

WEBINAR

The U Visa As A Crime-Fighting Tool:

*How Certification Improves Domestic
and Sexual Violence Investigations and
Prosecutions*

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Introductions



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Learning Objectives

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

- Identify victims who qualify for the U and T Visa
- Hold offenders accountable by utilizing immigration relief as a crime fighting tool
- Enhance victim, community, and officer safety by combatting domestic, sexual violence and stalking
- Implement pretrial and trial strategies to combat common defenses in cases involving immigrant victims of crime

POLL: Who is participating?

- A. Law enforcement
- B. Prosecutor
- C. Systems-based victim witness staff
- D. Judges and court staff
- E. Community based victim advocates or attorneys

Other – Please type in the Chat Box

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 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

U Visa Statistics

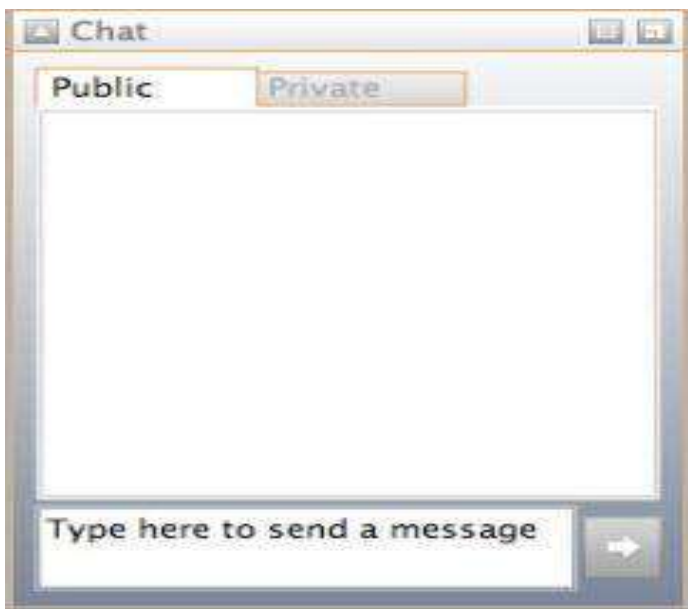
11/2011

% 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

Leslye E. Orloff and Paige E. Feldman, National Survey on Types Of Criminal Activities Experienced By U-Visa Recipients (Nov 29, 2011)

POLL:
Why is Immigration
Relief Available to
Victims of Crime?

*Please type your answers in the
Chat Box.*



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

Goals of Immigration Relief



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 Visa Policies

IACP 2018 Resolution

- Improves cooperation between law enforcement and immigrant communities
- Increases “trust between law enforcement officials and otherwise reluctant immigrant communities who fear that contacting police will lead to their deportation”
- Provides an opportunity to increase collaboration with victim advocacy groups

Immigrant Victim Dynamics

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

Prevalence: Coercive Control

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of 3.97 years.

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)

- 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)

Prevalence: Immigrant Victims

- 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., Battered Immigrants and U.S. Citizen Spouses (2006)

Prevalence: Sexual Assault and Immigrant Women

- High school aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault

Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007)

- Latina college students
 - Experience the highest incidents of attempted rape compared to White, African American and Asian college students

Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000)

