NIWAP

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

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

Maryland 2025

For Law Enforcement, Prosecutors, and Systems-Based Victim Witness Staff

This project is supported by Grant No. VAWA-2024-0047, awarded by the Office on Violence Against Women, U.S. Department of Justice.

The opinions, findings, conclusions and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.

Introduction

- Faculty
- Housekeeping

NIWAP

AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW

- 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 offender accountability and 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
- 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
  - Other victim advocates
- Statutes, regulations, policies, and government publications
- Training tools, webinars, and podcasts
- Language access
  - Multilingual materials
- Immigration
- 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

Materials Summary

- Materials
  - Agenda
  - PowerPoint presentation
  - Evaluations
- Web Library
  https://niwaplibrary.wcl.american.edu/pubs/le-prosecutor-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
- Blue Card Tool Screening Victims for Immigration Protections
- Tools for law enforcement and prosecutors working with immigrant survivors

Participant Goals and Expectations



Learning Objectives

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

- Describe who qualifies for U and T Visas
- Sign U Visa and T Visa applications consistent with Maryland law to increase victim stability and safety
- Collaborate to improve trust with immigrant communities
- Develop strategies to overcome common defenses in cases involving immigrant victims

Dynamics of Intimate Partner Violence, Stalking, Sexual Assault, and Human Trafficking involving Immigrant Victims

Large Group Discussion

- What are some specific tactics used by offenders seeking to assert power and control over immigrant victims of…
  - Intimate Partner Violence
  - Sexual Assault
  - Stalking
  - Child abuse
  - Human trafficking

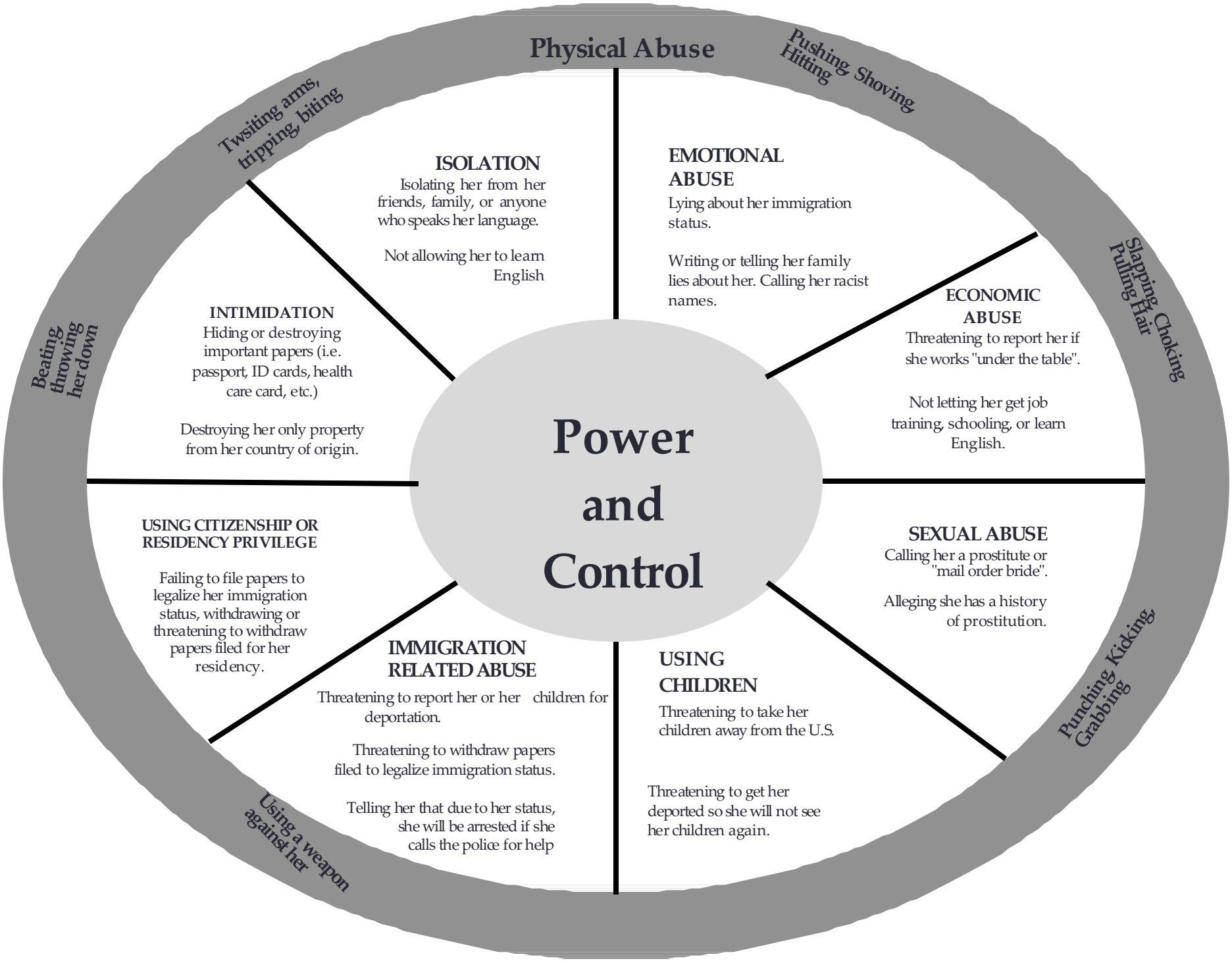
Power & Control Wheel

Domestic Abuse Intervention Project, Duluth, MN



Power & Control Tactics Used Against Immigrant Women

Document Updated December 3, 2024



Department of Homeland Security



- DHS Video

Immigration-Related Abuse

- 65% of immigrant survivors report some form of immigration-related abuse (NIJ, 2003)
- Abuse rates among immigrant women is almost three times the national average*
  - Lifetime as high as 49.8%
  - Those married to citizens and lawful permanent residents – 50.8%
  - U.S. citizen spouse/former spouse abuse rate rises to 59.5%

* Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

Immigration-Related Abuse, cont'd.

- Among abusive spouses who could have filed legal immigration papers for survivors*:
  - 72.3% never file immigration papers
  - Mean delay of 3.97 years with those who did file
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
- Forcing partners to work with false documents

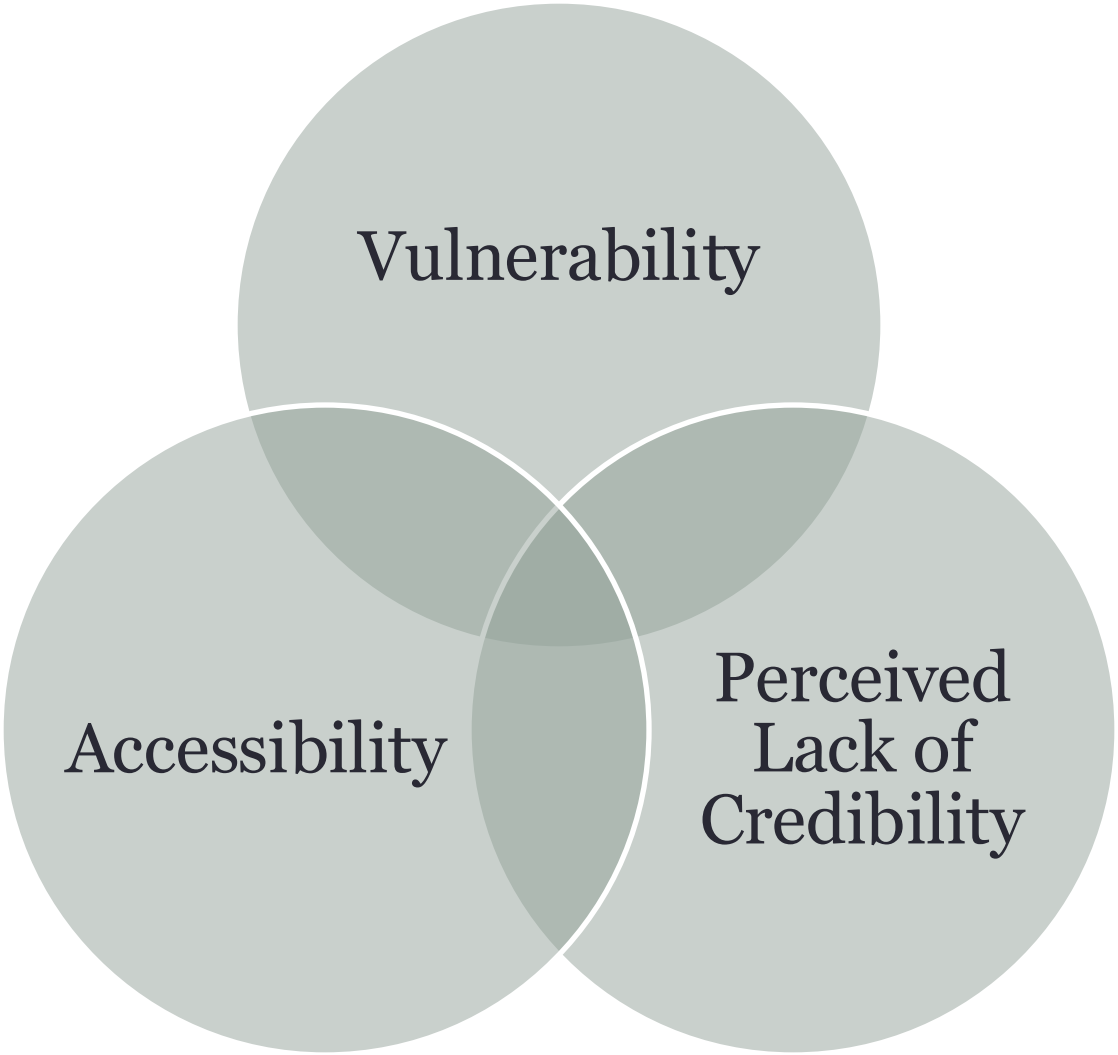
*Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

Immigration-Related Abuse, cont'd.

- Threats or attempts to have immigrant partner deported or have case denied
  - 25% of perpetrators actively report the victim for removal
- Using language proficiency to manipulate law enforcement
  - 36% of perpetrators get immigrant and LEP victims victims arrested for domestic violence*

* 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)*

The Perfect Plan



Sexual Assault and Immigrants

- High school aged immigrant girls
  - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault

  - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007)

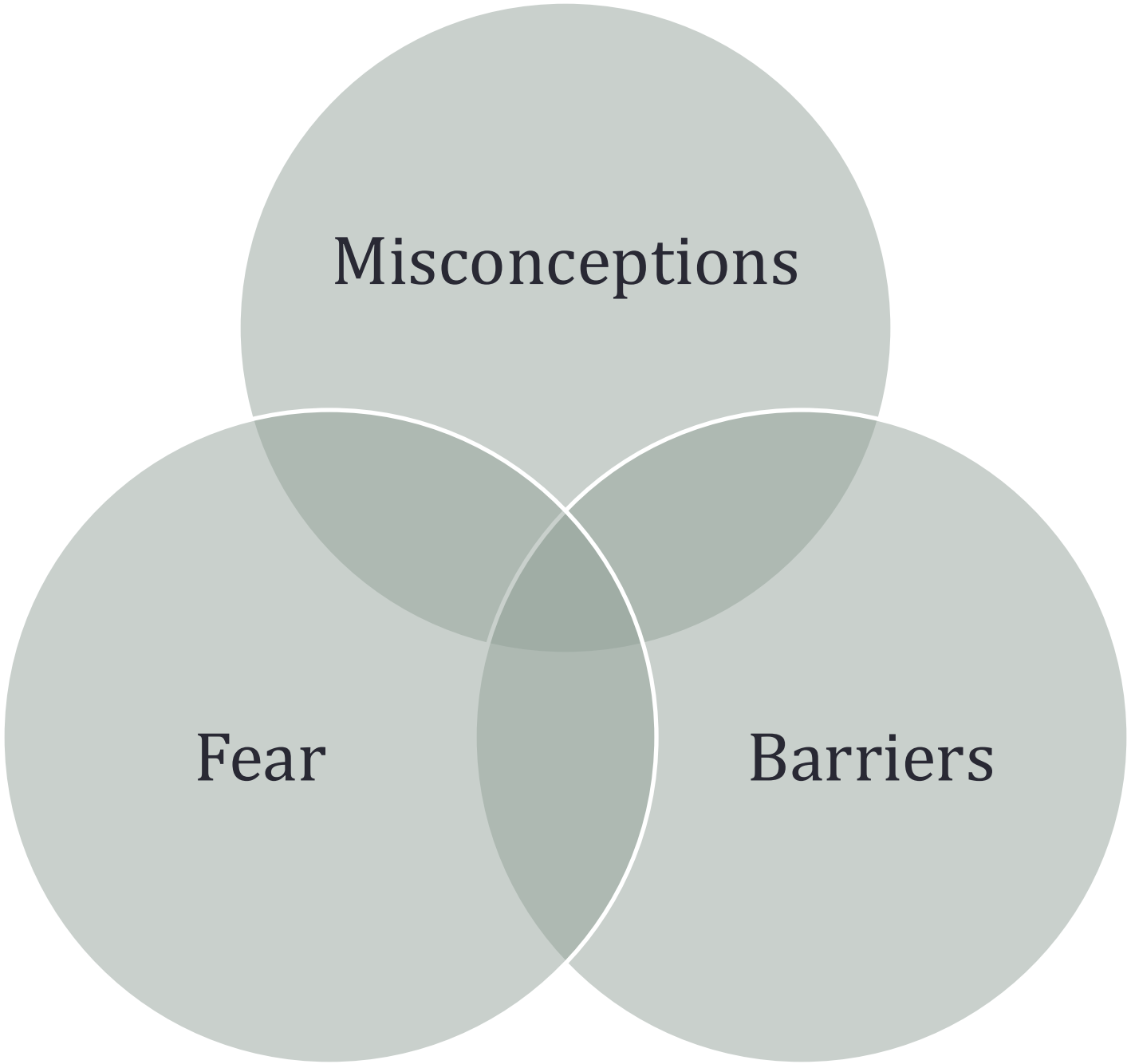
Screening

Immigration-related abuse…

- 10x higher in relationships with physical/sexual abuse as opposed to psychological abuse*
- May predict abuse escalation
- Corroborates existence of physical and sexual 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)

What prevents immigrant victims from reporting crime?


