

Opportunities For Otsego

Best Practices to Support Immigrant Victims, and Increase Participation in the Criminal Justice System

July 20, 2021

NIWAP

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



Introductions



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The National Immigrant Women's Advocacy Project Brochure

MISSION

NIWAP amplifies the voices of immigrant survivors of abuse and their advocates and builds the capacity of professionals to eliminate the systemic barriers faced by survivors.



At NIWAP, we envision a world with equitable access to justice for immigrant abuse survivors and their children to heal and thrive.

NIWAP BY THE NUMBERS

- 8,500+ personalized answers to technical assistance calls
- 5,500+ legal professionals helped
- 440 training events conducted
- 29,780 people trained by NIWAP
- 11,000+ subscribers to our newsletter
- 665 publications created
- 615,000+ downloads of NIWAP materials from our free web library

**Data reported from January 2012- April 2019

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 NIWAP

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NIWAP

The National
Immigrant Women's
Advocacy Project

American University
Washington College of Law

NIWAP

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

Who We Are

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



What We Do

- **Training:** Capacity building to make laws effective
 - Legally accurate resource materials
 - Technical assistance
- **Research:** Transformation through Documentation
 - Legal and Social Science
 - Web library
 - Publications
- **Policy:** Amplifying voices through advocacy

POLL #1: Who is participating?

- A. Law enforcement
- B. Prosecutor
- C. Systems-based Victim Service Professional
- D. Community-based Victim Service Professional
- E. Victim Attorney

Other – Please type in the Chat Box

Learning Objectives

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

- Articulate qualifications for the U Visa program
- Identify how the U Visa program can improve relationships and build trust between immigrant crime victims, law enforcement and prosecutors
- Enhance victim participation in investigations and prosecutions

Training Page and Supplementary Materials

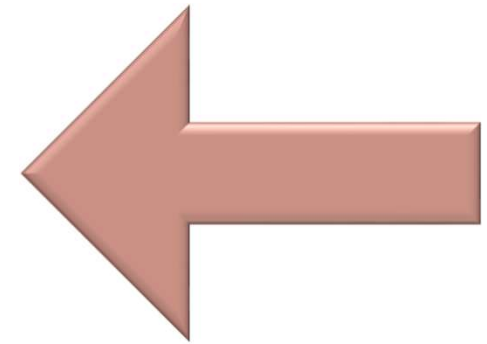
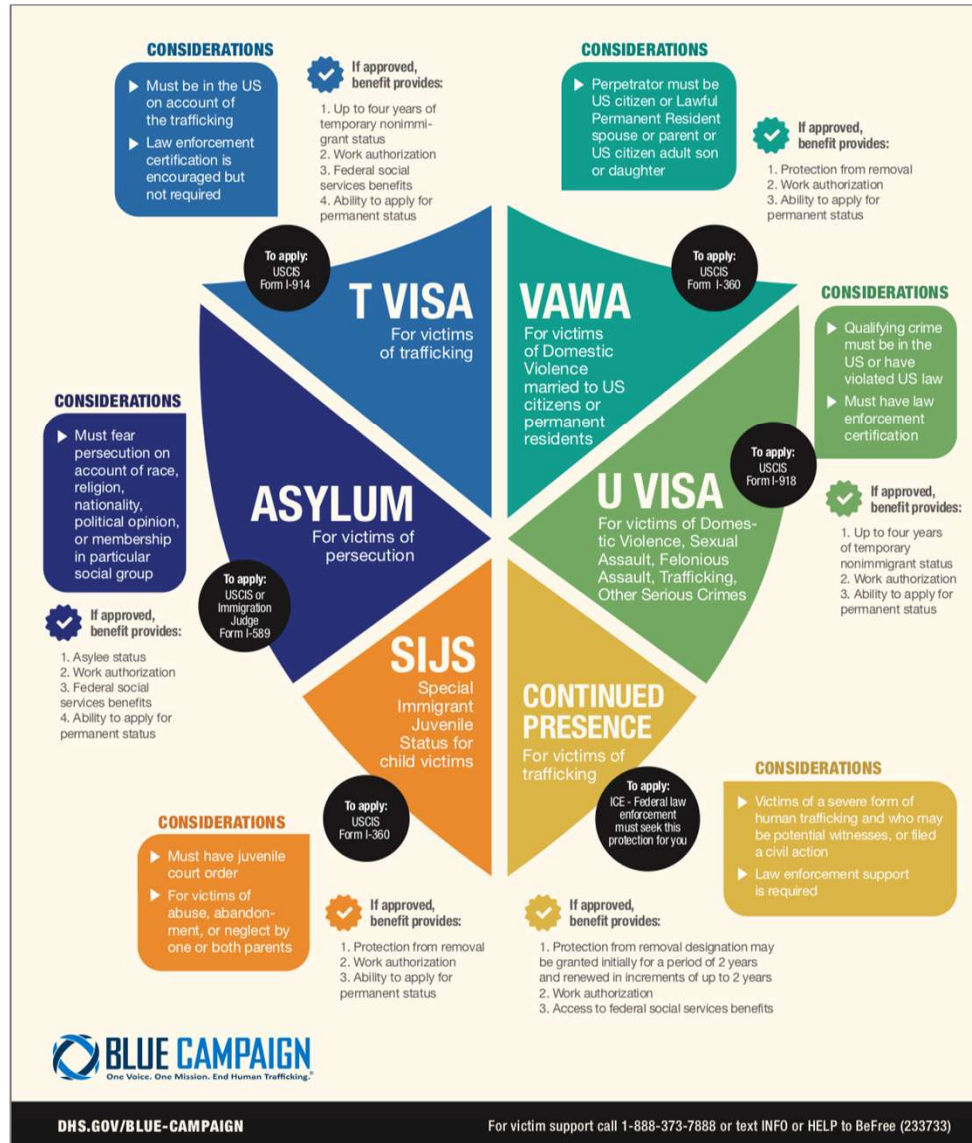
- <https://niwaplibrary.wcl.american.edu/ots-ego-21>

