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

Dane County, Wisconsin
July 10, 2017

This curriculum was adapted from materials developed in partnership with Legal Momentum and the Vera Institute for Justice supported by a grant awarded by the Bureau of Justice Assistance.

This project was supported by Grant No. 2014-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.

Introduction

- Faculty
- Housekeeping
- Pre-Training Assessment

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



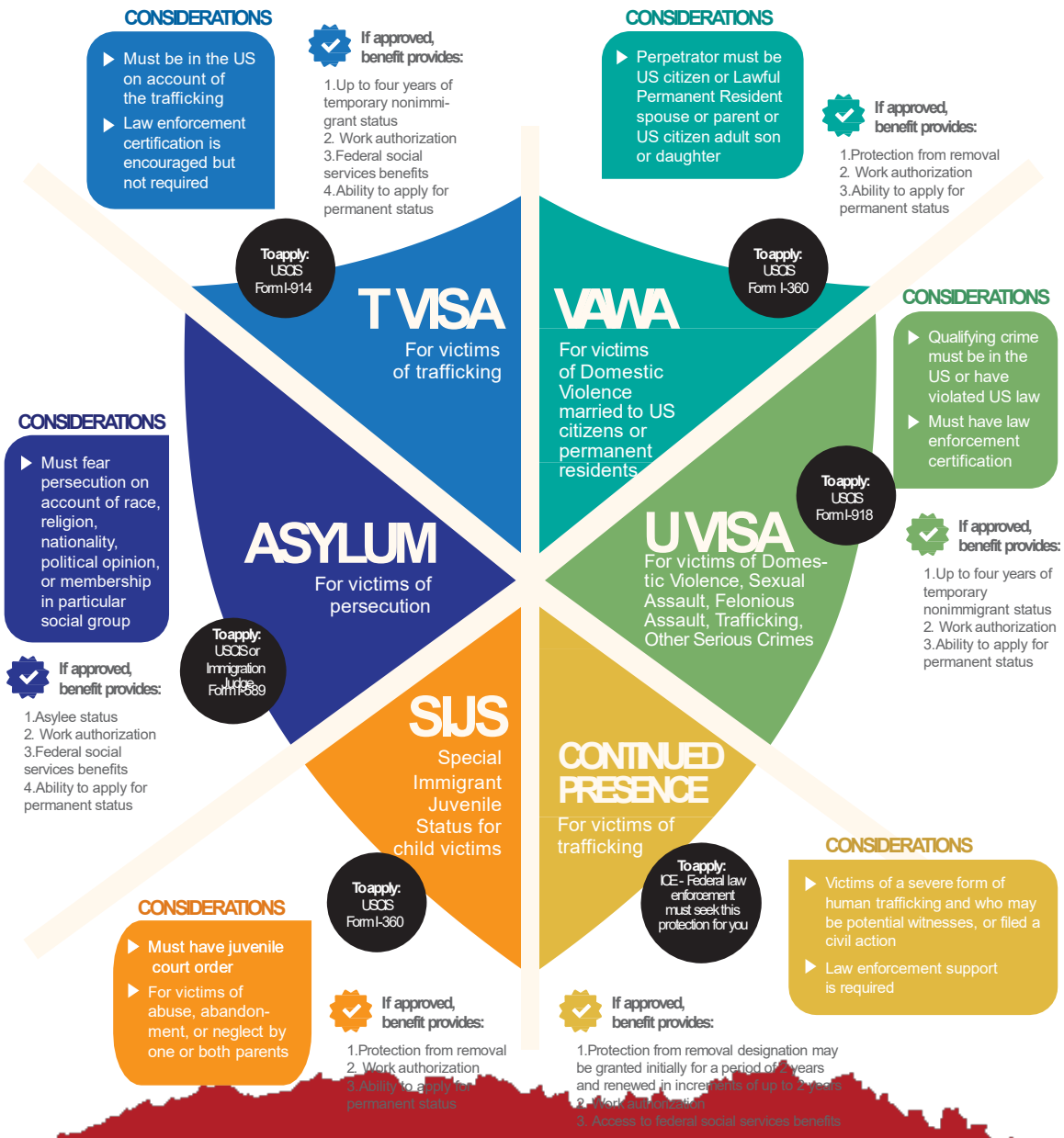
Learning Objectives

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

PROTECTIONS FOR IMMIGRANT VICTIMS



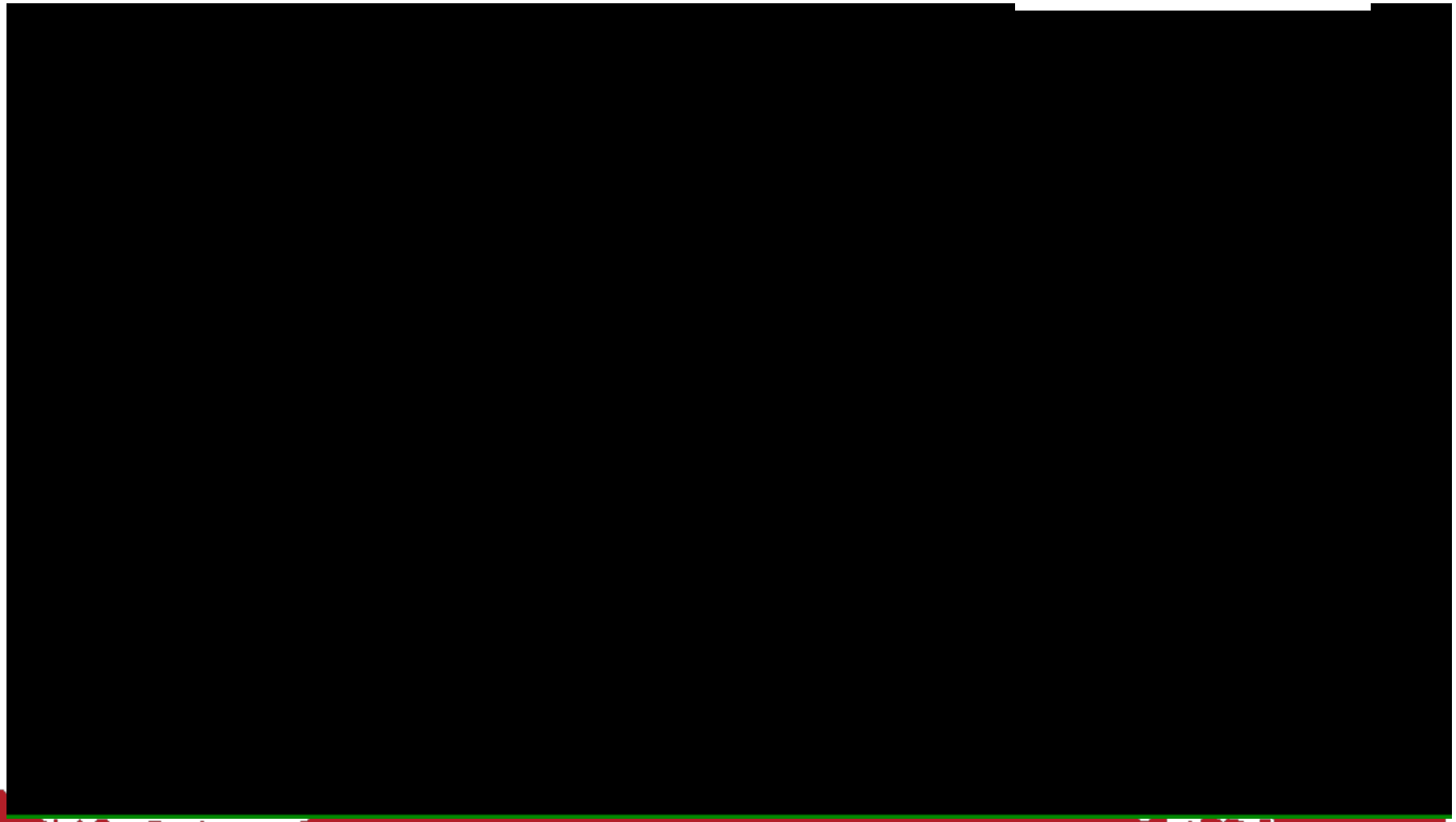
NIWAP

DHS.GOV/BLUE-CAMPAIGN

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

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Department of Homeland Security



Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
  - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
  - 72.3% never file immigration papers
  - The 27.7% who did file had a mean delay of **3.97 years**.
- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

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

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

Major Challenges in working with Immigrant Victims of Crime

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

Language Access

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

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



Wisconsin Demographics (2015)*

- Total foreign born population – 278,981
- 4.8% of the state's ~5.7 million people are foreign born
  - 45.4% naturalized citizens
  - ~50.7% legal permanent residents or temporary visa holders
  - ~3.9% undocumented (Migration Policy Insitute)
- 47.4% rise in immigrant population from 2000 to 2014
- 11.2% of children in the state under age 18 have 1 or more immigrant parents
  - 87.1% of children with immigrant parents in the state are U.S. citizens