Misconceptions
Fear
Barriers

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

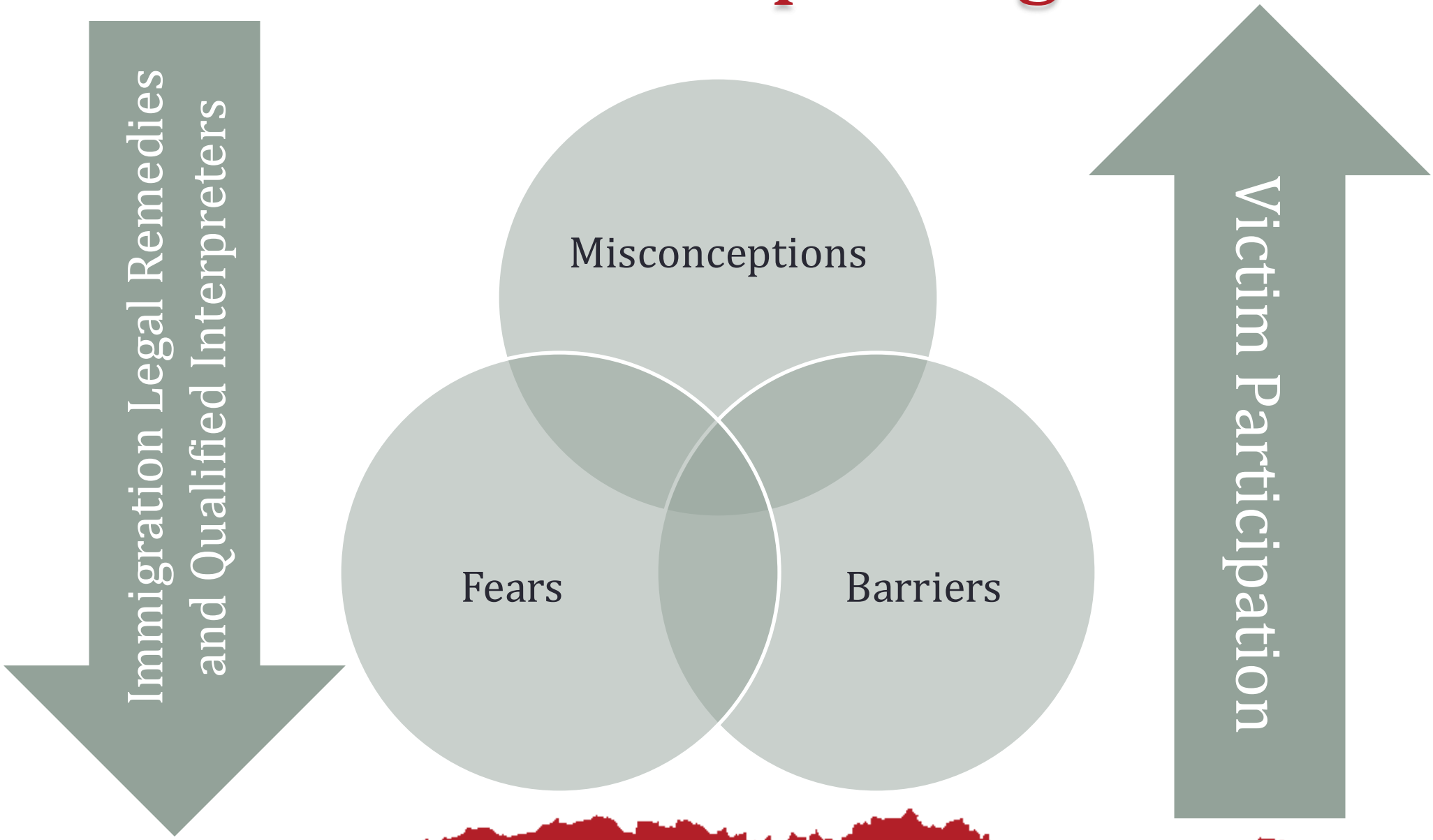
Immigrant Experience/ Misconceptions

- History of Immigrant Experience
  - Lack of knowledge of
    - Crime victim legal rights
    - Laws regarding domestic violence, sexual assault
  - Fears based on past experiences
  - Do not trust the police
- Misconceptions
  - 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



Effective Interviewing and Use of Interpreters

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

What countries are you seeing immigrant survivors coming from?

Maryland Data (2021)

Sources: Migration Policy Institute Data Hub (November 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)

Maryland (2022)*

- Total foreign born population – 1,029,710
- 16.7% of the country's ~ 6.2 million people are foreign born
  - 54.6% naturalized citizens
  - 27% legal permanent residents (as of 2019)*
  - 18.4% temporary visa holders or undocumented immigrants
- 98.7% rise in immigrant population from 2000 to 2022
- Length of time immigrants have lived in the U.S.
  - 38.5% entered before 1999
  - 25.8% entered 2000 - 2009
  - 35.7 since 2010
- 32.5% of children under age 18 have one or more immigrant parents
  - 83.7% 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)*

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

- Latin America – 39.0%
  - El Salvador (11.8%)
  - Other Central America (8.7%)
  - South America (7/6%)
  - Caribbean (7.3%)
- Asia – 27.2%
  - India (6.2%)
  - China/Taiwan (5.8%)
  - Other South Central Asia (4.5%)
- Africa – 20.8%
  - Western Africa (9.9%)
- Europe – 8.6%
- Canada – 0.8%
- Oceania – 0.2%
- Middle East – 3.4%
- Language spoken
  - 20.7% of people in the state who speak a language other than English at home
  - 37.9% of foreign born persons are LEP - speak English less than "very well"

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

Maryland-Languages Spoken at Home (2022)*

- Spanish (519,045)
- Chinese (including Mandarin, Cantonese) (76,605)
- Yoruba, Twi, Igbo, or Other Languages of Western Africa (71,087)
- Amharic, Somali, or Other Afro-Asiatic Languages (55,189)
- French (including Cajun) (52,848)
- Tagalog (including Filipino) (37,003)
- Korean (34,399)
- Russian (25,402)
- Swahili or Other Languages of Central, Eastern, and Southern Africa (20,922)
- Vietnamese (19,398)
- Hindi (19,122)
- Urdu (18,324)
- Arabic (18,277)
- Persian (including Farsi, Dari) (17,969)
- Portuguese (16,623)
- German (14,496)
- Haitian (14,226)

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

Maryland-LEP (2022)*

- Limited English Proficiency (Speak English less than very well)
  - Naturalized citizens – 26.1%
  - Noncitizens – 52.2%
- Limited English Proficiency by language spoken at home
  - Vietnamese (55.2%)
  - Korean (51.5%)
  - Chinese (including Mandarin, Cantonese) (47.3%)
  - Spanish (47.1%)
  - Russian (32.8%)
  - Urdu (30.8%)
  - French (including Cajun) (28.2%)
  - Amharic, Somali, or Other Afro-Asiatic Languages (28.1%)
  - Arabic (28.1%)
  - Haitian (24.8%)
  - Tagalog (including Filipino) (22.0%)

Source: https://www.migrationpolicy.org/data/state-profiles/state/language/MD (July, 2024)

"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* *i*nterpreter 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	Harms if not used
• Safety • ID offender • Locate weapons • Admissible statements (excited utterances)	• 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?

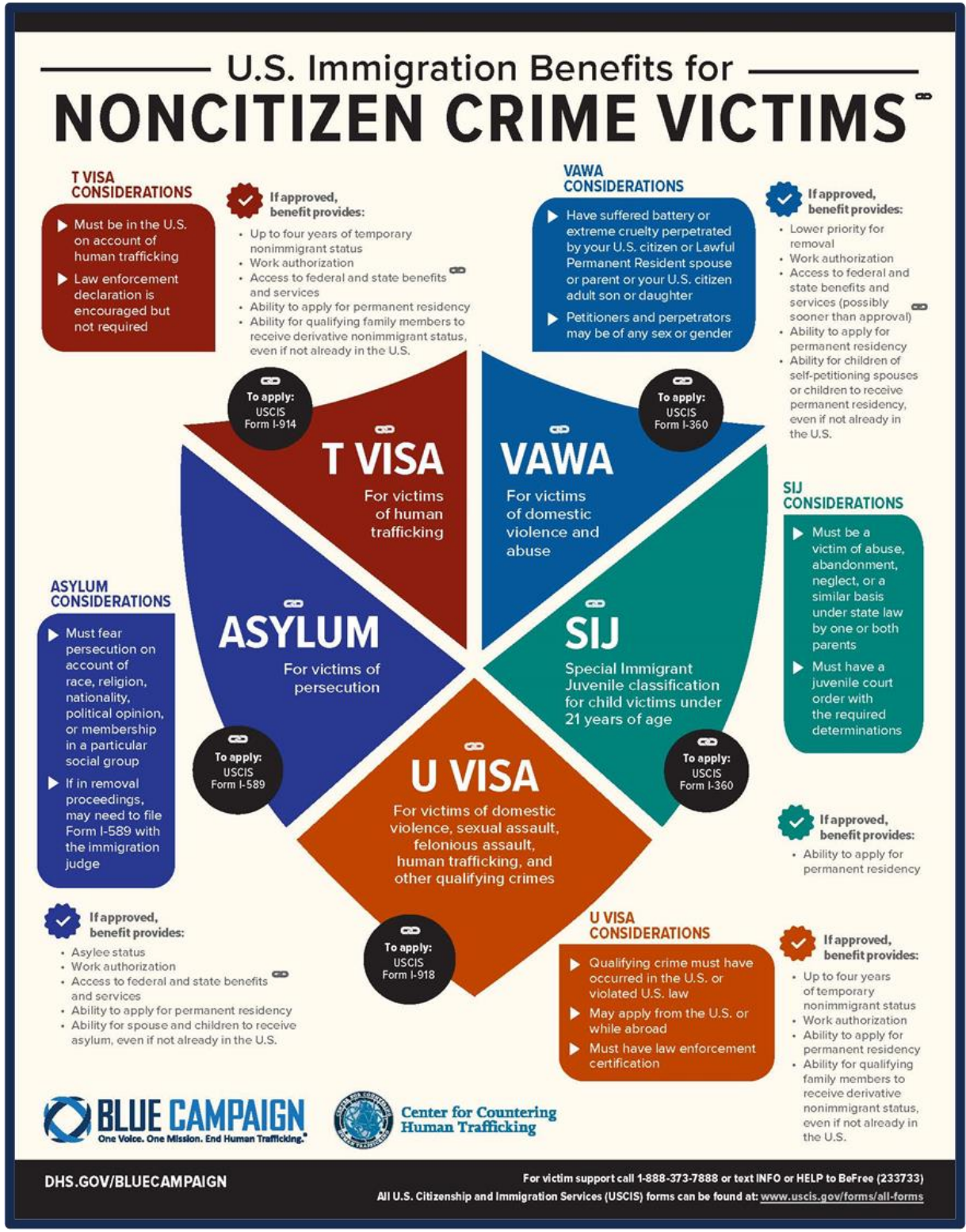
Language Resources

- 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 Protections for Noncitizen Victims of Crime and Abuse



