

U Visas Crime Fighting Tool: Tips, Tools, and Certification for Law Enforcement and Prosecutors Working With Immigrant Survivors

July 30, 2015

Workshop III, Session A

New Orleans, LA

Introductions

Officer Michael LaRiviere

- Officer, Patrol Division, Salem Police Department

Detective Shelli Sonnenberg

- Detective, Financial Crimes Unit, Boise Police Department

Bill Tamayo

- Regional Attorney, U.S. Equal Employment Opportunity Commission

Learning Objectives

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

- Hold offenders more accountable by using the U Visa certification process as a crime fighting tool
- Enhance victim safety and participation in the criminal justice system
- Understand what is being asked of certifiers when determining whether to sign U visa certifications
- Enhance officer/victim/community safety using U visa certification programs

Immigration 101

- U.S. citizens (by birth, naturalized)
- Lawful Permanent Residents (LPRs, “green card” holders)
- Nonimmigrants (legally here for a limited authorized time and may or may not be authorized to work, e.g., tourists, students, skilled workers (H-1) or agriculture (H-2))

Immigration 101 (cont.)

- Refugees, Asylees: well-founded fear of persecution (status granted)
- Undocumented:
 - Overstays, violations of nonimmigrant status, worked without authorization, etc.
 - Entered without inspection
 - Violations of lawful permanent status and ordered deported

The Undocumented

- 7 million undocumented workers, primarily in agriculture, service, light manufacturing, and construction
- Non-white, non-citizen, non-English speaking, can't vote, low wages, not organized, may live in fear of deportation
- If deported: extreme poverty and/or persecution

The Undocumented

- Blamed for everything: unemployment, disease, crime, terrorism, “decrease of American culture,” etc.
- Therefore: very vulnerable, very exploitable, scared to assert rights...and their employers know that
- Perverse incentive to hire them, yet demand documents when they complain

General Caveats

1. Women, men, and children can qualify for U Visas
2. 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

DHS Terminology: Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - Judges, Magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

U Visa Basics

- Law enforcement certification is just one part of the overall process it does not = U.S. Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Can be “revoked”
- Increases immigrant victim participation in criminal justice system

Overview of the U Visa

- What is the U visa?
- Purpose: Why does it exist?

Purpose

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction, or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

Qualifying Criminal Activity

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

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

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
- Bystander’s victimization – very limited
- For child victims, a “next friend” can provide helpfulness

U Visa Criminal Activities (11/2011 data)

- Domestic violence **45.9%**
- Rape, sexual assault, incest, trafficking **30.4%**
- Felonious assault, murder, manslaughter **9.9%**
- Kidnapping, being held hostage, unlawful criminal restraint, torture **8.47%**
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**

Domestic Violence

- Domestic violence in U.S. in general: 22.1% (NIJ)
- Domestic violence among immigrant women: 30-50%
- Immigrant women with U.S. citizen spouses abuse rate reaches 59.5%
- Research has found that immigrant victims
 - Stay longer with their abusers
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse

Sexual Assault & Child Abuse

- Immigrant women particularly vulnerable to sexual assault
- High school aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers
 - Including increased risk of recurring sexual assault
- Immigrant children also particularly susceptible to child abuse

The U Visa Application Process



Typical length of process = 12 -14 months

DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
 - Review of criminal history
 - Review of immigration history

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

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 Visa Certification Overview

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

Form I-918 Supplement B,
U Nonimmigrant Status Certification

How Will a U Visa Certification Request Come to You?

- From victim advocate or immigration attorney
- As a police officer, you are the first responder
- As a prosecutor, you might have continued contact with the victim and might be first to identify victim's U visa eligibility

U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime

Review the U Visa Certification Form

- **Goals:** Identify the criminal activity and the victim, then begin the certification process

Form I-918 Supplement B,

U Nonimmigrant Status Certification

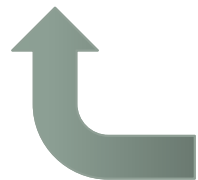
Department of Homeland Security
U.S. Citizenship and Immigration Services

START HERE - Please type or print in black ink.