**Source: http://www.migrationpolicy.org/data/state-profiles/state/demographics/WI (June 2017)*

NIWAP

21

Wisconsin – Countries/Regions of Origin (2015)*

- Americas –43.6%
  - Central America (36.1%)
  - Mexico (32.7%)
  - Caribbean (2.0%)
- Europe – 15.7%
  - Western Europe (5.3%)
  - United Kingdom (2.0%)
  - Germany (4.0%)
- Asia – 20.3%
  - Eastern Asia - including China/Taiwan, Korea (8.8%)
  - South Central Asia - including India, Iran (9.3%)
  - Southeastern Asia – including Philippines, Vietnam (15.4%)
- Africa – 4.2%

Source:http://www.migrationpolicy.org/data/state-profiles/state/demographics/WI (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 i*nterpreter 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

Now that emergency is over what are the next steps in the investigation?

The Investigation Begins

- Call Detective
- Call Fire/Rescue
- Take initial statements
- Call crime scene
- Photograph
- Formal interviews at the station
- Develop probable cause
- Prepare case for prosecution

Typical Encounters With LEP Victims

- Dispatch
- Crime Scene
- Walk Into Station
- Referrals from other agencies
  - CPS, APS, Family Justice Center
- Investigations

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



Victim Translation Assistance Tool United Nations

VITA is a tool created by the United Nations using audio messages, that allows law enforcement officials to provide a level of basic assistance to victims of human trafficking.

This audio tool, consisting of key encounter messages, was developed to facilitate the identification of a trafficked person and the launch of a criminal investigation. Thirty-five basic questions and messages have been recorded and translated into 40 languages, taking into account special questions for children.

http://ungift.org/knowledgehub/en/tools/vita.html

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

What, if anything, do you know about U Visas?

Overview of the U Visa

- **What is the U visa?**
- **Purpose:** Why does it exist?

