

NIWAP



Best Practices for Responding to, Investigating, and Prosecuting Cases Involving Immigrant Victims of Domestic and Sexual Violence

**Dallas, Oregon
October 4, 2024**

For Law Enforcement, Prosecutors, Victim Advocates, Attorneys,
and State Government Agency Staff

NIWAP

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

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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.

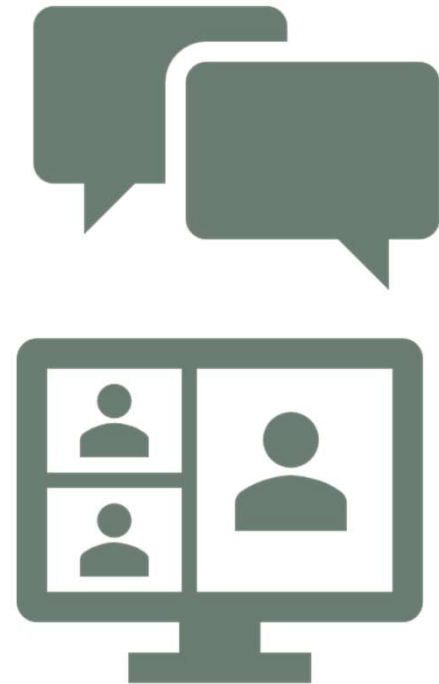
Introduction

- Faculty
- Housekeeping

- We provide Training & 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 the 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 \
 - Meets by monthly
- To register, visit <https://www.surveymonkey.com/r/LERoundtable>



Join a NIWAP Community of Practice

- Family Law Attorneys Community of Practice
www.surveymonkey.com/r/FamCOP2023
 - Meets monthly
- Victim Advocates Community of Practice
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
 - Meets every other month
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>
 - Meets monthly 9-10 times a year

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

- Training materials for:
 - Law enforcement
 - Prosecutors
 - Systems-based victim advocates
 - Judges
 - Attorneys
 - Other victim advocates
- Statutes, regulations, policies, and government publications
- Training tools, webinars, and podcasts
- Language access
 - Multilingual materials
- Immigration
- Law enforcement and prosecution tools
- Family and criminal law
- Violence Against Women Act (VAWA) confidentiality
- Public benefits, legal services, and economic relief
- Dynamics, culture, collaboration, and safety

Materials Summary

- Materials
 - Agenda
 - PowerPoint presentation
 - Evaluations
- Power Point presentations and materials for this conference at <https://niwaplibrary.wcl.american.edu/DallasOR-Oct2024>
- Web Library <https://niwaplibrary.wcl.american.edu/pubs/le-prosecutor-training-materials/>
- USB Drives – Tools and resources

USB Drive Materials



U and T Visa Toolkit For Law Enforcement Agencies And Prosecutors

DHS: U and T Visa Certification Resource Guides

DHS memos and policies

Tools for officers to promote language access

Blue Card Tool Screening Victims for Immigration Protections

Tools for law enforcement and prosecutors working with immigrant survivors

Participant Goals and Expectations



Learning Objectives

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



Describe who qualifies for U and T Visas

Sign U Visa and T Visa certifications to increase victim stability and safety

Collaborate to improve trust with immigrant communities

Develop strategies to overcome common defenses in cases involving immigrant victims

DYNAMICS OF INTIMATE PARTNER
VIOLENCE, STALKING, SEXUAL
ASSAULT, AND HUMAN TRAFFICKING
INVOLVING IMMIGRANT VICTIMS

Learning Objectives



Describe your community's demographics

Identify how offenders use immigration status to assert power and control

Minimize barriers to victim disclosures

What countries are you seeing immigrant survivors coming from?

Oregon Data (2022)

*Sources: Migration Policy Institute Data Hub
(November 2023) and Lawful Permanent Resident
estimates MPI and DHS (2022)*

Oregon (2022)

- ❖ Total foreign-born population – 420,943
- ❖ 9.9% of the state's ~ 4.2 million people are foreign born
 - 47.9% naturalized citizens
 - 29% legal permanent residents (as of 2019)*
 - 23.1% temporary visa holders or undocumented immigrants
- ❖ 45.3% rise in immigrant population from 2000 to 2022
- ❖ Length of time immigrants have lived in the U.S.
 - 47.9% entered before 1999
 - 23.5% entered 2000 - 2009
 - 28.7% since 2010
- ❖ 21.7% of children under age 18 have one or more immigrant parents
 - 91.0% of these children are native-born U.S. citizens

Oregon – Countries/Regions of Origin & Limited English Proficiency (LEP)(2022)

- ❖ Latin America – 43.8%
 - ❖ Mexico (34.0%)
- ❖ Asia – 29.1%
 - ❖ China/Taiwan (6.5%)
 - ❖ South Central Asia (8.3%)
 - ❖ Vietnam (6%)
 - ❖ India (4.9%)
- ❖ Europe – 14.2%
 - ❖ Eastern Europe (6.4%)
- ❖ Africa – 3.8%
 - ❖ Eastern Africa (1.8%)
- ❖ Canada – 3.6%
- ❖ Middle East – 3.4%
- ❖ Oceania – 2.1%
- ❖ Language spoken
 - ❖ 15.3% of people in the state who speak a language other than English at home
 - ❖ 43.3% of foreign-born persons are LEP - speak English less than “very well”

Oregon-Languages Spoken at Home (2022)

- ❖ Spanish (363,810)
- ❖ Chinese (including Mandarin, Cantonese) (29,377)
- ❖ Vietnamese (25,968)
- ❖ Russian (18,376)
- ❖ German (13,875)
- ❖ Tagalog (including Filipino) (12,829)
- ❖ French (including Cajun) (12,163)
- ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (10,849)
- ❖ Japanese (9,922)
- ❖ Korean (9,870)
- ❖ Nepali, Marathi, or Other Indic Languages (8,565)
- ❖ Arabic (8,368)
- ❖ Hindi (6,950)
- ❖ Amharic, Somali, or Other Afro-Asiatic Languages (6,493)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (5,138)
- ❖ Persian (including Farsi, Dari) (4,166)
- ❖ Italian (2,535)

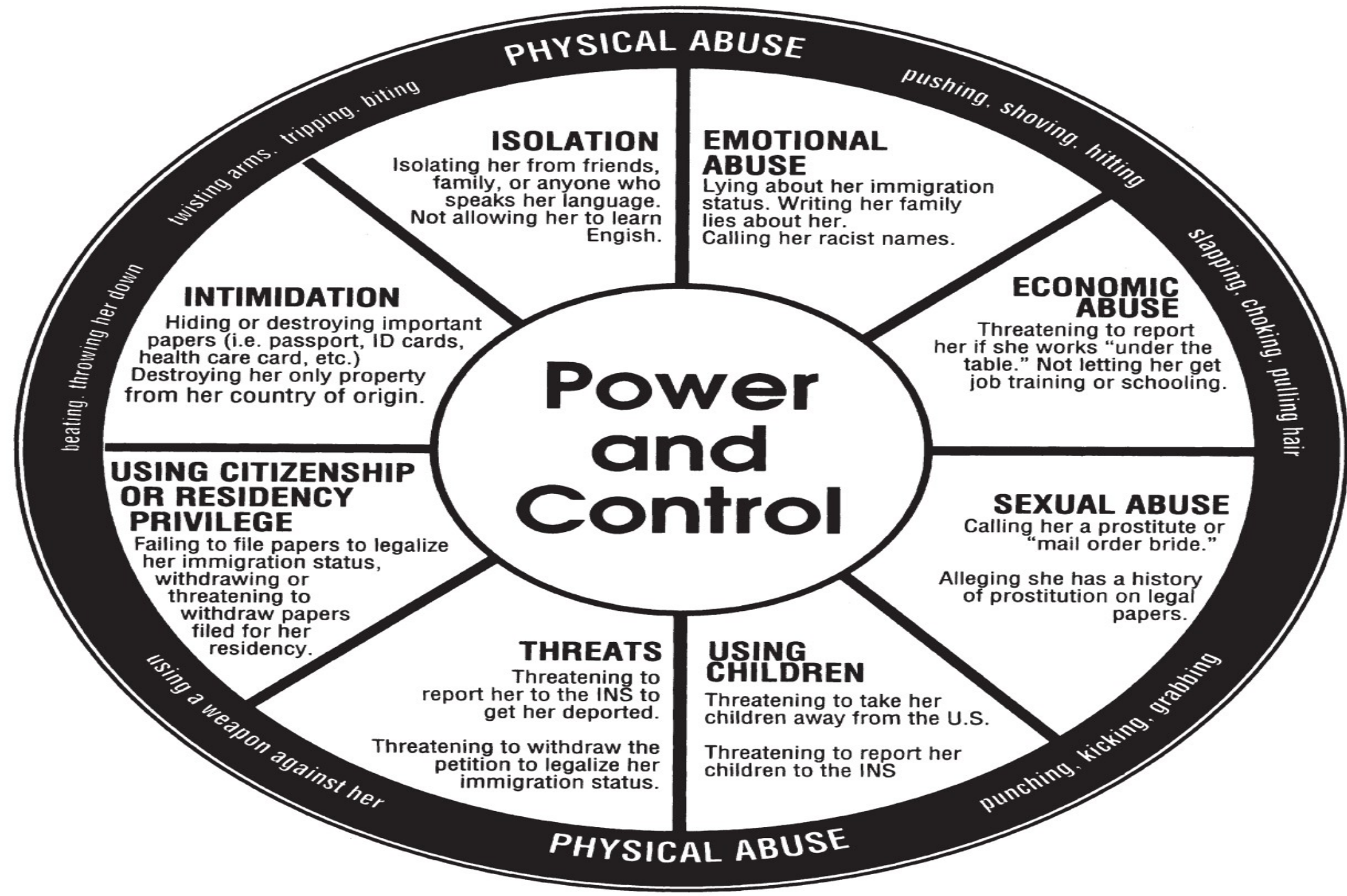
Oregon - LEP (2022)

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 32.6%
 - ❖ Noncitizens – 53.2%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Vietnamese (58.3%)
 - ❖ Thai, Lao, or Other Tai-Kadai Languages (53.0%)
 - ❖ Chinese (including Mandarin, Cantonese) (48.2%)
 - ❖ Korean (40.7%)
 - ❖ Spanish (37.3%)
 - ❖ Russian (35.7%)
 - ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (40.7%)
 - ❖ Japanese (18.2%)
 - ❖ Arabic (29.1%)
 - ❖ Tagalog (including Filipino) (26.6%)
 - ❖ French (including Cajun) (10.0%)

How can immigration status and LEP affect victimization?

Immigration Power & Control Wheel

Adapted by Futures Without Violence and Ayuda



Large Group Discussion

- What are some specific tactics used by offenders seeking to assert power and control over immigrant victims of...
 - Intimate Partner Violence
 - Sexual Assault
 - Stalking
 - Child abuse
 - Human trafficking

Department of Homeland Security



- DHS Video

Immigration-Related Abuse

- 65% of immigrant survivors report some form of immigration-related abuse (NIJ, 2003)
- Abuse rates among immigrant women is almost three times the national average*
 - 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%

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

Immigration-Related Abuse, cont'd.

