

U VISA CERTIFICATION TOOL KIT FOR FEDERAL, STATE AND LOCAL JUDGES AND MAGISTRATES

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What is the Role of Judges in U Visa Certifications?

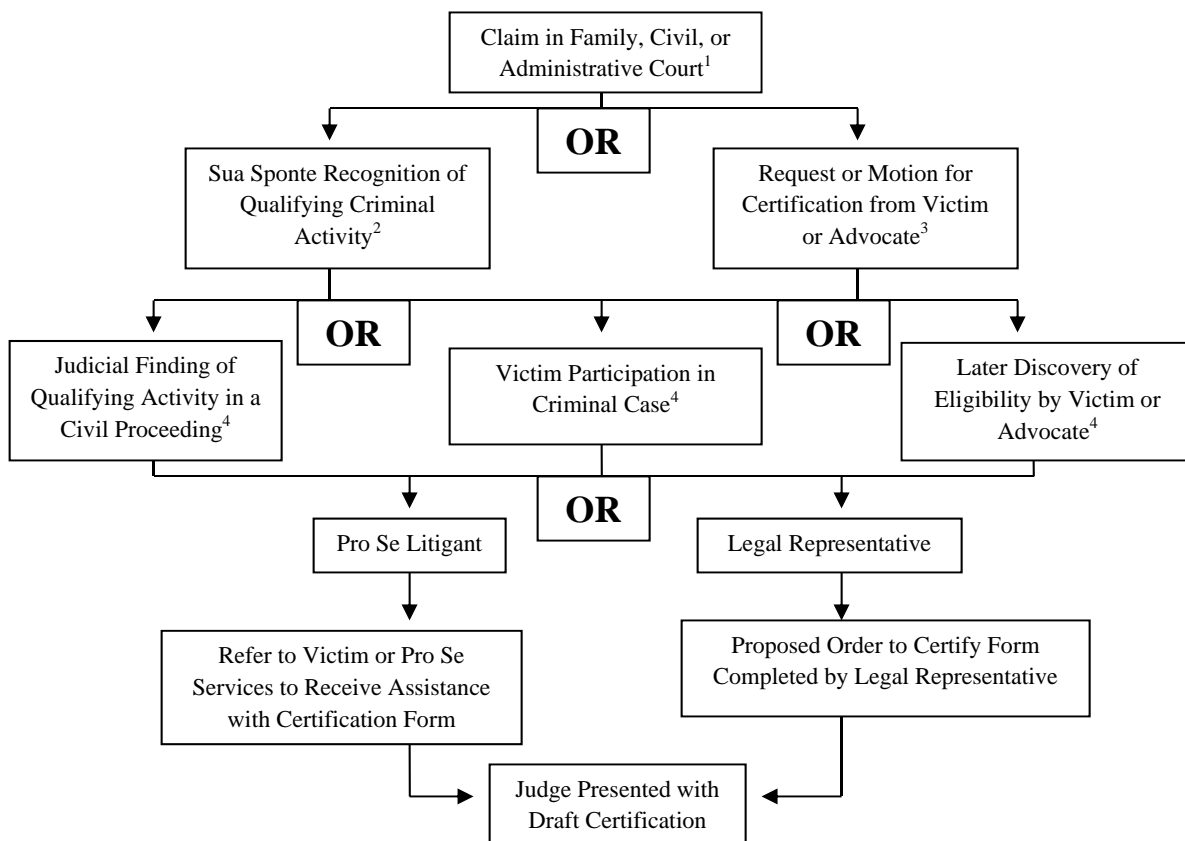
Congress recognized in the Violence Against Women Act of 2000 (VAWA 2000) that without some form of immigration status that protects immigrant crime victims from retaliation, few undocumented victims are willing to pursue civil or criminal claims against crime perpetrators. The integrity of the justice system is compromised when perpetrators take advantage of immigration related fears to escape accountability. Judges have a role in protecting the integrity of the justice system. In the U visa context, Congress in the VAWA 2000 specifically listed judges as government officials authorized to sign U visa certifications. U visa certifications verify that the immigrant has been a victim and that victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of criminal activity.⁴ The U visa certification is a mandatory piece of evidence that the immigrant victim must include in the U visa application. The Department of Homeland Security reviews the full application, including the certification and the additional evidence which the immigrant victim applicant is required to submit as part of the application, and determines whether the applicant will be awarded a U visa. The U visa does not confer permanent immigration status, but instead grants victims a temporary visa for 4 years that protects them from deportation and grants temporary legal work authorization.

Why Seek Certification from the Courts?

Congress created a system designed to promote U visa certification by a range of federal, state, and local officials with experience determining whether there is probable cause to believe that a criminal activity was perpetrated and that a particular individual has been the victim of that criminal activity. All government officials authorized to sign U visa certifications detect, investigate, prosecute, convict, sentence, make probable cause determination, hear cases, and/or issue rulings on facts and other evidence relating to criminal activity. A key goal of the U visa system was to promote access to justice for immigrant victims of criminal activity. Improving access to justice includes improving access to courts, police, prosecutors and state and federal government agencies with authority to enforce labor, employment, and other state and federal laws that could involve detection or investigation of facts about one or more of the U visa listed criminal activities. There are instances in which the other entities authorized by Congress to certify U visa applications have declined to exercise that authority for various reasons. Congress understood that this would occur and designed the list agencies with authority to sign certifications to include first responders and other potential justice system entry points that immigrant crime victims may turn to for assistance either before, after or instead of contacting police (e.g. protection order courts, the Equal Employment Opportunity Commission, the U.S. Department of Labor, and child and adult protective services agencies).

