

Seeking Justice and Safety for Undocumented Victims & Their Families

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The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.

Who We Are

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



Who We Provide Technical Assistance To

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



General Caveats

- Women, men and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas
- *That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault*

Learning Objectives

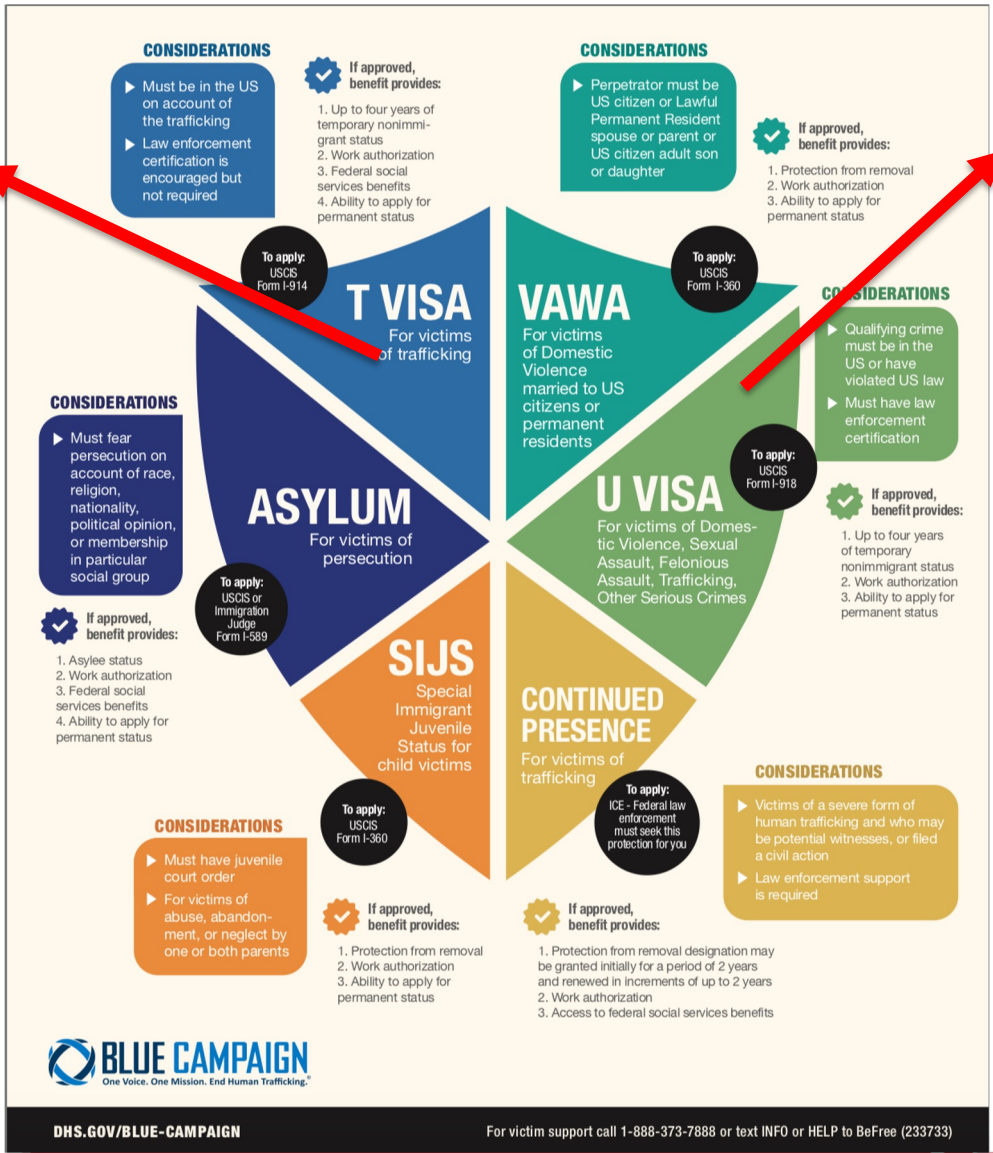
By the end of this workshop, you will be able to:

- 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
- Enhance officer/victim/community safety using language access and certification programs