Part 1. Victim Information

Family Name	Given Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Other Names Used <i>(Include maiden name/nickname)</i>		
<input type="text"/>		
Date of Birth <i>(mm/dd/yyyy)</i>	Gender	
<input type="text"/>	<input type="checkbox"/> Male <input type="checkbox"/> Female	

For USCIS Use Only	
Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	



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



This should be left blank

Usually one person within an agency is designated as the “Certifying Official”



Part 2. Agency Information		
Name of Certifying Agency		
<input type="text"/>		
Name of Certifying Official	Title and Division/Office of Certifying Official	
<input type="text"/>	<input type="text"/>	
Name of Head of Certifying Agency		
<input type="text"/>		
Agency Address - Street Number and Name		Suite No.
<input type="text"/>		<input type="text"/>
City	State/Province	Zip/Postal Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Daytime Phone No. <i>(with area code and/or extension)</i>		Fax No. <i>(with area code)</i>
<input type="text"/>		<input type="text"/>
Agency Type		
<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local		
Case Status		
<input type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> Other: _____		
Certifying Agency Category		
<input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other: _____		
Case Number	FBI No. or SID No. <i>(if applicable)</i>	
<input type="text"/>	<input type="text"/>	

Part 3. Criminal Acts

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. *(Check all that apply.)*

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> Abduction | <input type="checkbox"/> Female Genital Mutilation | <input type="checkbox"/> Obstruction of Justice | <input type="checkbox"/> Slave Trade |
| <input type="checkbox"/> Abusive Sexual Contact | <input type="checkbox"/> Hostage | <input type="checkbox"/> Peonage | <input type="checkbox"/> Torture |
| <input type="checkbox"/> Blackmail | <input type="checkbox"/> Incest | <input type="checkbox"/> Perjury | <input type="checkbox"/> Trafficking |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Involuntary Servitude | <input type="checkbox"/> Prostitution | <input type="checkbox"/> Unlawful Criminal Restraint |
| <input type="checkbox"/> Extortion | <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Rape | <input type="checkbox"/> Witness Tampering |
| <input type="checkbox"/> False Imprisonment | <input type="checkbox"/> Manslaughter | <input type="checkbox"/> Sexual Assault | <input type="checkbox"/> Related Crime(s) |
| <input type="checkbox"/> Felonious Assault | <input type="checkbox"/> Murder | <input type="checkbox"/> Sexual Exploitation | <input type="checkbox"/> Other: <i>(If more space needed, attach separate sheet of paper.)</i> |
| <input type="checkbox"/> Attempt to commit any of the named crimes | <input type="checkbox"/> Conspiracy to commit any of the named crimes | <input type="checkbox"/> Solicitation to commit any of the named crimes | <div style="border: 1px solid black; height: 20px; width: 100%;"></div> |

You can & should certify multiple offenses when present. Other can include criminal activity present, but not listed specifically, e.g., “stalking”



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

Part 3. Criminal Acts *(continued)*

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4. 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

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? Yes No

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

c. Where did the criminal activity occur?

Part 3. Criminal Acts *(continued)*

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

Make copies of all reports and attach.

6. 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 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in **Part 3**. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)* Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)* Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)* Yes No

5. Other, please specify.

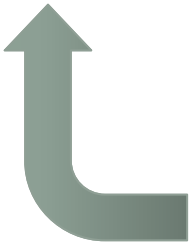
NOTE: This will be discussed in detail in the next section.

Part 5. Family Members Implicated in Criminal Activity

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	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 has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is 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 the U.S. Citizenship and Immigration Services, 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/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Date (*mm/dd/yyyy*)

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



Things to Know About Certifying

- “Do I believe this person was a victim of a qualifying crime?”
- “Did the person assist or willing to assist in detection, investigation, conviction, prosecution, and/or sentencing?”
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor’s office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?

