

**Webinar:**  
**U and T Visas for Immigrant Victims of  
Crime and Trafficking:  
Best Practices in Responding to,  
Investigating and Prosecuting Cases  
Involving Immigrant Crime Victims--  
Including Cases of Domestic and Sexual  
Violence**

**December 13, 2023**  
**Statewide Maryland Training**

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# Faculty



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



**Officer Michael  
LaRiviere**  
Investigator  
Salem, Massachusetts  
Police Department



**Tara Patet**  
Supervising Prosecutor  
City Attorney's Office  
St. Paul, Minnesota

# POLL #1: Who is participating?

- A. Law enforcement
- B. Prosecutor
- C. Systems-based Victim Service Professional
- D. Child or Adult Protective Services?
- E. Other

*Other – Please type in the Chat Box*

# Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) American University Washington College of Law
- We provide training and technical assistance to
  - Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals
  - Serving immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, child/elder abuse and other crimes
  - Our goal is to increase immigrant crime victims' safety, justice system participation, and ability to rebuild their lives and thrive



# 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 <https://www.surveymonkey.com/r/LERoundtable>



# Learning Objectives

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

- Hold offenders more accountable by using the U and T Visa certification process as a crime fighting tool
- Enhance victim safety and participation in the criminal justice system through certification
- Enhance officer/victim/community safety by building trust
- Develop pretrial and trial strategies to overcome common defenses in immigrant victims' cases



# General Caveats

- Women, men, children, and persons of all genders can qualify for U & T 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*



# Effectively Communicating with Victims of Crime

# Poll 2: What countries do the victims in your jurisdiction come from?\*



# Maryland (2021)\*

- ❖ Total foreign born population – 979,051
- ❖ 15.9% of the country's ~ 6.2 million people are foreign born
  - 55.5% naturalized citizens
  - 27% legal permanent residents
  - 17.5% temporary visa holders or undocumented immigrants
- 88.9% rise in immigrant population from 2000 to 2021
- ❖ Length of time immigrants have lived in the U.S.
  - 40% entered before 1999
  - 28.4% entered 2000 - 2009
  - 31.6% since 2010
- ❖ 31% of children under age 18 have one or more immigrant parents
  - 85.5% of these children are native-born U.S. citizens

*\*Source: Migration Policy Institute Data Hub (October, 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)*

# Maryland– Countries/Regions of Origin & Limited English Proficiency (LEP)(2021)\*

- ❖ Latin America – 38.2%
  - ❖ El Salvador (12%)
  - ❖ Other Central America (11.3%)
  - ❖ South America (7.8%)
  - ❖ Caribbean (7.1%)
- ❖ Asia – 29.2%
  - ❖ India (6.5%)
  - ❖ China/Taiwan (6%)
  - ❖ Other South Central Asia (5.2%)
- ❖ Africa – 19.7%
  - ❖ Western Africa (10.2%)
  - ❖ Eastern Africa (5.1%)
- ❖ Europe – 8.7%
- ❖ Middle East – 3%
- ❖ Canada – 0.9%
- ❖ Oceania – 0.2%
- ❖ Language spoken
  - ❖ 20.4% of people in the state who speak a language other than English at home
  - ❖ 37.8% of foreign born persons are LEP - speak English less than “very well”

*\*Source: Migration Policy Institute Data Hub (October, 2023)*

# Maryland-Languages Spoken at Home (2021)\*

- ❖ Spanish (522,688)
- ❖ Chinese (including Mandarin, Cantonese) (70,837)
- ❖ Yoruba, Twi, Igbo, or Other Languages of Western Africa (69,594)
- ❖ French (including Cajun) (57,606)
- ❖ Amharic, Somali, or Other Afro-Asiatic Languages (37,885)
- ❖ Korean (35,322)
- ❖ Tagalog (29,196)
- ❖ Urdu (26,803)
- ❖ Russian (25,833)
- ❖ Hindi (23,294)
- ❖ Arabic (20,972)
- ❖ Vietnamese (20,736)
- ❖ German (16,081)
- ❖ Haitian (15,660)
- ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (15,429)
- ❖ Persian (including Farsi, Dari) (14,783)
- ❖ Portuguese (14,728)

\* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MD> (October, 2023)

# Maryland-LEP (2021)\*

- ❖ Limited English Proficiency (Speak English less than very well)
  - ❖ Naturalized citizens – 26.1%
  - ❖ Noncitizens – 52.5%
- ❖ Limited English Proficiency by language spoken at home
  - ❖ Vietnamese (50.6%)
  - ❖ Chinese (including Mandarin, Cantonese) (50.1%)
  - ❖ Spanish (44.5%)
  - ❖ Korean (43.2%)
  - ❖ Russian (34.3%)
  - ❖ Amharic, Somali, or Other Afro-Asiatic Languages (33.2%)
  - ❖ French (including Cajun) (30%)
  - ❖ Urdu (29.2%)
  - ❖ Arabic (29.1%)
  - ❖ Tagalog (including Filipino) (27.7%)
  - ❖ Haitian (24.2%)

Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MD> (October, 2023)

What does this mean for law enforcement and prosecutors?



