



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

NCVC
September 9, 2015



Introduction

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Materials Summary

- Training Folder
 - Agenda
 - Hard copy of PowerPoint presentation
 - Faculty Bios and Participant List
 - Sample – U Visa Certification Form
 - Sample – T Visa Endorsement Form
 - Evaluation
- USB Drives – Supplementary Tools and Resources



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



What barriers and fears exist for immigrant victims of crime to report?



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



Major Challenges working with Immigrant Victims of Crime

1. Language
2. Fear of Deportation
3. Lack of knowledge of legal rights
4. Do not trust that police/prosecutors will help them
5. Lack of reporting and/or cooperation as the case moves forward



Language Access

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

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

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

Source of Law

- 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.”

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



US Demographics (2013)*

- ❖ Total foreign born population – 41,348,066
- ❖ 13.1% of the country's ~315.6 million people are foreign born
 - 46.7% naturalized citizens
 - ~25.5%^ legal permanent residents and temporary visa holders (2012 data)
 - 27.8%^ undocumented (Immigration Policy Center 2012 data)
- ❖ 32.9% rise in immigrant population from 2000 to 2013
- ❖ High proportion of new immigrants
 - 25.4% entered in the 1990s
 - 35.1% entered 2000 or later
- ❖ 24.9% of children in the state under age 18 have one or more immigrant parents
 - 87.9% of these children are native-born U.S. citizens

^ The Department of Homeland Security no longer reports on lawful permanent resident or temporary visa holder statistics

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>
(January 2015)

US – Countries/Regions of Origin (2013)*

- ▶ **Asia – 29.5%**
 - ▶ China/Taiwan (5.8%)
 - ▶ India (4.9%)
 - ▶ Philippines (4.5%)
 - ▶ Vietnam (3.1%)
- ▶ **Latin America – 51.9%**
 - ▶ Mexico (28.0%)
 - ▶ Other Central America (4.7%)
 - ▶ South America (6.7%)
 - ▶ Caribbean (9.6%)
 - ▶ El Salvador (3.0%)
- ▶ **Europe – 11.6%**
 - ▶ Eastern Europe (5.1%)
- ▶ **Oceania – 0.5%**
- ▶ **Africa – 4.4%**
- ▶ **Non-U.S. North America – 2%**

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=AK>
(January 2015)



**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?*



Qualified vs. Non-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

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

Now that emergency is over, how do you work with victims, witnesses, and offenders who do not speak English?

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





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
- Can be “revoked”
- Increases immigrant victim participation in criminal justice system

Purpose

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

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

[DHS Video Part 1.mpg](#)

U Visa Requirements

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



Qualifying Criminal Activity

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

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



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%**



DHS Terminology: Who Can Certify?

“law enforcement” & “law enforcement agencies” =

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

How will a U visa certification request come to you?

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

U Visa Certification Considerations

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

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?

When should you certify?

