

Ulster County Sheriff In-Service Training
in partnership with the
**Ulster County Inter-Agency Council of Domestic
Violence & Human Trafficking**

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

May 2, 2022

NIWAP

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



**Worker
Justice Center
of New York**

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Introduction

- Faculty
- Housekeeping
- Pre-training assessment

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.



Who We Provide Technical Assistance To

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



Virtual Roundtables

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



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

- Training Materials for:
- Law Enforcement
- Prosecutors
- Systems Based Victim Advocates
- Judges
- Attorneys/Victim Advocates Language Access
- Public Policy
- Statutes, Regulations & Policies
- Multilingual Materials
- Immigration
- Family Law
- VAWA Confidentiality
- Dynamics, Culture & Safety
- Access to Legal Services
- Public Benefits & Economic Relief

Materials Summary

- Materials
 - Agenda
 - PowerPoint presentation
 - Hypotheticals
 - Evaluations
- Web Library
 - <https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials>
- USB Drives – Tools and resources

USB Drive Materials

- U Visa Toolkit For Law Enforcement Agencies And Prosecutors
- DHS: U and T Visa Law Enforcement Resource Guides
- DHS memos and policies
- 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:

- 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

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

- ❖ Latin America – 48.3%
 - ❖ Other Caribbean (18.7%)
 - ❖ South America (13.1%)
 - ❖ Other Central America (6.5%)
 - ❖ Jamaica (5.3%)
 - ❖ Mexico (4.7%)
- ❖ Asia – 27.4%
 - ❖ China/Taiwan (11.1%)
 - ❖ South Central Asia (10%)
 - ❖ Southeastern Asia (4%)
- ❖ 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 (August 2021)*

New York (2019)*

- ❖ Total foreign born population – 4,360,291
- ❖ 28.9% of the country's ~ 15,093,270 million people are foreign born
 - 59.5% naturalized citizens
 - 28% legal permanent residents (as of 2016)
 - 12.5% 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 (August 2021) and Lawful Permanent Resident estimates MPI and DHS (2021)*

New York-Languages Spoken at Home (2019)*

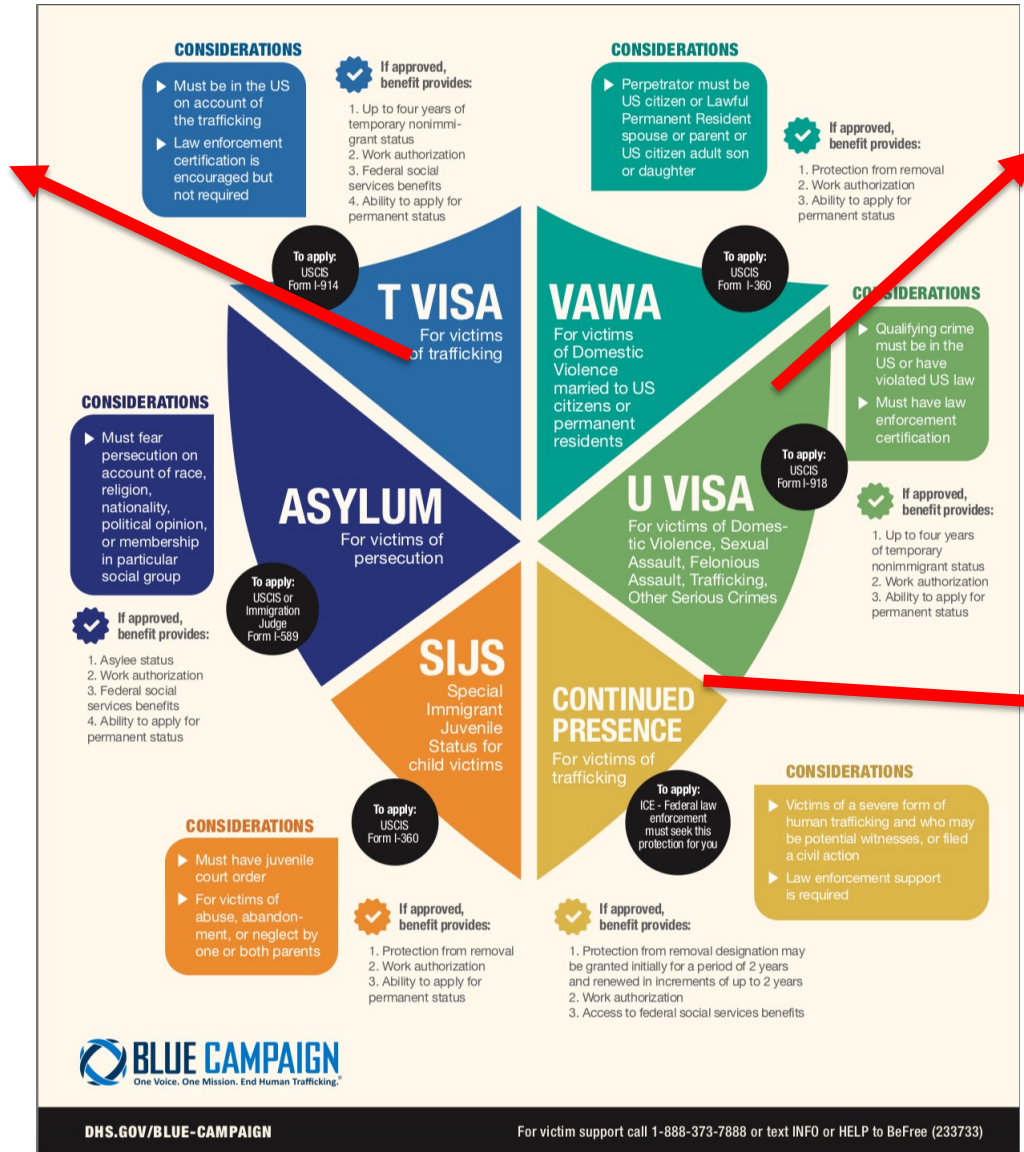
- ❖ Spanish (2,735,172)
- ❖ Chinese (including Mandarin, Cantonese) (596,299)
- ❖ Russian (225,117)
- ❖ Yiddish, Pennsylvania Dutch or Other West Germanic Languages (194,786)
- ❖ Haitian (158,565)
- ❖ Bengali (138,801)
- ❖ Italian (134,145)
- ❖ Arabic (113,521)
- ❖ French (including Cajun) (112,415)
- ❖ Korean (93,861)
- ❖ Yoruba, Twi, Igbo, or Other Languages of Western Africa (86,323)
- ❖ Tagalog (including Filipino) (79,290)
- ❖ Polish (79,281)
- ❖ Urdu (77,046)
- ❖ Hindi (57,520)
- ❖ Hebrew (52,864)
- ❖ German (49,725)

