

A Leadership Approach to Domestic Violence Response with a Focus on Immigrant Victims

**Salt Lake City, UT
March 6th, 2025**

**For Law Enforcement, Prosecutors, and
Systems-Based Victim Advocates**

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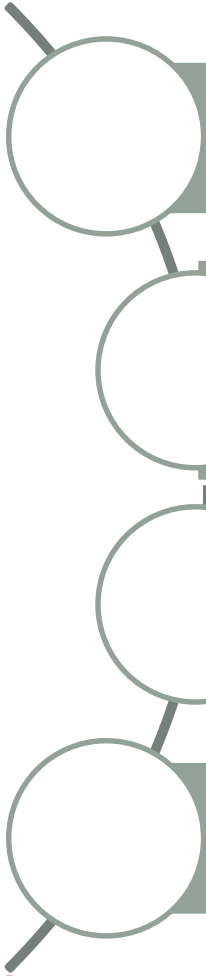
The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.

Faculty

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- **Investigator, Michael LaRiviere**, Salem Police Department

Learning Objectives

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



Identify offender tactics used to assert power and control over victims

Conduct offender focused investigations, including co-occurring human trafficking, domestic violence, sexual assault, stalking and child abuse

Improve investigations and prosecutions by effectively utilizing immigration legal remedies to enhance victim safety and security

Develop strategies to overcome common defenses in cases involving immigrant victims

- We provide Training & 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 the 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 \
 - Meets by monthly
- To register, visit
<https://www.surveymonkey.com/r/LERoundtable>

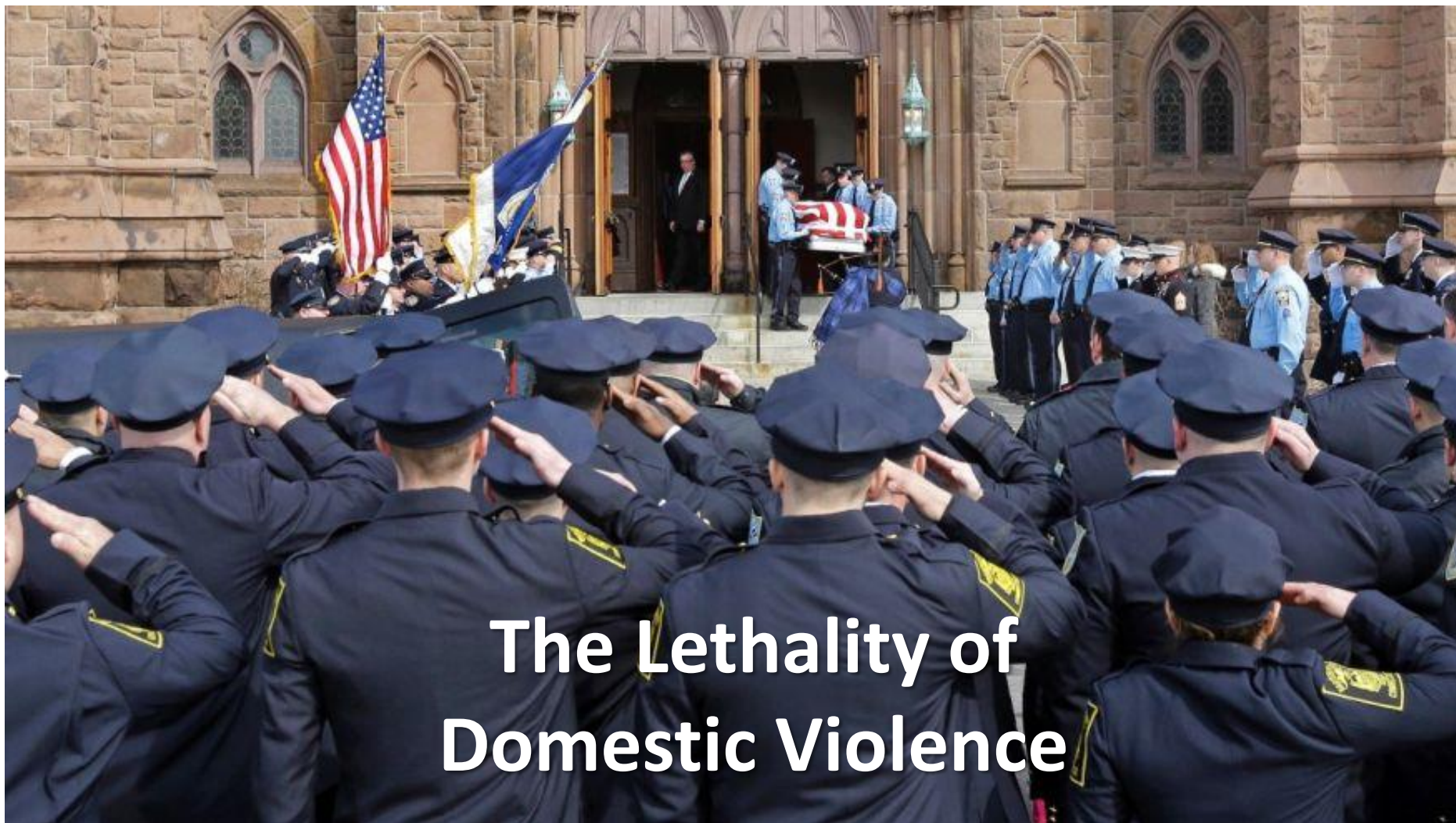


Join a NIWAP Community of Practice

- Family Law Attorneys Community of Practice
www.surveymonkey.com/r/FamCOP2023
 - Meets monthly
- Victim Advocates Community of Practice
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
 - Meets 9-10 times per year
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>
 - Meets monthly 9-10 times a year

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

- Training materials for:
 - Law enforcement
 - Prosecutors
 - Systems-based victim advocates
 - Judges
 - Attorneys
 - Other victim advocates
- Statutes, regulations, policies, and government publications
- Training tools, webinars, and podcasts
- Interpretation and translation
 - Multilingual materials
- Immigration legal remedies
- Law enforcement and prosecution tools
- Family and criminal law
- Violence Against Women Act (VAWA) confidentiality
- Public benefits, legal services, and economic relief
- Dynamics, culture, collaboration, and safety



The Lethality of Domestic Violence





Officer Christopher Wells

Officer Joseph Murphy

FBI Releases 2016 Statistics for Law Enforcement Officers Killed

Circumstances: At the time the 66 law enforcement officers were feloniously killed:

- 17 were ambushed (entrapment/premeditation);
- 13 were answering disturbance calls (seven were domestic disturbance calls);
- nine were investigating suspicious persons/circumstances;
- six were engaged in tactical situations;
- five were performing investigative activities (such as surveillances, searches, or interviews);
- four were conducting traffic pursuits/stops;
- three were investigating drug-related matters;
- three were victims of unprovoked attacks;
- one was answering a burglary in progress call or pursuing a burglary suspect(s);
- one was answering a robbery in progress call or pursuing a robbery suspect(s); and
- four were attempting other arrests.

Unrecognized Lethality of Domestic Violence Offenders

- FBI Statistics “Responding to Domestic Disturbances”
- The true lethality of domestic violence offenders
- Between October 1, 2016 and December 31, 2016
- 10
- Between October 1, 2016 and December 30, 2016
- 7


How do you define “responding to” a domestic?