General Caveats

- Women, men, and children can qualify for U Visas
- Victims/Survivors of almost all violent crimes, and many other crimes are eligible to apply for U Visas

That said, many examples in this presentation will refer to female victims of domestic violence and/or sexual assault because they make up a large majority of the U Visa applications filed

Primary Immigration Protections for Victims



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

*These slides were produced by The National Immigrant Women's Advocacy Project (NIWAP) at American University, Washington College of Law and Legal Momentum and was supported by Grant Number 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U. S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

New York (2019)*

- ❖ Total foreign born population – 4,360,291
- ❖ 22.4% of the country's ~19.4 million people are foreign born
 - 59.5% naturalized citizens
 - 28% legal permanent residents
 - 12.6% temporary visa holders or undocumented immigrants
- 12.7% rise in immigrant population from 2000 to 2019
- ❖ Length of time immigrants have lived in the U.S.
 - 54.4% entered before 1999
 - 22.8% entered 2000 - 2009
 - 22.8% since 2010
- ❖ 36.3% of children under age 18 have one or more immigrant parents
 - 86.8% of these children are native-born U.S. citizens

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

New York– Countries/Regions of Origin & Limited English Proficiency (LEP)(2018)*

- ▶ Latin America – 48.3%
 - ▶ Mexico (4.7%)
 - ▶ South America (13.1%)
 - ▶ Central America (11.2%)
- ▶ Asia – 30.4%
 - ▶ China/Taiwan (11.1%)
 - ▶ Korea (1.9%)
 - ▶ Japan (0.6%)
 - ▶ South Central Asia (10%)
 - ▶ Philippines (2.1%)
- ▶ Europe – 15.2%
 - ▶ Eastern Europe (8.1%)
- ▶ Africa – 4.5%
- ▶ Middle East – 3%
- ▶ Canada – 1.2%
- ▶ Oceania – 0.4%
- ▶ Language spoken
 - ▶ 30.7% of people in the state who speak a language other than English at home
 - ▶ 45.3% of foreign born persons are LEP - speak English less than “very well”

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

New York-Languages Spoken at Home (2019)*

- Spanish (2,735,172)
- Chinese, including Mandarin, Cantonese (597,299)
- Vietnamese (23,494)
- Arabic (113,521)
- French, including Cajun (112,415)
- Tagalog (including Filipino) (9,072)
- Other Indo-European Languages (6,672)
- Korean (6,459)
- Italian (4,308)
- Japanese (2,328)
- Portugese (2,230)

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

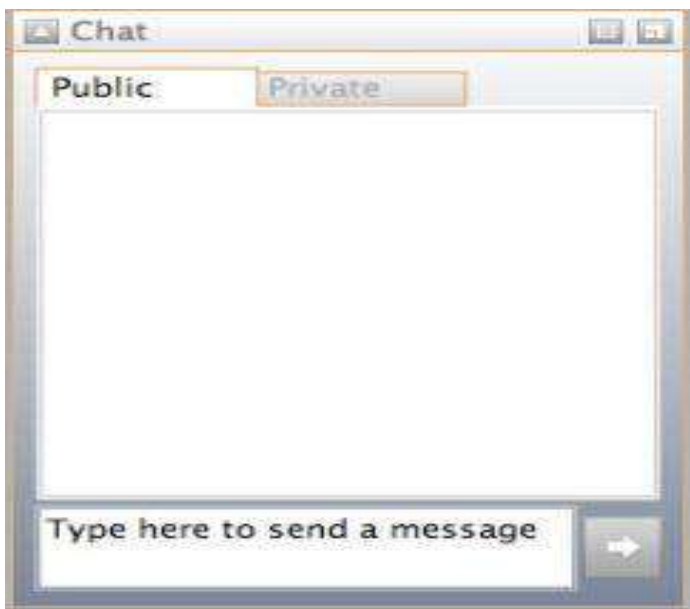
New York-LEP (2019)*

- Limited English Proficiency (Speak English less than very well)
 - Naturalized citizens - 37.6%
 - Noncitizens -56.8%
- Limited English Proficiency by language spoken at home
 - Spanish (42%)
 - Russian (55.5%)
 - Bengali (49.5%)
 - Chinese (including Mandarin, Cantonese) (65.1%)
 - Vietnamese (55.5%)
 - Thai, Lao, or Other Tai-Kadai Languages (61%)

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

POLL #2:
Why is immigration
relief available to
victims of crime?

*Please type your answers in the
Chat Box.*



Goals of Immigration Relief



POLL #3: Immigrants are uniquely affected by domestic and sexual violence because ...