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
 - ❖ Chinese (including Mandarin, Cantonese) (65.1%)
 - ❖ Russian (55.5%)
 - ❖ Korean (52.8%)
 - ❖ Bengali (49.5%)
 - ❖ Spanish (42%)
 - ❖ Yiddish, Pennsylvania Dutch or Other West Germanic Languages (41.7%)
 - ❖ Polish (40.5%)
 - ❖ Urdu (39.1%)
 - ❖ Arabic (35.7%)
 - ❖ Haitian (33.8%)

Immigration Relief for Crime Victims

T VISA
For victims of trafficking



U VISA
For victims of Domestic Violence, Sexual Assault, Trafficking, Other Serious Crimes

CONTINUED PRESENCE
For victims of trafficking

To apply:

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

Legislative Intent

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

Goals of Immigration Relief

Prosecutions

**Community-
police relations**

Improve

**Reporting of
crime**

**Safety of victims,
communities, and
police**

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

How Best Practices in Domestic Violence Investigations Promote Officer Safety

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Department of Homeland Security



- DHS Video 1

Immigration Related Abuse

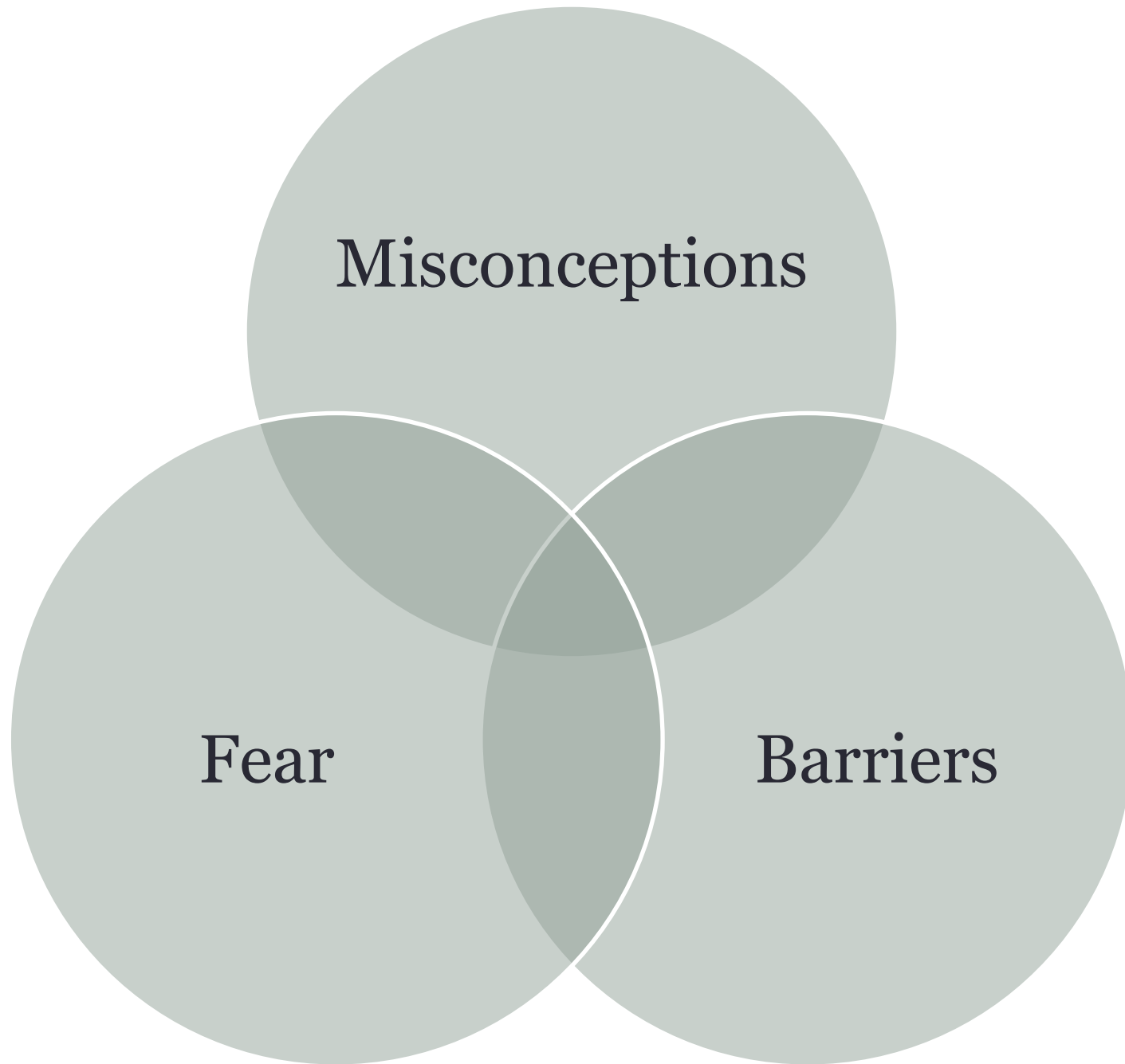
- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her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

Coercive Control Over Immigration Status

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

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

What prevents immigrant victims from reporting crime?



