



ncall

Celebrating 20 Years:
1999-2019

WEBINAR

Best Practices and Tools That Build the Capacity of Adult Protective Services to Serve Immigrant Domestic and Sexual Violence Victims

January 30, 2020

NIWAP

National Immigrant Women's Advocacy Project, American University
Washington College of Law and National Clearinghouse on Abuse in Later Life

Faculty



Leslye E. Orloff
Director
National Immigrant
Women's Advocacy
Project, American
University Washington
College of Law



Ann Laatsch
Justice System Coordinator,
National Clearinghouse on
Abuse in Later Life



Kathryn Sapp
Bureau of Adult
Protective Services Policy
& Staff Development
Division of Senior &
Disability Services
Department of Health &
Senior Services



ncall

Celebrating 20 Years:
1999-2019

This webinar is supported by Grant Nos. 2017-TA-AX-K043, and 2016-TA-AX-K077 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.



Poll 1: Let's see who is on the webinar with us

Please check the box that best describes you:

- A. APS Administrators and their staff
- B. Law enforcement/Prosecutors
- C. State government
- D. Victim advocates/attorneys
- E. Other – type in the chat

POLL



Learning Objectives

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

- Identify elder and vulnerable adult victims who qualify for crime victim based forms of immigration relief
- Implement U and T visa certification practices at your Adult Protective Services Agency
- Enhance victim safety and participation and offender accountability in the APS and justice systems
- Know how to screen and identify types of assistance that immigrant survivors qualify to receive

Understanding Immigrant Victim/Offender Dynamics



ncall

Older Americans Statistics

- 10,000 Americans turn 65 every day.
- Older women comprise more than half (55.8%) of the adult population age 65 and older
- In 2010, there were 5.8 million people aged 85 or older.
- By 2050, it is projected that there will be 19 million people aged 85 or older.

Acierno, R., Hernandez, M. A., Amstadter, A. B., Resnick, H. S., Steve, K., Muzzy, W., & Kilpatrick, D. J. (2010).

United States Census Bureau (2012).

U.S. Dept. of Commerce, U.S. Census Bureau. (2010).



ncall

Racial and Ethnic Diversity

- Racial and ethnic populations comprise a growing share of older adults in the U.S.:
 - In 2007, 7.2 million (19% of the older adult population)
 - In 2017, 11.8 million (23% of older adults)
 - In 2040, projected 27.7 million (34% of older adults)

A Profile of Older Americans: 2012, Administration on Aging, U.S. Dept. of Health and Human Services.



Elder Abuse Defined

“Elder abuse includes physical, sexual or psychological abuse, as well as neglect, abandonment, and financial exploitation of an older person by another person or entity, that occurs in any setting, either in a relationship where there is an expectation of trust and/or when an older person is targeted based on age or disability.”

Department of Justice, 2014. Elder Justice Roadmap.



Elder Abuse Dynamics

- 1 in 10 community-residing older adults reported experiencing elder abuse in the past year.
- Most elder abuse is not reported.
 - For every 1 case of elder abuse that comes to the attention of a responsible entity another 24 cases never come to light.
- About 2/3 of elder abuse victims are women.

Acierno, R., Hernandez, M. A., Amstadter, A. B., Resnick, H. S., Steve, K., Muzzy, W., & Kilpatrick, D. G. (2010).

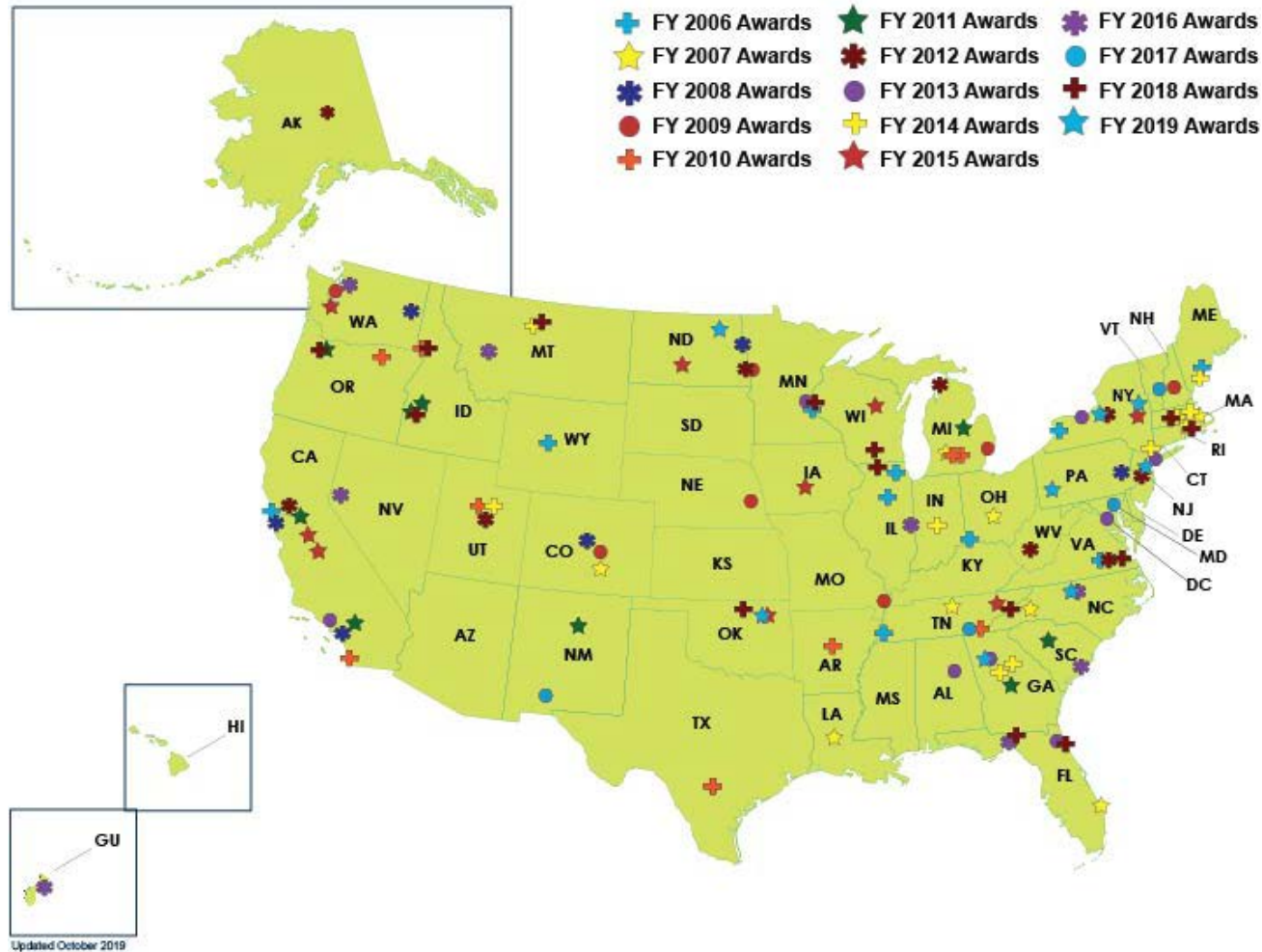
Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University, & New York City Department for the Aging. (2011).