# DOJ Model Guidance

- 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>

DOJ Sample Policy Center City Police Department

# “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>

# DOJ and Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances
  - Fleeing suspect
  - Weapons
  - Life threatening to the officer, the victim, or the 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”
  - Police reports
  - Criminal interrogations
  - Crime witness interviews
- Vital written materials translated into primary language
  - Miranda warnings & Know your rights brochures

# “Qualified Interpreter”

*“When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer’s dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview.”*

# History and Purpose of the U and T Visa Programs and VAWA's Immigration Protections







POLL #3:  
Why do you think  
these forms of  
immigration relief  
exist for  
victims of crime?

*Please type your answers in the  
Chat Box.*



# 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



# U Visa Statistics

11/2011

% of U Visas	Criminal Activity
<b>76.1% = Domestic Violence &amp; Sexual Violence</b>	
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

# POLL #4: Immigrants are uniquely affected by domestic and sexual violence because ... (check all that apply)

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

# 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

# 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)

# Immigration-Related Abuse

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

# Rationale

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

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

POLL #5:  
What prevents immigrant  
victims from reporting  
crime and/or participating  
in investigations and  
prosecutions ?



*Please type your answers in the  
Chat Box.*

# 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

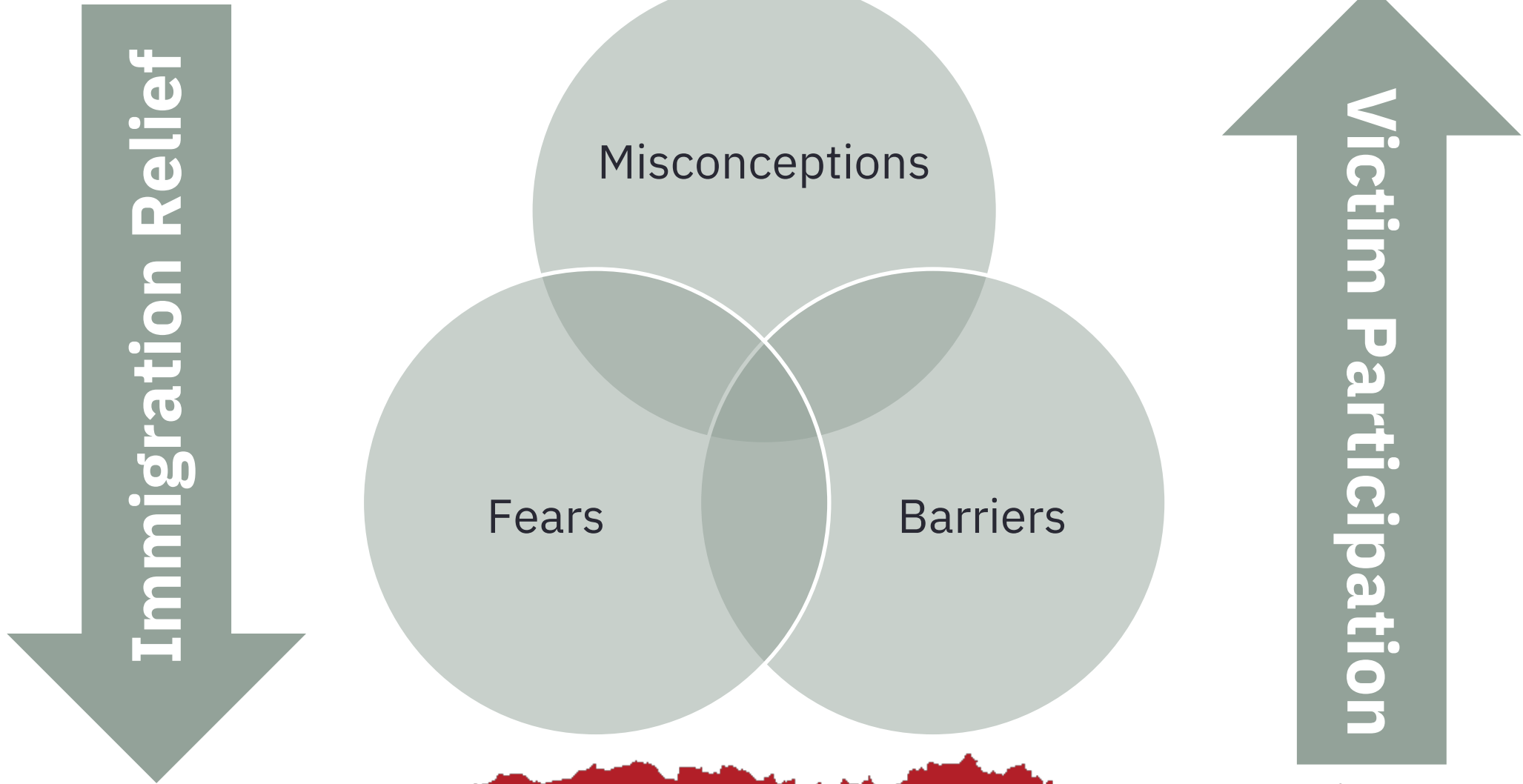
- Lack of knowledge of
  - Crime victim legal rights
  - Laws regarding domestic violence, sexual assault
- Do not trust the police
- Believe police will arrest them
- Local police are immigration officers
- No services are available to immigrant victims
- Police are corrupt
- Criminal justice system 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