Fears

- Deportation
- Returning to home country
- Separation from children
- Lack of contact with family
- Family in danger in their country of origin
- Ostracism from the community
- Retaliation

Misconceptions

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

Barriers

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

Immigration relief

Misconceptions

Language access

Fear

Barriers

How do 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

IACP 2018 Resolution

- Recognizes U and T Visas as significant crime fighting tools and using them as best practice
- Supports training, education, communication and “increased police leadership involvement”
- Committed to increasing collaboration

U Visas are “effective tools for law enforcement agencies that enhance public safety, officer safety and protection of victims nationwide.”

U and T Visa Victims “Red Flagged”



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

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?**

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

Department of Homeland Security



- DHS Video 2

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law
- Admissible to US or granted waiver

Helpful (Certification)

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

Harm (Victim's Application)

Substantial physical or mental harm as a result of having been a victim of criminal activity

Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	
	These are general categories, and not specific crimes or citations to a criminal code.	

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

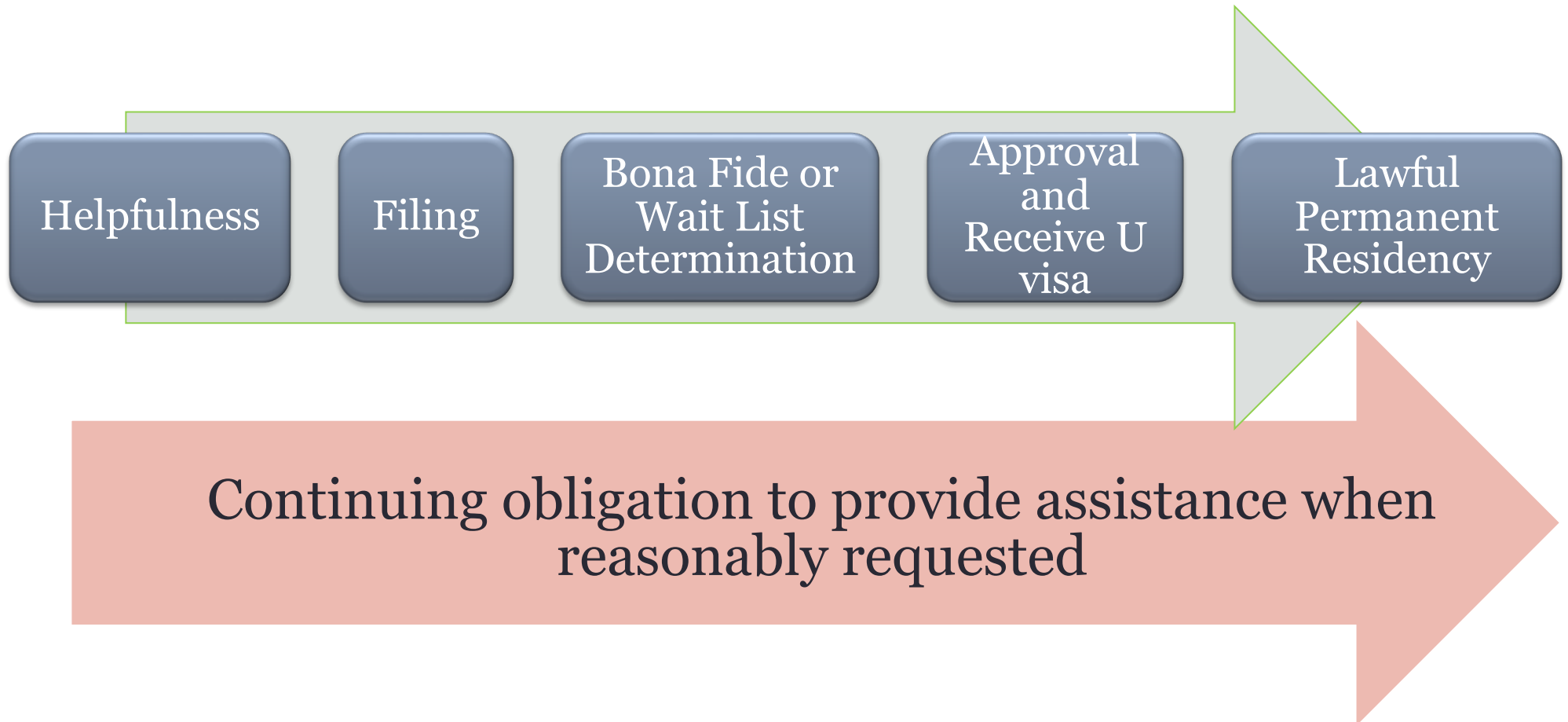
- Federal, state, and local
 - Police, sheriffs, FBI, HIS, ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates, Commissioners, other judicial official
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government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

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

*Why did Congress design
the U visa to authorize
multiple agencies to
provide U visa
certification?*