The U Visa certification process tracks and is consistent with U.S. Department of Justice Access to Justice Initiative principles by providing immigrant victims of criminal activity the ability to receive access to justice. Certification from the courts promotes accessibility and eliminates barriers that prevent people, regardless of their immigration status, limited English proficiency, length of time in the United States, educational background or economic means access the courts and receive fair and just outcomes. Congress designed the U visa system to provide certifications at the early stages of detection, probable cause and investigation to remove the perpetrator's ability to control an immigrant victim's access to justice through threats, retaliation, and coercion related to deportation. Removing that control opens the doors of the justice system to a vulnerable population that would otherwise hesitate in reporting criminal activity or participating in the justice system.

⁴ U visa relief is available to adult immigrant victims of crime as well as child victims. However, some children may have easier access to immigration status through Deferred Action for Childhood Arrivals (DACA) and Special Immigrant Juvenile Status (SIJS). For more information on DACA, please refer to *Deferred Action for Childhood Arrivals (Dreamers) Can Also Help Immigrant Survivors*, Web Library, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (NIWAP), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/deferred-action-for-childhood-arrivals-dreamers-can-also-help-immigrant-survivors>; and for SIJS, please refer to Eileen Lohmann and Leslye E. Orloff, *State Proceedings in Which Courts Can Enter Findings and Orders Needed by Children Filing for Special Immigrant Juvenile Status Protections* (Oct. 11, 2013).



¹ **Courts:** Judges and magistrates in any forum that decides legal matters may sign certifications. Domestic violence, sexual assault, and trafficking issues can be raised in a wide variety of courts, including but not limited to state and federal criminal and civil courts, immigration courts, family courts, small claims courts, probate courts, and departments of labor.

² **Qualifying Criminal Activity:** Congress used the term “qualifying criminal activity” as opposed to “crime” to allow for certification without regard to conviction. Qualifying activity includes domestic violence, sexual assault, trafficking, and involuntary servitude.

³ A sample **motion** for certification is included in this packet at page Sample Memorandum in Support of Motion for U Visa Certification43.

⁴ **Timing:** Victim participation in a criminal case would be appropriate evidence to warrant certification. Civil judges may decide to certify once a court has made a finding that domestic violence or other qualifying criminal activity has been committed. There is no time limit on U visa certification as long as the victim meets U visa eligibility requirement.

U visa Quick Reference for Judges

Purpose of the U visa	<ul style="list-style-type: none"> The U visa facilitates the reporting of crimes to law enforcement officials by trafficked, exploited, victimized or abused noncitizens and ensures immigrant victims receive access to justice.
Benefits of the U visa	<ul style="list-style-type: none"> Strengthens law enforcement agencies' abilities to detect, investigate, and prosecute criminal activity while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation. Immigrant survivors and victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the criminal justice system. The U visa certification follows the DOJ Access to Justice Initiative by promoting accessibility, ensuring fairness, and increasing efficiency.
Who is eligible for a U visa?	<ul style="list-style-type: none"> To be eligible for a U visa an individual: <ul style="list-style-type: none"> Must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activity; Must possess information concerning the criminal activities; Must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local investigation or prosecution of the criminal activity; and The criminal activity must have violated the federal or state laws of the U.S. (federal or state) or been perpetrated in the U.S. or its territories and possessions. To prove his or her helpfulness, the applicant must obtain a certification from a law enforcement official, prosecutor, judge, USCIS official, or other federal or state authority detecting, investigating, prosecuting, convicting or sentencing any of the qualifying criminal activities.
U visa Qualifying Criminal Activities	<ul style="list-style-type: none"> U visa qualifying criminal activities include, but are not limited to: <ul style="list-style-type: none"> Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting⁵, solicitation to commit any of the above-mentioned crimes, or <i>any similar activity</i> in violation of federal, state, or local criminal law. The term <i>any similar activity</i> accounts for the wide variety of state and federal criminal laws, which may be named differently than the enumerated criminal activity in the statute but are comparable in nature and elements to the enumerated criminal activity. The term “criminal activity” in the statutory language was intentionally chosen by Congress to accomplish two goals – to be broadly inclusive of “any similar activity” and to focus on the actions of the victim in coming to state or federal government officials with information about criminal activity. This language is meant to take into account “the wide variety of state criminal statutes in which the terminology used to describe the criminal activity may not be identical to that found on the statutory list, although the nature and elements of both criminal activities are comparable.”⁶ For example, the statute lists domestic violence as a U visa qualifying crime. However, most states do not specify domestic violence as a crime, but

⁵ § 8 U.S.C. 1351

⁶ 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007).

