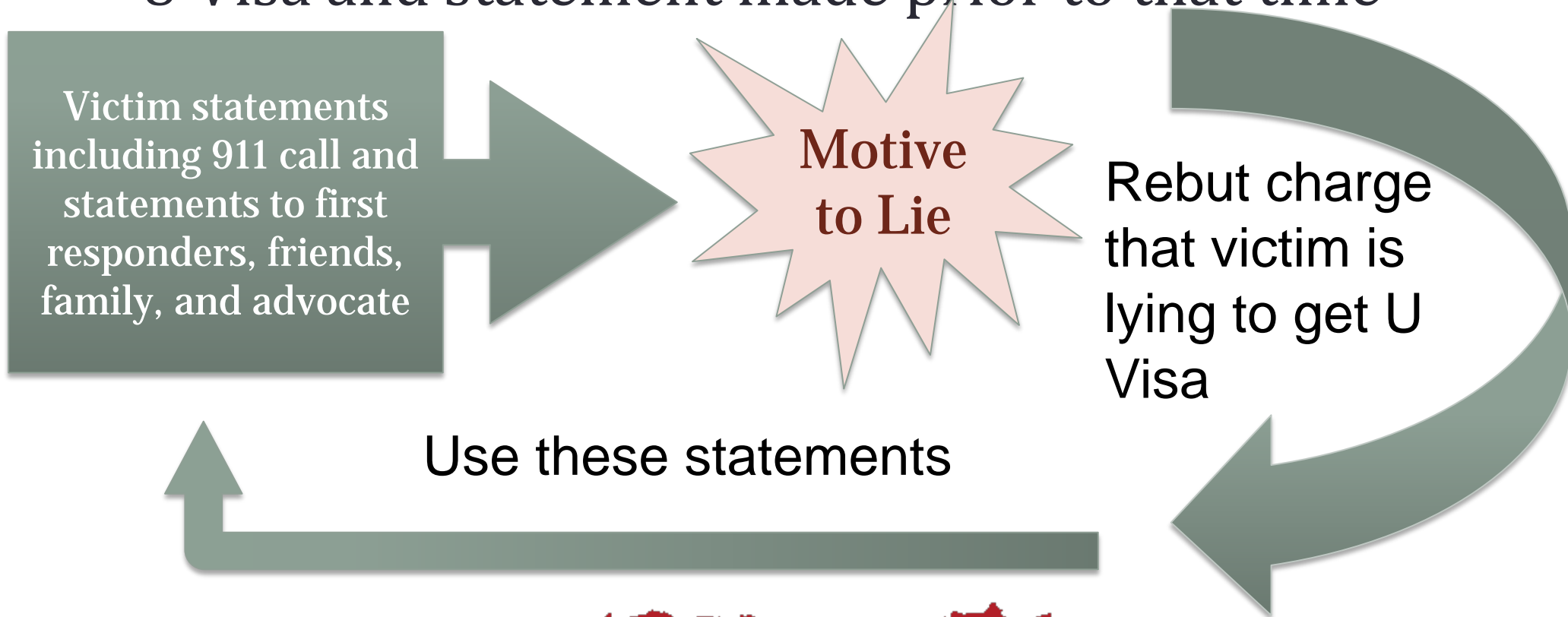
- Once the defendant has alleged that the victim has a motive to lie, the prosecution can introduce the victim's prior consistent statements about the charged crime
- Door to this testimony can be opened at any time, but is likely done during cross-examination

Prior Consistent Statements

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

Introducing Statements

- Establish timeline of when victim was told about U Visa and statement made prior to that time



Prior Consistent Statements

Not hearsay if the victim testifies, it is consistent with the victim's testimony, and is

a. 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; or*

b. to *rehabilitate the declarant's credibility as a witness when attacked on another ground; or*

Fed. R. Evid. 801(d)(1)

Victim Statements

- 911 call
- Statements to first responders
- Interview by detective
- Comments made to family, friends, or coworkers
- Conversation with service providers
 - Community-based v. Systems-based

Certify Early

PROS

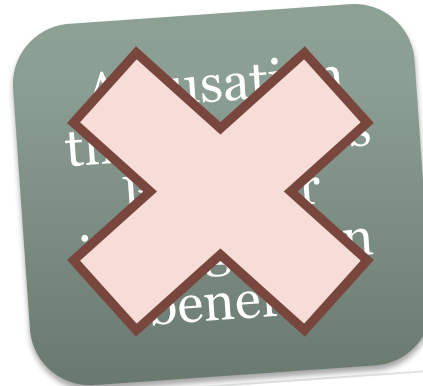
CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation



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
- For prosecutors: Litigate discovery and pretrial motions to ensure just results
- Turn challenges into strengths

Human Trafficking

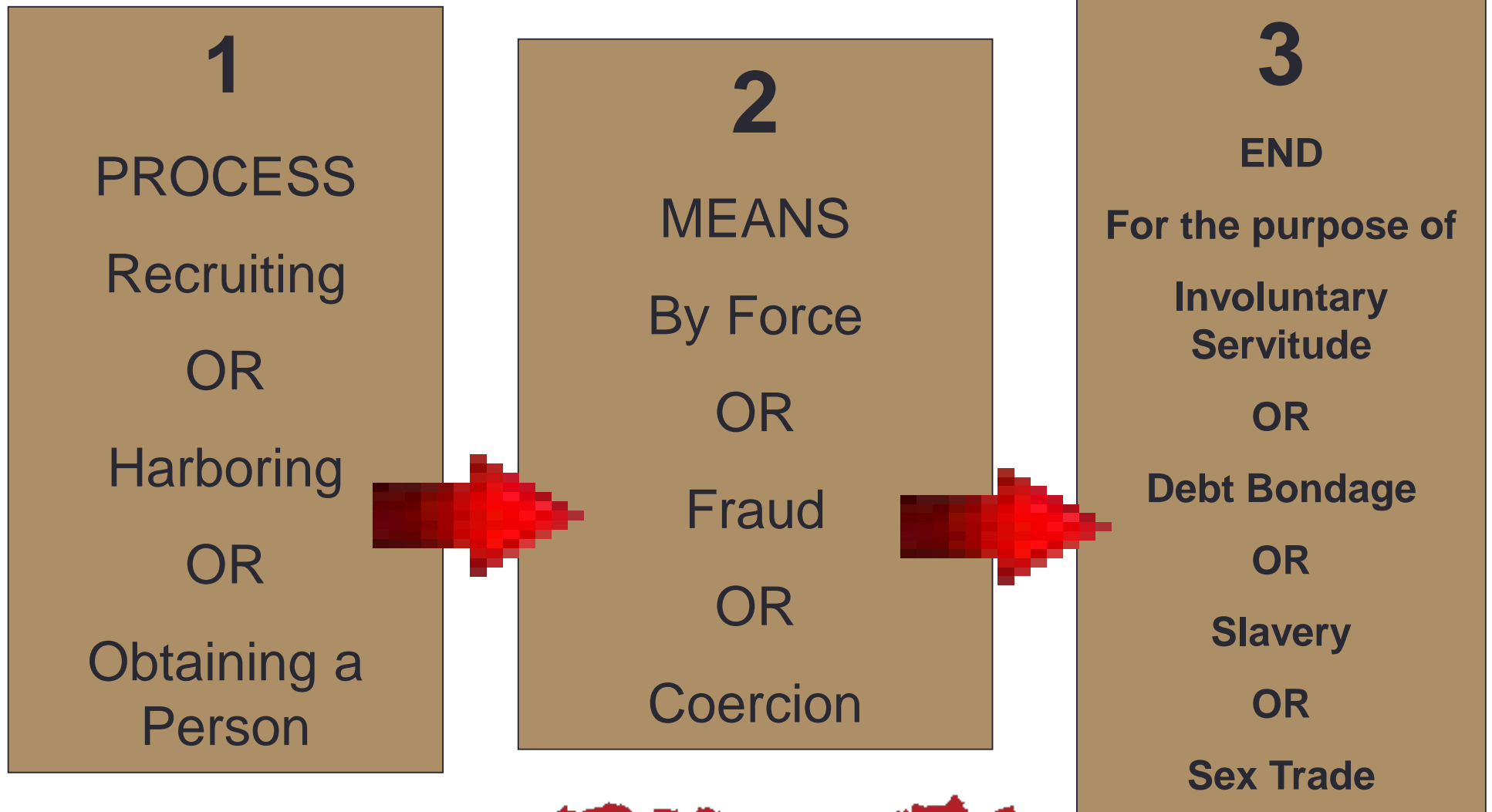
- Generally: use of force, fraud and/or coercion to exploit a person for profit.
- Federal statute: TVPA 2000
- Maryland law: Md. Code Ann., Crim. Law § 11-303

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/)