*The Unrecognized Lethality of
Domestic Violence Offenders*





DEF	12904918	BAT CN	BRM	07/08/2005 PROTECTION ORDER VIOLATION	Y	GD	E	N	A	\$750.00
DEF	12904917	BAT CN	BRM	06/23/2005 PROTECTION ORDER VIOLATION	Y	G		N	A	\$950.00
DEF	12904914	POD CN	PRM	05/06/2004 THEFT 3	N	G		N	A	\$1,102.00
				11/17/2003 SPEEDING 17 MPH OVER LIMIT	N	C		I	A	\$743.00
				11/17/2003 OP MOT VEH W/OUT INS	N	C				
				02/24/2003 EXCEED MAXIMUM SPD SCHOOL/PLAYG CRO	N	C		I	A	\$205.00
				11/06/2002 MINOR POSS AND/OR CONSUMPTION	N	G		N	A	\$750.00
				08/10/2002 DUI	N	G		N	I	A \$1,665.00
				03/22/2002 MINOR POSS AND/OR CONSUMPTION	N	G		N	A	\$250.00
				01/24/2002 DUI	N	G		N	I	A \$1,055.00
				12/01/2001 MINOR POSS AND/OR CONSUMPTION	N	G		CL	N	
A RSP	10-3-00717-8	S3	S18	05/19/2010 PARENTING PLAN/CHILD SUPPORT						
DEF	08-1-00622-9	S1	S18	05/31/2008 ELUDING A POLICE VEHICLE	N	G		CM	A	\$2,958.40
DEF	04-1-01906-9	S1	S18	12/09/2004 PROTECTION ORDER VIOL-FELONY	Y	G	E	CM	A	\$2,440.83
DEF	04-1-01552-7	S1	S18	10/03/2004 ASSAULT 4TH DEGREE	Y	G		CM	N	A \$1,488.18



ROSE BORISOW GRAFX



DETECTIVE BENJAMIN MARCONI
END OF WATCH : NOVEMBER 20TH, 2016



IN VALOR THERE IS HOPE
-REST IN PEACE, BROTHER-





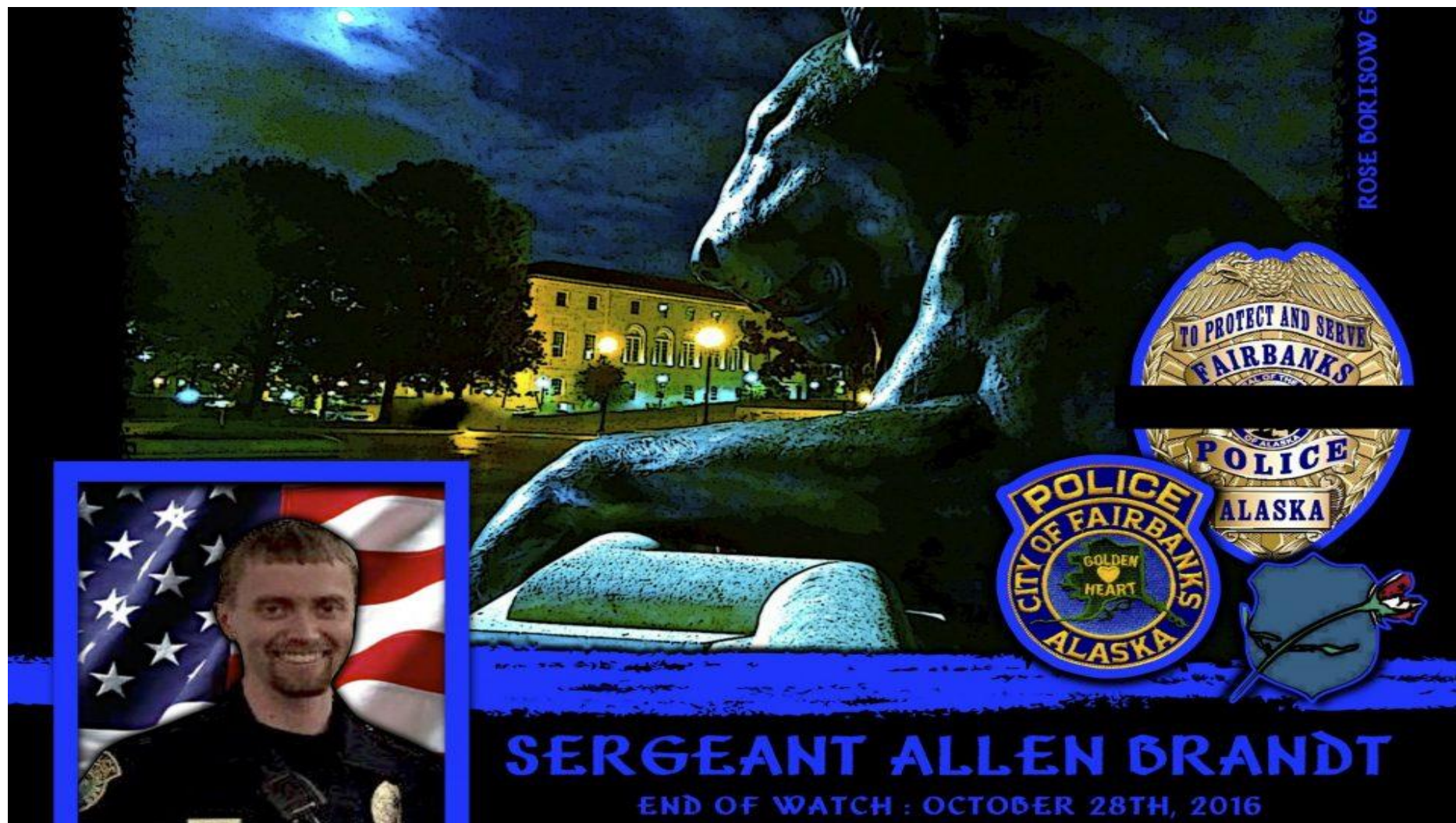
Case	Name / Business	Court	Date	Status	Description
2011CI08878	MCKANE, OTIS T	407	05/27/2011	DISPOSED	OTHER PARENT-CHILD
2012CI01103	MCKANE, OTIS	407	01/25/2012	DISPOSED	PROTECTIVE ORDER/DA
382843	MCKANE, OTIS, T	CC7	01/22/2012	CLS	ASSAULT BODILY INJURY-MARRIED/





- ***Minor in Possession (3)***
- ***Operating Under the Influence (3)***
- ***Speeding***
- ***Trespassing***
- ***Theft***
- ***Evading Police***
- ***Operating After Suspension***

- ***4 Restraining Orders Issued***
- ***4th Degree Domestic Assault***
- ***Domestic Assault with Injury***





**Ret. Sheriff, Chief Herbert
Proffitt**



The Foundation of Effective Responses to Domestic Violence

- Federal and State Legislation
- Leadership Prioritization, Support and Oversight
- Agency Policies and Procedures
- Comprehensive Training
- Multidisciplinary Collaboration and response
- Community Outreach

Comprehensive Training

- Dynamics
- Interviewing Techniques (Trauma Informed)
- Evidence Gathering and Preservation
- Strangulation
- Stalking
- Protection Orders
- Self-Defense and Predominant Aggressor

Comprehensive Training

- Dynamics
- Underserved Populations
- Interviewing Techniques (Trauma Informed)
- Evidence Gathering and Preservation
- Strangulation
- Stalking
- Protection Orders
- Self-Defense and Predominant Aggressor

Comprehensive Training

- Federal, State and Local Resources
- Effect of Technology
- Related Federal Laws
 - VAWA
 - Firearms
 - Title VI (Language Access)
- Related Forms of Relief
 - U Visa
 - T Visa