Helpfulness

Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in **Part 3**. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)* Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)* Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)* Yes No

Form I-918 Supplement B (01/15/13) Y Page 2

What does “helpful” mean to you?

-
2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)*
-

Yes

No

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



Case Scenarios

Group Activity

Is this person eligible for a U Visa certification?

Hypothetical Case Scenario: 1

Lara



Lara entered the United States seven years ago with a student visa. One night after the visa had expired, she was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the “filthy things” she had done if she told anyone. Four months later, Lara realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss encouraged her to contact the police, and helped her call the police. Lara told the police everything she knew, but said she would not testify in court because she feared retaliation.

Hypothetical Case Scenario: 2

Amelia and Carlos



Amelia and Carlos were living in poverty in their home country. Together they saved, borrowed, and planned to pay a “coyote” \$3,000 to bring each of them into the United States. Once they arrived in the U.S., the “coyote” demanded an additional \$3,000 to release and transport them to family members living in Louisiana. After the “coyote” had held Amelia and Carlos in an abandoned house for 5 days, without food or water, their family was able to send the additional money. The coyote agreed to drive Amelia and Carlos to their family. The coyote had been drinking heavily before the drive, and just before they reached their destination, the coyote’s van crashed into oncoming traffic. Amelia was sitting in the passenger seat and died instantly. The passengers in the other car had minor injuries. Police arrived on the scene, and took both Carlos and the “coyote” into custody. Carlos told the police many details of the coyotes’ illegal business enterprises.

What does “helpful” mean?

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 a U visa certification once they assess the 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 a 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 of rights, the U-visa, and meaningful language access

What does it mean for a victim to “unreasonably refuse” to provide assistance?

-
4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)* Yes No

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

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

When should you certify?

Timeline

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



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

Certifying early

PROS

CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit

National Survey Results

LE Reasons for NOT Certifying

1. The criminal was not prosecuted
2. The crime happened too long ago
3. The criminal was not arrested
4. The victim's case was closed
5. The victim did not show enough assistance to law enforcement
6. Law enforcement has the discretion not to certify
7. The victim did not have any or enough injuries
8. The certifier did not feel comfortable granting legal status
9. The agency does not know they can certify
10. Victim may stop cooperating after U visa certification is signed
11. The criminal was not identified
12. Victim is a child and the parent is seeking certification
13. The criminal has not been convicted
14. The victim never testified
15. Agency did not want to certify due to concern about liability
16. Victim has a removal order or is in removal proceedings
17. Victim no longer in the U.S.
18. Agency has no certification policy

Challenges to Prosecution


- Similar to challenges facing law enforcement
 - Victim involvement
 - Recantation or minimization
- Locating victims and witnesses
- Misunderstandings surrounding U visas
- Bias of jury pool
- Discovery implications U visas
- Cross examination of victim

#1 Concern:

Explicit or implicit accusation
that the victim is lying to stay in
the country



U Visa
gives
victim
motive
to lie



Proof
of lack
of
motive

Rebuttal

Prosecutors can:

- Establish timeline of when victim was told about U visa
- Introduce prior consistent statements

Victim statements including 911 call and statements to first responders, friends, family, and advocate

Motive to Lie

Rebut charge that victim is lying to get U Visa

Use these statements

Prior Consistent Statements

- 911 call*
- Statements to first responder*
- Statements to detective
- Conversations with family and friends
- Other disclosures