	<p>instead list crimes that constitute domestic violence, such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, stalking, child abuse, elder abuse, or malicious property damage.⁷ Even though these crimes are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence.</p>
Status of Crime Perpetrator	<ul style="list-style-type: none"> • The U visa applicant does not have to be married to the crime perpetrator and there may or may not be any family relationship between the victim and the perpetrator. The crime perpetrator may have any immigration or citizenship status including U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.
Certification Requirements	<ul style="list-style-type: none"> • U.S. Citizenship and Immigration Services (USCIS) Form I-918 Supplement B, must be completed by a qualifying certifier, such as a judge, and verify that the victim applying for a U visa meets the following four criteria: <ul style="list-style-type: none"> ○ has been the victim of qualifying criminal activity; ○ possesses information about the qualifying criminal activity; ○ has been, is being or is likely to be helpful in the investigation or prosecution of that qualifying criminal activity; and ○ the qualifying criminal activity was perpetrated in the U.S. or violated U.S. federal or state law. • The criminal activity may have occurred at any time in the past. However, once the victim receives a certification the victim must file the U visa application within six (6) months. • The certification should provide specific details about the nature of the criminal activity being detected, investigated, or prosecuted and describe the petitioner’s helpfulness in the case. • U visa certification does not require the criminal prosecution to be completed or successful, nor does it require law enforcement to investigate the criminal activity; the certification only attests to the U visa petitioner’s helpfulness in detection, prosecution, or investigation efforts.
Judges as U visa Certifiers	<ul style="list-style-type: none"> • Judges are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B. • The certification is necessary to establish eligibility for the U visa, but by itself does not grant immigration status to the victim. To obtain a U visa, a victim must meet eligibility requirements, in addition to obtaining a U visa certification. The Department of Homeland Security (DHS) has sole authority to grant or deny a U visa. • Judges may amend the language of the form to accurately reflect the findings upon which the judge is signing the certification. In Part 6 of the Certification form, “Based upon investigation of the facts, I certify,...” maybe amended with the following examples: <ul style="list-style-type: none"> ○ “Based upon my findings and issuance of a civil protection order ...I certify” ○ “Based upon my finding of probable cause in...I certify” ○ “Based on my having presided over the criminal case ... I certify” ○ “Based upon my findings in a [custody/divorce] case of [domestic violence/child abuse] ... I certify” • The unique role of judges in the U visa certification process – • Judges make a range of determinations and findings under probable cause. By regulation, the terms “investigation or prosecution” include the <i>detection</i> of criminal activities, giving

⁷ See Catherine F. Klein & Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 849-876 (1993).

	<p>effect to Congress’ intent to include judges as certifiers. Detection of criminal activities is a part of the initial proceedings that take place in a court, both civil and criminal. It, like probable cause findings, is the first step in a criminal or civil case. Under DHS regulations judges are authorized under federal law to sign certifications at detection (when the judge has probable cause to believe the immigrant has been a victim of criminal activity) as well as when the judge has been involved in conviction and/or sentencing. A certification can be signed by a judge at any stage in the process from probable cause (“detection”) through sentencing. .</p> <ul style="list-style-type: none"> • Judges make findings and issue orders based on qualifying criminal activities. Federal or state criminal and civil court judges and magistrates can be U visa certifiers. In civil protection order, custody, and child abuse cases, family court judges “detect” criminal activity to issue protection orders, make determinations in child abuse proceedings, or as a factor in custody determinations. • Judges were included as certifiers to increase victims’ ability to access relief. Immigrant crime victims – especially those with limited English proficiency – do not always know or understand the range of available relief. A judge may be the first certifying official the victim encounters who is knowledgeable about the U visa; in many jurisdictions, certifiers such as police and prosecutors have not been adequately trained on how the U visa supports criminal investigations and prosecutions. • Judges have legal training and experience with crime victims and witnesses. Judges are certifiers because they are familiar with administering justice as a neutral party and often have considerable training on issues affecting crime victims.
<p>Assessing the Helpfulness of the U visa Applicant</p>	<ul style="list-style-type: none"> • Judges need only assess the helpfulness using the same standard the judge uses in making probable cause determinations. DHS advises that certification be granted on “any credible evidence,” which is parallel to probable cause. • The U visa helpfulness requirement allows an individual to seek relief at various stages of detection, an investigation or prosecution, including past helpfulness and willingness to be helpful in the future. • If a U visa petitioner assisted or cooperated with an investigation or prosecution, an approved certifier may prepare the certification even when investigation or prosecution efforts are abandoned or did not result in conviction. • The statute imposes an ongoing responsibility on the victim to provide assistance, where reasonable, to be eligible for lawful permanent residence.
<p>Attesting to Helpfulness on the Certification Form</p>	<ul style="list-style-type: none"> • Judges need not provide a summary of victim reports or testimony on the certification form. • Judges need only provide a general description of victim helpfulness, for example: <ul style="list-style-type: none"> ○ Victim called police to report the crime ○ Victim spoke freely with responding officers ○ Victim sought a protection order, that the victim can enforce if violated in the future ○ Victim sought a protection that law enforcement would serve on the perpetrator ○ Credible evidence presented in court that lack of qualified interpreters interfered with the victim’s efforts to report the crime, call the police for help and cooperate with police or prosecutors. ○ Court observed evidence in the case that evidenced the victims efforts to be helpful in the past or their willingness to provide helpfulness in the future ○ Victim testified in before the grand jury or at other stages of a criminal case