U Visa Application Process

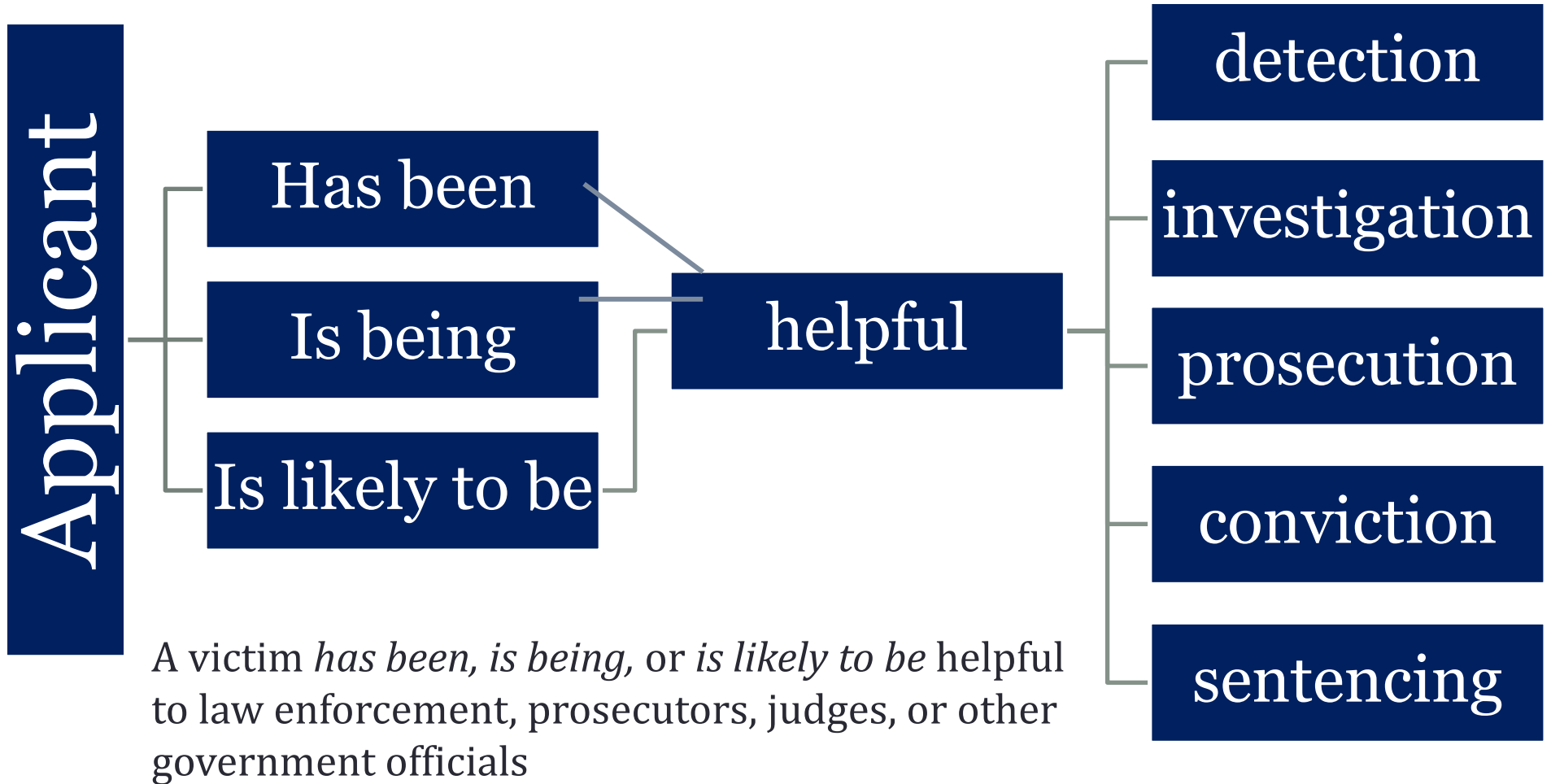


Who can apply?

- 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

Definition of “Helpfulness”

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



Determining Helpfulness

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

Example of Helpfulness May Include:

Calling 911

Having a Rape Kit performed

Providing a description of offender or their whereabouts

Allowing photographs to be taken

Filing for a protection order

Bringing a minor victim to court

Providing a statement about "other bad acts"

Providing evidence of abuse in a custody, child welfare, or divorce case

Testifying at a bond hearing, trial, or sentencing

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

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



Victim-centered approach

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

How have certifications come to you?

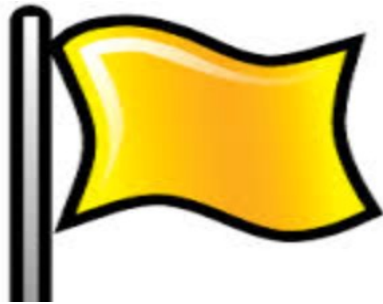
How will a U visa certification request come to you?

- 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?

Filing and VAWA Confidentiality

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



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

Certifying Early

PROS

CONS

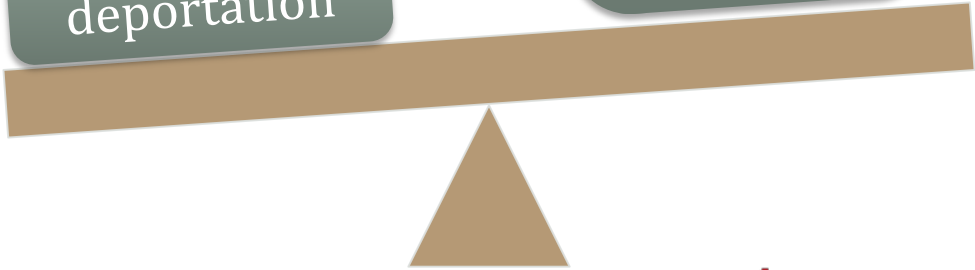
Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit



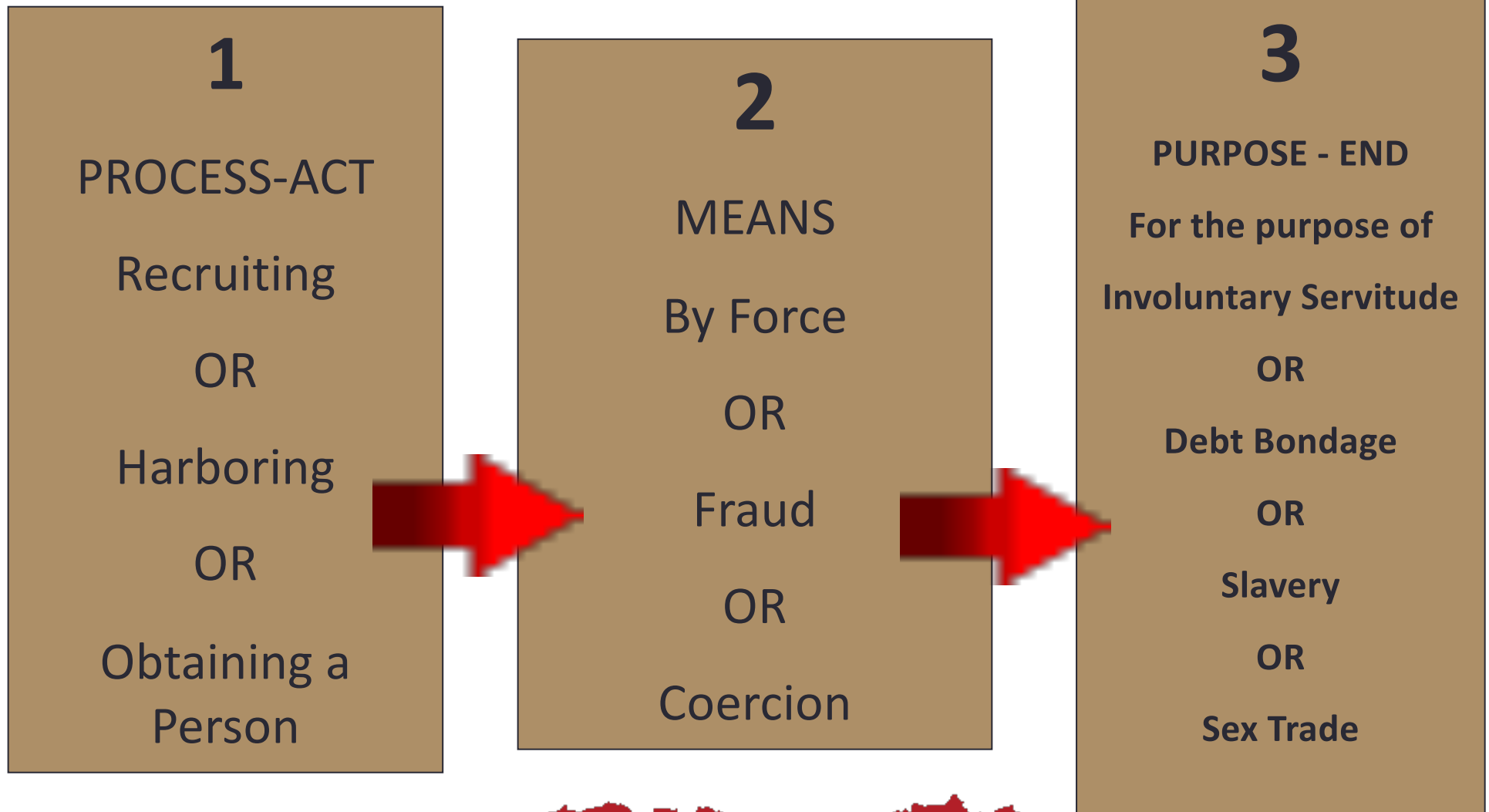
DHS Decision

- 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

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

Three Federal Elements of Trafficking



Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Process -Act

- Recruits
- Entices
- Harbors
- Transports
- Provides
- Obtains
- Advertises
- Maintains
- Patronizes
- Solicits
- Benefits, financially or by receiving anything of value

Means

- Force
- Fraud
- Coercion
- **Proof of force, fraud, or coercion not required for sex trafficked children under 18.**

Purpose-End

- **Commercial Sexual Activity**
- **A commercial sex act is any sexual act for which something of value is given or received**
 - Money
 - Drugs
 - Food
 - Shelter
 - Clothing
 - Transportation

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Process-Act

- **Recruits**
- **Harbors**
- **Transports**
- **Provides**
- **Obtains**
- **Benefits, financially or by receiving anything of value**

Means

- **Force**
- **Restraint**
- **Threats of harm**
- **Abuse or threatened abuse of the legal system**
- **Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint**
- **No federal exception for minors**