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

DHS Video Part 1.mpg

http://niwaplibrary.wcl.american.edu/2014/04/dhs-roll-call-videos/

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%**

NIWAP

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

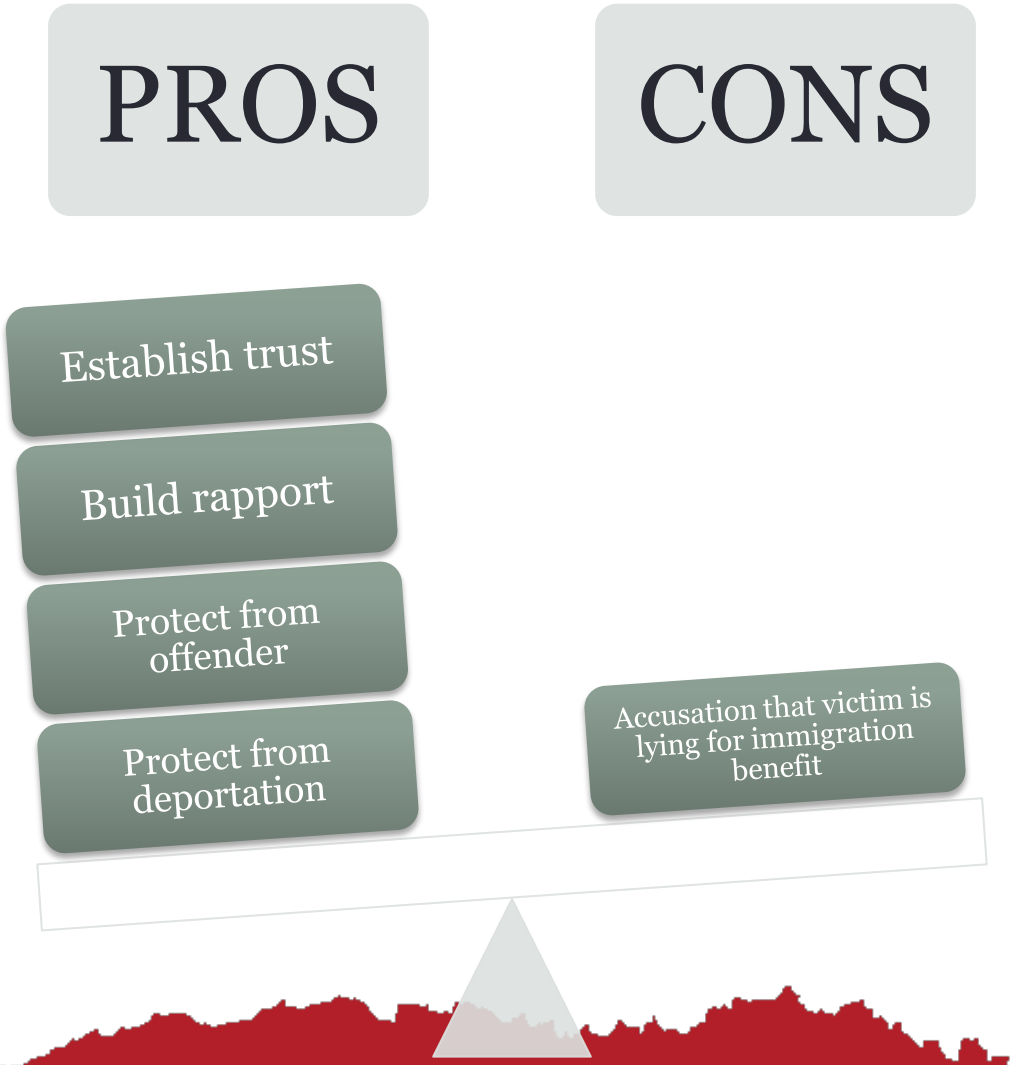
- Certification must be included in the initial application for a U Visa
- Once the initial application is processed:
  - Victim is entered into a database and flagged as an applicant for a U Visa