EFFECTIVE INTERVIEWING AND USE OF INTERPRETERS

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

**What
countries do
victims in the
communities
you serve
come from?**



Utah (2022)*

- ❖ Total foreign-born population – 292,299
- ❖ 8.6% of the state's ~ 3.3 million people are foreign born
 - 41.8% naturalized citizens
 - 31% legal permanent residents (as of 2019)*
 - 27.2% temporary visa holders or undocumented immigrants
- 84.2% rise in immigrant population from 2000 to 2022
- ❖ Length of time immigrants have lived in the U.S.
 - 38.6% entered before 1999
 - 27.3% entered 2000 - 2009
 - 34.0% since 2010
- ❖ 16.3% of children under age 18 have one or more immigrant parents
 - 91.3% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (July, 2024) and Lawful Permanent Residents MPI and DHS (2022)*

Utah – Countries/Regions of Origin & Limited English Proficiency (LEP)(2022)*

- ❖ Latin America – 58.9%
 - ❖ Mexico (36.1%)
 - ❖ South America (16.9%)
 - ❖ Other South America (11.8%)
- ❖ Asia – 19.1%
 - ❖ Southeastern Asia (8.3%)
 - ❖ South Central Asia (4.6%)
 - ❖ Eastern Asia (7.1%)
- ❖ Europe – 8.9%
 - ❖ Eastern Europe (3.1%)
- ❖ Africa – 3.5%
- ❖ Oceania – 4.6%
- ❖ Canada – 2.7%
- ❖ Middle East – 2.2%
- ❖ Language spoken
 - ❖ 15.8% of people in the state who speak a language other than English at home
 - ❖ 44.4% of foreign-born persons are LEP - speak English less than “very well”

**Source: [Migration Policy Institute Data Hub](#) (July, 2024)*

Utah - Languages Spoken at Home (2022)*

- ❖ Spanish (332,752)
- ❖ Chinese (including Mandarin, Cantonese) (20,357)
- ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (19,026)
- ❖ Portuguese (14,749)
- ❖ German (9,188)
- ❖ Vietnamese (8,435)
- ❖ Native Languages of North America (8,426)
- ❖ Tagalog (including Filipino) (8,284)
- ❖ French (including Cajun) (7,570)
- ❖ Korean (5,741)
- ❖ Japanese (5,713)
- ❖ Russian (4,969)
- ❖ Arabic (4,858)
- ❖ Nepali, Marathi, or Other Indic Languages (3,686)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (3,297)
- ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (1,755)
- ❖ Yoruba, Twi, Igbo, or Other Languages of Western Africa (341)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/U> (July, 2024)

Utah - LEP (2022)*

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 30.6%
 - ❖ Noncitizens – 50.3%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Vietnamese (56.2%)
 - ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (43.1%)
 - ❖ Thai, Lao, or Other Tai-Kadai Languages (45.3%)
 - ❖ Tagalog (including Filipino) (23.1%)
 - ❖ Chinese (including Mandarin, Cantonese) (34.8%)
 - ❖ Japanese (23.9%)
 - ❖ Spanish (36.4%)
 - ❖ Native Languages of North America (24.4%)
 - ❖ Russian (20.4%)
 - ❖ Portuguese (19.8%)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/UT> (July, 2024)

Best Practices for Using Interpretation and Translation

- Police provide qualified interpreters and qualified translators:
 - 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 interpreters and translators are available free of charge
- Interpreters/translators are provided in person's primary language

“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”

Title VI

- Any recipient of federal financial assistance has a responsibility to ensure effective communication and understanding of LEP persons
- Best practice is for agencies to have a written language assistance plan, and the agency is regularly using qualified interpreters
- The use of informal interpreters is discouraged (e.g., family members, guardians, caretakers, friends) except in limited or emergency situations
- The determination of what documents need to be translated for the benefit of the LEP persons up to the agency receiving funds

****We can't afford qualified interpreters and translators:

This is not an acceptable excuse****



First responders –
What do you do
when you arrive at a
crime scene?



Crime Scenes Involving LEP Persons

Large Group Discussion

- 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*?

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 is the Difference Between

- Securing the scene
- Interviewing victims and witnesses



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

Best Practices 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

Using Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements (excited utterances)

Harms if not used

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation results in inaccurate statements
- Trauma to children

“Qualified Interpreter”

When considering whether an interpreter is qualified, the LEP plans should discourage the 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.

Bilingual Officer v. Interpreter

- Bilingual officers
 - When they are interpreting, they are not investigating
- Biculturalism v. bilingualism
 - Different words have different meanings:



- e.g.: Variations on the word “highway” depending on what state you’re from.
- “500 feet” many communities don’t know what that distance looks like.

Spotting a Bad Interpreter

- Can you understand the interpreter?
- Does the individual look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter engaging in conversations with the individual before/after the interpretation meeting?
- Is the interpreter summarizing?
- Is everything being interpreted ?
- Is the interpreter using English words?
- Is there a change in the individual's demeanor?

Language Resources

- Language line
- Video remote interpretation
- Video relay interpretation – Dartmouth Hospital System
- Department interpreters line developed in response to large local refugee population
- Immigrant community-based organization partners
- Health care providers
- School systems
- Court systems