Three Elements of Trafficking



Continued Presence

- Temporary lawful immigration status
 - For victims of severe forms of human trafficking
 - Victim of human trafficking who is a potential witness in investigation or prosecution of a trafficker
- Requested by federal law enforcement
 - Can be on behalf of state and local LEAs
 - One year, can be renewed
 - Can have family members join them

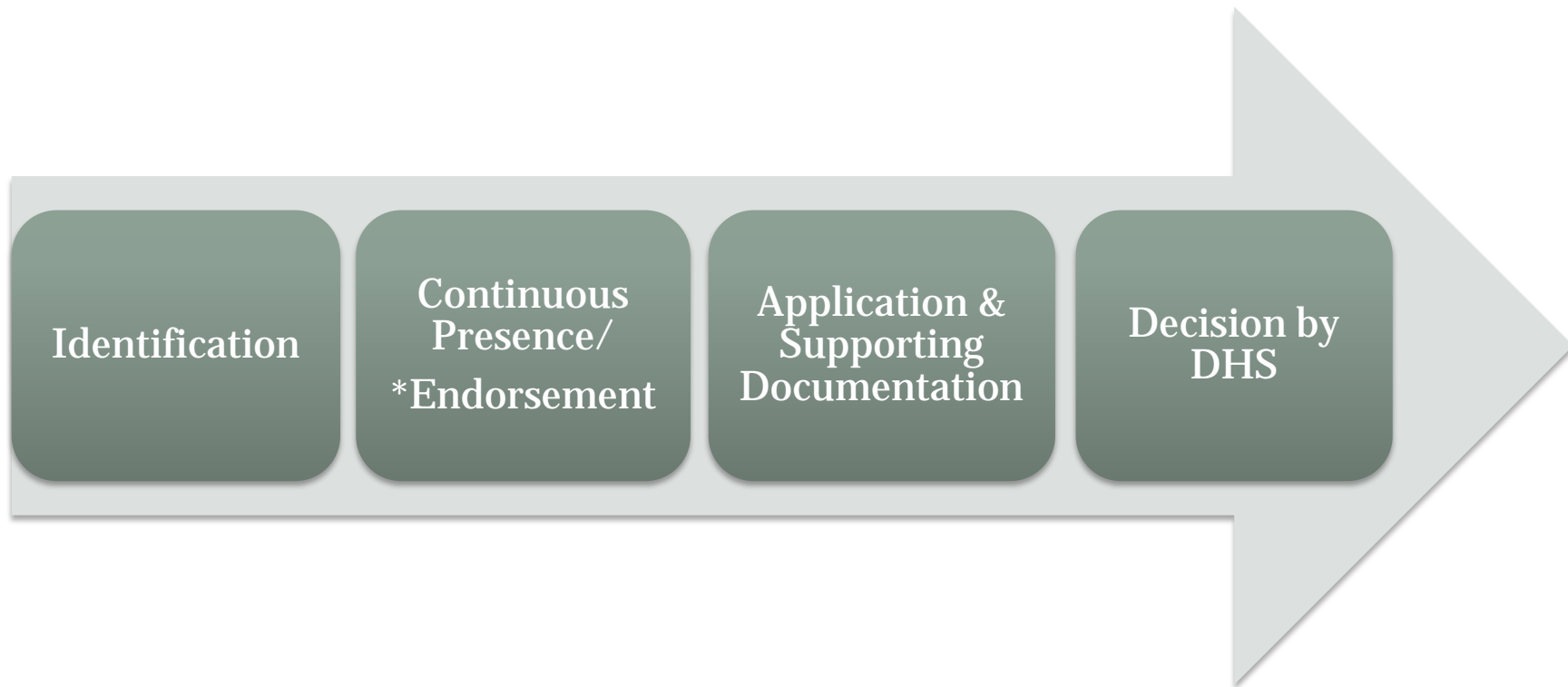
Continued Presence - Benefits

- Temporary legal status in the U.S.
- Work authorization
- Access to public benefits – like refugees
 - State and federal
- Family members can join
- Can travel within the U.S.
- Does not lead directly to permanent legal status

T Visa Overview

- 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
 - Prosecution unless victim is under 18
 - Hardship upon return to home country
- May apply for lawful permanent residency after investigation/prosecution is over or 3 years, what ever time is shorter

The T Visa Application Process



Typical length of process = 4 - 6 months

T Visa Certification Not Mandatory

- T visa certification discretionary
- Certification provides helpful evidence
- Victim can file for a T visa without a certification