OVW Abuse in Later Life Grant Program

- Approximately 8–9 communities a year
- \$400,000 for 3 years
- Address elder abuse by:
 - Providing training and cross training
 - Creating or enhancing a CCR team
 - Developing victim services

OVW All Grantees





ncall

Victims are Often Vulnerable

- Nearly half of all victims have a physical impairment.
- About one-third of victims have mental impairment or dementia.

Huang, Y., & Lawitz, A. (2016).



ncall

Perpetrators of Elder Abuse

- Spouses, partners, family members, caregivers and other persons in a relationship where the victim and society expects compassion and caring.
- Studies have consistently shown that the majority of elder abuse cases involve female victims with spouses as perpetrators.

Acierno, R. Hernandez-Tejada, M., Muzzy, W., Steve, K. (2009).
United Nations (2013).



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

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses



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

Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse
 - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse
 - May predict abuse escalation
 - Corroborates existence of physical and sexual abuse

Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)



ncall Consequences of Elder Abuse

- Health consequences of violence are often more severe for older women and include:
 - Greater health service utilization
 - Declines in overall health status
 - Poorer life expectancy
- Risk of death and elder abuse
 - Elders who experienced abuse had a 300% higher risk of death compared to those who have not been abused.

Dong X, Simon M, Mendes de Leon C, Fulmer T, Beck T, Hebert L, et al. (2009). Mouton, (2003); Fisher et al., (2011); Fisher and Regan, (2006); Fisher, B. S., Zink, T., and Regan, S. L. (2011); Stein and Barret-Connor, (2000).



Age does not Equal Incapacity

- Many older adults have full capacity and are actively engaged in their communities.
- Too often older adults are not believed when they report abuse because of ageist assumptions about dementia.

**Many Immigrant Victims of
Domestic Violence, Sexual
Assault, and Other Crimes Are
Eligible for Immigration
Relief**

Immigration Relief Available for Immigrant Victims of:

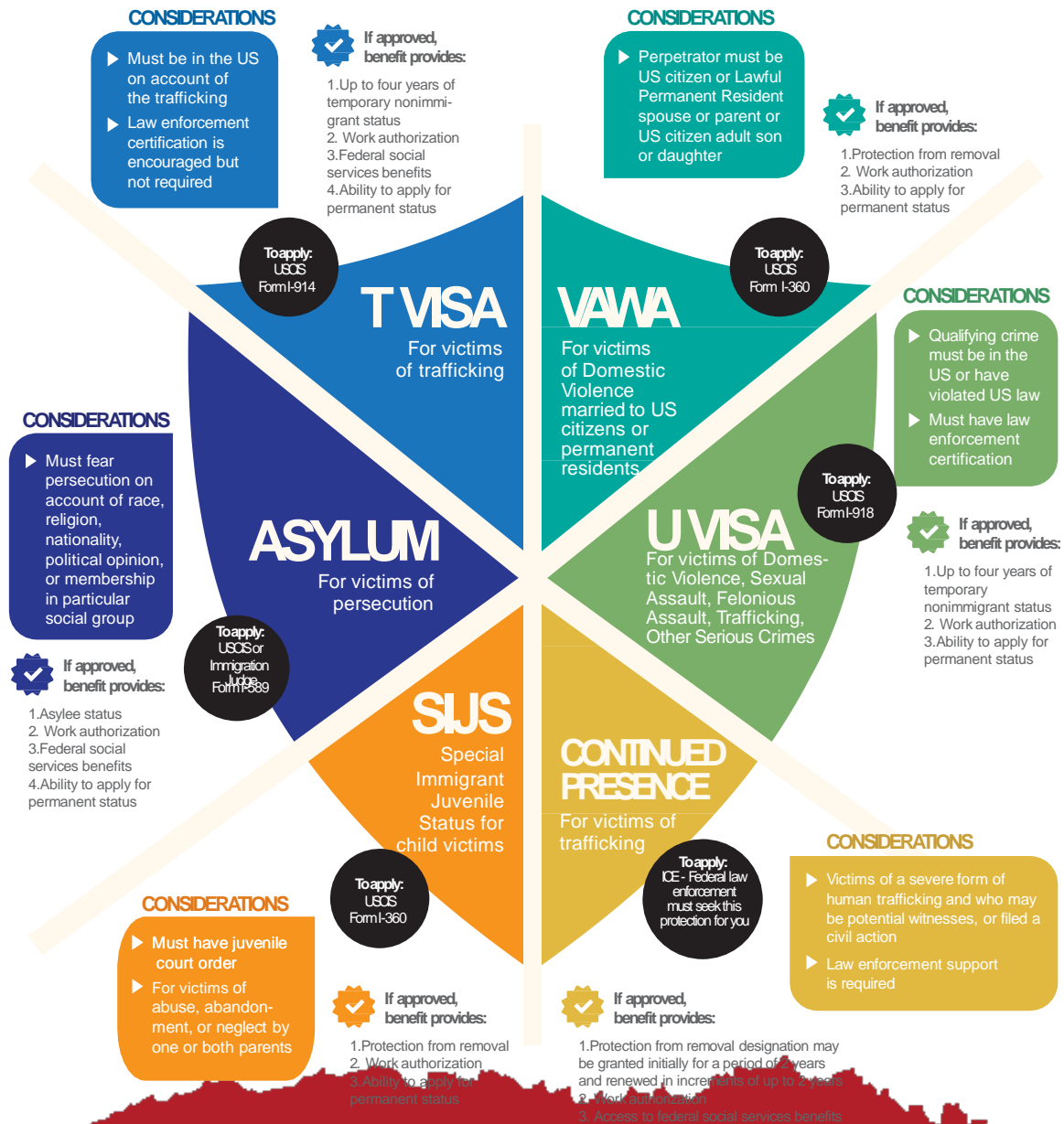
- Domestic violence
 - Child abuse
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage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

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

Have you have encountered immigrant elder abuse or vulnerable adult victims who experienced any of the crimes listed on the previous slide in your work? If so, please raise your hand.



