

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

**A Twin Cities Training
Minneapolis, Minnesota**

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WELCOME

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Introduction

- Faculty
- Housekeeping
- Pre-training assessment

Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) American University Washington College of Law
- We provide training and 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 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
- To register, visit <https://www.surveymonkey.com/r/LERoundtable>



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

- Training Materials for:
- Law Enforcement
- Prosecutors
- Systems Based Victim Advocates
- Judges
- Attorneys/Victim Advocates
- Statutes, Regulations, Policies & Government Publications
- Language Access
- Multilingual Materials
- Immigration
- Family and Criminal Law
- VAWA Confidentiality
- Public Benefits, Legal Services & Economic Relief
- Dynamics, Culture, Collaboration & Safety



INNOVATIVE

**Sustaining effective
practices and promoting
systemic change**

INFORMED

**Training, resources, and
assistance supported by
research and experience**

PRACTICAL

**Customized strategies
that are accessible,
responsive, and easy to
apply**

What We Do



Resources

Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices



Consultations

Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions



Training Events

Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals



Partnerships & Initiatives

Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training

Materials Summary

- Materials
 - Agenda
 - PowerPoint presentation
 - Hypotheticals
 - Evaluations
- Web Library
 - <https://niwaplibrary.wcl.american.edu/law-enforcement-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
- Bluecard Tool Screening Victims for Immigration Protections
- Multilingual Know Your Rights Materials

General Caveats

- Women, men, children, and persons of all genders can qualify for U & T 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 better able to:

- Support U and T Visa applications to promote trust with immigrant victims of crime and immigrant communities
- Improve victim safety & justice system participation and offender accountability through certification
- Enhance officer/victim/community safety by certifying U visas early
- Develop pretrial and trial strategies to overcome common defenses in immigrant victims' cases

Effectively Communicating with Victims of Crime

What countries do the victims in your jurisdiction come from?*

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Minnesota (2019)*

- ❖ Total foreign born population – 472,231
- ❖ 8.7% of the state's ~ 5.6 million people are foreign born
 - 50% naturalized citizens
 - 27% legal permanent residents
 - 23% temporary visa holders or undocumented immigrants
- 81.3% rise in immigrant population from 2000 to 2019
- ❖ Length of time immigrants have lived in the U.S.
 - 40% entered before 1999
 - 29.2% entered 2000 - 2009
 - 30.8% since 2010
- ❖ 20.2% of children under age 18 have one or more immigrant parents
 - 86.5% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (August 2022) and Lawful Permanent Resident estimates MPI and DHS (2022)*

Minnesota – Countries/Regions of Origin & Limited English Proficiency (LEP)(2019)*

- ❖ Asia – 35.7%
 - ❖ Other Southeastern Asia (13.8%)
 - ❖ India (7.8%)
 - ❖ Eastern Asia (6.8%)
 - ❖ Vietnam (4.3%)
- ❖ Africa – 26.7%
 - ❖ Eastern Africa (17.6%)
 - ❖ Western Africa (6.1%)
- ❖ Latin America – 22.9%
 - ❖ Mexico (12.2%)
 - ❖ South America (5.1%)
 - ❖ Other Central America (4.3%)
- ❖ Europe – 9.6%
 - ❖ Eastern Europe (4.8%)
- ❖ Middle East – 2.4%
- ❖ Canada – 2.3%
- ❖ Language spoken
 - ❖ 12.3% of people in the state who speak a language other than English at home
 - ❖ 41% of foreign born persons are LEP - speak English less than “very well”

**Source: Migration Policy Institute Data Hub (August 2022)*

Minnesota - LEP (2019)*

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 35.8%
 - ❖ Noncitizens – 47.8%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Khmer (57.0%)
 - ❖ Vietnamese (55.2%)
 - ❖ Thai, Lao, or Other Tai-Kadai Languages (46.3%)
 - ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (40.1%)
 - ❖ Hmong (39.4%)
 - ❖ Amharic, Somali, or Other Afro-Asiatic Languages (38.9%)
 - ❖ Chinese (including Mandarin, Cantonese) (38.1%)
 - ❖ Nepali, Marathi, or Other Indic Languages (36.2%)
 - ❖ Spanish (35.9%)
 - ❖ Russian (33.8%)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MI> (August 2022)

Minnesota - Languages Spoken at Home (2019)*

- ❖ Spanish (209,370)
- ❖ Amharic, Somali, or Other Afro-Asiatic Languages (89,066)
- ❖ Hmong (73,604)
- ❖ Vietnamese (23,933)
- ❖ Chinese (including Mandarin, Cantonese) (22,526)
- ❖ German (18,581)
- ❖ Arabic (15,815)
- ❖ Russian (15,055)
- ❖ French (including Cajun) (14,760)
- ❖ Hindi (14,204)
- ❖ Yoruba, Twi, Igbo, or Other Languages of Western Africa (13,728)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (12,134)
- ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (11,526)
- ❖ Native Languages of North America (9,554)
- ❖ Tagalog (including Filipino) (8,306)
- ❖ Tamil (6,575)
- ❖ Nepali, Marathi, or Other Indic Languages (6,074)
- ❖ Telugu (5,144)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MI>(August 2022)

What does this mean for law enforcement and 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