# Lack of Reporting



# Poll 6: How do law enforcement, prosecutors, and government agencies 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.”*

# Maryland U Visa Statute: Who Certifies

- Certifying Agents:
  - State and local law enforcement
  - Prosecutors
  - Child protective services
  - Maryland commission on civil rights
  - MD Department of labor
  - Other state agencies responsible for the detection, investigation or prosecution of cases involving U visa criminal activities

# Maryland U Visa Statute: Timing Requirements – Certifying Agency Shall

- Complete or deny certification within 90 days of request
  - 14 days if the victim is in removal proceedings or is subject to a final removal/deportation order
- Include in the certification
  - Details about the criminal activity
  - Description of the victim’s helpfulness
  - Copies of documents that help prove substantial harm
- A current investigation, the filing of charges, a prosecution or a conviction **IS NOT REQUIRED** for a victim to request and obtain certification

# Maryland U visa Statute -Helpfulness

## 11-931 (A) “HELPFULNESS”

- When a person was a victim of a U visa listed criminal activity; and
- Was helpful or is being helpful or is likely to be helpful
  - In the detection, investigation, or prosecution
- Shall be considered helpful for purposes of U visa certification
- The parent/guardian/next friend can provide helpfulness when the victim
  - Was under 16 year old victim on the date of the criminal activity; or
  - Is incapacitated or incompetent



# Maryland U visa Statute: Confidentiality

- The **law limits disclosure of information** about persons seeking certification
- A certifying entity may disclose only:
  - In order to comply with federal law, court order, or a discovery obligation in the prosecution of a criminal offense OR
  - After all adult petitioners for a U visa and/or U visa holders have provided written consent for the disclosure of information

# U Visas as a Crime Fighting Tool

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

# POLL #7: How many cases have you had involving a U Visa?

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

*Chat additional information, if you want to expand your answer*

# U Visa Basics

- 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

# 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.	

# Types of Qualifying Criminal Activity

- Conviction of criminal activity is not required
  - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.
- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
  - Hate crimes
  - Video voyeurism
  - Elder abuse/abuse of adults with disabilities
  - Child abuse
  - Robbery or aggravated robbery could be similar to felonious assault depending on the evidence and state law definition

# 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

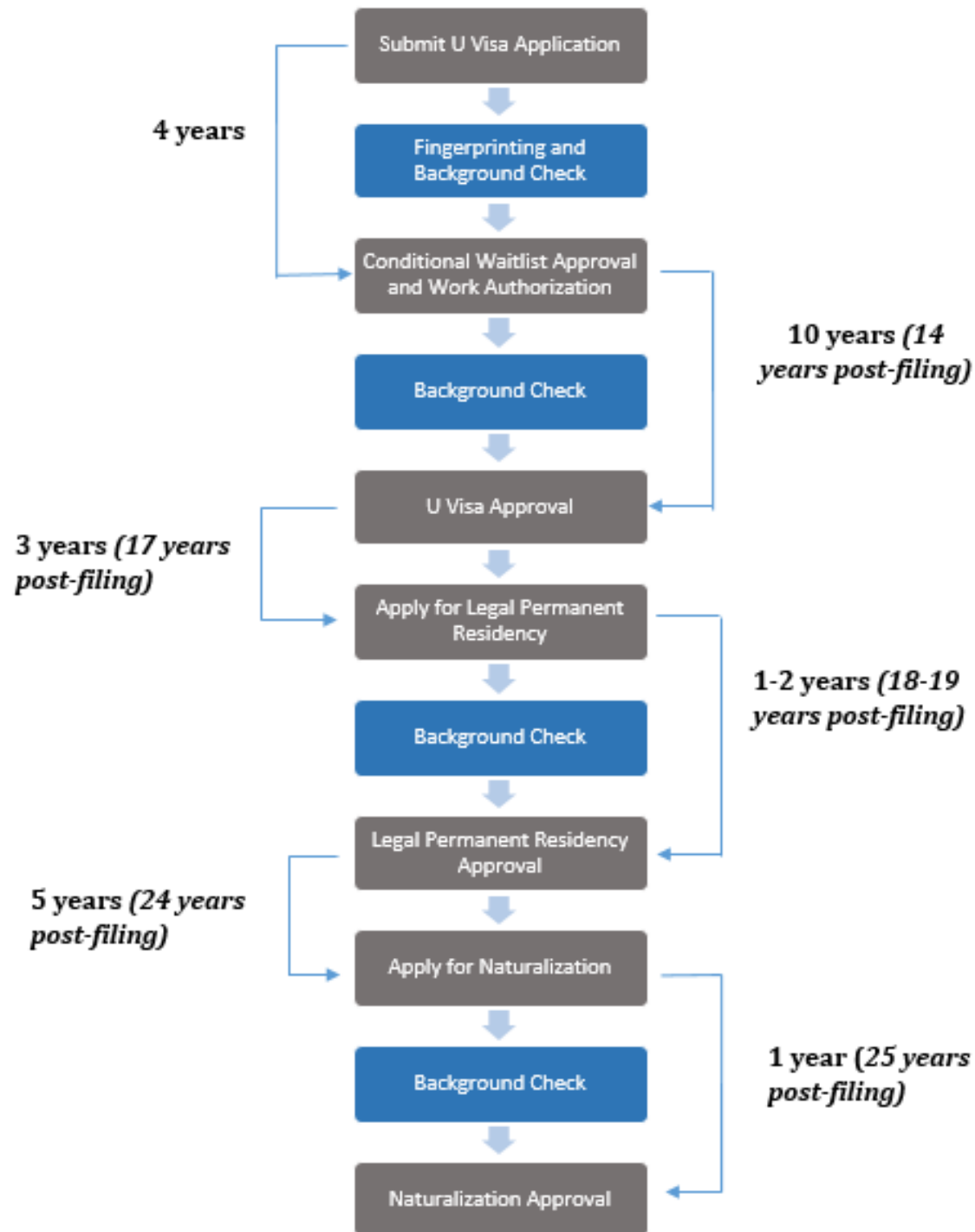
There is **NO** statute of limitations on signing a certification. However, U visa application must be filed within **six months** of the certification date.