Tools: Immigration Legal Remedies

Law Enforcement, Prosecutors, Government Agency Involvement

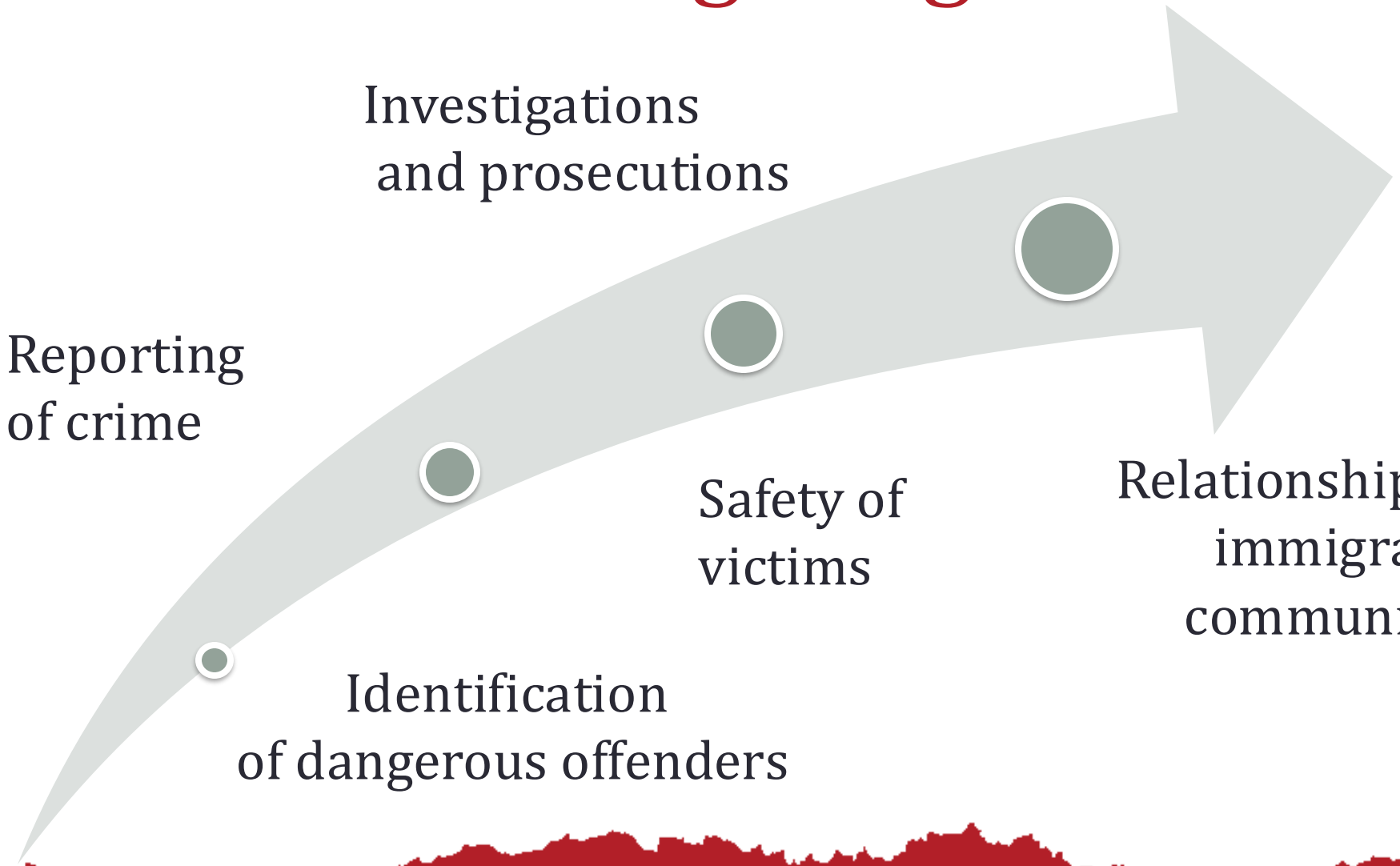
U Visa	Available to most victims of violent crime
T Visa	Available to victims of human trafficking
Continued Presence	Short-term immigration relief to newly-identified victims of trafficking

Why do you think these forms of legal immigration remedies 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 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."

RESEARCH SHOWS THAT U VISA APPLICANTS REPORT FUTURE CRIMES AT HIGHER 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)*

Increased Participation

- 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
- VAWA Self-Petitioners
  - 62% participate in criminal investigations and prosecutions
  - 63% seek civil protection orders
  - 60% turn to the courts for child custody orders

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

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 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.

Who can apply?

- Parents and guardians can apply as an "indirect victim" if:
  - The direct victim is a child under 21 years of age and/or is incompetent, incapacitated, or deceased due to murder or manslaughter
  - They demonstrate helpfulness
- 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

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	Fraud in Foreign Labor Contracting	Unlawful Criminal Restraint
Peonage	Perjury	Prostitution
Rape	***Includes attempt, conspiracy or solicitation***	

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

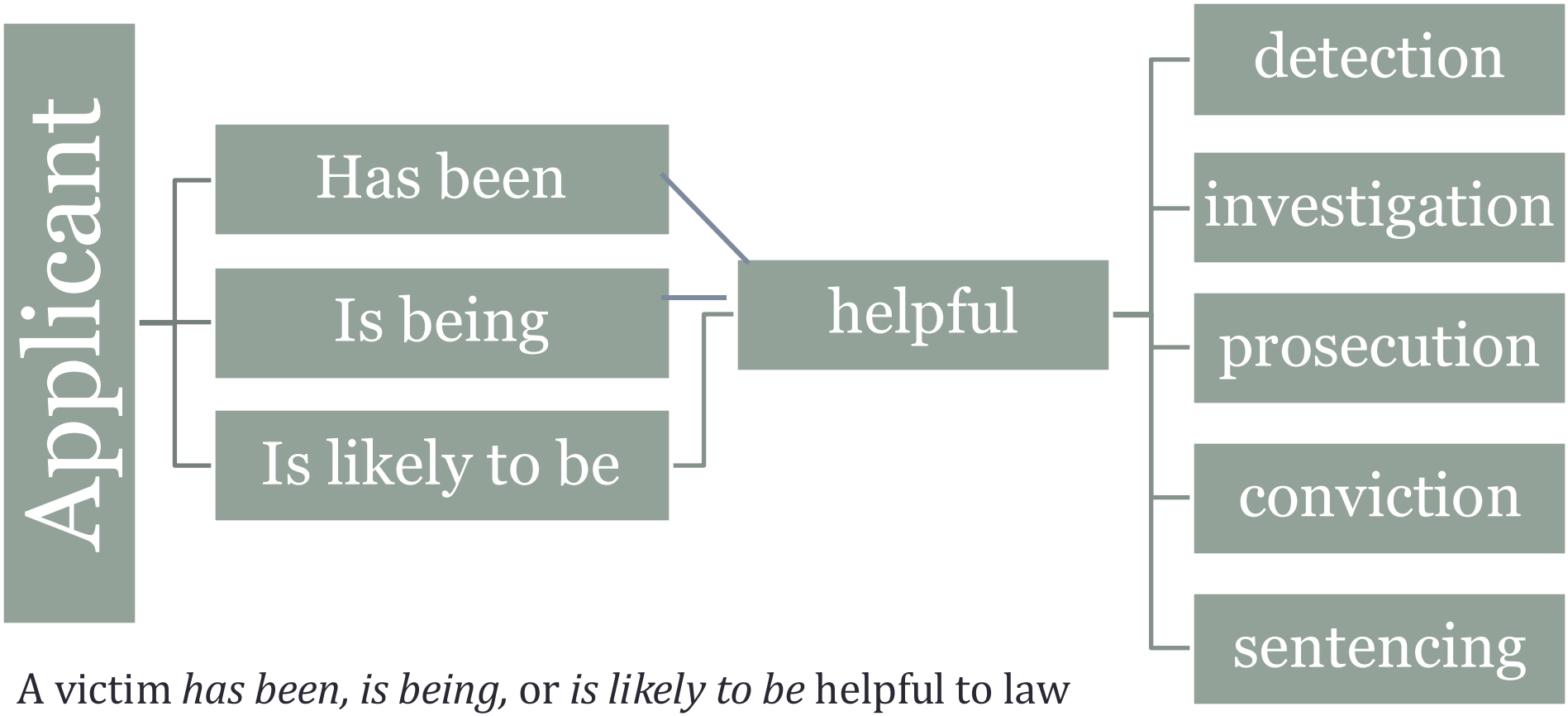
U Visa Statistics

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

Small Group Activity - Aditi

- Meet as a group to review and discuss the assigned case study
  - Make a list of the criminal activities experienced by the victim
  - Identify the ways that the victim provided or is providing helpfulness
  - Would you certify?
  - What are the questions you want to be able to answer about certification in this case
- Handouts: Helpfulness Definition and U visa criminal activity list

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

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



Let's Make a List of All the Agencies in Your State or Local Jurisdiction Who Are…

- Law enforcement agencies
- Prosecution agencies
- Judicial decision makers
- Other government agencies with civil, criminal, or administrative investigative authority

Maryland's U Visa Certification Law
§ §11-930 and 11-931

Effective Date: October 1, 2025

Maryland U-visa Certification Law

Criminal Procedure §11-930 (Enacted April 22, 2025)

- Certifying agencies:
  - State or local law enforcement agency;
  - State's Attorney or deputy or assistant State's Attorney;
  - any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; or
  - Child protective services, Adult protective services, the Commission on Civil Rights, and the Maryland Department of Labor, etc.

Maryland U-visa Certification Law

Criminal Procedure §11-930 (Enacted April 22, 2025)

- Who can request certification:
  - The victim, or
  - The victim's parent, guardian, next friend (if victim was under 16 years or incapacitated or incompetent and the parent, guardian or next friend has been helpful), or
  - Attorney, Victim Advocate, or other representative

Maryland U-visa Certification Law

Criminal Procedure §11-930 (Enacted April 22, 2025)

- Determining helpfulness:
  - "an individual shall be considered helpful if, since the initiation of helpfulness, the individual has not unreasonably refused to cooperate or unreasonably failed to provide information and assistance reasonably requested by a certifying entity"
- Written explanation required if the evidence does not support issuance of certification.

Maryland U-visa Certification Law

Criminal Procedure §11-930 (Enacted April 22, 2025)

- Established time limit to respond: 45 days or 7 days (if in removal proceedings)
- No statute of limitation
- NOT required: Current investigation, filing of charges, prosecution or conviction

U Visas Promote Trust and Partnership With Law Enforcement and Prosecutors

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

U Visa Process Timeline

NIWAP

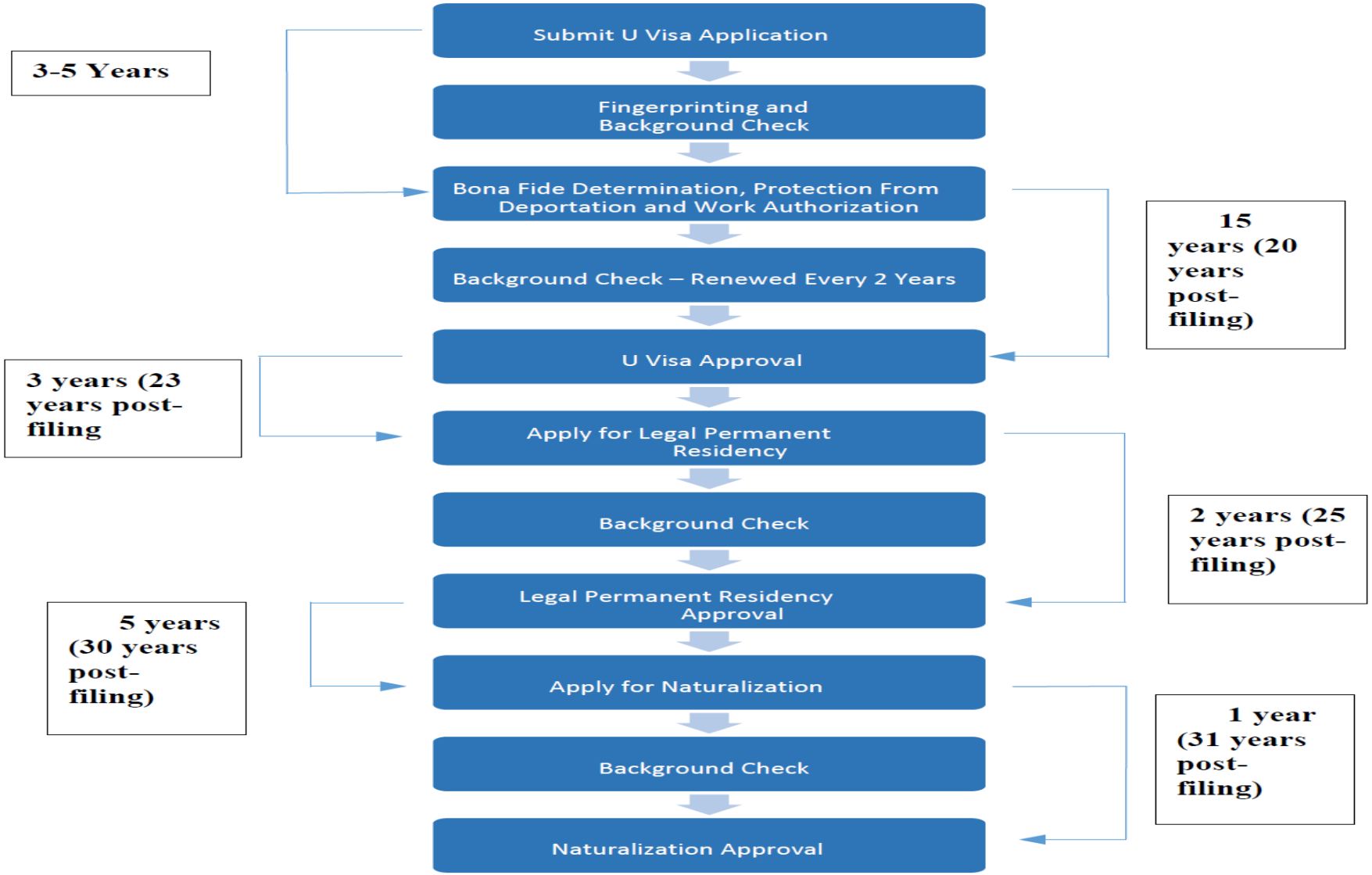
State Justice Institute

American University Washington College of Law

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

New Tools Demonstration

- Letters that advocates and attorneys can provide to victims
- Letters for law enforcement and prosecutors and their agency staff to provide to victims
- Letters that advocates and attorneys at protected locations can provide should they encounter ICE