Immigration Relief for Crime Victims

T VISA
For victims of trafficking

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



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

Legislative Intent

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

Goals of Immigration Relief

Prosecutions

**Community-
police relations**

Improve

**Reporting of
crime**

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

U Visa Statistics

11/2011

% of U Visas	Criminal Activity
76.1% = Domestic Violence & Sexual Violence	
9.9%	Felony Assault, Murder, Manslaughter
8.47%	Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture
5.3%	Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation

How Best Practices in Domestic Violence Investigations Promote Officer Safety

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Immigration Related Abuse

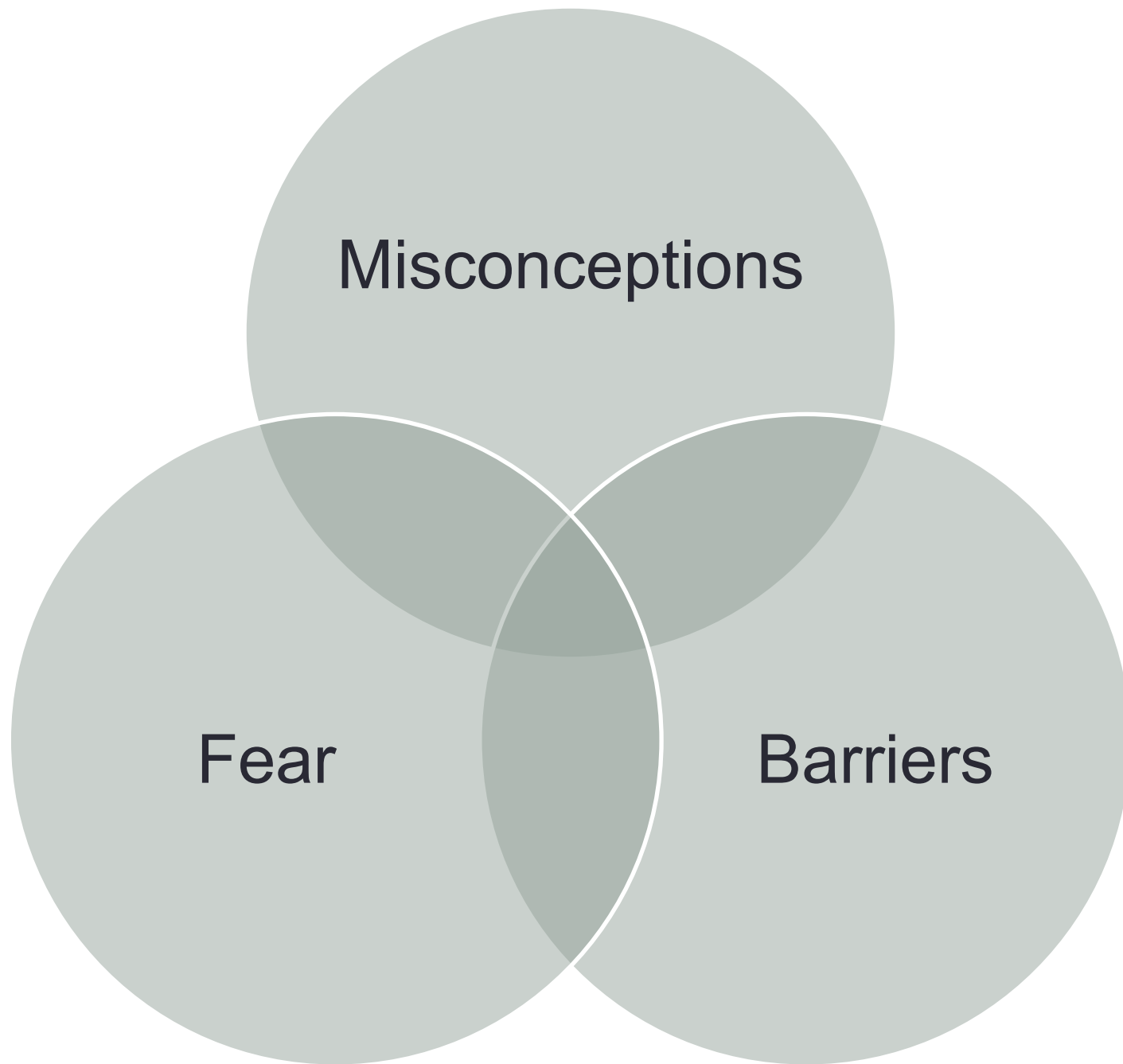
- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her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

Coercive Control Over Immigration Status

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

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

What prevents immigrant victims from reporting crime?