- Among abusive spouses who could have filed legal immigration papers for survivors*:
 - 72.3% never file immigration papers
 - Mean delay of 3.97 years with those who did file
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
- Forcing partners to work with false documents

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

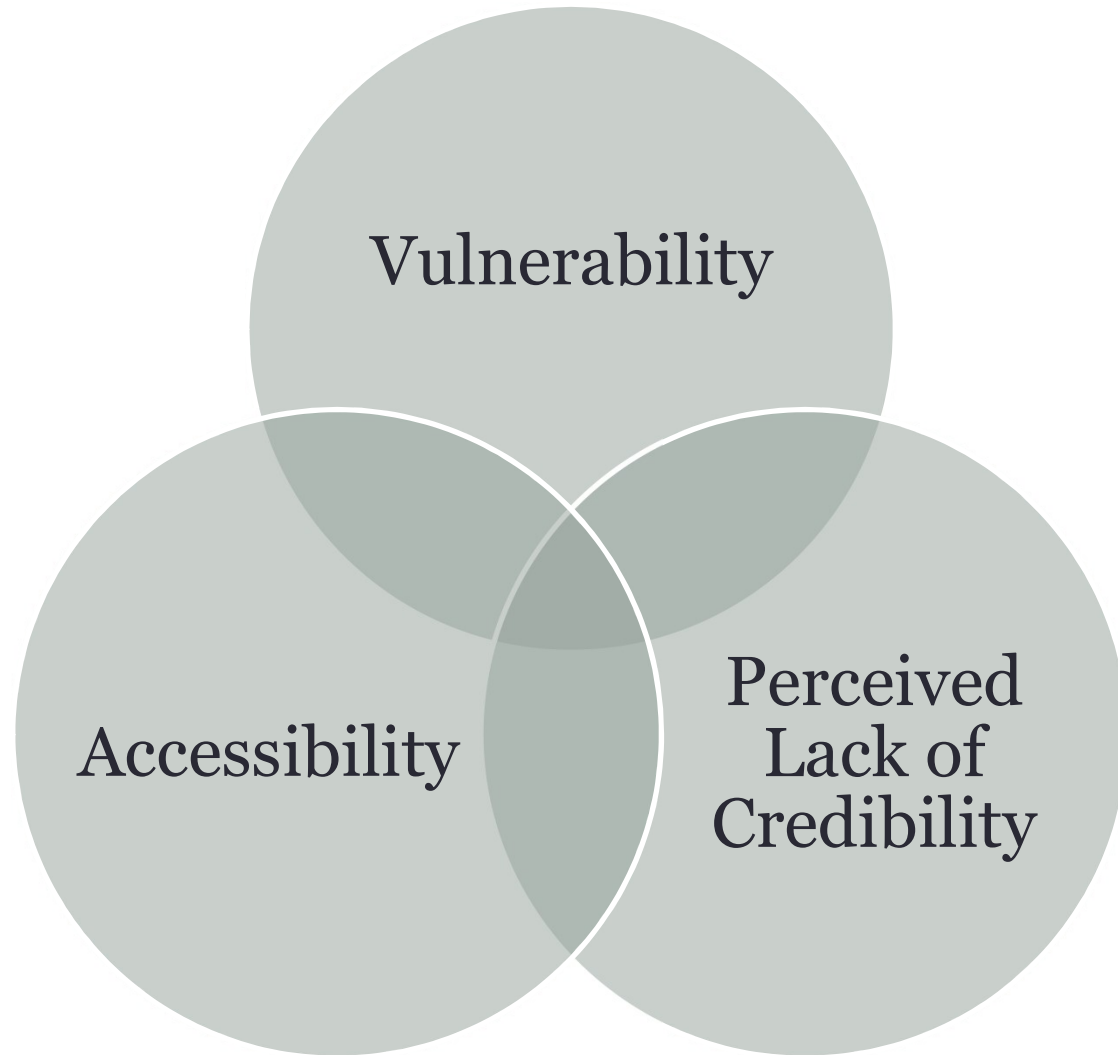
Immigration-Related Abuse, cont'd.

- Threats or attempts to have immigrant partner deported or have case denied
 - 25% of perpetrators actively report the victim for removal
- Using language proficiency to manipulate law enforcement
 - 36% of perpetrators get immigrant and LEP victims arrested for domestic violence*

*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)*

The Perfect Plan

Sexual Assault & Human Trafficking



Screening

Immigration-related abuse...

10x higher in relationships with physical/sexual abuse as opposed to psychological abuse*

May predict abuse escalation

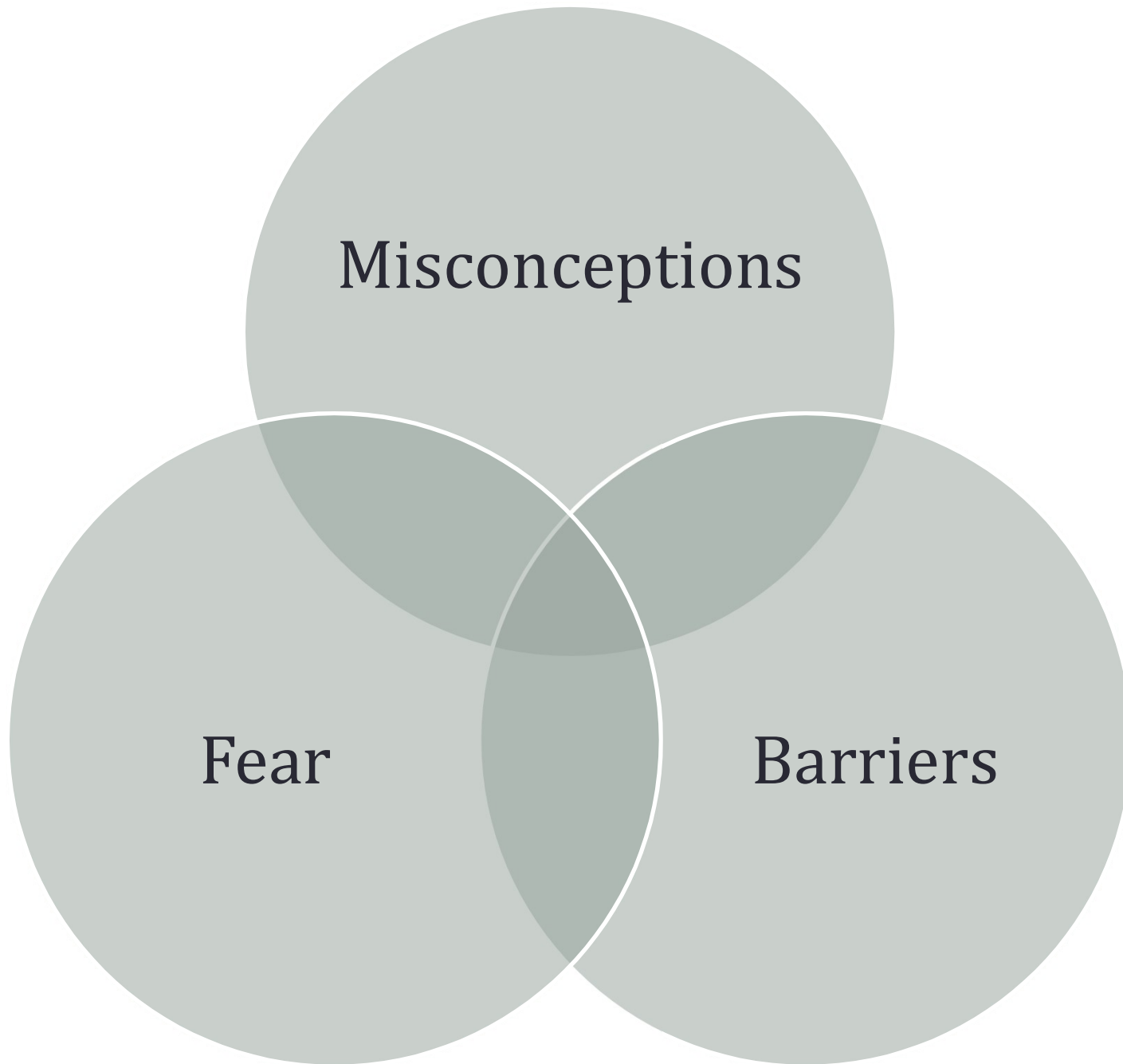
Corroborates existence of physical and sexual abuse

*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)

Sexual Assault and Immigrants

- High school aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
 - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).
- Latina college students
 - Experience the highest incidents of attempted rape compared to White, African American and Asian college students
 - Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000).

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

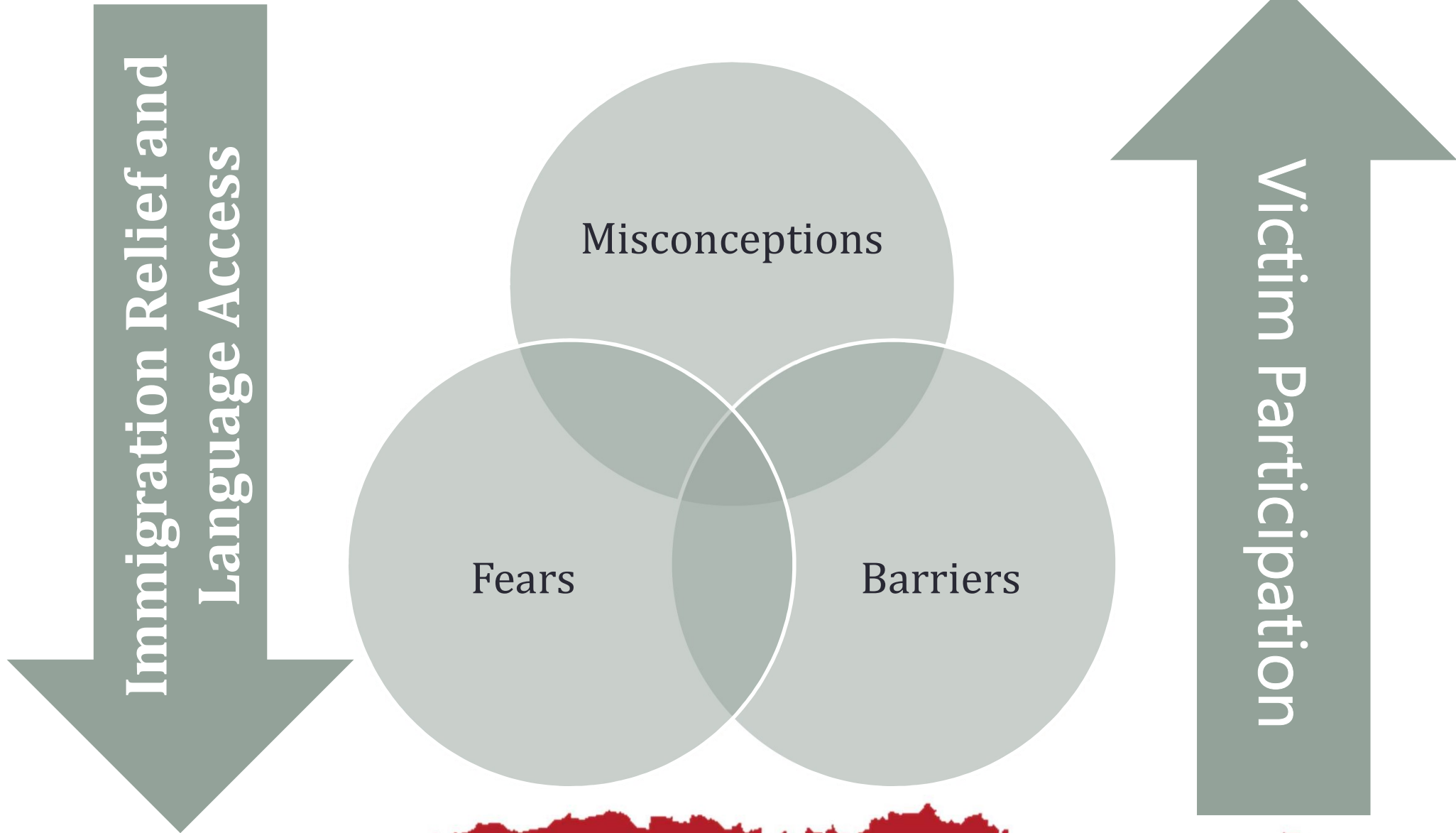
Misconceptions

- 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

Lack of Reporting



Language Access

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

What Are the Consequences of Not Providing Qualified Interpreters

- For Victims?
- For Law Enforcement?
- For Prosecutors?