Protections for Immigrant Victims



U Visa Statistics

11/2011

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

Legislative Intent

- We want crimes reported to police and government agencies
- 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, elder abuse, child abuse
 - Sexual violence, stalking

Goals of Immigration Relief

Investigations and Prosecutions

Community-government agency relations

Improve

Reporting of crime

Safety of victims, communities, and police

Overview: Forms of Immigration Relief for Immigrant Victims of Elder and Vulnerable Adult Abuse

Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the “condition” placed on the status of immigrant spouses of marriages less than two years old
- Waives both the joint filing requirement and two year wait for full lawful permanent resident status
- Requires proof that
 - Marriage to U.S. citizen or permanent resident entered into in good faith *and*
 - Spouse or child was battered or subjected to extreme cruelty
 - Child can include step-child

Immigration and Nationality Act § 216(c)(4)



VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - Spouse;
 - Parent; or
 - Citizen adult son/daughter (over 21)
- With whom Self-Petitioner resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal has similar eligibility requirements
- **Timeline to formal protection = 4-18 months (2019)**

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
- **Timeline to formal protection = 4-6 years (2019)**



T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- 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
- **Timeline to formal protection = 3-12 months (2019)**

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (3-48 months from filing)
 - Issuance of federally recognized ID
- VAWA confidentiality protections

Improved Access to Justice After Victims File Immigration Cases

- Seek protection orders
 - 47.6% self-petitioners; 43.7% U visa cases
- Help in criminal case
 - 73.1% U visa cases; 33.4% self-petitioners
- Filed police report in future cases
 - 36.2% self-petitioners; 50.3% U visa cases
- Sought help from family courts
 - 32.1% self-petitioners; 19.6% U visa cases

Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16, 2013)

VAWA Confidentiality Protections

When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)

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

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:** Locational prohibitions to enforcement unless there is compliance 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

DHS VAWA Confidentiality Computer System

- Department of Homeland Security (DHS) “red flag” 384 computer system to identify victims who have already 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
 - Human trafficking

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
- Immigration case brought against a victim can be dismissed for VAWA confidentiality violation
 - 8 U.S.C. 1367
- Practice Tip: Victims should carry a signed certification form with them at all times

Importance for APS of Early Screening for U/T Visa or VAWA Eligibility



Case Scenario

Clara met Eduardo, a lawful permanent resident, when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara, who was raising her son Miguel. After Clara became pregnant and gave birth to a baby girl, Lupe, Eduardo decided to bring Clara (41), Miguel (4) and Lupe (1) to the U.S. to live with him. When they arrived in the U.S. Eduardo married Clara and took Clara, Miguel, and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved." When Miguel turned 14, Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 15 and Lupe was 12, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. When Clara was 60 (Miguel is 23, Lupe 20) one of the beatings was so severe the neighbors called the police for help. Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and referred Clara to adult protective services.



Poll 2: What forms of immigration relief would Clara qualify for?

- A. U Visa
- B. VAWA self-petition as parent of Lupe
- C. VAWA self-petition on her own
- D. T visa
- D. All of the above

POLL



Poll 3: What forms of immigration relief would Lupe and Miguel qualify for:

- A. Both can self-petition
- B. Both qualify for a U visa
- C. Lupe qualifies for a T visa
- D. All of the above



POLL



VAWA Self-Petitioning Process

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - Spouse;
 - Parent; or
 - Citizen adult son/daughter (over 21)
- Cast must be filed within 2 years of marriage termination
- Bigamy exception
- Any credible evidence standard of proof
 - e.g. APS worker affidavit, APS reports or findings, police report, protection order.
 - *Note: Medical records NOT required*

VAWA Terminology for Domestic Violence

- “Battery or Extreme Cruelty”
- Includes
 - All forms of abuse covered in state civil protection order statute
 - All forms of abuse that constitute domestic violence under states criminal laws
 - Forms of abuse that constitute extreme cruelty
 - No physical harm or crime required

Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Financial exploitation
- Abuse at work
- Caregiver neglect
- Sexual Abuse
- Coercive control
- Deportation threats
- Immigration related abuse
- Intimidation
- Abandonment
- Social Isolation
- Degradation
- Possessiveness
- Minimizing, denying, blaming
- Harming pets
- Threats

Factors That Can Constitute Extreme Cruelty

- Correlate strongly with physical & sexual abuse
 - Isolation
 - Intimidation
 - Economic Abuse
 - Employment Related Abuse
 - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away money

What Evidence Might APS Have That Could Help With a Victim's Immigration Case?

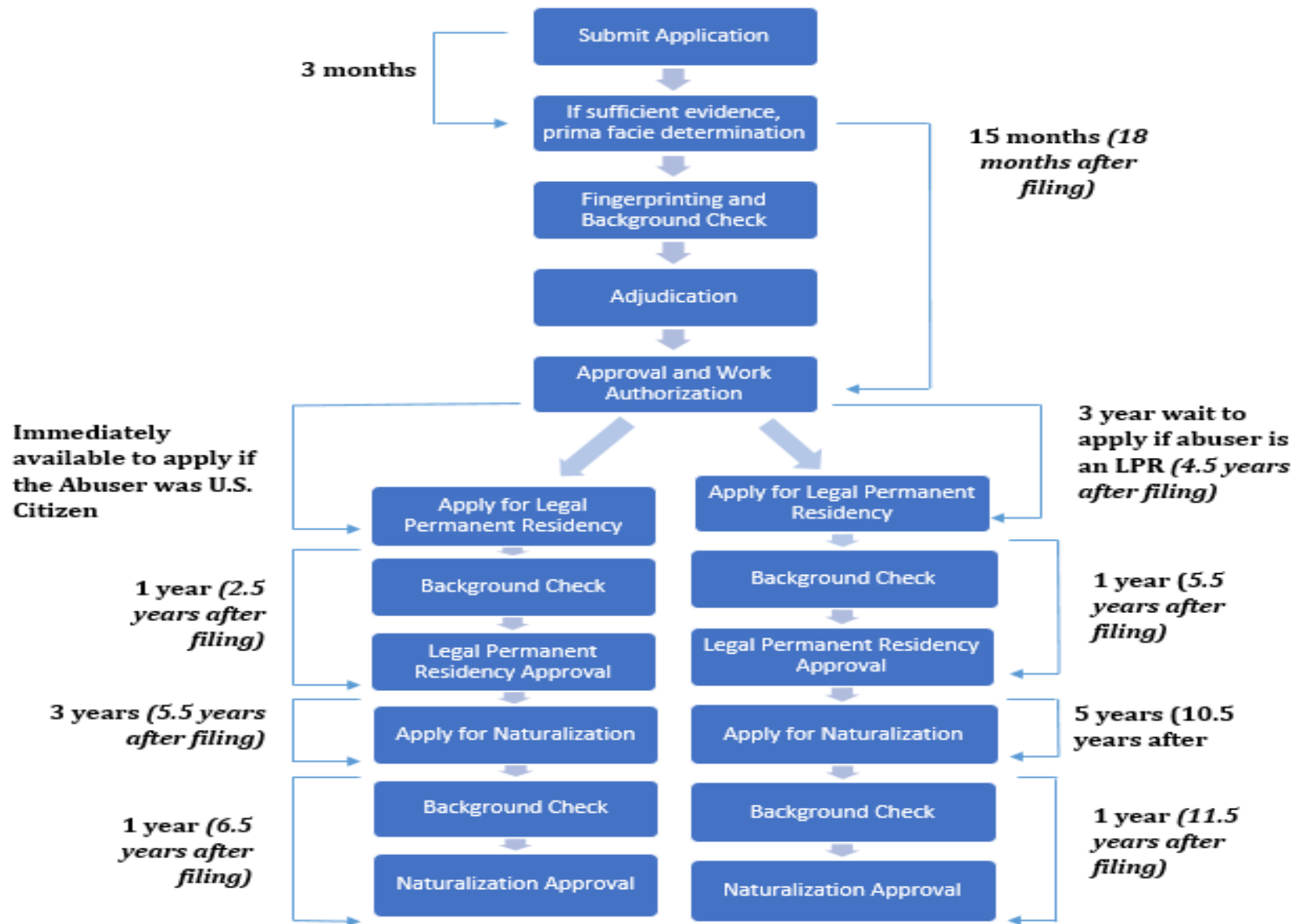
- Battering, sexual assault or extreme cruelty
- Good faith marriage
- Spouse or parent/child relationship