Fears

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

Misconceptions

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

Barriers

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

Immigration relief

Misconceptions

Fear

Barriers

Language access

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



U Visa Benefits to Law Enforcement and Prosecutors

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhanced immigrant community involvement
- Makes it easier to identify victim witnesses
- Reduces repeat calls and recanting victims
- Fosters community policing partnerships
- Enhances officer and community safety

U and T Visa Victims

“Red Flagged”



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

U Visas as a Crime Fighting Tool

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

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.	

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.

U Visa Facts

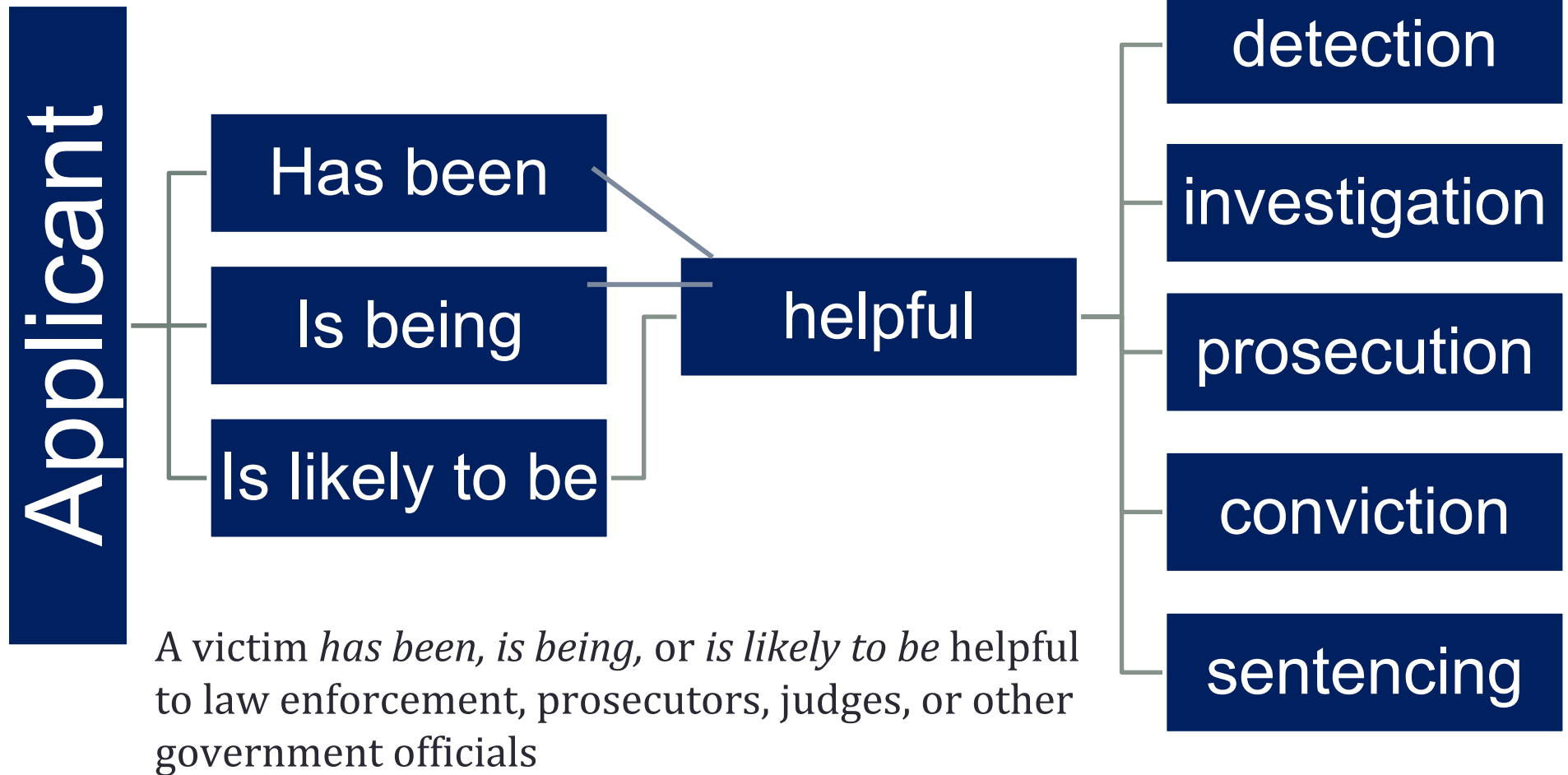
- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

Who can apply?