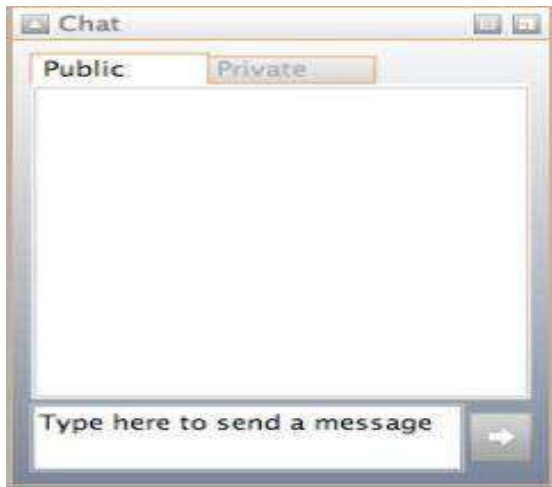
Practice Tips

- 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

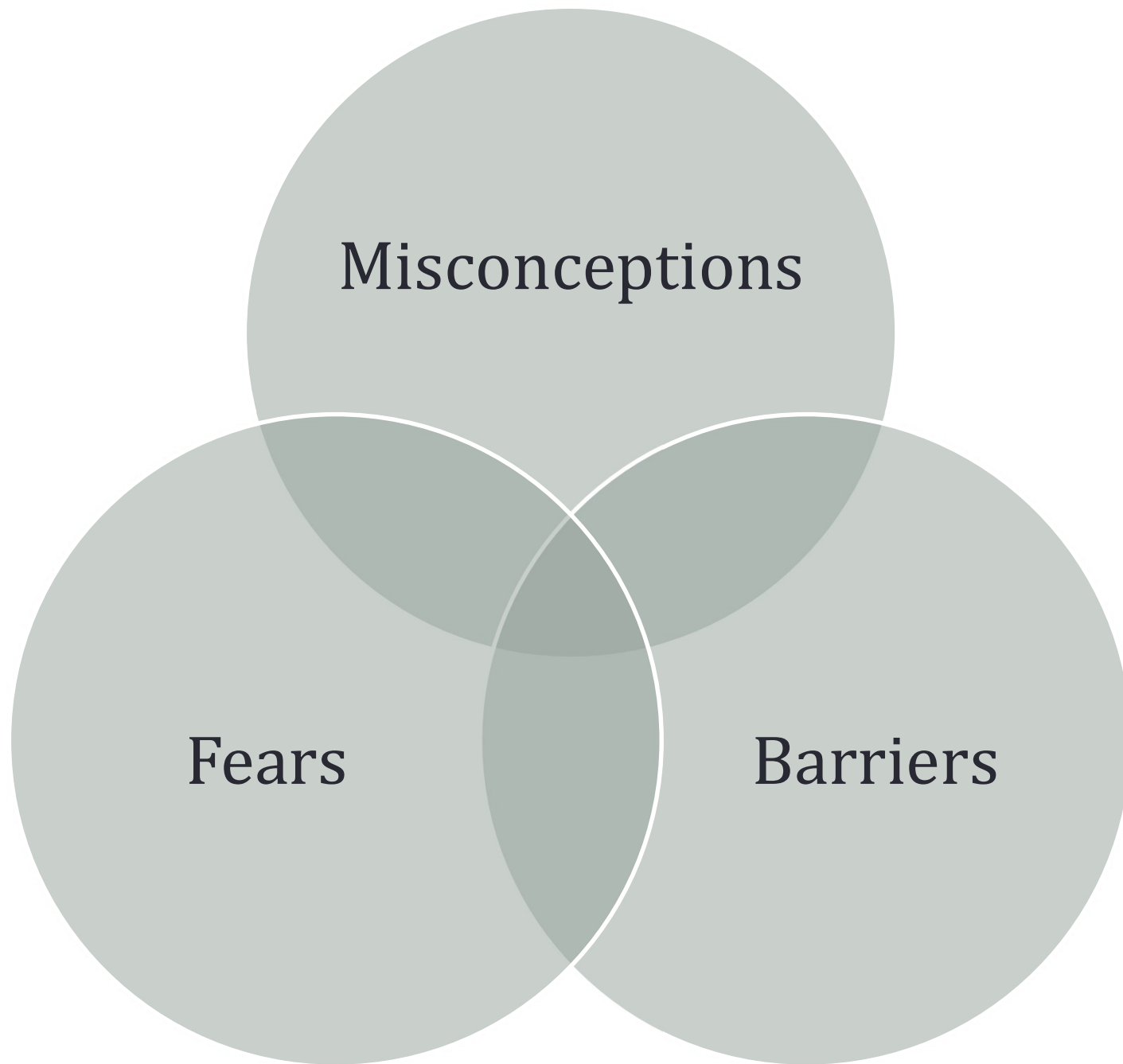
Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

- Document to support claims of physical and sexual abuse

POLL:
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
- 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 childcare
- Community pressure
- Family pressure
- Religious factors

Immigration relief

Misconceptions

Fear

Barriers

Language access

Importance of Language Access

- Services and legal protections effectively closed to victims without language access
- Medical records, counseling records, and police report with incorrectly interpreted information can:
 - Lead to “conflicts” between testimony and written records
 - Undermine victim/witness credibility
 - Incorrect information could impact safety and well being
- No access violates federal law

