

Community of Practice for Victim Advocates Working with Immigrant Survivors

Understanding the Intent and Purpose of the U Visa

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Introductions



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Introduction



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Thank you to OVW

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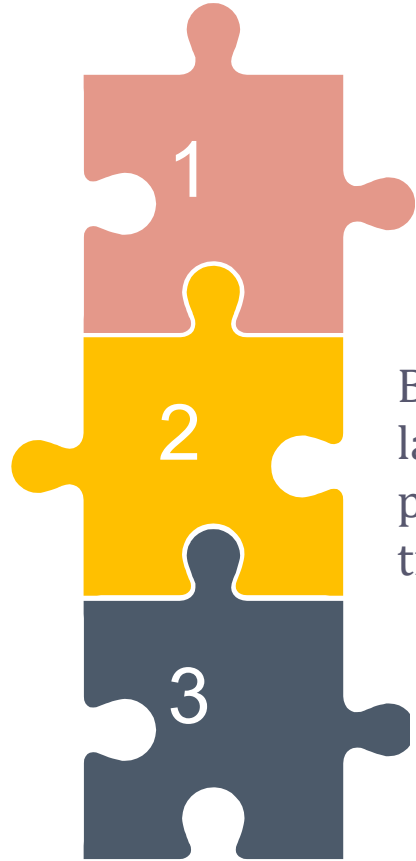
What are your Fourth
of July plans?

The following slides are intended to be a guide to lead our discussion on this topic and to provide substantive material for your future reference.



Today's Goals

By the end of this COP members will be better able to



1 Better understand noncitizen crime victim's/survivor's dynamics and barriers to accessing justice

2 Better understand how the U Visa strengthens the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of other crimes.

3 Understand the role advocates can play helping certifiers learning about the U visa as a crime fighting tool



Safety
Planning

Abuser is not
a USC or LPR

Has not lived
together w/
abuser



Immigration
Violations



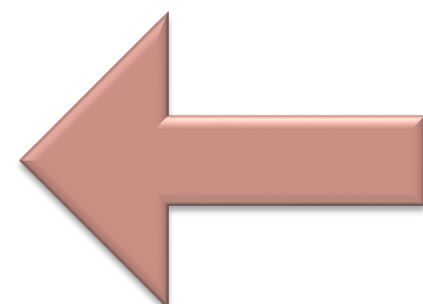
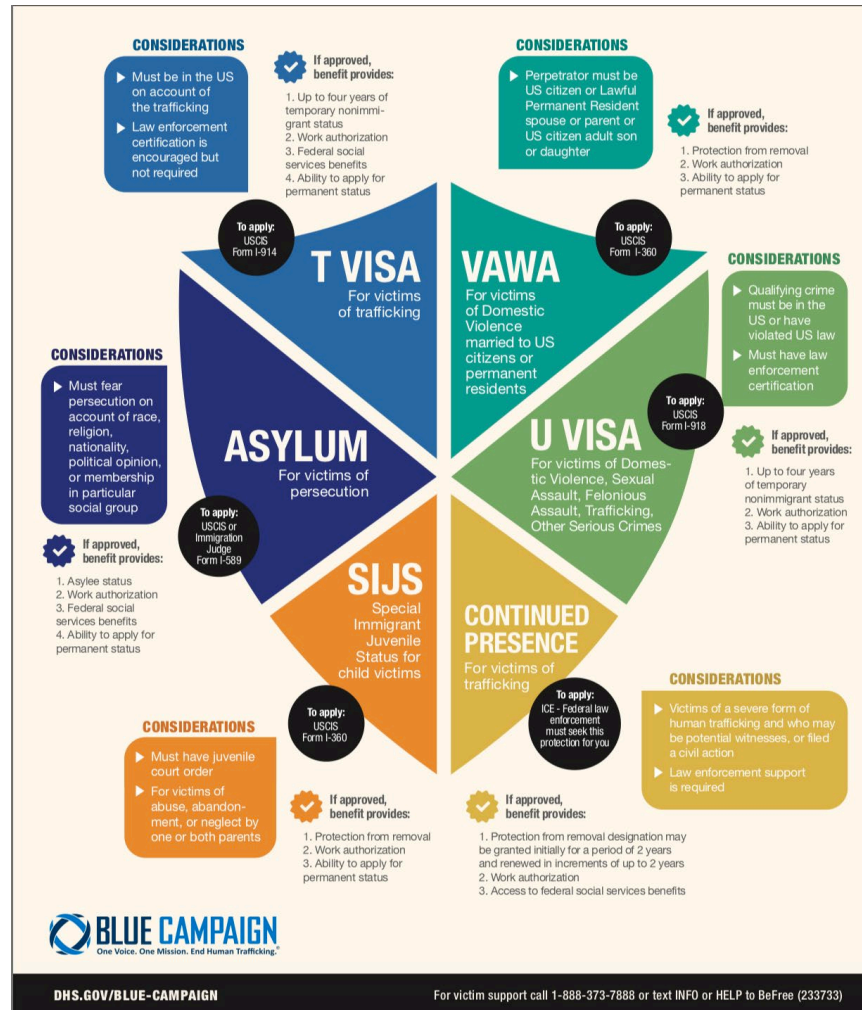
Victim-
Centered
Approach