- A. The U.S. Constitution does not protect them
- B. Resources to help victims are only available in English
- C. State laws do not require police to help immigrant crime victims
- D. Offenders prey upon immigrant victims' fears and misconceptions, count on barriers to prevent the reporting of crime, and manipulate the legal system to assert power and control

Legislative Intent

- We want crimes reported to police
- Improved community policing helps everyone
- No one should be a victim of crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we won't know about the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking

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

Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and LEP victims calling for help arrested for domestic violence
- U visa applicants have higher future crime reporting rates

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work 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)*

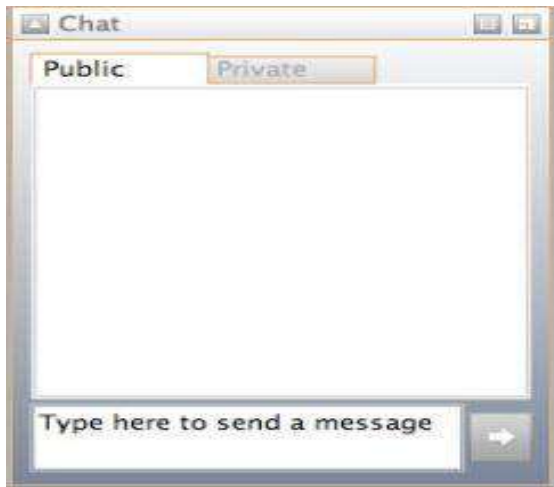
Screening Tips

- Screen for immigration-related abuse
 - More likely to exist in relationships where physical and sexual abuse exist (v. psychological abuse)
- Identify immigration-related abuse as a potential predictor of escalating abuse

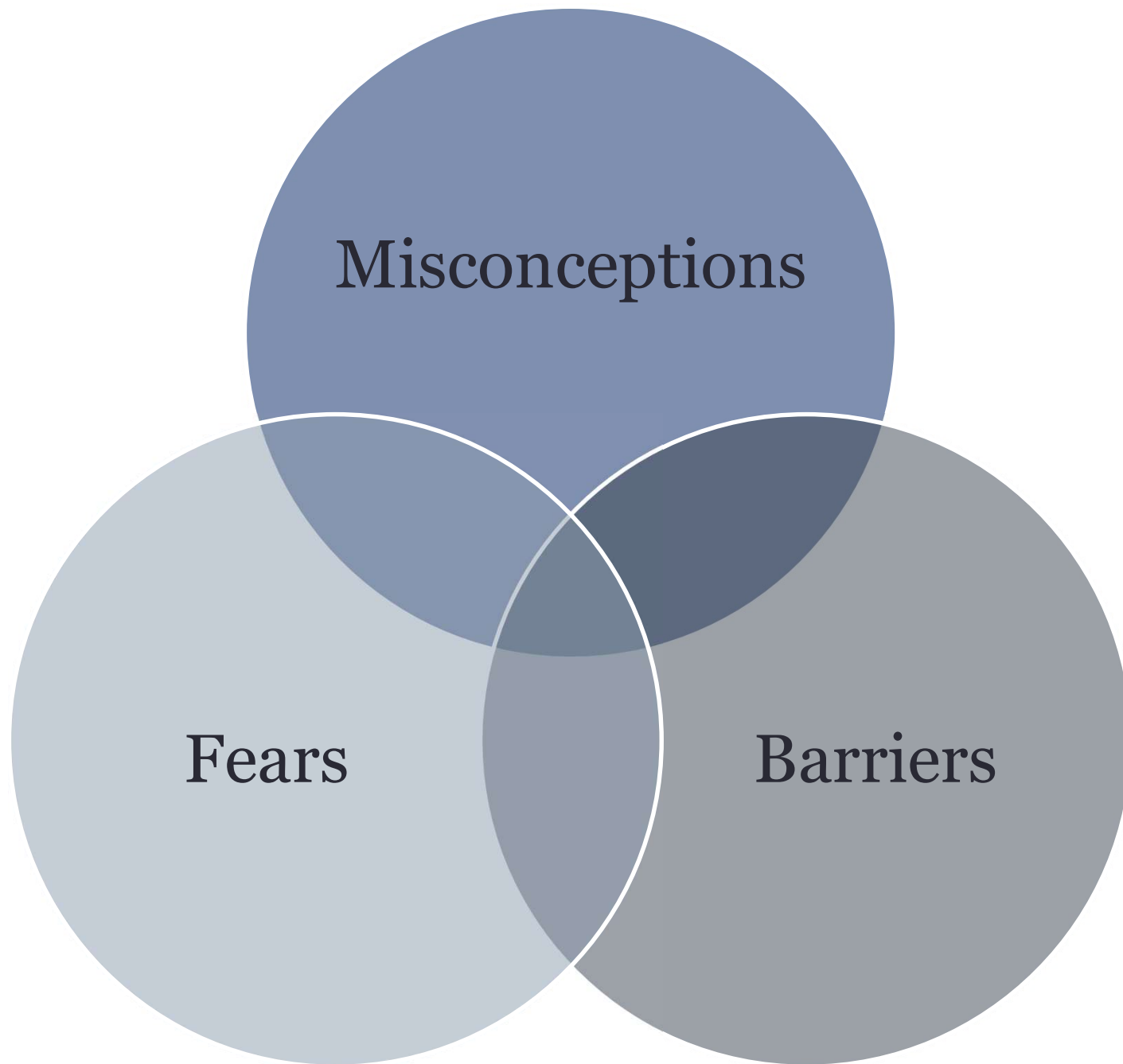
Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

- Document to support claims of physical and sexual abuse

POLL #4:
What prevents immigrant
victims from reporting
crime and/or participating
in investigations and
prosecutions ?



