

# Immigrant Victim and Witnesses: U-Visas, T-Visa, VAWA Self-Petitions -- Ethics, Timing, Discovery, and Confidentiality

Virginia Beach, Virginia  
August 3, 2019

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# Welcome

- Faculty introductions

# Learning Objectives:

By the end of this training participants will be able to

- Identify victims and witness who qualify for crime victim based forms of immigration relief.
- Enhance victim and community safety and hold offenders accountable by utilizing immigration relief as a crime fighting tool
- Analyze requests for assistance with immigration relief applications in the context of victim and offender dynamics
- Implement pretrial and trial strategies to combat common defenses to cases involving immigrant victims of crime

# Virginia Immigrant Demographics

- Where are you seeing foreign born populations in the communities you serve?

# Virginia Demographics (2017)\*

- ❖ Total foreign born population – 1,062,370
- ❖ 12.5% of the state's 8.4 million people are foreign born
  - 52.2% naturalized citizens
  - ≈27.3% lawful permanent residents or temporary status\*\*
  - ≈20.5% undocumented\*\*
- ❖ 13.8% rise in immigrant population from 2000 to 2017
- ❖ 24.4% of children in the state under age 18 have 1 or more immigrant parents
  - 86.3% of children with immigrant parents in the state are U.S. native.

*\*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/VA>  
(Feb. 2018)*

*\*\*DHS Population Estimates (2015)*

# Virginia– Countries/Regions of Origin and Limited English Proficiency (2017)\*

- ▶ Asia–37.8%
  - ▶ India (8.6%)
  - ▶ Korea (5.5%)
  - ▶ Philippines (4.5%)
  - ▶ China (4.2%)
  - ▶ Vietnam (3.6%)
- ▶ Latin America – 35.0%
  - ▶ El Salvador (11.1%)
  - ▶ Mexico (4.8%)
- ▶ Africa – 11.0%
- ▶ Europe – 9.9%
- ▶ Middle East – 4.9%
- ▶ Canada – 1.2%

Limited English Proficiency  
(Speak English less than very well)

- ▶ Naturalized citizens (29%)
- ▶ Non-citizens (50.0%)

Languages Spoken at Home

- ▶ Spanish (576,297)
- ▶ Korean (62,154)
- ▶ Chinese (59,393)
- ▶ Arabic (53,932)
- ▶ Amharic, Somali, or other Afro-Asiatic language (43,883)
- ▶ Vietnamese (43,673)
- ▶ Tagalog (43,017)
- ▶ Urdu (37,306)

\*Source:

<http://www.migrationpolicy.org/data/state-profiles/state/language/VA>  
(Feb. 2018)

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

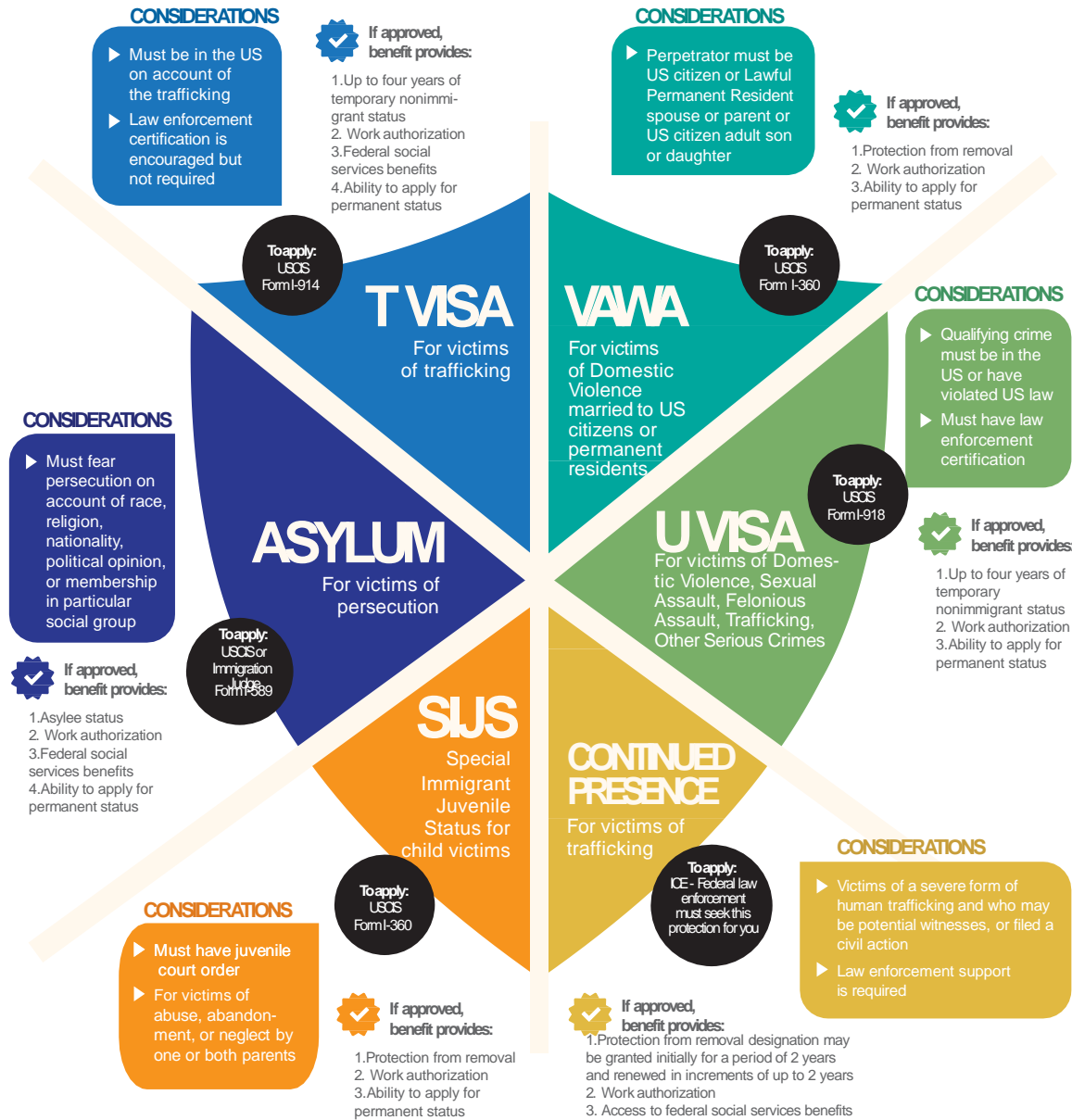


# Immigration Relief Available for Immigrant Victims of ---

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

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

# PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

# Legal Immigration Status Options for Non-citizen Crime Victims and Children

- Battered spouse waiver
  - Abused spouses of US citizens with two-year conditional permanent residency
- VAWA self-petition
  - Abused spouses/children of US citizens and lawful permanent residents
  - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
  - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Special Immigrant Juvenile (SIJS)
  - Children abused, abandoned or neglected by one or both parents
- U visa
  - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
  - Substantial harm from criminal activity
- T visa and Continued Presence
  - Victims of severe forms of human trafficking
- Work Authorization for Abused Spouses of Work Visa Holders
  - A (Diplomats); G (Foreign government, international organization employees), H & E3 (Specialty occupation workers)

# Benefits for Survivors

- Protection from deportation
  - Waivers of inadmissibility for crime victims
- Access to legal immigration status
- Financial independence from perpetrator
  - Legal work authorization (3 months – 6 years from filing)
  - Issuance of federally recognized ID
  - Some public benefits access beyond
    - Services necessary to protect life and safety open to all
- VAWA confidentiality

# Waivers of Inadmissibility for VAWA Self- Petitioners

- For self-petitioners
  - Health related grounds
  - Crimes of moral turpitude
  - Single offense possession 30 or less grams of marijuana
  - 2 or more offenses with total sentencing 5+ years
  - Prostitution or commercialized vice
  - Who have immunity from prosecution
  - Pardon by governor or President
  - Eligible for domestic violence victim waiver
- With connection to battery or extreme cruelty
  - Good moral character waiver
  - Unlawful presence waiver
- If removal would cause extreme hardship to self, parent or child
  - Fraud or willful misrepresentation of material facts
- Exempt from public charge