General Caveats

- Women, men, and children can qualify for U Visas
- Victims/Survivors of almost all violent crimes, and many other crimes are eligible to apply for U Visas

That said, many examples in this presentation will refer to female victims of domestic violence and/or sexual assault because they make up a large majority of the U Visa applications filed

Primary Immigration Protections for Victims



DHS.GOV/BLUE-CAMPAIGN

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

Why is Immigration Relief Available to Victims of Crime?



**Please type
your answers
in the chat box**

Goals of Immigration Relief



*What kind of
Congressional support
was there for the U visa
and what was the
legislative intent?*



Bipartisan Legislative Intent

- We want crimes reported to police and courts
- Improved community policing helps everyone
- No one should be a victim of crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we won't know about the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking

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.
- Promotes use of qualified interpreters

Framing How We Approach the U Visa

The U Visa As A Crime-Fighting Tool: *How Certification Improves Domestic and Sexual Violence Investigations and Prosecutions*

Department of Homeland Security



- DHS Video 1
 - <https://niwaplibrary.wcl.american.edu/dhs-roll-call-videos>

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

Success story of your experience with the U Visa



Immigrant Victim Dynamics & the U Visa

POLL: Immigrants are uniquely affected by domestic and sexual violence because ...

- A. The U.S. Constitution does not protect them
- B. Resources to help victims are only available in English
- C. State laws do not require police to help immigrant crime victims
- D. Offenders prey upon immigrant victims' fears and misconceptions, count on barriers to prevent the reporting of crime, and manipulate the legal system to assert power and control

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

Practice Tips

- Screen for immigration-related abuse
 - More likely to exist in relationships where physical and sexual abuse exist (v. psychological abuse)
- Identify immigration-related abuse as a potential predictor of escalating abuse