Benefits of VAWA Protections

- **Deportation:** Protection from deportation shortly after filing
- **VAWA Confidentiality:** protections against the release of information and reliance on abuser provided information
- **Public Benefits:** As qualified immigrants (≈ 3 months), may qualify for additional state funded benefits – See Public Benefits Map
- **Employment Authorization/Drivers' License:**
 - Citizen abuser (≈ 6 months);
 - Lawful permanent resident abuser (≈ 18 months)
- **Lawful Permanent Residency:**
 - Citizen perpetrator apply upon approval (1 year)
 - Lawful permanent resident perpetrator ($\approx 5+$ years-depends on when a visa is available)

VAWA Self-Petition Process Timeline





APS Staff Role

- Identify VAWA self-petitioning eligible victims
 - Battering or extreme cruelty perpetrated by:
 - Spouse/former spouse– citizen or lawful permanent resident
 - Adult citizen child
- Refer victims to local experts – directory
- Provide evidence for victim’s case
- Determine what benefits and services the victim is eligible for in your state and help victims apply



Poll 4: Which Immigrant Victims is Your APS Most Likely to Encounter?

Please check the box that best fits your agency:

- A. Elder victim of spouse abuse
- B. Elder victim of abuse by their adult child
- C. Elder victim abused by their caregiver
- D. All of the above

POLL

Immigration Relief for Victims of Human Trafficking

Poll 5:



True or False:

A victim of human trafficking qualifies for both a T and U visa and if they filed a U visa they can later file for and switch their application to a T visa.

The Facts about Continued Presence

Fact CP applications should be submitted immediately upon identification of a victim regardless of whether or not the victim has cooperated. In some cases, due to the nature of trafficking crimes, victims are too traumatized to cooperate at the outset of an investigation; however, this should not preclude the submission of a CP application.

Fact CP applications can be approved with an uncorroborated victim statement. A victim's statement alone is sufficient as long as the law enforcement official finds it credible under the circumstances.

Fact CP approval is not dependant on the case being accepted for prosecution. A victim must only be a potential witness to the human trafficking crime.

Fact CP approval is not dependant on human trafficking charges being brought. CP is available to all trafficking victims even if a human trafficking violation is not charged or if charges are never brought.

Fact Deferred action should never be used in place of CP. Deferred action is a form of prosecutorial discretion, such as not placing an individual in removal proceedings, and is done as an act of administrative convenience to the government. It precludes a victim from receiving TVPA benefits and services.

Fact CP does not require that the victim has suffered a violent form of human trafficking. Human traffickers may employ a range of non-violent forms of coercion to hold victims against their will such as threats of deportation, document control and psychological coercion.

Fact CP is initially granted for one year and may be renewed in one-year increments. CP renewals are submitted by the federal law enforcement official and evaluated by their agency on a case-by-case basis.

Fact CP can be revoked. If it is later determined that the individual is not a victim of human trafficking and/or is no longer a potential witness, CP can be revoked.

Fact CP is not a guarantee of a long-term form of immigration status. Receipt of CP does not guarantee that USCIS will favorably adjudicate other long-term immigration status applications.

Fact CP recipients are permitted to travel domestically and may have their family members join them in the U.S. At the discretion of the federal law enforcement official and their agency, a victim may be granted authorization to have their family member enter the U.S. to join them.

Long-Term Immigration Status

Victims may qualify for other forms of immigration benefits depending on their unique circumstances. Law enforcement officials are encouraged to work with the local ICE victim assistance coordinator to obtain referrals to non-governmental victim service providers. These providers may offer a variety of services to assist crime victims such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job skills training and case management.

Trafficking victims are eligible to self-petition to USCIS for T and U nonimmigrant status which permits them to remain in the U.S. for up to four years and can lead to lawful permanent residence. These applications may require a law enforcement certification. Federal, state and local law enforcement should, upon request, provide law enforcement certifications for human trafficking victims. USCIS will complete a comprehensive review of these applications prior to adjudication.

Important Numbers

ICE Law Enforcement Parole Branch:
202-732-8164 (law enforcement only)

ICE Headquarters Victim Assistance:
866-872-4973 or victimassistance.ice@dhs.gov

For human trafficking-related policy issues, please contact the
ICE Headquarters Human Smuggling and Trafficking Unit at:
ICEHumanTrafficking.helpdesk@dhs.gov



Homeland
Security
Blue Campaign

Report Suspicious Activity:
1-866-DHS-2-ICE (1-866-347-2423)
www.dhs.gov/humantrafficking

08/2010



Continued Presence

Temporary Immigration Status for Victims of Human Trafficking



U.S. Immigration
and Customs
Enforcement

Continued Presence Basics

- Temporary immigration status provided to victims of trafficking who are “sponsored” by federal law enforcement
- Government agency (e.g. APS, police) initiates application immediately after identifying victim; cooperation is not required
- Individual identified as a victim of human trafficking
- Potential witness in a trafficking investigation or prosecution
- Cooperation is required to access these benefits

Securing Federal Law Enforcement Sponsorship

- Government agency (e.g. APS) requests continued presence from
 - Immigration and Customs Enforcement - Law Enforcement Parole Branch (LEPH)
 - If LEPH initially determines victim meets the definition of a victim of a severe form of human trafficking continued presence
- Does not guarantee any of form of long term immigration relief

Continued Presence Duration and Benefits

- Granted for 2 years; can be renewed
- Can be revoked
- Upon approval by Dept. of Health and Human Services
 - Allows victim to access federal and state benefits
 - Work authorization

Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591 Severe form of human trafficking

Act	Means	Purpose
<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	<ul style="list-style-type: none">• Commercial Sexual Activity

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590 Severe form of human trafficking

Act	Means	Purpose
<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	<ul style="list-style-type: none">• Involuntary servitude• Peonage• Debt Bondage• Slavery