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



# U Visa Process Timeline



# U Visa Facts

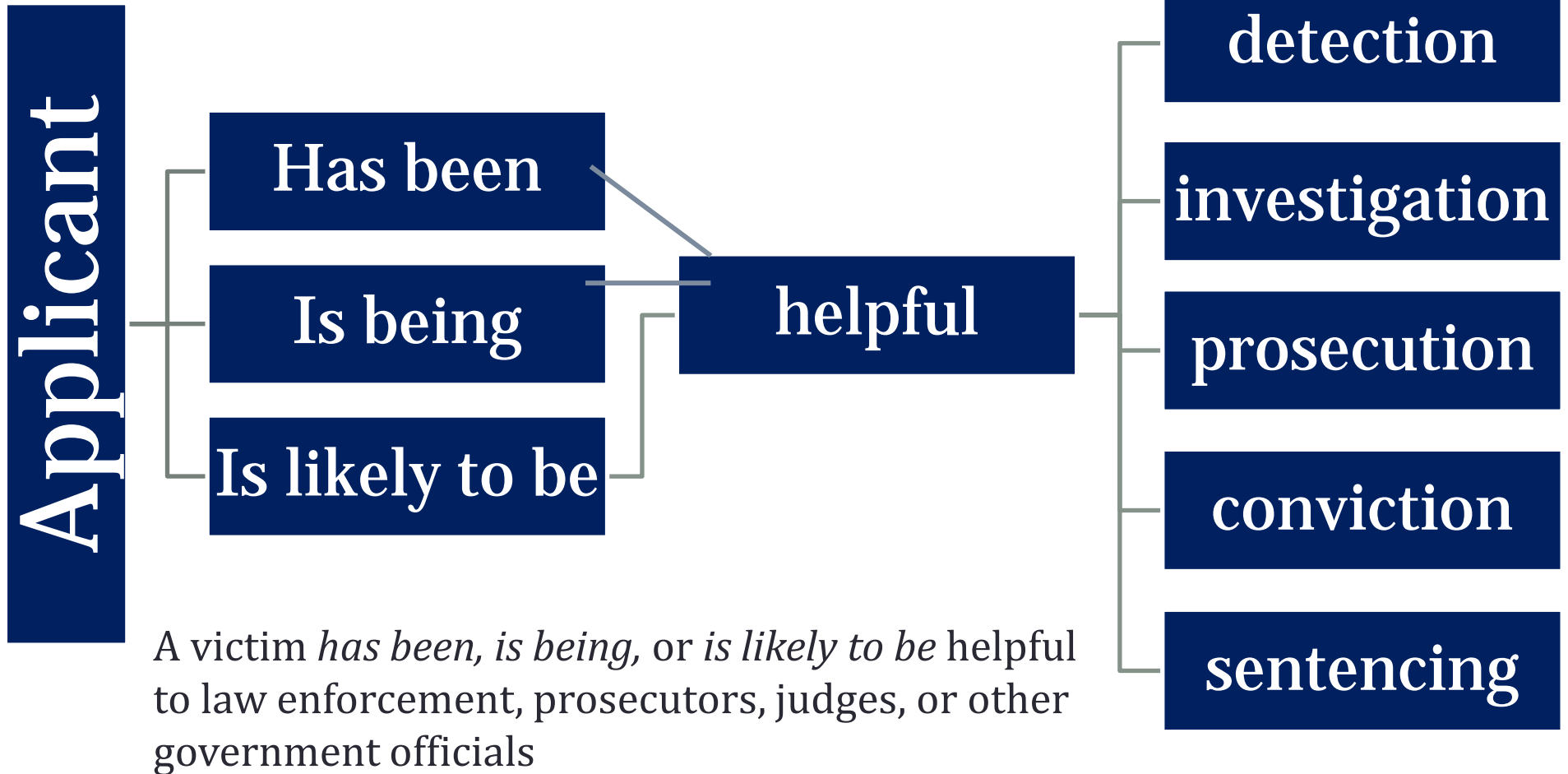
- Only 10,000 U visas can be granted annually
- Bona Fide determination with work authorization 4-5 years after filing
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful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

# Who can apply?

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

# 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



# DHS Promotes a Victim-Centered Approach

- Includes practices that build trust, help stabilize victims, and minimize victimization and additional trauma. Equally values
  - The identification and stabilization of victims, including providing immigration relief, and
  - The detection, investigation, and prosecution of perpetrators of serious crimes.
- Promoted by use of qualified interpreters

# 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

# Immigration Relief and Human 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



# When should you certify?

# Analyzing Requests for Certification

What criminal activity occurred?