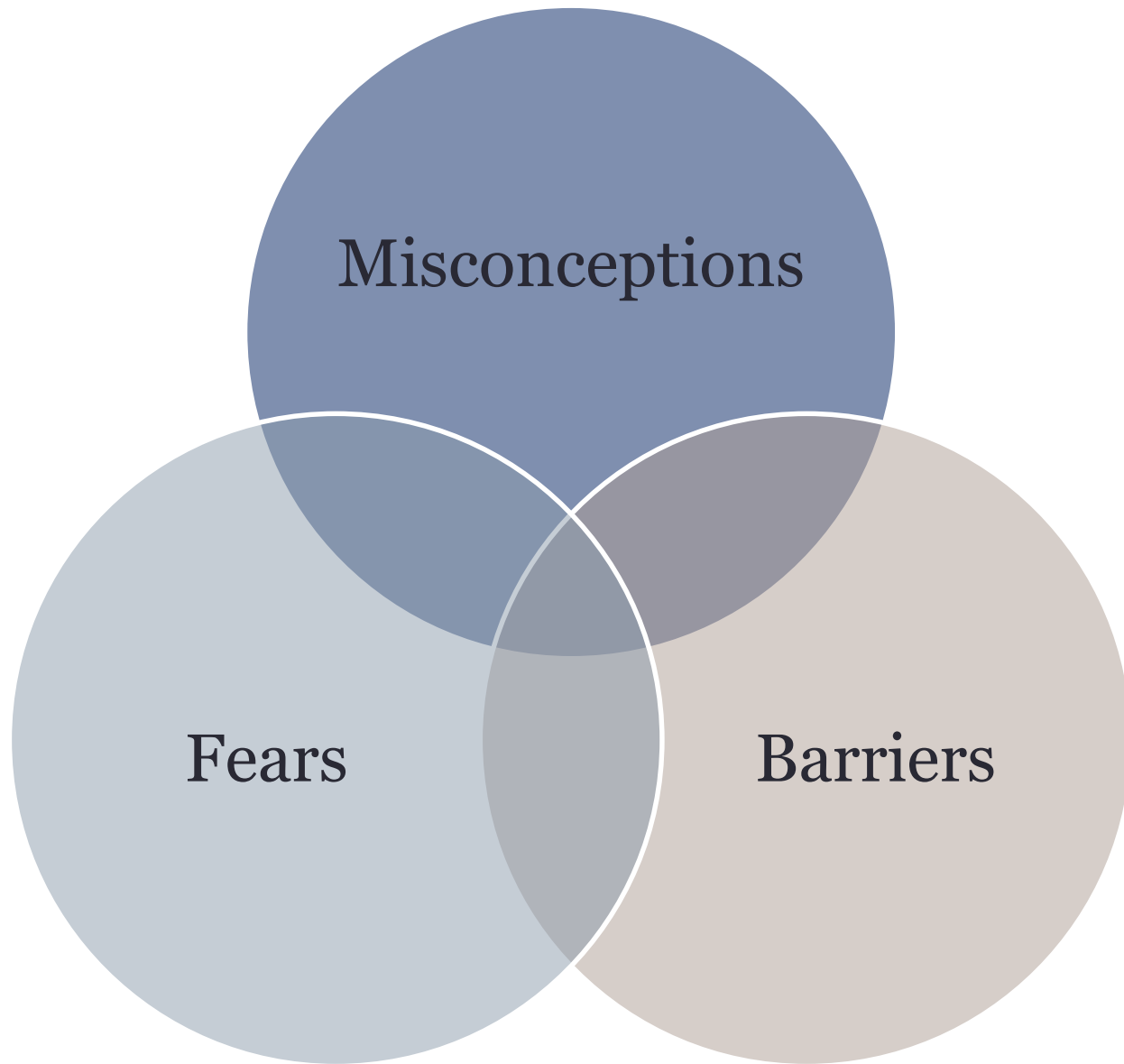
Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

- Document to support claims of physical and sexual abuse

POLL: What prevents immigrant victims from reporting crime and/or participating in investigations and prosecutions?



Please type your answers in the chat box.



Fears

- Deportation
- Circumstances in their home country
- Separation from children
- Lack of contact with family
- Dangers facing their family in their country of origin
- Ostracism from their community
- Retaliation

Misconceptions

- Lack 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
- Financially depend on the perpetrator
- Isolation
- Lack of transportation or child care
- Community pressure
- Family pressure
- Religious factors

Immigration relief

Misconceptions

Fear

Barriers

Language access

U Visa Basics

- The U Visa grants a temporary 4 year stay
- Only 10,000 U Visas awarded per year
- Application for a U Visa requires a certification from a designated government official
- Certification is one part of the overall application
 - Victim must submit additional documentation and proof in their full application

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.	

Why does the U Visa requirement use the word “criminal activities” instead of crime ?