=

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

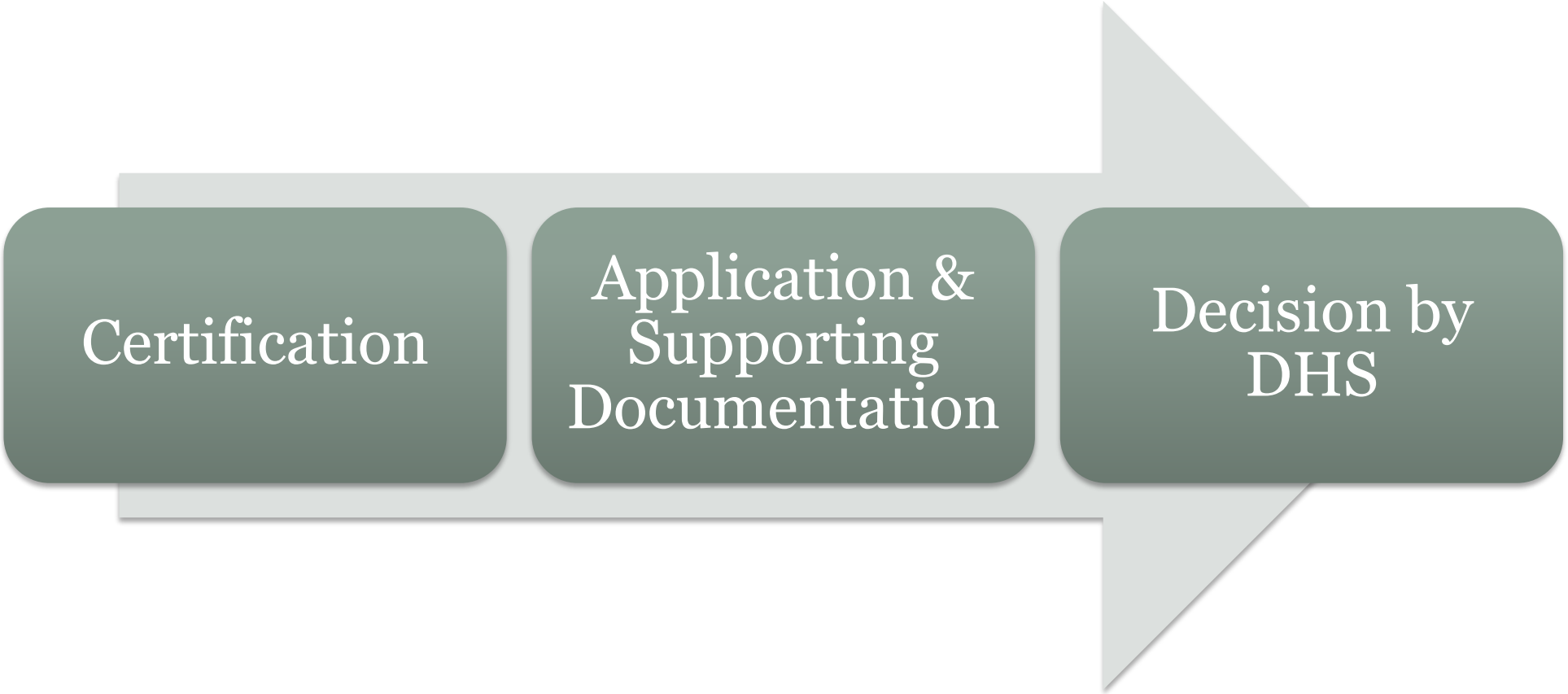
Certifying early



Beyond the Certification

- *Brainstorm*
- In addition to the certification, what else is a victim required to prove to Homeland Security in order to receive a U Visa?