- Victims of qualifying criminal activity
- Parents and guardians can apply as an “indirect victim” if:
 - the victim is a child under 21 years of age and/or
 - is incompetent, incapacitated, or deceased due to murder or manslaughter
- Bystanders victimization – very limited
- For child victims a “next friend” can provide helpfulness

Definition of “Helpfulness”

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



Determining Helpfulness

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

Example of Helpfulness May Include:

Calling 911

Having a Rape Kit performed

Providing a description of offender or their whereabouts

Allowing photographs to be taken

Filing for a protection order

Bringing a minor victim to court

Providing a statement about "other bad acts"

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

Testifying at a bond hearing, trial, or sentencing

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

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



Victim-
centered
approach

When should you certify?

Filing and VAWA Confidentiality

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



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

Certifying Early

PROS

CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit



Helpfulness

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

- Understand the scope of the helpfulness standard
- Apply the helpfulness standard to U visa certifications



Helpfulness in the Regulations

- Statute and DHS regulations: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or investigation, or
 - Prosecution, or conviction or
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing

Helpfulness can be satisfied even if:

- Victim reports a crime where there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is subject to immigration removal
- The perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history or is subject to immigration enforcement
- Victim fully discloses story after better understanding rights, the U-visa and meaningful language access

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

Reasons for Refusing to Cooperate

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

Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable"

- Considerations:
 - Totality of the circumstances, including the nature of the victimization
 - Victim's fear of the abuser
 - Trauma suffered
 - Force, fraud or coercion

Witness Tampering

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

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

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

U Visa Certification Important Tips



Supplement B, U Nonimmigrant Status Certification

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

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

Part 3. Criminal Acts

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

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

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

You can & should certify multiple offenses when present.

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

Yes No

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

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

Yes No

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

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

Make copies of all reports and attach.

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

Be as specific as possible, highlighting visible injuries observed (even if not photographed).

If you are aware of mental injury, include as well.

Part 5. Family Members Culpable In Criminal Activity

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

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

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



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

Part 6. Certification

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

1. Signature of Certifying Official (sign in ink)



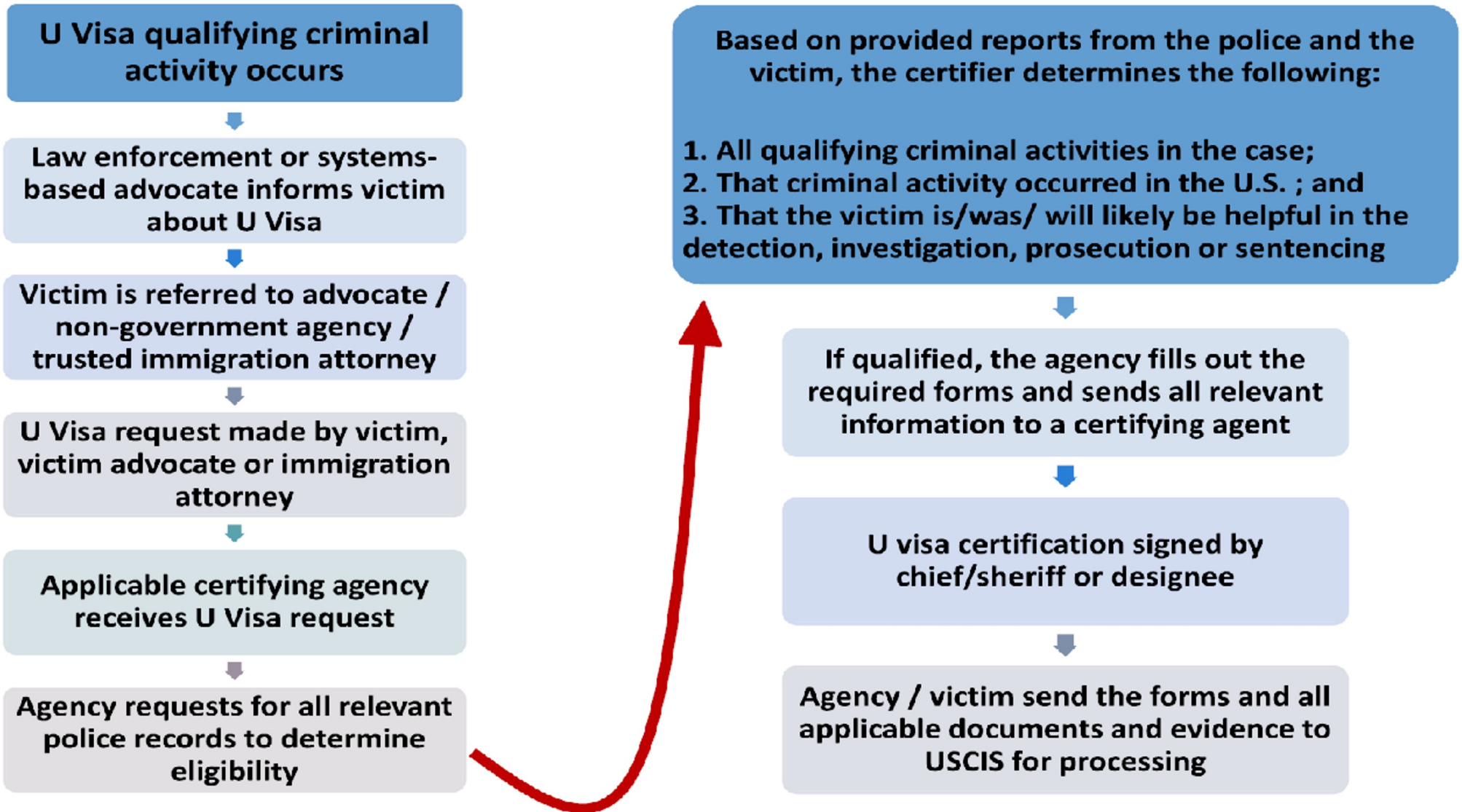
2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