Timeline

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



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

Certifying early

PROS

CONS

Establish trust

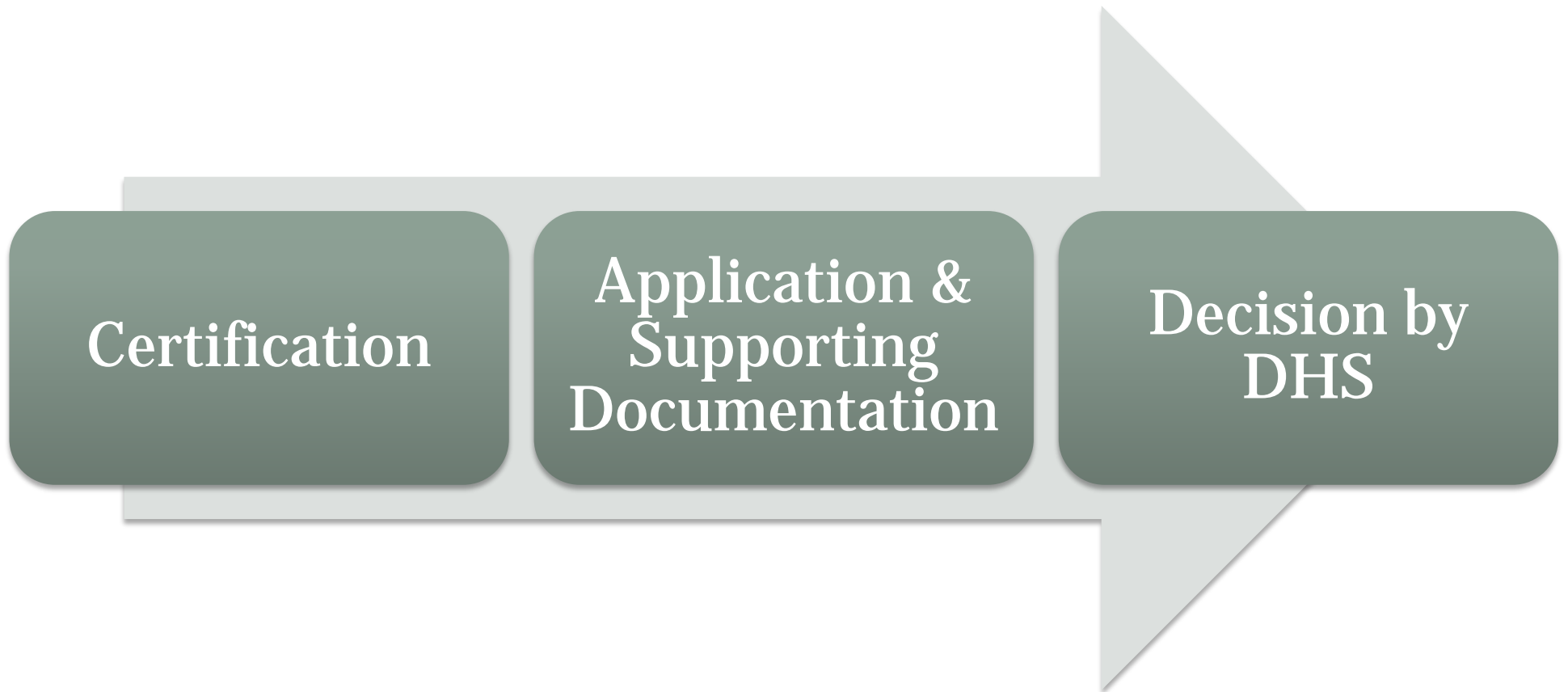
Build rapport

Protect from
offender

Protect from
deportation

Accusation that victim is
lying for immigration
benefit

The U Visa Application Process



Typical length of process = 12 -14 months



DHS Decision

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



U Visa Facts

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

How 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

U Visa Certification Overview

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

Form I-918 Supplement B,
U Nonimmigrant Status Certification

NIWAP

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.**

Part 4. Helpfulness of the Victim

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

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

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

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

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

5. Other, please specify.

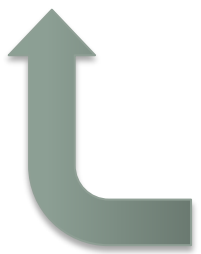
NOTE: This will be discussed in detail in the next section.

Part 5. Family Members Implicated in Criminal Activity

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

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

Full Name	Relationship	Involvement



Because many applications will include domestic violence, this may likely be the defendant.



Part 6. Certification

I am the head of the agency listed in **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Date (*mm/dd/yyyy*)

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

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 . | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. <i>(Attach an explanation briefly detailing the assistance the victim has provided.)</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Has not been requested to provide further assistance in the investigation and/or prosecution. <i>(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. <i>(Attach an explanation.)</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Helpfulness

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

- Understand the scope of the helpfulness standard
- Apply the helpfulness standard to U visa certifications





Hypotheticals

Small Group Activity

- Is this person eligible for a U Visa certification?

Hypothetical Case Scenario: 1

Lara



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

Hypothetical Case Scenario:2

Amelia and Carlos



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

What does “helpful” mean?

Helpfulness in the Regulations

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

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
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 - 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

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

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

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

Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable"

- Considerations:

- totality of the circumstances, including the nature of the victimization
- victim's fear of the abuser
- trauma suffered
- force, fraud or coercion



Witness Tampering

- Work with prosecutors to detect signs
 - Change in frequency of contact
 - Missed appointments
 - Recantation or minimization
- Investigate
 - Follow up with victim
 - Contact victim advocate, immigration attorney, others that had contact with victim
 - Jail calls
 - Interview friends, neighbors, and family