The U Visa Application Process



Typical length of process = 12 -18 months

DHS Decision

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

U Visa Facts

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

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





U Visa Benefits to Law Enforcement and Prosecutors

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

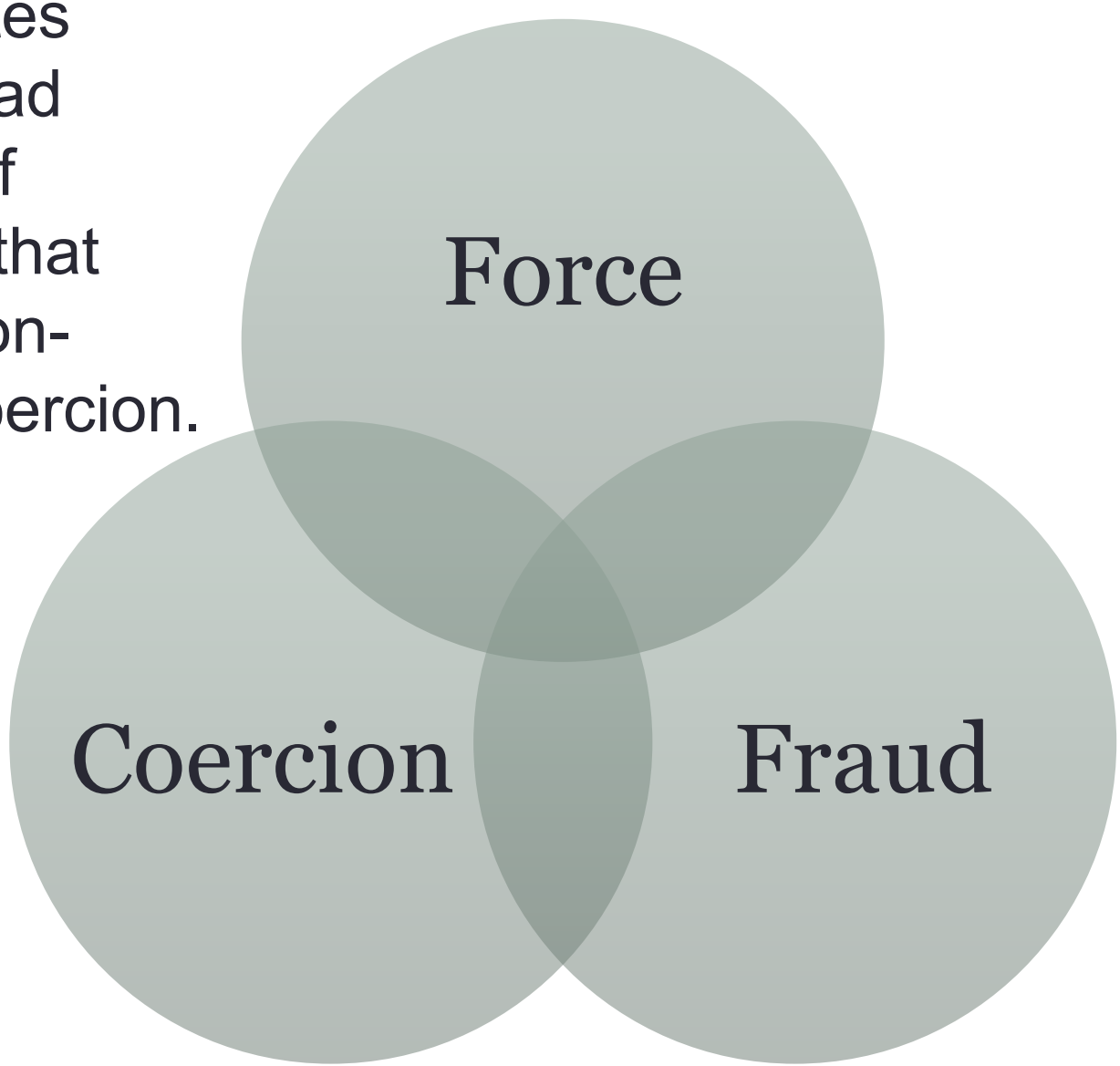
Human Trafficking

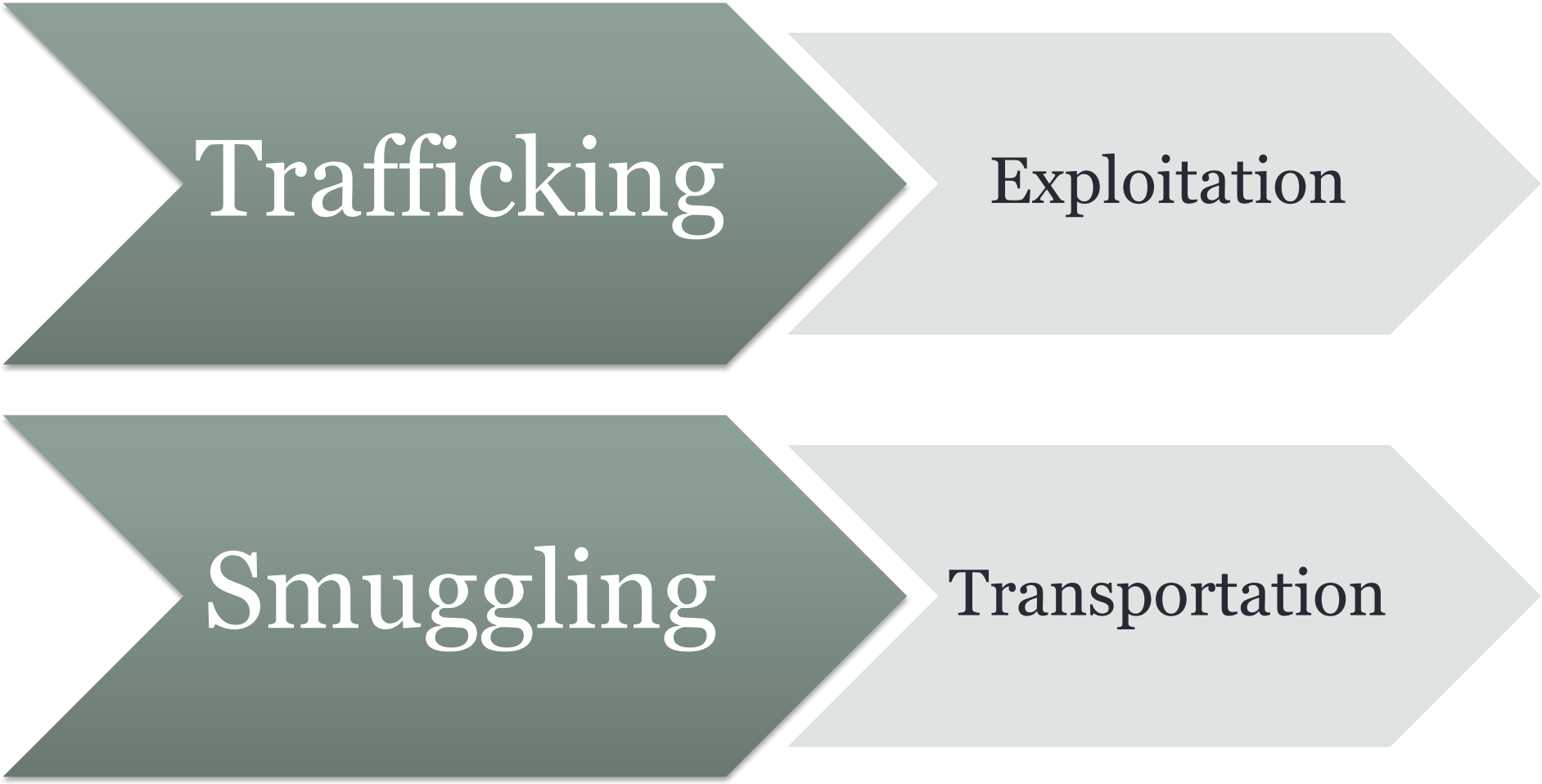
- Generally: use of force, fraud and/or coercion to exploit a person for profit.

- Federal statute: TVPA 2000

- Every state now has their own Human Trafficking statute – (labor trafficking), (sex trafficking)

Most statutes have a broad definition of "coercion" that includes non-physical coercion.




Trafficking
Exploitation
Smuggling
Transportation

Economic sectors where trafficking might occur

- Hotels & Restaurants
- Landscaping
- Construction
- Agriculture
- Domestic Servitude
- Commercial Sexual Activity
  - Prostitution; Pornography; Stripping
  - Massage Parlors; Nail Salons
- Criminal activity

Labor Trafficking Statistics

- 47.5% Men – 52.5% Women
- 10% Minors – 90% Adults
- 46% Single – 45% Married
- 64% had children
- 33% some college or higher
- Average age = 33
- 71% of victims entered the U.S. legally

"Understanding the Organization, Operation and Victimization of Labor Trafficking in the United States", Urban Institute and Northeastern University in collaboration with Freedom Network USA (2014)