“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>

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

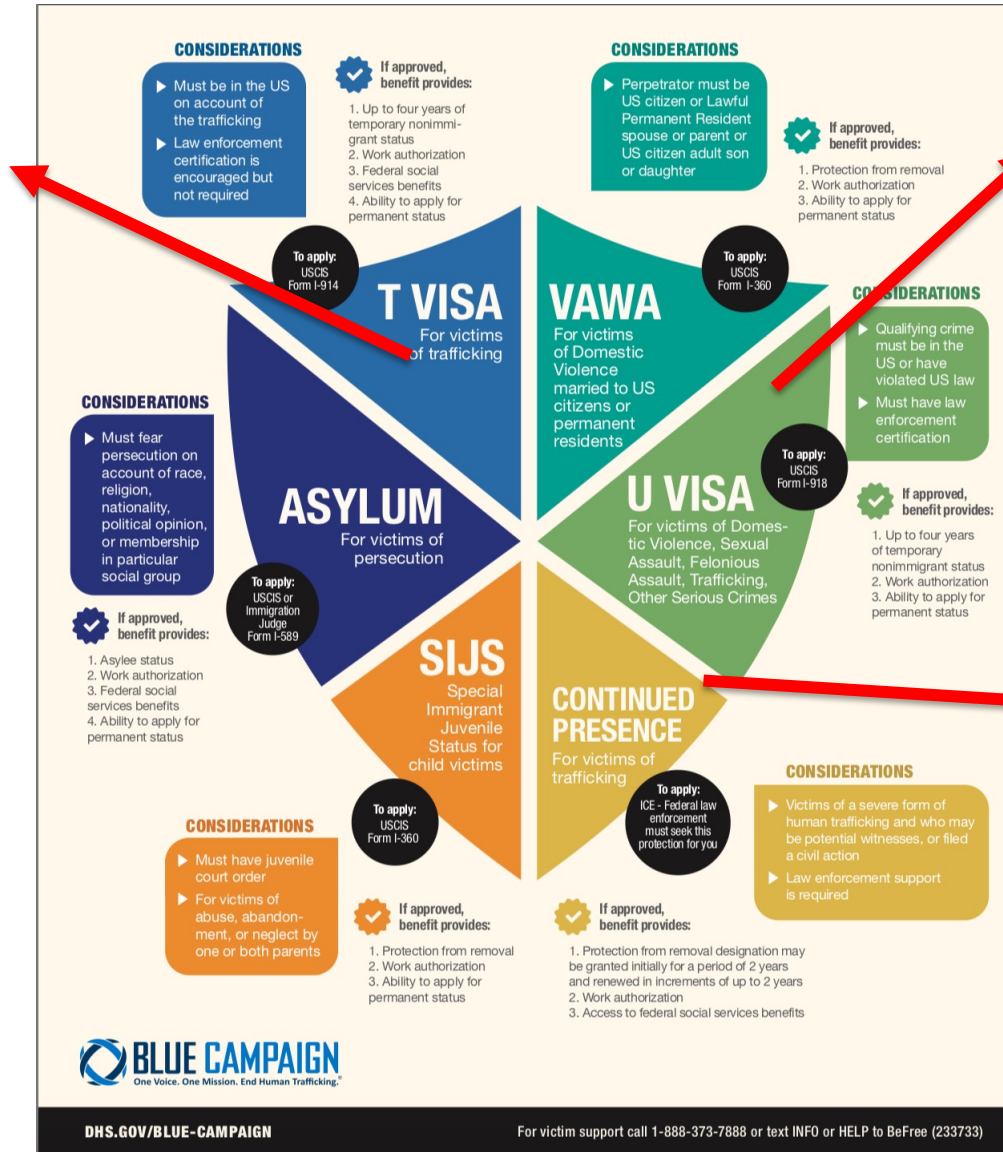
“Qualified Interpreter”

“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.”

History and Purpose of the U and T Visa Programs and VAWA's Immigration Protections

Immigration Relief for Crime Victims

T VISA
For victims of trafficking



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

CONTINUED PRESENCE
For victims of trafficking

To apply:



DHS.GOV/BLUE-CAMPAIGN

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

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

Legislative Intent

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

Goals of Immigration Relief



U Visa Statistics

11/2011

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

Minn. Stat. §611A.95 Certifications for Victims of Crime

- Requires state and local law enforcement agencies to
 - Process certifications within 90 days
 - Within 14 days if the victim is in removal proceedings
 - Designate certifiers, do outreach, keep records of certifications, provide language access
 - Prohibit disclosure of immigration status
- Active investigation, filing of charges, prosecution or conviction -not required

Minneapolis Ordinance Title 2- Ch. 19

Employee Authority in Immigration Matters

- City employees cannot inquire about or discriminate based on immigration status
- Public safety officials (police/city attorneys) cannot verify, arrest, detain, or question about immigration status
- City attorneys may address immigration status:
 - When relevant to the prosecution's cases
 - Warn of immigration consequences for pleas
 - Inquiring of witness or defendant, in setting bail/release conditions, settlement

Minneapolis Ordinance Title 2 Ch. 19.60

U/T Visa Certifications

- City certifying agencies shall
 - Process certifications within 30 days
 - Within 7 days if the victim is in removal proceedings
 - Publicize certification in multiple languages
 - Designate certifying officials
- “Investigation or prosecution” means detection, investigation, prosecution, conviction, or sentencing of the criminal activity
- U Visa - Rebuttable presumption that the victim is likely to be helpful if a victim has not unreasonably refused to cooperate or unreasonably failed to provide information and assistance reasonably requested by law enforcement or prosecution

How Best Practices in Domestic Violence Investigations Promote Officer Safety

DYNAMICS OF DOMESTIC AND SEXUAL VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Department of Homeland Security



- DHS Video 1

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)