Title VI of the Civil Rights Act 1964

Meaning:

Government & government funded programs must provide meaningful access to programs & benefits to persons with limited English proficiency

U Visa Basics

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

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

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

Rationale

- 25% - 38% 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 rates of
 - Future crime reporting
 - Seeking protection orders & other family court relief

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)*

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	

Additional Applicants

- Parents and guardians can apply as an “indirect victim” if:
 - The victim is a child under 21 years of age and/or
 - The 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” being helpful

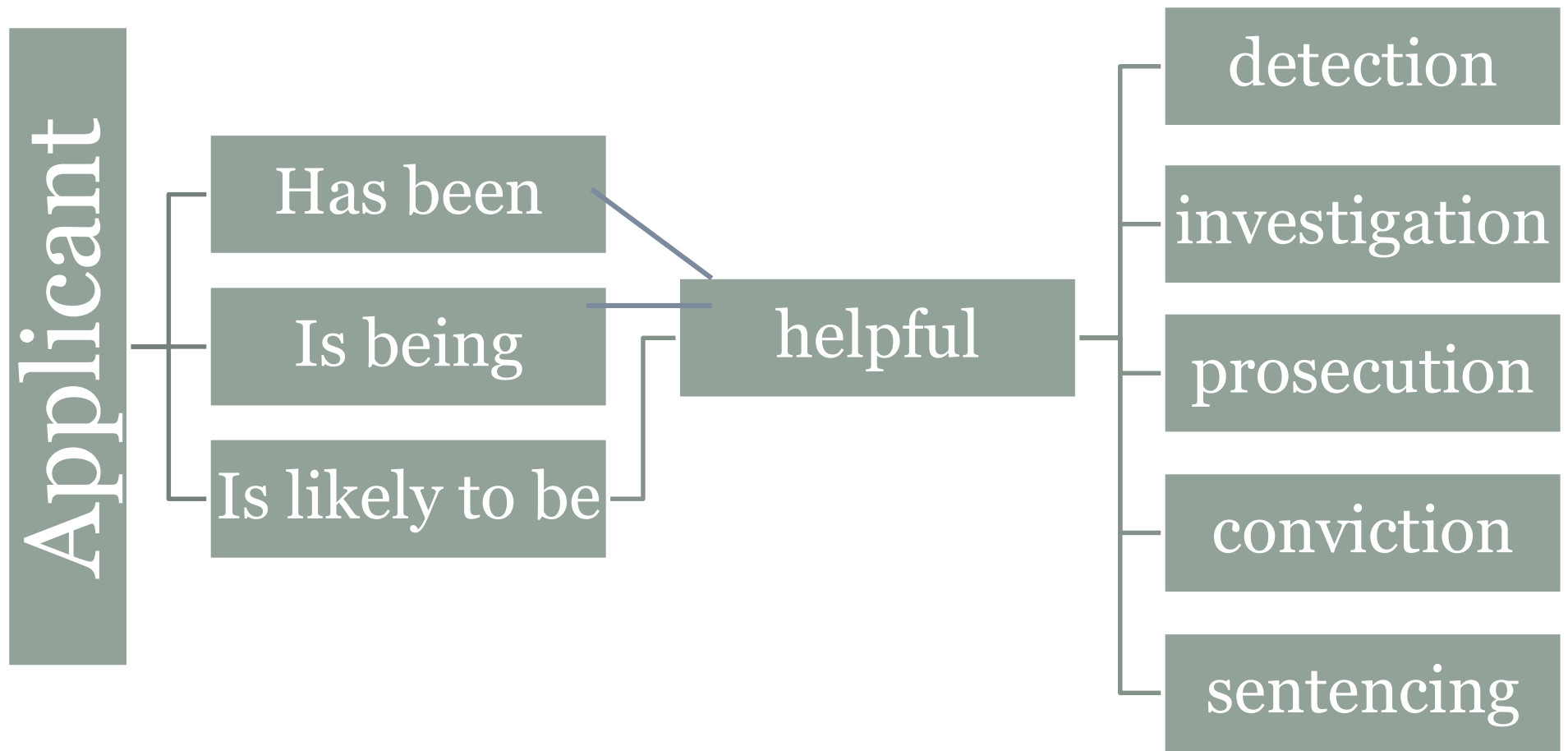
Who Can Certify?