Purpose-End

- **Involuntary servitude**
- **Peonage**
- **Debt Bondage**
- **Slavery**

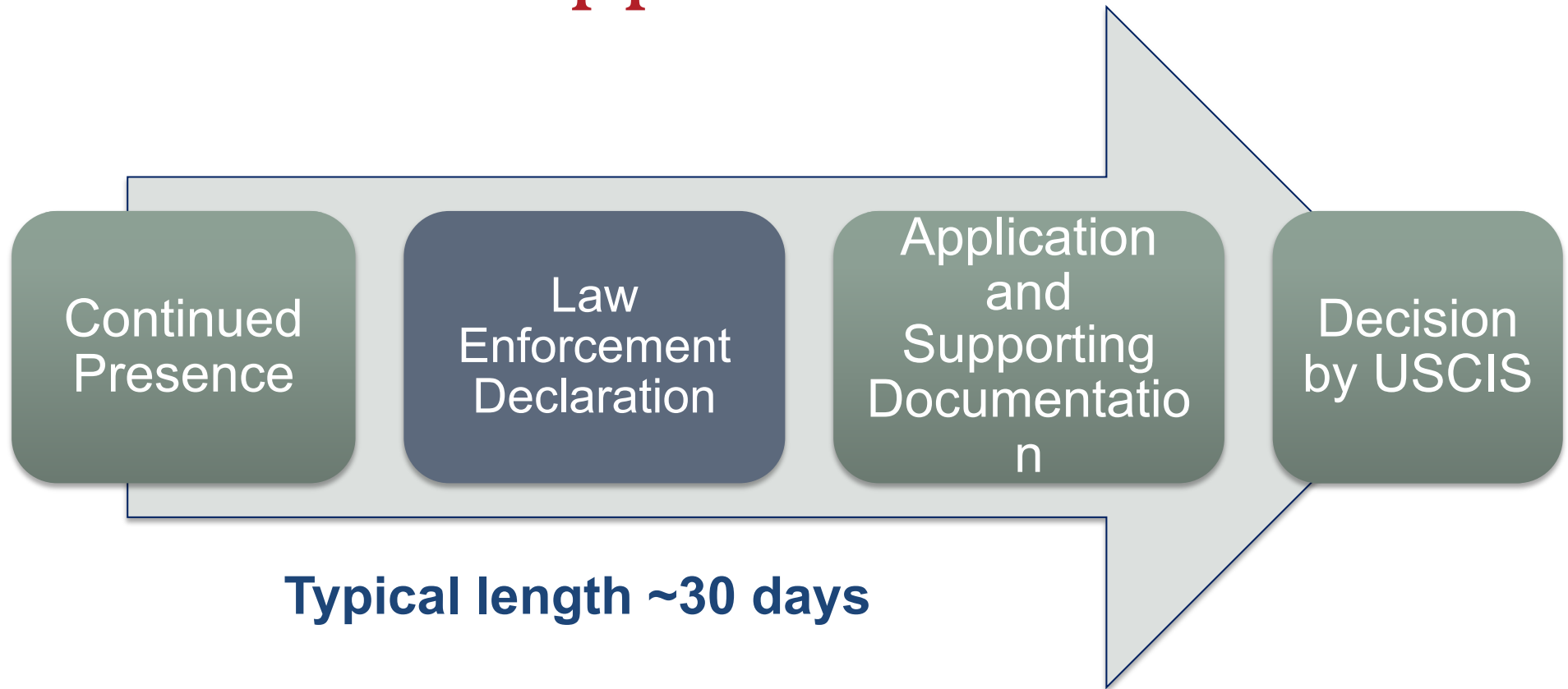
T Visa for Trafficking Victims

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

Continued Presence

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

Continued Presence and the T Visa Application



Trafficking

Exploitation

Smuggling

Transportation

Large Group Discussion: Where do you think trafficking happens?

Top Venues/Industries for Sex Trafficking

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

National Human Trafficking Hotline (2015-2019)

<https://humantraffickinghotline.org/states>

Major Labor Trafficking Venues

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

Colleen Owens et al., Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States (2014), <https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states>

Language Access

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

DOJ Model Guidance

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

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

Large Group Discussion

- Why do think this model policy exists?

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.”

“Meaningful Access”

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

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

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

What is a Qualified Interpreter?

- Category for languages that certification does not exist but the interpreter has:
 - completed interpreter training and
 - has experience interpreting.
- **This is different than a Certified Interpreter**



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

Case Study - *Jose Lopez Meza - 2008*

- Charged with first degree murder – Charge was reduced to manslaughter
 - Baby died after Meza shook his 3 week old son so violently the child’s brain began to swell, ultimately killing him
 - Detectives used a Spanish speaking officer to assist with the interview
 - Review of the tapes by court appointed certified interpreters revealed that the officer interpreting left out some of the information, misinterpreted several statements made by the suspect and the detective

Bilingual Officer v. Interpreter

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



First responders –
Now that emergency is
over what are the next
steps in the investigation
in which you will need a
qualified interpreter ?

The Investigation Begins

- Call fire/rescue
- Take initial statements
- Call crime scene
- Develop probable cause
- Photograph
- Formal interviews at the station
- Call detective
- Prepare case for prosecution

On Scene Considerations

- Separating parties
- Use of two interpreters
- Is the abuser threatening in a different language or making intimidating gestures?
- Headset and background noise
- Consider cultural differences (ex. matriarchal vs. patriarchal)
- Be aware of the perception of an implicit bias

Other Encounters With LEP Victims

- Dispatch
- Walk into station
- Referrals from other agencies
 - CPS, APS, Family Justice Center
- How would you identify the languages?

Language Resources

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



Large Group Discussion

- How do you access qualified interpreters?
- What are alternative approaches you might consider?

Tips for Working with Interpreters

- Control the interview
- Pre-session with the interpreter
 - Where are they located?
 - Establish what your rules are
 - Hand signals
- 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 there a change in the individual's demeanor?
- Are they using English words?



Interpretation Best Practices

- Evaluation systems
- Interpreter uses a dictionary, takes notes
- Interpreter comfortable with subject matter of the case
- Address cultural experiences ahead of time
- Ensure that they do not know the parties
 - If using telephonic interpreters: first ask where they are located
- Team interpreting and interpreter breaks

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

**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

Ongoing Assistance

Continuing obligation to provide assistance when reasonably requested by law enforcement or prosecutors