Immigration-Related Abuse

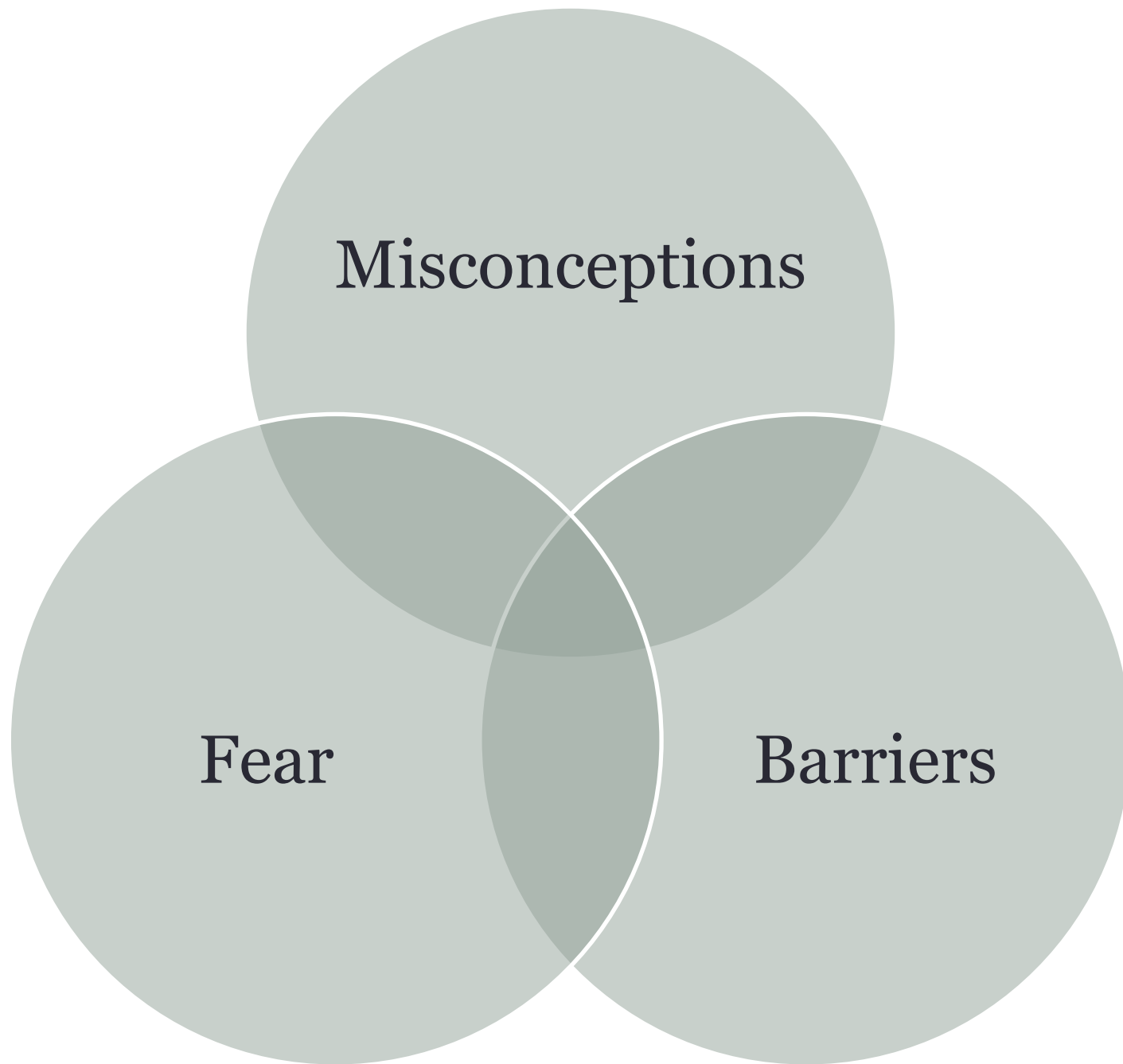
- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work-based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her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

Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and limited English proficient (LEP) victims calling for help arrested for domestic violence
- U visa applicants have higher future crime reporting rates

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)*

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

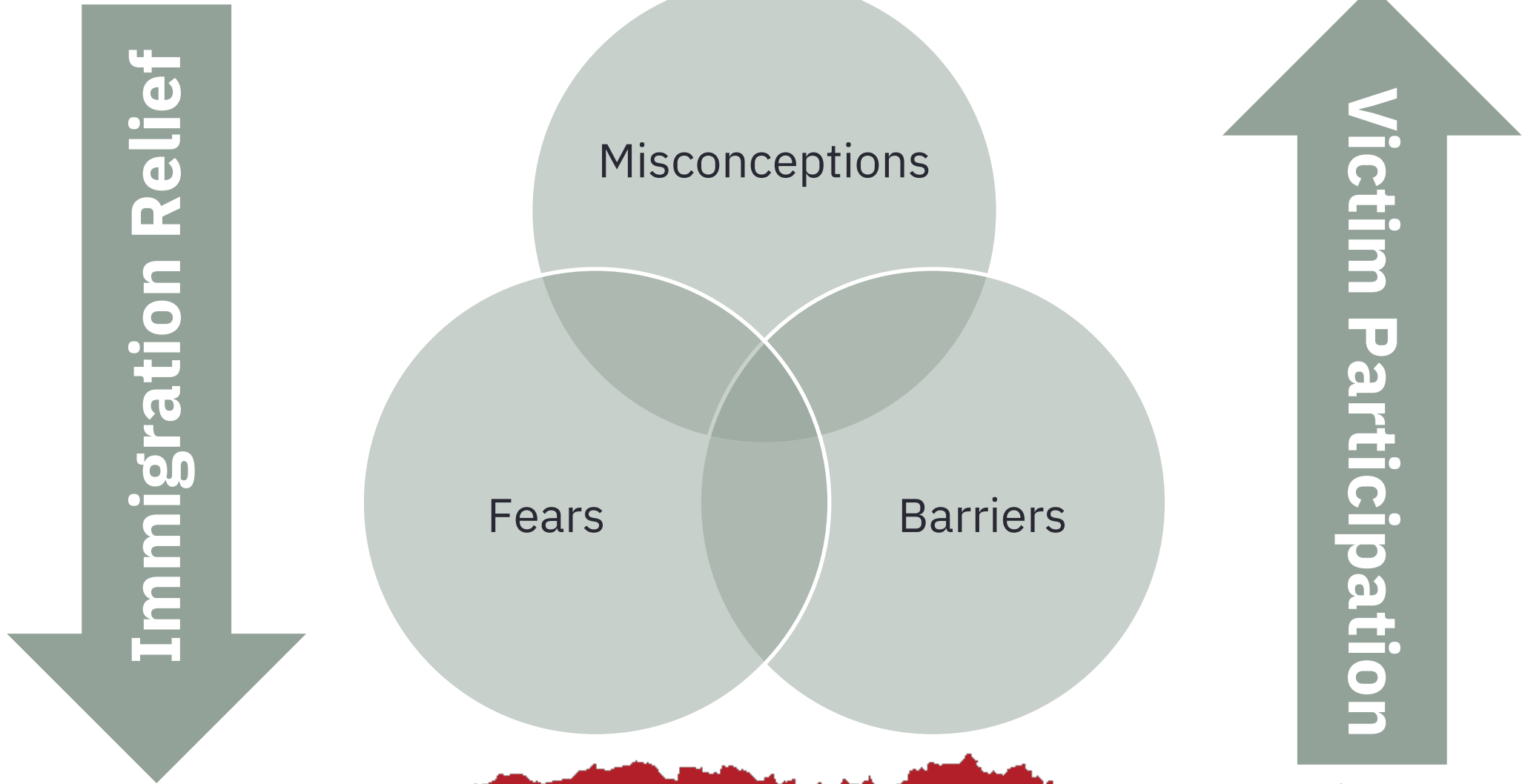
Misconceptions

- 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



U Visas as a Crime Fighting Tool

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

**What, if anything, do you know
about U Visas?**

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
- Increases immigrant victim participation in criminal justice system
- No statute of limitations
- Can be revoked

Department of Homeland Security



- DHS Video 2

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law
- Admissible to US or granted waiver

Helpful (Certification)

- Has been, is being, or is likely to be
- Detection, investigation, prosecution, conviction, or sentencing

Harm (Victim's Application)

Substantial physical or mental harm as a result of having been a victim of criminal activity

Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	
	These are general categories, and not specific crimes or citations to a criminal code.	