*Please type your answers in the
Chat Box.*



Fears

- Deportation
- Circumstances in their home country
- Separation from children
- Lack of contact with family
- Dangers facing their family in their country of origin
- Ostracism from their community
- Retaliation

Misconceptions

- Lack knowledge of:
 - Crime victim legal rights
 - Laws regarding domestic violence, sexual assault and stalking
- Do not trust the police
- Believe police will arrest them
- Local police are immigration officers
- No services are available to immigrant victims
- Police are corrupt
- Criminal justice system will do nothing

Barriers

- Do not speak or understand English
- Financially depend on the perpetrator
- Isolation
- Lack of transportation or child care
- Community pressure
- Family pressure
- Religious factors

Immigration relief

Misconceptions

Language access

Fear

Barriers

POLL #5: How many cases have you had involving a U Visa?

- A. Fewer than 5
- B. Between 6 and 15
- C. Between 16 and 25
- D. More than 25
- E. Do not know

Chat additional information, if you want to expand your answer

U Visa Basics

- The U Visa grants a temporary 4-year stay
- Only 10,000 U Visas granted per year
- Application for a U Visa requires a certification from a designated government official
- Certification (I-1918B form) is one part of the overall application
 - Victim must submit additional documentation and proof in their full application

U Visa Eligibility

The victim will indicate that they satisfy the three eligibility components in their U visa application (I-918 form).

The person is a U visa victim

- Victim of a qualifying criminal activity
- Victim possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Victim is “Helpful”

- Victim “has been, is being, or is likely to be helpful” in “detection, investigation, prosecution, conviction, or sentencing”

Victim suffered harm

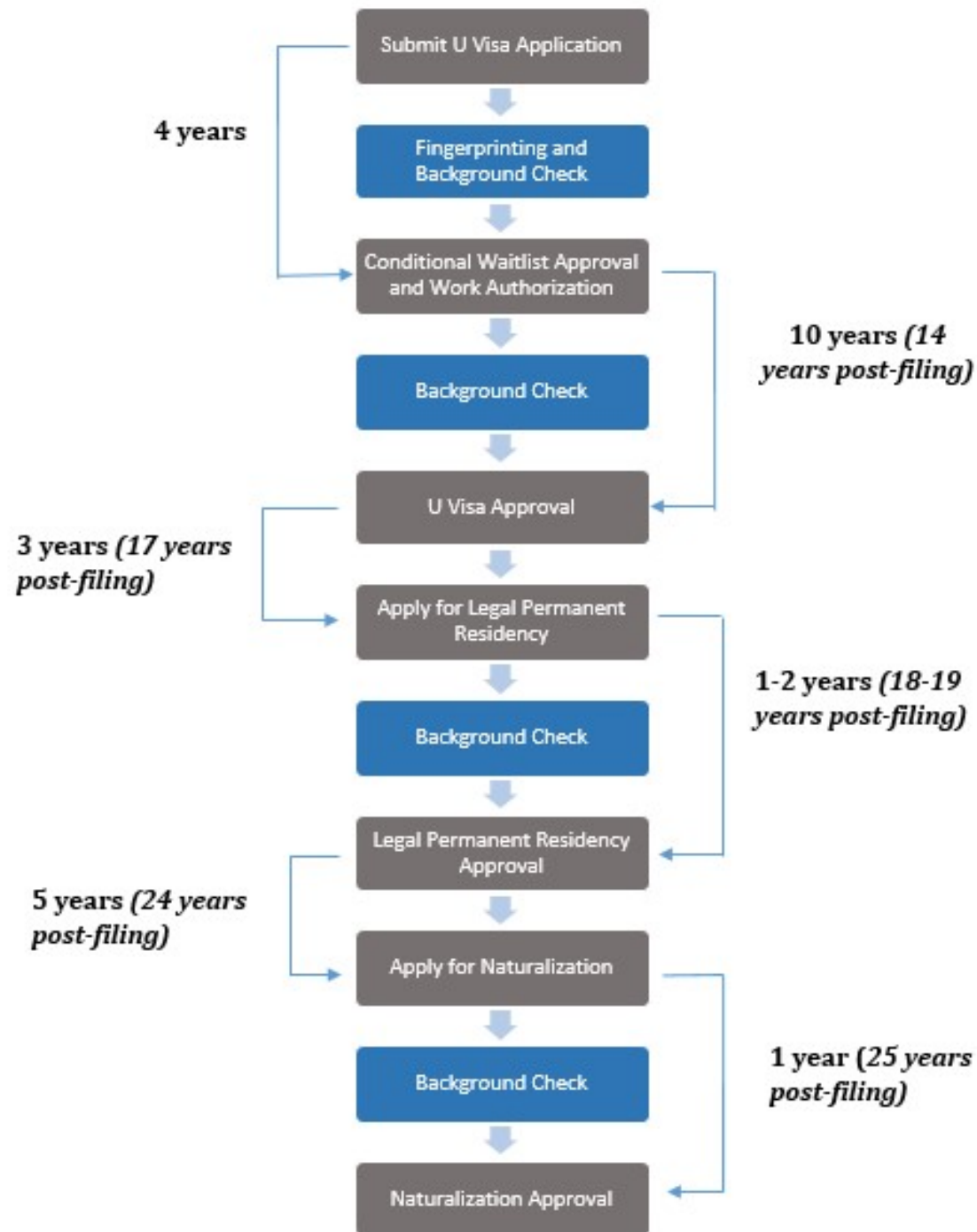
- Substantial physical or mental abuse as a result of the qualifying criminal activity

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

U Visa Process Timeline



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

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

A closer look at what U Visa
Certification attests to:

**THIS PERSON IS A VICTIM OF A
QUALIFYING CRIME**

Types of 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	

Types of Qualifying Criminal Activity

- Commission of criminal activity is not required
 - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.
- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar

Additional Applicants

- Parents and guardians can apply as an “indirect victim” if:
 - The direct victim is a child under 21 years of age and/or
 - The direct victim is incompetent, incapacitated, or deceased due to murder or manslaughter
- Indirect victims must demonstrate that they were helpful
- Bystander victimization – very limited
- When the victim is a child, the helpfulness requirement can be met by a “next friend” or family member being helpful

A closer look at what the U Visa certification attests to:

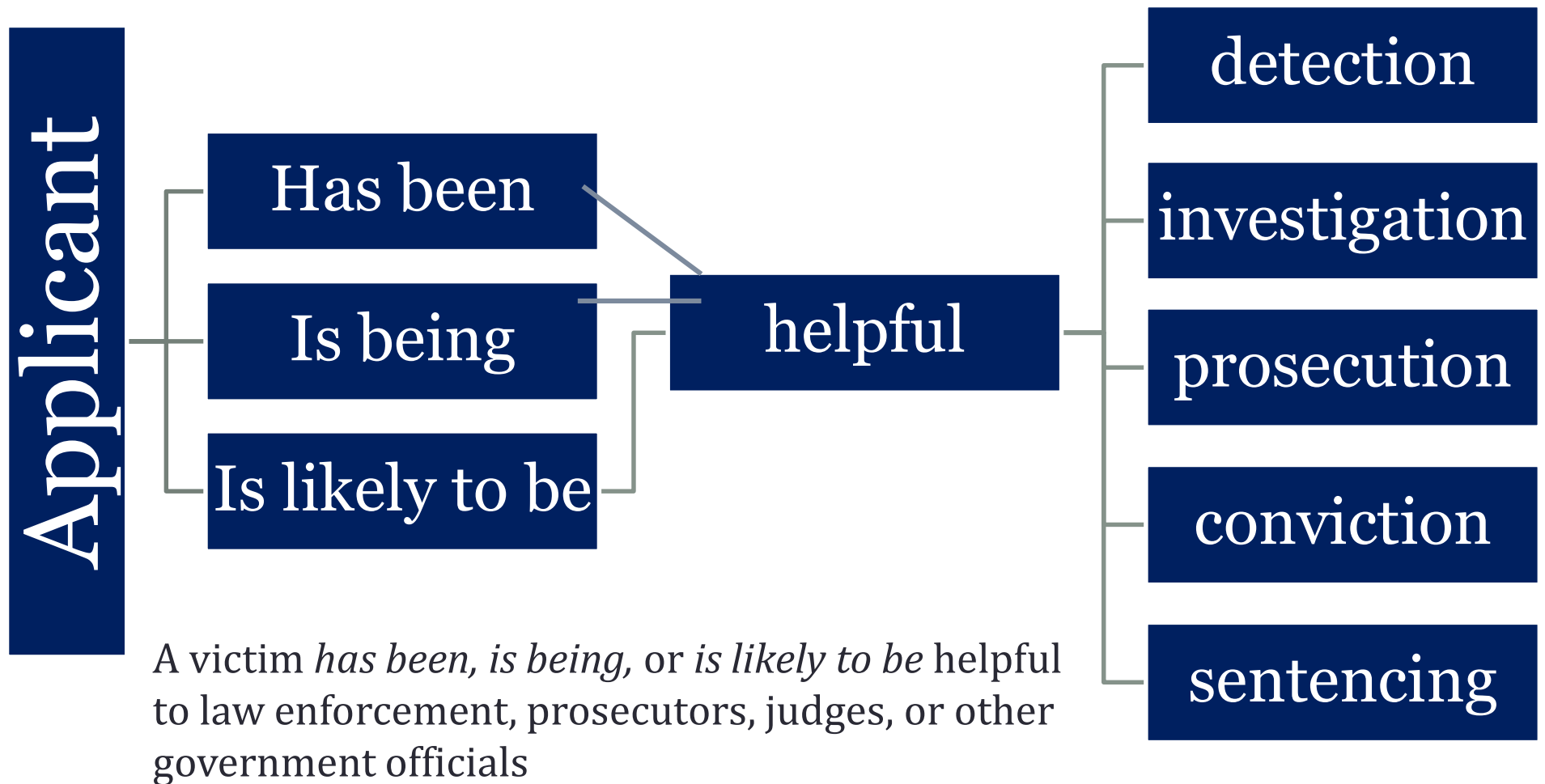
THE VICTIM IS “HELPFUL”

Determining Helpfulness

- Certifying agency determines “helpfulness”
- The degree of helpfulness required is determined by the “totality of the circumstances”
 - DHS regulations ask the certifying agent to consider what is required of the victim in each specific case.
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- The investigation or prosecution can still be ongoing

Definition of “Helpfulness”

INA 245(m)(1); 8 U.S.C. 1255(m)(1) and 8 C.F.R 214.14(b)(3)



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

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



Victim-centered approach

Examples of “Helpfulness”

Calling 911

Having a Rape Kit performed

Providing a description of offender

Allowing photographs to be taken

Giving information about the offender’s whereabouts

Bringing a minor victim to a Child Advocacy Center

Providing a statement about “other bad acts”

Reporting crime in another case against the perpetrator

Testifying at a bond hearing, trial, or sentencing

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

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

There is **NO** statute of limitations on signing a certification.

However, there is a **six month** window after signing the certification in which the U visa application must be filed.

