

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

Advocacy in Action
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Introduction

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Materials Summary

- Materials
 - Agenda
 - Hard copy of PowerPoint presentation
 - Evaluations
- USB Drives – Supplementary Tools and Resources
- <http://niwap.org/go/lawenforcement>
<http://niwaplibrary.wcl.american.edu>

USB Drive Materials

- U Visa Toolkit For Law Enforcement Agencies And Prosecutors
- DHS: U and T Visa Law Enforcement Resource Guide
- DHS: Policies including victim-witness
- Tools for officers to promote language access
- Bluecard Tool Screening Victims for Immigration Protections

General Caveats

- Women, men and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas
- *That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault*

Participant Introductions, Goals and Expectations



Learning Objectives

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

- Understand how investigations can be improved by using language access tools
- Hold offenders more accountable by using the U Visa certification process as a crime fighting tool
- Enhance victim safety and participation in the criminal justice system
- Enhance officer/victim/community safety using language access and certification programs

How Best Practices in Domestic Violence Investigations Promote Officer Safety

What barriers and fears prevent
immigrant victims from reporting
crime?

If they report...

- They will be deported
- Offender will retaliate
 - Harm them
 - Harm family members, children
- Nothing will happen
- Cannot communicate with officers

Fears & Misconceptions

- ▶ Do not trust police/prosecutors
- ▶ Economic survival
- ▶ Pressures from both families
- ▶ Fear of abandoning the home/community
- ▶ Fear of losing children
- ▶ Religious factors
- ▶ Fear of unknown
- ▶ Victim believes that if perpetrator deported she has to go with him
- ▶ Dangers in the home country
 - ▶ Retaliation
 - ▶ Ostracism
 - ▶ Police
 - ▶ Political instability
 - ▶ Gender barriers

Language Access

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

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



New Mexico Demographics (2014)*

- ❖ Total foreign born population – 192,188
- ❖ 9.9% of the state's 2,085,572 people is foreign born
 - 36.8% naturalized citizens
 - ~59.8% lawful permanent residents or temporary visa holders
 - ~3.4% undocumented (American Immigration Council)
- ❖ 37.5% rise in immigrant population from 2000 to 2014
- ❖ High proportion of new immigrants
 - 24.5% entered in the 1990s
 - 38.3% entered 2000 or later
- ❖ 21.9% of children in the state under age 18 have 1 or more immigrant parents
 - 78.1% of children with immigrant parents in the state are U.S. citizens

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=NM>
(June 2016)

New Mexico – Countries/Regions of Origin (2014)*

- ▶ Latin America – 77.9%
 - ▶ Mexico (71.8%)
 - ▶ Other Central America (2.3%)
 - ▶ South America (1.7%)
- ▶ Asia – 11.9%
 - ▶ Eastern China (3.6%)
 - ▶ South Central Asia (2.3%)
 - ▶ Southeastern Asia (3.9%)
- ▶ Africa – 1.7%
- ▶ Europe – 6.6%

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=NM>
(June 2016)

Source of Language Access Laws

- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- LEP Executive Order 13166 (2001)
 - Requires all agencies receiving any federal financial assistance to
 - Ensure meaningful language access
 - Develop and implement language access plans
 - “Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith.”

DOJ Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - *When officer decides it is helpful* to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language

DOJ Sample Policy Center City Police Department

DOJ Approach to language access outline in:

Steps for Obtaining Interpreters

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

First Response

- Locate and secure the scene
- Are there any weapons?
- Is anyone injured?
- Identify the people involved
 - Victim
 - Offender
 - Witnesses
- If offender is not on the scene
 - Where is the suspect?
 - Are they a continuing danger?
 - Is suspect in possession of weapon?



What do you do when the people at the scene are limited English proficient?

How can you get the information you need *to secure the scene*?

DOJ and Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer /victim/or public

DOJ Requirements for Investigations & Interrogations

- “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings

Using Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements
(Excited Utterances)

Harms

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

How does your investigation
proceed with an non-English
speaking victim?

Language Resources

- Language Line
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems



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.