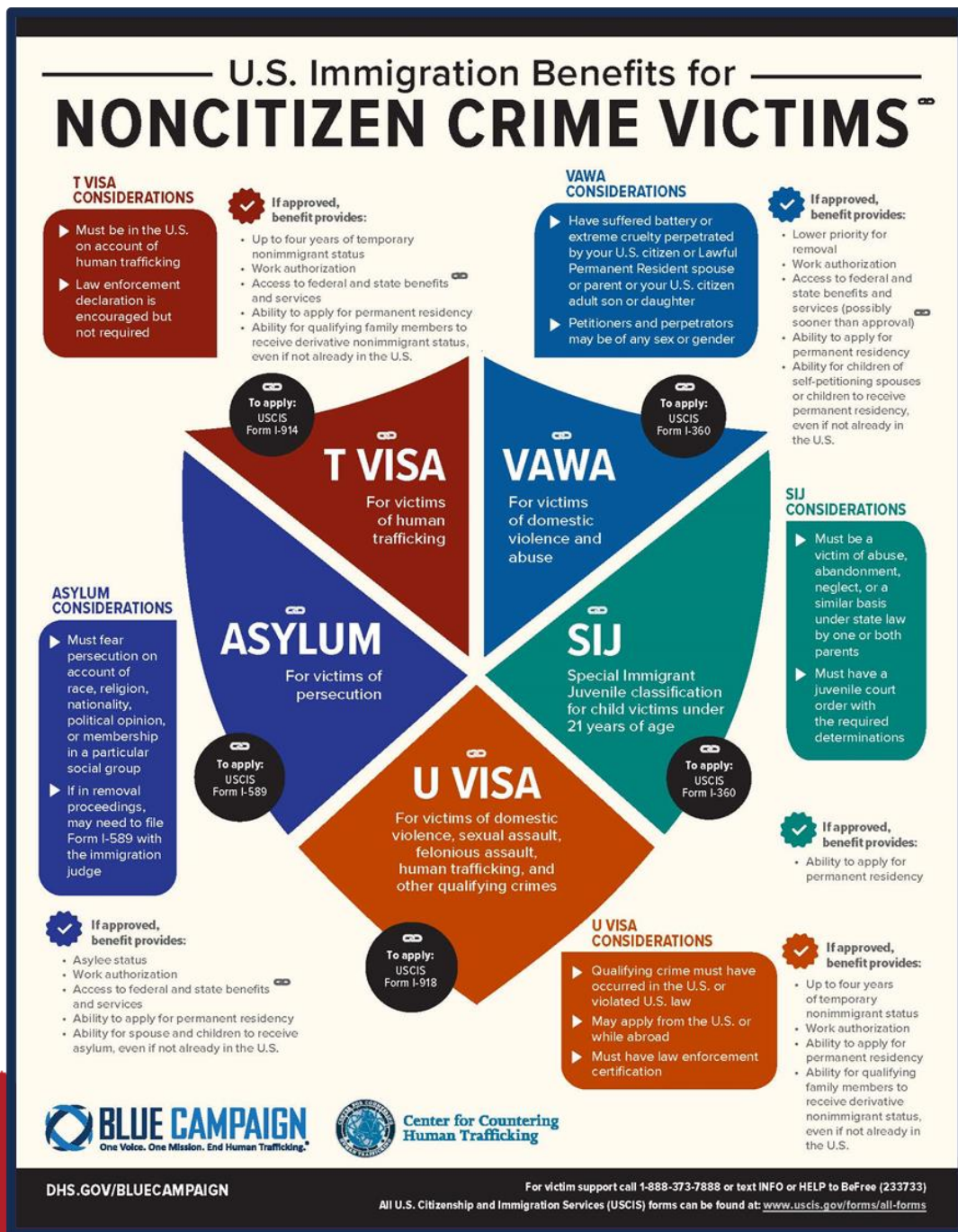


HOW U AND T VISA ARE CRIME FIGHTING TOOLS



Immigration Legal Remedies for Noncitizen Victims of Crime and Abuse

NIWAP



Tools: Immigration Legal Remedies

Law Enforcement, Prosecutors, Government Agency Involvement

U Visa

Available to most victims of violent crime

T Visa

Available to victims of human trafficking

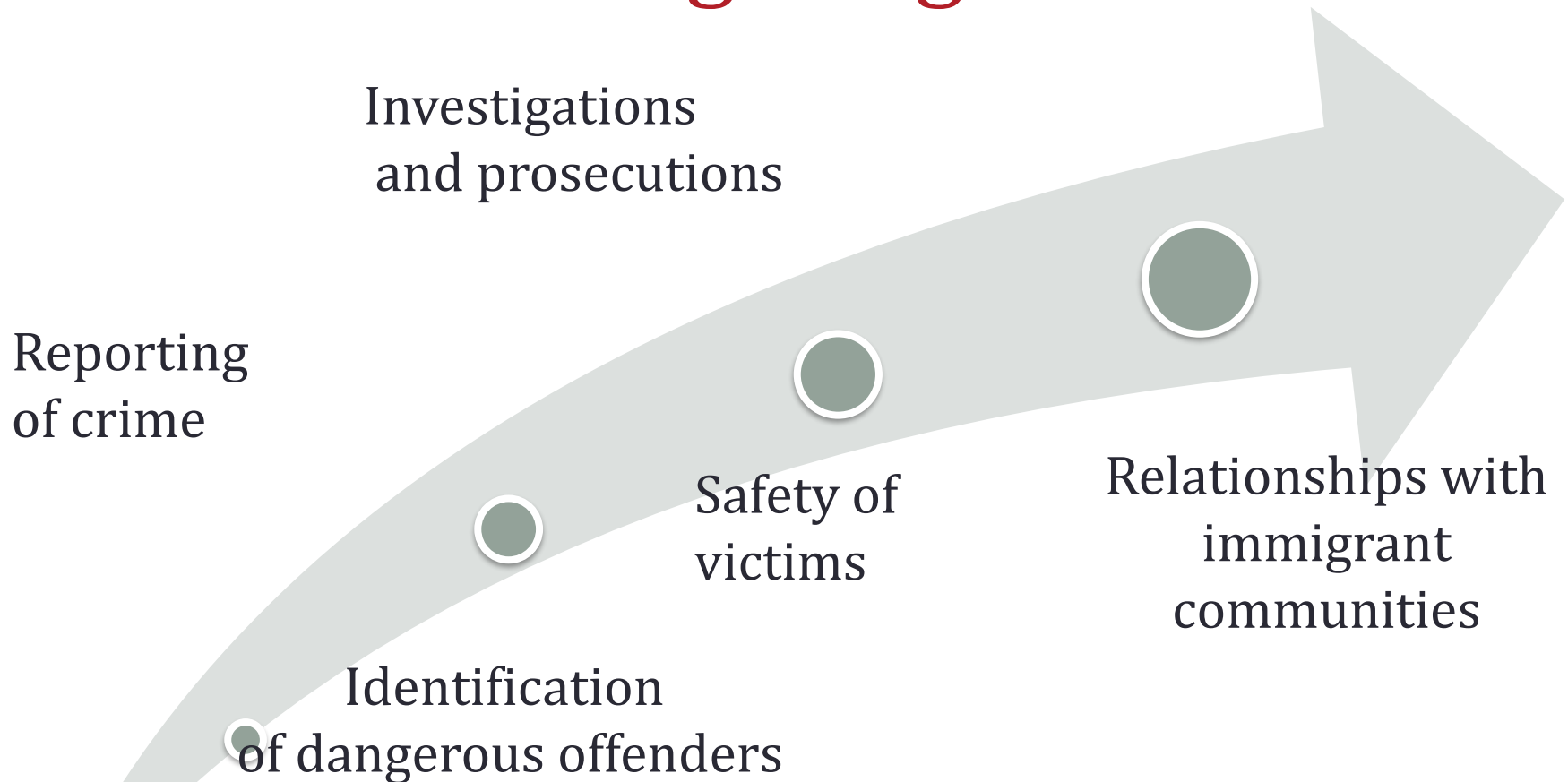
Continued Presence

Short-term immigration relief to newly-identified victims of trafficking

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 do not know about the most dangerous offenders
 - Domestic violence
 - Sexual violence

Immigration Legal Remedies as a Crime Fighting Tool



How do immigration legal remedies and use of qualified interpreters promote officer safety?

IACP 2018 Resolution

- Recognizes U as a significant crime fighting tool
- Recommends using U Visas as best practice
- Supports training, education, communication and “increased police leadership involvement”
- Commits to increasing collaboration

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

How much do you know about the U Visa? T Visa? Continued Presence?

Utah U Visa Certification Law

77-38-502 to 503 – Part I

- Certifiers:
 - Law enforcement, prosecutors, judges (all courts of record), other state agencies who detect, investigate or prosecute criminal activity
- Shall respond within
 - 90 days
 - 14 days if victim in removal proceedings
- Certifying entity shall determine helpfulness in a manner consistent with federal guidelines

Utah U Visa Certification Law

77-38-502 to 503 – Part II

- Current investigation, filing of charges, prosecution, or conviction not required
- Certification requests confidential except
 - When required by federal or state law
 - Written authorization from the victim

U Visa Basics

- Law enforcement certification is just one part of the overall process; it does not equal citizenship
- Meant to promote the reporting of crime
- Target offenders who prey on the most vulnerable victims
- Offender may be a citizen or noncitizen
- Victim can be lawfully present or undocumented
- Increases immigrant victim participation in the criminal justice system
- No statute of limitations
- Can be revoked

U Visa Facts

- Only 10,000 U visas can be given annually
 - Cap created significant wait for U visa
- USCIS conducts bona fide determinations provide work authorization and deferred action
- The U Visa grants a temporary 4-year stay
- Many U Visa holders will qualify for lawful permanent residency
- U.S. citizenship may be attained after lawful permanent residency for 5 years + proof of good moral character

Who Can Certify?