# Waivers of Inadmissibility for Special Immigrant Juvenile Status (SIJS) Cases

- Inadmissibility grounds that do not apply to SIJS
  - Public charge
  - Labor certification
  - Unlawful presence/presence without admission or parole
  - Misrepresentation including false claims of US citizenship
  - Stowaways
  - Immigrant not in possession of valid entry documents
- May not waive
  - Certain crimes of moral turpitude
  - Drug related convictions or drug traffickers
  - 2 or more convictions
  - Espionage, overthrowing the US government, terrorism, or admission would have serious adverse foreign policy consequences
  - Nazis, genocide, torture or extra-judicial killing

# Waivers of Inadmissibility for Special Immigrant Juvenile Status (SIJS) Cases

## More common waivers:

- Health related grounds
- Prostitution and commercialized vice
- Immigrants previously removed
- Unlawfully present after previous immigration violations
- Smuggling
- Student visa abusers
- Immigrant visa holder without valid entry documents at time of application for admission
- Failure to attend removal proceeding

## Less common waivers:

- Immunity from prosecution
- Severe violations of religious freedom by foreign government officials
- Significant human trafficking
- Money laundering
- Membership in communist/totalitarian party
- Association with terrorist organizations
- Unqualified physicians
- Uncertified foreign health care workers
- Ineligibility for citizenship or left US to evade the draft
- Practicing polygamy
- International child abduction
- Unlawful voting
- Persons who renounced citizenship to avoid taxation



# Access to Public Benefits in VA

- TANF & TANF funded childcare
  - T visa applicants, continued presence (CP), refugees, asylees
  - VAWA self-petitioners eligible at prima facie + SIJS & U visa if lawful permanent residents eligible.
    - 5 year bar if entered on or after 8/22/96
- Food Stamps
  - T visas (& their children)
  - Under 18 year old children who are VAWA self-petitioners or SIJS/U visa with lawful permanent residency
- Public and Assisted Housing & Vouchers
  - T visas (& their children)
  - VAWA self-petitioner (& children)



# Health Insurance and Driver's Licenses in VA

- CHIP and Medicaid subsidies
  - T visas, refugees, asylees, CP (& their children) – 7 year limitation
  - VAWA self-petitioners (& children), SIJS applicant children, and wait-list approved U visa applicants or lawful permanent residents eligible for subsidized health care through
    - CHIP if Children up to age 19
    - Adults who entered prior to 8/22/97 = Medicaid
    - Adults who entered on or after 8/22/97: Must have lawful permanent residency + 40- quarters of work credit
- Pregnant women receive health care without regard to immigration status

# Access to Public Benefits in VA

- Federally recognized driver's license
  - Deferred action = approved VAWA self-petitioners, wait-list approved U visa applicants, DACAs
  - Asylees, refugee, T-visa and CP, any unexpired visa, lawful permanent residents
- Educational Grants/Loans (FAFSA)
  - T visas, VAWA self-petitioners (& their children)
  - SIJS children, U visas after lawful permanent residency
- Some Virginia postsecondary institutions offer institutional aid or scholarships for DACAs
- SSI
  - T visas, VAWA self-petitioners if lawfully residing on 8/22/96 and blind or disabled. Other lawful permanent residents 5 year bar + 40 quarters
- LIHEAP
  - VAWA self-petitioners, T visa, CP, refugees, asylees, SIJS/U with lawful permanent residency

# **DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS**

# 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.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." International Review of Victimology 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

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

# Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
  - Lifetime as high as 49.8%
  - Those married to citizens and lawful permanent residents – 50.8%
  - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

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

# Sexual Assault Rates Among 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).

# Immigration Related Abuse

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

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

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

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

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018)



# Immigration Relief As A Crime Fighting Tool

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
<b>76.1% = Domestic Violence, Sexual Assault, Child/Elder Abuse, Human Trafficking</b>	
9.9%	Felonious Assault, Murder, Manslaughter
8.47%	Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture
5.3%	Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation

# VAWA Confidentiality Prongs

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

# DHS Victim Protections For Whom?

## Statutes/Regulations/Policies

- VAWA confidentiality
  - VAWA self-petition, cancellation, suspension
  - Battered Spouse Waiver
  - U Visas
  - T Visas
  - Abused spouses of work visa holders who file for VAWA employment authorization
  - *All victims abused by a spouse or parent*

# DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
  - Victims of domestic violence
  - Crime victims
  - Human trafficking victims



# Victim Witness DHS Memo 2011

## Continuing Effect Confirmed 4/19

- Goal: “Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”
- “Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”
- Crime victims and witnesses should receive “release from detention and deferral or a stay of removal.”

# What prevents immigrant victims from reporting crime?

# Fears, Barriers, Misconceptions

- ▶ Fear deportation
- ▶ Fear of losing children
- ▶ Do not trust police/prosecutors
- ▶ Do not know legal rights
- ▶ Do not speak English
- ▶ Economic survival
- ▶ Family/community pressure
- ▶ Religious factors
- ▶ Victim believes that if perpetrator deported she has to go with him
- ▶ Dangers in the home country
  - ▶ Retaliation
  - ▶ Ostracism
  - ▶ Police
  - ▶ Political instability
  - ▶ To victim's family

# How do law enforcement and prosecution benefit from the U visa?



# U Visa Benefits

- 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

# U Visa: Basics & Best Practices

# U Visa Basics

- The U Visa grants a temporary 4 year stay for qualified crime victim applicants
  - 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
- Only 10,000 U visas granted annually
- Can be revoked

# U Visa Basics

Cont'd.

- Application for a U Visa requires a certification from a government official
- Certification is one part of the overall application
- Victim must submit additional documentation and proof in full application for U Visa



# Who Can Certify?

## *“Law Enforcement” & “Law Enforcement Agency” =*

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

# 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	

# 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

# U Visa Application Process

**Filing to decision:  
Decision to receipt of U Visa  
(48+ months):**

Certification

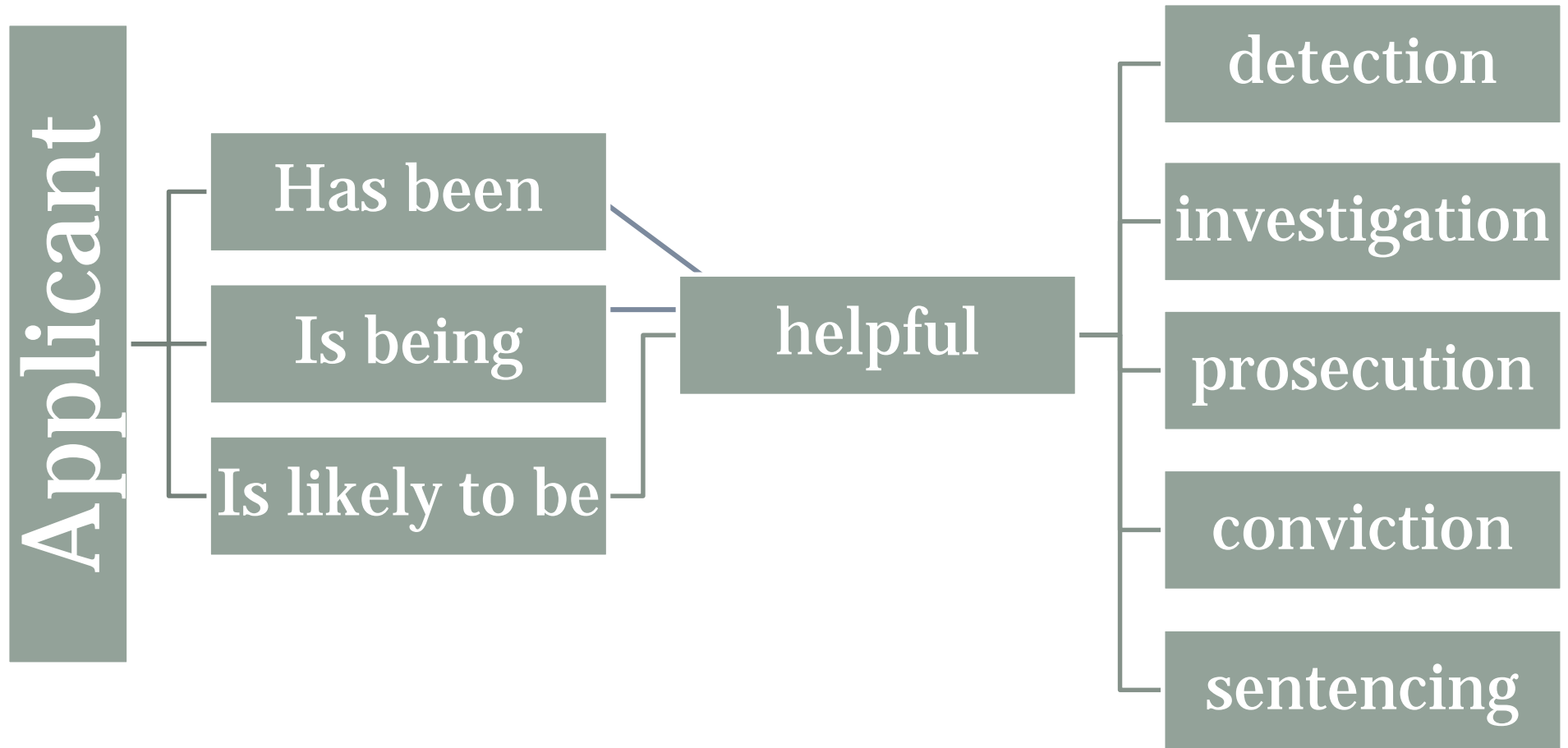
Application &  
supporting  
documentation