After applying

U visa bona fide determination or waitlist and receipt of U Visa

Through receiving lawful permanent residency

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

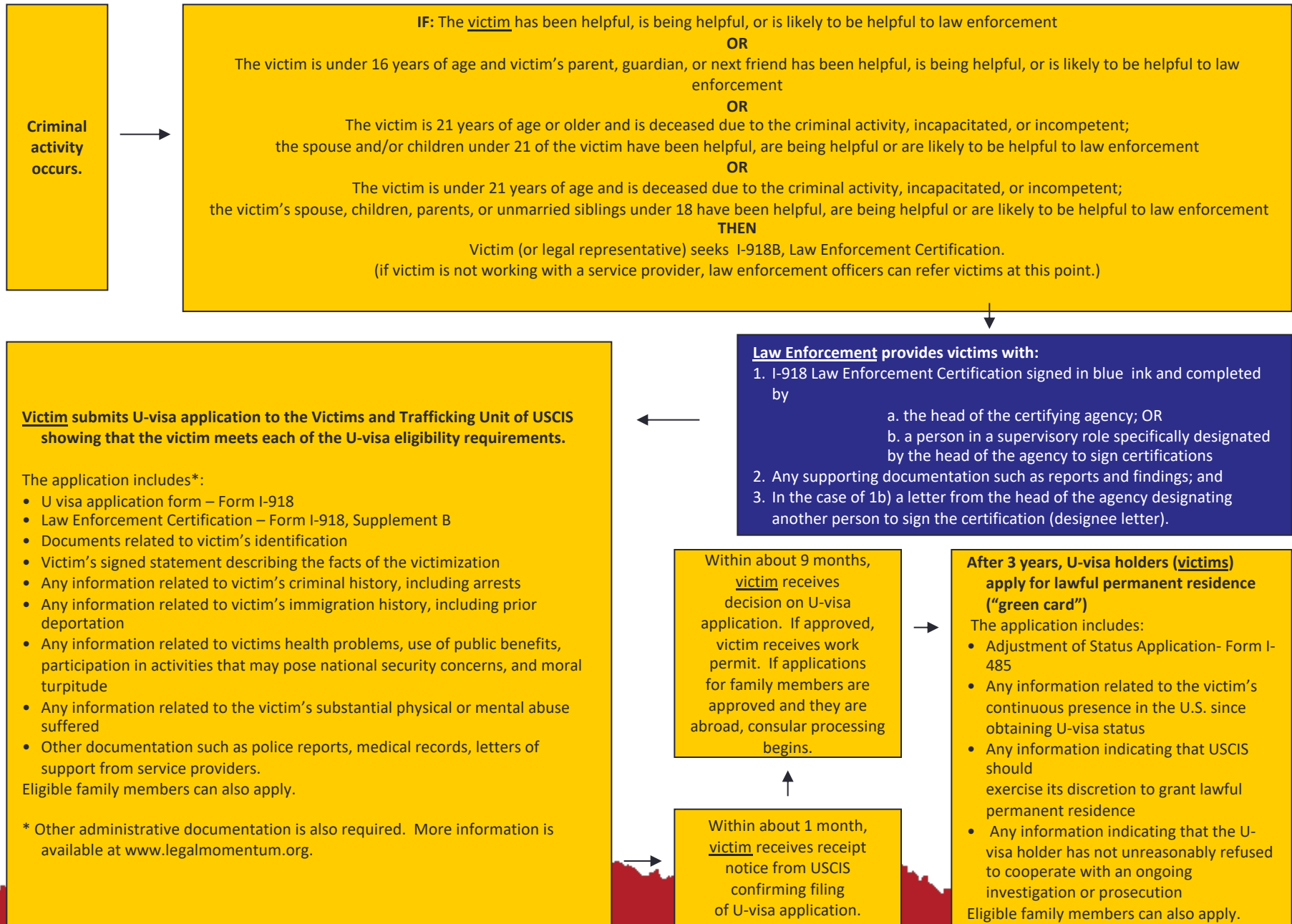
Witness Tampering

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

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

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

U-visa 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 Important Tips



Supplement B, U Nonimmigrant Status Certification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select all applicable boxes)

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

You can & should certify multiple offenses when present.

4.a. Did the criminal activity occur in the United States (including Indian country and military installations) or the territories or possessions of the United States?

Yes No

4.b. If you answered "Yes," where did the criminal activity occur?

5.a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

Yes No

5.b. If you answered "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in Part I. 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 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)