*“law enforcement” & “law enforcement agencies” =
Head of agency or designee*

- Federal, state, and local
 - Law enforcement
 - Prosecutors
 - Judges, magistrates, commissioners, and other judicial officials
- Child and Elder Abuse agencies
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Other government agencies with investigative authority

U Visa Process Timeline

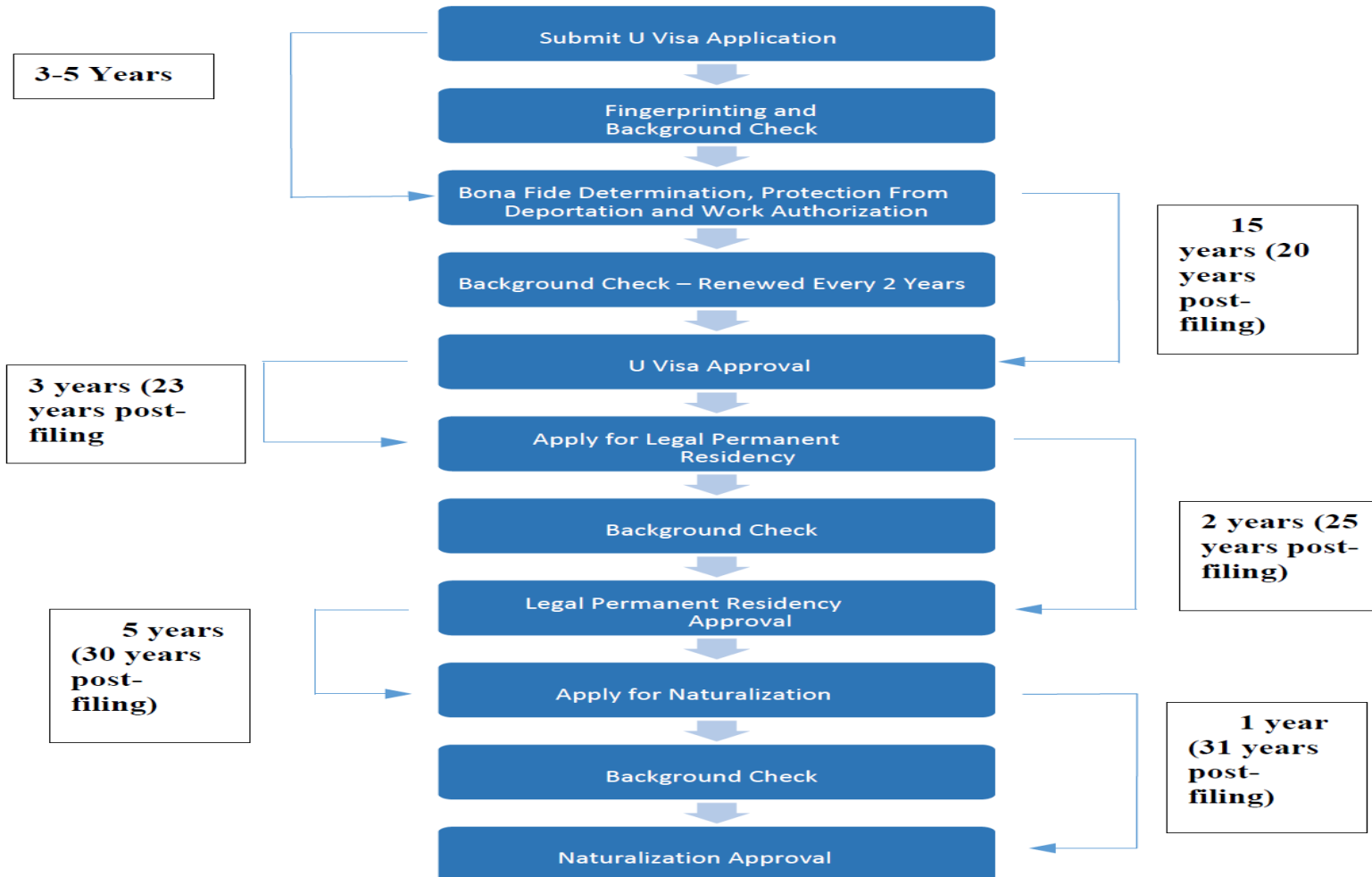
NIWAP



U Visa Timeline with Background Checks

By Katelyn Deibler, Faiza Chappell, and Leslye E. Orloff

August 11, 2024



At Filing Victims “Red Flagged”



- Department of Homeland Security (DHS) computer system “red flags” victims who have filed for victim-based immigration legal remedies
- Reminds DHS staff of legal obligation not to rely on “tips” from perpetrators
- Immigration case brought against a victim can be dismissed for VAWA confidentiality violation
 - 8 U.S.C. 1367
- Practice tip: Victims should always carry documentation with them

U Visa Requirements

Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Helpfulness

- Victim has been, is being, or is likely to be helpful in *any of the following*:
 - Detection
 - Investigation
 - Prosecution
 - Conviction
 - Sentencing

Harm

- Substantial physical or mental abuse as a result

This is not a part of the certification.

Immigration Legal Remedies Available for Immigrant Victims of ---

- Domestic violence
 - Child/elder abuse
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking
- Abusive sexual contact
- Sexual exploitation
- Unlawful criminal restraint

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



Similar Criminal Activity

- 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 include felonious assault, depending on the evidence and state law definition