Consequences of Lack of Language Access - Victims

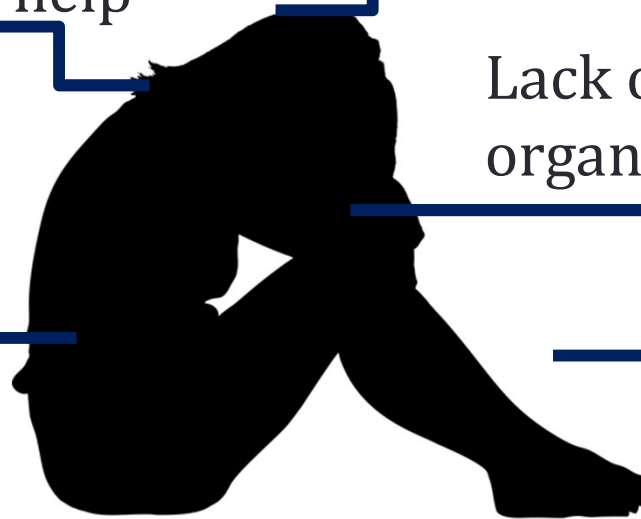
If programs are not accessible, survivors will not seek help

Perpetrators are rewarded: cycle of victimization continues and worsens

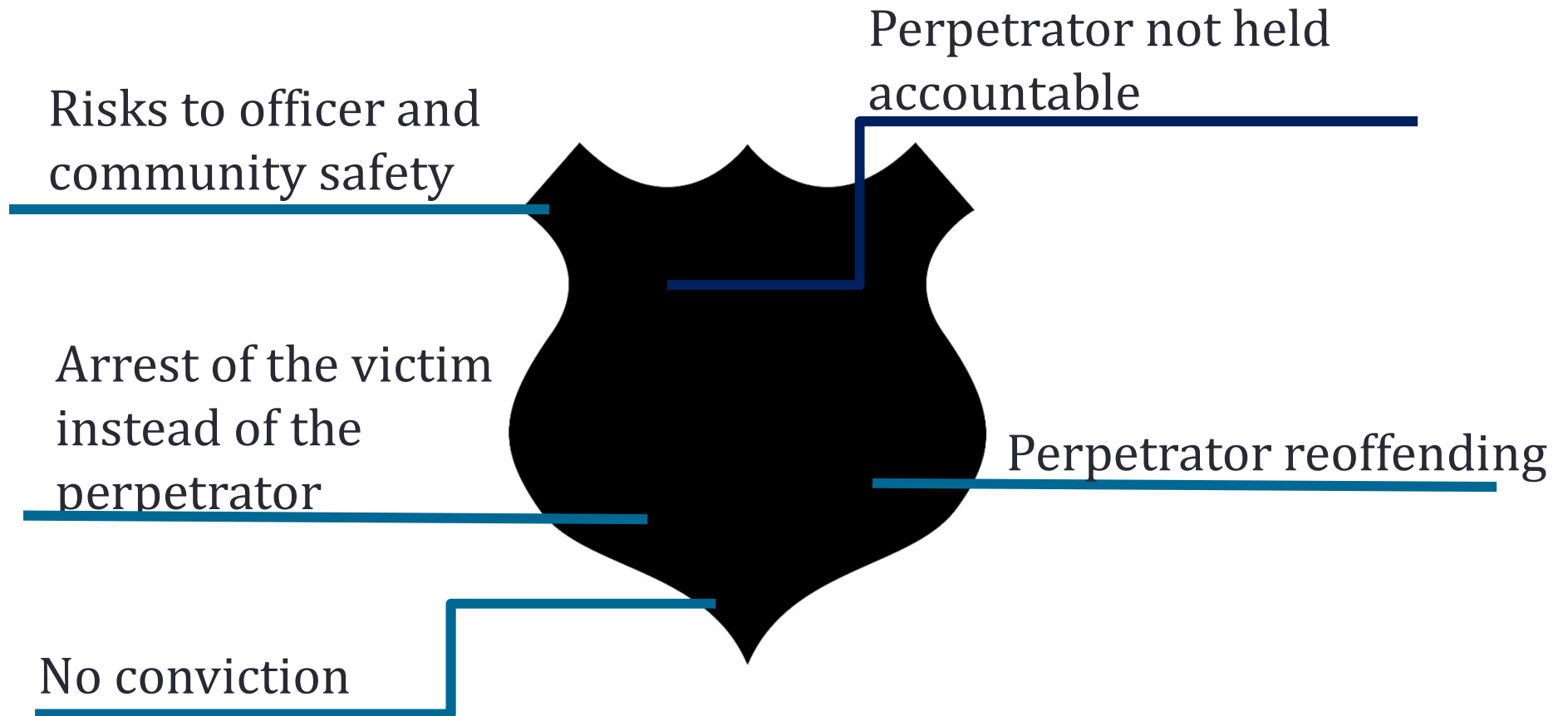
Lack of community trust in your organization

Risk to life and safety of the victim

Re-victimization



Consequences of Lack of Language Access – Police & 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

Large Group Discussion

- Why do think this model policy exists?

Source of Language Access Laws

- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- LEP Executive Order 13166 (2001)
 - Requires all agencies receiving any federal financial assistance to
 - Ensure meaningful language access
 - Develop and implement language access plans
 - “Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith.”

“Meaningful Access”

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

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

Title IV

- Any recipient of federal financial assistance has a responsibility to ensure access/understanding to LEP persons
- The U.S. Department of Justice (DOJ) strongly suggests, but does not require, a written language assistance plan be put in place (this does not preclude the obligation of the recipient)
- The DOJ discourages the use of informal interpreters (e.g., family members, guardians, caretakers, friends) except in limited or emergency situations
- The DOJ leaves the determination of what documents need to be translated for the benefit of the LEP persons up to the recipient

****We can't afford language access:

This is not an acceptable excuse****

First responders –
What do you do when
you arrive at a crime
scene?



First Response

- Locate and secure the scene
- Are there any weapons?
- Is anyone injured?
- Identify the people involved
 - Victim
 - Offender
 - Witnesses
- If offender is not on the scene
 - Where is the suspect?
 - Are they a continuing danger?
 - Is suspect in possession of weapon?



Crime Scene Language Access

Large Group Discussion

- What do you do when the people at the scene are limited English proficient?
- How can you get the information you need *to secure the scene?*

What is the Difference Between

- Securing the scene
- Interviewing victims and witnesses



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

Using Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements (excited utterances)

Harms

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation results in inaccurate statements
- Trauma to children

“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.”

Bilingual Officer v. Interpreter

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



Vetting and Preparing Noninterpreters

- In some emergencies and exigent circumstances, it may be necessary to use a third-party bilingual individual until a phone, interpreter, or qualified bilingual member arrives
- Qualifying questions
 - Ask for experience or credentials: Is the person educated in both languages?
 - Have they worked in both languages?
 - How did they learn the language?
 - Relationship to the party?
- Review the interpreter role
 - Complete -- Accurate -- Neutral
- Record the use of a third-party bilingual speaker

Tips for Working with Interpreters

- Control the interview
- Pre-session with the interpreter
 - Where are they located?
 - Establish what your rules are
 - Hand signals
- Interpreter has to interpret everything that you say
 - Example: when you are explaining confidentiality

Working Effectively With An Interpreter - I

- Tell the interpreter the circumstances/conditions
 - Speakerphone vs. passing the phone, ensuring telephonic interpreter pauses
- Tell the interpreter and LEP individual that everything will be interpreted (false starts, mumbling, cursing, and thinking out loud)
- Maintain pauses/hand signals to regulate the speaker
- Be attentive to extraneous noise

Working Effectively With An Interpreter - II

- Conduct team interpreting for events lasting more than two hours
- Be aware of a LEP individual's education level, the interpreter will NOT adjust
- Explain and break down the system and legal concepts
- Do not give the interpreter any explanatory responsibilities

Working Effectively With An Interpreter - III

- Use straight, simple, direct language; short phrases; and first and second person
- Speak slower not louder; go sentence by sentence and pause
- Talk through, not to, the interpreter; continue to speak to the LEP individual and maintain eye contact as if the interpreter is not present

Working Effectively With An Interpreter - IV

- Do not ask the interpreter for their opinion about the LEP individual
- Have patience; interpreted interviews will take longer
- Be aware of interpreter fatigue
- Check and recheck to be sure that the client understands using open-ended questions
- Do not be afraid to step in if you see something amiss
- Thank the interpreter!

Spotting a Bad Interpreter

- Can you understand the interpreter?
- Does the individual look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter engaging in conversations with the individual before/after the interpretation meeting?
- Is the interpreter summarizing?
- Is everything being interpreted ?
- Is the interpreter using English words?
- Is there a change in the individual's demeanor?

Language Resources

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



IMMIGRATION RELIEF FOR VICTIMS OF
VIOLENT CRIMES AND
HOW U AND T VISA ARE CRIME
FIGHTING TOOLS

Objectives



Utilize immigration relief as a crime fighting tool to identify and prosecute dangerous offenders

• Identify the prosecutor's and law enforcement's role where victims are eligible for immigration relief

• Enhance victim safety and stability by providing access to immigration relief and language access



Personalized
QR Code
Generator
for Office

Immigration Protections for Noncitizen Victims of Crime and Abuse

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply:
USCIS
Form I-914

T VISA

For victims of human trafficking

To apply:
USCIS
Form I-360

VAWA

For victims of domestic violence and abuse

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

ASYLUM

For victims of persecution

To apply:
USCIS
Form I-589



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

SIJ

Special Immigrant Juvenile classification for child victims under 21 years of age

To apply:
USCIS
Form I-360

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

U VISA

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes

To apply:
USCIS
Form I-918

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



Center for Countering
Human Trafficking

DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)
All U.S. Citizenship and Immigration Services (USCIS) forms can be found at: www.uscis.gov/forms/all-forms