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

U Visa Certification Process



Prosecution Strategies

Rebuttal Testimony

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

Introducing Statements

Establish timeline

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

Victim statements

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

Motive
to lie

Rebut charge that
victim is lying to
get immigration
benefit

Prior Consistent Statements

F.R.E. 801(d)(B)

- Non-hearsay
- Not subject to Crawford
- Any consistent statement
 - offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying
 - to rehabilitate the declarant's credibility as a witness when attacked on another ground

Discovery and Due Process

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

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

Custody and Control

Within

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

Not Within

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

Response to Motions to Compel

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

People v. Alvarez Alvarez

No. G047701, 2014 WL 1813302, at *5

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

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

Collaboration between Law Enforcement and Prosecution

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

Cooperation is key



Resources

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

NIWAP is New Podcast Series

The screenshot shows the Spotify interface for the 'National Immigrant Women's Advocacy Project' podcast. The page features a dark red background with white text. On the left is the Spotify navigation menu. The main content area includes the podcast cover art, the title 'National Immigrant Women's Advocacy Project', and a list of episodes. The 'About' section on the right identifies the podcast as being by the National Immigrant Women's Advocacy Project and lists categories like 'Government' and 'Educational podcasts'.

Spotify SIGN UP LOG IN

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

FOLLOW ...

All Episodes

- Web Library Podcast Dec 2020**
Introduction to NIWAP and the Web Library featuring Leslye Orloff. What NIWAP is, how it came to be, and how to take advantage of its resources (including the web library, local resources, online webinars, training materials, and technical assistance)
Oct 29 · 25 min 42 sec
- Language Access Podcast 2020 - Part Two**
Issues of language access for crime victims and witnesses featuring Detective Shell Sonnenberg from the Boise, Idaho, police department, and Investigator Michael LaRiviere from the Salem, MA Police Department, along with Leslye Orloff, director of NIW...
Oct 29 · 25 min 36 sec
- Language Access Podcast 2020 - Part One**
Issues of language access for crime victims and witnesses featuring Detective Shell Sonnenberg from the Boise, Idaho, police department, and Investigator Michael LaRiviere from the Salem, MA Police Department, along with Leslye Orloff, director of NIW...
Oct 29 · 26 min 42 sec

About
Podcast by National Immigrant Women's Advocacy Project

Government **Educational podcasts**

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NIWAP

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

Virtual Roundtables

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



Thank You!

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