Types of Qualifying Criminal Activity

- Conviction of criminal activity is not required
 - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.
- 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 be similar to felonious assault depending on the evidence and state law definition

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HIS, ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates, Commissioners, other judicial official
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

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



U Visa Facts

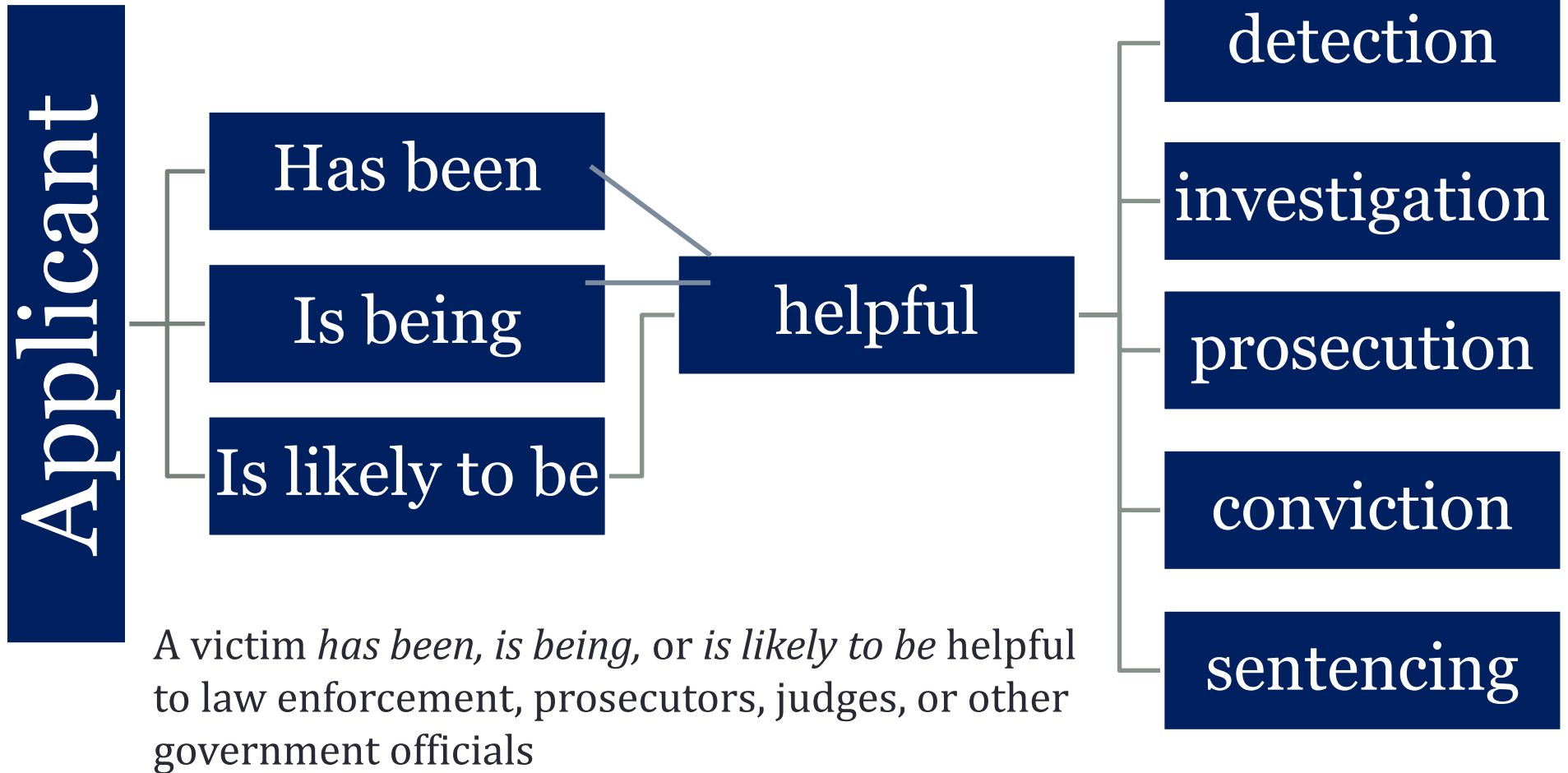
- Only 10,000 U visas can be granted annually
- Bona Fide determination with work authorization 4-5 years after filing
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful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

Who can apply?

- Victim of qualifying criminal activity
- Parents and guardians can apply as an “indirect victim” if:
 - The direct victim is a child under 21 years of age and/or
 - The direct victim is incompetent, incapacitated, or deceased due to murder or manslaughter
- Indirect victims must demonstrate that they were, are being, or are likely to be helpful
- 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

Definition of “Helpfulness”

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



Determining Helpfulness

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

Example of Helpfulness May Include:

Calling 911

Having a Rape Kit performed

Providing a description of offender or their whereabouts

Allowing photographs to be taken

Filing for a protection order

Bringing a minor victim to court

Providing a statement about "other bad acts"

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

Testifying at a bond hearing, trial, or sentencing

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

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



Victim-centered approach

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

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

IACP 2018 Resolution

- Recognizes U and T Visas as significant crime fighting tools and using them as best practice
- Supports training, education, communication and “increased police leadership involvement”
- Committed to increasing collaboration