POLL #6: When should you certify?

- A. Immediately upon receipt of certification
- B. Once your agency has knowledge of a victim's past or present helpfulness or believes a victim is likely to be helpful
- C. When you are certain that the victim will testify at trial
- D. When the defendant is convicted

Analyzing Requests for Certification

What criminal activity occurred?



Identify the victim or indirect victim



Determine helpfulness

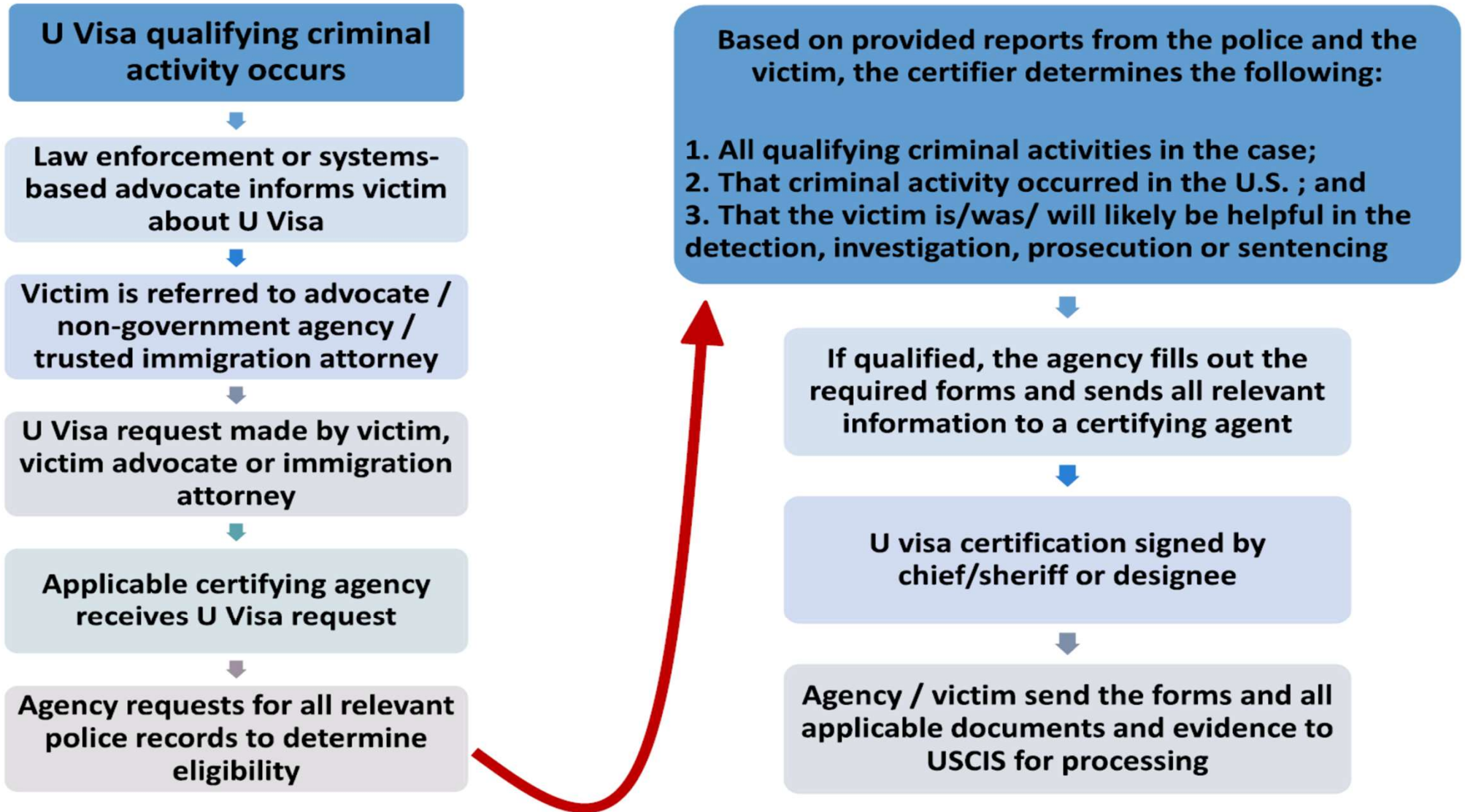


Identify if any family members were implicated in the crime



Note any injuries observed; provide documentation

U Visa Certification Process



U Visa Certification (Form I-918B)

What is the U Visa Certification saying?

Background: The certification is required evidence in victims' U visa applications. USCIS makes the ultimate determination of whether the victim will receive a U Visa.

- Signing a U visa certification means you are attesting that:
 - The individual is a victim of a qualifying crime
 - The victim has been, is being, or will likely be helpful
 - The information you listed in the form is accurate and to the best of your knowledge. You have direct knowledge of the information listed (or have reviewed relevant records)
- A U visa certification **does not confer** immigration status.