Tips for Working with Interpreters

- Control the interview
- Pre-session with the interpreter
 - Where are they located?
 - Establish what your rules are
 - how do you want the interpreter to interpret?
- Interpreter has to interpret everything that you say
 - Example: when you are explaining confidentiality

Red Flags

- Can you understand the interpreter?
- Does the LEP person look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter summarizing?
- Is everything being interpreted?
- Is there a change in the individual's demeanor?
- Are they using English words?

Interpretation Best Practices

- Evaluation systems
- Interpreter uses a dictionary, takes notes
- Interpreter comfortable with subject matter of the case
- Address cultural experiences ahead of time
- Ensure that they do not know the parties
- If using telephonic interpreters: first ask where they are located
- Know the interpreters code of conduct

U Visas as a Crime Fighting Tool

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

[DHS Video Part 1.mpg](#)

U Visa Basics

- Law enforcement certification is just one part of the overall process it does not = Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Offender may be citizen or non-citizen
- Can be “revoked”
- Increases immigrant victim participation in criminal justice system

Purpose of Crime Victim Protections

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

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

Major Forms of Relief

- VAWA self-petition
 - Abuse by US citizen or lawful permanent
 - Spouse, former spouse, parent, step-parent, over 21year old child
- Special Immigrant Juvenile Status
 - Immigrant children abused, abandoned or neglected by one of their parents
 - (US or Abroad)
- U Visa
- T Visa

U Visa Requirements

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

U Visa Criminal Activities (11/2011 data)

- Domestic violence **45.9%**
- Rape, sexual assault, incest, trafficking **30.4%**
- Felonious assault, murder, manslaughter **9.9%**
- Kidnapping, being held hostage, unlawful criminal restraint, torture **8.47%**
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**

Qualifying Criminal Activity

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

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

Who can apply?

- Victims of qualifying criminal activity
- Parents and guardians can apply as an “indirect victim” if:
 - the victim is a child under 21 years of age and/or
 - is incompetent, incapacitated, or deceased due to murder or manslaughter
- Bystanders victimization – very limited
- For child victims a “next friend” can provide helpfulness

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

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

U Visa Certification Considerations

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

Things to Know About Certifying

- “Do I believe this person was a victim of a qualifying crime?”
- “Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?”
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor’s office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?

How will a U visa certification request come to you?

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

When should you certify?