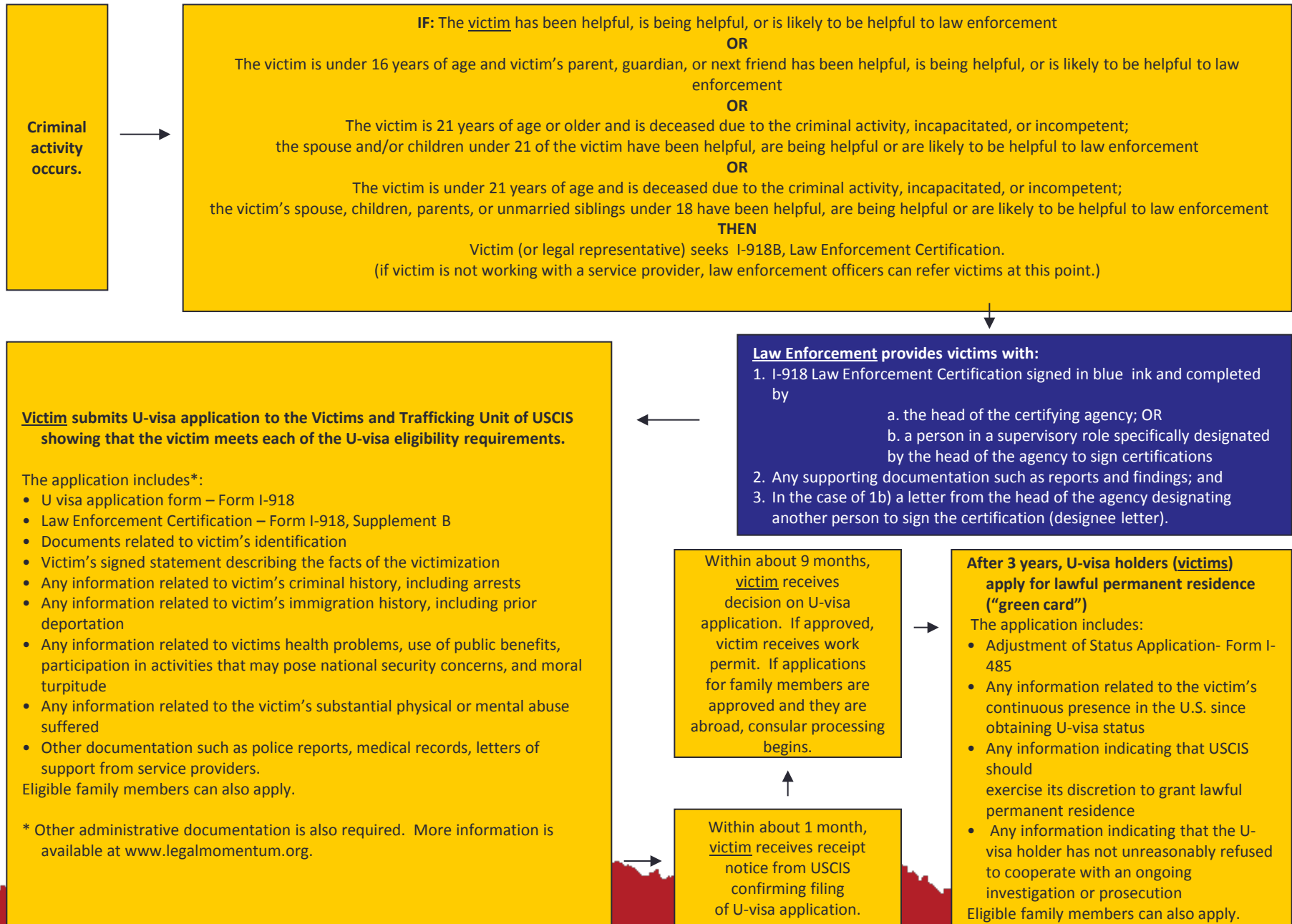
If you still believe the victim is unreasonably refusing...

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



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).

Resources

- ▶ **Technical Assistance**

- ▶ Call: 202.274.4457
- ▶ Email: niwap@wcl.american.edu

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

- ▶ Visit <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:
<http://niwap.org/go/lawenforcement>



Evaluations



Thank You!

The logo for NIWAP (Northwest Indian Water and Power) is located at the bottom left of the slide. It features a dark blue silhouette of a mountain range with a jagged, irregular top edge. The letters "NIWAP" are printed in a white, serif font over the left side of the mountain range.

NIWAP