Decision by  
DHS

# 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

# Helpfulness



# Making Determination

- Certifying agency determines “helpfulness”
- Helpfulness can include:
  - Calling 911
  - Providing a description of offender
  - Allowing photographs to be taken
  - Giving information about the offender’s whereabouts
  - Statement about prior bad acts

# Not Required

- Conviction
- Charges filed
- Offender arrested
- 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

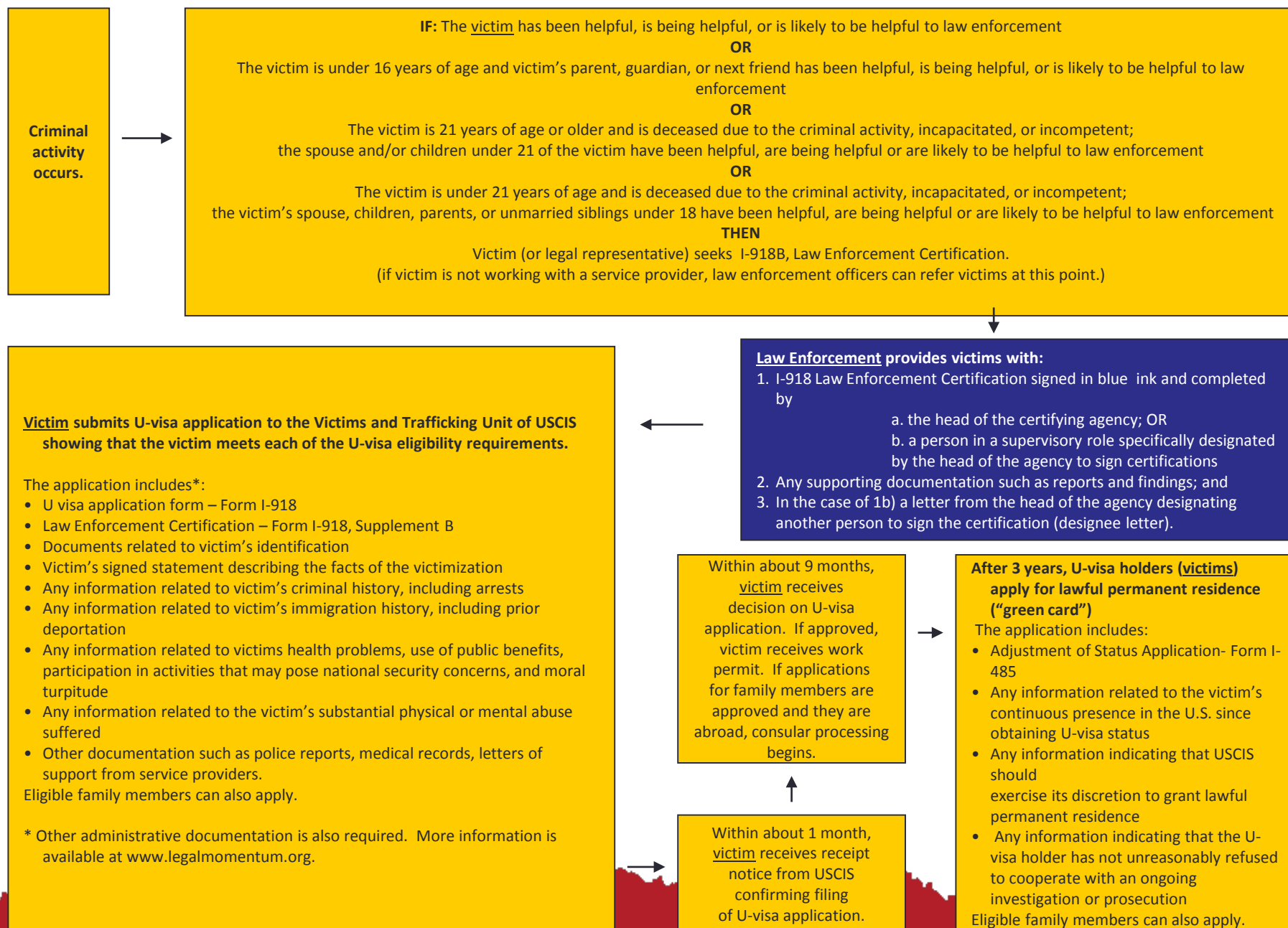


Identify if any family members were implicated in the crime



Note any injuries observed; provide documentation

# U Visa Application Victim Flow Chart



## **Government Official 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 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 02/28/2019



Certification form is located in your materials.  
Please locate to follow along.

## 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

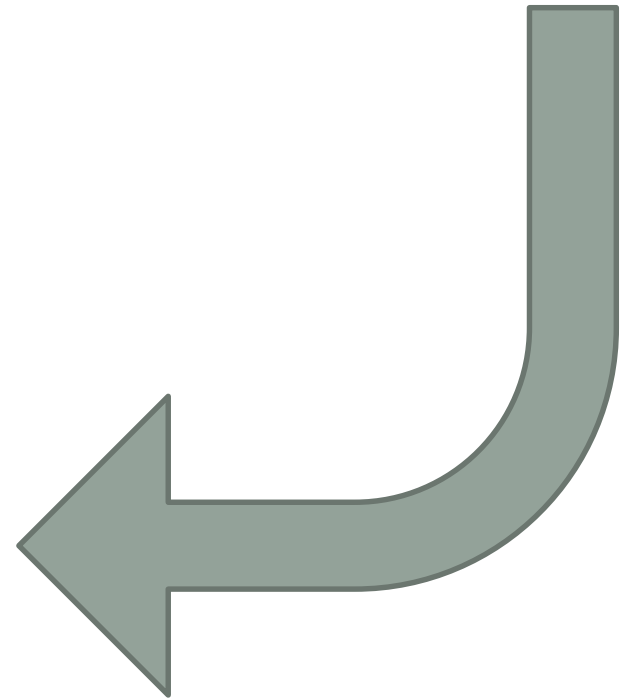
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4. Date of Birth (mm/dd/yyyy)

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5. Gender ☐ Male ☐ Female

This is sometimes filled out by the victim's immigration attorney or advocate.





## 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

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

### Part 3. Criminal Acts

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

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

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

You can & should certify multiple offenses when present.

Dates do not have to be precise – you can use months, seasons or years.

Provide the dates on which the criminal activity occurred.

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

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

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

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

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

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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?

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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.

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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.

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7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

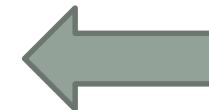
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Make copies  
of all reports  
and  
photographs  
and attach.