Timeline

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



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

Certifying early

PROS

CONS

Establish trust

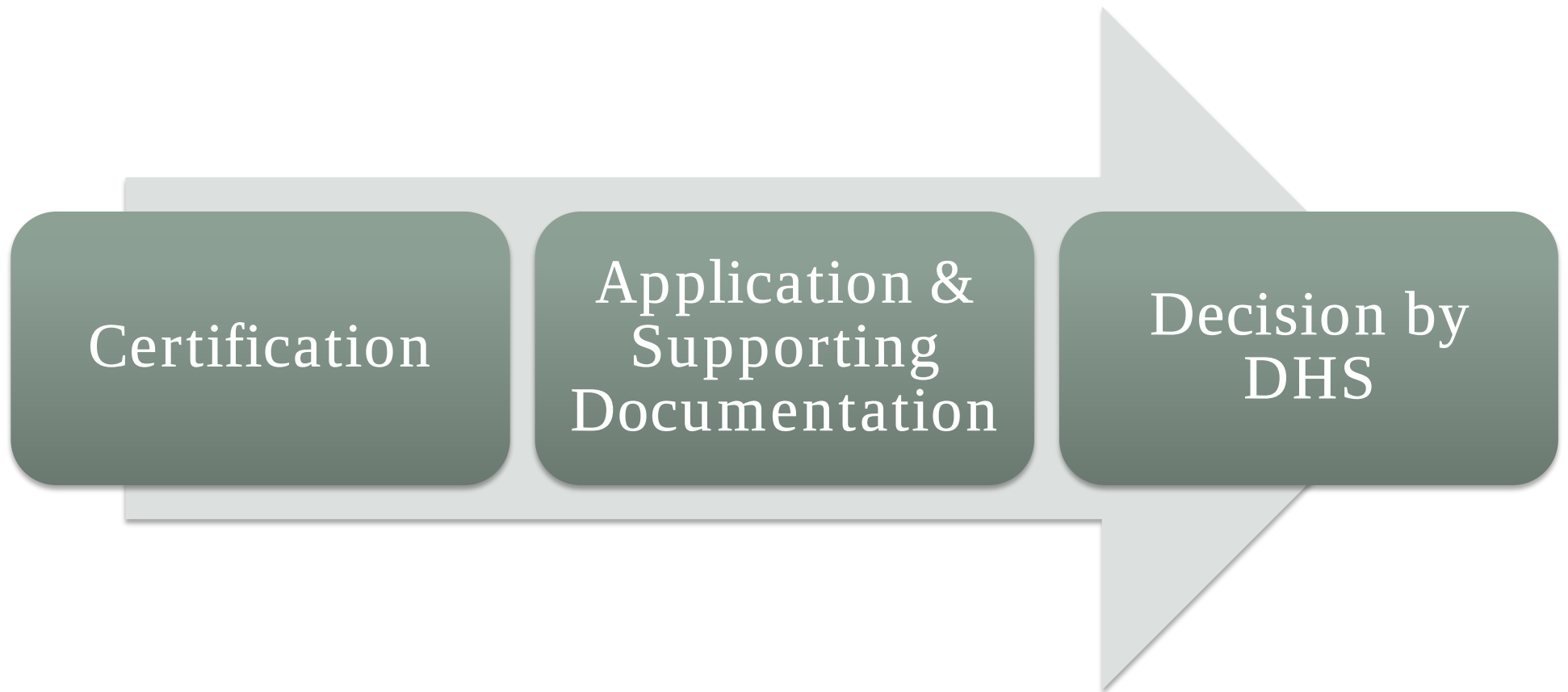
Build rapport

Protect from
offender

Protect from
deportation

Accusation that victim is
lying for immigration
benefit

The U Visa Application Process

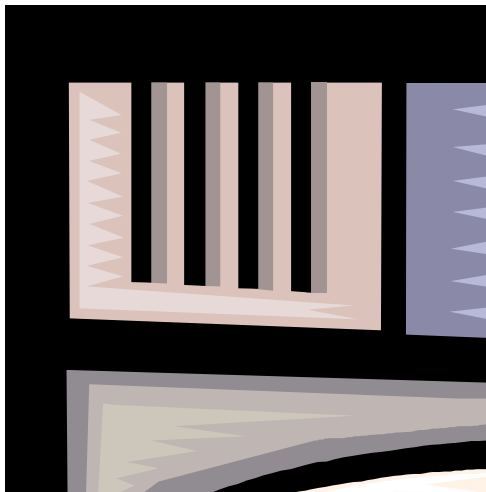


Typical length of process = 28 months

U Visa Facts

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

How does law enforcement and prosecution benefit from the U visa?



U Visa Benefits to Law Enforcement and Prosecutors

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhanced immigrant community involvement
- Makes it easier to identify victim witnesses
- Reduces repeat calls and recanting victims
- Fosters community policing partnerships
- Enhances Officer and Community Safety