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 04/30/2021



Certification form is available to download at
<https://www.uscis.gov/i-918>

▶ **START HERE - Type or print in black or blue ink.**

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)

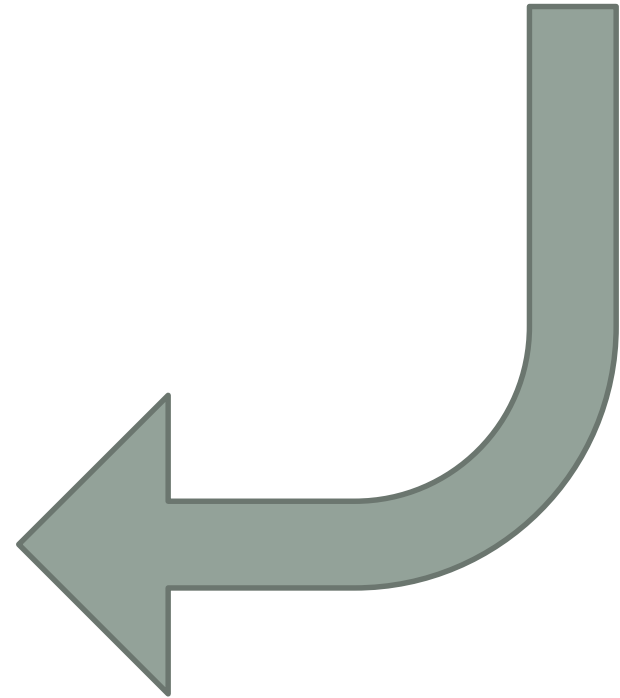
3.b. Given Name
(First Name)

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.





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

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 in the case, even if not charged

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)

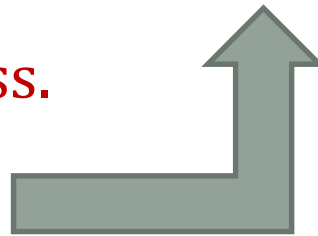
2.d. Date (mm/dd/yyyy)

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

Attaching state statutory language can be helpful.

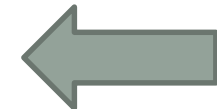
6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.

Discuss the victim's helpfulness.
Make copies of all reports and
photographs 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 and
if you are
aware of
mental injury.



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

We will
talk
about
this
next

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.**

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

"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.

POLL #7

“Raise Your Hand”

If You Have Ever Had a Case Where the Victim
Became “Uncooperative” At Any Point



Two Distinct Requirements

“Helpfulness” and “Cooperation/Assistance”

Helpfulness: For Certification Before Filing the U Visa

- Has been helpful *Or*
- Is being helpful *Or*
- Is likely to be helpful

TO.....

- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

Cooperation: After Filing the U Visa until Permanent Residency

- Ongoing obligation to provide cooperation or assistance
 - Reasonably requested by law enforcement or prosecutors
- **Exception: Victim *may show that refusal to cooperate or assist was not unreasonable***

Did the victim unreasonably refuse cooperate?

Although a case does not require prosecution or conviction, DHS still requires the victim to cooperate from filing, to receipt of the U visa, until receipt of lawful permanent residency.

The requirement to cooperate is **modified** when the victim's refusal is reasonable. **Look at totality of the circumstances.**

Is the request for cooperation reasonable?

8 C.F.R. 214.14(b)(3)
8 C.F.R. 245.24(2)(2)(ii)

Is the victim's refusal unreasonable?

8 C.F.R. 245.24(a)(5)

AND

Is the victim's refusal to help unreasonable? 8 C.F.R. 245.24(a)(5)

Analyze this question from the victim's point of view. Does the victim have a good reason for saying "no" to law enforcement's request?

The victim may refuse in cases where:

- In danger
- Unaware of request
- Being intimidated
- Being threatened or subjected to force, fraud or coercion
- Concerned about the safety of her family
- Under the belief that participating is more dangerous than not
- Increased trauma to the victim
- Due to the victim's age, maturity or capacity

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 provides the victim an opportunity to explain
- DHS makes the ultimate decision

POLL #8

You are in the best position to determine the reasons the victim may refuse to assist?



Practice Tips

- Identify tactics used by offender to assert power and control
- Proactively address witness intimidation
 - Monitor jail phone calls
 - Conduct wellness checks when appropriate
 - Recognize changes in communication patterns