Family Members Who Can Be Included in T Visa Application

- Child victims under age 21 can include:
 - Spouse, children, parents and unmarried siblings under age 18
- Victims over 21 can include:
 - Spouse and children

T Visa Benefits

- While Case is Pending
 - Protection from deportation and removal
 - VAWA Confidentiality
 - Programs and services necessary to protect life and safety
- Upon receiving a bona fide determination or continued presence
 - All federal and state public benefits
 - Health Care Exchanges
 - Receives work authorization
 - Drivers licenses
- Upon Approval
 - Immigration benefits for children (and unmarried siblings if applicant is under age 21)
 - Eligible for lawful permanent residence after 3 years
 - Can travel outside of the U.S. but may need permission

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



Hypotheticals

Small Group Activity

- Is this person eligible for a U Visa certification?
- *Stories handout*



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

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

What does it mean for a victim to “unreasonably refuse” to provide assistance?

**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 of the abuser
- trauma suffered
- force, fraud or coercion

Witness Tampering

- Detect signs of witness tampering
 - 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

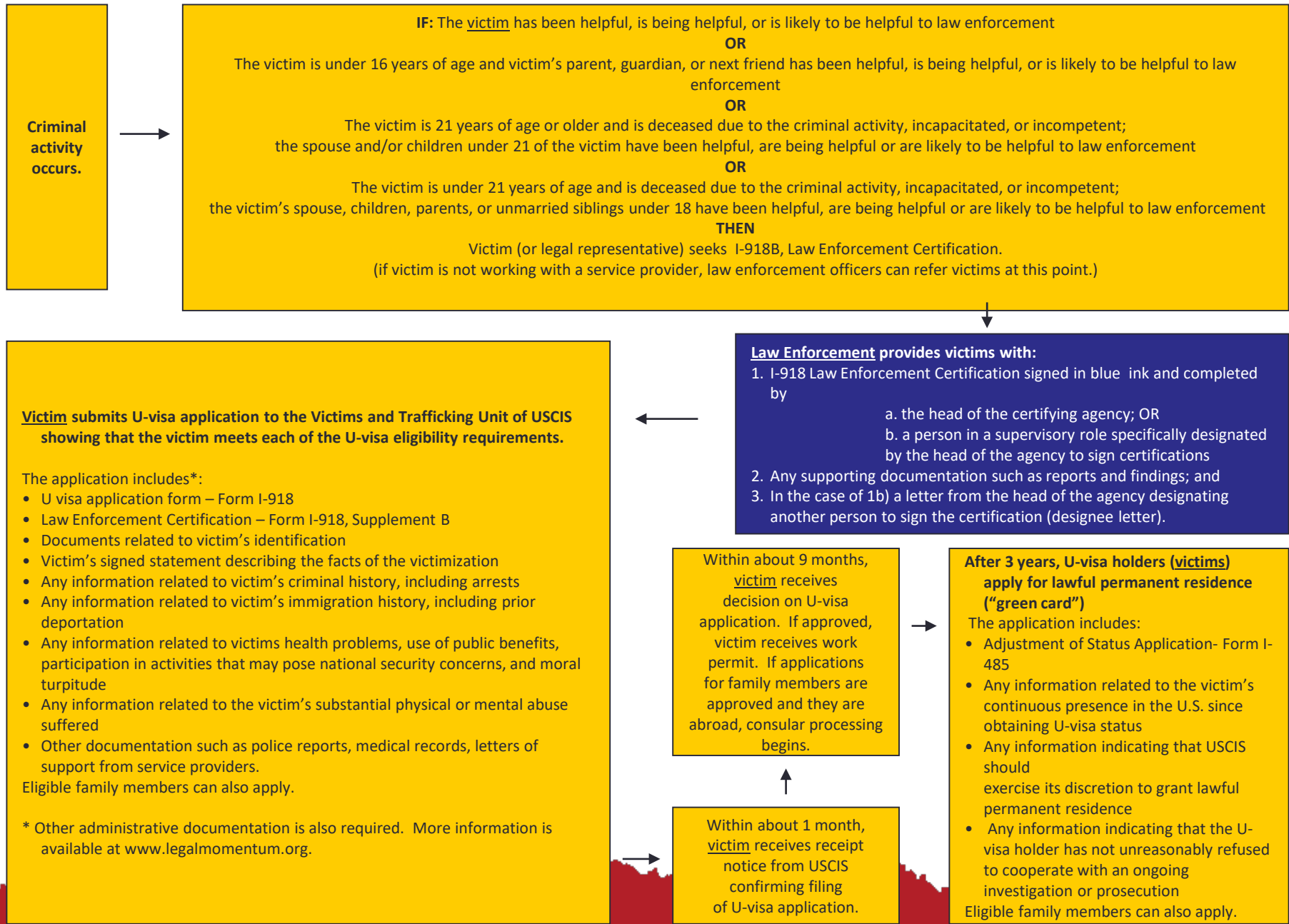
If you still believe the victim is unreasonably refusing...