T Visa Overview

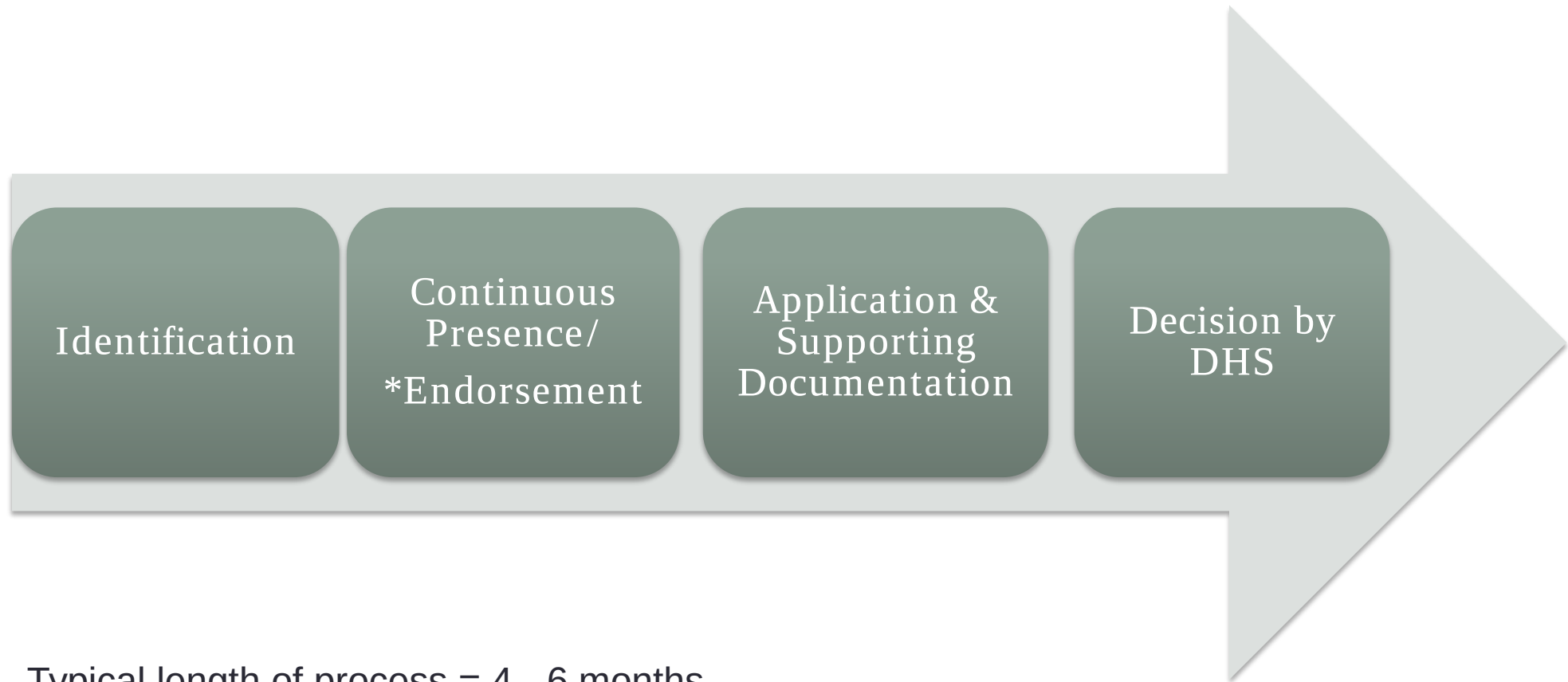
- Non-Immigrant, 4 Year Visa
 - Victim of Severe form of Trafficking
 - In the US or territories on account of trafficking
 - Respond to reasonable requests for collaboration with investigation
 - prosecution unless victim is under 18
 - Hardship upon return to home country
- May apply for adjustment of status after investigation/prosecution is over or 3 years, what ever time is shorter

What are Severe Forms of Human Trafficking?

- **Sex Trafficking:** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- **Labor:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

