

Law Enforcement and Prosecution Best Practices: Immigrant Crime Victims, Language Access and the U Visa

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Introduction

- Antonio Flores
- Jane Anderson
- Leslye E. Orloff

- Pre-test

Materials Summary

- Materials
 - Agenda
 - Evaluations
- USB Drives – Supplementary Tools and Resources
- <http://niwap.org/go/lawenforcement>
<http://niwaplibrary.wcl.american.edu>

USB Drive Materials

- U Visa Toolkit For Law Enforcement Agencies And Prosecutors
- DHS: U and T Visa Law Enforcement Resource Guide
- Tools for officers to promote language access
- Bluecard Tool Screening Victims for Immigration Protections
- DHS Infographic

General Caveats

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

Participant Introductions, Goals and Expectations



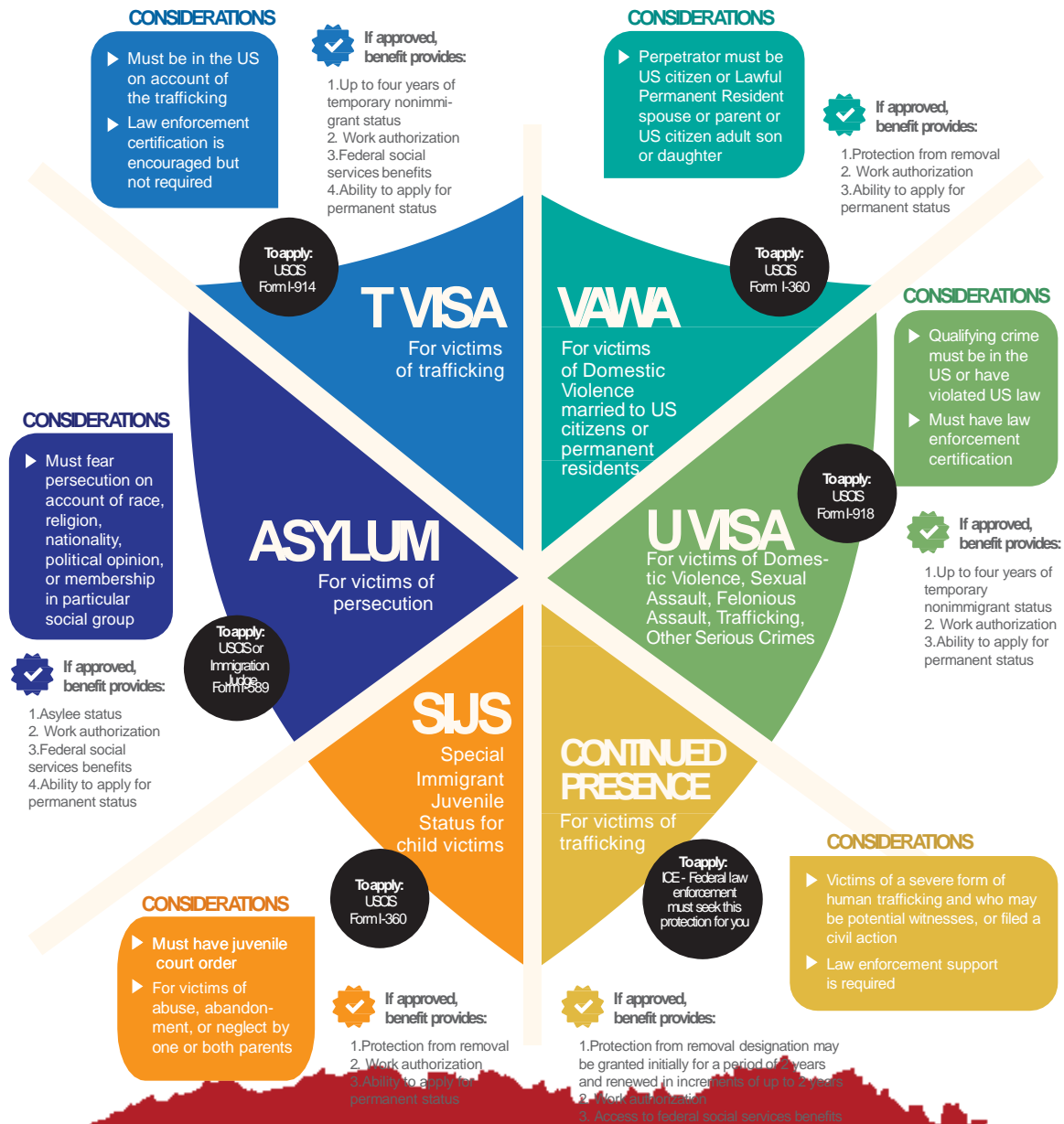
Learning Objectives

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

- Understand how investigations can be improved by using language access tools
- 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
- Enhance officer/victim/community safety using language access and certification programs

How Best Practices in Domestic Violence Investigations Promote Officer Safety

PROTECTIONS FOR IMMIGRANT VICTIMS



DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Department of Homeland Security



Immigration Related Abuse

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

Coercive Control Over Immigration Status

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

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

Connection Between Abuse and Control Over Immigration Status

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

Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
 - twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
- Latina college students
 - experience the highest incidents of attempted rape compared to White, African American, and Asian college students
- Victimization of immigrant children also high
 - child sexual abuse

Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse as a Lethality Factor
 - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
 - Lethality factor can 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)

Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 26.7%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4%; U visa 7.5%
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7%

What barriers and fears prevent
immigrant victims from reporting
crime?

If they report...

- They will be deported
- Offender will retaliate
 - Harm them
 - Harm family members, children
- Nothing will happen
- Cannot communicate with officers

Fears & Misconceptions

- ▶ Do not trust police/prosecutors
- ▶ Economic survival
- ▶ Pressures from both families
- ▶ Fear of abandoning the home/community
- ▶ Fear of losing children
- ▶ Religious factors
- ▶ Fear of unknown
- ▶ Victim believes that if perpetrator deported she has to go with him
- ▶ Dangers in the home country
 - ▶ Retaliation
 - ▶ Ostracism
 - ▶ Police
 - ▶ Political instability
 - ▶ Gender barriers

Language Access

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

What countries do immigrants in your jurisdiction come from and what language do they speak?



Hawaii Demographics (2015)*

- ❖ Total foreign born population – 253,414
- ❖ 17.7% of the state's 1.43 million people is foreign born
 - 57.8% naturalized citizens
 - ~33.9% legal permanent residents or temporary visa holders
(<http://www.migrationpolicy.org/data/ unauthorized-immigrant-population/state/HI>)
 - ~8.3% undocumented
- ❖ 19.4% rise in immigrant population from 2000 to 2015
- ❖ 28.1% of children in the state under age 18 have 1 or more immigrant parents
 - 84.2% of children with immigrant parents in the state are U.S. citizens

**Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=HI>
(March 2017)*

Hawaii – Countries/Regions of Origin and Limited English Proficiency (2015)*

- ▶ Asia – 79.7%
 - ▶ China (10.7%)
 - ▶ Japan (8.8%)
 - ▶ Korea (6.8%)
 - ▶ Philippines (47.1%)
 - ▶ Vietnam (3.5%)
 - ▶ Other southeastern Asia (1.5%)
- ▶ Oceania – 6.6%
- ▶ Latin America – 5.7%
 - ▶ Central America & Mexico (3.2%)
- ▶ Europe – 4.9%
- ▶ Canada 1.2%
- ▶ Limited English Proficiency (Speak English less than very well)
 - ▶ Naturalized citizens 47.1%
 - ▶ Non-citizens 62.6%

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=HI>
(March 2017)

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.”

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 persons primary language

DOJ Sample Policy Center City Police Department

DOJ Approach to language access outline in:

Steps for Obtaining Interpreters

**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?



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?*

DOJ and Exigent Circumstances

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

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

Now that emergency is over what are the next steps in the investigation?

The Investigation Begins

- Call Detective
- Call Fire/Rescue
- Take initial statements
- Call crime scene
- Photograph
- Formal interviews at the station
- Develop probable cause
- Prepare case for prosecution

Typical Encounters With LEP Victims

- Dispatch
- Crime Scene
- Walk Into Station
- Referrals from other agencies
 - CPS, APS, Family Justice Center
- Investigations

How does your investigation proceed with an non-English speaking victim?

Language Resources

- Language Line
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems



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.

Tips for Working with Interpreters

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

Red Flags

- Can you understand the interpreter?
- Does the LEP person look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter summarizing?
- Is everything being interpreted?
- Is there a change in the individual's demeanor?
- Are they using English words?

Interpretation Best Practices

- Evaluation systems
- Interpreter uses a dictionary, takes notes
- Interpreter comfortable with subject matter of the case
- Address cultural experiences ahead of time
- Ensure that they do not know the parties
- If using telephonic interpreters: first ask where they are located
- Know the interpreters code of conduct

U Visas as a Crime Fighting Tool

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

[DHS Video Part 1.mpg](#)

U Visa Basics

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

Purpose of Crime Victim Protections

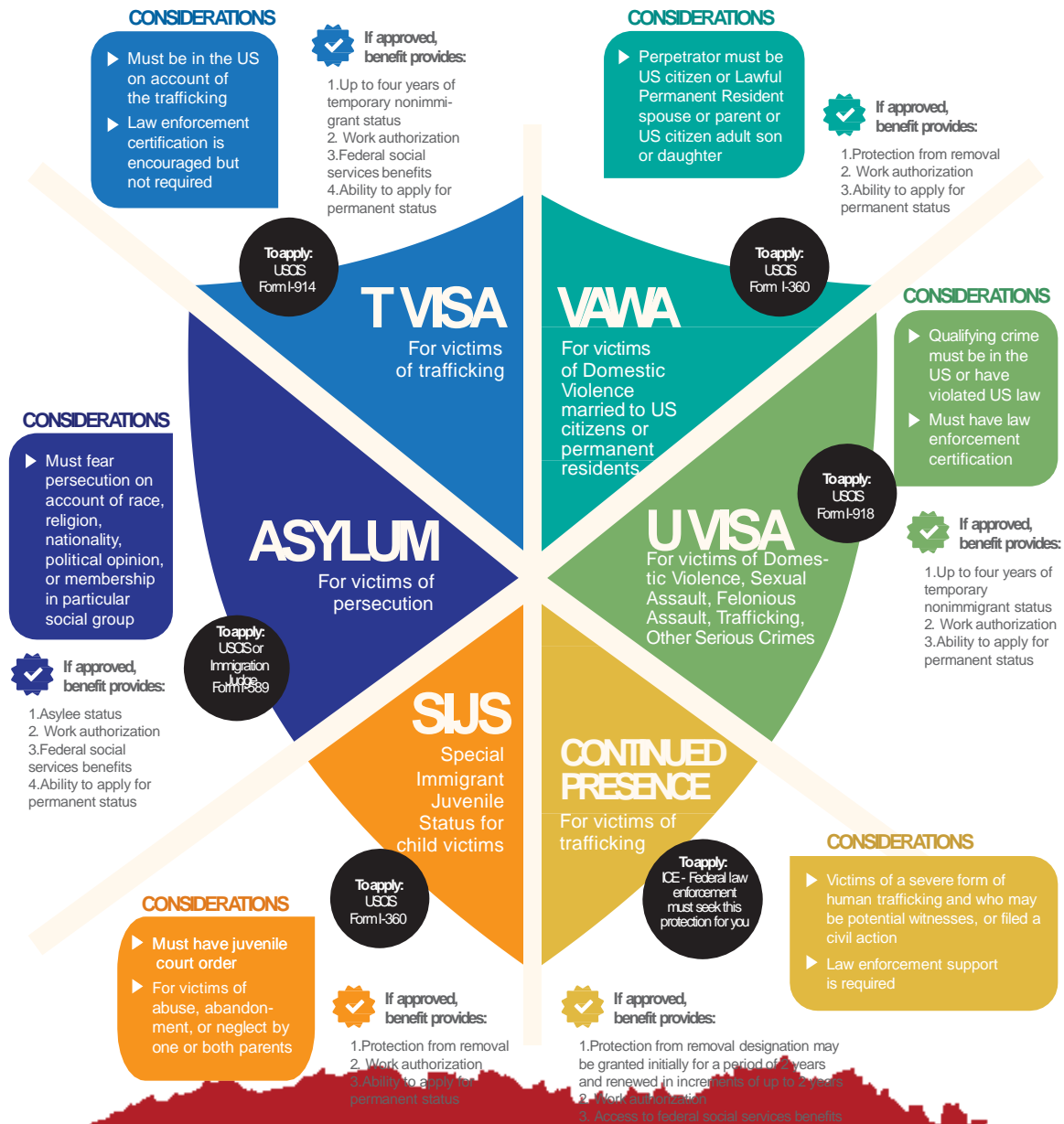
Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- 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

Major Forms of Relief

- VAWA self-petition
 - Abuse by US citizen or lawful permanent
 - Spouse, former spouse, parent, step-parent, over 21year old child
- Special Immigrant Juvenile Status
 - Immigrant children abused, abandoned or neglected by one of their parents
 - (US or Abroad)
- U Visa
- T Visa

PROTECTIONS FOR IMMIGRANT VICTIMS



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

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%**

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
- Bystanders victimization – very limited
- For child victims a “next friend” can provide helpfulness

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 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

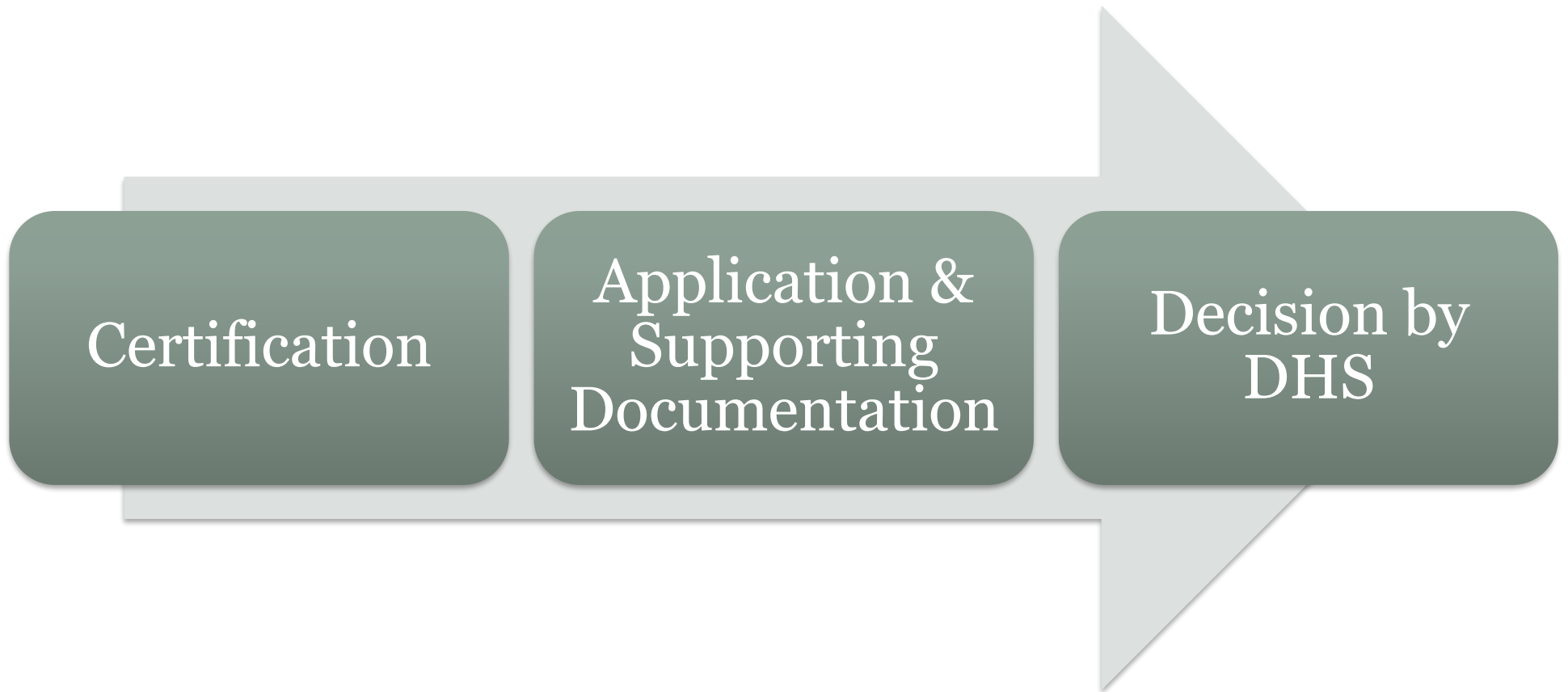
Things to Know About Certifying

- “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?

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

The U Visa Application Process



Typical length of process = 28 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 does 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

Prosecution Strategies for cases involving Immigrant Victim

Learning Objectives

- Hold offenders accountable by focusing on their predatory actions against vulnerable immigrant victims
- Enhance victim safety by ensuring provision of services and immigration relief
- Engage in pretrial litigation to maximize trial success

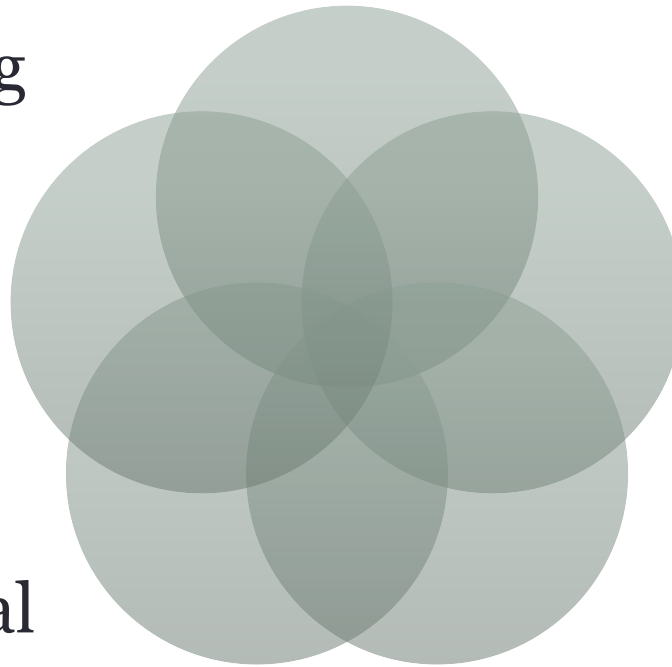
What are your biggest challenges
to prosecuting cases where the
victim is an immigrant?

Challenges

Recantation/
Minimization

Misunderstanding
of Dynamics

Inability to Locate



Lack of Physical
Evidence

Attacks on
Credibility

Additional Challenges

- Victims have additional fear to come forward due to immigration status
- Offenders can threaten victims with deportation
- Jurors may have anti-immigration feelings
- Allegations that the victim is lying because of immigration
 - To receive an immigration benefit
 - To curry favor with the government

Topics



Certification

Discovery

Pretrial Litigation

Trial Strategies

Certification

- Prosecutors can sign certification forms
 - Must be designee
- Any certifying agency can certify at any time they have probable cause
- Policies regarding certification should be discussed at MDT meetings
- Certifying prosecutor should consider not being trial prosecutor

Certify Early

PROS

CONS

Establish trust

Build rapport

Protect from offender

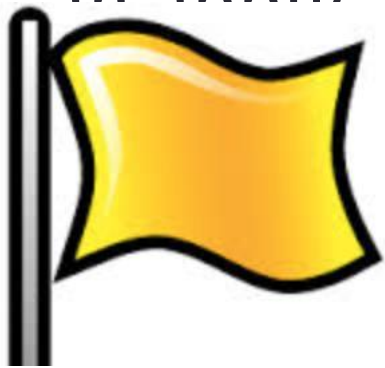
Protect from deportation

Accusation that victim is lying for immigration benefit

Why not just wait to certify until
the case is over?

Threats of Deportation

- Signed 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



Power &
Control

Threats of
Deportation

Witness
Intimidation

Discovery

- Must provide defense with any materials within the state's control that may effect the credibility of any witness or that goes to any witnesses motive to lie or bias
 - Is it within the State's custody or control?
 - Does it go to the witness' credibility, bias, or motive to lie?

What is considered within your
custody and/or control?

Custody and Control

Within

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

Not Within

- Application attachments not provided to you
- Immigration file

State v. Marroquin-Aldana

2014 ME 47, ¶ 20, 89 A.3d 519, 525

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

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

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

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

Response to Motions to Compel

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

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

Analyze Case

Victim Selection

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

Criminal Act

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

Escape Detection

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

Victim Selection

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

Criminal Act

- Human trafficking
- Rape by threats
- Power and control within domestic violence relationship
- Threats as part of stalking or harassment
- Witness intimidation or tampering
- Robbery by threat

Escape Detention

- Threats
 - Deportation
 - “No one will believe you”
 - Financial
 - Family cohesiveness



Challenges



Strengths

Pretrial Strategies

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

Motions in *Limine*

Immigration Status

- Exclusion
- Limitation

Other Bad Acts

- Prior threats
- Subsequent threats or intimidation

Experts

- Victim Dynamics
- Immigration Relief

Immigration Status

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

People v. AlvarezAlvarez

No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014),
review denied (July 16, 2014)

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

Other Bad Acts

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

Expert Witness

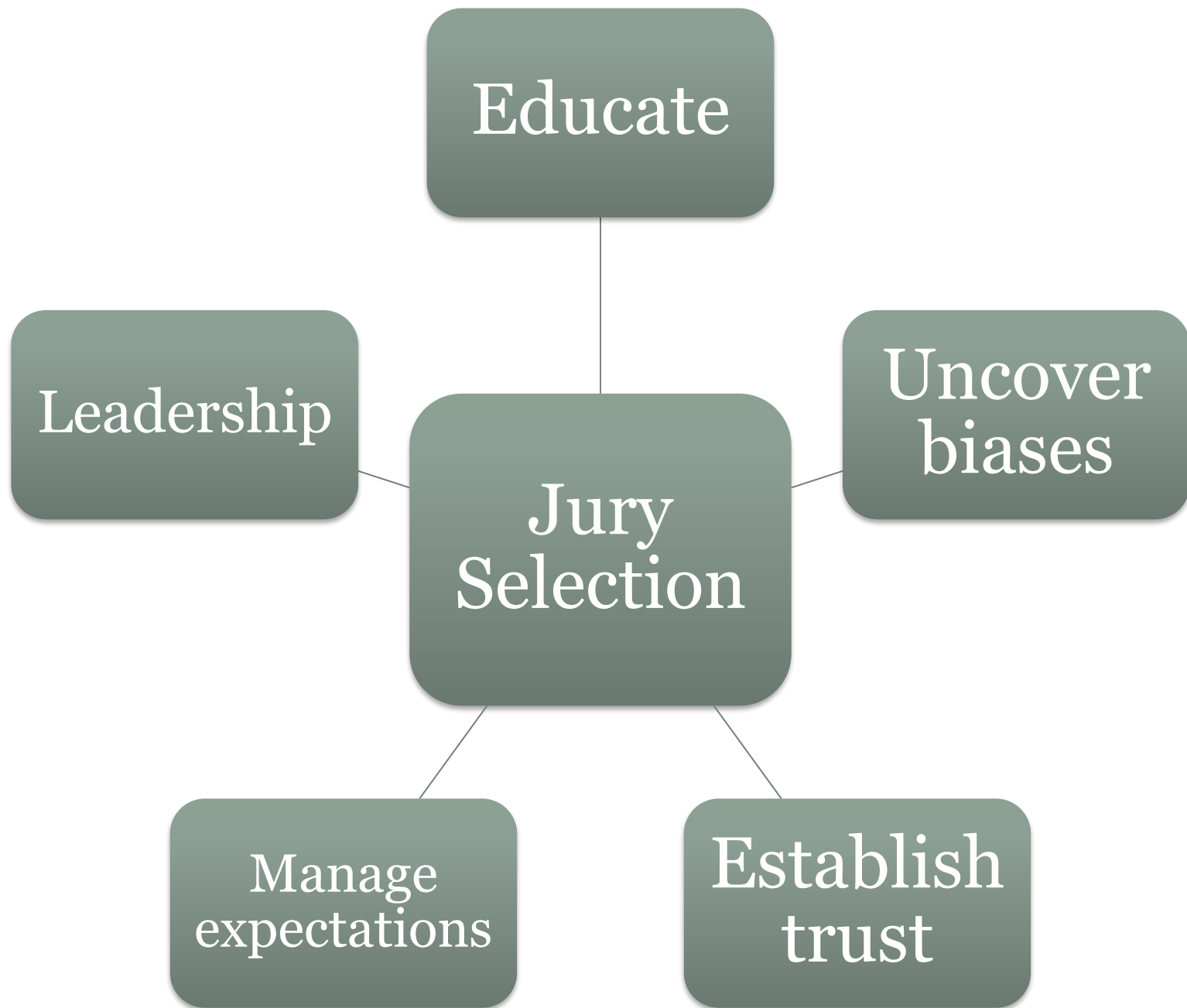
- Victim responses to trauma
- Dynamics of domestic violence
- Relationships between offenders and victims in human trafficking cases
- Other subjects that may be outside the common jurors understanding

State v. Olvera-Guillen

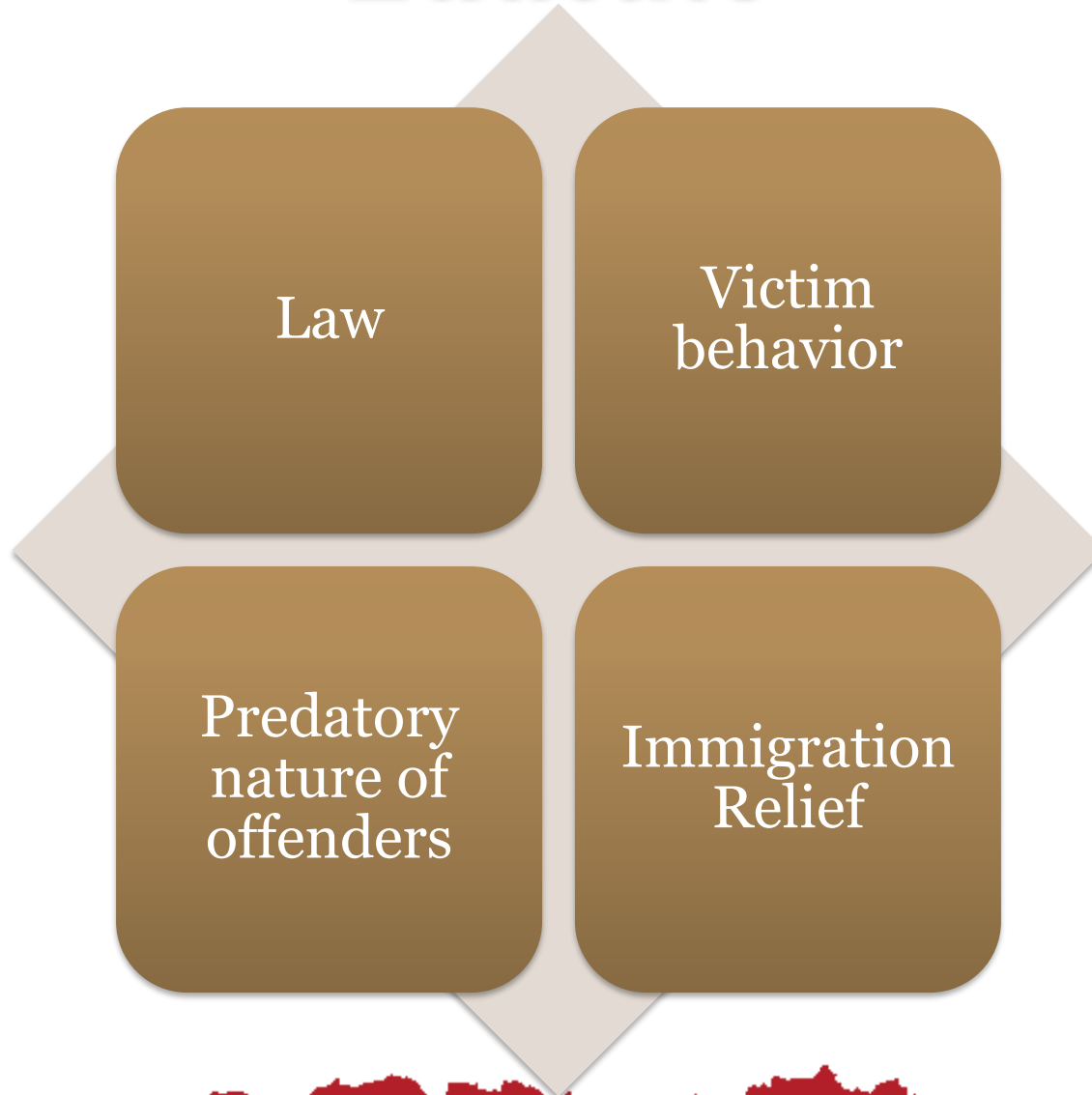
2008-Ohio-5416

- Court allowed defense to call an expert witness to explain the U Visa process
- Prosecutor's comments permissible:
 - “You know there is a very good reason why that U-visa program is in place because without it, people like him, can have free rein. They rape, pillage and plunder a whole underclass of people in this country simply because they are illegal aliens, knowing full well that they in their perpetual fear factor and their state of paranoia are not going to go running to the police.”

When do you start talking about immigration status?



Educate



Uncover Biases

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

Establish Trust

- Be accurate about the law
- Do not hide “bad facts”
- Be respectful to Judge, defense attorney, defendant, court staff, and jurors

Jurors watch everything you do!

Leadership

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

#1 BE YOU

Manage Expectations

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

Offender-Focused Theme

PREYING ON
THE MOST
VULNERABLE

AMERICAN
DREAM
BECAME A
NIGHTMARE

BETRAYAL OF
TRUST,
FAMILY, AND
THE LAW

POWER OVER
THE
POWERLESS

PICKED THE
PERFECT
VICTIM

KNEW THERE
WAS NO
WHERE TO
TURN

Victim Testimony

- Introduce the victim to your jury
- Recreate the reality of the crime
- Illustrate fear
- Address immigration status and U Visa application
- Emphasize threats of deportation and/or separation from family

Cross-Examination

- Prepare victim for anticipated lines of questioning
- Listen for the defendant to explicitly or implicitly accuse the victim of lying for an immigration benefit

Rebuttal Testimony

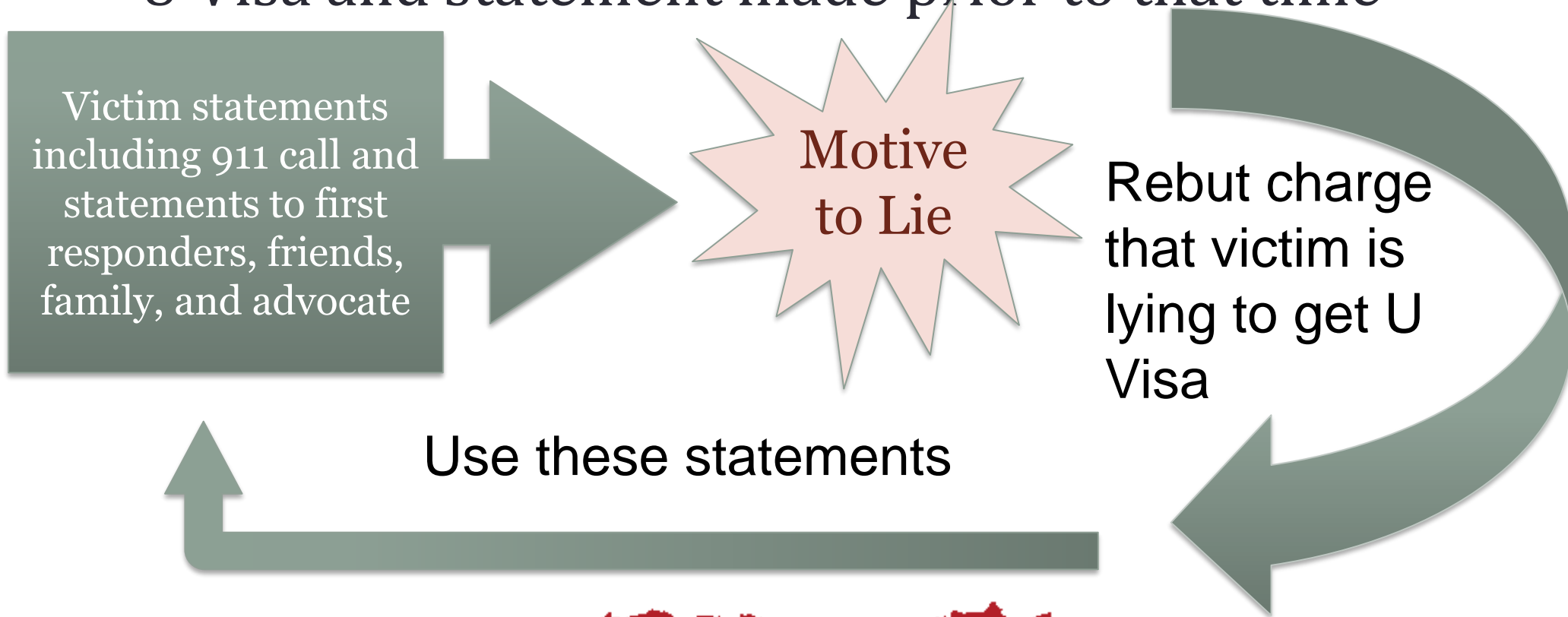
- Once the defendant has alleged that the victim has a motive to lie, the prosecution can introduce the victim's prior consistent statements about the charged crime
- Door to this testimony can be opened at any time, but is likely done during cross-examination
- Be prepared with case law and a legal brief, if appropriate

Prior Consistent Statements

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

Introducing Statements

- Establish timeline of when victim was told about U Visa and statement made prior to that time



What statements do you usually
have from a victim of a crime?

Victim Statements

- 911 call
- Statements to first responders
- Interview by detective
- Comments made to family, friends, or coworkers
- Conversation with service providers
 - Community-based v. Systems-based

Which of these statements would normally be admissible?

When is a victim typically
advised of immigration relief
benefits?

Example Questions on Rebuttal

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

Certify Early

PROS

CONS

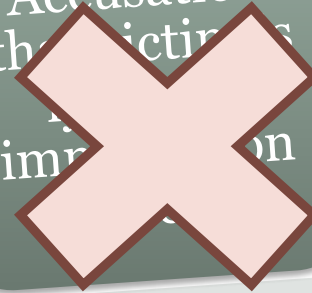
Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation
the victim's
immigration



Going Forward

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

T Visa Overview

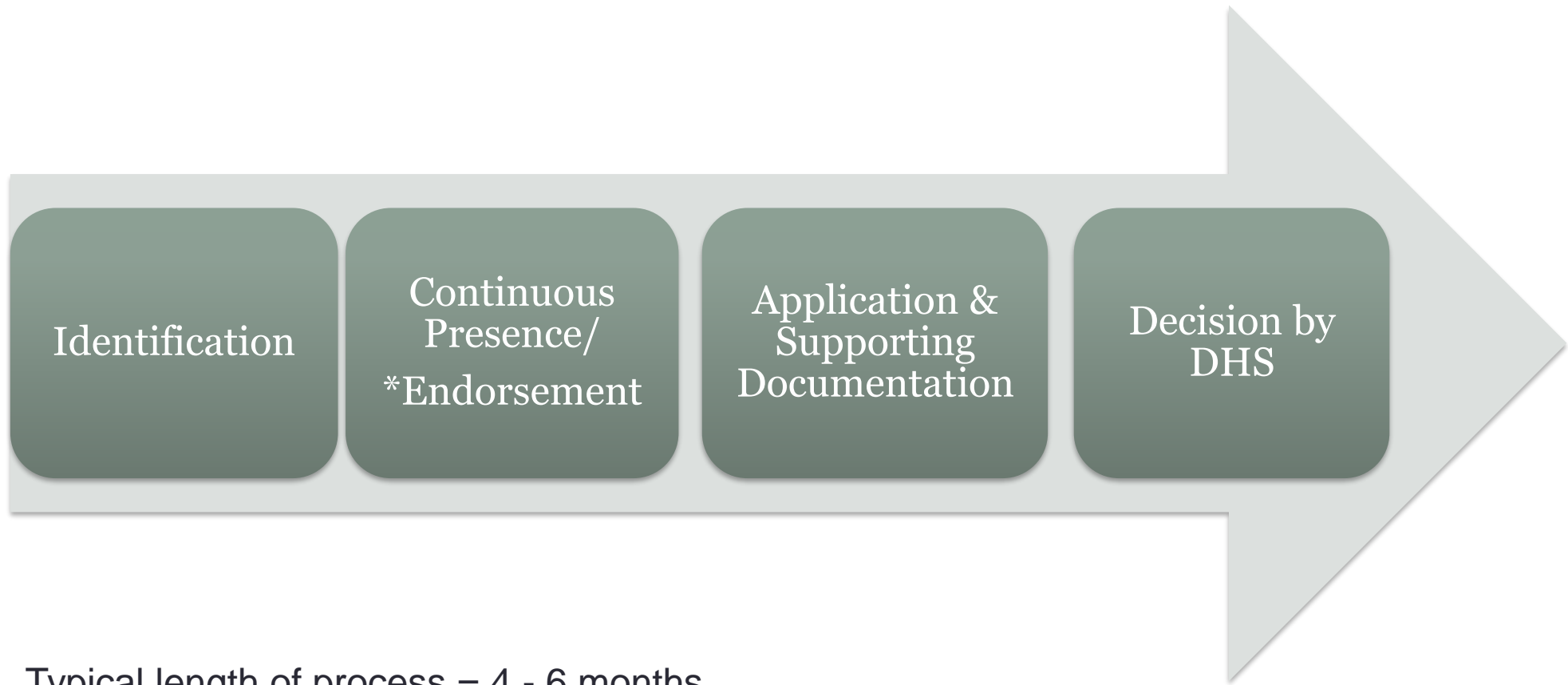
- Non-Immigrant, 4 Year Visa
 - Victim of Severe form of Trafficking
 - In the US or territories on account of trafficking
 - Respond to reasonable requests for collaboration with investigation
 - prosecution unless victim is under 18
 - Hardship upon return to home country
- May apply for adjustment of status after investigation/prosecution is over or 3 years, what ever time is shorter

What are Severe Forms of Human Trafficking?

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

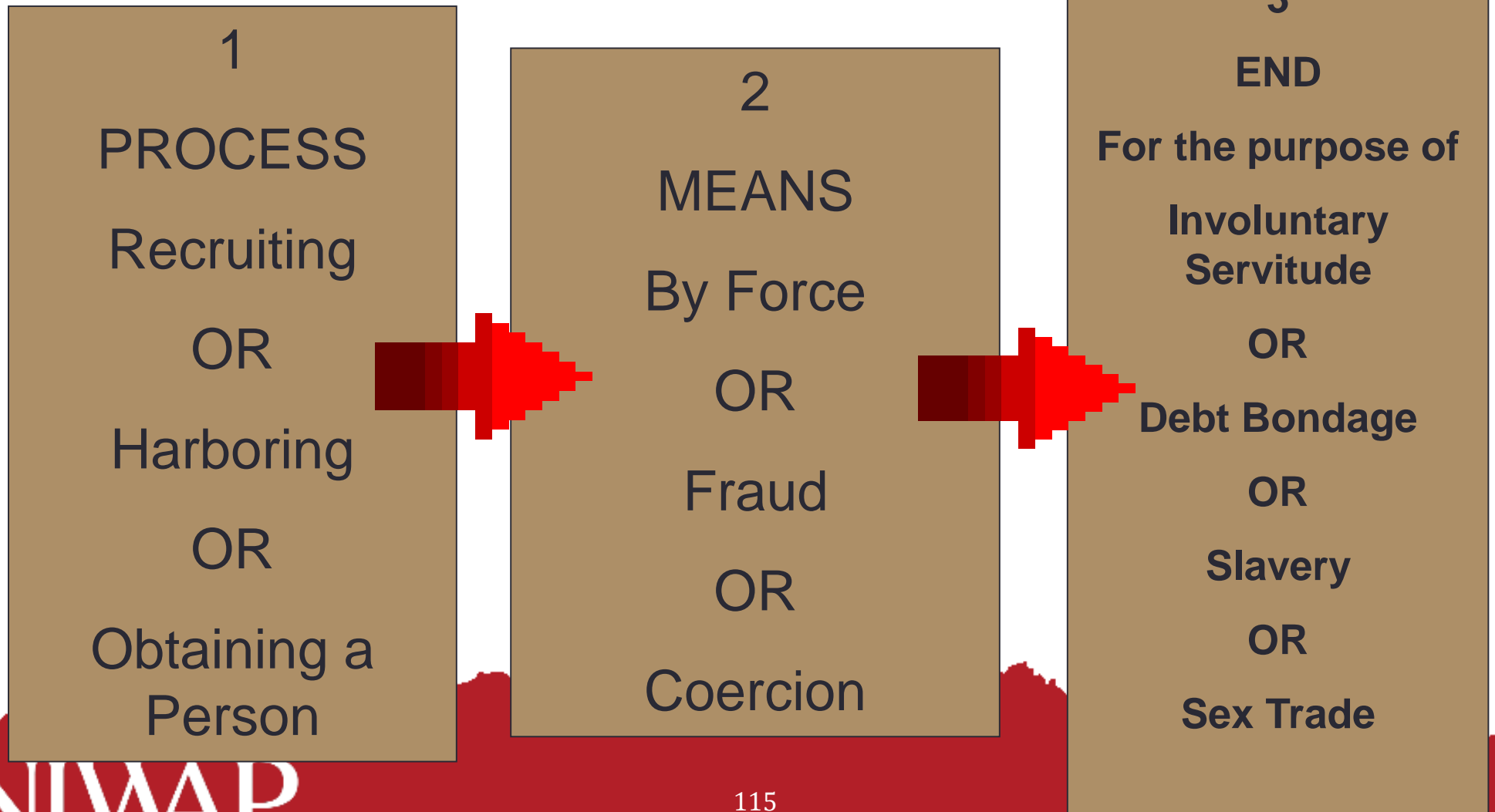
(Federal Law—“Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

The T Visa Application Process



Typical length of process = 4 - 6 months

Three Elements of Trafficking



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



Hypotheticals

Small Group Activity

- Is this person eligible for a U Visa certification?
- *Stories handout*



Helpfulness can be satisfied even if:

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

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

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

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

U Visa Certification Overview

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

Form I-918 Supplement B,
U Nonimmigrant Status Certification

NIWAP

Review the U Visa Certification Form

Located in your training packet

- **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.

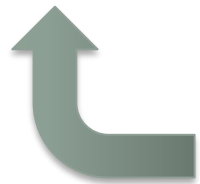
Part 1. Victim Information

Family Name	Given Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Other Names Used *(Include maiden name/nickname)*

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.**

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

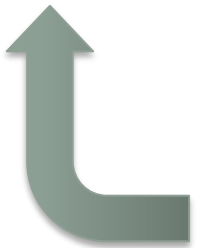
4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)* Yes No

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.

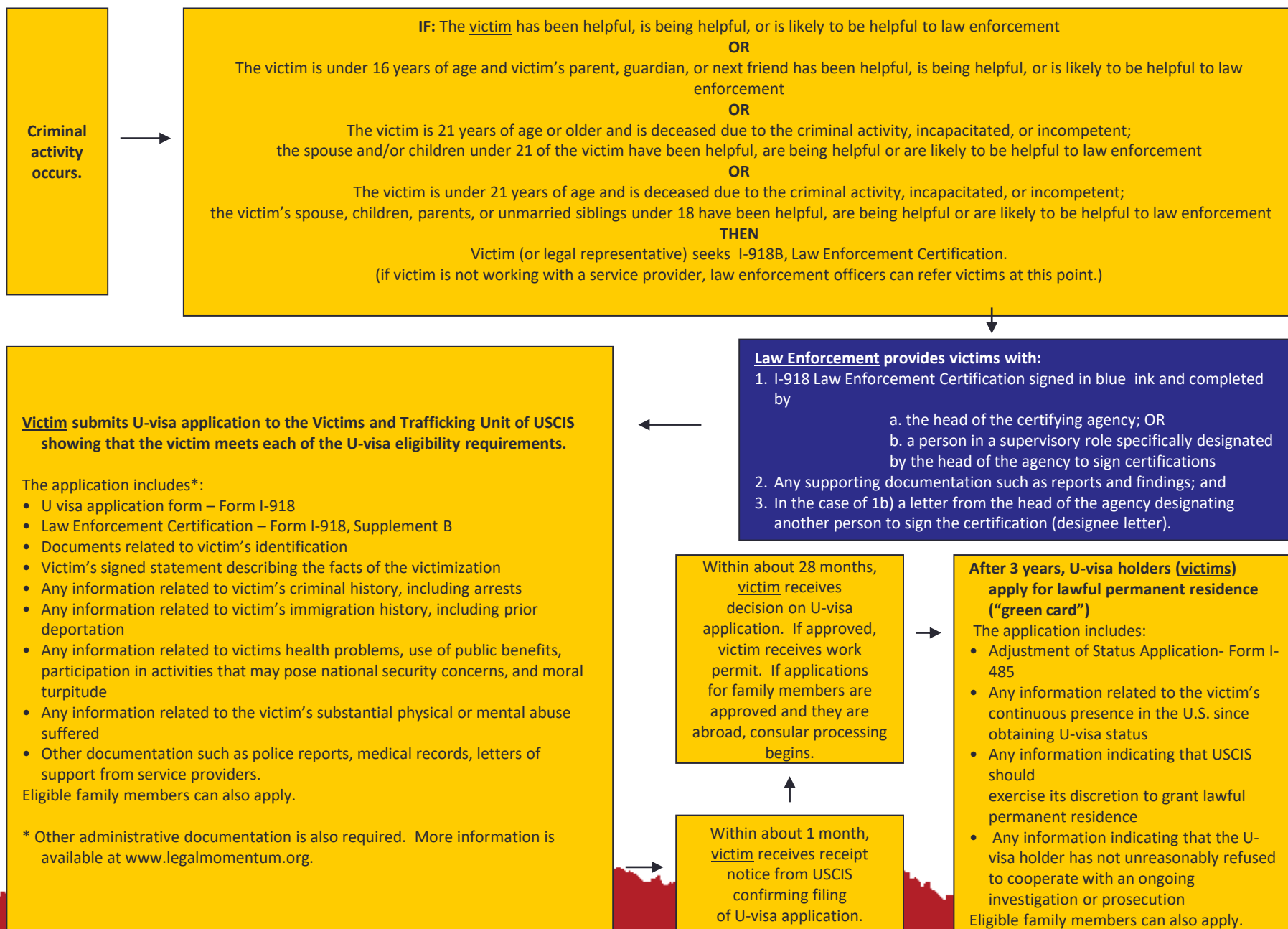
Signature of Certifying Official Identified in Part 2.

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.

DHS Video Part 2.mpg

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).

Does your agency have a
U-Visa policy/procedure ?

Large Group Discussion

- City of X, Law Enforcement Certification Protocol
- Are these true or false?
 - Identify any problems with the protocol
 - Note provision numbers
 - How could the protocol be improved?
 - What is missing?
 - **MODEL POLICY**

Collaboration Roadmap

- Collaboration more important now than ever
- Strategies for collaboration with law enforcement
- How collaboration protects immigrant victims
- Collaboration is key



Small Group Discussion

Based on the training today, what will you take back when you return to your agency?

- What might you want to implement?
- Questions you want to ask?

DHS Resources



U.S. Immigration
and Customs
Enforcement

ICE Victim Assistance Specialist

SAC Honolulu

Karl Mueller

Phone: (808) 532-3746

Karl.T.Muller@ice.dhs.gov

DHS Resources

ICE ERO Community Field Liaison

Patricia Matthews

San Francisco Community Relations Officer

patricia.matthews@ice.dhs.gov

Law Enforcement Support Center Field Offices

LESC Communications Section

188 Harvest Lane

Williston, VT, 05495

(802) 872-6050 or via NLETS Administrative

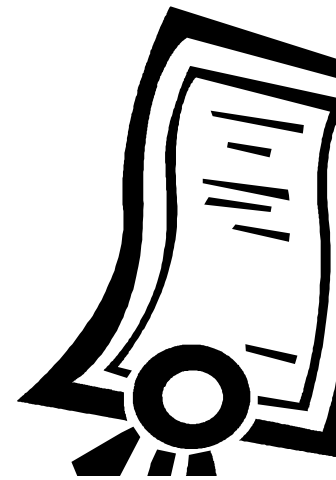
Message (AM) to VTINS07S0

Resources

- ▶ **Technical Assistance**
 - ▶ Call: 202.274.4457
 - ▶ Email: niwap@wcl.american.edu
- ▶ **Materials on U visa and Immigrant Victims Legal Rights**
 - ▶ Conference materials:
www.niwap.org/go/HIProsecutors2017
 - ▶ Visit web library <http://niwaplibrary.wcl.american.edu>
 - ▶ U Visa Certification Toolkit
 - ▶ DHS Answers to Law Enforcement Reasons for Not Certifying
 - ▶ USCIS Q & A on U Visa Certification
 - ▶ Roll call training videos
 - ▶ All available at: [www.http://niwap.org/lawenforcement](http://www.niwap.org/lawenforcement)

Evaluations

- Evaluations are in your training packet
- Certificates



Thank You!