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

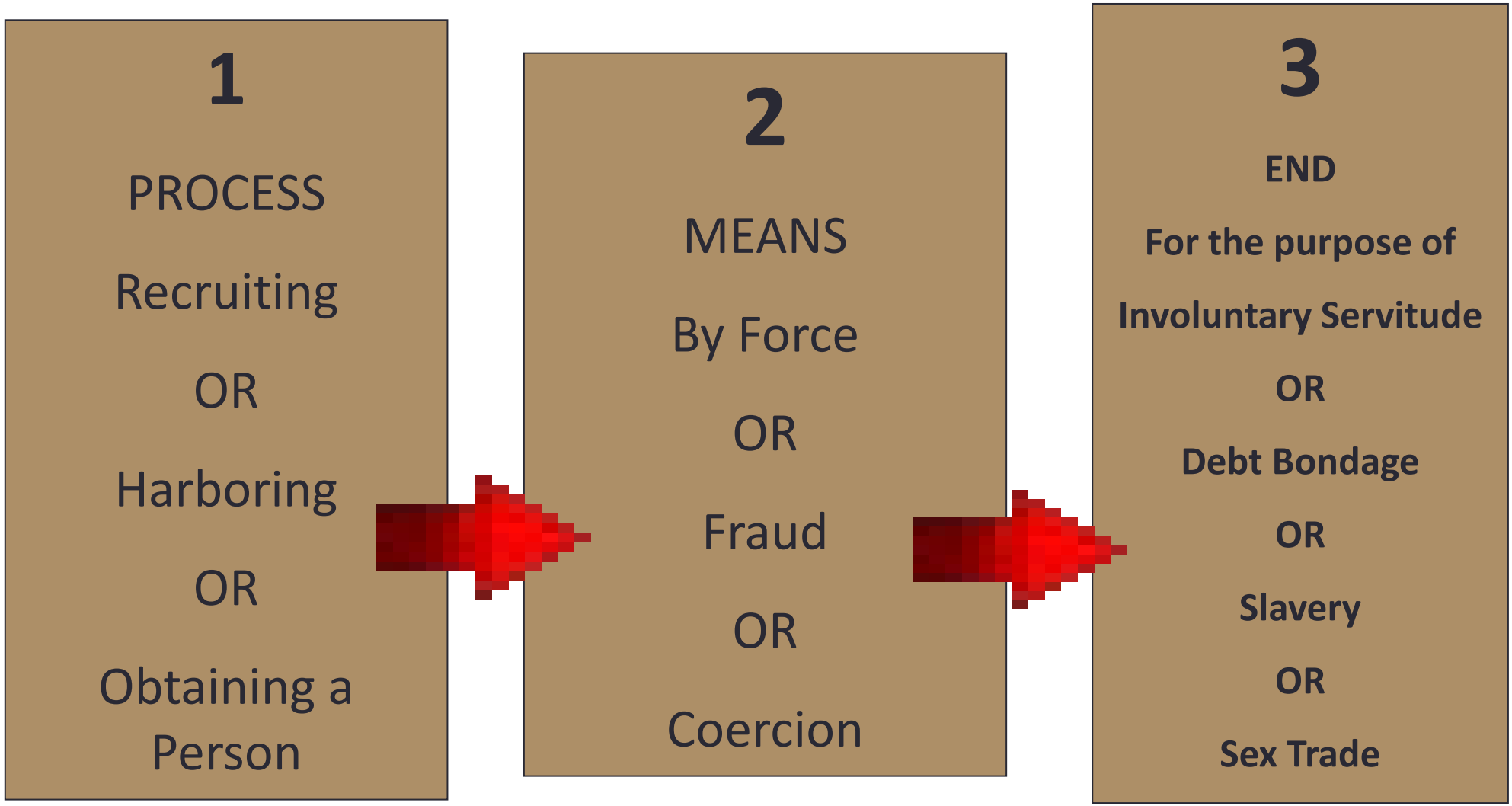
(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

The T Visa Application Process



Typical length of process = 4 - 6 months

Three Elements of Trafficking



DHS Decision

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

U Visa Certification Overview



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 02/28/2019

Review the U Visa Certification Form

Located in your training packet

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

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 is sometimes filled out by the victim's immigration attorney or advocate.
(Certifier Preference)



In addition to the head of the agency, one or more certifying officials can be designated as a "Certifying Official"



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

Agency Address

5.a. Street Number and Name

5.b. ☐ Apt. ☐ Ste. ☐ Flr.

5.c. City or Town

5.d. State **5.f.** ZIP Code

5.g. Province

5.h. Postal Code

5.i. Country

Other Agency Information

6. Agency Type

☐ Federal ☐ State ☐ Local

7. Case Status

☐ On-going ☐ Completed

☐ Other

8. Certifying Agency Category

☐ Judge ☐ Law Enforcement ☐ Prosecutor

☐ Other

9. Case Number

10. FBI Number or SID Number (if applicable)

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.

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.

_____

_____

4.a. 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

4.b. If you answered "Yes," where did the criminal activity occur?

5.a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

☐ Yes ☐ No

5.b. If you answered "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

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.

Make copies of all reports 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 (even if not photographed).

If you are aware of mental injury, include as well.

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

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**.

4. Other. Include any additional information you would like to provide.

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

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**.)

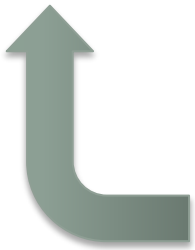
2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement



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 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

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.

Part 7. Additional Information

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number, Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name

Petitioner's Name

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. A-Number (if any)

► **A-**

4.a. Page Number **4.b.** Part Number **4.c.** Item Number

4.d.

5.a. Page Number **5.b.** Part Number **5.c.** Item Number

5.d.

6.a. Page Number **6.b.** Part Number **6.c.** Item Number

6.d.

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 in the Regulations

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

Helpfulness 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

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

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

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

- <u>Considerations:</u>
  - totality of the circumstances, including the nature of the victimization
  - victim's fear or the abuser
  - trauma suffered
  - force, fraud or coercion

Witness Tampering

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

If you still believe the victim is unreasonably refusing…

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

DHS Video Part 2.mpg

http://niwaplibrary.wcl.american.edu/2014/04/dhs-roll-call-videos/

U-visa Application Victim Flow Chart

Criminal activity occurs.