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

Certification and Helpfulness

Role of Certifying Official

Certification

+

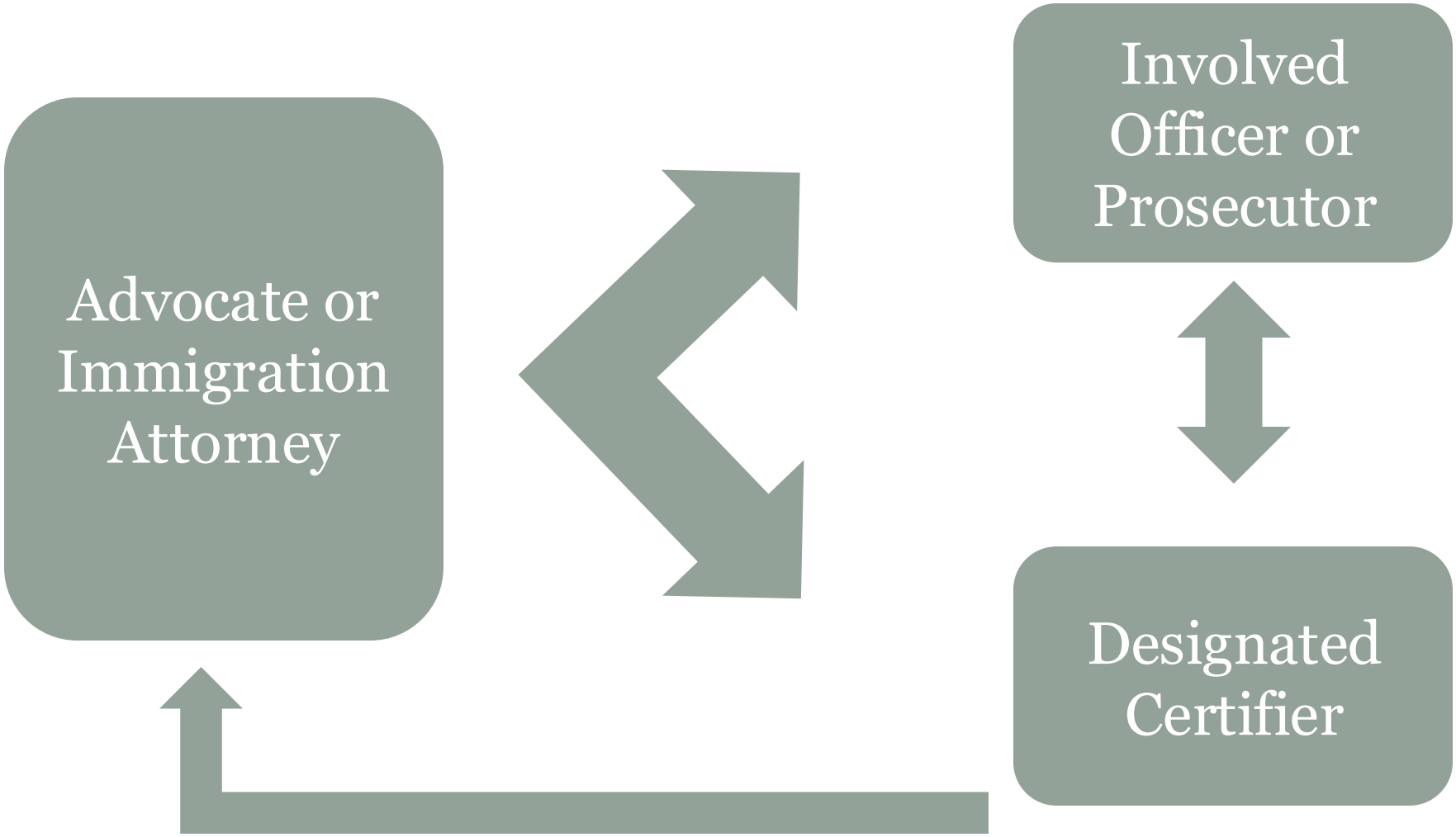
Supporting documentation

→

U Visa Application

How are you involved in the certification process?

Certification Review



Determining Helpfulness

- Certifying agency determines "helpfulness"
- No degree (or timing) of helpfulness is 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
- Investigation or prosecution can still be ongoing

Small Group Activity

- Make a list of the types of helpfulness domestic violence, sexual assault, stalking, child abuse, and human trafficking vicitms offer to:
  - Law enforcement – Group I
  - Prosecutors – Group II
  - Judges and courts – Group III
  - Child welfare agencies – Group IV

Examples of Helpfulness

Calling 911	Having a Rape Kit performed	Providing a description or location of offender
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

ACTIVITY: CASE SCENARIOS

Small Group Activity

- Review the case scenario assigned
- Determine who, if anyone, qualifies for a U visa
- What are the criminal activities?
- What helpfulness was provided?
- Would you certify or recommend certification?
- What questions do you have or want to be able to answer for the certifier in your agency?
  - Use Helpfulness-Criminal Activities Handout

Small Group Activity Report Back

- Discuss each of the scenarios assigned

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

How do law enforcement and prosecutors benefit from the U visa?





U Visa Benefits

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

Obligation to Provide Ongoing Assistance and Exception

Ongoing Assistance



Continuing obligation to provide assistance when reasonably requested

Helpfulness vs. Cooperation

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 and 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

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

Was the refusal unreasonable?

Unreasonable refusals are subjective, but consider if it is reasonable to refuse a request if the victim is:

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

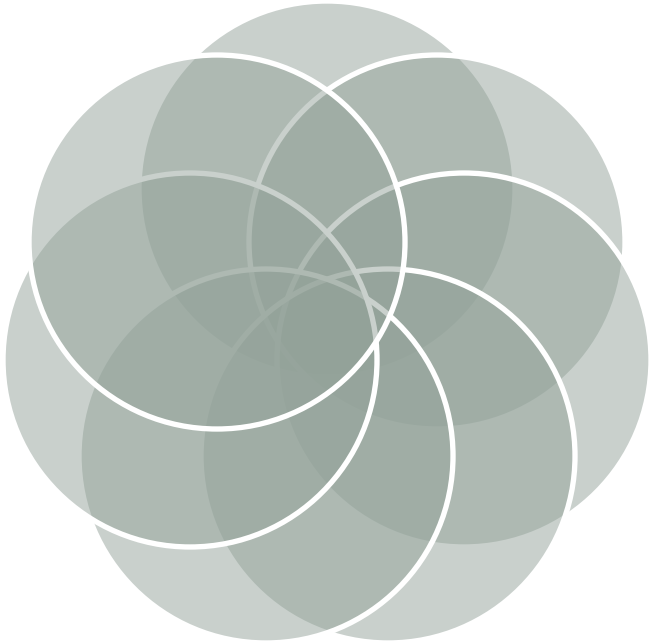
Why would a victim report a crime and then refuse to participate in the ensuing investigation and trial?

Factors that Impede Victim's Ability to Safely Participate

Fear of Reprisal

Inaccessible services

Witness intimidation



Lack of resources

Deportation Threats

Lack of communication

Culture

Practice Tips

- Proactively investigate witness intimidation
- Collaborate with systems-based and community-based victim service professionals
- Establish safe points of contact with victim's friends and family
- Conduct trauma-informed assessments of reasonableness

What if after conducting a trauma-informed analysis, you still believe the victim is unreasonably refusing to comply with reasonable requests?

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

- Check the appropriate box 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

FAQs

What if the victim has a criminal history?	This is not a part of the certification process, but USCIS fully reviews applicants' history
What if the victim later commits a crime?	The certifying is not held liable for the applicant's actions
What if I later find out the victim lied?	Ensure you are conducting a trauma-informed analysis, but the certification is revokable
How long does it take to get a U Visa?	There is currently a waiting list, so qualified applicants can wait 20+ years for their visa, but with work authorization…

Completing the U Visa Certification Form

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 02/28/2026

Certification form is available to download at https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf

► **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)

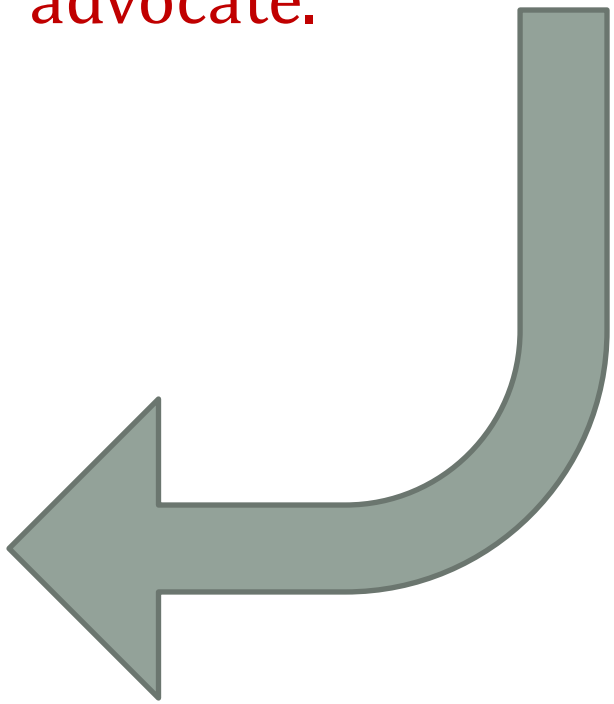
3.b. Given Name (First Name)

3.c. Middle Name

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

5. Gender ☐ Male ☐ Female

This section 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)

- ☐ Abduction
- ☐ Abusive Sexual Contact
- ☐ Attempt to Commit Any of the Named Crimes
- ☐ Being Held Hostage
- ☐ Blackmail
- ☐ Conspiracy to Commit Any of the Named Crimes
- ☐ Domestic Violence
- ☐ Extortion
- ☐ False Imprisonment
- ☐ Felonious Assault
- ☐ Female Genital Mutilation
- ☐ Fraud in Foreign Labor Contracting
- ☐ Incest
- ☐ Involuntary Servitude
- ☐ Kidnapping
- ☐ Manslaughter
- ☐ Murder
- ☐ Obstruction of Justice
- ☐ Peonage
- ☐ Perjury
- ☐ Prostitution
- ☐ Rape
- ☐ Sexual Assault
- ☐ Sexual Exploitation
- ☐ Slave Trade
- ☐ Solicitation to Commit Any of the Named Crimes
- ☐ Stalking
- ☐ Torture
- ☐ Trafficking
- ☐ Unlawful Criminal Restraint
- ☐ 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.

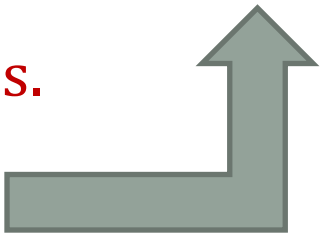
Attaching state statutory language is helpful.

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.

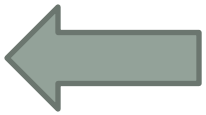


7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

_____

_____

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

We already talked about this

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

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**.

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



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

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 legal remedies.