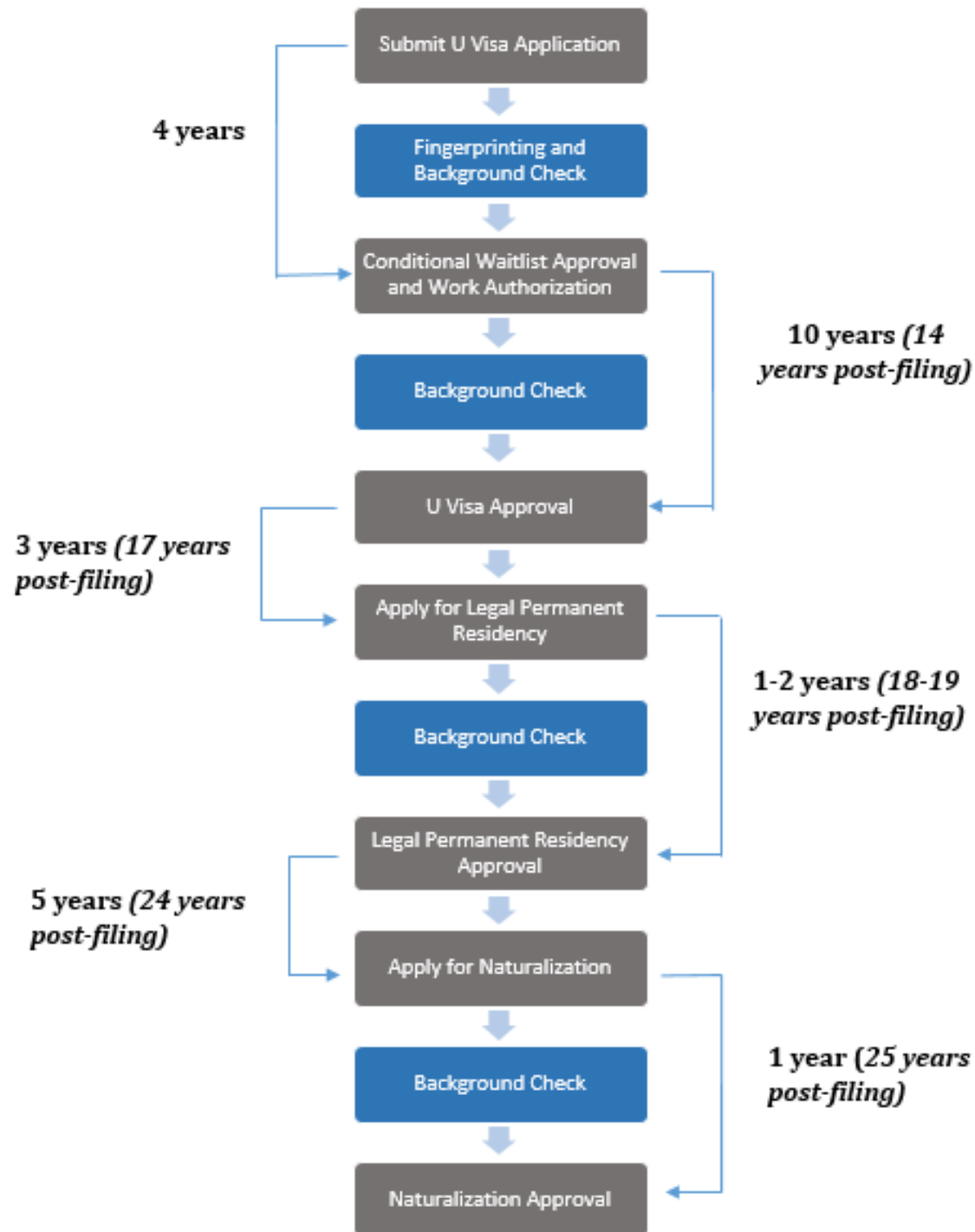
U Visas are “effective tools for law enforcement agencies that enhance public safety, officer safety and protection of victims nationwide.”

U and T Visa Victims “Red Flagged”



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

U Visa Process Timeline



Immigration Relief and Human Trafficking

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 something 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**

Trafficking

Exploitation

Smuggling

Transportation

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
- Victim is physically present in the U.S. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- Can include certain family members

Continued Presence

- 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 U.S. during investigation or prosecution into human trafficking
- Granted for 2 years, can be renewed
 - Receive work authorization, public benefits and services
- **Judges should refer victims to federal authorities** who are authorized to file continued presence applications for trafficking victims with DHS

Large Group Discussion:

What tactics do you think traffickers use against immigrant victims of sex and labor trafficking?”

U.S. Department of Labor

- Deferred action available to victims and witnesses of forced labor and labor exploitation
- OSHA and Wage & Hour U visa certifications

Break

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 in the Regulations

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

Helpfulness can be satisfied even if:

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

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

Reasons for Refusing to Cooperate

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

Helpfulness vs. Cooperation/Assistance

For Certification Before Filing the U Visa

- Has been helpful *Or*
- Is being helpful *Or*
- Is likely to be helpful

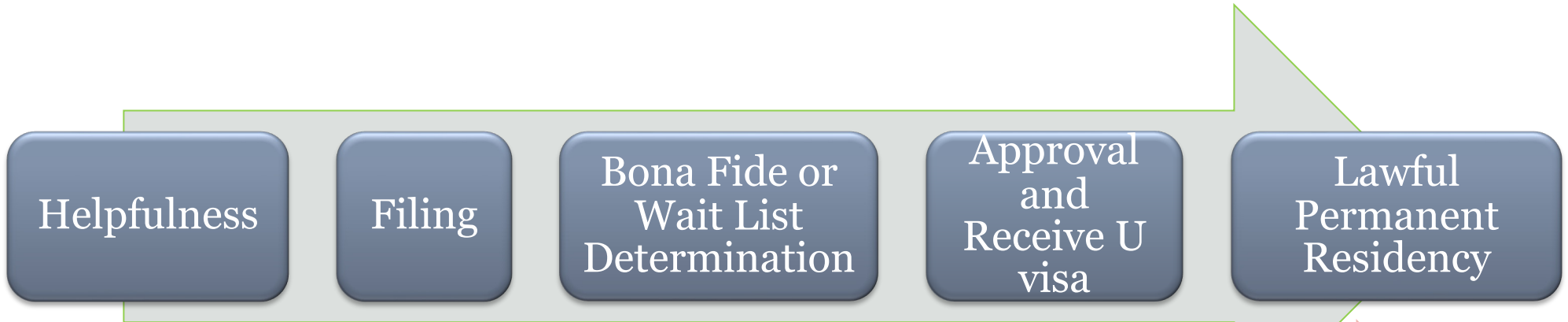
TO.....

- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

After Filing the U visa & 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

Ongoing Assistance



Continuing obligation to provide assistance when reasonably requested

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 herself or her family
- Is reasonable in light of the perpetrator's force, fraud or coercion of the victim

Ongoing Assistance Statutory and Regulatory Exception

- “Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the criminal activity”
 - 8 CFR 245.24(a)(5)
 - Implementing INA Section 245(m)(1); 8 U.S.C. 1255(m)(1)

Reasonable Refusals

Subjective, but consider if it is reasonable to refuse a request if the victim is:

- In danger
- Unaware of 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, capacity of the applicant
 - 8 C.F.R. 245.24(a)(5)

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

Practice Tips

- Proactively address witness intimidation
 - Monitor jail phone calls
 - Conduct wellness checks when appropriate
 - Recognize changes in communication patterns
- Collaborate with victim service professionals
- Communicate with victim's immigration attorney or victim advocate
- Establish safe points of contact with friends and family
- Identify tactics used by offender to assert power and control
- Continually safety plan with victim

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

- Note that 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

How does this discussion help you address the following on the U visa 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

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.

How have certifications come to you?

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

When should you certify?

Analyzing Requests for Certification

What criminal activity occurred?



Identify the victim or indirect victim



Determine helpfulness

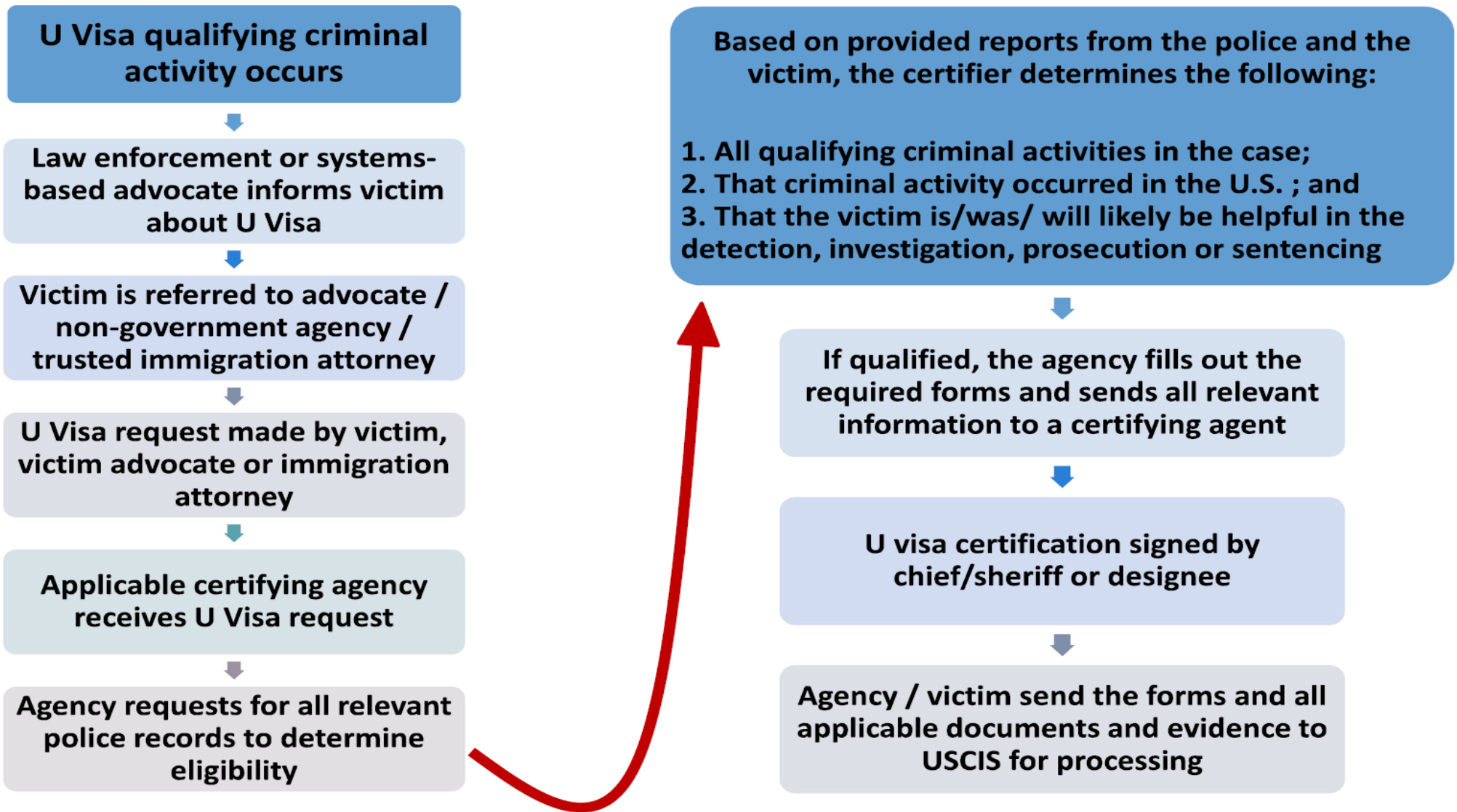


Identify if any family members were implicated in the crime

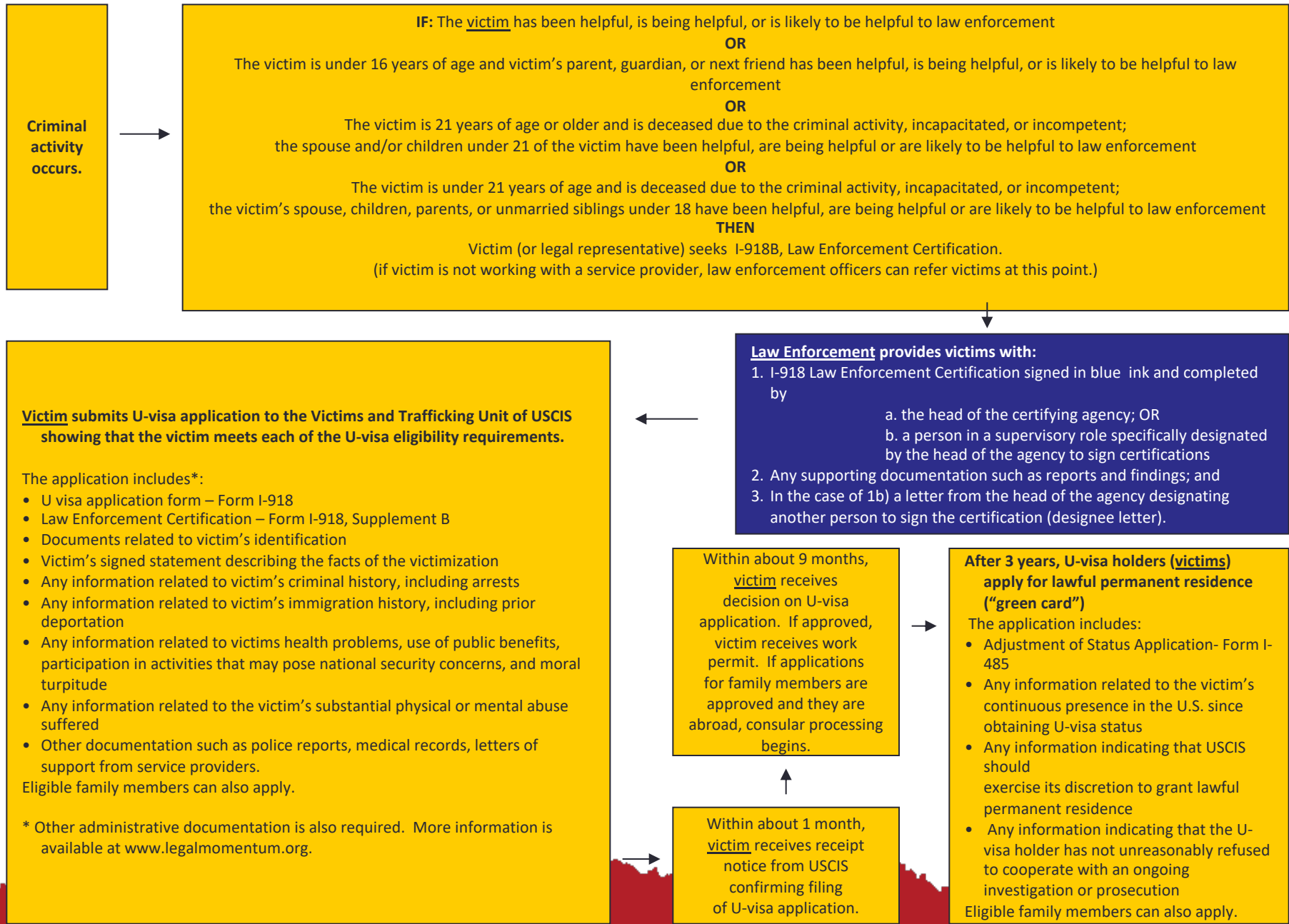


Note any injuries observed; provide documentation

U Visa Certification Process



U-visa Application Victim Flow Chart



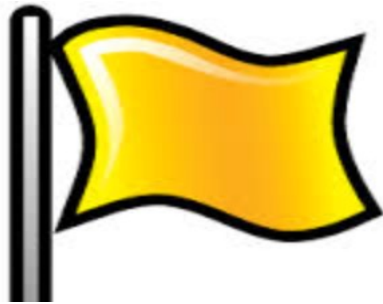