Identify the victim or indirect victim



Determine helpfulness

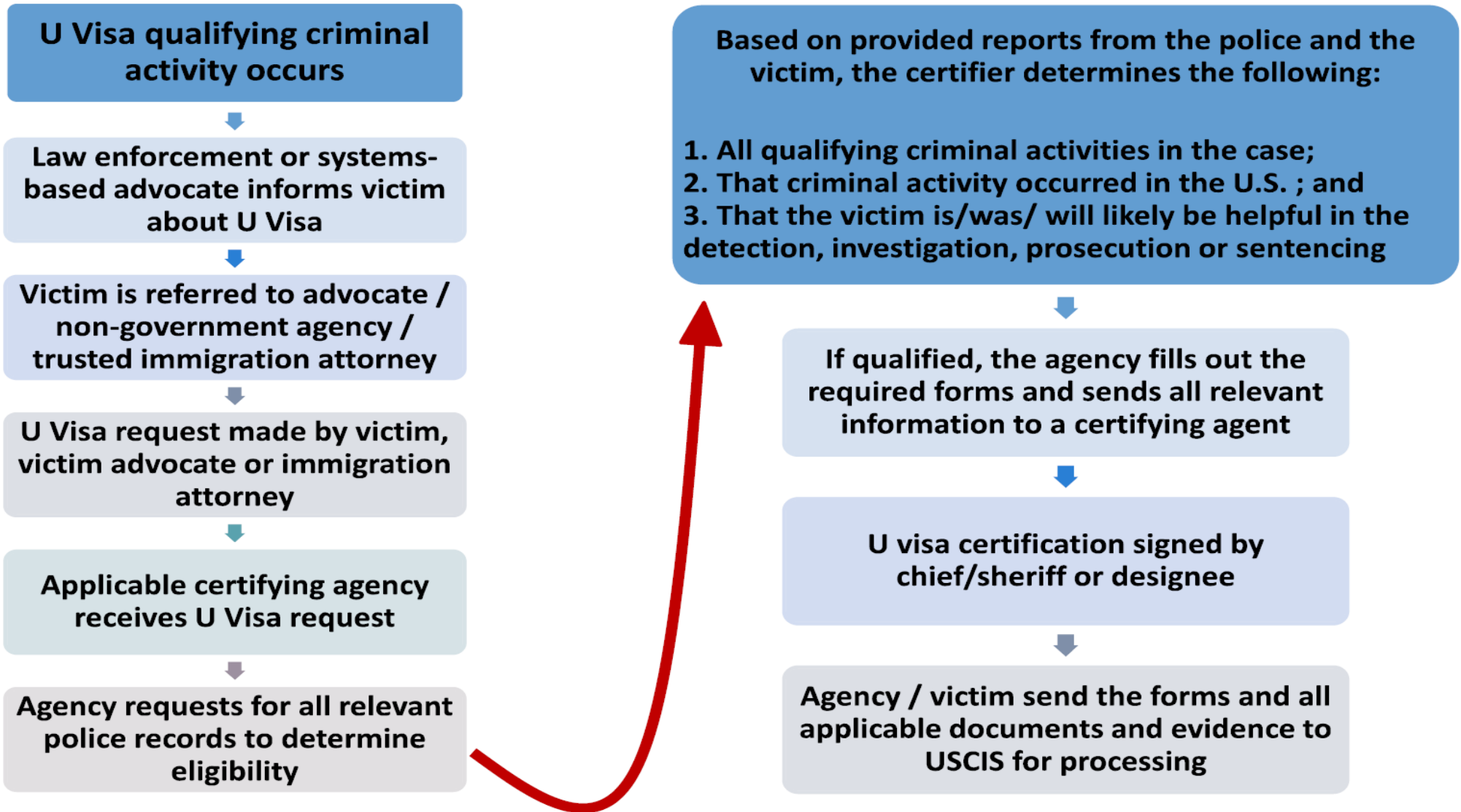


Identify if any family members were implicated in the crime

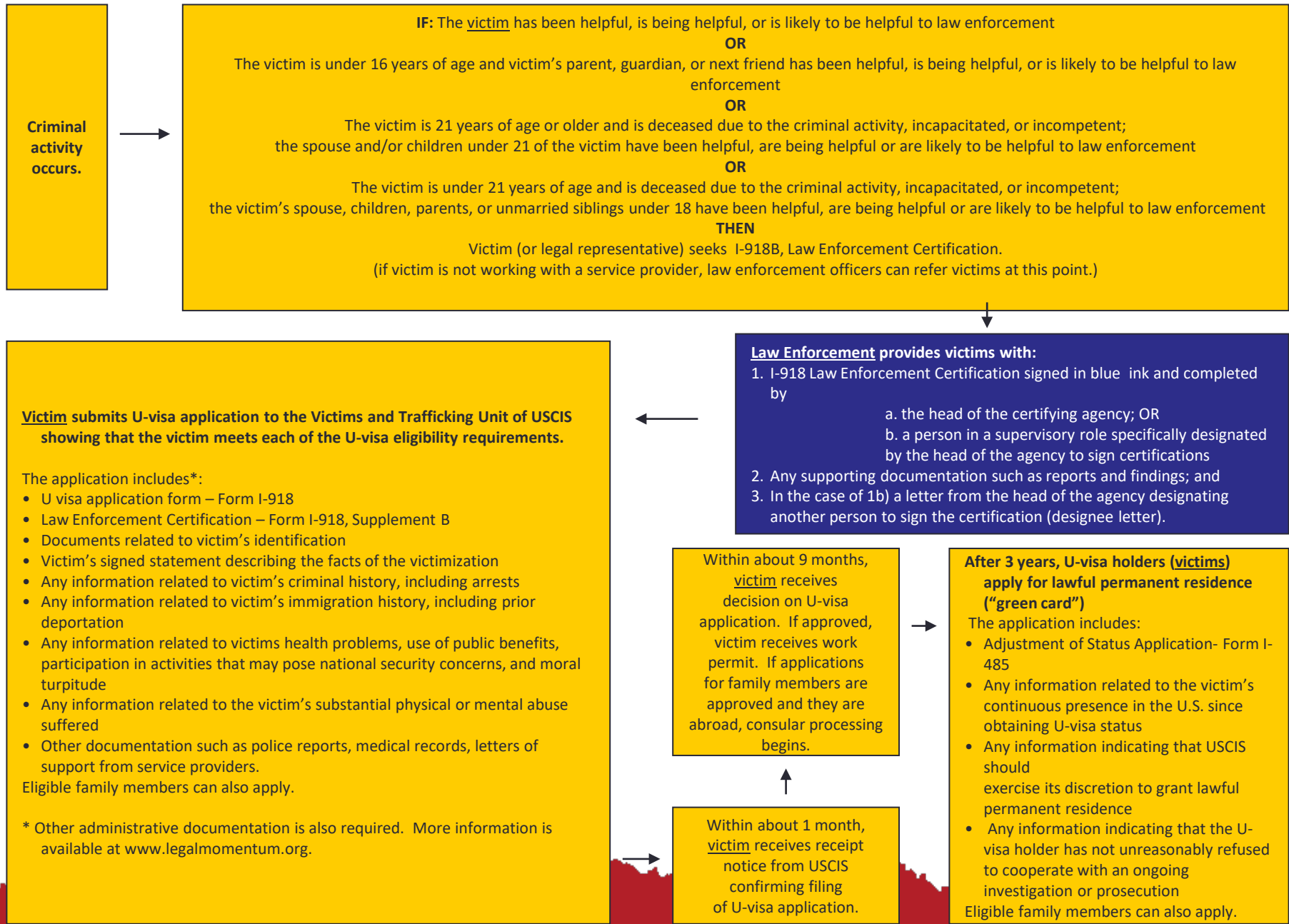


Note any injuries observed; provide documentation

# U Visa Certification Process



# U-visa Application Victim Flow Chart



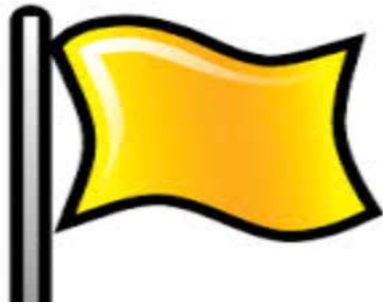
## Certification provides victims with:

1. I-918 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; OR
  - c. a Judicial official
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).

Why can't I wait to sign until  
the case is over?

# 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.

# Bona Fide Determination Process

Implemented on June 14, 2021

- USCIS exercises its discretion to grant Employment Authorization Documents and deferred action
- Applies to victims and qualifying family members with pending , bona fide applications
  - “Bona fide” generally means made in good faith, without fraud or deceit



# With Deferred Action and Work Authorization Trust Improves

- Increased justice system involvement
  - 114% increase in willingness to trust the police
  - 36% make police reports regarding future crimes
  - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
  - 74% decline in immigration related abuse
  - 78% decline in threats to snatch/cut off access to children
  - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

Orloff, Magwood, Campos-Mendez, & Hass, Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status (June 2021)

# 2013 and 2017 Research Found Increased Justice System Participation

- VAWA Self-Petitioners
  - 62% participate in criminal investigations and prosecutions
  - 63% seek civil protection orders
  - 60% turn to the courts for child custody orders
- U Visa Victims
  - 70% participate in active criminal prosecutions and investigations
    - 29% willing to cooperate if their criminal cases went forward
  - 67% seek protection orders
  - 64% seek custody orders

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); Leslye Orloff, et. al., *U Visa Victims and Lawful Permanent Residency* 5 (September 6, 2012)

# Certifying Early

**PROS**

**CONS**

Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit



# POLL #8

## “Raise Your Hand”

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



# Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from either family
- Financial hardship
- Lesser of two evils