Legal Remedies for Human Trafficking Victims

T Visa Requirements

Applicant is a victim of severe form of human trafficking

Applicant is in the U.S. because of trafficking

Responds to "reasonable requests for collaboration"

- Age & trauma exceptions may apply

Extreme hardship upon return to home country

Severe Forms of Human Trafficking

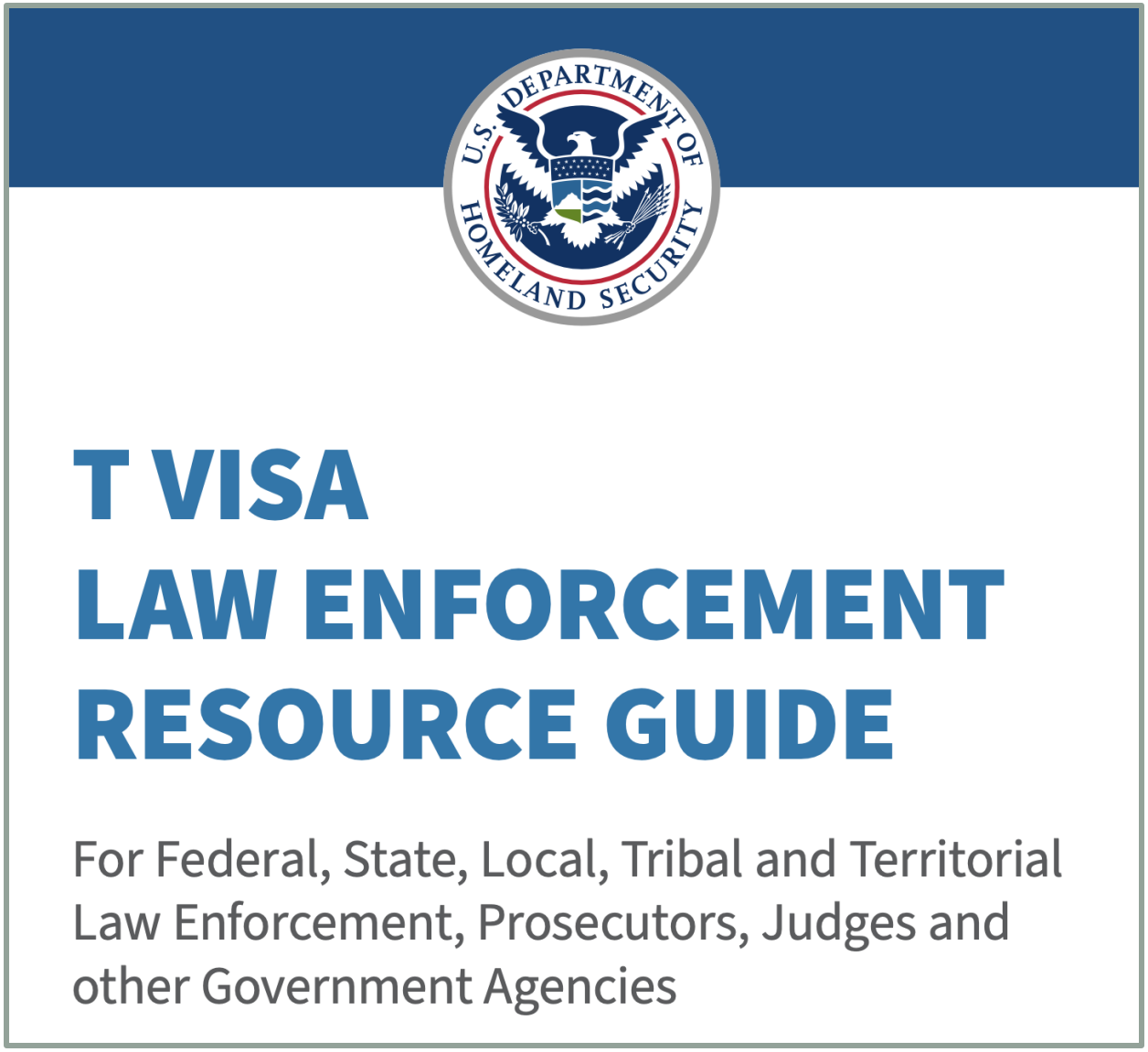
TVPA, 22 U.S.C. § 7102

Act	Means	Purpose
• Recruit • Harbor • Transport • Provide • Obtaining • Patronize • Solicit	• Force • Fraud • Coercion Not required for minor victims of sex trafficking	• Commercial Sex • Forced labor • Forced services • Involuntary servitude • Peonage • Debt bondage • Slavery

Note: There is no such thing as "attempted trafficking". It is included in this definition.

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*



https://www.uscis.gov/sites/default/files/document/guides/T-Visa-Law-Enforcement-Resource-Guide.pdf

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"

8 C.F.R. § 214.201; 18 U.S.C. § 1589; 18 U.S.C. § 1591

Serious harm means 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 in order to avoid incurring that harm.

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.

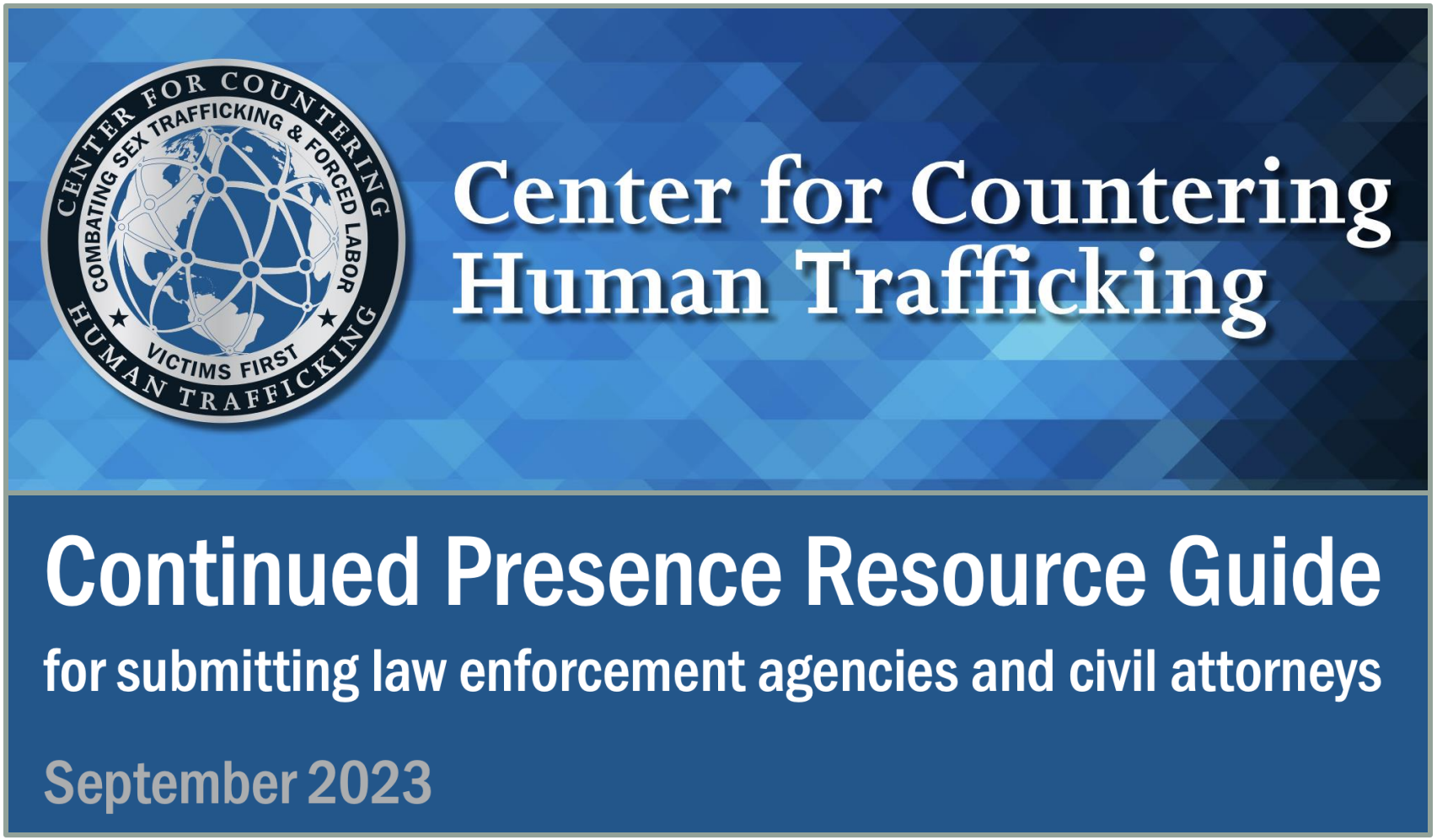
United States v. Kozminski, 487 U.S. 931, 933, 108 S. Ct. 2751, 2755, 101 L. Ed. 2d 788 (1988)

Continued Presence

- Temporary immigration status for victims of trafficking who are "sponsored" by federal law enforcement
- Law enforcement meant to initiate application immediately after identifying victim; cooperation is not required
- Upon approval, Dept. of Health and Human Services allows victim to:
  - Access federal and state benefits
  - Receive work authorization

Continued Presence, Cont'd.

- Granted for 2 years; can be renewed
- Does not guarantee any form of long-term immigration relief
- T Visa application is typically filed while the victim has CP
- Can be revoked



https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf

Human Trafficking Occurring Within Families

Includes "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

81 Fed. Reg. 92271

DHS Recognizes Labor Trafficking Occurs Within Families

- Involuntary 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

Familial Trafficking

- 2 in 5 trafficking cases reported annually to federal trafficking taskforces involve child sex trafficking
- Over 62.7% of sex trafficked children their trafficker is a family member
  - Parent, grandparent, aunt, uncle, cousin, sibling
  - With 45.8% parent or guardian
- 65% of sex trafficked children come from unstable homes or compromised parenting
  - Almost 20% have a history of child abuse or neglect
- Up to 34% of sex trafficked children are trafficked by an intimate partner

- Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. Child Abuse & Neglect (2014), http://dx.doi.org/10.1016/j.chiabu.2014.07.015

What are examples of legal coercion you have seen in domestic violence, sexual assault and human trafficking cases?

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

T Visa Process Includes Bona Fide Determination

- USCIS will deem an application *bona fide* if:
  - The I-914 is properly filed and complete;
  - The applicant has included a signed personal statement; and
  - Initial background check results are complete and do not present national security concerns. 8 C.F.R. § 214.205(a)(2)
- After T applicant is deemed *bona fide*
  - USCIS will conduct a *bona fide* review of applications of family members.

    8 C.F.R. § 214.240(m)

When should you sign a U Visa Certification or a T Visa Declaration?

ANSWER:
As soon as you have the information you need to complete the paperwork.

Early Certification

Do you have the information you need to determine if the applicant is a victim of the qualifying criminal activity?

- Standard of proof: "Any credible evidence"

Can you make initial helpfulness determination?

- You do not need to determine ongoing helpfulness when you sign
- You can revoke

Small Group Activity

- Meet at your tables to discuss how filing a victim's abused-based immigration case (VAWA, T or U visa) can help stabilize victims participating in criminal investigations or prosecutions.
- Report Back

Improved Stability From

- Receiving protection from deportation
  - Through VAWA confidentiality at filing 8 U.S.C. 1367
  - Formal when receive deferred action
- Improved economic stability & independence
  - Legal work authorization
  - Greater and increasing access to state and federally funded public benefits
  - Office of Trafficking in Persons (OTIP) benefits and support
- Improved justice system trust
  - Law enforcement, prosecutors, judges, and courts
- Being connected and working with victim advocates and attorneys
  - Safety planning and support

Open to All Immigrant Victims of Crime/Abuse/Neglect Including Children

- Legal Services
- Family Court (Divorce, custody, economic relief, protection orders)
- Interpreters/Translators
- Police Assistance
- Perpetrators Can Be Criminally Prosecuted
- Public Benefits for Their Eligible Children
- SANE Exams
- VOCA
- Assistance for Crime Victims
- Shelter/Transitional Housing
- WIC/school lunch & breakfast
- Primary/Secondary education/GEDs
- Immunizations, testing, treatment communicable diseases
- Emergency medical care
- Healthcare from federally qualified health centers and Hill Burton hospitals

In-Kind Services Necessary to Protect Life and Safety, Open to All Immigrants

- Child and adult protection services
- Crisis counseling and intervention
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Shelter & transitional housing assistance
  Nutrition programs for those requiring special assistance



(8 U.S.C. Section 1611(b)(1)(D)) (66 Federal Register 3613)

Benefits in Maryland Part 1

- TANF and TANF funded Child Care
  - No wait state funded TANF: *Applicants*/recipients VAWA, T visa, OTIP, Continued Presence, SIJS applicants, asylees, refugees, DACA recipients and U visa bona fide
- Childcare: Child Care Development Fund no restrictions
- SSI -(follows federal most limited): T visas, OTIP, CP, Refugees, asylees
  - Wait times: VAWAs (10 yrs); SIJS-LPRs (14 yrs); U visa (28 yrs)
- SNAP (federal)
  - Children under 18, elderly or disabled:
    - No wait: VAWAs, T visas, CP, OTIP Letter, Lawful Permanent Residents (LPRs) –SIJS LPRs (4 years)
  - Adults no wait: T visas, T bona fide, OTIP, CP – Other Adults
    - LPR + 40 quarters work credit: VAWA (10 yrs), U visa (33+ years)

Benefits in Maryland 2

- Health Care Exchanges: VAWA, T visa, T bona fide, *OTIP*, CP, asylee, refugees, U visa bona fide/waitlist, SIJS applicants
- Health care for pregnant persons eligible for fprenatal care, full-scope health care including 12 months post partum care–*without regard to immigration status*
- CHIP available up to age 21: VAWA, T visa, T bona fide, *OTIP*, CP, asylee, refugees, U visa bona fide/waitlist, SIJS applicants
  - Montgomery – Under 250% FLP *without regard to immigration status*
  - Prince Georges – Under 300% FLP *without regard to immigration status*
- Health non-pregnant adults eligible without 5-year bar: T visa, T bona fide, *OTIP*, CP, asylee, refugees
  - Montgomery – Under 259% FLP *without regard to immigration status*
- LIHEAP = VAWAs, refugees, asylees, T visa bona fide, T visas and LPRs (e.g. SIJS (5 yrs) and U visas (20+ yrs) if income eligible
- Weatherization Assistance Program– no immigrant restrictions if at or over 200% of poverty