Timing of U visa Certification	<ul style="list-style-type: none"> • Judges may certify at any time after detecting a qualifying U visa offense. • Judges may prefer to sign certifications after the completion of a case, but can grant certifications after arraignment, during a probable cause hearing (grand jury or preliminary hearing), or while the case is still pending.
When Judges are Able to Grant U visa Certification	<ul style="list-style-type: none"> • If the judge finds that there is probable cause that criminal activity was perpetrated and that the victim was helpful, is being helpful or is willing to be helpful in detection, investigation, prosecution, conviction or sentencing , a certification can be signed at any of the following stages, regardless of whether the certifying judge continues to preside over the remaining stages of the case. <ul style="list-style-type: none"> ○ Arraignment ○ Preliminary hearings or grand jury proceedings <ul style="list-style-type: none"> ▪ Judge to whom the grand jury presents the true bill of indictment can sign a certification based on those findings. ○ Pre-trial motions ○ During all stages of trial/civil proceeding ○ After the trial/civil proceeding has closed
U visa & Adjustment of Status to Lawful Permanent Resident	<ul style="list-style-type: none"> • After three (3) years of continuous presence in the U.S., a U visa holder may be eligible to apply for adjustment of status to lawful permanent residence. • Due to the “continuous presence” requirement, if the applicant departed the U.S. for any single period of time longer than 90 days, or for shorter periods in the aggregate exceeding 180 days, s/he must include a certification – from the original U visa certifying agency – that verifies that the absence was necessary for the investigation or prosecution or otherwise justified. • A U visa holder applying for adjustment of status must provide evidence that s/he did not unreasonably refuse to provide assistance in a criminal investigation or prosecution by submitting a newly executed Form I-918, Supplement B signed by an official (such as a judge) or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity. Judges should note that this form of evidence could be useful to an applicant, but it is not required. Other forms of evidence are equally acceptable for the adjustment process.
More Information	<ul style="list-style-type: none"> • Please visit the National Immigrant Women’s Advocacy Project’s website at http://www.wcl.american.edu/niwap/ for more information.

U visa Certification: Introduction

(Last Updated February 2011)

As part of the Violence Against Women Act of 2005, Congress created the U visa, designed to provide access to legal immigration status for immigrant crime victims who are, have been, are being or are willing to be helpful in crime detection, investigation or prosecution. Congress specifically listed state and federal judges and magistrates sitting in criminal, family, civil or administrative law courts among the government officials authorized and encouraged to sign U visa certifications. This document provides the following background information on the U visa: an overview of the U visa, information on who qualifies for the U visa, which criminal activities are covered by the U visa, the application process, and other information that will assist judges in their role as certifiers. The U visa certification form and a sample form completed by a law enforcement official are included in this toolkit.

Overview of the U visa

When Congress created the U visa in the Violence Against Women Act (VAWA) under the Victims of Trafficking and Violence Prevention Act of 2000 its intent was (1) to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, and other crimes; and (2) to offer protection to victims of such crimes.⁸

Lawmakers recognized that a victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of crimes.⁹ Victims who fear deportation, however, will be unlikely to come forward to cooperate and assist in investigative efforts. Thus, Congress provided a specific avenue through which immigrant crime victims who cooperate with law enforcement can obtain lawful immigration status and protection against deportation.

Who is eligible for a U visa?

To be eligible for a U visa, immigrant victims must meet four statutory requirements and they must include a certification from a certifying official or agency that they have been, are being, or are likely to be helpful in the detection, investigation, or prosecution of a qualifying criminal activity.¹⁰ The law requires that a person who is eligible for a U visa must

- (1) have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity;

⁸ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007) (citing Battered Immigrant Women Protection Act (BIWPA) § 1513(a)(2)(A)).

⁹ Congress created the U visa because it was important for U.S. humanitarian interests to enhance safety of crime victims and encourage them to cooperate with the justice system. BIWPA § 1513(a)(2)(A).

¹⁰ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U visa eligibility and contains non-exhaustive list of qualifying criminal activities. Congress used the term "criminal activity" rather than "crime" to provide victims access to U visa protection as early as possible after the crime was committed or was reported.); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

- (2) possess information concerning such criminal activity;
- (3) have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
- (4) have been the victim of a criminal activity perpetrated in the United States or that violated the laws, state or federal, of the United States.¹¹

The U visa certification requirement

The U visa statute states that federal, state, or local judges are listed as qualified to provide certifications for victims filing U visa applications.¹² Judges sitting in criminal, family law, domestic violence, and child support courts are most likely to encounter immigrant crime victims who qualify to file U visas. Just as judges make probable cause determinations, judges are well positioned to detect criminal activity in the early stages of trials or proceedings and can sign certifications based on findings made in those early states. At the conclusion of the case, a judge hearing a criminal case or a civil protection order case will often have information that the court credits regarding the fact that a person before the court has been a victim of criminal activity. The court will have knowledge about the victim's helpfulness, efforts to be helpful, or can assess the victim's willingness to be helpful in detecting and reporting the crime, seeking a protection, being willing to have a temporary protection order served on the perpetrator, as well as the victim's participation in any subsequent investigations, prosecutions, or sentencing of the perpetrator. Judges are well positioned to provide U visa certifications and verify a victim's helpfulness or willingness to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the perpetrator of qualifying criminal activity.