IF: The victim has been helpful, is being helpful, or is likely to be helpful to law enforcement
OR
The victim is under 16 years of age and victim's parent, guardian, or next friend has been helpful, is being helpful, or is likely to be helpful to law enforcement
OR
The victim is 21 years of age or older and is deceased due to the criminal activity, incapacitated, or incompetent;
the spouse and/or children under 21 of the victim have been helpful, are being helpful or are likely to be helpful to law enforcement
OR
The victim is under 21 years of age and is deceased due to the criminal activity, incapacitated, or incompetent;
the victim's spouse, children, parents, or unmarried siblings under 18 have been helpful, are being helpful or are likely to be helpful to law enforcement
THEN
Victim (or legal representative) seeks I-918B, Law Enforcement Certification.
(if victim is not working with a service provider, law enforcement officers can refer victims at this point.)

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).

Victim submits U-visa application to the Victims and Trafficking Unit of USCIS showing that the victim meets each of the U-visa eligibility requirements.

The application includes*:
- U visa application form – Form I-918
- Law Enforcement Certification – Form I-918, Supplement B
- Documents related to victim's identification
- Victim's signed statement describing the facts of the victimization
- Any information related to victim's criminal history, including arrests
- Any information related to victim's immigration history, including prior deportation
- Any information related to victims health problems, use of public benefits, participation in activities that may pose national security concerns, and moral turpitude
- Any information related to the victim's substantial physical or mental abuse suffered
- Other documentation such as police reports, medical records, letters of support from service providers.

Eligible family members can also apply.

* Other administrative documentation is also required. More information is available at www.legalmomentum.org.

Within about 1 month, victim receives receipt notice from USCIS confirming filing of U-visa application.

Within about 9 months, victim receives decision on U-visa application. If approved, victim receives work permit. If applications for family members are approved and they are abroad, consular processing begins.

After 3 years, U-visa holders (victims) apply for lawful permanent residence ("green card")
The application includes:
- Adjustment of Status Application- Form I-485
- Any information related to the victim's continuous presence in the U.S. since obtaining U-visa status
- Any information indicating that USCIS should exercise its discretion to grant lawful permanent residence
- Any information indicating that the U-visa holder has not unreasonably refused to cooperate with an ongoing investigation or prosecution

Eligible family members can also apply.

Prepared by the National Immigrant Victims Access to Justice Partnership (2010). This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

<u>Law Enforcement</u> 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).

Prosecution Specific Issues

Discovery

- Must provide defense with any materials within the state's control that may effect the credibility of any witness or that goes to any witnesses motive to lie or bias

  1. Is it within the State's control?
  2. Does it go to the witness' credibility, bias, or motive to lie?

#1 Concern:

Explicit or implicit accusation that the victim is lying to stay in the country

Cross-Examination

- It goes to the witness' credibility, bias, or motive to lie – they can be asked about it.
  - Discuss during *voir dire*
  - Identify jurors with anti-immigrant attitudes and get them off the jury
  - Prepare victim for cross-examination

Rebuttal Testimony

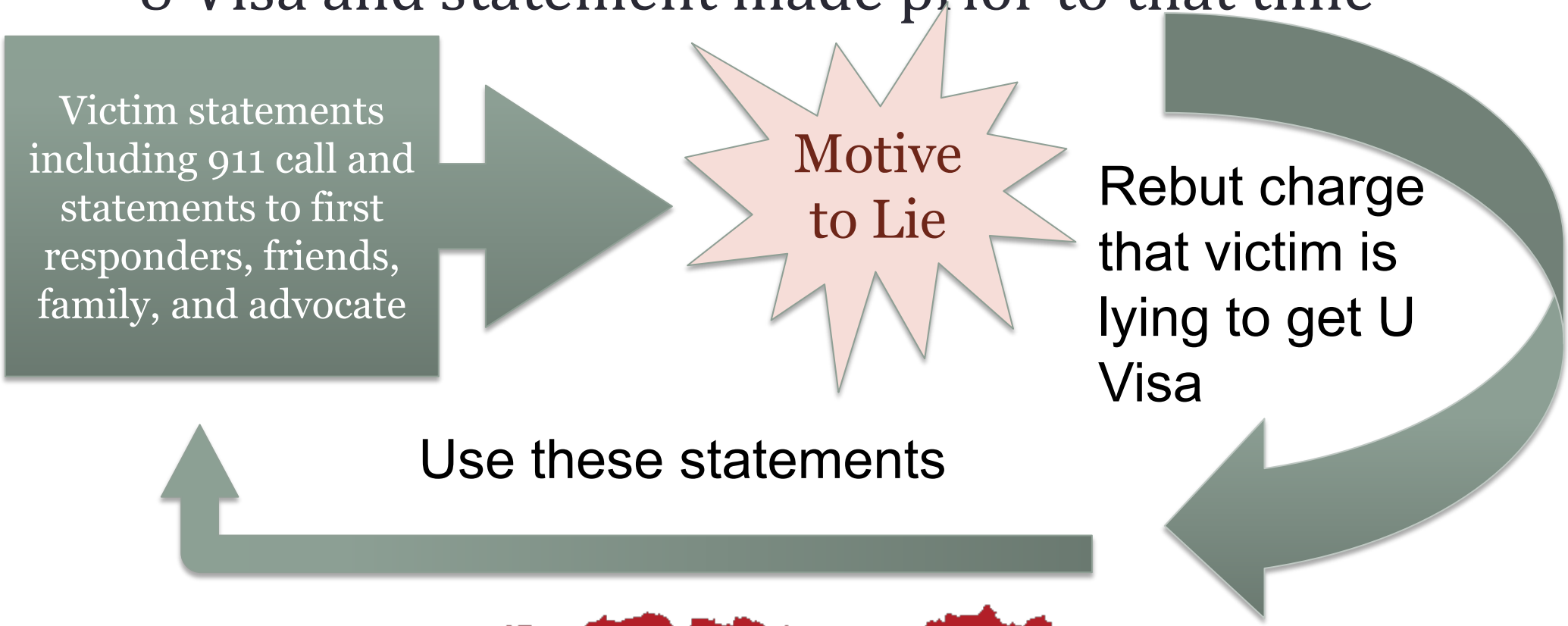
- Once the defendant has alleged that the victim has a motive to lie, the prosecution can introduce the victim's prior consistent statements about the charged crime
- Door to this testimony call be opened at any time, but is likely done during cross-examination