Head of the agency or someone in a supervisory role who is specifically designated by the head of the agency:

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

Helpfulness

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



Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree of helpfulness required
 - DHS regulations – totality of the circumstances
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- The investigation or prosecution can still be ongoing
- Certification can be “revoked”

Helpfulness

Calling 911

Having a Rape Kit performed

Providing a description of offender or helping locate the offender

Allowing photographs to be taken

Providing information about abuse in a civil protection order or other family law case

Bringing a minor victim to a Child Advocacy Center or to court in a child welfare case

Providing a statement about "other bad acts"

Reporting crime in another case against the perpetrator

Testifying at a bond hearing, trial, or sentencing

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

Analyzing Requests for Certification

What criminal activity occurred?




Identify the victim or indirect victim



Determine helpfulness



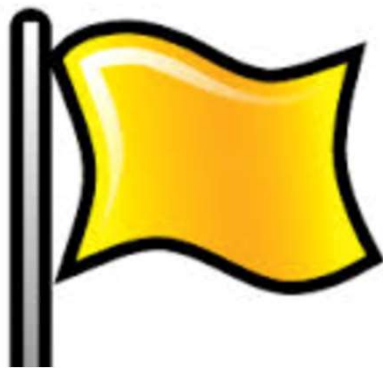
Identify if any family members were implicated in the crime