Immigration Relief Tools

Law Enforcement, Prosecutors, Government Agency Involvement

U Visa

Available to most victims of violent crime

T Visa

Available to victims of human trafficking

Continued Presence

Short-term immigration relief to newly-identified victims of trafficking

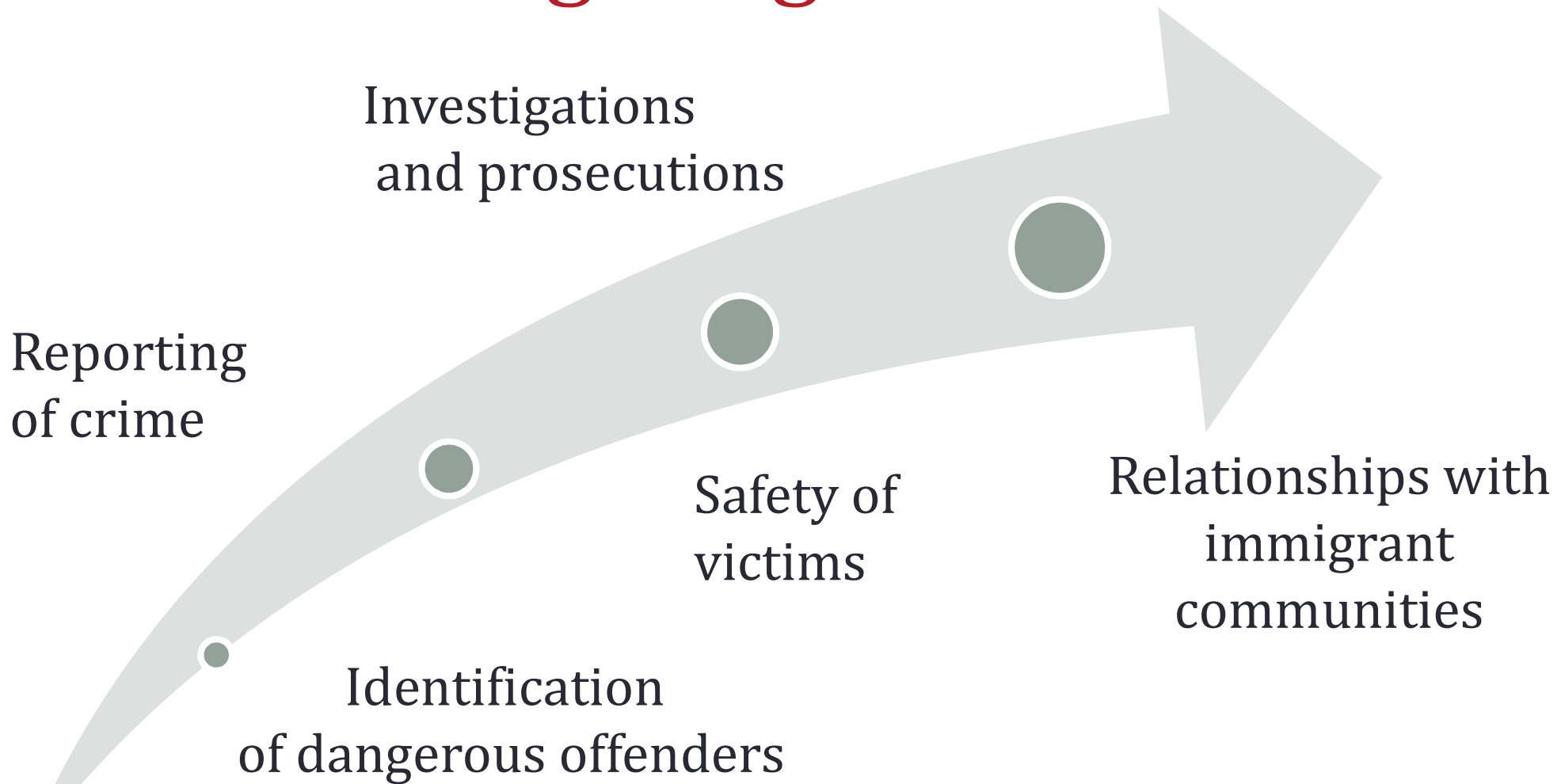
Small Group Activity

- Why do you think these forms of immigration relief exist for victims of crime?
 - Make a list
 - Report back

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 do not know about the most dangerous offenders
 - Domestic violence
 - Sexual violence

Immigration Relief as a Crime Fighting Tool



How do immigration relief and language access promote officer safety?

IACP 2018 Resolution

- Recognizes U as a significant crime fighting tool
- Recommends using U Visas as best practice
- Supports training, education, communication and “increased police leadership involvement”
- Commits to increasing collaboration

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

How much do you know about the
U Visa? T Visa? Continued
Presence?

U Visa Basics

- Law enforcement certification is just one part of the overall process; it does not equal citizenship
- Meant to promote the reporting of crime
- Target offenders who prey on the most vulnerable victims
- Offender may be a citizen or noncitizen
- Victim can be lawfully present or undocumented
- Increases immigrant victim participation in the criminal justice system
- No statute of limitations
- Can be revoked

U Visa Requirements

Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Helpfulness

- Victim has been, is being, or is likely to be helpful in *any of the following*:
 - Detection
 - Investigation
 - Prosecution
 - Conviction
 - Sentencing

Harm

- Substantial physical or mental abuse as a result

This is not a part of the certification.

Who can apply?

- Parents and guardians can apply as an “indirect victim” if:
 - The direct victim is a child under 21 years of age and/or is incompetent, incapacitated, or deceased due to murder or manslaughter
 - They demonstrate helpfulness
- 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

Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
 - Child/elder 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
- Abusive sexual contact
- Sexual exploitation
- Unlawful criminal restraint

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

Similar Criminal Activity

- 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 include felonious assault, depending on the evidence and state law definition

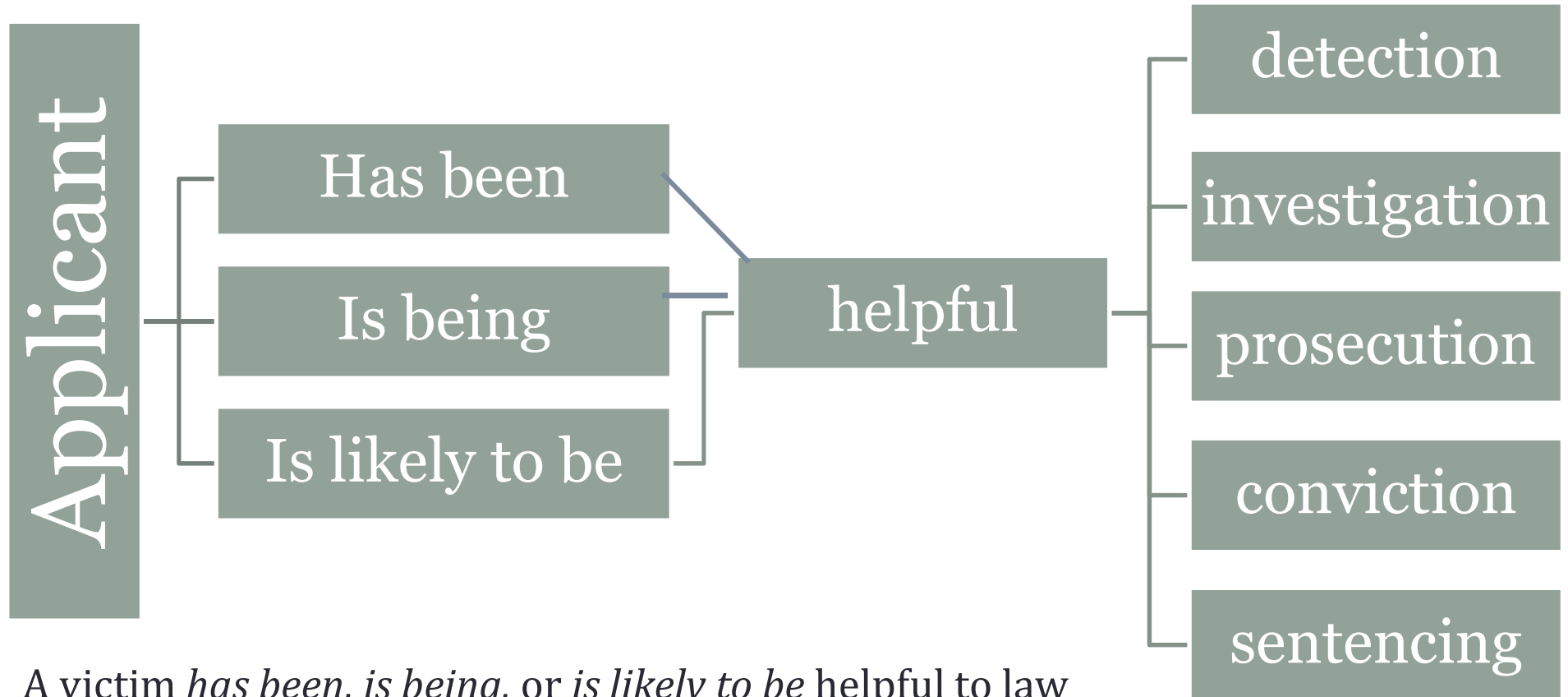
U Visa Statistics

NIWAP 11/2011 and USCIS 2020

% of U Visas	Criminal Activity
58% to 76.1% = Domestic & Sexual Violence, Crimes Against Children & Human Trafficking	
50%	Felony Assault, Murder, Manslaughter
9%	False Imprisonment, Kidnapping, Being Held Hostage, Unlawful Criminal Restraint
4% - 5.3%	Torture, Stalking, Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation, Other U Visa Criminal Activities

Definition of “Helpfulness”

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



A victim *has been, is being, or is likely to be* helpful to law enforcement, prosecutors, judges, or other government officials

Small Group Activity

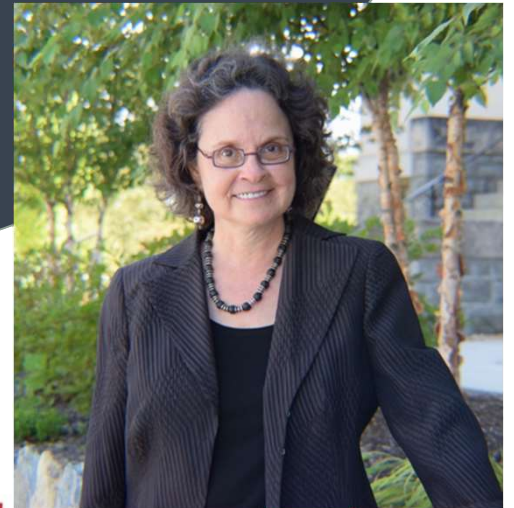
- Meet as a group to review and discuss the assigned case study
 - Make a list of the criminal activities experienced by the victim
 - Identify the ways that the victim provided or is providing helpfulness
 - Would you certify?
 - What are the questions you want to be able to answer about certification in this case
- Handouts: Helpfulness Definition and U visa criminal activity list

Who Can Certify?

*“law enforcement” & “law enforcement agencies” =
Head of agency or designee*

- Federal, state, and local
 - Law enforcement
 - Prosecutors
 - Judges, magistrates, commissioners, and other judicial officials
- Child and Elder Abuse agencies
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Other government agencies with investigative authority

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



Let's Make a List of All the Agencies in Your State or Local Jurisdiction Who Are...

- Law enforcement agencies
- Prosecution agencies
- Judicial decision makers
- Other government agencies with civil, criminal, or administrative investigative authority

Oregon - ORS 147.620(1)&(10) Certification Procedures

- Defines Certifying Agencies as
 - State or local law enforcement agency
 - Prosecutor's or district attorney's office
 - The Judicial Department, with respect to a judge of a state court acting as a certifying official
 - A judge other than a judge of a state court and
 - Any other agency with responsibility for detection, investigation or prosecution of criminal activities, including but not limited those defined in 8C.F.R. 214.14.
 - Child and adult protective services
 - State labor enforcement agencies
 - State agencies with civil or criminal investigative authority
- Certifying agencies required to designate certifiers, develop written procedures, and report on certifications and denials annually

Oregon ORS 147.620 (2) & (4) Certification Procedures

- Upon the request of a victim or a victim's representative, a certifying official shall –
 - Certify on the USCIS certification form that the victim has been helpful if
 - The victim is a victim of a U visa covered criminal activity as defined by USCIS
 - The victim has been helpful, is being helpful or is likely to be helpful to the detection, investigation or prosecution of the qualifying criminal activity
 - Rebuttable presumption of helpfulness when the if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement

Oregon ORS 147.620 (5) Certification Procedures

- A certifying official processing a certification under this section shall:
 - Fully complete and sign the certification form
 - Include on the form specific details about
 - The nature of the qualifying criminal activity investigated or prosecuted and
 - A detailed description of the victim's helpfulness or likely helpfulness
 - If the qualifying criminal activity was committed by an adjudicated youth as defined in ORS 419A.004 the certifying official shall include only
 - The name of the adjudicated youth;
 - The case number, if applicable;
 - And A description of the qualifying criminal activity.

Oregon ORS 147.620 (6) & (7) Certification Procedures

- Certifying officials shall grant or deny certification
 - Within 90 days of the request, or
 - 14 days if the victim is in removal proceedings
- Many only deny certification for
 - Lack of U visa covered criminal activity
 - Lack of past, present *OR* likely future helpfulness
 - Lack of jurisdiction over certification request
 - Other basis for which a certification may lawfully be denied

Oregon ORS 147.620 (7)& (8) Certification Procedures

- Denials must be in writing and state: authorized reason, date, and internal case number. Denials are not appealable
- Victim receiving denial may:
 - Provide supplemental information to certifier
 - Seek certification from another certifier
- Agencies prohibited from disclosing immigration status of victim
- Certification documentation confidential unless
 - Required by state or federal law or legal process;
 - Required by ORS 135.815 (Disclosure to defendant)
 - Constitutionally required
 - Requested by a law enforcement agency and necessary for the investigation of a criminal charge, or
 - Authorized by the victim.