Certification provides victims with:

1. I-918 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; OR
 - c. a Judicial official
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).

Why can't I wait to sign until
the case is over?

Filing and VAWA Confidentiality

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



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

Bona Fide Determination Process

Implemented on June 14, 2021

- USCIS exercises its discretion to grant Employment Authorization Documents and deferred action
- Applies to victims and qualifying family members with pending , bona fide applications
 - “Bona fide” generally means made in good faith, without fraud or deceit

With Deferred Action and Work Authorization Trust Improves

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 22% help other victims report abuse and seek help/justice
- Significant reductions in 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

Orloff, Magwood, Campos-Mendez, & Hass, Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status (June 2021)

2013 and 2017 Research Found Increased Justice System Participation

- VAWA Self-Petitioners
 - 62% participate in criminal investigations and prosecutions
 - 63% seek civil protection orders
 - 60% turn to the courts for child custody orders
- U Visa Victims
 - 70% participate in active criminal prosecutions and investigations
 - 29% willing to cooperate if their criminal cases went forward
 - 67% seek protection orders
 - 64% seek custody orders

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey (May 3, 2018); Leslye Orloff, et. al., *U Visa Victims and Lawful Permanent Residency* 5 (September 6, 2012)

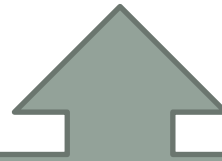
U Visa Certification Form Highlights



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 04/30/2021



Certification form is available to download at
<https://www.uscis.gov/i-918>

► **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)

► A-

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

2.a. Family Name
(Last Name)

2.b. Given Name
(First Name)

2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

3.a. Family Name
(Last Name)

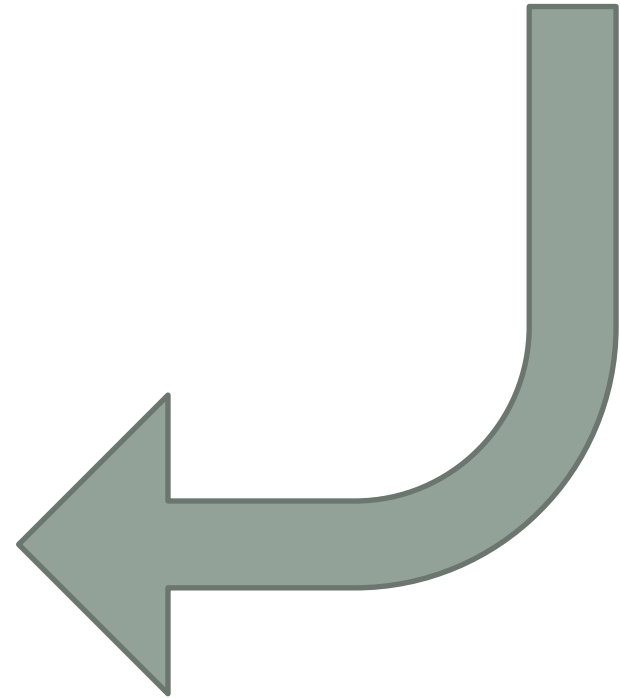
3.b. Given Name
(First Name)