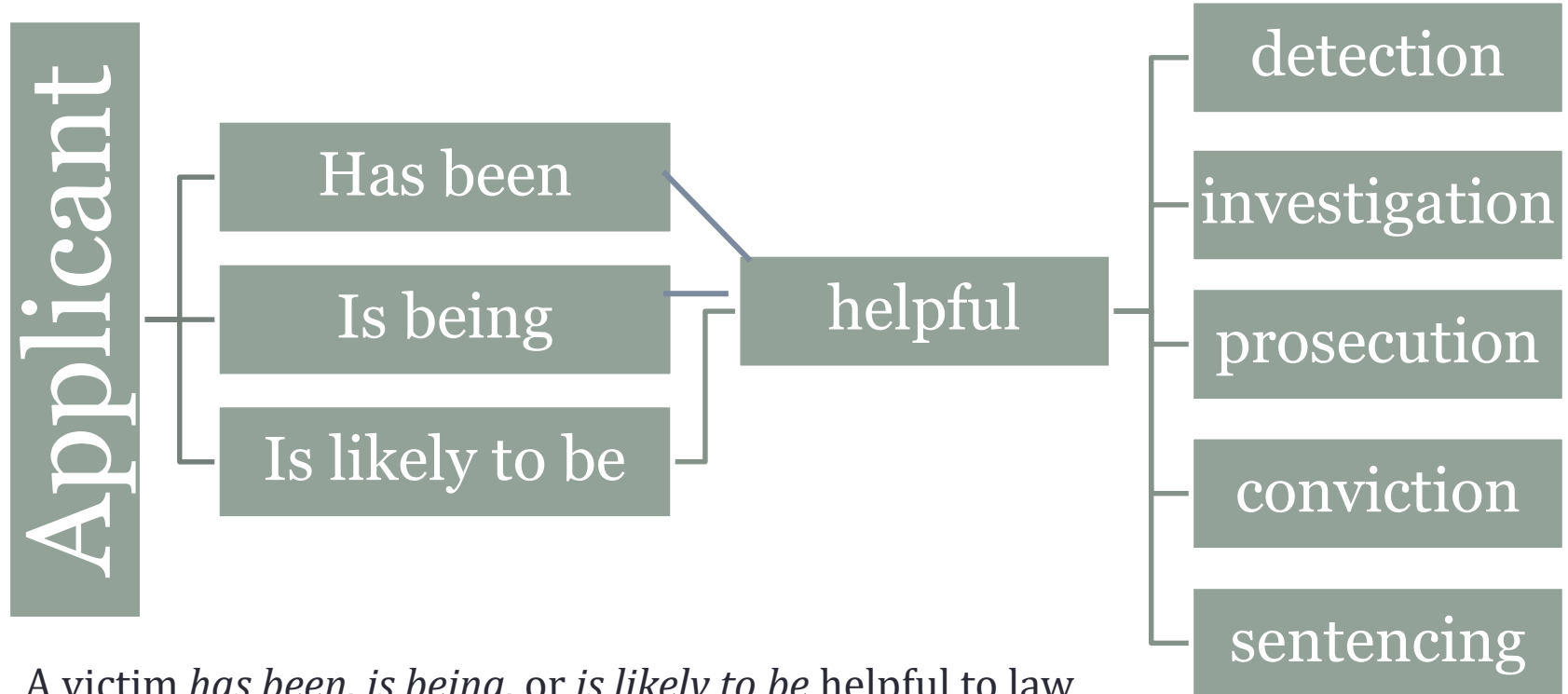
U Visa Statistics

NIWAP 11/2011 and USCIS 2020

% of U Visas	Criminal Activity
58% to 76.1% = Domestic & Sexual Violence, Crimes Against Children & Human Trafficking	
50%	Felonious Assault, Murder, Manslaughter
9%	False Imprisonment, Kidnapping, Being Held Hostage, Unlawful Criminal Restraint
4% - 5.3%	Torture, Stalking, Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation, Other U Visa Criminal Activities

Definition of “Helpfulness”

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



A victim *has been, is being, or is likely to be* helpful to law enforcement, prosecutors, judges, or other government officials

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
 - Prosecution or conviction
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess a victim's helpfulness
- The investigation or prosecution can still be ongoing

Not Required

- Within the statute of limitations
- 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

U Visa Benefits For Law Enforcement and Prosecutors

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases the potential to convict the most dangerous criminals
- Build trust with U visa victims that can solve other crimes
- 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

HUMAN TRAFFICKING VICTIMS

T Visa Requirements

Applicant is a victim of severe form of human trafficking

- Refers to the federal definition of human trafficking

Applicant is in the U.S. because of trafficking

- Not necessary that the victim came to the U.S. because of trafficking; can be in the U.S. for the investigation

Responds to “reasonable requests for collaboration”

- Age exemption & Trauma exception in specific cases

Extreme Hardship upon return to home country

T Visa Facts

- T Visa is a temporary visa for 4 years
- May apply for lawful permanent residence after either 3 years or after the investigation or prosecution is concluded
- Applicants are encouraged to submit a Law Enforcement Declaration along with their application, *but it is not required*

Severe Forms of Human Trafficking

TVPA, 22 U.S.C. § 7102

Act	Means	Purpose
<ul style="list-style-type: none">• Recruit• Harbor• Transport• Provide• Obtaining• Patronize• Solicit	<ul style="list-style-type: none">• Force• Fraud• Coercion <div>Not required for minor victims of sex trafficking</div>	<ul style="list-style-type: none">• Commercial Sex<ul style="list-style-type: none">• Any sex act in exchange for something of value• Forced labor• Forced services• Involuntary servitude• Peonage• Debt bondage• Slavery

Includes “Attempted Trafficking”

- The preamble to the 2024 T Visa Rule and DHS policy Manual include protections for victims of attempted trafficking
 - Cases where the applicant has not performed labor or services or a commercial sex act
 - When the victim can prove they are otherwise eligible for a T visa and
 - But/for some intervention or victim’s escape the perpetrator would have trafficked them

2016 Preamble: 81 Fed. Reg. 92266, at 92271

What are common tactics used by traffickers to assert “force, fraud, and coercion”?

Coercion

22 U.S.C. § 7102(3)

Threats of serious harm to or physical restraint against any person;

Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;

The abuse or threatened abuse of the legal process.

Serious Harm

- Any harm whether physical or nonphysical, including psychological, financial, or reputational harm,
- That is sufficiently serious,
 - Under all the surrounding circumstances,
 - To compel a reasonable person of the same background and in the same circumstances
 - To perform or to continue performing labor or services
 - To avoid incurring that harm.

8 C.F.R. § 214.201

Totality of the Circumstances

Serious Harm

- Physical or nonphysical
- Psychological
- Financial
- Reputational

Circumstances

- The surrounding circumstances

Victim

- Same background
- In the same circumstances

The victim's vulnerabilities are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve.

United States v. Kozminski, 487 U.S. 931, 933, 108 S. Ct. 2751, 2755, 101 L. Ed. 2d 788 (1988)

Updated Involuntary Servitude Definition

- A condition of servitude
 - Induced by means of any scheme, plan, or pattern
 - Intended to cause a person to believe or to fear that
 - If the person did not enter into or continue in such condition or undertake the forced work
 - That person or another person would Suffer serious harm, physical injury, physical restraint, or legal coercion.
- A condition of servitude induced by the abuse or threatened abuse of the law or legal process.

8 C.F.R. § 214.201



Involuntary Servitude in a Domestic Violence Relationship

- Abuser/Trafficker controls victim's liberty creating conditions of servitude
- Expectation that the victim's life fulfills the trafficker's orders
 - E.g., demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and/or constant availability to labor regardless of health or energy;
- Lack of control over the victim's own wages (or not paid) despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of a campaign of force, fraud, and coercion
 - E.g., unequal sleeping arrangements, living arrangements, or access to nourishment.

<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>



Continued Presence (CP) for Victims

- Temporary immigration status for any victim of human trafficking
 - Sex and/or labor trafficking
 - For victims not witnesses
- Victim (and certain family) remain lawfully in the United States during investigation or prosecution into human trafficking
- Granted for two years, can be renewed
 - Receive work authorization, public benefits, and services
 - Does not guarantee long-term immigration legal remedies
 - T visa application typically filed while the victim has CP

CP—Law Enforcement Role

- Only federal law enforcement can apply for Continued Presence
- Local and state law enforcement should partner with Homeland Security Investigations (HSI) or other federal law enforcement agencies
- Application should be prepared immediately after identifying the victim; cooperation is not required
- Can be revoked

Federal Sponsors

- Homeland Security Investigations
- Federal Bureau of Investigation
- State Department Diplomatic Security Services
- Department of Justice
 - United States Attorney's Offices
 - Civil Rights Division
 - Criminal Section
- U.S. Marshal's Service
- U.S. Department of Labor
- Equal Employment Opportunity Commission

THE FACTS ABOUT CONTINUED PRESENCE



- FACT** Law enforcement is urged to make an expeditious initial determination of CP eligibility and to complete the application as early as practicable upon encountering a victim. A best practice is for law enforcement to bring the paperwork to an interview; if the individual credibly appears to be a victim and law enforcement will take any additional actions, then CP should be requested.
- FACT** In some cases, victims may be too traumatized to initially cooperate. CP is appropriate if the totality of the circumstances indicate the individual is a trafficking victim and may be a potential witness.
- FACT** Law enforcement should not be selective but should request CP for every identified victim who lacks immigration status and may be a potential witness to be available, if necessary, for the investigation.
- FACT** CP should be used for labor trafficking and sex trafficking victims.
- FACT** There is no requirement for charges of any kind to be filed, a pending indictment, or a current prosecution to request CP.
- FACT** Deferred action should rarely if ever be used instead of CP for CP-eligible victims, because only with CP do victims receive two-year renewable authorization to remain in the United States, work authorization, and federal benefits and services. This combination is critical support for victims. Deferred action may be appropriate only in certain limited circumstances such as when it is critical to prevent removal of a trafficking victim.
- FACT** CP can be revoked if the recipient commits a crime, absconds, departs without obtaining advance parole, receives an immigration benefit, or is determined to not be a trafficking victim.
- FACT** CP recipients are discouraged from leaving the country unless for an emergency, in which case an application for Advance Parole is required before travel.