U Visa Statistics

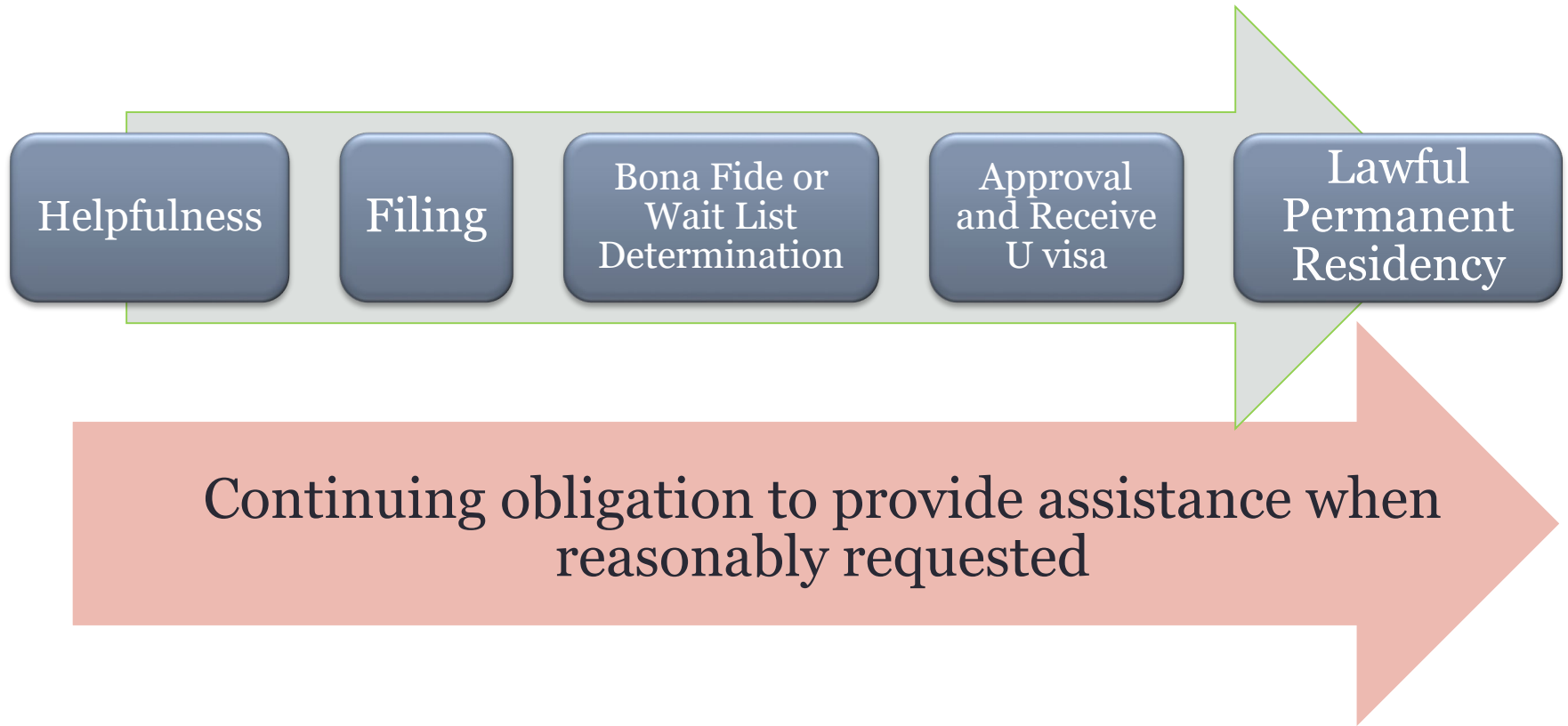
11/2011

% 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

Does it matter how long ago the criminal activity occurred? Is there a statute of limitations?



Updated U Visa Process



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

Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and 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)*

VAWA Confidentiality Prongs

Abuser-Provided Information:

- DHS, DOJ and the State Department are barred from taking action against a victim based solely upon information provided by abusers and crime perpetrators (and their family members)

Location Prohibitions:

- Locational prohibitions to enforcement unless there is compliance with specific statutory and policy safeguards

Non-Disclosure:

- Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone

Additional Applicants

- Parents and guardians can apply as an “indirect victim” if:
 - The victim is a child under 21 years of age and/or
 - The victim is incompetent, incapacitated, or deceased due to murder or manslaughter
 - Indirect victims must demonstrate that they were helpful
- Bystander victimization – very limited
- When the victim is a child, the helpfulness requirement can be met by a “next friend” being helpful