3.c. Middle Name

4. Date of Birth (mm/dd/yyyy)

5. Gender Male Female

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





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 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

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)

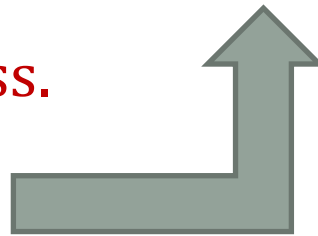
2.d. Date (mm/dd/yyyy)

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

Attaching state statutory language can be helpful.

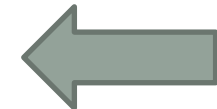
6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.

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.

Prosecution Strategies

PROS

Establish trust

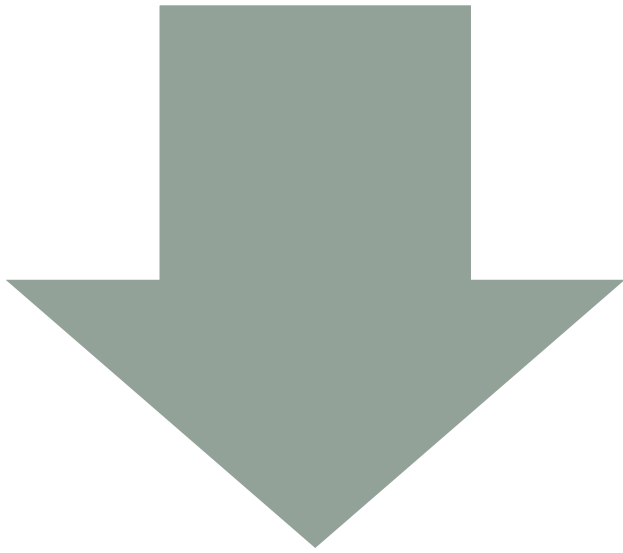
Build rapport

Protect from offender

Protect from deportation

CONS

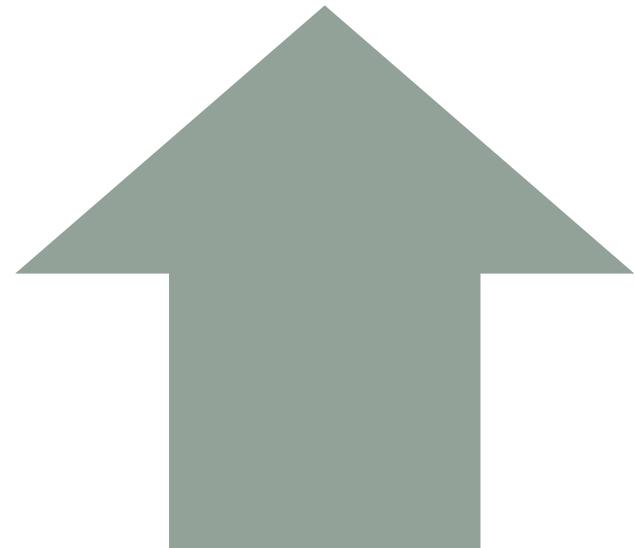
Accusation that victim is lying for immigration benefit



Challenges



Strengths



Analyze Case

Victim Selection

- Did the offender 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?

Excluding Evidence

Arguments

- Irrelevant
- Probative value is substantially outweighed by potential prejudice

Examples

- Child victims
- Time lapse between reporting and applying

People v. Alvarez Alvarez

No. G047701, 2014 WL 1813302, at *5

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

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

Minnesota v. Niola-Agudo

Minn. Court of Appeals (June 26, 2023)

- Court did not abuse its discretion by preventing a defendant from cross-examining witnesses about immigration status
- Evidence of the child's and mother's immigration status is both irrelevant and unfairly prejudicial
- Courts must balance whether probative value is substantially outweighed by the danger of prejudice, confusion of issues, or misleading the jury
- No allegation or evidence that the victims applied for or intended to apply for U visas

Educate



Discovery and Due Process

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

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

Disclosures

“within the State’s possession or control”

- Certification form
- Communication with immigration attorney or advocate
- Accompanying documentation

Custody and Control

Within

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

Not Within

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

Response to Motions to Compel

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

State v. Marroquin-Aldana – Criminal Case

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

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

Prior Consistent Statements

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

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

Establishing Timeline

Victim
statements
to officers,
friends, and
others

**Motive
to lie**

Testimony
consistent
with
statement

Introduce
prior
consistent
statements

People v. Sharp,

2021 IL App (1st) 182042-U, ¶ 5

- Defense allowed to ask about the victim inquiring as to the U Visa program
- The court also ruled that if the defense inquired about the U Visa, the State could go into the victim's "prior consistent statement indicating that he said whatever he said way back when before any motive regarding immigration" arose.

State v. Olvera-Guillen

No. CA2007-05-118, 2008 WL 4616310 *5

(Ohio Ct. App. Oct. 20, 2008)

- Court allowed defense to call an expert witness to explain the U Visa process
- Prosecutor's comments not condoned by court, but did not lead to a reversal:

“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.”

Collaboration between Law Enforcement and Prosecution

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

Cooperation is key



Resources

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

NIWAP's Podcast Series

The screenshot shows the Spotify interface for the 'National Immigrant Women's Advocacy Project' podcast. The left sidebar contains navigation options: Home, Search, Your Library, Create Playlist, and Liked Songs. The main content area features the podcast's logo, a 'FOLLOW' button, and a list of three episodes. The 'About' section on the right identifies the podcast as being by the National Immigrant Women's Advocacy Project, with tags for 'Government' and 'Educational podcasts'. The bottom of the page includes 'Cookies' and 'Privacy' links.

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All Episodes

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

Thank You!