# Helpfulness vs. Cooperation/Assistance

## For Certification Before Filing the U Visa

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

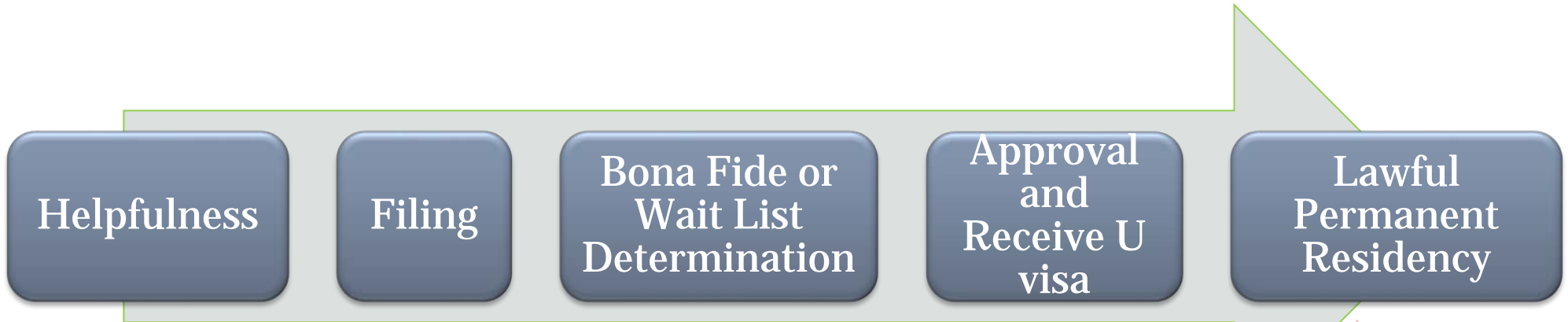
TO.....

- 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

# Ongoing Assistance



Continuing obligation to provide assistance when reasonably requested

# 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 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)

# 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

# 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)

# 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

# Practice Tips

- Proactively address witness intimidation
  - Monitor jail phone calls
  - Conduct wellness checks when appropriate
  - Recognize changes in communication patterns
- Collaborate with victim service professionals
- Communicate with victim's immigration attorney or victim advocate
- Establish safe points of contact with friends and family
- Identify tactics used by offender to assert power and control
- Continually safety plan with victim

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

- Note that 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



# How does this discussion help you address the following on the U visa certification form?

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

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.

# Prosecution Strategies

## PROS

Establish trust

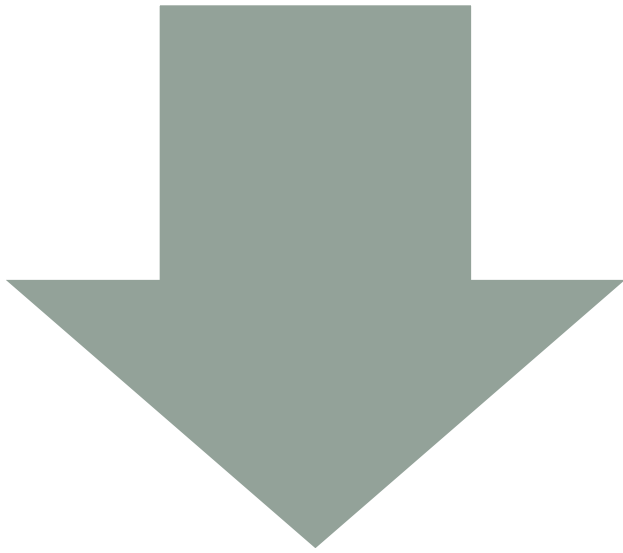
Build rapport

Protect from offender

Protect from deportation

## CONS

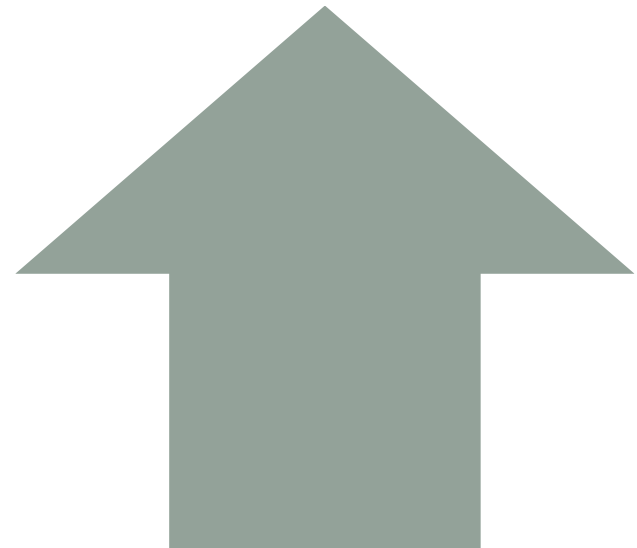
Accusation that victim is lying for immigration benefit



Challenges



Strengths



# 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?

# Excluding Evidence

## Arguments

- Irrelevant
- Probative value is substantially outweighed by potential prejudice

## Examples

- Child victims
- Time lapse between reporting and applying

# 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.”*

# Minnesota v. Niola-Agudo

Minn. Court of Appeals (June 26, 2023)

- Court did not abuse its discretion by preventing a defendant from cross-examining witnesses about immigration status
- Evidence of the child's and mother's immigration status is both irrelevant and unfairly prejudicial
- Courts must balance whether probative value is substantially outweighed by the danger of prejudice, confusion of issues, or misleading the jury
- No allegation or evidence that the victims applied for or intended to apply for U visas