Family Members Can Also Be Protected

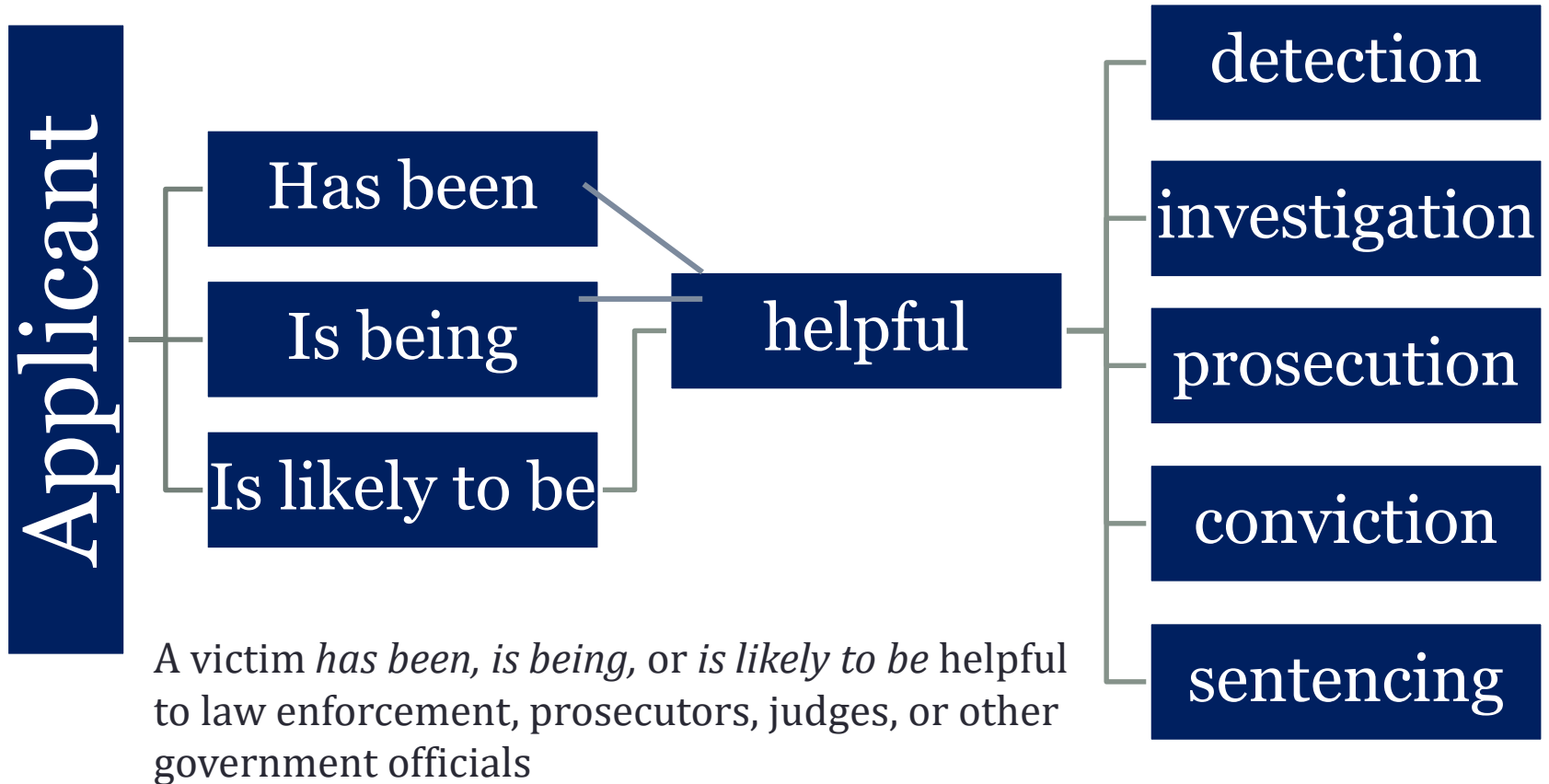
- U visa victims can also apply for certain family members :
 - If victim under the age of 21:
 - Spouse
 - Child under 21
 - Parent
 - Unmarried siblings under the age of 18
 - If victim is over the age of 21
 - Spouse
 - Children under 21



Helpfulness For Certification

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

Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree of helpfulness required
 - DHS regulations – totality of the circumstances
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- The investigation or prosecution can still be ongoing
- Certification can be “revoked”

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



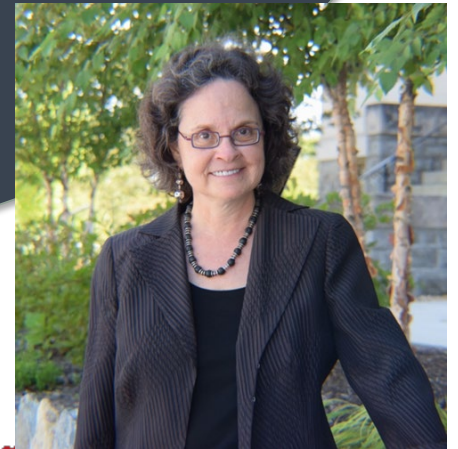
Victim-
centered
approach

Who Can Certify?

Head of the agency or someone in a supervisory role who is specifically designated by the head of the agency:

- Federal, state, and local
 - Law enforcement
 - 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 with investigative power

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



TRUE



FALSE

Can a victim apply for U visa if they did not report the crime to police and only obtained a civil protection order?

*In what types of cases
can judges certify?
What are some ways
courts are approaching
judicial certification?*



Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