The U visa certification must affirm the immigrant victim's past, present, or future helpfulness in the detection, investigation, prosecution, conviction or sentencing of certain qualifying criminal activity.¹³ **Judges and magistrates who sign certifications do not confer any immigration status upon the victim**, but rather attest to the existence of certain facts which are required to be established before the victim can apply for enable the victim to meet one of the eligibility requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS).¹⁴ Only DHS has the discretion to grant or deny U visa immigration status to the victim.

¹¹ INA § 101(a) (15) (U); 8 U.S.C. § 1101(a) (15) (U). If the petitioner is under 16 years of age, incapacitated, or incompetent, s/he is not required to personally possess information regarding the qualifying criminal activity. In these cases, an exception permits a parent, guardian, or "next friend" of the minor, incapacitated, or incompetent petitioner to provide information and assist in the investigation or prosecution. See INA § 101(a)(15)(U)(i), 8 U.S.C. §1101(a)(15)(U)(i).

¹² INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

¹³ *Id.*

¹⁴ See Form I-918, Supplement B, Instructions (08/31/07), at page 3 (United States Customs and Immigration Services will consider the totality of the circumstances in determining whether someone is eligible for the U visa).

U Visa Application Flow Chart



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 or 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 or 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 victim's 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 niwaplibrary.wcl.american.edu.

Within about 6 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.

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

After three 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.

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Judges and the U Visa Certification Requirement

Last Updated June 2011

I. INTRODUCTION

The U visa is a temporary visa for noncitizen victims of crime who have suffered substantial mental and physical abuse resulting from the criminal activity and are willing to cooperate with law enforcement in the detection, investigation or prosecution of that criminal activity.¹⁵ Congress recognized in creating the U visa that it is virtually impossible for local, state and federal law enforcement, justice system and government enforcement agency officials to punish and hold perpetrators of crimes against noncitizens accountable if the abusers and other criminals have their victims deported. Congress also recognized that victims would not come forward to seek law enforcement assistance because they feared detention or deportation. The U visa encourages immigrant victims to report criminal activity by protecting them from deportation and provides safety to the community at large by holding perpetrators accountable for criminal activity that might otherwise go undetected.

The U visa application process requires an immigrant crime victim to obtain a certification by *a judge or other approved certifying official* that verifies the type of criminal activity perpetrated against the U visa applicant and attests to the fact that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of that criminal activity.¹⁶ Congress explicitly included federal, state and local judges in the list of certifiers to increase victim access to certifications.¹⁷ This document outlines the significance of the role of judges as U visa certifiers.

II. WHAT IS THE U VISA AND WHY WAS IT CREATED?

In October 2000, Congress reauthorized the Violence Against Women Act (VAWA). As part of this legislation, Congress sought to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute crimes against immigrants. The Act recognizes that without some form of immigration status that protects immigrant crime victims from retaliation few undocumented victims are willing to assist in investigation or prosecution efforts.¹⁸ Thus, Congress provided a specific avenue for immigrant crime victims to obtain lawful immigration status. Congress did so by amending sections of the Immigration and Nationality Act to create the U visa.¹⁹ If approved, an applicant for a U visa will receive U visa status for up to four years. This status will permit the crime victim to live and work legally in the United States for the duration of the U visa.

¹⁵ “Investigation or prosecution” used in the statute. In implementing the statute the Department of Homeland Security this term interpreted broadly to include detection, investigation, prosecution, conviction or sentencing qualifying criminal activity and the perpetrator of such criminal activity. 8 C.F.R. § 214.14(a)(5).

¹⁶ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

¹⁷ See generally, 72 Fed. Reg. 53,014, 53,023-53,024 (Sept. 17, 2007).

¹⁸ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, div. A § 1513(a), 114 Stat. 1464, 1533 (Oct. 28, 2000) (detailing Congress’ findings and purpose for the U visa statutes).

¹⁹ See I.N.A. § 101(a)(15)(U), 8 U.S.C. § 1101 (a)(15)(U)

At the end of the third year, the U visa recipient may be eligible to apply to adjust his or her status to lawful permanent residence (commonly known as a “green card”). Receiving a U visa does not directly or necessarily grant lawful permanent residency. Lawful permanent residency will be granted only to U visa recipients who can provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution and that their continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. The authority to issue U visas rests solely with the Department of Homeland Security’s Victims and Trafficking Unit at the Vermont Service Center.²⁰

III. WHO QUALIFIES FOR A U VISA?

To qualify for a U visa, an applicant must demonstrate that s/he meets each of the following requirements:²¹

- the applicant must have suffered substantial physical or mental abuse as a result of having been the victim of certain qualifying criminal activity;
- the applicant must possess information concerning such criminal activity;
- the applicant must be helpful, have been helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
- the criminal activity occurred in the United States or violated the state or federal laws of the United States.²²

In addition to meeting these four requirements, a U visa applicant must obtain a certification from a law enforcement official, prosecutor, judge, or other federal or state agency authorized to detect, investigate or prosecute any of the criminal activities listed in the U visa statute.²³

A “non-exclusive” list of qualifying criminal activities is provided in the statute.²⁴ The list includes rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting²⁵, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law. This list also includes attempts or conspiracy to commit any of the listed activities.