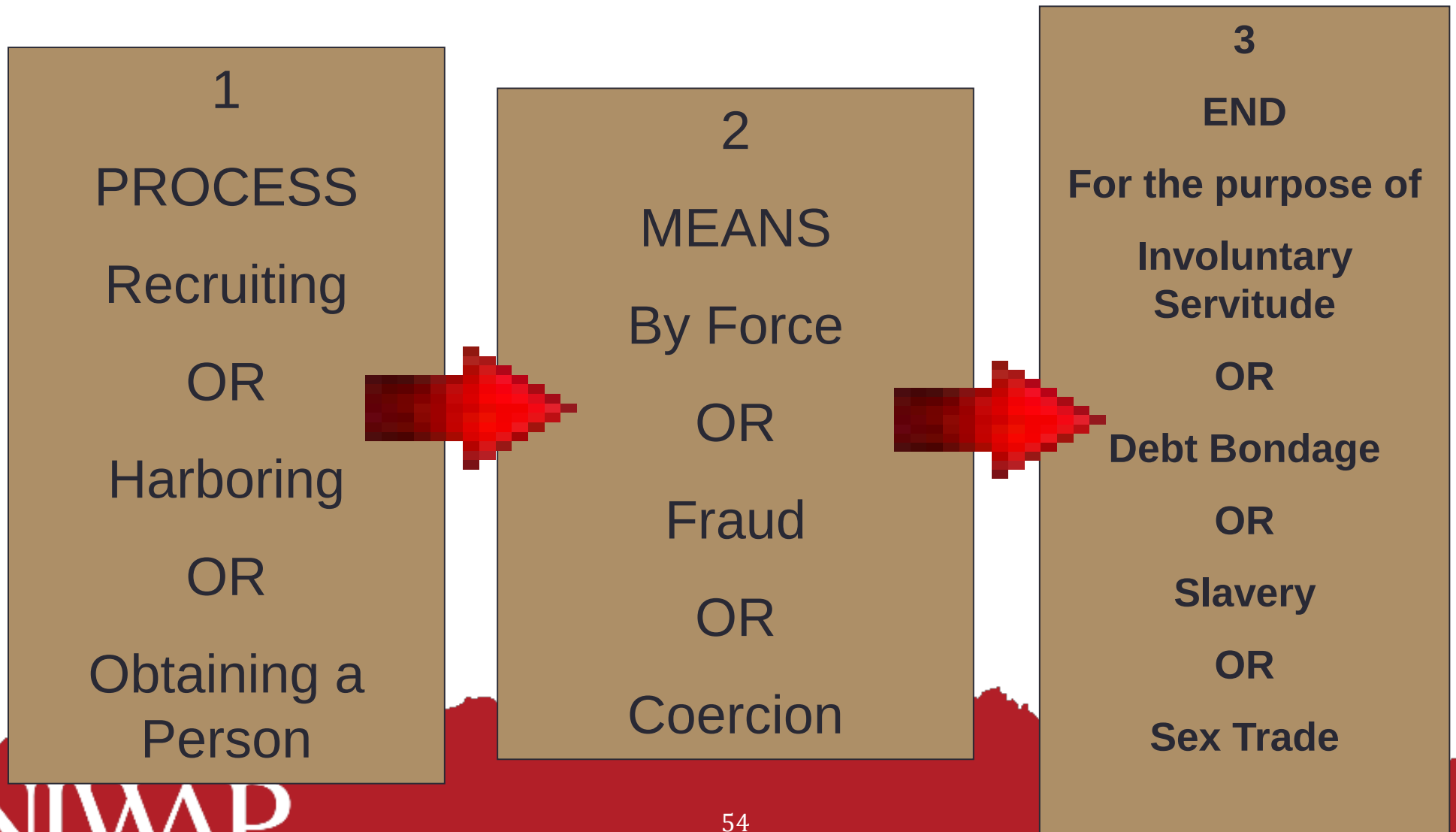
(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

The T Visa Application Process



Typical length of process = 4 - 6 months

Three Elements of Trafficking



Helpfulness

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

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



Hypotheticals

Small Group Activity

- Is this person eligible for a U Visa certification?
- *Stories handout*



Helpfulness can be satisfied even if:

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

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

- Considerations:

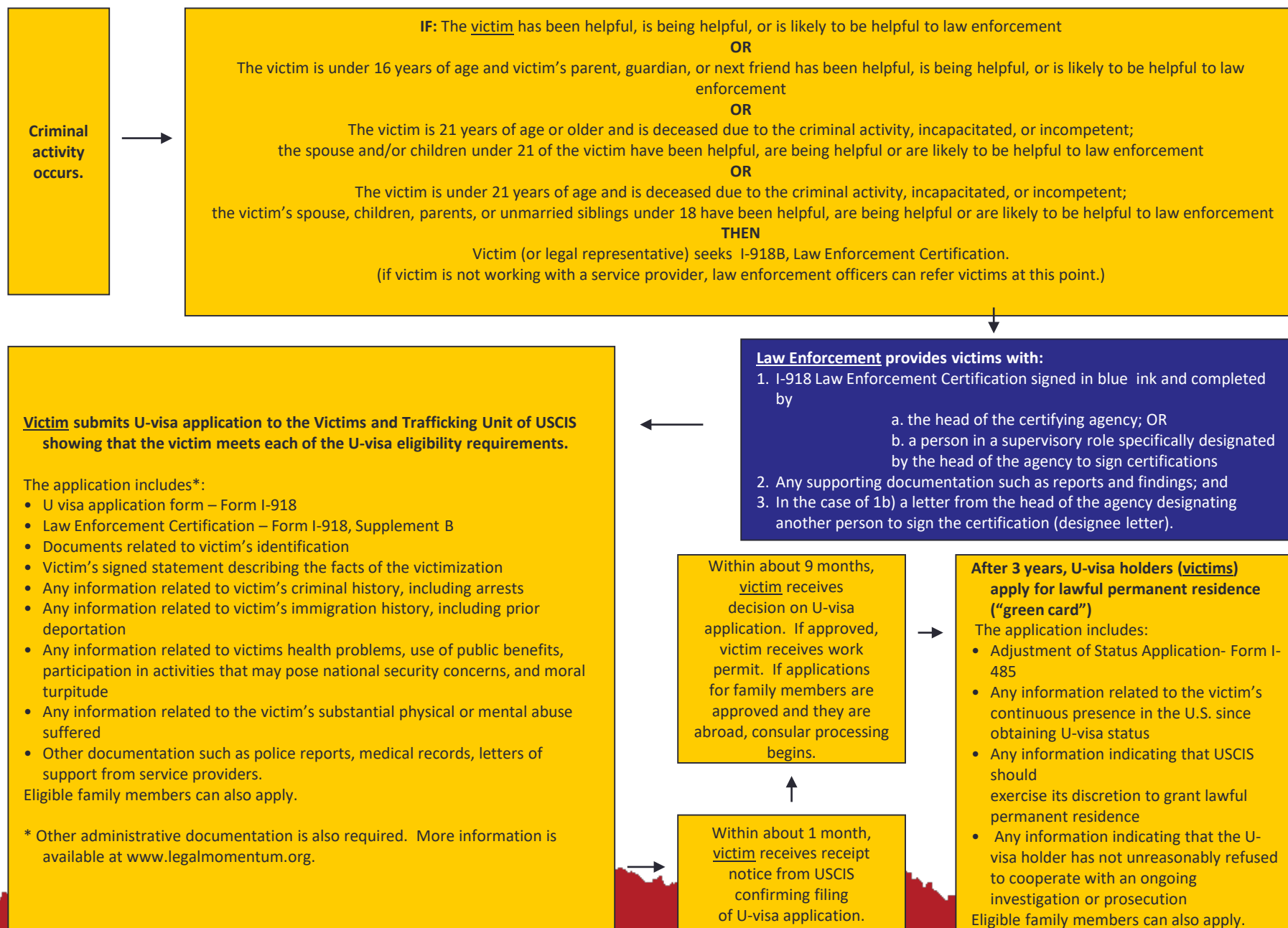
- totality of the circumstances, including the nature of the victimization
- victim's fear of the abuser
- trauma suffered
- force, fraud or coercion

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

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

DHS Video Part 2.mpg

U-visa Application Victim Flow Chart



Law Enforcement provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by:
 - a. the head of the certifying agency; OR
 - b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b) a letter from the head of the agency designating another person to sign the certification (designee letter).

Collaboration Roadmap

- Collaboration more important now than ever
- Strategies for collaboration with law enforcement
- How collaboration protects immigrant victims
- Collaboration is key



What collaborations have you done in your communities

- Setting up committees

U Visa Certification Overview

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

Form I-918 Supplement B,
U Nonimmigrant Status Certification



NIWAP

Review the U Visa Certification Form

Located in your training packet

- **Goals:** Identify the criminal activity and the victim, then begin the certification process

Form I-918 Supplement B,**U Nonimmigrant Status Certification**

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

START HERE - Please type or print in black ink.

Part 1. Victim Information

Family Name

Given Name

Middle Name

Other Names Used *(Include maiden name/nickname)*Date of Birth *(mm/dd/yyyy)*

Gender

☐ Male☐ Female**For USCIS Use Only****Returned****Receipt**

Date

Date

Resubmitted

Date

Date



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



This should
be left blank

Usually one person within an agency is designated as the “Certifying Official”



Part 2. Agency Information

Name of Certifying Agency

Name of Certifying Official

Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

Agency Address - Street Number and Name

Suite No.