Benefits in Maryland – Part 3

- Education
  - Post Secondary Educational Grants and Loans - Federal
    - Federal: VAWAs, T visas, T bona fide, OTIP, CP, LPRs
  - Maryland in-state tuition, state financial aid, and scholarships to persons regardless of immigration status :
    - School in MD 3 yrs. + diploma + 3 yrs. taxes in MD filed by student, parent, guardian; can use SSN or ITIN.
- Drivers' license REAL ID - federally recognized at work authorization
  - VAWA approved (LPR abusers), prima facie (USC abusers), T visa bona fide, T visas, CP, U visas bona fide, DACA, , SIJS –LPRs
- MD State Driver's License: Requires Maryland residence and filing of Maryland tax returns for the past two years
- Family Medical Leave Act (begins July 1, 2026)– no immigrant restrictions

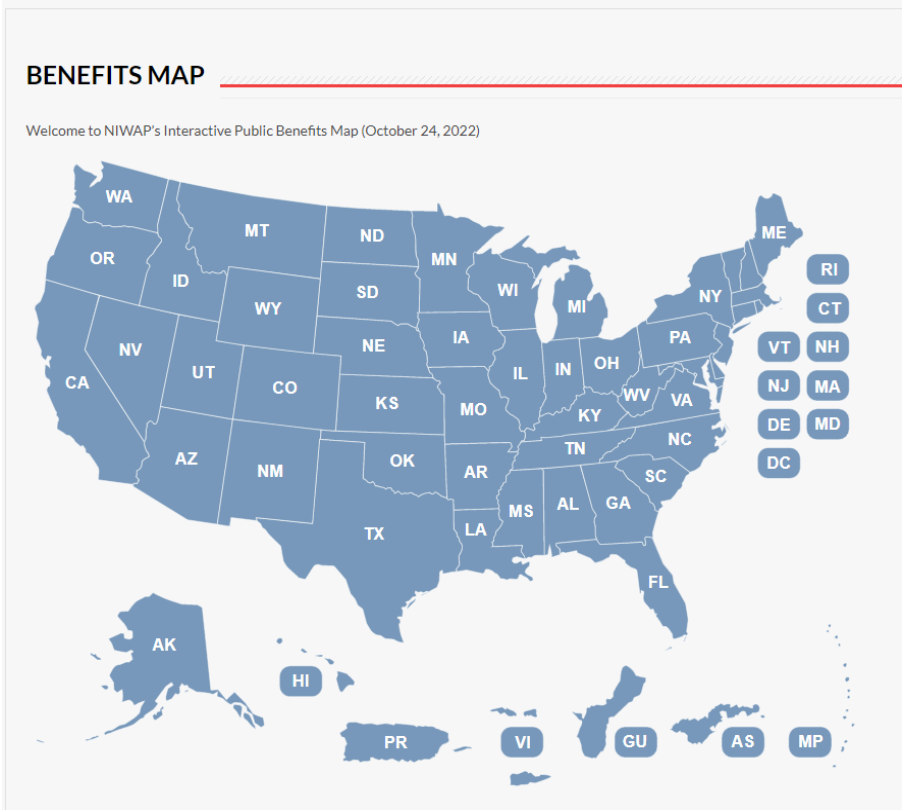
Interactive Public Benefits Map State-By-State

Hide fields | Filter | Group | Sort | ...

	Ben...	STATE & TERRITORY	Benefit Name	VAWA Self-Petitioner
1	309	Florida Public Benefits	Child Care - TANF Funded	Eligible for TANF funded child care if receiving TANF.
2	308	Florida Public Benefits	Child Care: Child Care Development Fund (CCDF)	Eligible for CCDF
3	310	Florida Public Benefits	Children's Health Insurance Program (CHIP)	Eligible up to age 19 upon prima facie determination. ...
4	311	Florida Public Benefits	Earned Income Tax Credits (EITC)	Eligible with conditions upon receipt of work ...
5	313	Florida Public Benefits	Emergency Medicaid	Eligible.
6	315	Florida Public Benefits	Family Medical Leave Act - State Law	No state law, federal law applies.
7	316	Florida Public Benefits	Federal Education Student Aid, Grants, and Loans	Eligible upon prima facie determination.

30 records um 13017

Airtable Download



Enhancing our Work through Collaboration

Collaborations That Enhance Justice System Participation



What is an example of how collaboration has enhanced your work?

Collaborative Efforts

- Maintain victim and witness contact
- Update victims on case status
- Coordinate victim services
- Investigate witness tampering and other co-occurring crimes
- Ensure use of qualified interpreters and translators
- Provide meaningful access to appropriate services

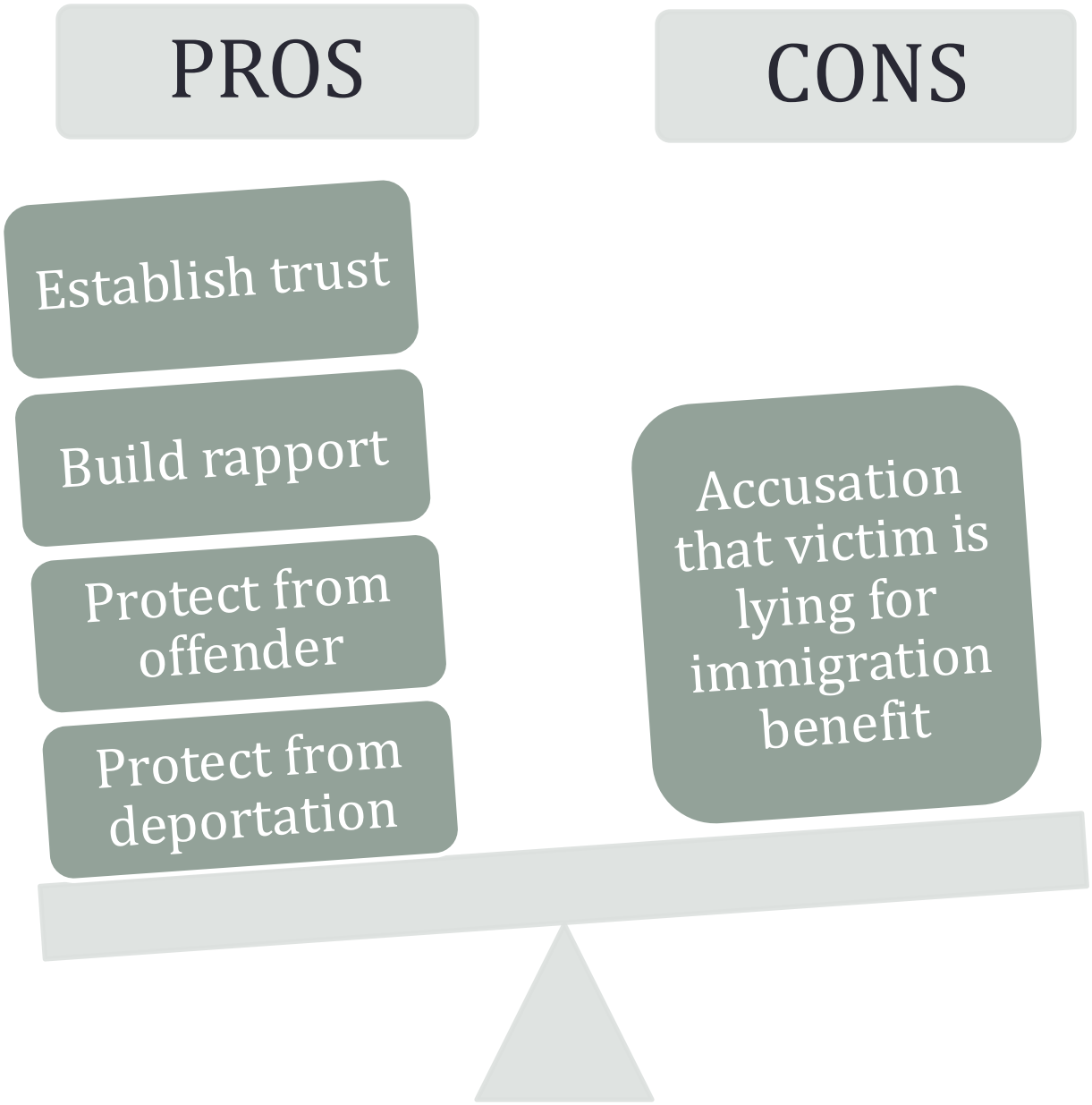
Collaboration is Best

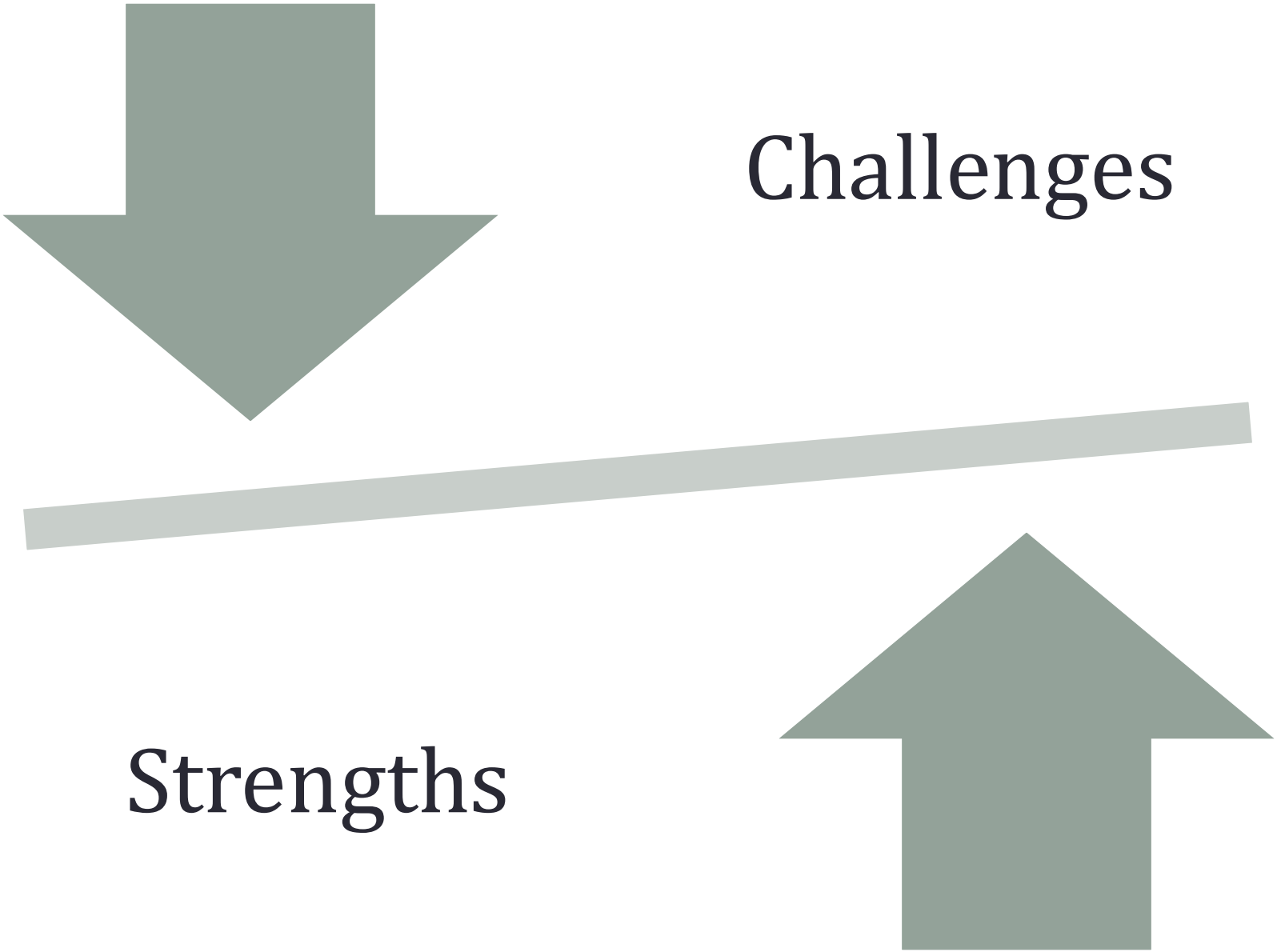
- Ensures effective delivery of services to people most in need
- Builds trust and confidence in the criminal justice system
- Allows for the identification of the best resources to solve problems
- Improves policies and practices to better service communities

Consulate Resources

- Outreach and awareness opportunities
- Qualified interpreters including dialects
- Explain culture and traditions
- Legal assistance from country of origin
- Issues passports and consular IDs

Developing Your Case Strategy


PROS
CONS
Establish trust
Build rapport
Protect from offender
Protect from deportation
Accusation that victim is lying for immigration benefit