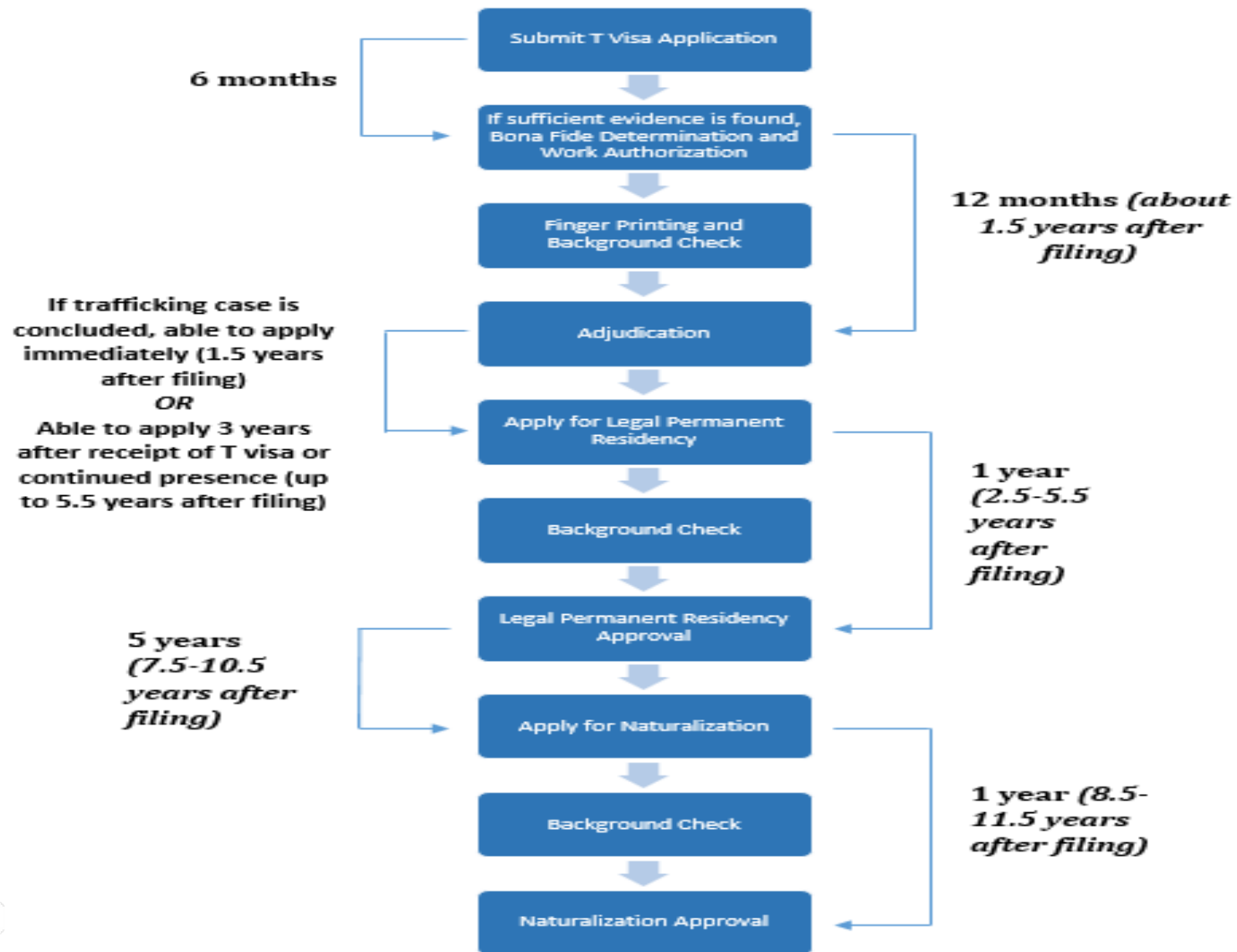
T Visa Overview

- 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 lawful permanent residency after investigation/prosecution is over or 3 years, what ever time is shorter

Trauma Exception

- T Visa may be issued without cooperation, at DHS discretion
 - Victim unable to cooperate due to physical or psychological trauma
- Application must include an affirmative statement from victim
 - Describing trauma
- Also encouraged to provide evidence; e.g., letter from APS or other professional who can attest to the victim's mental state

T Visa Process Timeline



Benefits of T-Visa Protections

- **Deportation:** Protection from deportation shortly after filing.
- **Can File for Immigration Benefits for Family Members:**
 - Adult victims: spouse and children
- **Public Benefits:**
 - With HHS certification federal and state public benefits same as refugees
 - With T Visa bona-fide/approval time limitation ends (See Benefits Map)
- **Employment Authorization:**
 - With HHS certification (3-4 months of filing)
- **VAWA Confidentiality:** protections against the release of information and reliance on abuser provided information
- **Lawful Permanent Residency the shorter of:**
 - After investigation or prosecution of trafficker completed or
 - 3 years after receive T visa



APS Staff Role

- Identify VAWA T visa or continued presence eligible victims
- Request continued presence for victim
- Sign T visa endorsement
- Refer victims to local experts – directory
- Provide evidence for victim's case
 - Evidence of trauma exception
- Determine what benefits and services the victim is eligible for in your state and help victims apply

How are APS staff most likely to encounter human trafficking victims?



U Visas as a Crime Fighting Tool

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

U Visa Requirements

Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Helpful

- Has been, is being, or is likely to be
- Detection, investigation, prosecution, conviction, or sentencing

Harm

- Substantial physical or mental abuse as a result

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	

What types of criminal activities have the U visa victims in your APS cases most commonly experienced?



U Visa Certification

- 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

Who Can Certify?