*Typically, all of these are inadmissible
hearsay*

Certifying early

PROS

CONS

Establish trust

Build rapport

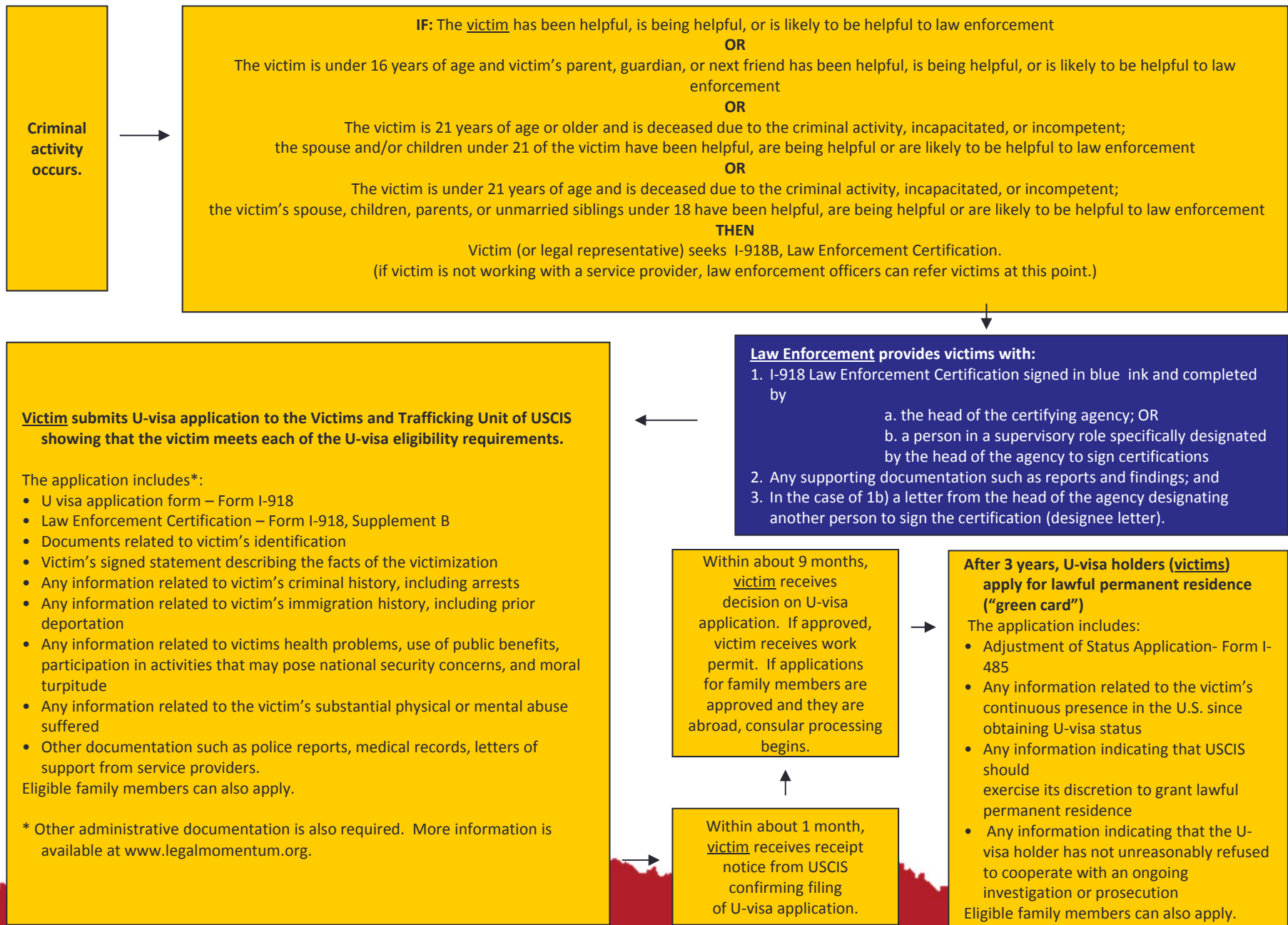
Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefits



U-visa Application Victim Flow Chart



Law Enforcement provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by:
 - a. the head of the certifying agency; OR
 - b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b) a letter from the head of the agency designating another person to sign the certification (designee letter).

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



Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2015
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

THIS PROJECT WAS SUPPORTED BY GRANT NO. 2013-TA-AX-K009 AWARDED BY THE OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE. THE OPINIONS, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS EXPRESSED IN THIS PUBLICATION/PROGRAM/EXHIBITION ARE THOSE OF THE AUTHOR(S) AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN.