

# NIWAP

AMERICAN UNIVERSITY  
WASHINGTON  
COLLEGE OF LAW

## WEBINAR

# LAW ENFORCEMENT WORKING WITH VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT IN RURAL COMMUNITIES: U AND T VISA CERTIFICATIONS

**February 26, 2018**

NIWAP



 Kansas Coalition  
against sexual & domestic violence

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Where are you located?  
Please type your city in  
text box



# Learning Objectives

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

- Enhance your skills to work with immigrant victims of domestic violence, sexual assault, stalking and human trafficking
- Hold offenders more accountable by using the certification process as a crime fighting tool
- Understand the benefits U and T certification for victims, law enforcement and community safety

# KANSAS DEMOGRAPHICS



# Kansas Demographics (2016)\*

- ❖ Total foreign born population – 205,522
  - ❖ 7% of the state's 3 million people are foreign born
    - 39.5% naturalized citizens
    - ≈29.8% lawful permanent residents and temporary status
    - ≈30.7% undocumented
- <http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/KS>
- ❖ 52.5% rise in immigrant population from 2000 to 2016
  - ❖ 16% of children in the state under age 18 have 1 or more immigrant parents
    - 89.7% of children with immigrant parents in the state are U.S. native.

**\*Source:** <http://www.migrationpolicy.org/data/stateprofiles/state/demographics/KS>  
(Feb. 2018)

# Kansas– Countries/Regions of Origin and Limited English Proficiency (2016)\*

- ▶ Latin America – 55%
  - ▶ Mexico (40.7%)
  - ▶ Central America (8.4%)
  - ▶ South America (3.4%)
- ▶ Asia – 32.2%
  - ▶ Vietnam (6%)
  - ▶ India (5.7%)
  - ▶ China (4.1%)
- ▶ Europe – 7%
- ▶ Africa – 3.7%

## Limited English Proficiency

(Speak English less than very well)

- ▶ Naturalized citizens 37.6%
- ▶ Non-citizens 63%

Source: LEP Adults, Ages 18 and Older, 2016.

<http://www.migrationpolicy.org/programs/data-hub/us-immigration-trends#lep> (Feb. 2018)

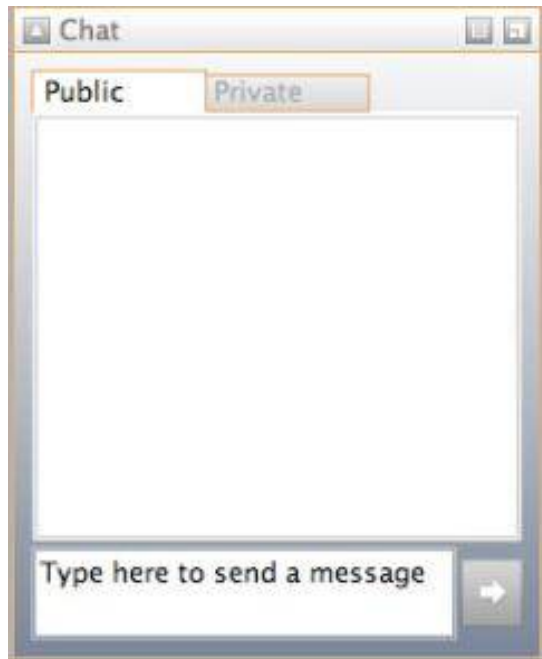
\*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=KS>  
(Feb. 2018)



# Benefits

- Increase reporting
- Improve investigations
- Enhance participation
- Increase safety

What barriers and fears prevent immigrant victims of domestic and sexual violence from reporting crime?



# Challenges in Working with Immigrant Victims of Domestic and Sexual Violence

- Fear of Deportation
- Language
- Isolation
- Lack of knowledge of legal rights
- Do not trust that police/prosecutors will help them
- Lack of reporting and/or cooperation as the case moves forward

What unique barriers exist in rural jurisdictions that would impact immigrant victims ability to report crimes and/or seek resources?



# Rural Barriers

- Isolation
- Transportation
- Ability to make contact with others
- Language access
- Lack of cultural specific resources
- Access to specialty trained law enforcement officers
- Access to certifying officials

# U and T Visa Basics

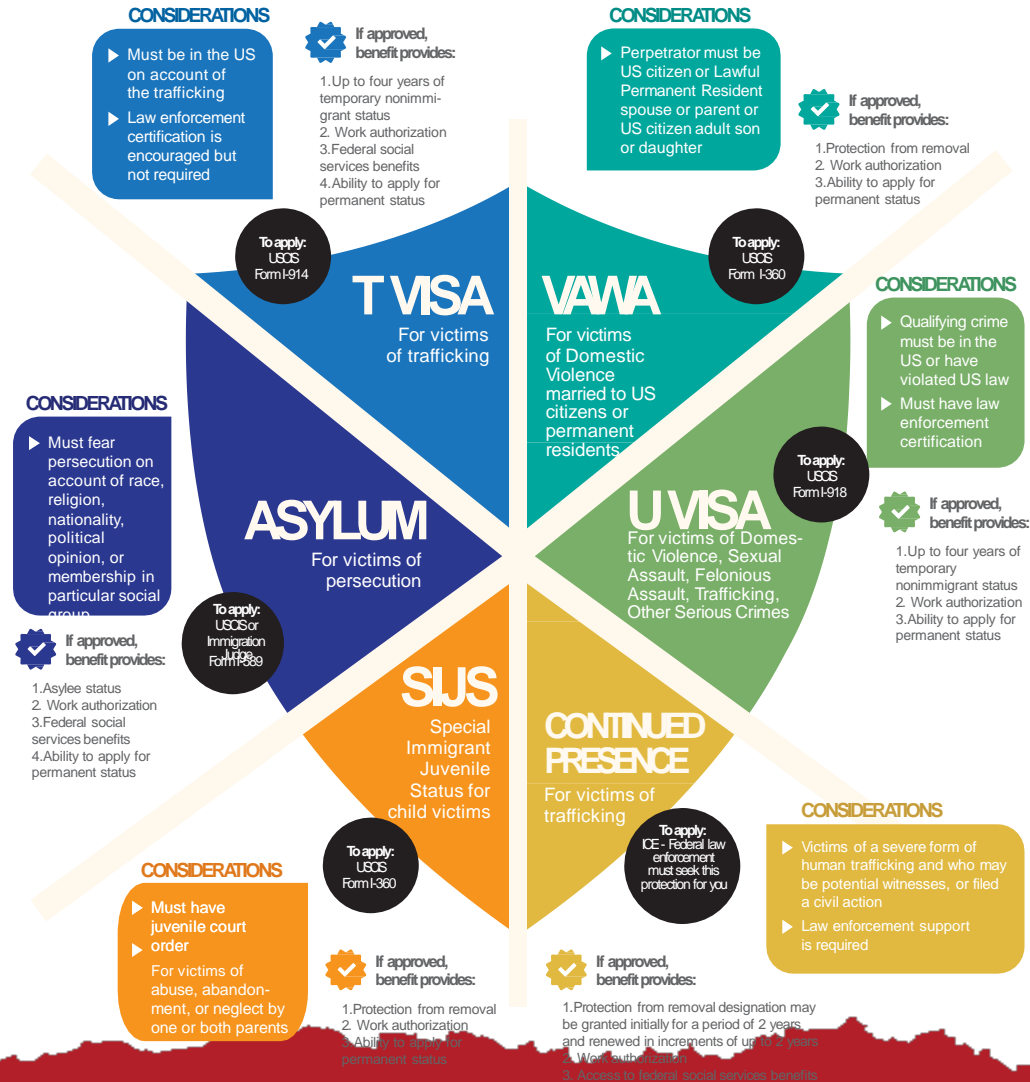
- Law enforcement certification is just one part of the overall process it does not = U.S. citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Offender may be U.S. citizen or non-citizen
- Can be “revoked”
- Increases immigrant victim participation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

# PROTECTIONS FOR IMMIGRANT VICTIMS





# Overview of Legal Immigration Status Options for Immigrant Crime Victims

- **VAWA self-petition (7 months)**
  - Abused spouses/children of US citizens and lawful permanent residents
  - Abused parents of U.S. citizens over 21 years of age
- **VAWA cancellation of removal and suspension of deportation**
  - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- **Battered spouse waiver**
  - Abused spouses of US citizens with two-year conditional permanent residency
- **U visa (28 months)**
  - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
  - Substantial harm from criminal activity
- **T visa & Continued Presence**
  - Victims of severe forms of human trafficking
- **Abused Spouse of Visa Holders**
  - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Australian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- **Special Immigrant Juvenile (SIJS)**
  - Children abused, battered, abandoned or neglected by one or both parents

# Law Enforcement and Prosecutors' Important Role: Identifying Eligible Victims

- Tool: Blue Card: Screening Tool for Victims of Domestic Violence and Sexual Assault Who Qualify for Immigration Protective Relief
- Know forms of immigration relief immigrant domestic and sexual violence victims qualify for
- Early identification of victims, certification and referral to agency that can help the victim file a VAWA, U or T visa case
  - Cuts off the ability of perpetrators to trigger the victims removal
  - DHS VAWA confidentiality computer system

# DHS VAWA Confidentiality Computer System

- DHS “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for:
  - Victims of domestic violence
  - Crime victims
  - Human trafficking victims

# January 2018 ICE Courthouse Enforcement Policy

- Limit enforcement to targeted immigrants:
  - With criminal convictions, gangs, national security, public safety, and orders of removal
  - Will not target witnesses or people accompanying to court
  - Enforcement in family law and other non-criminal
    - Should generally be avoided AND
    - Requires Field Office Director/Special Agent in Charge Approval

# 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



# Questions

## Ask

- Do I believe this person was a victim of a qualifying crime?
- Did the person assist or is willing to assist in the detection, investigation, conviction, prosecution and/or sentencing?

## Do Not Ask

- Can we prosecute?
- 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 in the Regulations

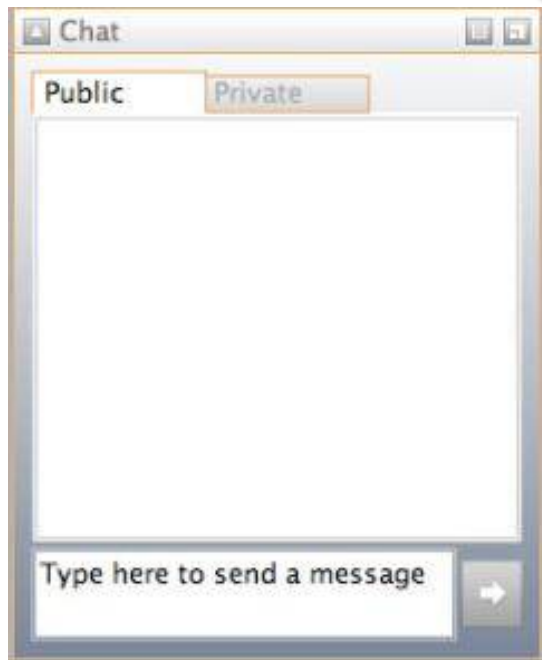
- Statute and DHS Regulations: has been helpful, is being helpful or is likely to be helpful in the
  - Detection, or Investigation, or
  - Prosecution, or Conviction or
  - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess victim's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



# Helpfulness can be satisfied even if:

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

Why would a immigrant victim report sexual assault or domestic violence and then refuse to participate in the ensuing investigation and trial?



# Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Unable to maintain regular contact with available support.
- Pressure from either family
- Financial hardship
- Lesser of two evils

# Ongoing Obligation to be Helpful

- 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 or 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

# Timeline

- 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

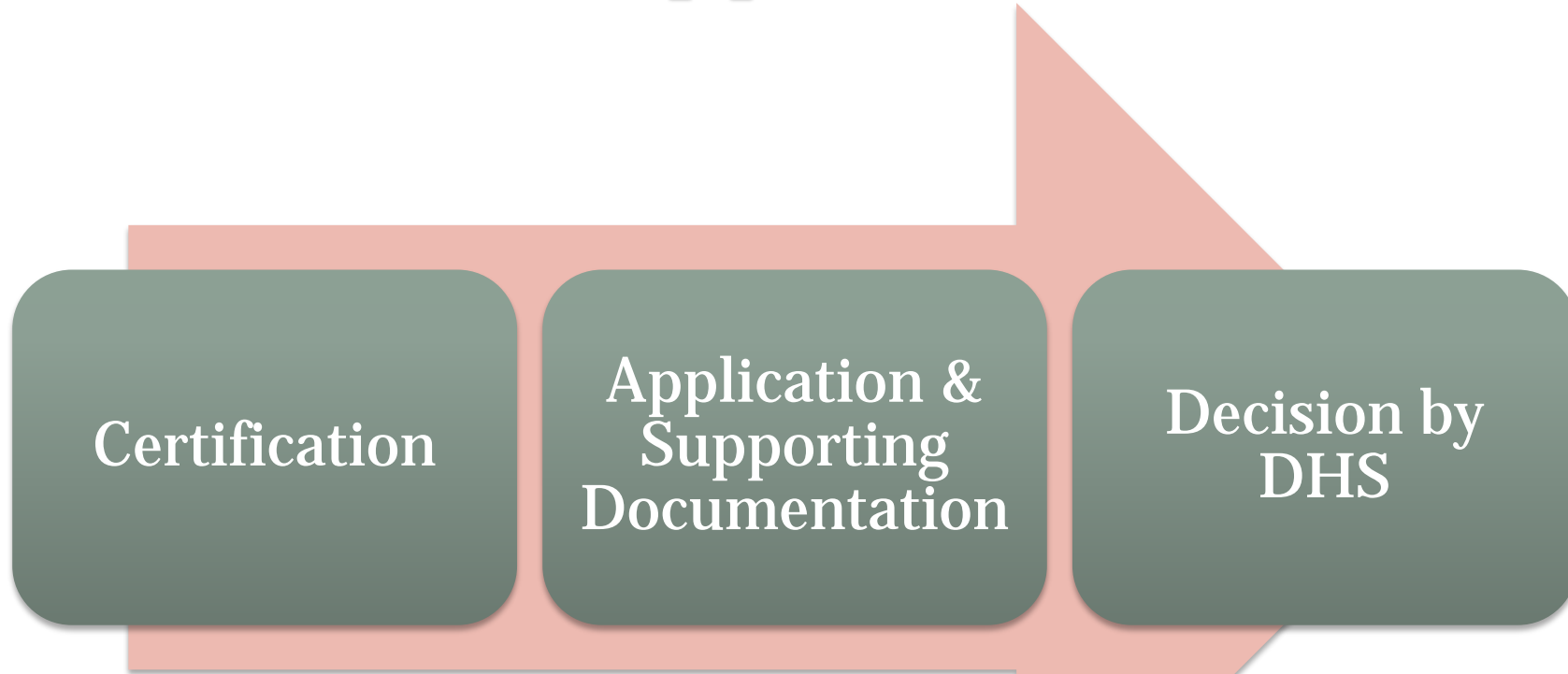


- **Immigration proceedings will not be initiated**
- **Offender can not succeed with deportation intimidation**

# 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 = 28-36 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

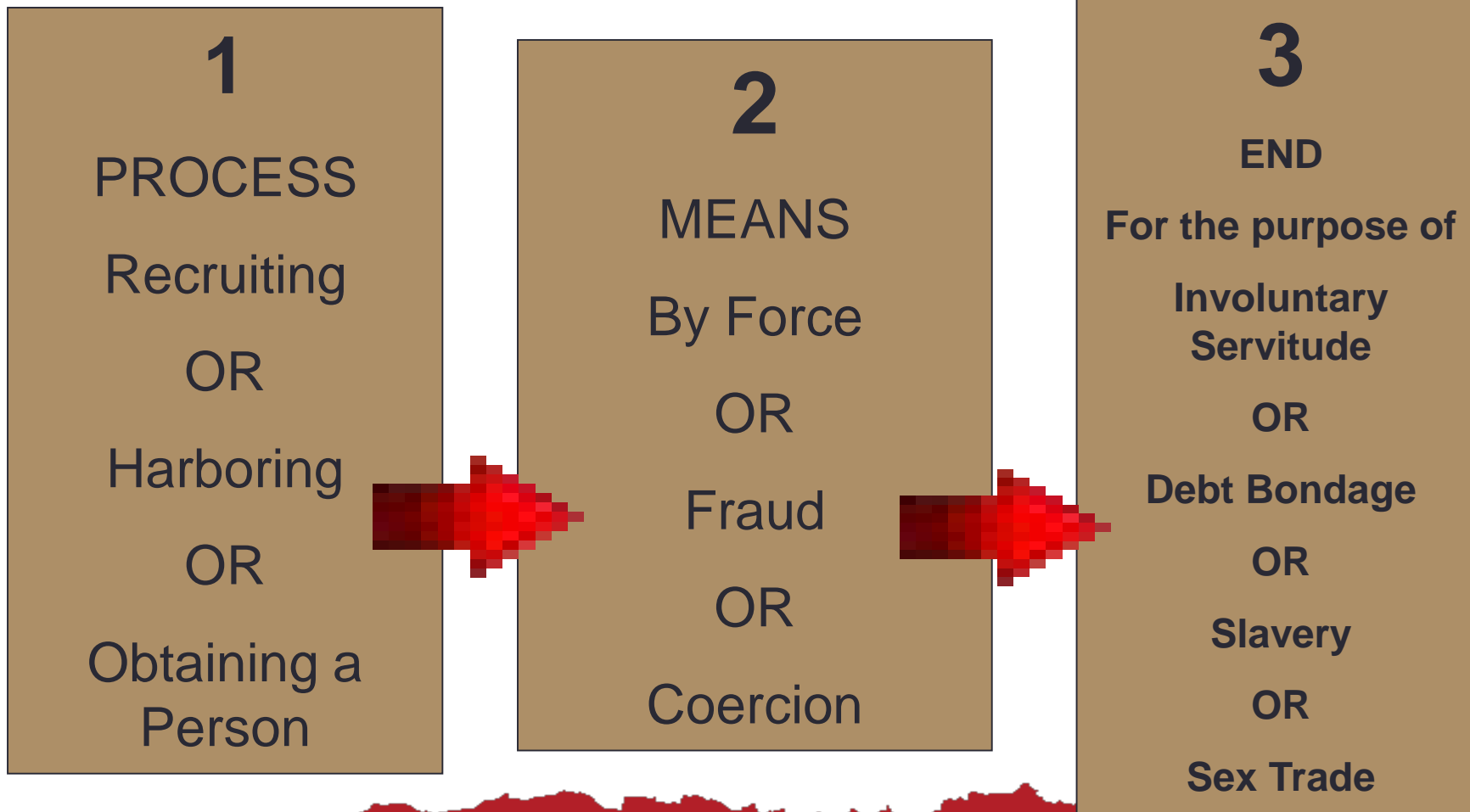
# Additional U Visa Facts

- 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

# Human Trafficking

- Generally: use of force, fraud and/or coercion to exploit a person for profit.
- Federal statute: TVPA 2000
- Every state now has their own Human Trafficking statute – (labor trafficking), (sex trafficking)

# Three Elements of Trafficking





# T Visa Overview

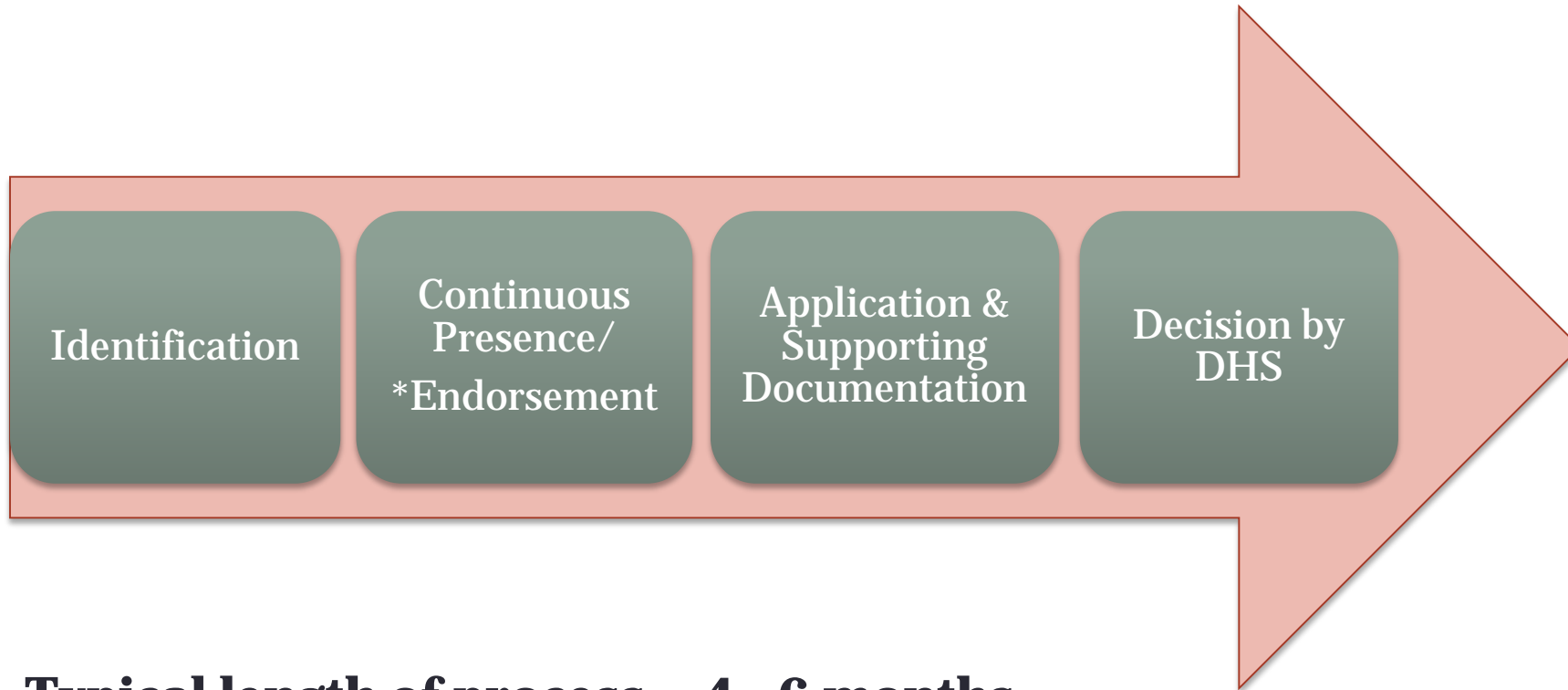
- Non-immigrant, 4 Year Visa
  - Victim of severe form of trafficking
  - In the U.S. or territories on account of trafficking
  - Respond to reasonable requests for collaboration with investigation
  - prosecution unless victim is under 18
  - Hardship upon return to home country
- May apply for adjustment 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/](http://www.ojp.usdoj.gov/vawo/laws/vawo2000/))

# The T Visa Application Process



**Typical length of process = 4 - 6 months**

# How does law enforcement and prosecution benefit from the U and T visa?



# U and T Visa Benefits to Law Enforcement and Prosecutors

- Encourages immigrant 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

# Certify Early

PROS

CONS

Establish trust

Build rapport

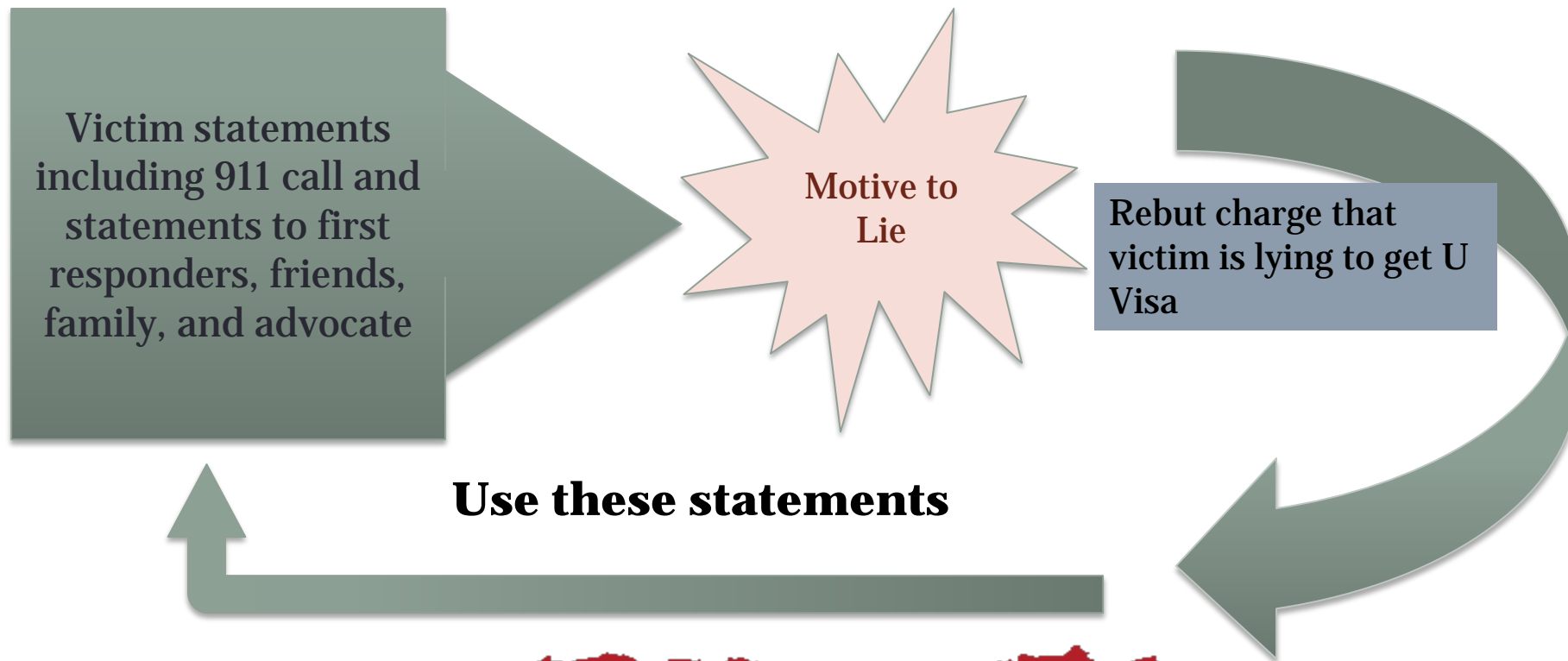
Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit

# Introducing Statements

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



# 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



# 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

# Certify Early

PROS

CONS

Establish trust

Build rapport

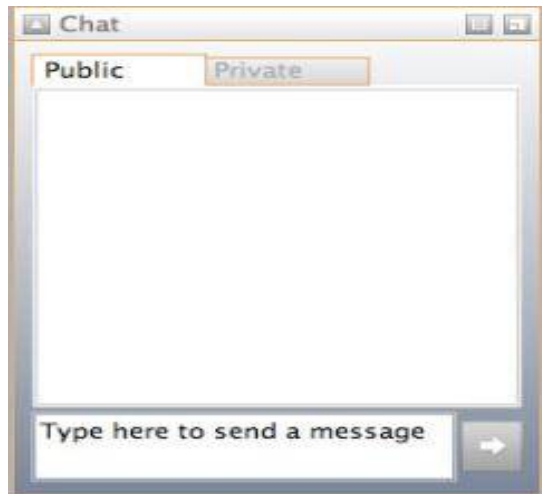
Protect from offender

Protect from deportation

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# Questions



# NIWAP Resources

- ▶ **Technical Assistance**

- ▶ Call: 202.274.4457
- ▶ Email: [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)

- ▶ **Materials on U visa and Immigrant Victims Legal Rights**

- ▶ Visit NIWAP's Web Library <http://niwaplibrary.wcl.american.edu>
- ▶ U Visa Legal Advocacy: Overview of Effective Policies and Practices
- ▶ U Visa Certification Toolkit for Law Enforcement and Prosecutors
- ▶ DHS Resource Guide on U and T Visa Certification
- ▶ U Visa as a Crime Fighting Tool
- ▶ Helpfulness Checklist
- ▶ Roll call training videos
- ▶ All available at: [www.http://niwap.org/lawenforcement](http://www.niwap.org/lawenforcement)