²⁰ See *Garcia v. Audubon Communities Management, LLC*, No. 08-1291, 2008 WL 1774584, at *4, n.1 (E.D. La. Apr. 15, 2008). <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/Garcia-v-Audubon.pdf/view>

²¹ I.N.A. § 101(a)(15)(U); 8 U.S.C. 1101 (a)(15)(U) and at I.N.A. § 214(p)(1), 8 U.S.C. 1184(p)(1); I.N.A. § 101(a)(15)(U), 8 U.S.C. 1101 (a)(15)(U).

²² I.N.A. § 101(a)(15)(U), 8 U.S.C. 1101 (a)(15)(U).

²³ I.N.A. § 214(p)(1), 8 U.S.C. 1184(p)(1).

²⁴ I.N.A. § 101(a)(15)(U)(iii), 8 U.S.C. 1101 (a)(15)(U)(iii); 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007) (explaining that the list is non-exclusive).

²⁵ § 8 U.S.C. 1351

The term “criminal activity” in the statutory language was intentionally chosen by Congress to accomplish two goals – to be broadly inclusive of “any similar activity” and to focus on the actions of the victim in coming to state or federal government officials with information about criminal activity. This language is meant to take into account “the wide variety of state criminal statutes in which the terminology used to describe the criminal activity may not be identical to that found on the statutory list, although the nature and elements of both criminal activities are comparable.”²⁶ For example, the statute lists domestic violence as a U visa qualifying crime. However, most states do not specify domestic violence as a crime, but instead list crimes that constitute domestic violence, such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, stalking, child abuse, elder abuse, or malicious property damage.²⁷ Even though these crimes are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence.

U visa status does not require the actual initiation of a law enforcement investigation, nor does it require a successful prosecution or victim testimony. In some cases, investigation or prosecution of criminal activity is impossible because the offender cannot be located, has been deported, or has diplomatic immunity. Moreover, U visa status can be granted even when prosecutors decline to charge perpetrators, or if they decide to prosecute unrelated crimes.²⁸ The discretion that investigators and prosecutors have to investigate or prosecute criminal activity does not negate the assistance, cooperation, and helpfulness that a victim may have provided or may have been willing to provide regarding that activity.

Additionally, “qualifying criminal activity may occur in the commission of non-qualifying criminal activity.”²⁹ An illustrative example is provided in the U visa regulations: if an investigator is in the process of investigating federal embezzlement charges and learns that the offender is abusing his wife, despite an absence of federal domestic violence laws, the immigrant victim wife may qualify for the U visa as a victim of domestic violence, even though her husband is charged only with the non-qualifying federal embezzlement crimes.³⁰

IV. APPLICATION PROCESS

The United States Citizenship and Immigration Services (USCIS) of the United States Department of Homeland Security (DHS) has sole jurisdiction over all petitions for U visa status. A person seeking U visa status must submit, by mail, Form I -918, “Petition for U Nonimmigrant Status” and include with it Form I-918 Supplement B, along with supporting documents

²⁶ 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007).

²⁷ See Catherine F. Klein & Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 849-876 (1993).

²⁸ 72 Fed. Reg. 53,014, 53,020 (Sept. 17, 2007) (“This rule does not require that the prosecution actually occur, since the statute only requires an alien victim to be helpful in the investigation or the prosecution of the criminal activity.” See INA sections 101(a)(15)(U)(i)(III) & 214(p)(1), 8 U.S.C. 1101(a)(15)(u)(i)(III) and 1184(p)(1).).

²⁹ *Id.*

³⁰ *Id.*

establishing eligibility. Form I-918 Supplement B must be signed by a qualifying certifier, such as a federal, state, or local judge. A copy of Form I-918, Supplement B, with instructions is included in this tool kit on page 25. The applicant sends the petition and supporting materials to the Victims and Trafficking Unit of USCIS located in Vermont. This specialized unit is trained to adjudicate cases involving crime victims and is the only adjudication unit within DHS that can grant U visa status.³¹

By preparing and signing Form I-918 Supplement B, a certifier is not conferring legal immigration status upon a noncitizen applicant or making a determination of the applicant's eligibility for a U visa. The certification is a mandatory part of the evidence the victim must submit to USCIS to prove eligibility to receive a U visa. The certification is limited to verification that the individual is a victim of a qualifying criminal activity and that s/he has been helpful in the investigation or prosecution.³² In addition to the certification, the applicant must meet several other eligibility criteria, including demonstrating that s/he suffered substantial mental or physical abuse³³ as a result of having been a victim of qualifying criminal activity and providing a statement describing the facts of the victimization in his or her own words.

V. JUDGES AS U VISA CERTIFIERS

Judges are specifically enumerated by statute as U visa certifiers.³⁴ In criminal court cases, including when protection orders have been violated, judges are certainly well positioned to be U visa certifying officials because they make findings based on probable cause. However, Congress included all judges (state, federal, civil, family, criminal, magistrate, and administrative) as approved certifying officials. Thus, civil court judges may also certify U visa applications. Civil court judges are routinely exposed to cases involving U visa qualifying criminal activities.