Note any injuries observed; provide documentation

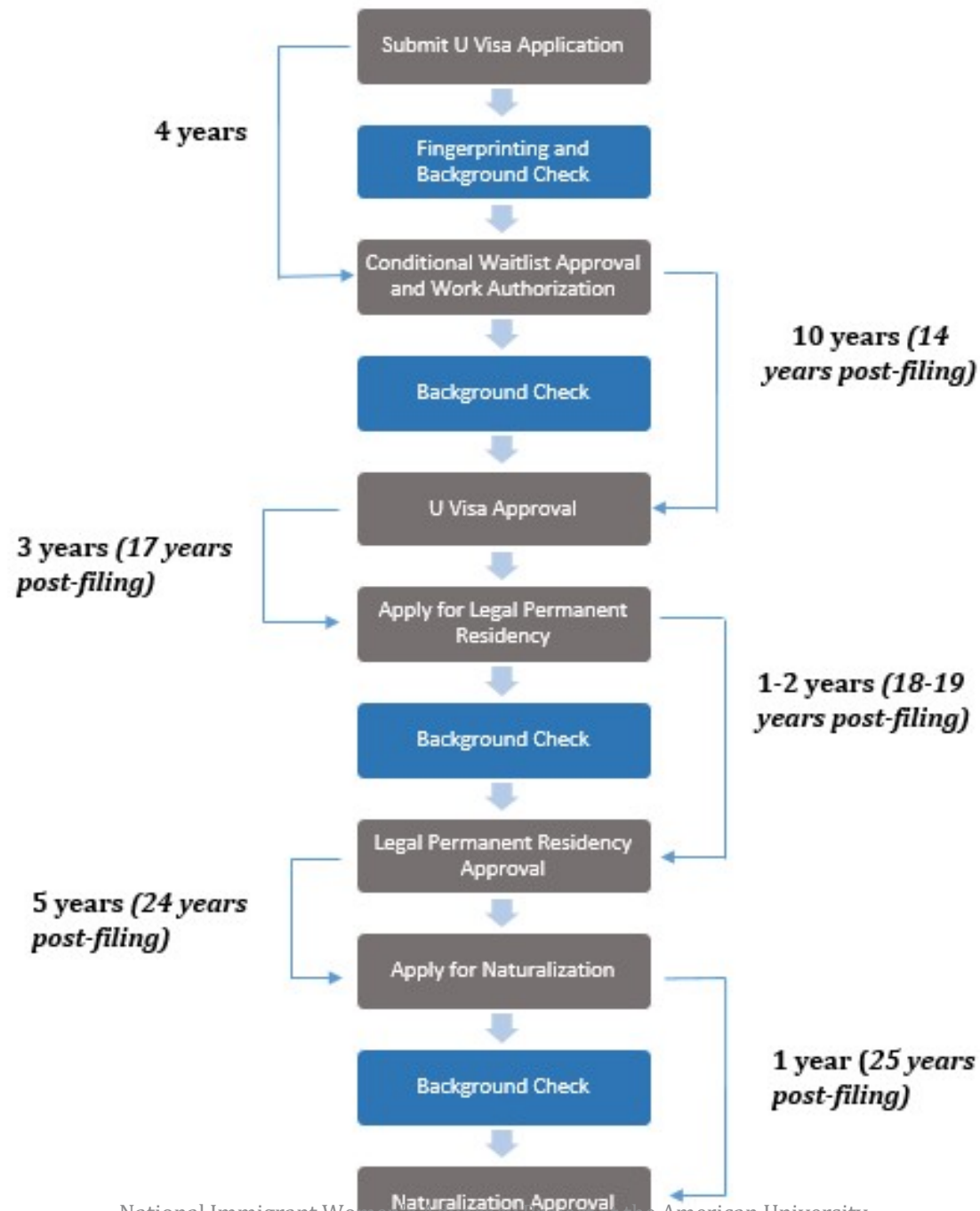
Timeline

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



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

U Visa Process Timeline

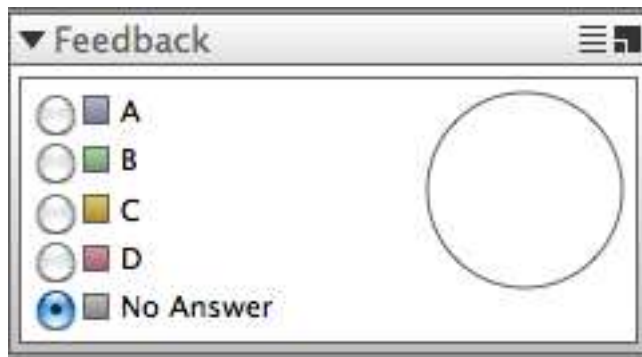


When should you certify?

- 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

Why would victims seek U visa certification from state courts?

- A. Only justice system contact a custody, protection order, civil employment or child welfare case
- B. No language access to police when victim called for help
- C. Judge observed victim's attendance and participation in criminal case
- D. All of the above



T Visa Overview

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

Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

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

Act

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

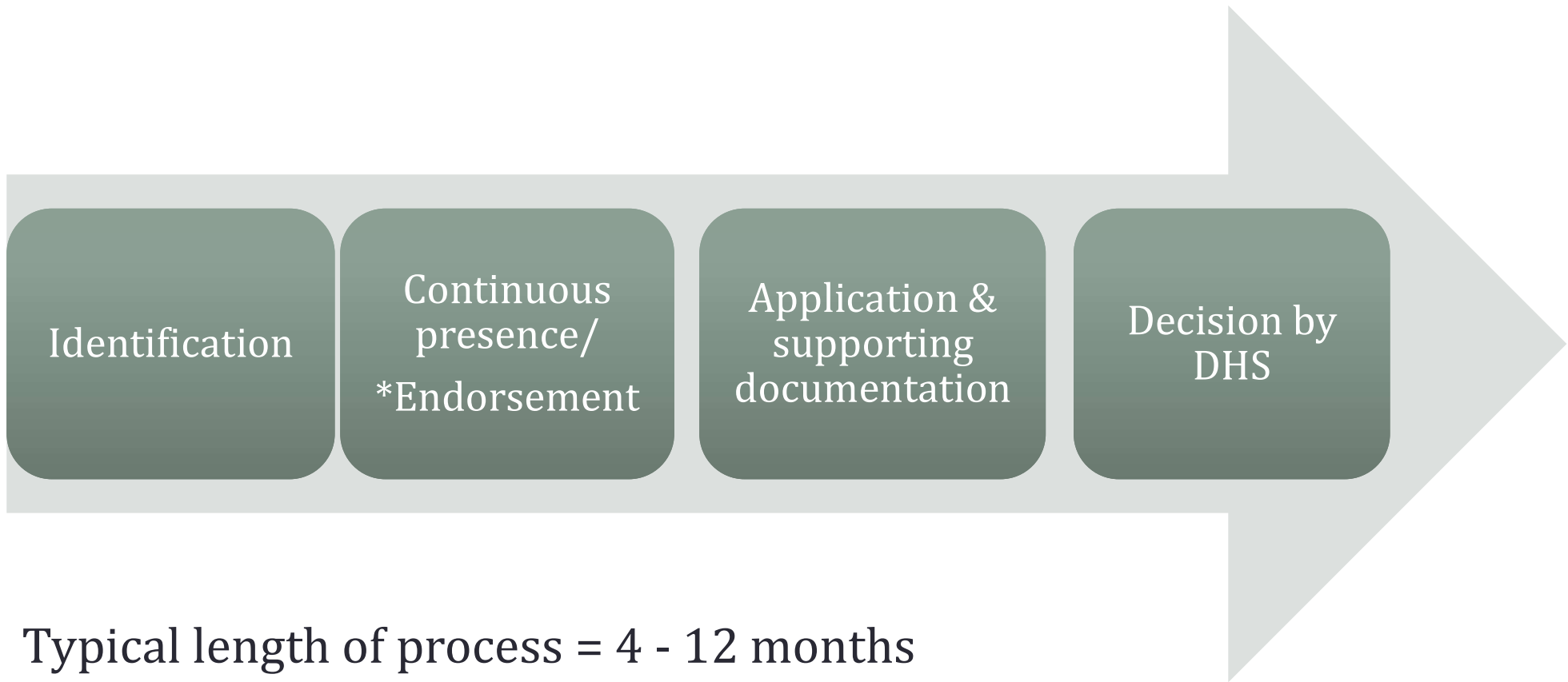
Means

- 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

Purpose

- Involuntary servitude
- Peonage
- Debt Bondage
- Slavery

The T Visa Application Process

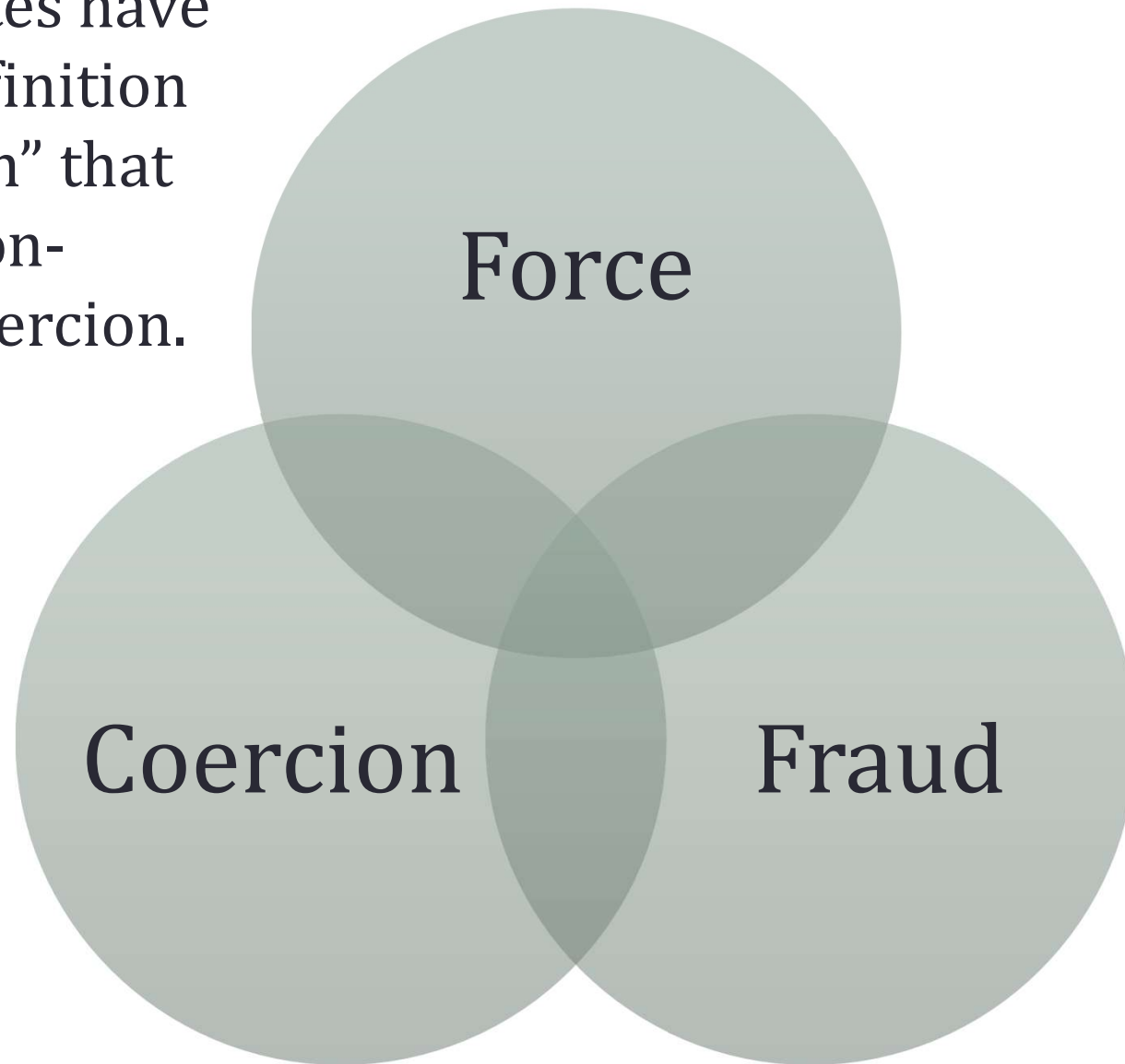


Typical length of process = 4 - 12 months

Human Trafficking

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

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



Trafficking

Exploitation

Smuggling

Transportation

Venues

Labor Trafficking

- Domestic servitude
- Hotels & restaurants
- Landscaping
- Construction
- Agriculture
- Massage parlors
- Criminal activity

Commercial Sexual Activity

- Prostitution
 - Online
 - Street
 - Brothels
 - Massage parlors
- Pornography
- Stripping
- Web cams

Labor Trafficking Statistics

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

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

U Visa Helpfulness and Post Filing Ongoing Assistance Requirements and Exceptions

Helpfulness vs. Cooperation/Assistance

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

After Filing the U visa & for Permanent Residency

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

Analysis

Is the request
reasonable?

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

8 C.F.R. 245.24(2)(2)(ii)

Is the refusal
unreasonable?

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

Unreasonable Requests

Subjective, but consider if the request:

- Endangers victim, witnesses, family members, or others
- Subjects the victim to greater harm
- Increases trauma to victim
- Negatively affects the victim's ability to support herself or her family
- Is reasonable in light of the perpetrator's force, fraud or coercion of the victim

Ongoing Assistance

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

After
applying

U visa waitlist
and receipt of U
Visa

Through
receiving lawful
permanent
residency

Ongoing Assistance Statutory and Regulatory Exception

- “Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the criminal activity”
 - 8 CFR 245.24(a)(5)
 - Implementing INA Section 245(m)(1); 8 U.S.C. 1255(m)(1)

POLL

“Raise Your Hand”

If you have ever had a case where the victim of sexual or domestic violence became “uncooperative” at any point



Discussion

- Why would a victim report a crime and then refuse to participate in the ensuing investigation and/or trial?

Reasonable Refusals

Subjective, but consider if it is reasonable to refuse a request if the victim is:

- In danger
- Unaware of request
- Being intimidated
- Being threatened
- Concerned about the safety of her family
- Under the belief that participating is more dangerous than not

POLL

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



“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>

Witness Tampering

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

Evaluating Unreasonableness

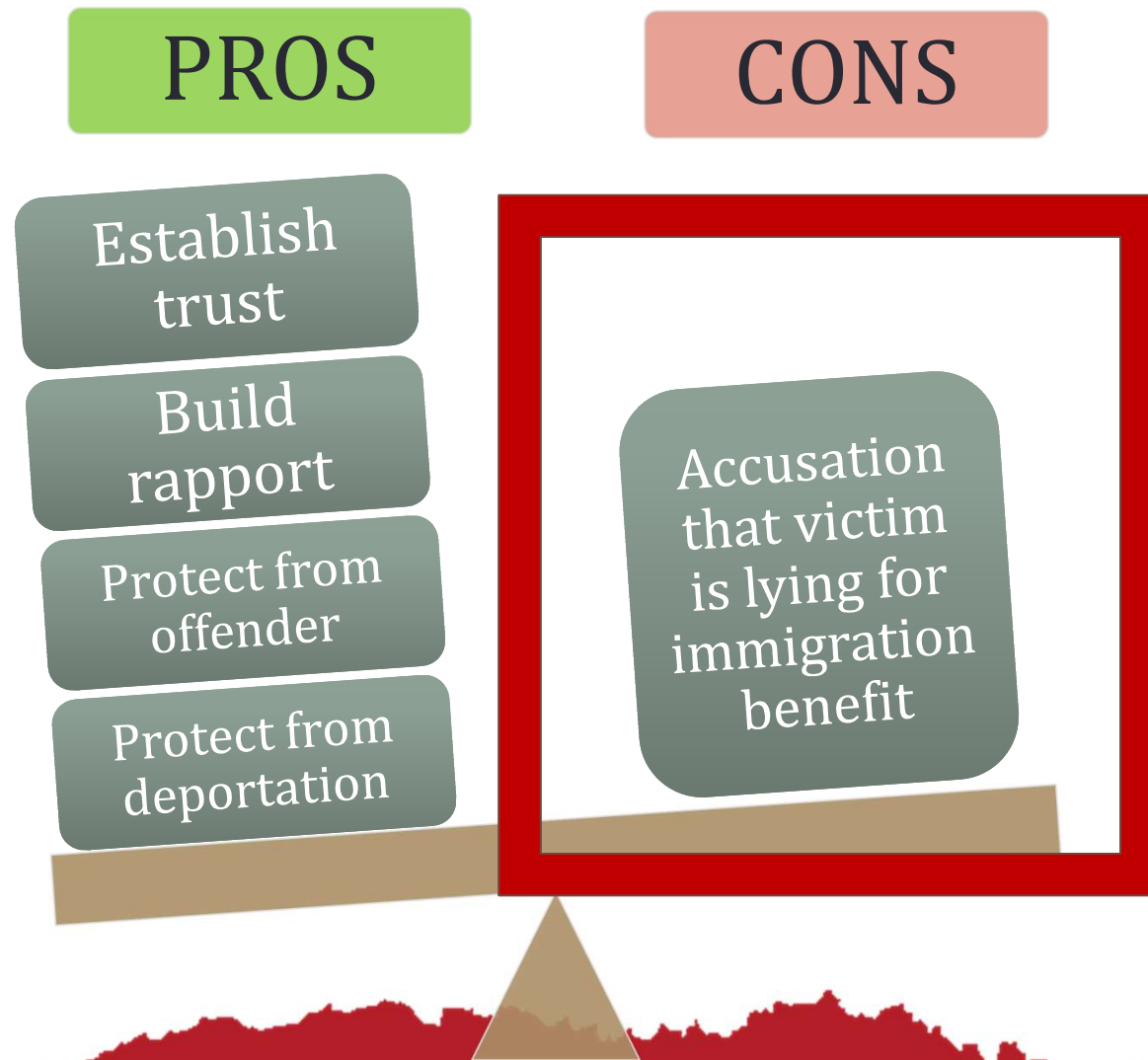
DHS regulations require affirmative evidence and consideration of:

- Totality of the circumstances
- The nature of the victimization
- Applicable guidelines for victim/witness assistance
- Victim's fear or the abuser
- Trauma suffered (both mental and physical)
- Force, fraud or coercion
- Age, maturity, capacity of the applicant
 - 8 C.F.R. 245.24(a)(5)

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

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

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/>

Resources on Language Access

- Contact Technical Assistance provider **Asian and Pacific Institute on Gender-Based Violence**
- Tools, resources and links to webinars available through
 - Asian and Pacific Institute on Gender-Based Violence
 - NIWAP
- Language Access Plan development and updating
 - Asian Pacific Institute on Gender-Based Violence



Virtual Roundtables

- Only law enforcement & prosecutors and victim advocates that work with those agencies
- Interactive discussion
 - Strategies to build rapport, establish trust, and ensure safety
 - Ask questions from subject-matter experts and peers
- To register contact info@niwap.org



Trainings

- Onsite and virtual training on immigrant crime victim issues and language access
- Available for law enforcement, prosecutors, judges, victim service professionals, allied professionals, and others
- To request a training in your jurisdiction contact 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