The U Visa Process and How It Promotes Victim Safety, Stability, and Greater Justice System Participation

U Visa Facts

- Only 10,000 U visas can be given annually
 - Cap created significant wait for U visa
- The U Visa grants a temporary 4-year stay
- Many U Visa holders will qualify for lawful permanent residency
- U.S. citizenship may be attained after lawful permanent residency for 5 years + proof of good moral character

U Visa Process Timeline

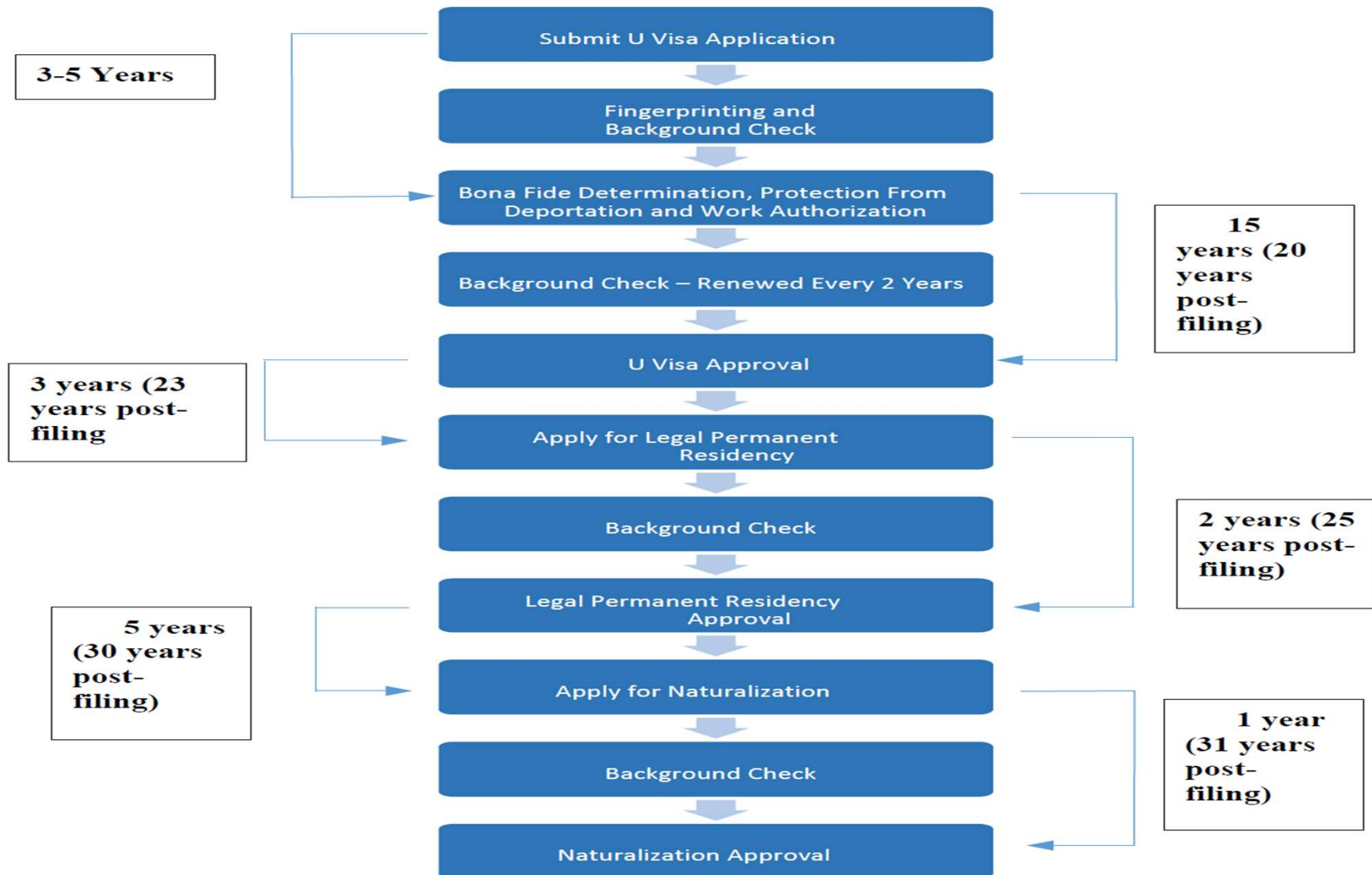
NIWAP



AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW

U Visa Timeline with Background Checks

By Katelyn Deibler, Faiza Chappell, and Leslye E. Orloff
August 11, 2024



At Filing Victims “Red Flagged”



- Department of Homeland Security (DHS) computer system “red flags” victims who have filed for victim-based immigration relief
- Reminds DHS staff of legal obligation not to rely on “tips” from perpetrators
- Immigration case brought against a victim can be dismissed for VAWA confidentiality violation
 - 8 U.S.C. 1367
- Practice tip: Victims should always carry documentation with them

Bona Fide Determination Process

Implemented on June 14, 2021

- USCIS exercises its discretion to grant
 - Employment Authorization
 - Deferred Action
 - Formal protection from deportation
- Applies to victims and qualifying family members with pending, bona fide applications
 - “Bona fide” generally means made in good faith, without fraud or deceit

After Work Authorization and Deferred Action U Visa Applicants Report Future Crimes At Higher Rates

- Increases justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 60% seek protection orders and/or custody
 - 22% help other victims report abuse and seek help/justice
- Significantly reduces 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

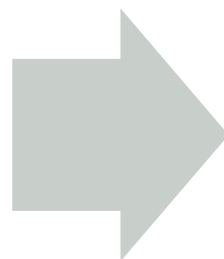
Certification and Helpfulness

Role of Certifying Official

Certification



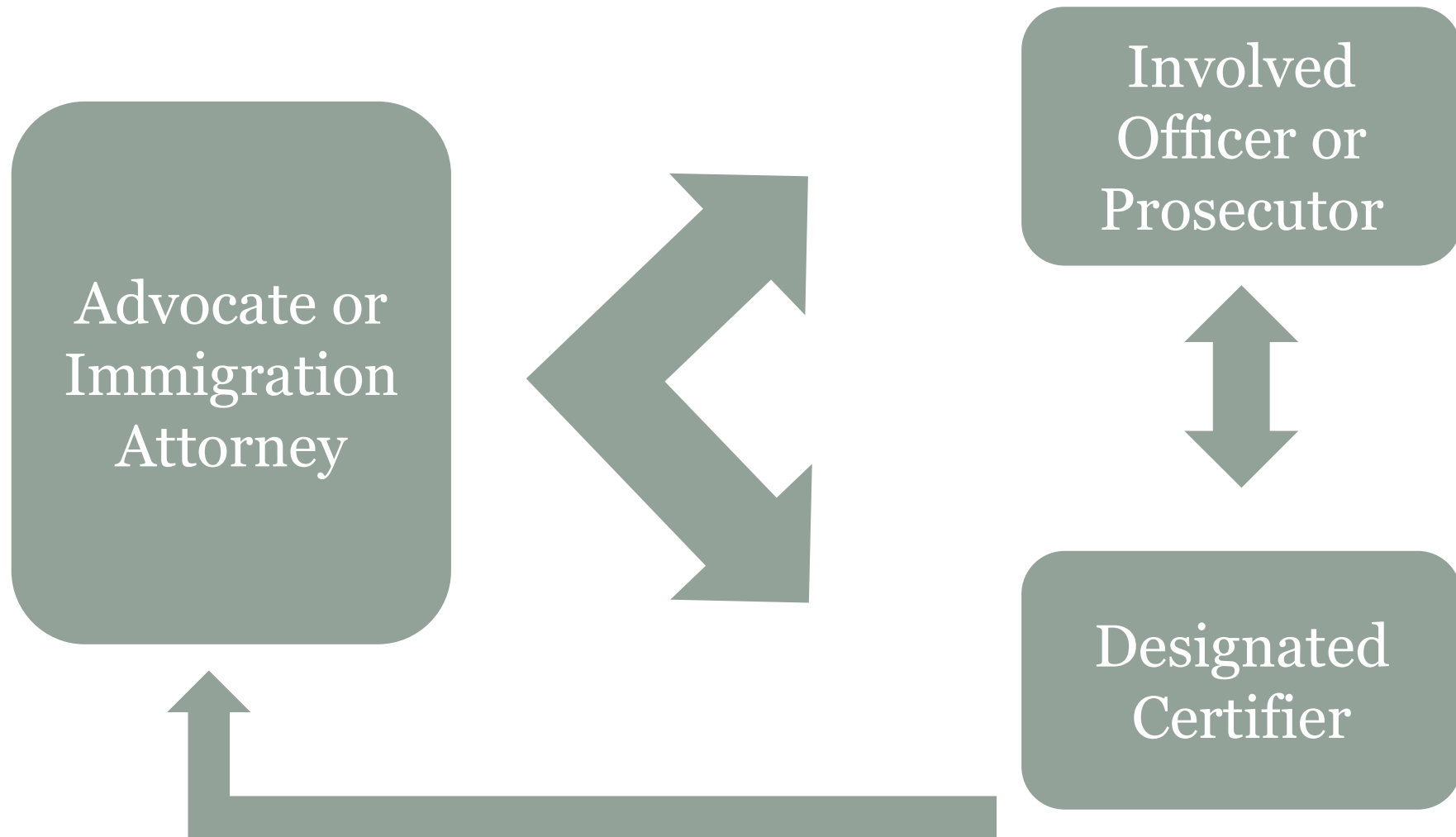
Supporting
documentation



U Visa
Application

How are you involved in the certification process?

Certification Review



Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree (or timing) of helpfulness is 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
- Investigation or prosecution can still be ongoing

Small Group Activity

- Make a list of the types of helpfulness to law enforcement, prosecutors, judges, courts, or the EEOC a victim of the following crimes could offer:
 - Domestic violence
 - Child abuse
 - Sexual assault
 - Human trafficking
 - Felonious assault

Examples of Helpfulness

Calling 911

Having a Rape Kit performed

Providing a description or location of offender

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

ACTIVITY: CASE SCENARIOS

Small Group Activity

- Review the case scenario assigned
- Determine who, if anyone, qualifies for a U visa
- What are the criminal activities?
- What helpfulness was provided?
- Would you certify or recommend certification?
- What questions do you have or want to be able to answer for the certifier in your agency?
 - Use Helpfulness-Criminal Activities Handout

Small Group Activity Report Back

- Discuss each of the scenarios assigned

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
 - Prosecution or conviction
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess a victim's helpfulness
- The investigation or prosecution can still be ongoing

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
 - The detection, investigation, and prosecution of perpetrators of serious crimes
- Promoted by use of qualified interpreters

Not Required

- Within the statute of limitations
- 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