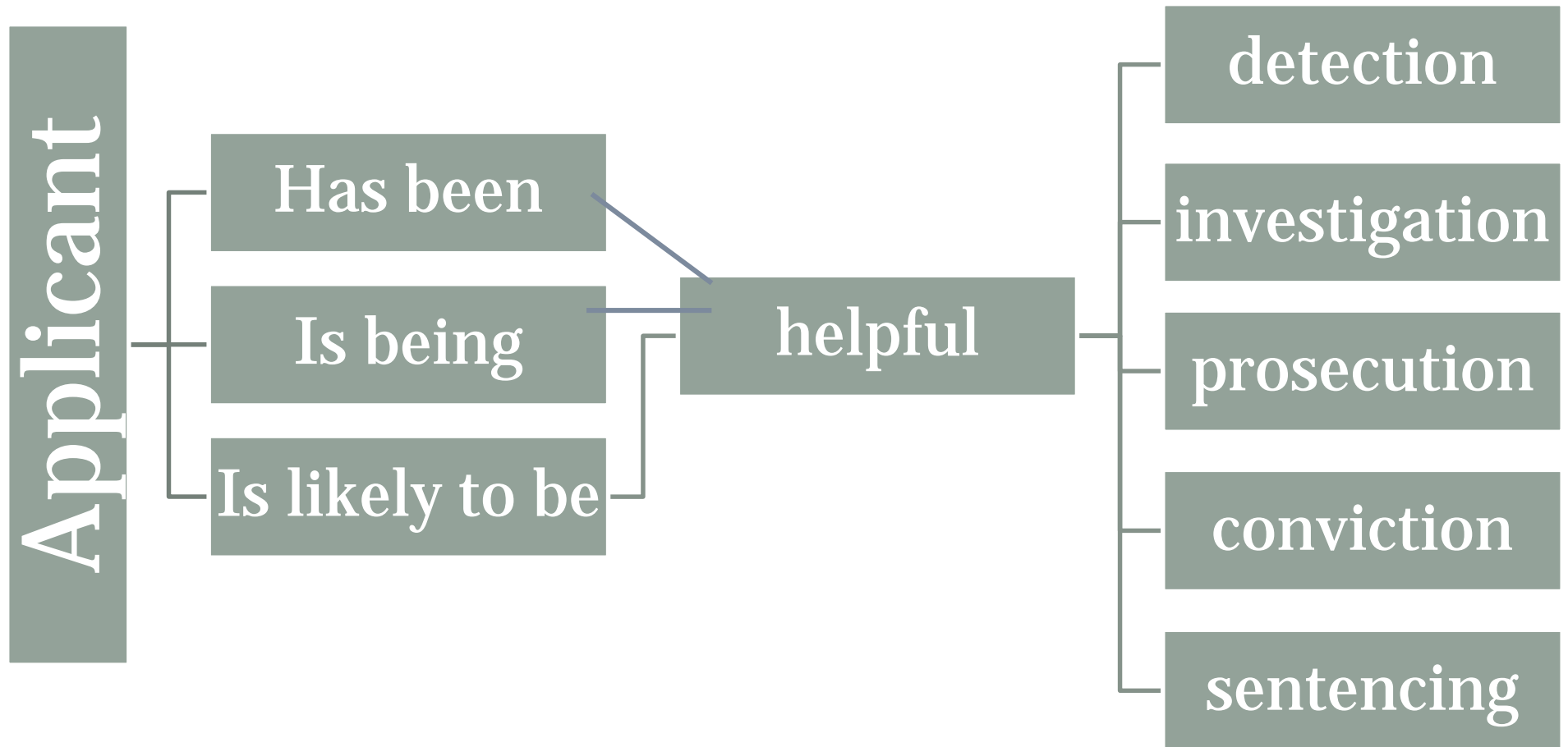
“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - Judges, magistrates, Commissioners
- Elder and Child Abuse investigators and agencies
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Other government agencies

Who can apply?

- Victims of qualifying criminal activity
- Spouses, parents and under 21 year old children can apply as an “indirect victim” if:
 - Victim is incompetent, incapacitated, or deceased due to murder or manslaughter and/or
 - The victim is a child under 21 years of age
- Bystanders victimization – very limited
- For incapacitated or child victims a “next friend”, guardian or parent can provide helpfulness

Helpfulness



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
- APS may complete U visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing

Making a 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
 - Providing information to APS staff
 - Statement about prior bad acts
 - Reporting crime and providing testimony in another criminal case against the perpetrator (e.g. gangs, drugs)

Not Required

- Conviction
- Charges filed
- Offender arrested/prosecuted
- Testimony at trial
- Necessary witness
- Within statute of limitations
- Offender is identified
- Offender alive



Victim-
centered
approach

Statutory and Regulatory Definitions of: Initial “Helpfulness” and Ongoing “Assistance”

- U visa statute authorizes certification and granting of a U visa when
 - The victim has been, is being or is likely to be helpful
 - INA 245(m)(1); 8 U.S.C. 1255(m)(1) and 8 C.F.R 214.14(b)(3)
- Once the victim’s case is pending and after the victim is granted a U visa, the U visa regulations require
 - The victim may not unreasonably refuse to provide ongoing assistance
 - 8 C.F.R. 245.24(b)(5)
 - That assistance must be “reasonably requested”
 - 8 C.F.R 214.14(b)(3)

Analyzing Requests for Certification

What criminal activity occurred?