- 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

[DHS Video Part 2.mpg](#)

<http://niwaplibrary.wcl.american.edu/2014/04/dhs-roll-call-videos/>

U-visa Application Victim Flow Chart



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).

U Visa Certification Overview



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

Review the U Visa Certification Form

Located in your training packet

- **Goals:** Identify the criminal activity and the victim, then begin the certification process

Part 1. Victim Information

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

▶ A-

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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. (Certifier Preference)



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



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

Name of Head of Certifying Agency

4.a. Family Name
(Last Name)

4.b. Given Name
(First Name)

4.c. Middle Name

Agency Address

5.a. Street Number and Name

5.b. Apt. Ste. Flr.

5.c. City or Town

5.d. State **5.f. ZIP Code**

5.g. Province

5.h. Postal Code

5.i. Country

Other Agency Information

6. Agency Type

Federal State Local

7. Case Status

On-going Completed

Other

8. Certifying Agency Category

Judge Law Enforcement Prosecutor

Other

9. Case Number

10. FBI Number or SID Number (if applicable)

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.

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.

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.

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.**

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

NOTE: This will be discussed in detail in the next section

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.

Part 6. Certification

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

1. Signature of Certifying Official (sign in ink)



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

3. Daytime Telephone Number

4. Fax Number

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

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

4.d. _____

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d. _____

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

6.d. _____

PROTECTION ORDERS



NIJ Funded CPO Study Found

- With support immigrant victims will use and benefit from justice system assistance
 - 60.9% did not know about CPOs
 - 81% got CPO with help from advocate/attorney
 - 96% found them helpful
 - 68.3% of violations immigrant related

Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense

Essential Remedies

- Address remedies needed to
 - Stop abuse
 - Address housing
 - Custody of children and visitation
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes opportunity to offer relief designed to help:
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or coercive control
 - Offer victim remedy-relief for past abuse
 - Help victim overcome victimization and build new post abuse life
- Nexus With Victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies

CREATIVE REMEDIES: SMALL GROUP ACTIVITY

What creative protection order remedies might help an immigrant victim?

Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

Victims Who Stay: Full Contact Protection Orders

- No state's protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
 - Contrary to statutory intentions; and
 - Against public policy to prosecute abused women for complicity in violating their own orders.
- Provisions
 - No abuse
 - Counseling

A protection order or discovery can help a victim obtain needed evidence:

- Marriage certificate
- Wedding/family pictures
- Birth certificates
- Love letters
- Copies of joint leases/utility bills
- Police, medical, court documents about the relationship,
- Copy of abuser's green card or passport

Protection order or discovery continued

- School records
- Medical records
- Employment records
- Social security number information
- Health insurance
- Children's birth certificates
- Letters and other mail addressed to the victim and to the abuser at the same address
- Copy of I-130 petition

Catch-all Provisions Preventing Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities (e.g. work visa holders, I-130s)

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order.
- Supervised visitation
- Bond

Important Economic Provisions

- Maintain medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)
- Taxes
 - Turn over income tax statements
 - Victim named trustee for receipt of tax return funds, respondent ordered to sign check
 - Victim awarded exclusive right to claim children as tax exemptions
 - Respondent pays victim 1/2 of return

Resources

- ▶ **Technical Assistance**

- ▶ Call: 202.274.4457
- ▶ Email: niwap@wcl.american.edu

- ▶ **Materials on U visa and Immigrant Victims Legal Rights**

- ▶ Visit <http://niwaplibrary.wcl.american.edu>
- ▶ U Visa Certification Toolkit
- ▶ DHS Answers to Law Enforcement Reasons for Not Certifying
- ▶ USCIS Q & A on U Visa Certification
- ▶ Roll call training videos
- ▶ All available at:
[www.http://niwap.org/lawenforcement](http://www.niwap.org/lawenforcement)

Evaluations

- Evaluations are in your training packet
- Certificates



Thank You!