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

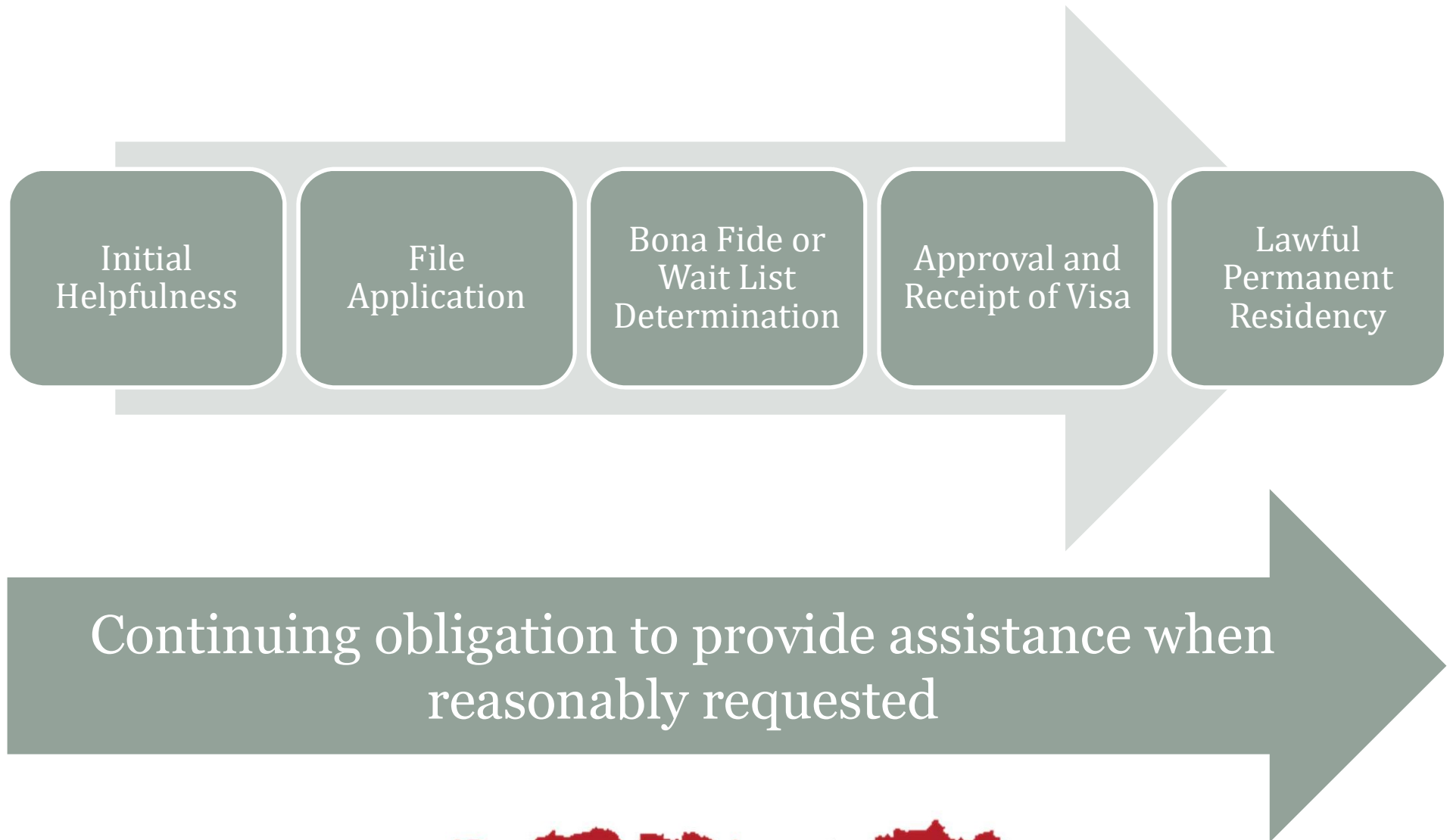


U Visa Benefits to Law Enforcement and Prosecutors

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases the potential to convict the most dangerous criminals
- Build trust with U visa victims that can solve other crimes
- 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

Obligation to Provide Ongoing Assistance and Exception

Ongoing Assistance



Helpfulness vs. Cooperation

Helpfulness 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 and for permanent residency

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

Analysis

Is the request
reasonable?

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

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

Is the refusal
unreasonable?

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

Unreasonable Requests

- Subjective, but consider if the request:
 - Endangers victim, witnesses, family members, or others
 - Subjects the victim to greater harm
 - Increases trauma to victim
 - Negatively affects the victim's ability to support their family
 - Is reasonable in light of the perpetrator's force, fraud or coercion of the victim

Was the refusal unreasonable?

Unreasonable refusals are subjective, but consider if it is reasonable to refuse a request if the victim is:

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

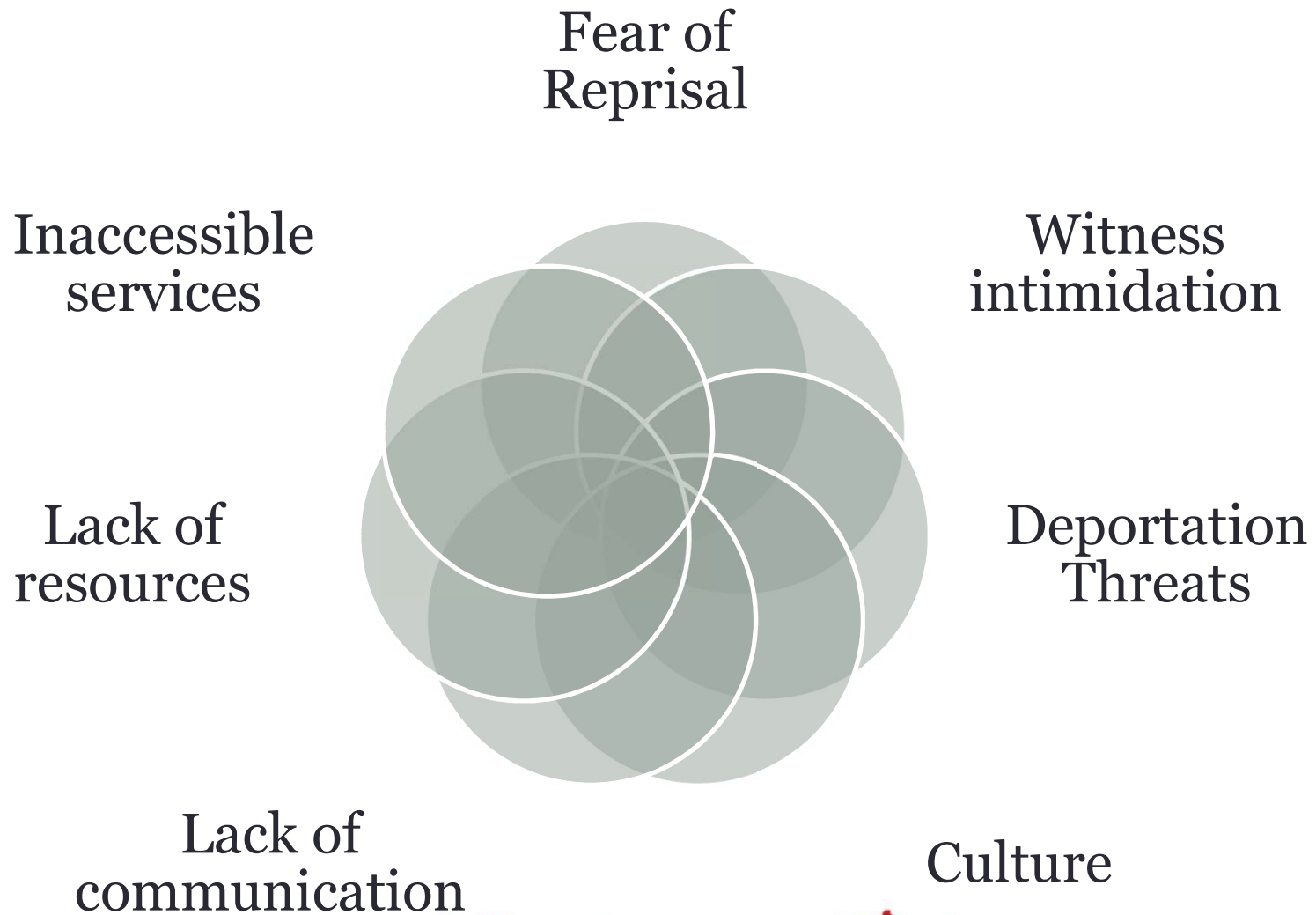
Evaluating Unreasonableness

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 of the abuser
- Trauma suffered (both mental and physical)
- Force, fraud, or coercion
- Age, maturity, and capacity of the applicant
 - 8 C.F.R. 245.24(a)(5)
- Also look for witness tampering

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

Factors that Impede Victim's Ability to Safely Participate



DHS Approach

- DHS promotes a victim-centered approach
 - Implement practices that build trust, help stabilize victims, and minimize re-victimization and additional trauma.
- DHS **equally values** the identification and stabilization of victims, including providing immigration relief, and the detection, investigation, and prosecution of perpetrators of serious crimes.
- DHS promotes the use of qualified interpreters

Practice Tips

- Proactively investigate witness intimidation
- Collaborate with systems-based and community-based victim service professionals
- Establish safe points of contact with victim's friends and family
- Conduct trauma-informed assessments of reasonableness

What if after conducting a trauma-informed analysis, you still believe the victim is unreasonably refusing to comply with reasonable requests?

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

- Check the appropriate box 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

FAQs

What if the victim has a criminal history?

•This is not a part of the certification process, but USCIS fully reviews applicants' history

What if the victim later commits a crime?

•The certifying is not held liable for the applicant's actions

What if I later find out the victim lied?

•Ensure you are conducting a trauma-informed analysis, but the certification is revokable

How long does it take to get a U Visa?

•There is currently a waiting list, so qualified applicants can wait 20+ years for their visa, but with work authorization...

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"

Moving Forward

Provide meaningful access to immigration relief to qualified applicants

Be prepared to explain why immigration relief exists for victims of crime

Completing the U Visa Certification Form

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 02/28/2026



Certification form is available to download at
[https://www.uscis.gov/sites/default/files/document/forms
/i-918supb.pdf](https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf)

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

Name of Head of Certifying Agency

4.a. Family Name
(Last Name)

4.b. Given Name
(First Name)

4.c. Middle Name



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

All judges can sign

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)

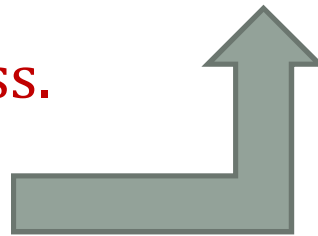
2.d. Date (mm/dd/yyyy)

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

Attaching state statutory language is helpful.

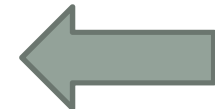
6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.

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.

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.

When should you sign a U Visa Certification or a T Visa Declaration?

ANSWER:

As soon as you have the information you need to complete the paperwork.

Early Certification

Do you have the information you need to determine if the applicant is a victim of the qualifying criminal activity?

- Standard of proof: “Any credible evidence”

Can you make initial helpfulness determination?

- You do not need to determine ongoing helpfulness when you sign
- You can revoke

Small Group Activity

- Meet at your tables to discuss how filing a victim's abused-based immigration case (VAWA, T or U visa) can help stabilize victims participating in criminal investigations or prosecutions.
- Report Back

Improved Stability From

- Receiving protection from deportation
 - Through VAWA confidentiality at filing 8 U.S.C. 1367
 - Formal when receive deferred action
- Improved economic stability & independence
 - Legal work authorization
 - Greater and increasing access to state and federally funded public benefits
 - Office of Trafficking in Persons (OTIP) benefits and support
- Improved justice system trust
 - Law enforcement, prosecutors, judges, and courts
- Being connected and working with victim advocates and attorneys
 - Safety planning and support **improves justice system access**