Identify the victim or indirect victim



Determine helpfulness

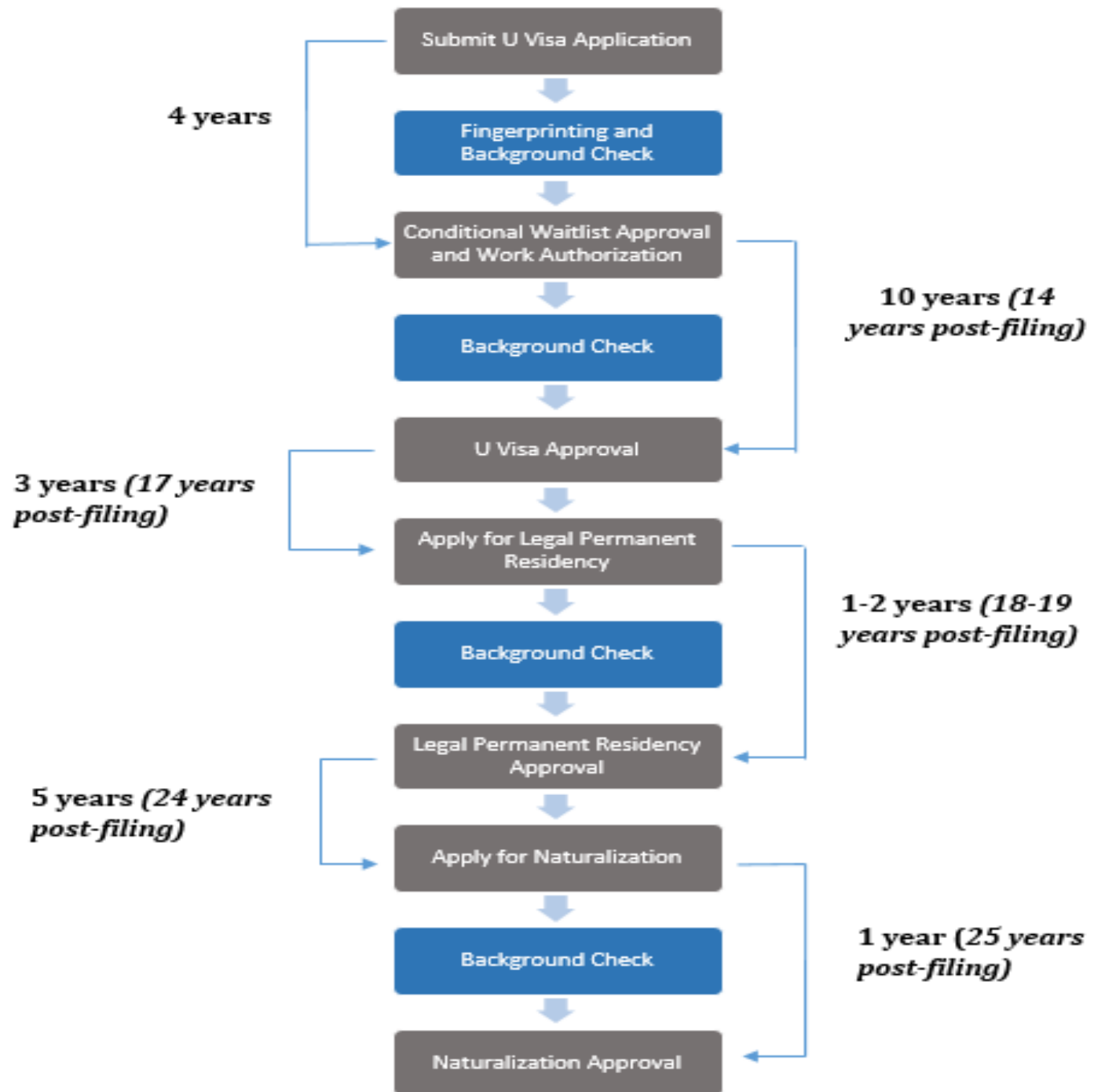


Identify if any family members were implicated in the crime



Note any injuries observed; provide documentation

U Visa Process Timeline



DHS Decision

- Were they a victim of a qualifying criminal activity?
- Did they suffer substantial harm as a result of victimization?
- Did victim provide helpfulness
- Assess whether the victim unreasonably did not comply with reasonable requests for assistance from law enforcement or prosecutors
- 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 —
Currently there is a waitlist of 110,000 visas
- Work authorization based on Deferred Action Status (4–6 years)
- The U visa grants a temporary 4-year stay
- Limited state benefits in a few states
- Lawful permanent residency 3 years after U visa if:
 - Continued cooperation or does not unreasonably refuse to cooperate; and
 - humanitarian need, family unity or public interest
- U.S. Citizenship after 5 years of lawful permanent residency + proof of good moral character



APS Staff Role

- Identify VAWA U visa eligible victims
- Sign U visa certifications
- Refer victims to local experts – directory
- Provide evidence for victim's case
- Determine what benefits and services the victim is eligible for in your state and help victims apply



Poll 6:



Yes or No:

Would you like additional
information/training on U visa
certification?

**Access to Publicly Funded
Assistance, Legal Services, and
Public Benefits by Immigrant
Domestic and Sexual Violence
Survivors**

Both documented and undocumented immigrants can access (APS):

- Adult Protective Services
- Family Court – e.g. divorce, custody, child support, protection orders
- Language Access
- Police Assistance
- Have perpetrators prosecuted
- Soup kitchens, food banks, nutrition assistance
- Emergency Medicaid
- Communicable disease immunizations, testing, treatment
- HHS funded public health centers
- VOCA Crime Victim Assistance and Services
- Services necessary to protect life and safety
- Legal Services
- Assistance for Crime Victims
- Emergency Shelter
- Transitional Housing
- Crisis counseling and intervention
- Violence/abuse prevention services

Health Care Open to All Immigrants

- Community and migrant health clinics
 - www.nachc.com
 - www.hrsa.gov
 - Enter zip code
- State funded programs
- Post-assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



Federally Qualified Health Centers

- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Child wellness services
- Emergency medical and dental services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Mental health treatment
- Substance abuse services

Resources: Healthcare for Immigrant Survivors

- State-by-state charts
 - VOCA funded post assault health care
 - Emergency Medicaid
 - Forensic Exams
 - Prenatal Care

Access to Benefits and Services Grows As Victims Pursue Immigration Relief

- Qualified Immigrants
 - Lawful permanent residents
 - Refugees/Asylees
 - VAWA self-petitioners
 - Trafficking victim with
 - Continued presence or
 - Bona fide determination in T visa case
- Not Qualified Immigrants
 - Asylum applicants
 - U visa applicants & recipients
 - Work/Student visa holders
 - Undocumented

Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Driver’s Licenses
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals
- Foster care
- Post-secondary educational grants & loans

Maps by State and by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License
- Earned Income Tax Credit
- Emergency Housing & Safety Programs
- Emergency Medicaid
- Federal Education Benefits
- FEMA Assistance
- FEMA Restricted Programs
- Food Stamps
- Forensic Costs Coverage
- Income Tax Credits
- Legal Services
- Medicaid
- Post-Assault Healthcare
- Prenatal Care
- Purchasing Health Insurance on the Exchanges
- State Education Benefits
- Supplemental Security Income
- Weatherization & Energy Assistance
- WIC

NIWAP's Public Benefits Map and Public Benefits Charts

- Public benefits map
 - <http://map.niwap.org/>
- Public benefits charts
 - <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>

Family Law Issues

Immigration Status Not Relevant to Establishing Jurisdiction in Family Court Cases

- Protection order case
 - Domestic violence crime committed in state or
 - Victim needs protection in state
- Divorce and spousal support case
 - Residency of party in state
 - Legal immigration status not required to establish residency under state family laws
- Guardianship case
 - When the elder abuse victim or vulnerable adult lives
 - The same jurisdictional rules apply to all guardianship cases under state law



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
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions



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
- Obtain Child/Spousal support
 - Affidavit of support
- Receive health insurance



Impact of Divorce

- VAWA self-petitioners:
 - Spouse must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment
 - Asylum
 - Family relationships
 - Cancellation of removal
- Annulment can lead to marriage fraud finding

Resources, Training and Technical Assistance



Stay Connected to NCALL

Sign up for our e-newsletter:

www.ncall.us/take-action

Find us online:



@ncall.us



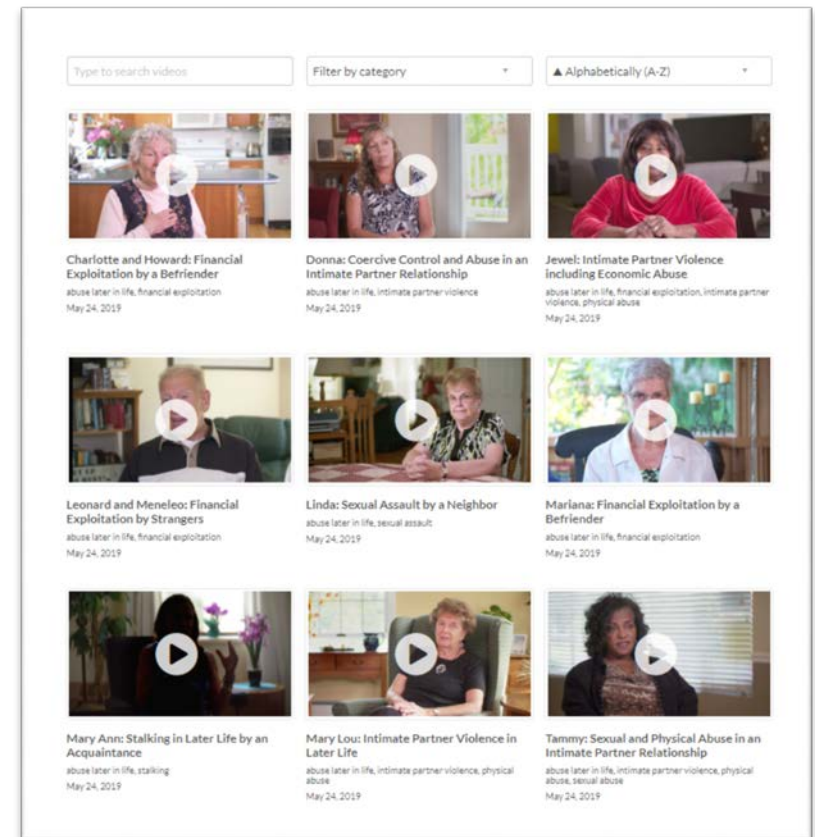
@ncall_us

Website: www.ncall.us



Lifting Up the Voices of Older Survivors (LUV)