Be as specific  
as possible,  
highlighting  
visible  
injuries  
observed and  
if you are  
aware of  
mental injury.



Let's skip Part 4 for now  
and go to Part 5

## 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.

## Part 7. Additional Information

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name

*Petitioner's Name*

2.a. Family Name  
(Last Name)

2.b. Given Name  
(First Name)

**2.c. Middle Name**

3. A-Number (if any)

► A-

4.a. Page Number

4.b. Part Number

4.c. Item Number

4.d.

5.a. Page Number

5.b. Part Number

**5.c. Item Number**

**5.d.**

6.a. Page Number

6.b. Part Number

6.c. Item Number

6.d.

Let's go back to Part 4 now

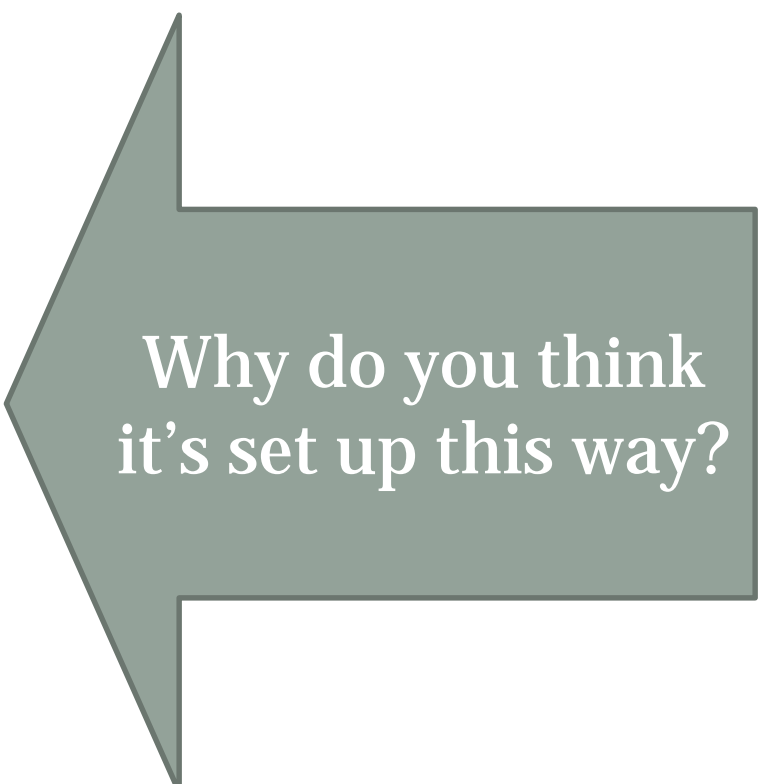
## Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

1. Does the victim possess information concerning the criminal activity listed in **Part 3.**? ☐ Yes ☐ No
2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? ☐ Yes ☐ No
3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above? ☐ Yes ☐ No

If you answer "Yes" to **Item Numbers 1. - 3.**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7.**

**Additional Information.**



Why do you think  
it's set up this way?

# Reasons for Refusal

- Fear
- Threats or intimidation
- Family pressure
- Family unity
- Financial
- Known v. unknown
- Victim-offender dynamics



Are you in the best position to  
determine the reasons the victim  
may refuse to assist?

# 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

*“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>

NIWAP

What if you still believe the victim  
has “unreasonably refused” to  
assist in the investigation or  
prosecution?

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

DHS provides victim an opportunity to explain. If you just don't sign, the victim has no opportunity explain. They are unable to apply.

# U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial  
Law Enforcement, Prosecutors, Judges, and  
Other Government Agencies



[https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf)

# When should you sign a U Visa Certification?

# Timeline

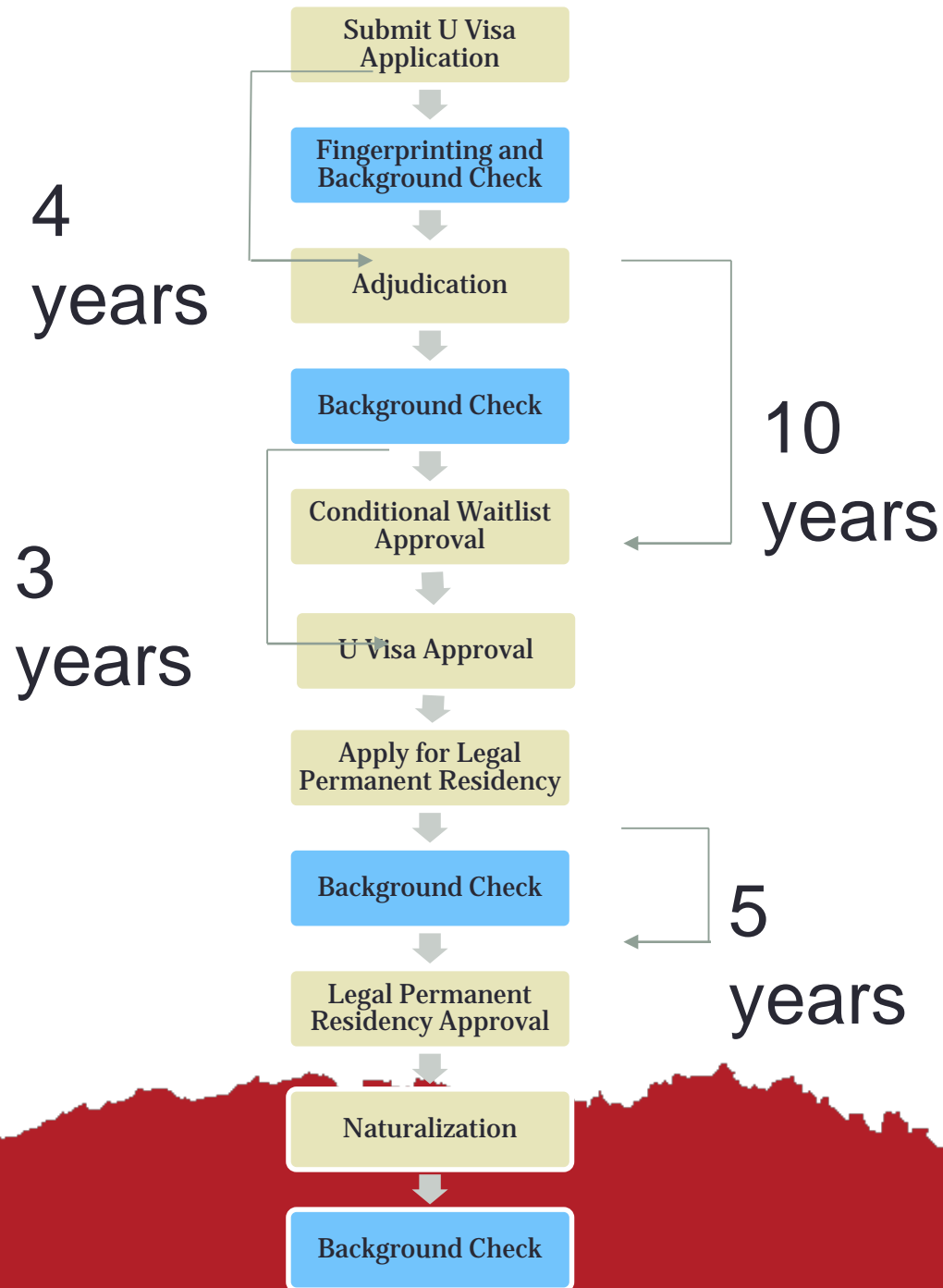
- Certification must be included in the initial application for a U Visa
- Once the initial application is processed:
  - Victim is entered into a database and flagged as an applicant for a U Visa



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



# U Visa Process Timeline



# Waivers Available in U Visa Cases

- DHS has the discretion to waive any inadmissibility ground, including criminal grounds except the following:
  - Genocide
  - Nazis
  - Extrajudicial killings
  - Acts of torture