Prior Consistent Statements

- Non-Hearsay
- Not subject to *Crawford*
- Any consistent statement
  - offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying
  - to rehabilitate the declarant's credibility as a witness when attacked on another ground

Introducing Statements

- Establish timeline of when victim was told about U Visa and statement made prior to that time



Prior Consistent Statements

Not hearsay if the victim testifies, it is consistent with the victim's testimony, and is

a. offered to *rebut an express or implied charge that the declarant recently fabricated* it or acted from a recent improper influence or motive in so testifying; or

b. to *rehabilitate the declarant's credibility* as a witness when attacked on another ground; or

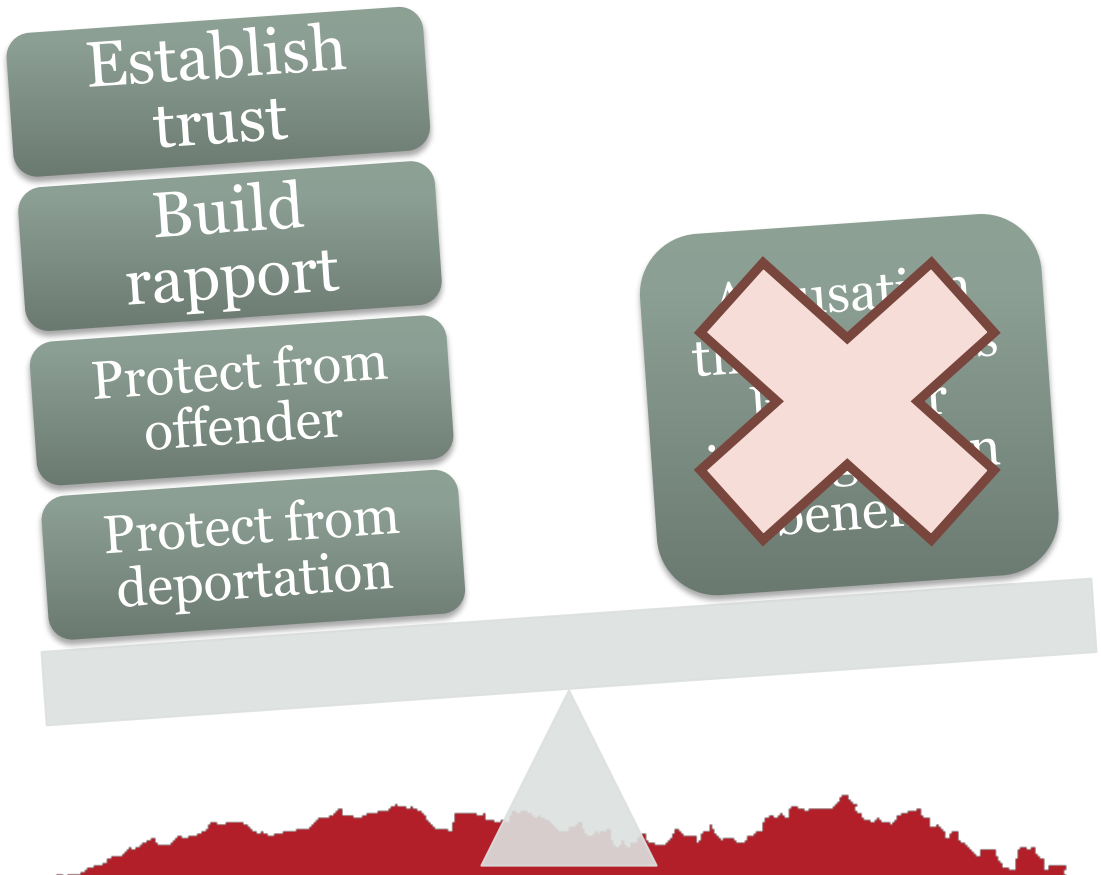
Fed. R. Evid. 801(d)(1)

Victim Statements

- 911 call
- Statements to first responders
- Interview by detective
- Comments made to family, friends, or coworkers
- Conversation with service providers
  - Community-based v. Systems-based

Certify Early

PROS	CONS



Going Forward

- When probable cause exists, certify early to ensure victim safety and enhance victim participation
- Focus on the offender's actions throughout the investigation and prosecution
- For prosecutors: Litigate discovery and pretrial motions to ensure just results
- Turn challenges into strengths

Does your agency have a U-Visa policy/procedure ?

Large Group Discussion

- City of X, Law Enforcement Certification Protocol
- Are these true or false?
  - Identify any problems with the protocol
    - Note provision numbers
  - How could the protocol be improved?
  - What is missing?
  - **MODEL POLICY**

Collaboration between Law Enforcement and Prosecution

- Maintain victim and witness contact
- Update victims on case status
- Coordinate victim services
- Investigate witness tampering and other co-occurring crimes

<u>Cooperation is key</u>



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

Victim Assistance Specialist

SAC St. Paul
Deborah Morrison
Phone: (952)858-5427
Deborah.morrison@dhs.gov

SAC Chicago
1 North Tower Lane Suite 1600
Oakbrook Terrace, IL, 60181
Phone: (630) 574-4600

DHS Resources

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**
  - 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.http://niwap.org/lawenforcement

Evaluations

- Evaluations are in your training packet
- Certificates



Thank You!