In civil court cases, judges are in a unique position to *detect* criminal activity due to their exposure to cases that involve issuance of civil protection orders, divorce, custody, child or spousal support and child abuse and neglect cases. For example, where domestic violence is involved, victims might seek a protection order as a civil remedy in family court. In most states, the underlying activity that permits the issuance of the civil protection order is a criminal activity. The detection of this criminal activity by the family court judge issuing the civil protection order would

³¹ Even where a case is before an immigration judge, adjudication for U visas may still only be conducted by the USCIS Vermont Service Center.

³² See Ross, Janell, Metro Nashville Police Block Visas for Crime Victims, Witnesses, *The Tennessean*, Apr. 18, 2010, <http://www.tennessean.com/article/20100418/NEWS01/4180357/1001/NEWS>. (quoting DHS spokeswoman clarifying that the role of certifying officials including police filling out U visa certifications is to verify that an individual was a crime victim)

³³ U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 11, January 2012, available at, http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf (stating that USCIS will make the determination as to whether the victim has met the “substantial physical or mental” standard on a case-by-case basis during its adjudication of the U visa petition).

³⁴ I.N.A. § 101(a)(15)(U)(i)(III), 8 U.S.C. 1101 (a)(15)(U)(i)(III); I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

enable the judge to act as a certifying official for a U visa applicant. Similarly, judges may find themselves capable of certification in a number of civil court cases, for example in:

- temporary or emergency protection order cases,
- custody order cases where there has been family violence,
- divorce cases awarding spousal support,
- child abuse or neglect proceedings,
- elder abuse or neglect proceedings,
- preliminary injunctions in a sexual assault tort action,
- small claims action for an unmarried couple seeking division of property when there has been domestic violence
- finding of child abduction,
- cases involving labor exploitation,
- finding that a protection order has been violated,
- landlord-tenant proceedings involving housing exploitation, and
- probate hearings with a finding of domestic violence.

The above are only some examples. Other cases may reveal the existence of qualifying criminal activity, and judges may certify in any case where they detect such activity.

Congress allowed for a wide range of certifiers so that victims could easily and safely access certifications. Judges are in a unique position as neutral finders of fact to assess whether the criminal activity occurred and whether the victim has been helpful in the detection, investigation or prosecution of that activity. Because judges must be impartial, they are sometimes the most trusted officials with whom victims come in contact with in the justice system. Judges can be neutral in assessing helpfulness and willingness to be helpful to the detection, investigation or prosecution of criminal activity.

Judges also are included as certifiers based, in part, on the understanding that language barriers prevent some immigrant victims from successfully communicating with police or other law enforcement officials when trying to report crimes; an increasing number of states require courts to provide interpretation for parties with limited English proficiency, and other states offer such services to parties appearing before their courts.³⁵ The increased possibility of language access in courtrooms allows a judge to assist with U visa certification. When a victim eventually gets to court, a judge may be the only certifying official the victim will encounter who is both language accessible and able to provide assistance.

³⁵ Laura Abel, *Language Access in State Courts*, Brennan Center for Justice, 2009.

A. TIMING OF JUDICIAL CERTIFICATION

Judges may complete U visa certifications as soon as they are able to assess a victim's helpfulness or willingness to be helpful. Judges who have victims before them for temporary civil protection order proceedings should note that this limited interaction with victims is enough for judges to act as certifiers. Many judges in civil protection order cases see victims who have filed police reports or tried to report domestic violence, sexual assault, or other U visa crimes in other ways. Under the statute and U visa regulations, judges would be appropriate certifiers in these cases.

The protection order system was developed to assure that victims can receive protection based on findings, *uncontested pleadings*, the admission of abusers, or after courts hold evidentiary hearings. Protection orders are issued without regard to whether criminal cases have been initiated.³⁶ U visa certification alone does not give a victim a U visa. S/he must get certification and additionally prove that s/he suffered substantial physical or emotional injury as a result of the criminal activity, as well as meeting the other eligibility requirements previously discussed.³⁷

B. EVALUATING HELPFULNESS

The certification signed by the judge or other certifying official demonstrates that the applicant "has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity."³⁸ The helpfulness requirement was written using several verb tenses, recognizing that an applicant may apply for status at different stages of an investigation or prosecution.³⁹ Congress intended to allow an individual to petition for status at very early stages of an investigation and at each successive step.⁴⁰ The definition of "investigation or prosecution" in the statute is interpreted broadly to include victim assistance in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.⁴¹ Some examples of helpful actions include, but are not limited to, the victim calling 911 to report the crime, the victim providing a statement to the police, filing a police report, or seeking a protection order.

³⁶ See Leslye Orloff et al., *Battered Immigrants and Civil Protection Orders*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RESOURCES FOR BATTERED IMMIGRANTS* (Leslye Orloff & Kathleen Sullivan eds.) (2004).