Interactive Public Benefits Map

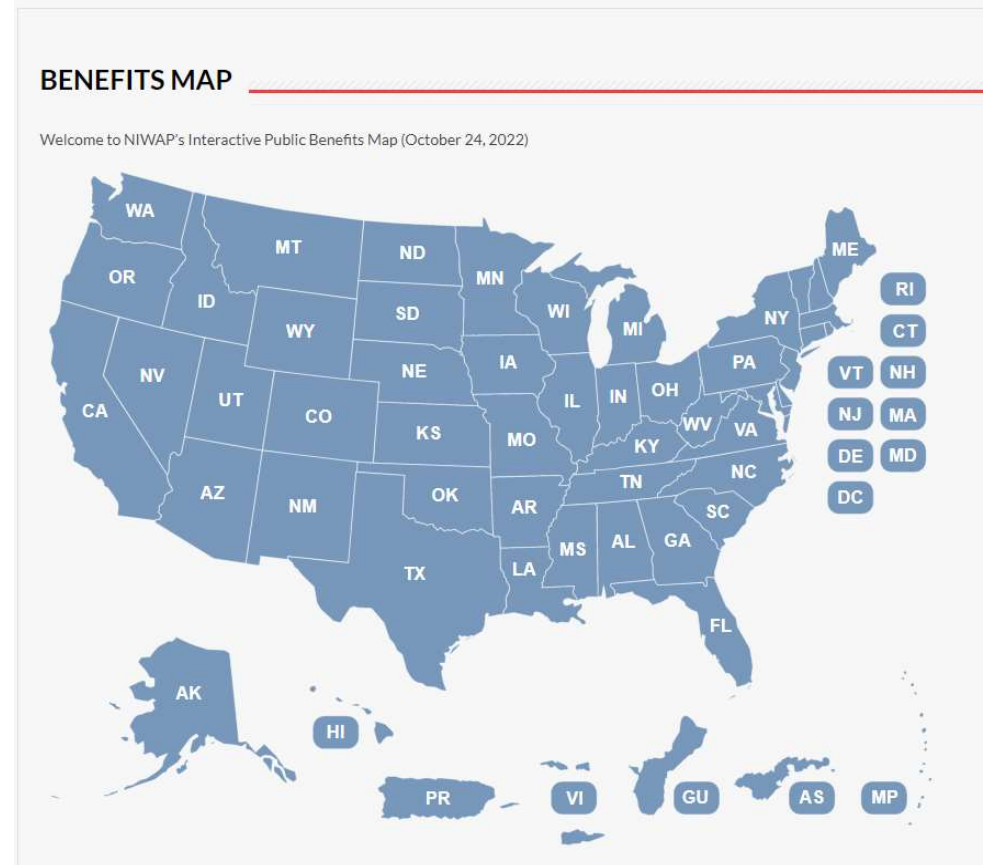
State-By-State

Hide fields Filter Group Sort

	Ben...	STATE & TERRITORY	Benefit Name	VAWA Self-Petitioner
1	309	Florida Public Benefits	Child Care - TANF Funded	Eligible for TANF funded child care if receiving TANF.
2	308	Florida Public Benefits	Child Care: Child Care Development Fund (CCDF)	Eligible for CCDF
3	310	Florida Public Benefits	Children's Health Insurance Program (CHIP)	Eligible up to age 19 upon prima facie determination. ...
4	311	Florida Public Benefits	Earned Income Tax Credits (EITC)	Eligible with conditions upon receipt of work ...
5	313	Florida Public Benefits	Emergency Medicaid	Eligible.
6	315	Florida Public Benefits	Family Medical Leave Act - State Law	No state law, federal law applies.
7	316	Florida Public Benefits	Federal Education Student Aid, Grants, and Loans	Eligible upon prima facie determination.

30 records um 13017

Airtable Download



<https://niwaplibrary.wcl.american.edu/benefits-map>

Benefits Map Demonstration

- How to use NIWAP's
 - Public benefits map
 - Public benefits screening charts
 - State detailed public benefits charts with citations
- What all victims qualify for without regard to immigration status
- State funded public benefits
- Federally funded public benefits

IMMIGRATION RELIEF AND HUMAN
TRAFFICKING AND
HUMAN TRAFFICKING CO-
OCCURRING WITH DOMESTIC
VIOLENCE

T Visa Requirements

Applicant is a victim of severe form of human trafficking

- Refers to the federal definition of human trafficking

Applicant is in the U.S. because of trafficking

- Not necessary that the victim came to the U.S. because of trafficking; can be in the U.S. for the investigation

Responds to “reasonable requests for collaboration”

- Age exemption & Trauma exception in specific cases

Extreme Hardship upon return to home country

T Visa Facts

- T Visa is a temporary visa for 4 years
- May apply for lawful permanent residence after either 3 years or after the investigation or prosecution is concluded
- Applicants are encouraged to submit a Law Enforcement Declaration along with their application, *but it is not required*

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 anything 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**

Definition Includes “Attempted Trafficking”

- The preamble to the 2024 T Visa Rule and DHS policy Manual include protections for victims of attempted trafficking
 - Cases where the applicant has not performed labor or services or a commercial sex act
 - When the victim can prove they are otherwise eligible for a T visa and
 - But/for some intervention or victim’s escape the perpetrator would have trafficked them

2016 Preamble: 81 Fed. Reg. 92266, at 92271

What are common tactics used by traffickers to assert “force, fraud, and coercion”?

Coercion

22 U.S.C. § 7102(3)

Threats of serious harm to or physical restraint against any person;

Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;

The abuse or threatened abuse of the legal process.

Serious Harm Means

- Any harm whether physical or nonphysical, including psychological, financial, or reputational harm,
- That is sufficiently serious,
 - Under all the surrounding circumstances,
 - To compel a reasonable person of the same background and in the same circumstances
 - To perform or to continue performing labor or services
 - To avoid incurring that harm.

8 C.F.R. § 214.201

Totality of the Circumstances

Serious Harm

- Physical or nonphysical
- Psychological
- Financial
- Reputational

Circumstances

- The surrounding circumstances

Victim

- Same background
- In the same circumstances

The victim's vulnerabilities are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve.

United States v. Kozminski, 487 U.S. 931, 933, 108 S. Ct. 2751, 2755, 101 L. Ed. 2d 788 (1988)

Updated Involuntary Servitude Definition

- A condition of servitude
 - Induced by means of any scheme, plan, or pattern
 - Intended to cause a person to believe or to fear that
 - If the person did not enter into or continue in such condition or undertake the forced work
 - That person or another person would *Suffer serious harm*, physical injury, physical restraint, or legal coercion.
- A condition of servitude induced by the abuse or threatened abuse of the law or legal process.

8 C.F.R. § 214.201

Abuse Or Threatened Abuse Of The Legal Process

Is the use or threatened use of a law or legal process whether administrative, civil, or criminal,

- In any manner or for any purpose for which the law was not designed,
- In order to exert pressure on another person to cause that person
- To take some action or refrain from taking some action.

8 C.F.R. § 214.201

Small Group Discussion

- Make a list of tactics that a domestic violence perpetrator or child abuser could use or facts of a case that would indicate
 - That labor trafficking is co-occurring in an intimate partner or family relationship
 - Victim: intimate partner – child
 - That sex trafficking is co-occurring in an intimate partner or family relationship
 - Victim: intimate partner - child

Report Back

- Examples of facts that would indicate labor trafficking
 - Of intimate partner
 - Of children
- Examples of facts that would indicate sex trafficking
 - Of intimate partner
 - Of children

Involuntary Servitude in a Domestic Violence Relationship

- Abuser/Trafficker controls victim's liberty creating conditions of servitude
- Expectation that the victim's life fulfills the trafficker's orders
 - E.g., demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and/or constant availability to labor regardless of health or energy;
- Lack of control over the victim's own wages (or not paid) despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of a campaign of force, fraud, and coercion
 - E.g., unequal sleeping arrangements, living arrangements, or access to nourishment.

<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>

T Visa Process Includes Bona Fide Determination

- USCIS will deem an application *bona fide* if:
 - The I-914 is properly filed and complete;
 - The applicant has included a signed personal statement; and
 - Initial background check results are complete and do not present national security concerns. 8 C.F.R. § 214.205(a)(2)
- After T applicant is deemed *bona fide*
 - USCIS will conduct a *bona fide* review of applications of family members.
8 C.F.R. § 214.240(m)

Continued Presence (CP)

- 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 United States during investigation or prosecution into human trafficking
- Granted for two years, can be renewed
 - Receive work authorization, public benefits, and services
 - Does not guarantee long-term immigration relief
 - T visa application typically filed while the victim has CP

CP—Law Enforcement Role

- **Officers should refer victims to federal authorities** who are authorized to file CP applications for trafficking victims with the DHS
- Trafficking victims must be **“sponsored” by federal law enforcement**
- Law enforcement initiates an application immediately after identifying the victim; cooperation is not required
- Can be revoked

Federal Continued Presence Sponsors

- Homeland Security Investigations
- Federal Bureau of Investigation
- State Department Diplomatic Security Services
- Department of Justice
 - United States Attorney's Offices
 - Civil Rights Division
 - Criminal Section
- U.S. Marshal's Service
- U.S. Department of Labor
- Equal Employment Opportunity Commission

Labor-Based Deferred Action


- Decision to defer removal as an act of prosecutorial discretion
 - DHS makes determinations on a case-by-case basis, and it can be terminated at any time
- No statutory or regulatory limit to the length of time
 - Historically, deferred action has been granted for periods of two to three years.
- Individuals with deferred action are eligible for an employment authorization document with a basic showing of economic necessity.

To qualify, a worker must...

(1) Witness or experience a violation of labor or employment law or other labor dispute;



(2) File a complaint with a federal, state, or local labor or employment agency or identify an existing agency investigation related to the violation; and



(3) Obtain a Statement of Interest from labor or employment agency; *e.g.*, NLRB, USDOL, EEOC

U.S. Department of Labor

- Deferred action available to victims and witnesses of forced labor and labor exploitation
- OSHA and wage and hour U visa certifications

VAWA CONFIDENTIALITY AND DISCOVERY

Learning Objectives



- Identify victims who are eligible for VAWA confidentiality protection

- Ensure that discovery in criminal and family court case is consistent with immigration law VAWA confidentiality requirements

- Anticipate and respond to discovery requests that violate VAWA confidentiality laws

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply:
USCIS
Form I-914

T VISA
For victims of human trafficking

To apply:
USCIS
Form I-360

VAWA
For victims of domestic violence and abuse

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

To apply:
USCIS
Form I-589

ASYLUM
For victims of persecution

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

To apply:
USCIS
Form I-360

SIJ
Special Immigrant Juvenile classification for child victims under 21 years of age



If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

To apply:
USCIS
Form I-918

U VISA
For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

All U.S. Citizenship and Immigration Services (USCIS) forms can be found at: www.uscis.gov/forms/all-forms

VAWA Confidentiality Prongs

Abuser-Provided Information Prohibition

Included family members of perpetrators

Protects all victims
*in the process of applying for U and T visas

Location Prohibitions

Protects all victims

Requires:
No action at protected locations
OR
Notice to Appear must state how they complied with VAWA confidentiality

Non-Disclosure

Protects victims who have filed a protected case with DHS

Non-Reliance on Perpetrator Provided Information DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for:
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

Victim Witness DHS Memo 2011

Continuing Effect Confirmed 4/19

- “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.”

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.”

Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - A shelter or rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking

How VAWA Confidentiality Protections Impact Criminal Court Cases

Ethical Duties and Due Process

Prosecutor Obligations



Is it
exculpatory?



Is it
confidential?

Disclosure of Information

- “State and local prosecutors are not constitutionally required under the Brady line of cases to seek out, obtain or disclose the existence of or any information contained in an immigration case that is maintained in federal immigration case files”
 - U Visa Certification and T Visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors (August 30, 2021)

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

- “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

Senate Congressional Record

*“The single most important provision we add to the Violence Against Women Act is the battered immigrant women provision”
Ensuring abusers “are brought to justice and the battered immigrants also escape abuse without being subject to other penalties.”*

Senator Biden 10/11/2000

DHS Policies and Regulations

VAWA Confidentiality

- Protects all information about the victim's VAWA confidentiality protected immigration case
- Prohibits disclosure of any information about
 - The existence of a VAWA, T or U Visa application
 - Decisions made in the case
 - Information contained in the #A file
- Disclosure is prohibited to all persons, not just the perpetrator
- Each violation sanctions against federal government officials
 - Disciplinary action and/or
 - \$5,000 fine for the individual

If a victim requests a U Visa certification, but you do not sign, what, if anything, do you need to disclose?

Considerations

- When does a motive or bias arise?
- What is the impact of having testimony come out that the victim will only have a signed certification/endorsement *if they testify the way the prosecutors want?*
- Whose responsibility is it to present the case to the court?