Challenges
Strengths

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

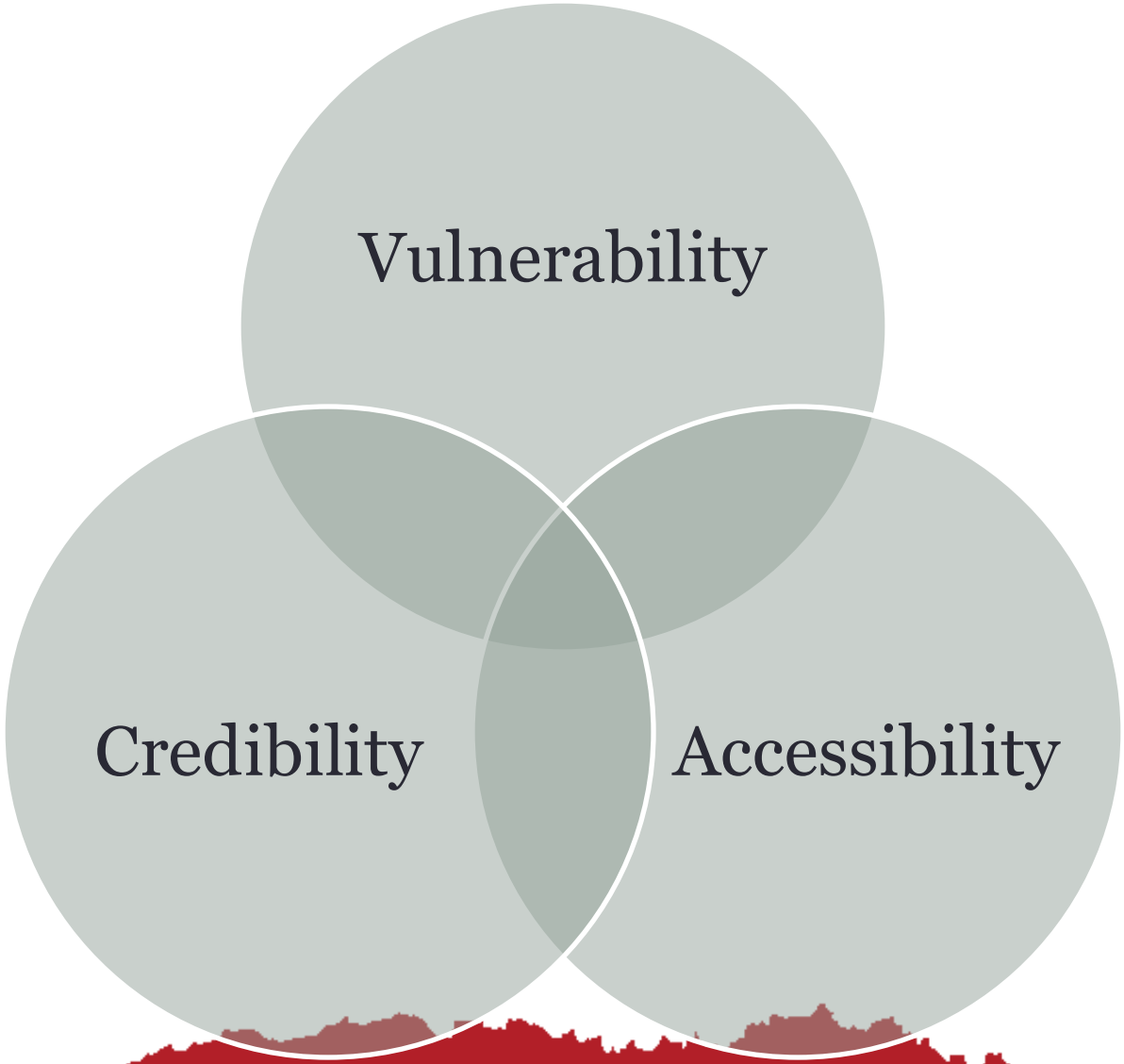
Criminal Act

- 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

The "Perfect Plan"



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

Pretrial Strategies

- Preview evidence for judge
- Brief complex legal issues
- Establish evidence that will and will not be admitted at trial
- Requires thoughtful consideration of case well in advance of trial date

Motions in Limine

Immigration Status

- Exclusion
- Limitation

Other Bad Acts

- Prior threats
- Subsequent threats or intimidation

[A] witness's application for a U visa can, on its own, create a basis for cross-examination where the U visa application has been submitted on the witness's behalf on the ground that the witness is the victim of a crime that a defendant is on trial for. A U visa application submitted by a witness demonstrates that the witness is applying for a visa that confers a substantial benefit based on the requirement that the witness be helpful in the investigation or prosecution of criminal activity specified in the application.

Gonzalez v. State, 487 Md. 136, 178, 316 A.3d 484, 508–09 (2024).

Excluding Evidence

Arguments	Examples
• Irrelevant • Probative value is substantially outweighed by potential prejudice	• Child victims • Time lapse between reporting and applying

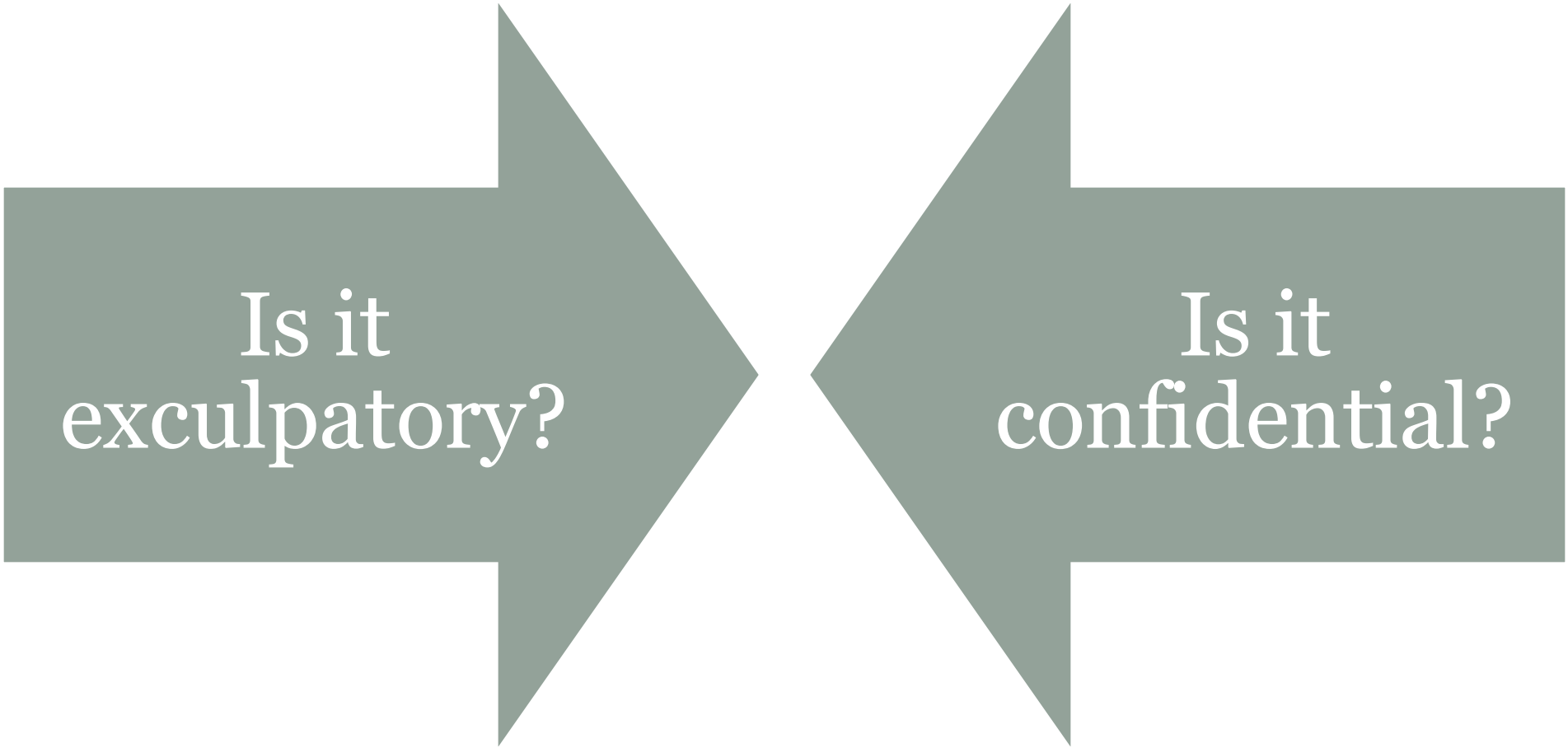
How VAWA Confidentiality Protections Impact Criminal Court Cases

Discussion:

What – if anything – do you need to provide the defense when the victim received a U Visa certification or T Visa declaration?

Ethical Duties and Due Process

Prosecutor Obligations



When do these obligations arise?

NOTE: Md. Code Ann., Crim. Proc. § 11-931 states that an agency "shall certify or decline certification… within 90 days after receiving a request"

Senate Congressional Record

"The single most important provision we add to the Violence Against Women Act is the battered immigrant women provision" Ensuring abusers "are brought to justice and the battered immigrants also escape abuse without being subject to other penalties."

Senator Biden 10/11/2000

Disclosure of Information

- "State and local prosecutors are not constitutionally required under the Brady line of cases to seek out, obtain or disclose the existence of or any information contained in an immigration case that is maintained in federal immigration case files"
  - U Visa Certification and T Visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors (August 30, 2021)

Ramirez v. Marsh,

No. S-1-SC-39966, 2025 WL 1409073 (N.M. May 15, 2025)

- Visa applications and related materials fall under attorney-client privilege
- VAWA Confidentiality (8 U.S.C. 1367) applies to legal service organization
- Criminal Court judges cannot circumvent by compelling from victim or family
- Defense has a right to cross-examine based on fact of application

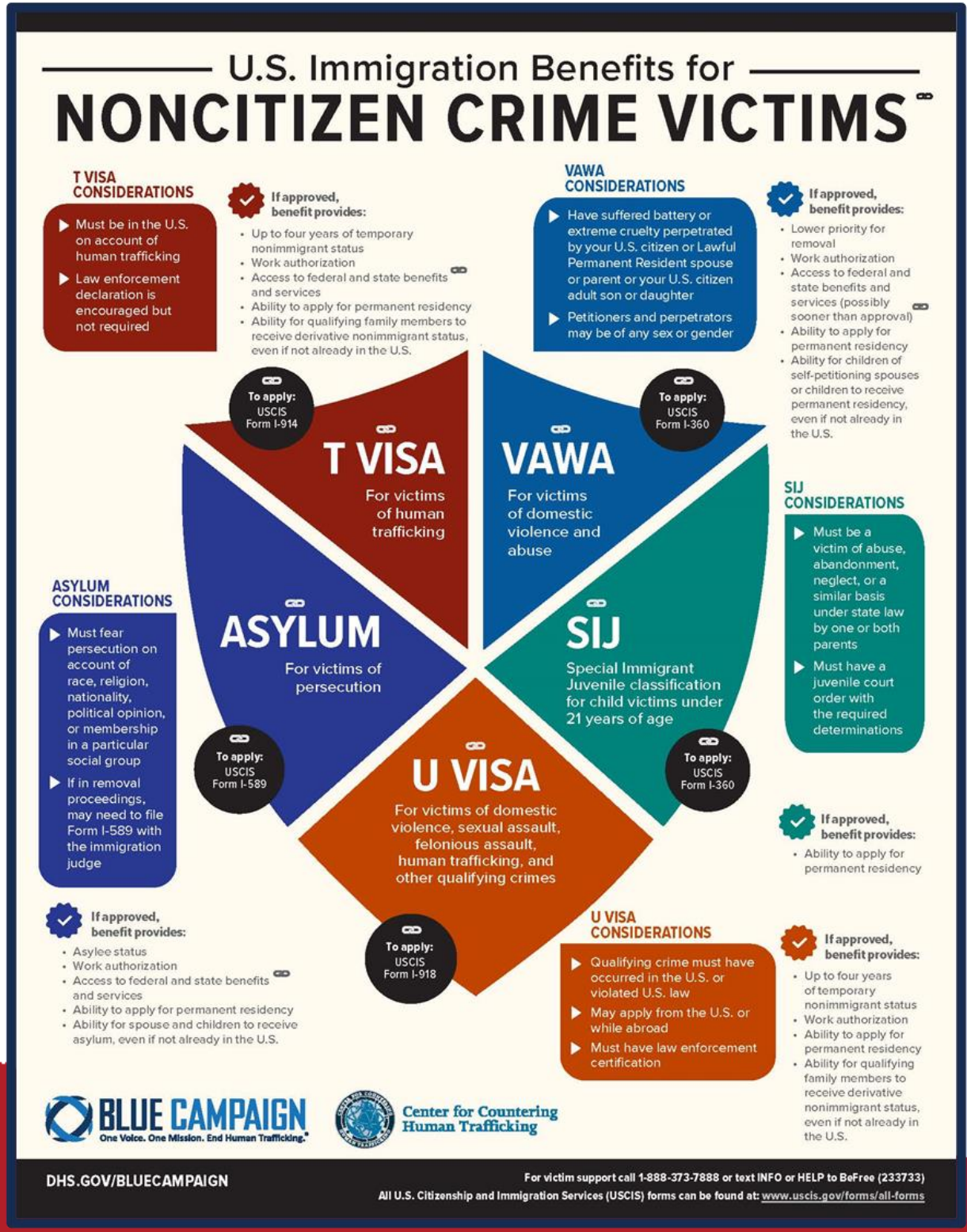
People v. Jun Du

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

- Judge reversed their own decision granting an in camera review of the T-visa application.
- Party seeking disclosure must show that the application is so relevant or material that it outweighs VAWA confidentiality.
- The Court determined applications are protected and confidential. No exceptions are permitted.