FAMILY MEMBERS MAY JOIN

Law enforcement may also request that certain family members join the CP recipient in the United States including:

- the spouse, child, parent, or unmarried sibling (under 18) of a CP recipient under 21;
- the spouse or child of a CP recipient 21 or older; and
- parent(s) or sibling(s) in present danger due to the CP recipient's escape from trafficking or cooperation with law enforcement.

T VISA

Trafficking victims may qualify to apply to USCIS for T nonimmigrant status, a longer-term immigration benefit issued by USCIS commonly referred to as a T visa. Victims should seek the advice of a qualified immigration attorney regarding the T visa, which allows eligible trafficking victims to remain in the U.S. for up to four years and can lead to lawful permanent residence. CP is not a guarantee of T visa approval.

It is consistent with a victim-centered approach for federal, state, and local law enforcement to sign the T visa declaration form when requested by a victim who is assisting or assisted in the investigation or prosecution of a trafficker.

Important Contact Information

Center for Countering Human Trafficking (CCHT)
ContinuedPresence@ccht.dhs.gov

The CCHT processes all requests for Continued Presence, provides training to law enforcement, and encourages its use.

Local HSI Field Office

<https://www.ice.gov/contact/hsi>

Ask for the duty agent or the human trafficking group to report the crime of human trafficking. State and local law enforcement who would like to request CP should ask for the parole coordinator who can provide the required forms and directions.

HSI Victim Assistance Program

866-872-4973 or victimassistance.ice@dhs.gov

Supporting federal victim assistance personnel nationwide who answer victims' questions about their rights as crime victims, provide information about the criminal justice system and provide victims with referrals for services.

CP Video

Please watch a three-part video on what is CP, who is eligible, and how to make a request. The video can also be used for training purposes and task force meetings. Find this and other Continued Presence resources at

<https://www.dhs.gov/blue-campaign/law-enforcement>.



Center for Countering
Human Trafficking

CONTINUED PRESENCE

Temporary Immigration Designation for Victims of Human Trafficking

Prosecution Strategies

PROS

Establish trust

Build rapport

Protect from offender

Protect from deportation

CONS

Accusation that victim is lying for immigration benefit

Analyze Case

Victim Selection

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

Criminal Act

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

Escape Detection

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

Victim Selection

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

Criminal Act

- Human trafficking
- Rape by threats
- Power and control within domestic violence relationship
 - Intimate partner, spouse, child, elder abuse
- Threats as part of stalking or harassment
- Witness intimidation or tampering
- Threats in cases of robbery, extortion, felonious assault, or false imprisonment

Escape Accountability

- Threaten victim with arrest and/or deportation if police are involved
- Manipulate law enforcement to arrest LEP victims
- Use financial manipulation to prevent victims from participating in investigation or prosecution
- Isolate the victim from support services
- Misuse culture to dissuade victim from participating

Offender-Focused Theme

Preying on the
most
vulnerable

Power over the
powerless

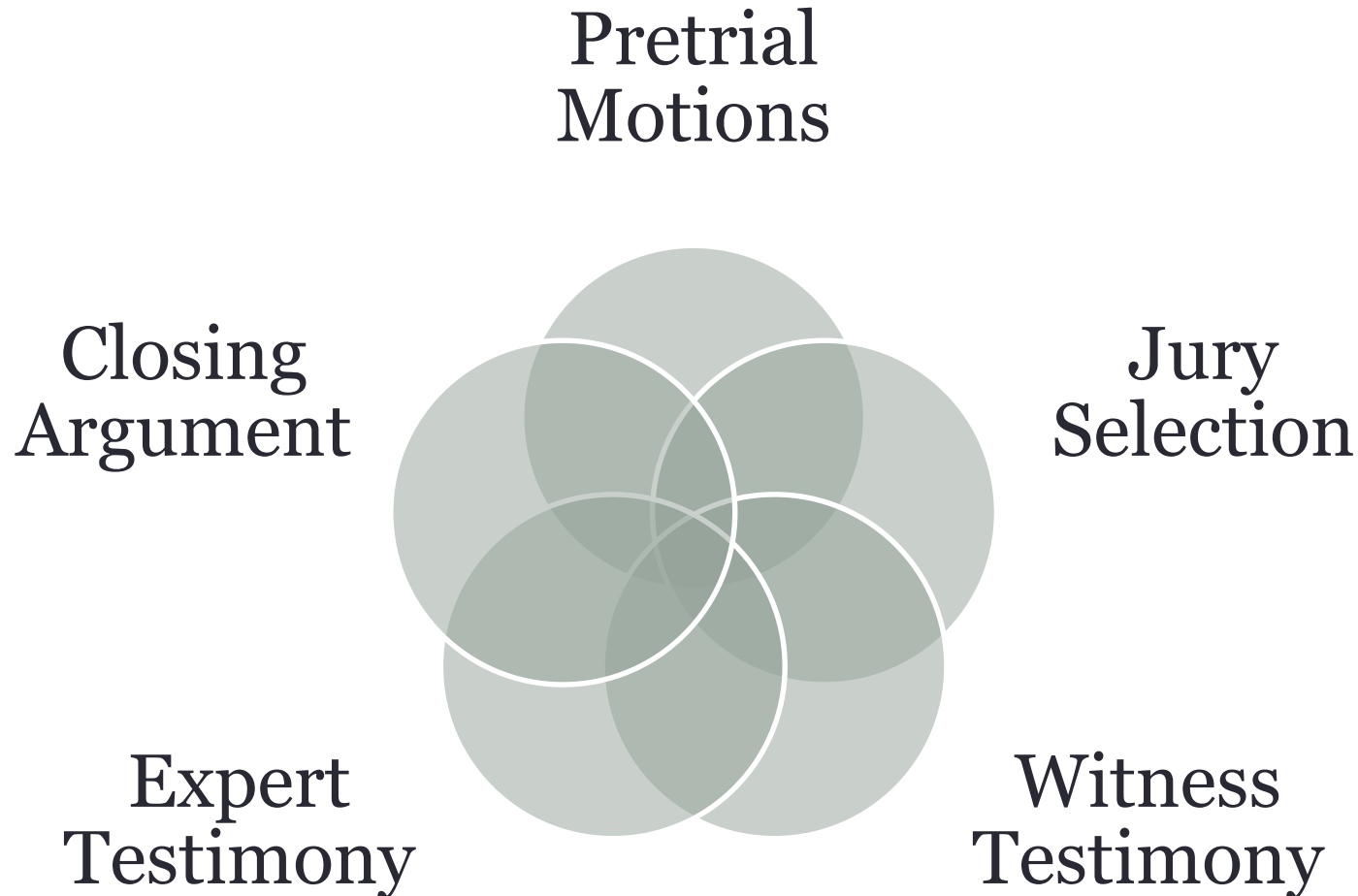
American
dream became
a nightmare

Picked the
perfect victim

Betrayal of
trust, family,
and the law

Knew there
was no where
to turn

Educating the Judge and Jury



Victim Testimony

- Introduce the victim to your jury
- Recreate the reality of the crime
- Illustrate fear and emphasize threats of
 - Deportation
 - Separation from family
 - Loss of employment or financial support
- Address immigration status and application for immigration legal remedies

Cross Examination

- Take the “sting” out during direct examination
- Prepare victim for cross-examination
- Listen for the defense to “open the door” to rebuttal evidence

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

N.H. R. Evid. 801(d)(1)(B)

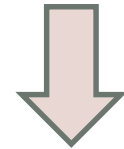
- Non-hearsay
- Not subject to Crawford
- Admissible if...
 - (1) consistent with the testimony of the witness; AND
 - (2) offered to rebut an inconsistent statement or express or implied charge against the witness of recent fabrication

Establishing Timeline

Victim
statements
to officers,
friends, and
others

**Motive
to lie**

Testimony
consistent
with
statement



Introduce
prior
consistent
statements

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?