Moving Forward

Uphold VAWA
confidentiality and protect
victim privacy

Comply with your ethical
and due process obligations

Provide access to the
immigration relief for
which crime victims qualify

DEVELOPING YOUR CASE STRATEGY

Learning Objectives



- Develop an offender-focused theme to strengthen prosecution of violent crimes

- Analyze case facts and dynamics to determine any relevance of immigration status and relief

- File pretrial motions to improve victim safety and privacy, educate the judge on novel evidentiary issues, and introduce relevant evidence of immigration-based abuse

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 choose 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

Escape Accountability

- Threaten victim with arrest and/or deportation if police are involved
- Manipulate law enforcement to arrest LEP victims
- Use financial manipulation to prevent victims from participating in investigation or prosecution
- Isolate the victim from support services
- Misuse culture to dissuade victim from participating

Offender-Focused Theme

Preying on the
most
vulnerable

Power over
the powerless

American
dream became
a nightmare

Picked the
perfect victim

Betrayal of
trust, family,
and the law

Knew there
was no where
to turn

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

Excluding Evidence

Arguments

- Irrelevant
- Probative value is substantially outweighed by potential prejudice

Examples

- Child victims
- Time lapse between reporting and applying

Ultimately, though, the court ruled that defendant had failed to establish a sufficient foundation to show that the victim's knowledge of the U visa had any bearing on her credibility in this case, and that ruling was correct. Because of the way that defendant limited his offer of proof, the record does not include even basic facts about the victim's potential eligibility for a U visa...

State v. Alvarez-Lopez, 316 Or. App. 106, 108, 501 P.3d 1141, 1142-43 (2021), review denied, 369 Or. 785, 511 P.3d 400 (2022)

Without those minimal foundational facts, the record does not allow for the nonspeculative inference that the victim's knowledge about U visas would supply a motive for the victim to testify in a particular way. The trial court, therefore, did not err in excluding the evidence.

Id.

State v. Valle,

255 Or. App. 805, 811, 298 P.3d 1237, 1241 (2013)

- Court found it was error to exclude the fact that the victim had applied for a U Visa and that the prosecutor's office had "signed off" on it.
- *"Thus, it is error for a trial court to exclude evidence from which a jury could reasonably infer that the witness has a motive to testify in a certain manner."*

State v. Del Real-Galvez

270 Or. App. 224, 232, 346 P.3d 1289, 1294 (2015)

“The jury was not fully informed about X's potential motive to fabricate allegations against defendant and X's potential interest in testifying in a certain manner. Further, X's credibility was central to the state's case, and the prosecutor argued that X had “no motive to fabricate a disclosure against [defendant.]” Thus, under the analysis set forth in Valle, we conclude that the error in this case was not harmless.”

Other Crimes, Wrongs, or Acts

OR. Stat. § 40.170, Rule 404

- 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, preparation, or accident
- Can be relevant to establish the “history of [the] relationship” between the defendant and victim, which speaks to a defendant's intent.

US v. Berckmann, 971 F.3d 999 (2020)

Moving Forward

Develop offender-focused trial strategies

Educate the judge about novel issues

Recreate the reality of the crime

TRIAL STRATEGIES FOR PROSECUTING VIOLENT CRIMES

Learning Objectives



- Educate potential jurors about the reality and dynamics of cases involving violent crime

- Prepare for direct, cross and rebuttal questioning of victims, including immigrant and LEP victims

- Utilize prior consistent statements to combat common defenses

Educating the Judge and Jury

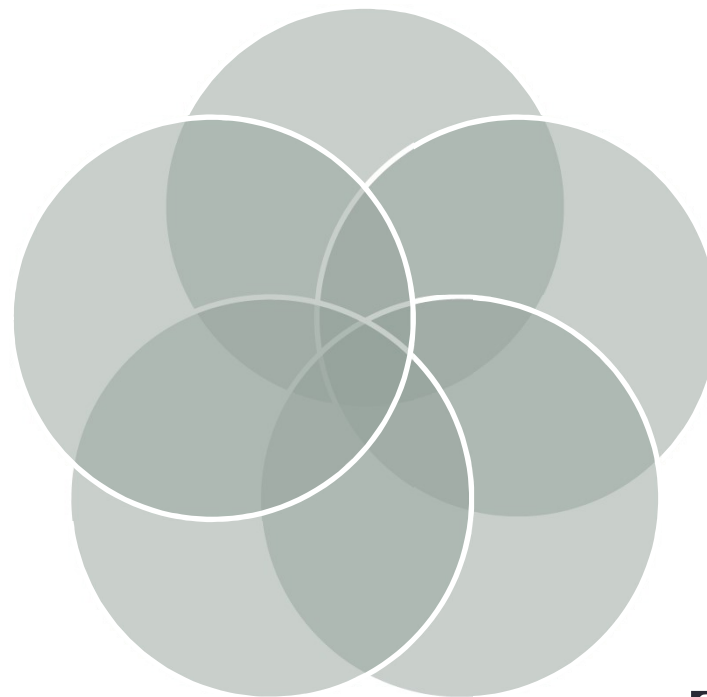
Pretrial
Motions

Closing
Argument

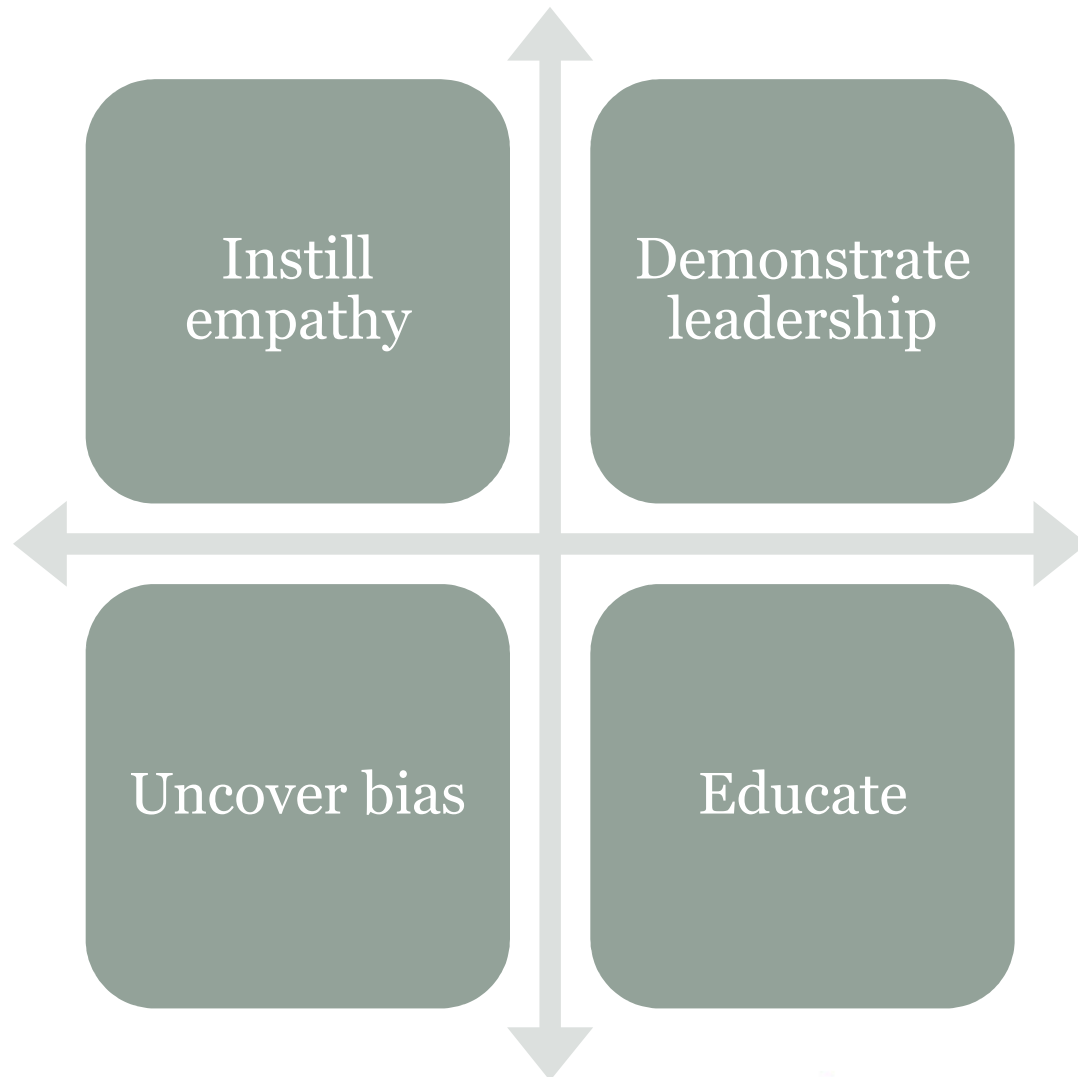
Jury
Selection

Expert
Testimony

Witness
Testimony



Jury Selection



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

- 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 call be opened at any time, but is likely done during cross-examination

Prior Consistent Statements

ORS 40.450, Rule 801(4)(a)(B)

- Non-hearsay
- Not subject to Crawford
- Admissible if...
 - (1) consistent with the testimony of the witness; AND
 - (2) offered to rebut an inconsistent statement or express or implied charge against the witness of recent fabrication

Prior Consistent Statements

Powers v. Officer Cheeley, 307 Or. 585 (1989)

“Only those prior consistent statements that were made ‘before’ the alleged motive to fabricate arose’ are admissible under [OEC 801(4)(a)(b)]”

Establishing Timeline

Victim
statements
to officers,
friends, and
others

Motive
to lie

Testimony
consistent
with
statement

Introduce
prior
consistent
statements

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 a recorded statement?”

Testimony by Experts

ORS §40.410 OR Rule 702

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

Conference Committee Commentary: “The rule is broadly phrased. The fields of knowledge which may be drawn upon are not limited merely to the ‘scientific’ and ‘technical’ but extend to all ‘specialized’ knowledge. Similarly the expert is viewed, not in a narrow sense, but as a person qualified by ‘knowledge, skill, experience, training or education.’

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

Expertise

- 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

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.”

Closing Arguments

- Focus on what the defendant did
 - *e.g.*, The Perfect Plan
- Do not apologize for the victim
 - The victim qualified for immigration relief
- Explain the evidence that corroborates the victim's disclosure

PROS

Establish trust

Build rapport

Protect from offender

Protect from deportation

CONS

Accusation that victim is lying for immigration benefit

Moving Forward

Educate the judge and jury
about power and control

Combat common defenses

Hold offenders
accountable

Resources

- Technical Assistance
 - Call: 202.274.4457
 - Email: niwap@wcl.american.edu
 - Web Library: <https://niwaplibrary.wcl.american.edu/>
- Power Point presentations and materials for this conference at <https://niwaplibrary.wcl.american.edu/DallasOR-Oct2024>
- 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's Podcast Series

<https://niwaplibrary.wcl.american.edu/niwap-podcast-series>

The screenshot shows the Spotify interface for the 'National Immigrant Women's Advocacy Project' podcast. The page features a dark red header with the Spotify logo and navigation options like 'Home', 'Search', and 'Your Library'. The main content area displays the podcast's cover art, which includes the NIWAP logo and the text 'National Immigrant Women's Advocacy Project'. Below the cover art, there is a 'FOLLOW' button and a list of episodes. The first episode is 'Web Library Podcast Dec 2020', followed by 'Language Access Podcast 2020 - Part Two', and 'Language Access Podcast 2020 - Part One'. Each episode entry includes a play button icon and the duration. On the right side, there is an 'About' section with the text 'Podcast by National Immigrant Women's Advocacy Project' and two category buttons: 'Government' and 'Educational podcasts'. At the bottom left, there are links for 'Cookies' and 'Privacy'.

Join a Roundtable or Community of Practice

- Community of Practice for Family Law Attorneys
www.surveymonkey.com/r/FamCOP2023
- Community of Practice for Victim Advocates
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
- Roundtable for Law Enforcement, Prosecutors and System-based Advocates -
<https://www.surveymonkey.com/r/LERoundtable>
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>

Evaluations

Thank You!



<https://www.surveymonkey.com/r/polk-or-10-4-24>