# 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

# Certifying Early

## PROS

Establish trust

Build rapport

Protect from offender

Protect from deportation

## CONS

Accusation that victim is lying for immigration benefit

# T Visa Overview

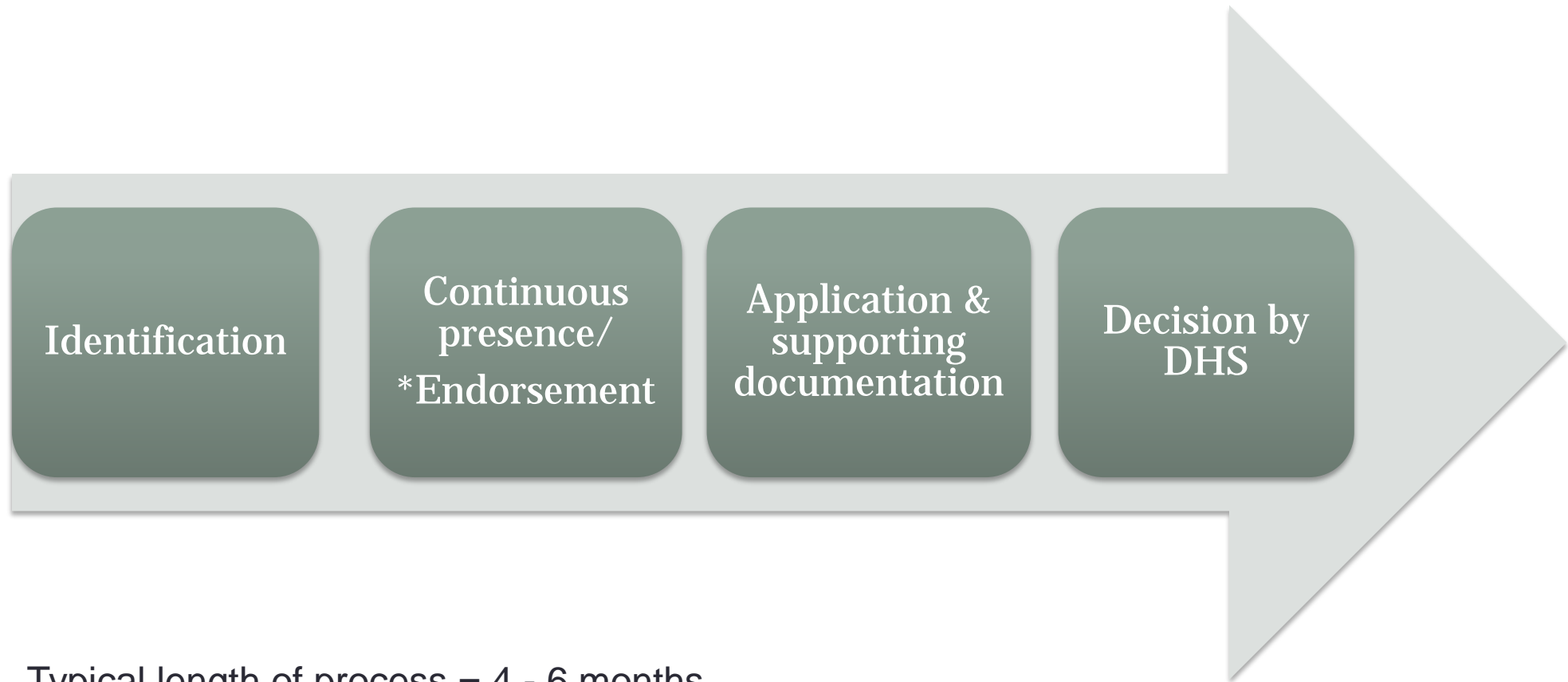
- Non-Immigrant, 4 Year visa
  - Victim of severe form of trafficking
  - In the US or territories on account of trafficking
  - Respond to reasonable requests for collaboration with investigation and prosecution unless victim is under 18
    - Limited “trauma exception”
  - Hardship upon return to home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

# What are Severe Forms of Human Trafficking?

- **Sex Trafficking:** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- **Labor:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at [www.ojp.usdoj.gov/vawo/laws/vawo2000/](http://www.ojp.usdoj.gov/vawo/laws/vawo2000/))

# The T Visa Application Process



Typical length of process = 4 - 6 months

# Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Act	Means	Purpose
<ul style="list-style-type: none"><li>• <b>Recruits</b></li><li>• <b>Entices</b></li><li>• <b>Harbors</b></li><li>• <b>Transports</b></li><li>• <b>Provides</b></li><li>• <b>Obtains</b></li><li>• <b>Advertises</b></li><li>• <b>Maintains</b></li><li>• <b>Patronizes</b></li><li>• <b>Solicits</b></li><li>• <b>Benefits, financially or by receiving anything of value</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Force</b></li><li>• <b>Fraud</b></li><li>• <b>Coercion</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Commercial Sexual Activity</b></li></ul>

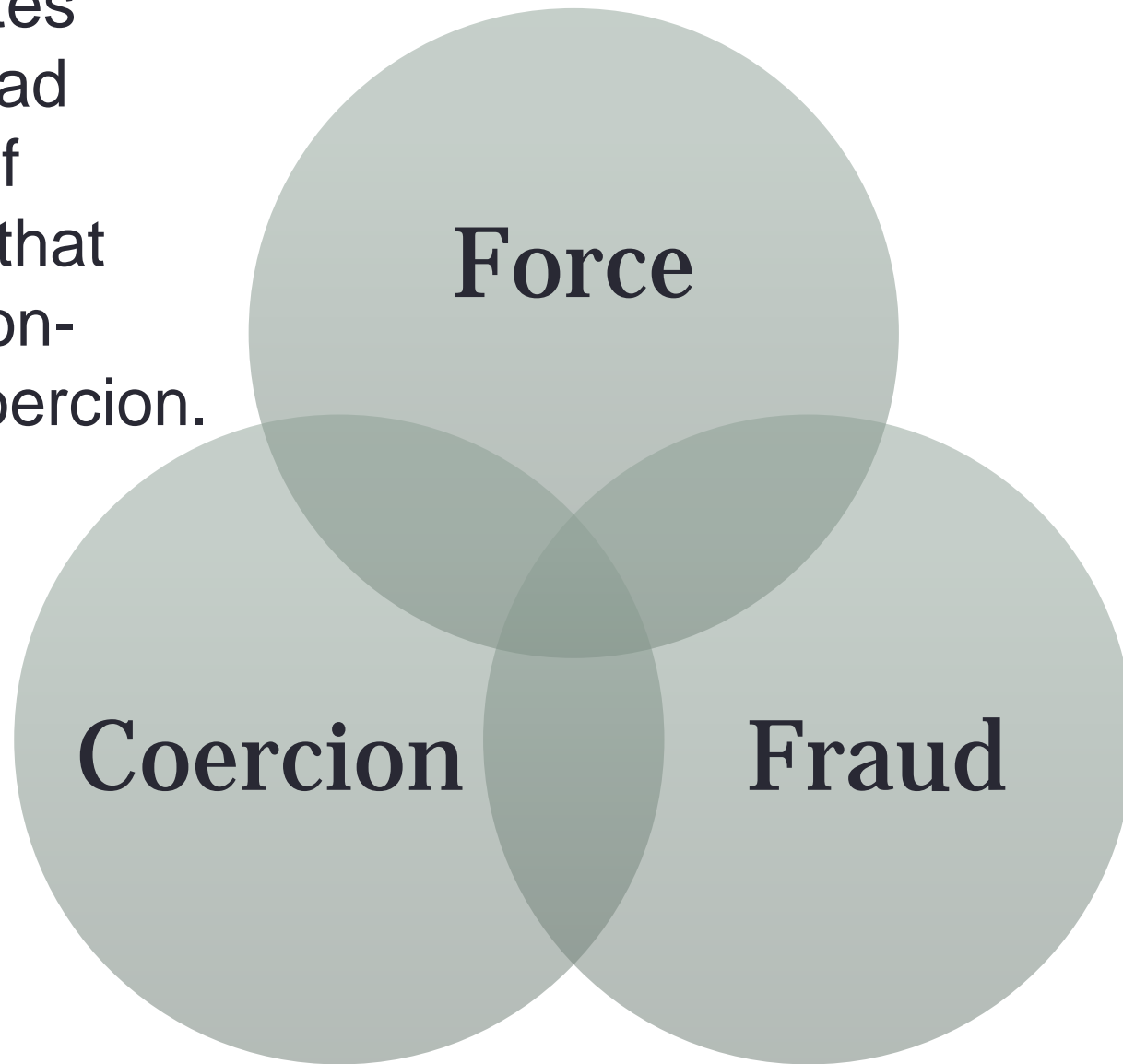


# Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Act	Means	Purpose
<ul style="list-style-type: none"><li>• <b>Recruits</b></li><li>• <b>Harbors</b></li><li>• <b>Transports</b></li><li>• <b>Provides</b></li><li>• <b>Obtains</b></li><li>• <b>Benefits, financially or by receiving anything of value</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Force</b></li><li>• <b>Restraint</b></li><li>• <b>Threats of harm</b></li><li>• <b>Abuse or threatened abuse of the legal system</b></li><li>• <b>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</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Involuntary servitude</b></li><li>• <b>Peonage</b></li><li>• <b>Debt Bondage</b></li><li>• <b>Slavery</b></li></ul>

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



# T Visa Waivers of Inadmissibility

- For T visa cases waive when in the national interest
  - Health related grounds
  - Any inadmissibility grounds that is related to victimization except
    - National security
    - Child abduction
    - Renounced citizenship to avoid taxation
- Waiver is trafficking was at least one central reason for unlawful presence

# Prosecution Strategies

# Topics



Certification

Discovery

Pretrial Litigation

Trial Strategies

# Certification

- Prosecutors can sign certification forms
  - Must be designee
- Any certifying agency can certify at any time they have probable cause
- Certification policies & practices should be discussed at collaborative partner meetings
  - e.g. CCR, MDT, Task Force
- Certifying prosecutor should consider not being the trial prosecutor

# 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



# Strategies to Limit Risk

- Certify based on information the prosecutor/police have
  - Do not need and should not seek additional information or materials
- Work with local attorneys and advocates working with immigrant victims
  - Tell them you will not accept more information
  - Do not accept materials offered/sent

# 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

# State v. Marroquin-Aldana

2014 ME 47, ¶ 20, 89 A.3d 519, 525

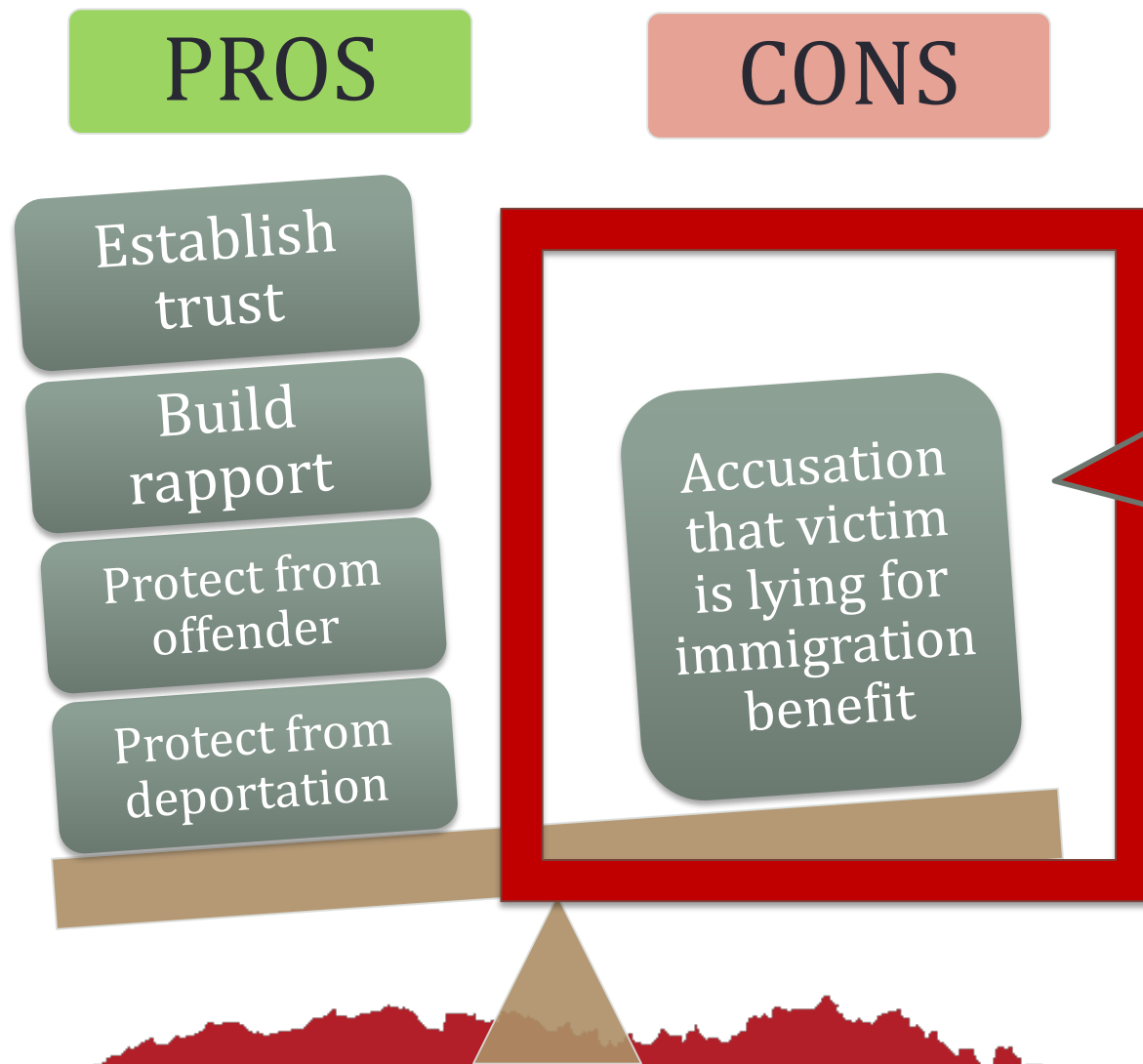
- Court ruled there was “insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration

# Hawke v. U.S. Dep't of Homeland Sec.

No. C-07-03456 RMW, 2008 WL 4460241, at \*7  
(N.D. Cal. Sept. 29, 2008)

*“[T]he strict confidentiality of the Violence Against Women Act still applies to any petitions filed by Mrs. Hawke. While Mr. Hawke's Sixth Amendment right to Compulsory Process permits him access to some information held by the government, it does not permit him to receive absolutely privileged information like any records held by DHS here.”*

# #1 Concern



Is the victim's immigration status  
ever relevant to the prosecution's  
case?

# Analyze Case

## Victim Selection

- Did the offender chose the victim because of a real or perceived vulnerability?

## Criminal Act

- Did the offender use the victim's immigration status to commit a criminal act?

## Escape Detection

- Was the victim prevented from reporting the crime to police because of their immigration status?

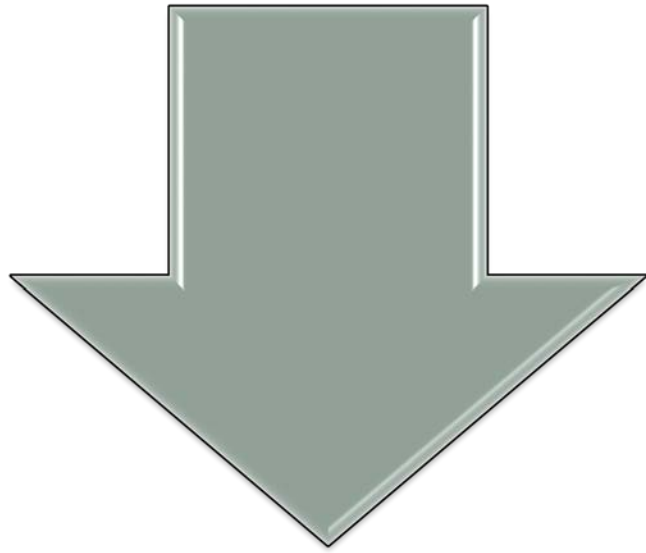
# Victim Selection

- Chose a particular area of town to commit crime
- Target victims working in specific venues; e.g. agriculture, hospitality, or construction
- Victimize known immigrant
- Instill vulnerability by jeopardizing victim's immigration status

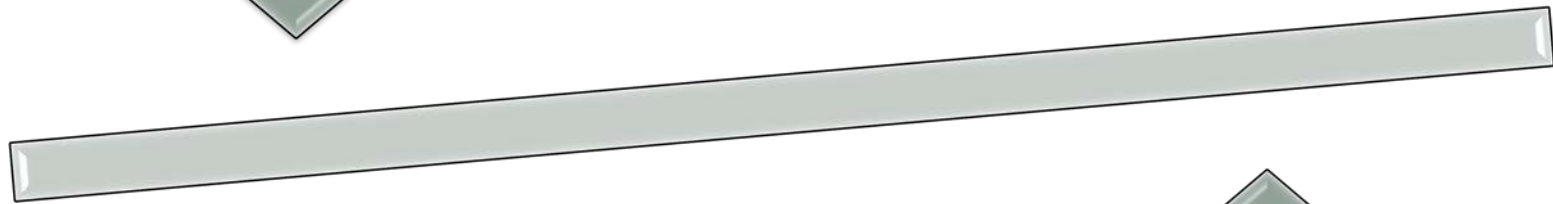


# Criminal Act

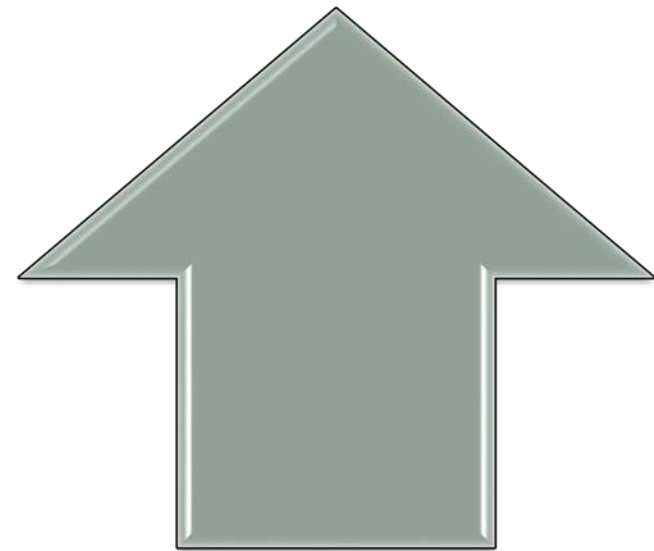
- Human trafficking
- Rape by threats
- Power and control within domestic violence relationship
  - Intimate partner, spouse, child, elder abuse
- Threats as part of stalking or harassment
- Witness intimidation or tampering
- Threats in cases of robbery, extortion, felonious assault, or false imprisonment



# Challenges



# Strengths



# Pretrial Strategies

- Preview evidence for judge
- Brief complex legal issues
- Establish evidence that will and will not be admitted at trial
- Requires thoughtful consideration of case well in advance of trial date

# Motions in Limine

## Immigration Status

- Exclusion
- Limitation

## Other Bad Acts

- Prior threats
- Subsequent threats or intimidation

## Experts

- Victim Dynamics
- Immigration Relief

# Immigration Status

- Exclude if irrelevant
  - No immigration benefit provided
  - Not relevant to offender's crime
- Cross-examination will be allowed as to application for immigration benefit
  - Limit scope
  - Opens the door to rebuttal evidence

# 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.”*

# Other Bad Acts

Fed. R. Evid. 404(b)

- Includes prior and subsequent “bad acts”
- Does not need to rise to the level of criminal activity
- May go to prove motive, knowledge, intent, opportunity, or lack of mistake, self-defense, or accident
- Can be relevant to establish the “nature of the relationship” or explain victim behavior such as delayed reporting or lack of participation

# Expert Witness

- Victim responses to trauma
- Dynamics of domestic violence experienced by immigrant victims
- Relationships between offenders and victims in human trafficking cases
- Victim protections under immigration law
- Other subjects that may be outside the common jurors understanding



# Fed. R. Evid. 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data...

Where can you find an expert?

# Possible Experts

## Dynamics

- Experience working with immigrant victims
  - DV Shelter
  - Advocates
  - Rape Crisis Center
  - Investigators
- Scholars

## Immigration

- Immigration attorney
- Law Professors
- Other attorneys that have experience with immigration issues; e.g. family law, legal aid

***Best Practice: Do not use any expert that is involved with the case or has worked with the victim***

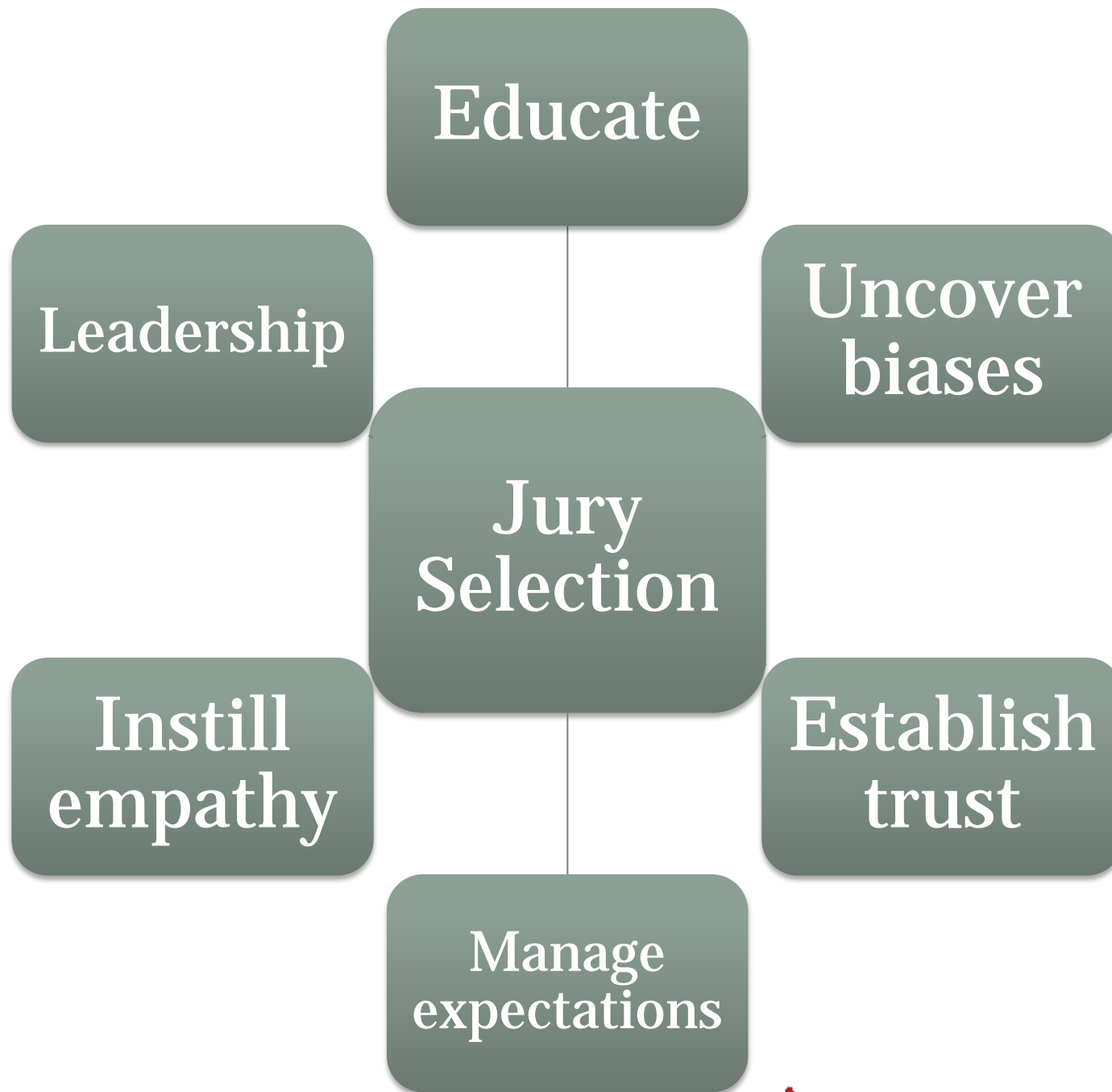
# State v. Olvera-Guillen

2008-Ohio-5416

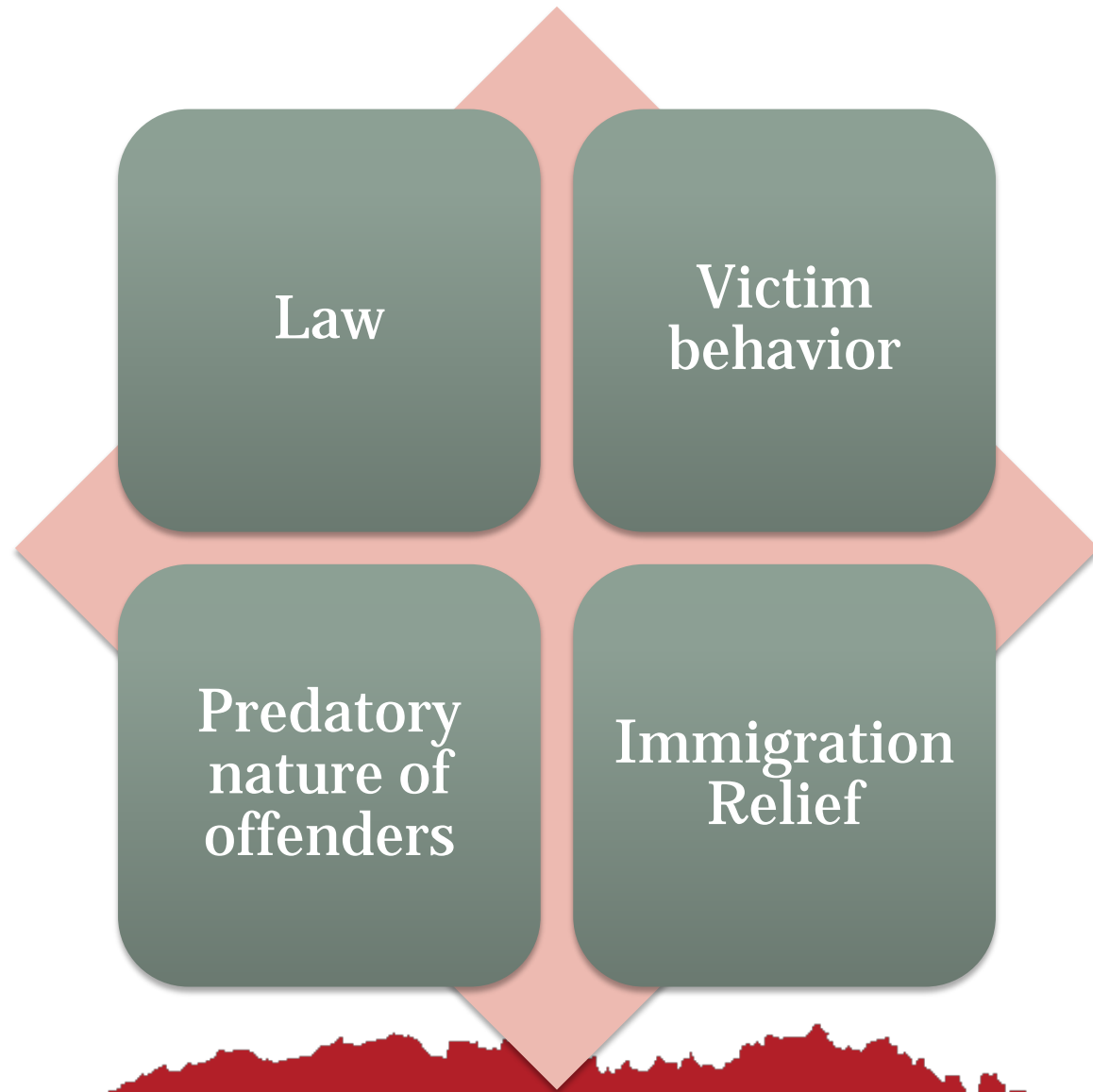
- Court allowed defense to call an expert witness to explain the U Visa process
- Prosecutor's comments not condoned, but not reversible:

*“You know there is a very good reason why that U-visa program is in place because without it, people like him, can have free rein. They rape, pillage and plunder a whole underclass of people in this country simply because they are illegal aliens, knowing full well that they in their perpetual fear factor and their state of paranoia are not going to go running to the police.”*

When do you start talking  
about immigration status?



# Educate



# Manage Expectations

- Victim may not have immediately reported the crime
- Victim may be undocumented
- Victim may have engaged in criminal behavior
- Offender may not have used violence, but merely threats of violence or deportation



# Instill Empathy

- Humanize the victim
- Discuss vulnerabilities
- Use jurors to discuss analogous situations involving domestic violence and sexual assault
  - Fears
  - Threats
- Explore what the “American dream” means

# Uncover Biases

- Will the juror be able to “get” ...
  - Victim is not on trial
  - Predatory nature of offenders
  - Equal protection of the law for immigrant victims
  - Intent of immigration relief for victims of crime

# Establish Trust

- Be accurate about the law
- Do not hide “bad facts”
- Be respectful to the judge, defense attorney, defendant, court staff, and jurors
- Establish yourself as the authority in the courtroom

# Leadership

- Inspire jurors
- Be authentic and genuine
- Do not be repetitive
- Use appropriate humor
- Demonstrate professionalism
- Be prepared

# Offender-Focused Theme

**PREYING ON  
THE MOST  
VULNERABLE**

**AMERICAN  
DREAM  
BECAME A  
NIGHTMARE**

**BETRAYAL OF  
TRUST,  
FAMILY, AND  
THE LAW**

**POWER OVER  
THE  
POWERLESS**

**PICKED THE  
PERFECT  
VICTIM**

**KNEW THERE  
WAS NO  
WHERE TO  
TURN**

# Victim Testimony

- Introduce the victim to your jury
- Recreate the reality of the crime
- Illustrate fear and emphasize threats of
  - Deportation
  - Separation from family
  - Loss of employment or financial support
- Address immigration status and application for immigration relief

# 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
- Others

**Motive  
to lie**

Rebut charge that  
victim is lying to  
get immigration  
benefit

# Example Questions on Rebuttal

- “Defense counsel asked you about your application for a U Visa, when did you first hear about the U Visa?”
  - “After speaking with detective, I spoke with an advocate at the police station”
- “Prior to speaking with the advocate, did you provide the detective with an recorded statement?”

# Certifying Early

PROS

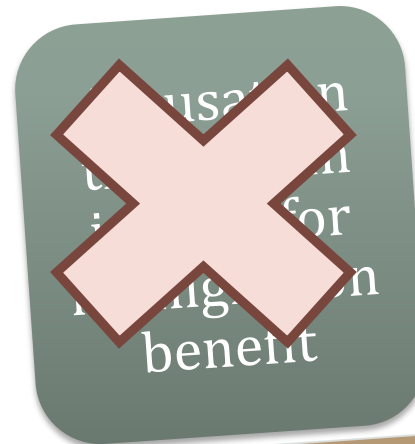
Establish  
trust

Build  
rapport

Protect from  
offender

Protect from  
deportation

CONS



# Going Forward

- When probable cause exists, certify early to ensure victim safety and enhance victim participation
- Focus on the offender's actions throughout the investigation and prosecution
- Litigate discovery and pretrial motions to ensure just results
- Turn challenges into strengths

# Resources

- Technical Assistance
  - Call: 202.274.4457
  - Email: [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Materials on USB/NIWAP website
  - U Visa Toolkit For Prosecutors and Law Enforcement Agencies
  - DHS: U and T Visa Law Enforcement Resource Guide, regulations, memos and policies
  - Immigration relief screening tools
  - Prosecutor's tools
  - Case law and legal research



**NIWAP**  
National Immigrant Women's Advocacy Project

Supporting immigrant  
women and children  
through education  
and policy advocacy.

**NIWAP**

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

**NIWAP**

# Thank You!

**NIWAP**

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