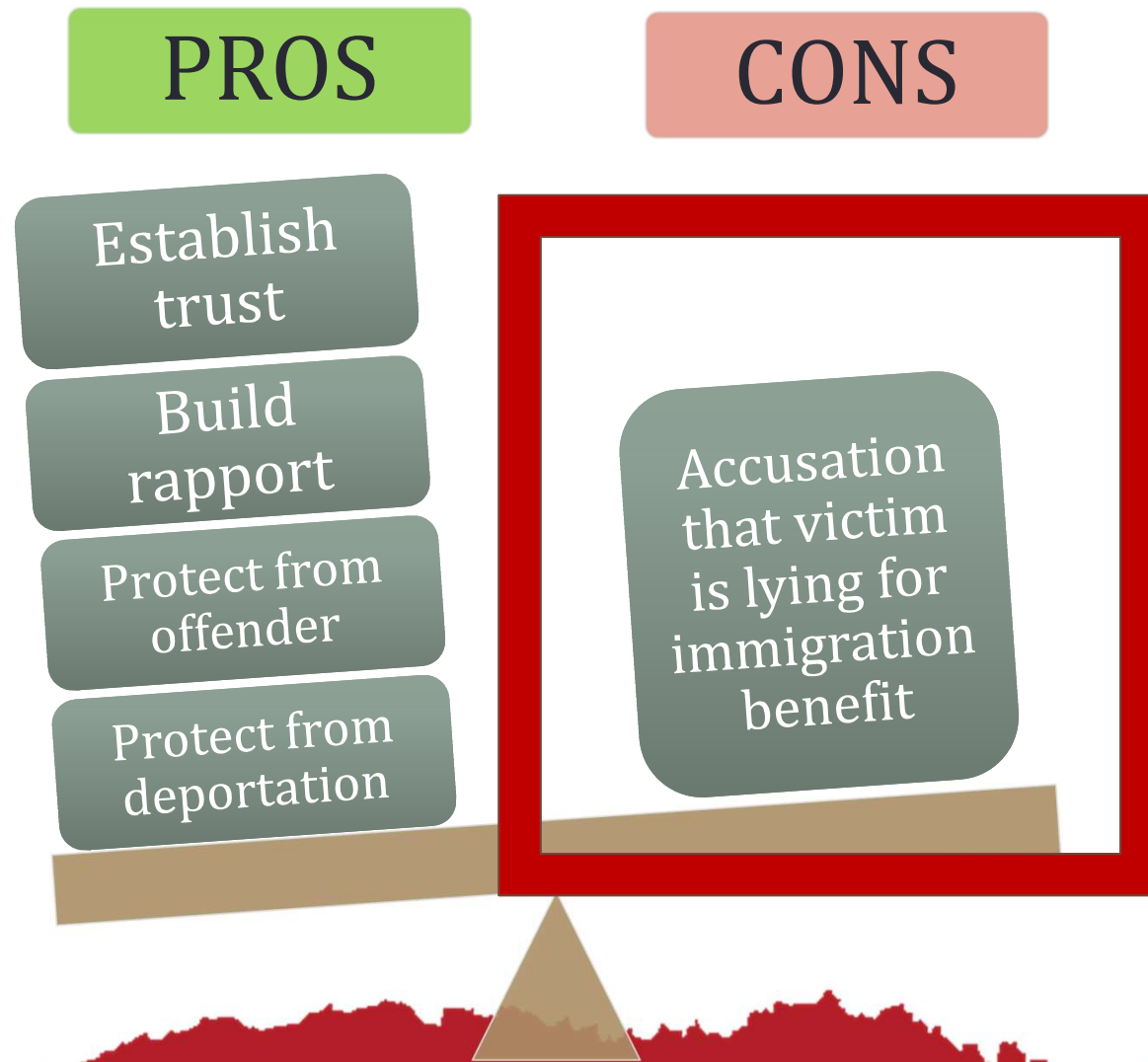
What you can do:

- Collaborate with victim service professionals
- Communicate with victim's immigration attorney
- Establish safe points of contact with friends and family
- Continually safety plan with victim

“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>

Prosecutors' Primary Concern



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

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

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

Introducing Statements

Establish timeline

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

Victim statements

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

Motive
to lie

Rebut charge that
victim is lying to
get immigration
benefit

Certifying Early

PROS

CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation

~~Reasons for certification benefit~~

Moving Forward

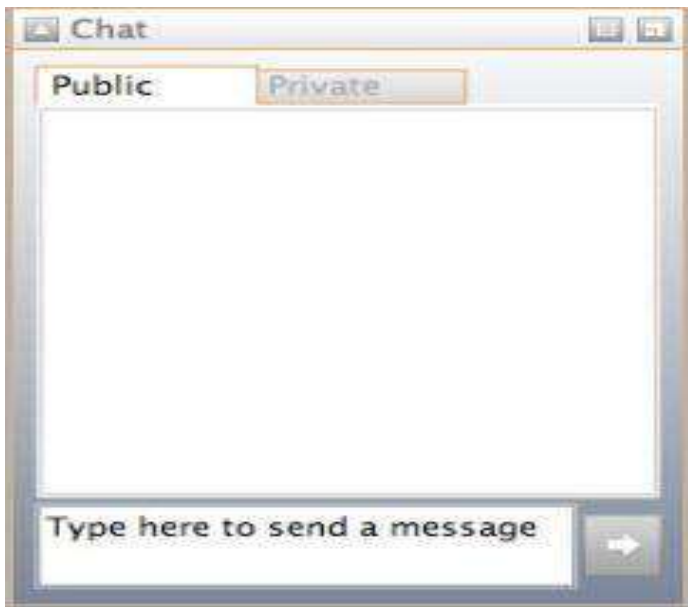
Implement U visa policies that are consistent with the law and legislative intent

Improve victim, community, and law enforcement safety by utilizing the U Visa as a crime fighting tool

Develop trial strategies to overcome common defenses

Are there other issues around immigrant crime victims you would like to learn more about ?

Please type your answers in the Chat Box.



Save the Date

Legal Rights of Immigrant Survivors:
Immigration Relief, Public Benefits, and
Protection Orders

When: Tuesday, August 24, 2021

Where:

<https://www.surveymonkey.com/r/BBV39S>

Resources, Training and Technical Assistance

Resources

- NIWAP's Library

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

- Materials and tools for law enforcement and prosecutors available at

<http://niwaplibrary.wcl.american.edu/language-access-materials-for-police-and-prosecutors/>

NIWAP Web library

niwaplibrary.wcl.american.edu



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Virtual Roundtables

- Law enforcement & Prosecutors only
- Interactive discussion
 - Strategies to build rapport, establish trust, and ensure safety
 - Ask questions from subject-matter experts and peers
- To register, visit email info@niwap.org



Trainings

- Onsite or virtual training on immigrant crime victim issues and language access
- Available for law enforcement, prosecutors, judges, victim service professionals, allied professionals, and others
- To sign up to have us bring a training to your jurisdiction go to: info@niwap.org

Technical Assistance

- NIWAP
 - Call: 202.274.4457
 - Email: niwap@wcl.american.edu
- AEquitas at www.aequitasresource.org
 - Jane Anderson
janderson@aequitasresource.org