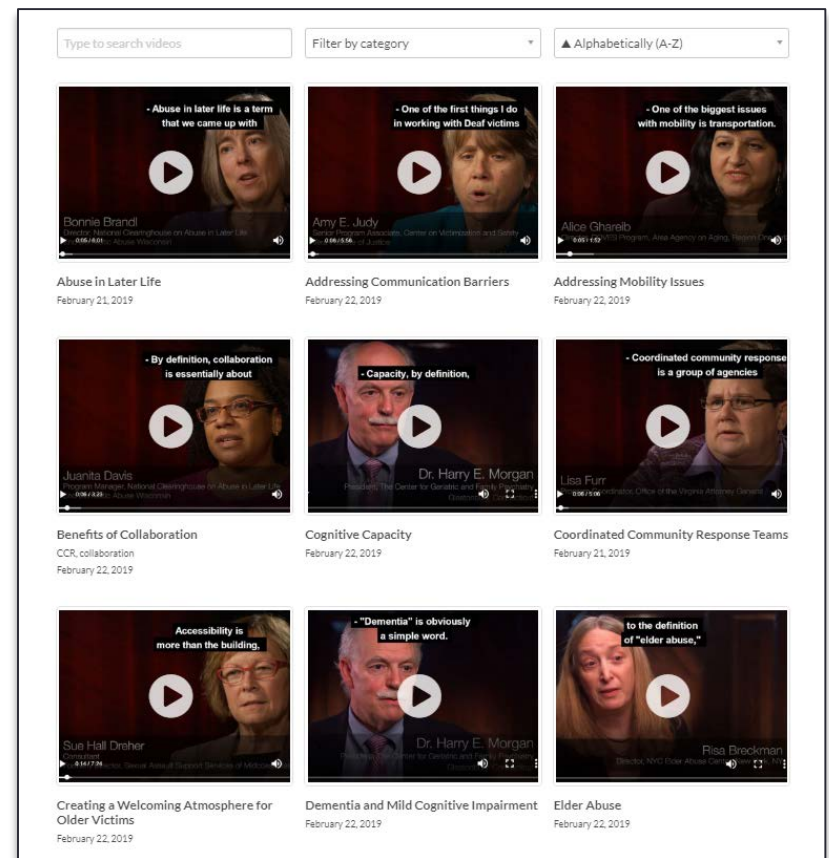
- Website: www.liftingupvoices.net
- Nine videos produced by NCALL and Terra Nova Films with funding by the Office for Victims of Crime





NCALL Video Library

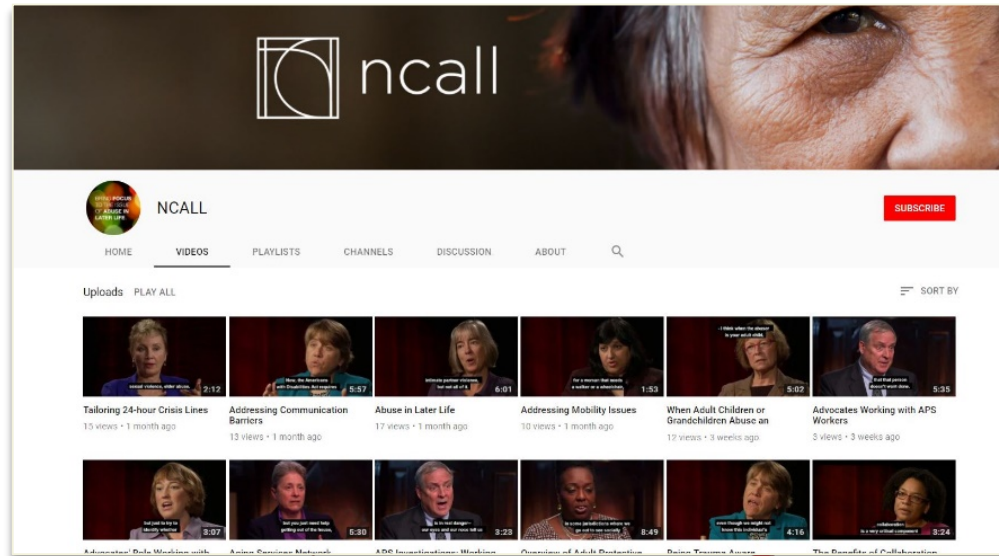
- Web address:
www.ncall.us/video-library
- More than 30 video clips with subject matter experts





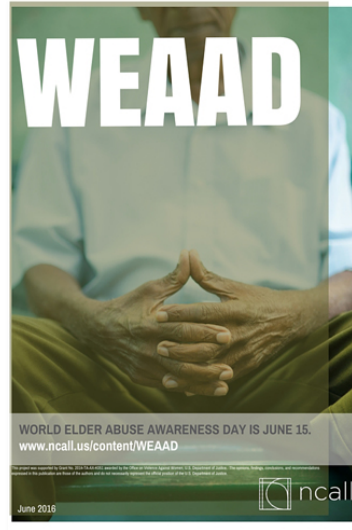
NCALL YouTube Channel

- Web address:
<https://www.youtube.com/channel/UCB-sVm3bqLSYqROfmDAUFSw>
- More than 150 streaming videos





Awareness/Outreach Materials



NIWAP Resources and Trainings

- NIWAP's Library <http://niwaplibrary.wcl.american.edu>
- Adult protective services U visa certification toolkit <http://niwaplibrary.wcl.american.edu/pubs/aps-u-visa-toolkit/>
- On-site trainings available in your state
- To sign up to have us bring a training to your jurisdiction go to: <http://www.niwap.org/requesttraining/>

Technical Assistance

- Contact NIWAP for free technical assistance
 - Call: 202-274-4457
 - Email: info@niwap.org
- Materials library:
<http://niwaplibrary.wcl.american.edu>
 - Contains over 2,000 free resources related to immigrant crime victims
- Subscribe to NIWAP's newsletter:
<https://secure.campaigner.com/CSB/Public/Form.aspx?fid=1682905&ac=fohe>