# Educate



# 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?

# Disclosures

“within the State’s possession or control”

- Certification form
- Communication with immigration attorney or advocate
- Accompanying documentation

# 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

# State v. Marroquin-Aldana – Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “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

# 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



# Establishing Timeline

Victim  
statements  
to officers,  
friends, and  
others

**Motive  
to lie**

Testimony  
consistent  
with  
statement

Introduce  
prior  
consistent  
statements

# People v. Sharp,

2021 IL App (1st) 182042-U, ¶ 5

- Defense allowed to ask about the victim inquiring as to the U Visa program
- The court also ruled that if the defense inquired about the U Visa, the State could go into the victim's "prior consistent statement indicating that he said whatever he said way back when before any motive regarding immigration" arose.

# State v. Olvera-Guillen

No. CA2007-05-118, 2008 WL 4616310 \*5

(Ohio Ct. App. Oct. 20, 2008)

- Court allowed defense to call an expert witness to explain the U Visa process
- Prosecutor's comments not condoned by court, but did not lead to a reversal:

“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.”

# Going Forward

Hold offenders accountable by utilizing immigration relief tools

Certify early and strategize how to address at trial

Educate the jury about offenders who target, abuse, and exploit immigrant victims

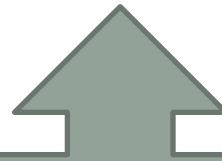
# U Visa Certification Form Highlights



## Supplement B, U Nonimmigrant Status Certification

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

USCIS  
Form I-918  
OMB No. 1615-0104  
Expires 04/30/2021



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

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

## Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)

▶ A-

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

2.a. Family Name  
(Last Name)

2.b. Given Name  
(First Name)

2.c. Middle Name

**Other Names Used** (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

3.a. Family Name  
(Last Name)

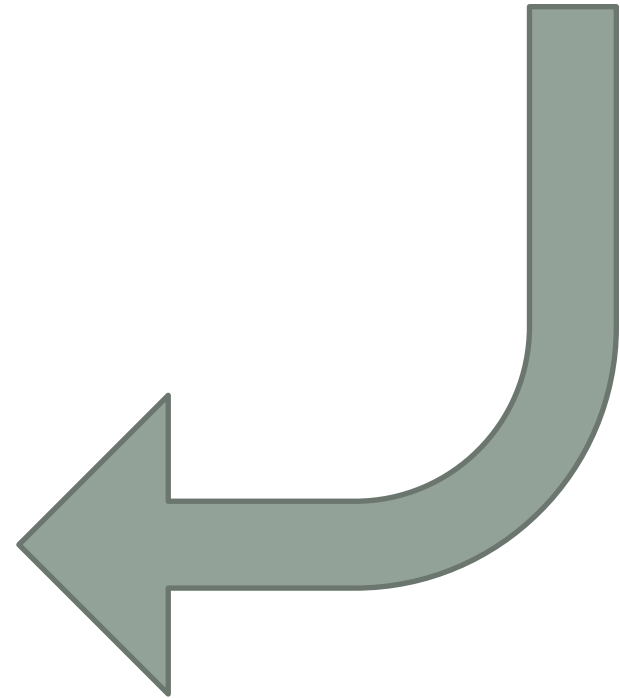
3.b. Given Name  
(First Name)

3.c. Middle Name

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

5. Gender  Male  Female

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



### Part 3. Criminal Acts

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

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

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

You can & should certify multiple offenses when present in the case, even if not charged

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

Provide the dates on which the criminal activity occurred.

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

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

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

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

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

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Attaching state statutory language can be helpful.

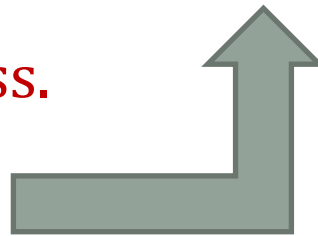


6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.

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Discuss the victim's helpfulness.  
Make copies of all reports and  
photographs and attach.

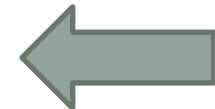


7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

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



## Part 4. Helpfulness Of The Victim

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

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

We will  
talk  
about  
this  
next

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

## Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim?  Yes  No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**)

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
- 2.d. Relationship
- 2.e. Involvement

Because many applications will include domestic violence, this may likely be the defendant.



## Part 6. Certification

I am the head of the agency listed in **Part 2.** or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in **Part 1.** is or was a victim of one or more of the crimes listed in **Part 3.** I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

➔

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

3. Daytime Telephone Number

4. Fax Number

*"I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS"*

REMEMBER: This 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.

# Resources

- ▶ **Technical Assistance**

- ▶ Call: 202.274.4457
- ▶ Email: [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- ▶ Web Library: <https://niwaplibrary.wcl.american.edu/>

- ▶ **Recording and webinar materials page:**

- ▶ <https://niwaplibrary.wcl.american.edu/u-and-t-visa-lea-md>
- ▶ **NIWAP's Podcast Series**
- ▶ <https://niwaplibrary.wcl.american.edu/niwap-podcast-series>

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