Custody and Control

Within

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

Not Within

- Materials not provided to law enforcement or prosecutors
 - U visa application
 - VAWA application
 - T visa application
 - Attachments to application
 - Other materials submitted
- Immigration file
 - Includes existence of, contents, & 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

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

New Mexico Supreme Court Ramirez & Reyes-Mendoza v. Marsh S-1-SC-39966 (May 7, 2024)

- VAWA confidentiality protections preclude discovery of U or T visa applications and related materials in a criminal case from:
 - The victim or the victim's family members
 - The victim's immigration attorney
- The Court issued two writs of superintending control overturning judicially ordered discovery

People v. Jun Du – Criminal Case

“Sanctuary For Families”

[NY Sup Ct Kings County 2024](Sept. 27, 2024)

- Based on VAWA confidentiality laws, the Judge reversed their previous decision granting an *in camera* review and denied the request for *in camera* review of the T-visa application (Form I-914).
- VAWA Confidentiality protects the disclosure of the T-visa application (Form I-914).
- Party seeking disclosure must show that the application is so relevant or material that it outweighs VAWA confidentiality.
- The Court decided the materials (T-visa application) are protected and confidential. No exceptions are permitted.

The U Visa Process and How It Promotes Victim Participation in Criminal Investigations, Prosecutions and Criminal and Family Court Cases

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

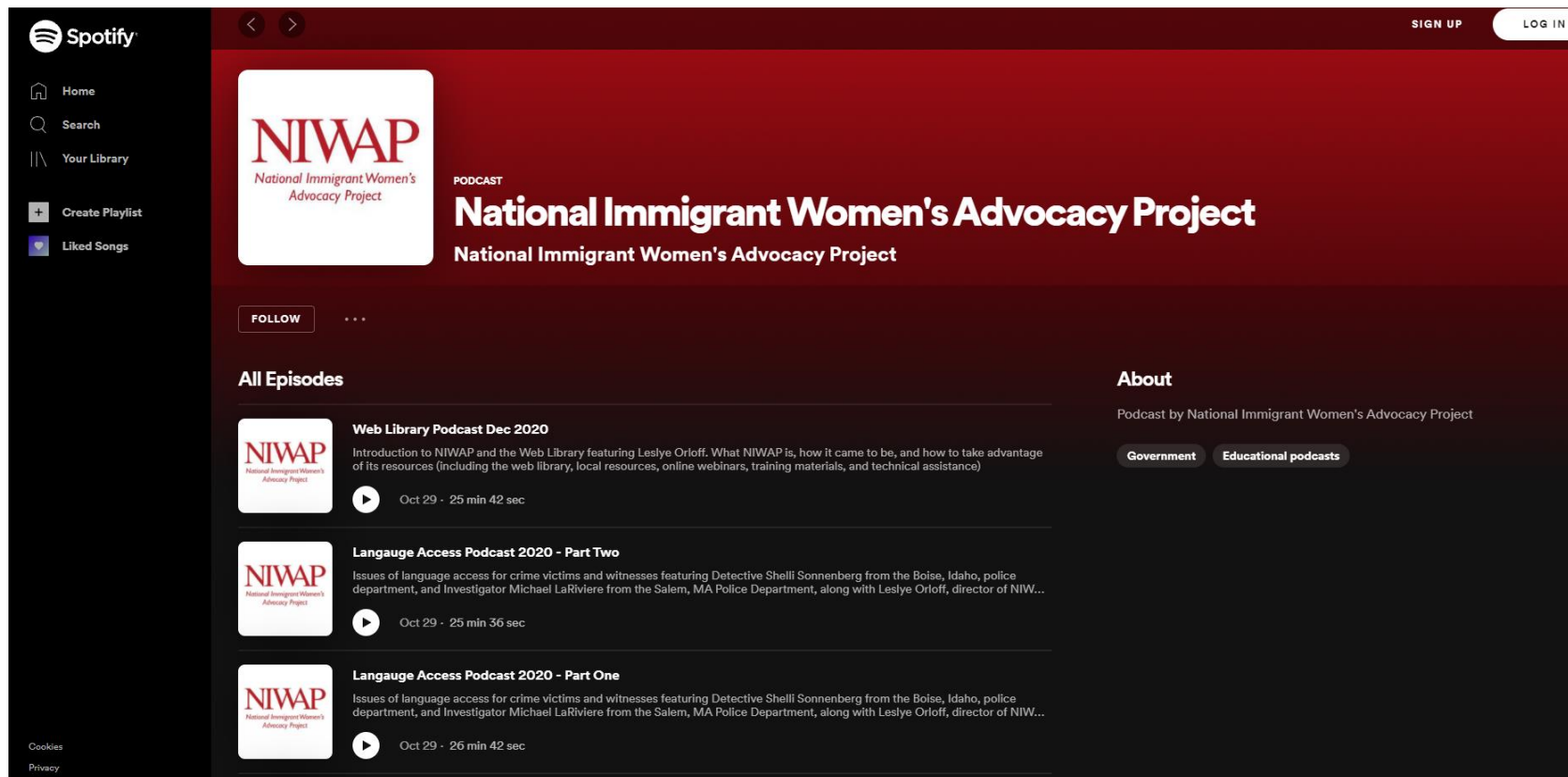
- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 60% seek protection orders and/or custody
 - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using immigration 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 of abusers to use immigration to gain an advantage in family court

Resources

- Technical Assistance
 - Call: 202.274.4457
 - Email: niwap@wcl.american.edu
 - Web Library: <https://niwaplibrary.wcl.american.edu/>
- Power Point presentations and materials for this conference at <https://niwaplibrary.wcl.american.edu/UtahLEADs2025>
- 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

<https://niwaplibrary.wcl.american.edu/niwap-podcast-series>



The screenshot shows the Spotify interface for the NIWAP podcast. The left sidebar contains navigation options: Home, Search, Your Library, Create Playlist, and Liked Songs. The main header area features the Spotify logo, a 'SIGN UP' button, and a 'LOG IN' button. Below the header, the podcast cover art for 'NIWAP National Immigrant Women's Advocacy Project' is displayed. The title 'National Immigrant Women's Advocacy Project' is prominently shown, followed by the subtitle 'National Immigrant Women's Advocacy Project'. A 'FOLLOW' button is visible. The 'All Episodes' section lists three episodes: 'Web Library Podcast Dec 2020' (Oct 29 - 25 min 42 sec), 'Language Access Podcast 2020 - Part Two' (Oct 29 - 25 min 36 sec), and 'Language Access Podcast 2020 - Part One' (Oct 29 - 26 min 42 sec). The 'About' section on the right states 'Podcast by National Immigrant Women's Advocacy Project' and includes tags for 'Government' and 'Educational podcasts'. At the bottom left, there are links for 'Cookies' and 'Privacy'.

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NIWAP
National Immigrant Women's
Advocacy Project

PODCAST

National Immigrant Women's Advocacy Project

National Immigrant Women's Advocacy Project

FOLLOW

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...

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Oct 29 - 26 min 42 sec

About

Podcast by National Immigrant Women's Advocacy Project

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- Roundtable for Law Enforcement, Prosecutors and System-based Advocates -
<https://www.surveymonkey.com/r/LERoundtable>
- Community of Practice for Victim Advocates
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
- Community of Practice for Family Law Attorneys
www.surveymonkey.com/r/FamCOP2023
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>

• THE END

• Evaluations