Additional VAWA Confidentiality Protections

Immigration Protections for Noncitizen Victims of Crime and Abuse



NIWAP

VAWA Confidentiality Prongs

Abuser-Provided Information Prohibition

- Included family members of perpetrators
- Protects all victims *in the process of applying for U and T visas

Location Prohibitions

- Protects all victims
- **Requires:** No action at protected locations OR Notice to Appear must state how they complied with VAWA confidentiality

Non-Disclosure

- Protects victims who have filed a protected case with DHS

Non-Reliance on Perpetrator Provided Information DHS VAWA Confidentiality Computer System

- Directs to check for "384" computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for:
  - Survivors of domestic violence
  - Crime victims survivors
  - Human trafficking survivor

DHS Policies and Regulations

VAWA Confidentiality

- Protects all information about the victim's VAWA confidentiality protected immigration case
- Prohibits disclosure of any information about
  - The existence of a VAWA, T or U Visa application
  - Decisions made in the case
  - Information contained in the #A file
- Disclosure is prohibited to all persons, not just the perpetrator
- Each violation sanctions against federal government officials
  - Disciplinary action and/or
  - $5,000 fine for the individual

Trial Strategies for Prosecuting Domestic and Sexual Violence Crimes

Educating the Judge and Jury

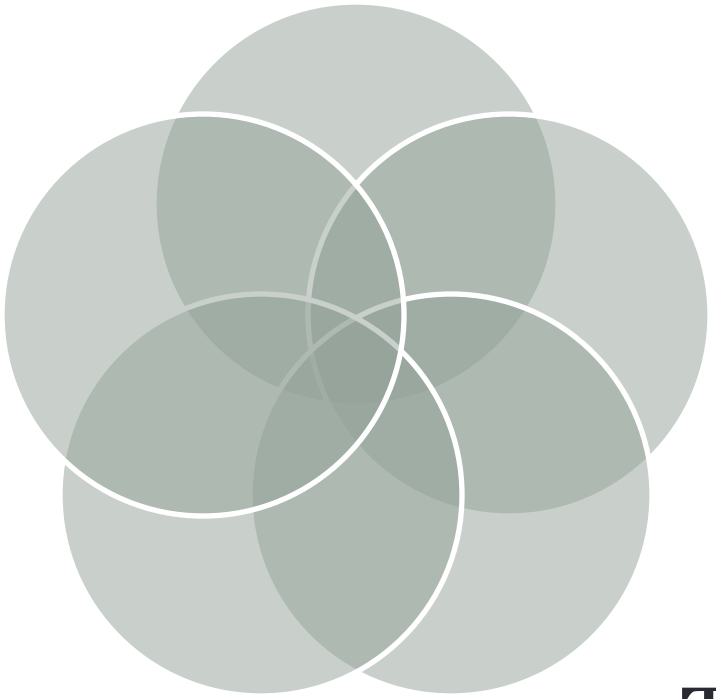
Pretrial Motions

Jury Selection

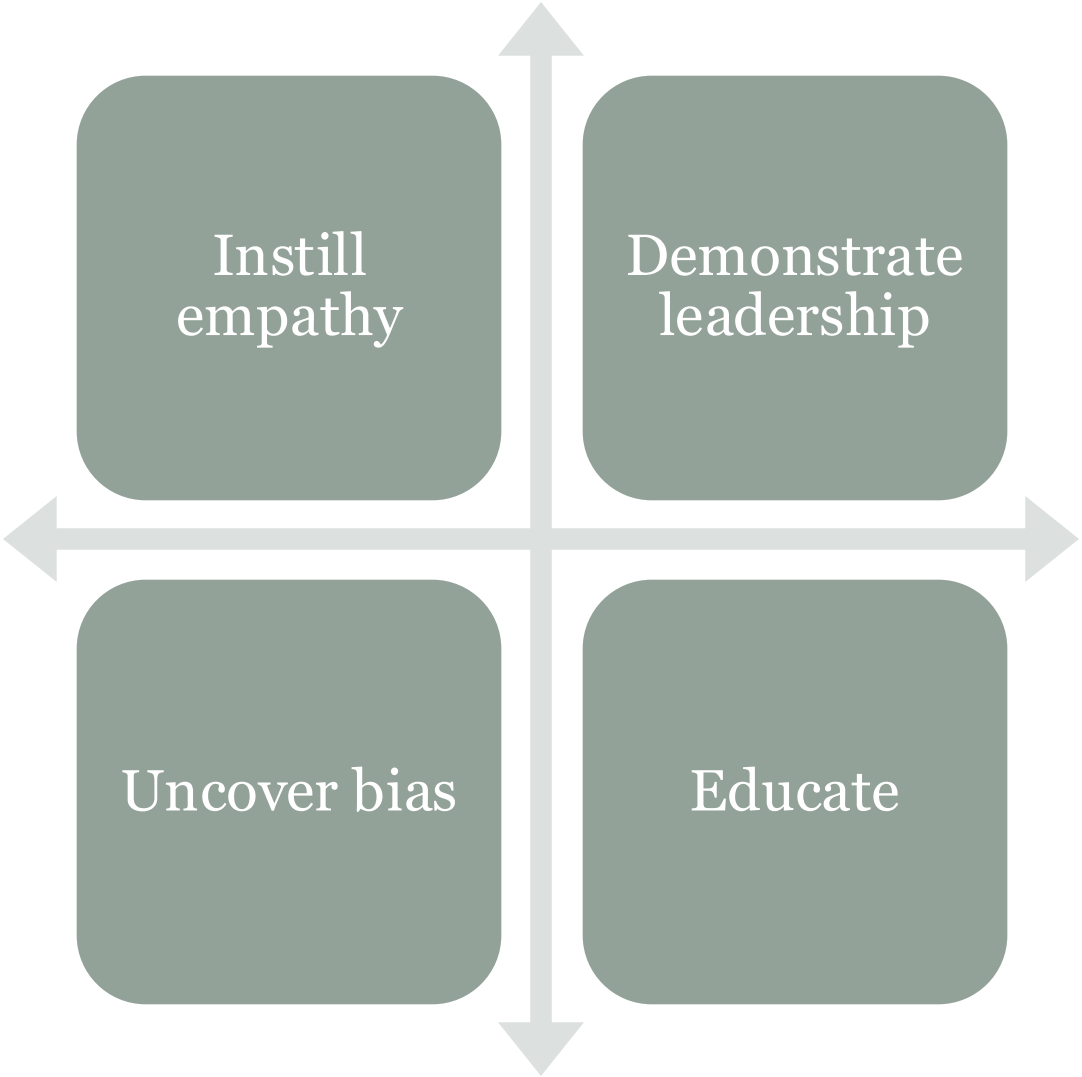
Witness Testimony

Expert Testimony

Closing Argument



Jury Selection



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



Listen for the defense to accuse the victim of lying for an immigration benefit.



Be prepared to introduce prior consistent statements.

Prior Consistent Statements

Md. Rule 5-802.1(b)

- Exception to hearsay
- *A statement that is consistent with the declarant's testimony, if the statement is offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive;*

Establishing Timeline

Victim statements to officers, friends, and others

Motive to lie

Testimony consistent with statement

Introduce prior consistent statements

Example Questions on Rebuttal

- "Defense counsel asked you about your application for a U Visa, when did you first hear about the U Visa?"
  - "After speaking with detective, I spoke with an advocate at the police station"
- "Prior to speaking with the advocate, did you provide the detective with a recorded statement?"

Testimony by Experts

Md. Rule 5-702

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine…

Testimony by Experts

MD. RULE 5-702

(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,

(2) the appropriateness of the expert testimony on the particular subject, and

(3) whether a sufficient factual basis exists to support the expert testimony.

See, e.g., Walter v. State, 239 Md. App. 168, 196 A.3d 49 (2018), *Hall v. State*, 107 Md. App. 684, 670 A.2d 962 (1996

Expertise

- Victim responses to trauma
- Dynamics of domestic violence experienced by immigrant victims
- Relationships between offenders and victims in human trafficking cases
- Victim protections under immigration law
- Other subjects that may be outside the common jurors understanding

Possible Experts

Dynamics

- Experience working with immigrant victims
  - DV Shelter
  - Advocates
  - Rape Crisis Center
  - Investigators
- Scholars

Immigration

- Immigration attorney
- Law Professors
- Other attorneys that have experience with immigration issues; e.g., family law, legal aid

Best Practice: Do not use any expert that is involved with the case or has worked with the victim

Closing Arguments

- Focus on what the defendant did
  - *e.g.,* The Perfect Plan
- Do not apologize for the victim
  - The victim qualified for immigration legal remedies
- Explain the evidence that corroborates the victim's disclosure

The purpose of a U visa is for victims of violent crimes, or any crimes, there's 28 different ones, in the United States who are not here legally to obtain a potential deferment of deportation. Ultimately, the reason, the intent behind that law, is to protect the most vulnerable among us.

Coreas-Rodriguez v. State, No. 0629 Sept. Term 2015, 2016 WL 4126015, at *5 (Md. Ct. Spec. App. Aug. 3, 2016).

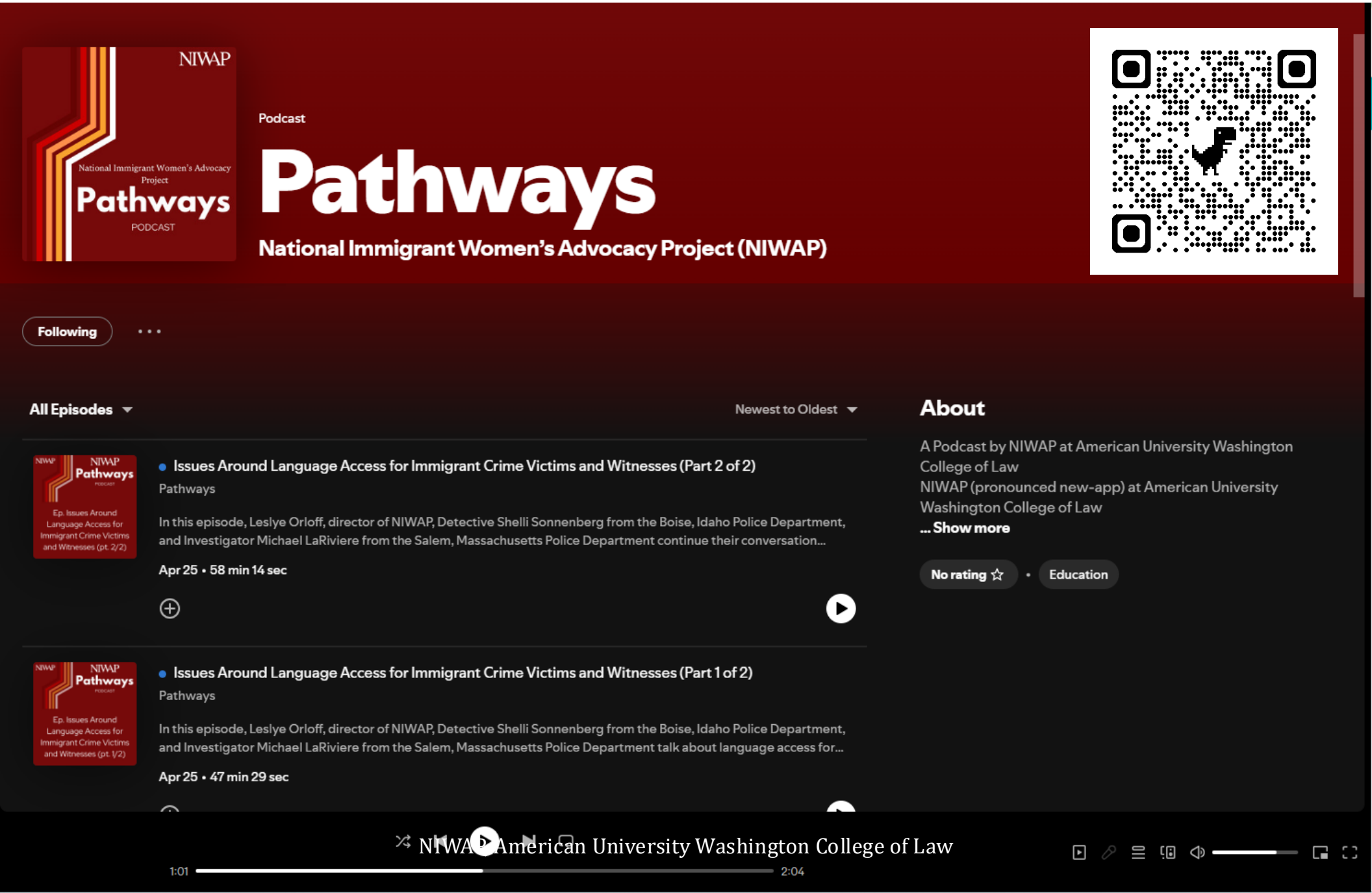
Resources

- Technical Assistance
  - Call: 202.274.4457
  - Email: niwap@wcl.american.edu
  - Web Library: https://niwaplibrary.wcl.american.edu/
- Materials for this training :

  https://niwaplibrary.wcl.american.edu/2025-md-trainings/

Pathways, NIWAP Podcast

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



Join a Roundtable or Community of Practice

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

Evaluations

- Please scan the QR code to provide your evaluation

Thank You!