City

State/Province

Zip/Postal Code

Daytime Phone No. *(with area code and/or extension)*

Fax No. *(with area code)*

Agency Type

☐ Federal

☐ State

☐ Local

Case Status

☐ On-going

☐ Completed

☐ Other: _____

Certifying Agency Category

☐ Judge

☐ Law Enforcement

☐ Prosecutor

☐ Other: _____

Case Number

FBI No. or SID No. *(if applicable)*

Part 3. Criminal Acts

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. *(Check all that apply.)*

- | | | | |
|--|---|---|--|
| ☐ Abduction | ☐ Female Genital Mutilation | ☐ Obstruction of Justice | ☐ Slave Trade |
| ☐ Abusive Sexual Contact | ☐ Hostage | ☐ Peonage | ☐ Torture |
| ☐ Blackmail | ☐ Incest | ☐ Perjury | ☐ Trafficking |
| ☐ Domestic Violence | ☐ Involuntary Servitude | ☐ Prostitution | ☐ Unlawful Criminal Restraint |
| ☐ Extortion | ☐ Kidnapping | ☐ Rape | ☐ Witness Tampering |
| ☐ False Imprisonment | ☐ Manslaughter | ☐ Sexual Assault | ☐ Related Crime(s) |
| ☐ Felonious Assault | ☐ Murder | ☐ Sexual Exploitation | ☐ Other: <i>(If more space needed, attach separate sheet of paper.)</i> |
| ☐ Attempt to commit any of the named crimes | ☐ Conspiracy to commit any of the named crimes | ☐ Solicitation to commit any of the named crimes | <div></div> |

You can & should certify multiple offenses when present. Other can include criminal activity present, but not listed specifically; e.g. “stalking”



Dates do not have to be precise – you can use months, seasons or years.

Part 3. Criminal Acts *(continued)*

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States? ☐ Yes ☐ No

- a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? ☐ Yes ☐ No

- b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

- c. Where did the criminal activity occur?

Part 3. Criminal Acts *(continued)*

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

Make copies of all reports and attach.

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

Be as specific as possible, highlighting visible injuries observed (even if not photographed).
If you are aware of mental injury, include as well.

Part 4. Helpfulness of the Victim

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

1. Possesses information concerning the criminal activity listed in **Part 3**.

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

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

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

☐ Yes☐ No

5. Other, please specify.

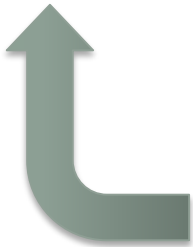
NOTE: This will be discussed in detail in the next section.

Part 5. Family Members Implicated in Criminal Activity

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

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

Full Name	Relationship	Involvement



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



Part 6. Certification

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

Signature of Certifying Official Identified in Part 2.

Date (*mm/dd/yyyy*)

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

Helpfulness

Part 4. Helpfulness of the Victim

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

- | | | |
|--|------------------------------|-----------------------------|
| 1. Possesses information concerning the criminal activity listed in Part 3 . | ☐ Yes | ☐ No |
| <hr/> | | |
| 2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. <i>(Attach an explanation briefly detailing the assistance the victim has provided.)</i> | ☐ Yes | ☐ No |
| <hr/> | | |
| 3. Has not been requested to provide further assistance in the investigation and/or prosecution. <i>(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)</i> | ☐ Yes | ☐ No |
| <hr/> | | |
| 4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. <i>(Attach an explanation.)</i> | ☐ Yes | ☐ No |

Small Group Discussion

Based on the training today, what will you take back when you return to your agency?

- What might you want to implement?
- Questions you want to ask?

DHS Resources



U.S. Immigration
and Customs
Enforcement

ICE Victim Assistance Specialist

SAC El Paso

Laura Frescas

Phone: (915) 231-3437

laura.frescas@dhs.gov

DHS Resources

ICE ERO Community Field Liaison

Jesus Placencia

Assistant Field Office Director

ElPaso.Outreach@ice.dhs.gov

Law Enforcement Support Center Field Offices

LESC Communications Section

188 Harvest Lane

Williston, VT, 05495

(802) 872-6050 or via NLETS Administrative

Message (AM) to VTINS07S0

Resources

- ▶ **Technical Assistance**
 - ▶ Call: 202.274.4457
 - ▶ Email: niwap@wcl.american.edu
- ▶ **Materials on U visa and Immigrant Victims Legal Rights**
 - ▶ Conference materials: www.niwap.org/go/NM2017
 - ▶ Visit <http://niwaplibrary.wcl.american.edu>
 - ▶ U Visa Certification Toolkit
 - ▶ DHS Answers to Law Enforcement Reasons for Not Certifying
 - ▶ USCIS Q & A on U Visa Certification
 - ▶ Roll call training videos
 - ▶ All available at: www.niwap.org/lawenforcement

Evaluations

- Evaluations are in your training packet
- Certificates



Thank You!