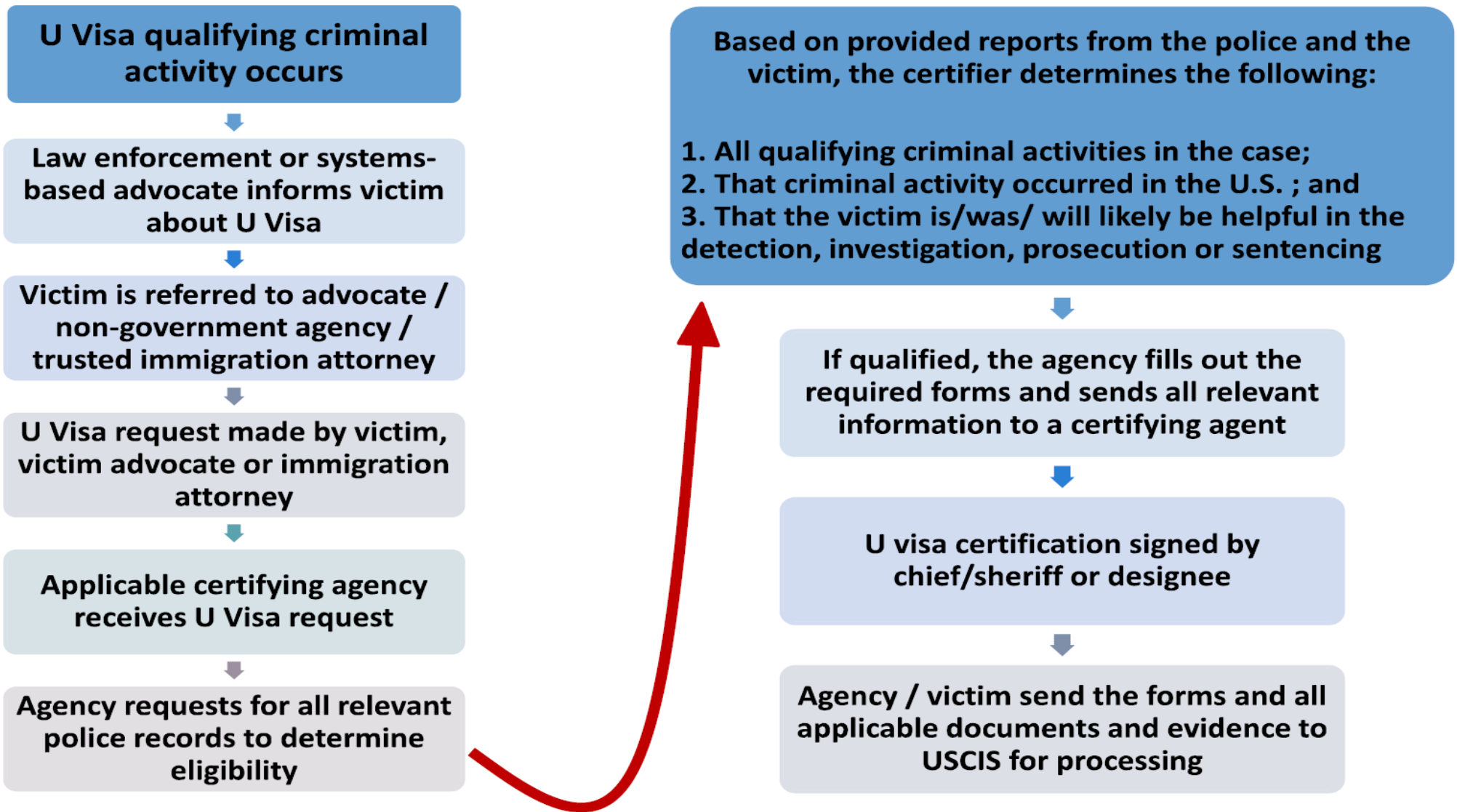
2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

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

U Visa Certification Process



Prosecution Strategies

Rebuttal Testimony

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

Introducing Statements

Establish timeline

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

Victim statements

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

Motive
to lie

Rebut charge that
victim is lying to
get immigration
benefit

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

Discovery and Due Process

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

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

Custody and Control

Within

- Certification form
- Accompanying documentation; e.g. police reports, photographs, medical records
- Communications from immigration attorney
- Attachments provided to you

Not Within

- Materials not provided to you
 - U visa application
 - VAWA application
 - T visa application
 - Attachments to application
 - Other materials submitted
- Immigration file
 - Includes existence of & actions taken in the case

Response to Motions to Compel

- Concede existence of certification
- Provide copy of certification and only accompanying documents that are in your custody and control
- Move to quash subpoena for immigration file:
 - Confidentiality protections
 - Impermissible “fishing expedition”
 - Case law

People v. Alvarez Alvarez

No. G047701, 2014 WL 1813302, at *5

(Cal. Ct. App. May 7, 2014), review denied (July 16, 2014)

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

Collaboration between Law Enforcement and Prosecution

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

Cooperation is key



Large Group Discussion

Based on the training today, what will you take back when you return to your agency?

- What are two things you will implement in your work?
- Questions you want might expect and would like to know how to answer?

Resources

- ▶ **Technical Assistance**
 - ▶ Call: 202.274.4457
 - ▶ Email: niwap@wcl.american.edu
 - ▶ Web Library: <https://niwaplibrary.wcl.american.edu/>
- ▶ **Materials for certifying agencies on best practices for working with immigrant victims**
 - ▶ <https://niwaplibrary.wcl.american.edu/law-enforcement-training-materials>
 - ▶ U and T Visa Certification Toolkit
 - ▶ DHS U Visa Certification Resource Guide
 - ▶ Roll call training videos
 - ▶ DHS Victim Centered Approach

NIWAP is New Podcast Series

The screenshot shows the Spotify interface for the 'National Immigrant Women's Advocacy Project' podcast. The page features a dark red background with white text. On the left is the Spotify navigation sidebar with options like Home, Search, Your Library, Create Playlist, and Liked Songs. The main content area displays the podcast's logo, a 'FOLLOW' button, and a list of three episodes. The first episode is 'Web Library Podcast Dec 2020', the second is 'Langauge Access Podcast 2020 - Part Two', and the third is 'Langauge Access Podcast 2020 - Part One'. An 'About' section on the right identifies the podcast as being by the National Immigrant Women's Advocacy Project and lists 'Government' and 'Educational podcasts' as genres. At the bottom left of the screenshot, there are links for 'Cookies' and 'Privacy'.

Spotify SIGN UP LOG IN

NIWAP
National Immigrant Women's Advocacy Project

PODCAST
National Immigrant Women's Advocacy Project
National Immigrant Women's Advocacy Project

FOLLOW ...

All Episodes

Web Library Podcast Dec 2020
Introduction to NIWAP and the Web Library featuring Leslye Orloff. What NIWAP is, how it came to be, and how to take advantage of its resources (including the web library, local resources, online webinars, training materials, and technical assistance)
Oct 29 · 25 min 42 sec

Langauge Access Podcast 2020 - Part Two
Issues of language access for crime victims and witnesses featuring Detective Shelli Sonnenberg from the Boise, Idaho, police department, and Investigator Michael LaRiviere from the Salem, MA Police Department, along with Leslye Orloff, director of NIW...
Oct 29 · 25 min 36 sec

Langauge Access Podcast 2020 - Part One
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Oct 29 · 26 min 42 sec

About
Podcast by National Immigrant Women's Advocacy Project

Government **Educational podcasts**

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NIWAP

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

Virtual Roundtables

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



Evaluations

- Evaluations are in your training packet
- Certificates

Thank You!