³⁷ U.S. Immigration and Customs Enforcement, *Protecting the Homeland, Toolkit for Prosecutors*, April 2011, available at, <http://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>. But see, U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 11, January 2012, available at, http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf (clarifying that certifying officials *do not* need to determine whether the victim witness has suffered substantial mental or physical abuse due to a qualifying crime before they can sign the certification. USCIS will make the determination on a case-by-case basis during its adjudication of the U visa petition).

³⁸ 8 U.S.C. § 1184(p)(1)

³⁹ 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 1997).

⁴⁰ *Id.*

⁴¹ *Id.* at 53,020.

It is important to note that a victim who received certification and was granted a U visa has an ongoing obligation to provide assistance.⁴² Certifiers can also inform DHS if a victim is no longer helpful. However, such notification is appropriate only if the certifier determines that the victim's unwillingness to provide ongoing helpfulness was unreasonable. Whether the victim's lack of cooperation is unreasonable is to be assessed in light of the totality of the circumstances.⁴³

The full system of checks and balances involving the U visa certification process ensures that the recipient of the certification will provide ongoing assistance with the criminal case. Once a U visa has been granted the U visa regulations impose an ongoing requirement of cooperation. Any U visa victim who applies for lawful permanent residence based upon having received a U visa must prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance. It can take 12 – 18 months to adjudicate the U visa application. If a judge or other certifying official signs a certification and later determines that the facts were other than they believed to be true at the time they signed the certification or believes that the immigrant U visa victim's failure to provide ongoing assistance was unreasonable, the judge can contact DHS.⁴⁴ DHS will use the information provided by the certifier to investigate whether the U visa should be revoked. DHS will also use this information in adjudicating the victim's application for lawful permanent residency as evidence of non-cooperation that the victim will have to overcome by proving to DHS' satisfaction that they did not unreasonably refuse to cooperate.

C. APPLICATIONS FOR LAWFUL PERMANENT RESIDENCY BY U VISA RECIPIENTS

In general, U visa status is issued for a period of up to four years.⁴⁵ A U visa holder can live and work legally in the United States and petition for family members.⁴⁶ Upon certification by an approved certifying official, U visa status can be extended.⁴⁷

After three years of continuous presence in the U.S. a U visa holder is eligible to apply for adjustment of status to lawful permanent resident status.⁴⁸ Not all U visa holders will qualify for

⁴² *Id.*

⁴³ 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008) (“The rule provides that the determination of whether an alien’s refusal to provide assistance was unreasonable will be based on all available affirmative evidence and take into account the totality of the circumstances and such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant. New 8 CFR 245.24(a)(5).”)

⁴⁴ Send the victim’s name, date of birth, A-file number (if available) and the reason for the certification’s withdrawal to: U.S. Citizenship and Immigration Services/Vermont Service Center, Attn: T/U visa Unit, 75 Lower Welden Street St. Albans, VT 05479-0001

⁴⁵ See INA § 214(p)(6), 8 U.S.C. § 1184(p)(6).

⁴⁶ 8 C.F.R. § 214.4(g) (2008).

⁴⁷ An extension beyond the four-year period is permitted upon an attestation by a certifying official that the victim’s presence continues to be necessary to assist in the investigation or prosecution of that crime. This requirement does not indicate that the certifying official be the same that initially completed the victim’s Form I-918, Supplement B. INA § 214(p)(6), 8 U.S.C. § 1184(p)(6); 8 C.F.R. §214.4(g) (2008).

lawful permanent residency. To qualify a U visa holder applying for adjustment of status must also provide evidence that s/he has not unreasonably refused to provide assistance in the criminal investigation or prosecution and that his or her continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. One acceptable form of evidence is a newly executed Form I-918, Supplement B signed by an official (such as a judge) or law enforcement agency that had the responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity. The newly executed Form I-918 does not have to be signed by the original certifying official. However, the U visa holder applying for adjustment may submit other forms of evidence to prove s/he did not unreasonably refuse to cooperate with law enforcement investigation or prosecution.

Additionally, in connection with the application for lawful permanent residency, if the U visa holder departed the U.S. for any single period of time exceeding 90 days, or for shorter periods in the aggregate exceeding 180 days, s/he must include a certification – from the original certifier – that verifies that the absences were justified.

⁴⁸ Adjustment of status refers to the process where a noncitizen applies for lawful permanent residence within the United States.

U Visa Statutory and Regulatory Background

The following excerpts from the Violence Against Women Act of 2000 and its implementing regulations summarize the statutory and regulatory background on the U visa's purpose, its helpfulness requirement, and its authorization of judges as certifiers.

Statutory Authority: Purpose of the U visa

“The purpose...is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens. Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status.”⁴⁹

Regulatory Authority: Judge Certification

“To qualify for the U nonimmigrant classification...the alien must be of assistance to a Federal, State, or local law enforcement official or prosecutor, a *Federal or State judge*, the Department of Homeland Security (DHS), or other Federal, State, or local authority investigating or prosecuting criminal activity.”⁵⁰

“The rule defines a ‘certifying agency’ as a Federal, State, or local law enforcement agency, prosecutor, *judge*, or other authority, that has responsibility for the investigation or prosecution of the qualifying criminal activities designated in the [Violence Against Women Act of 2000].”⁵¹

“This rule defines ‘certifying official’ as the head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, *or a Federal, State, or local judge*.”⁵²

Regulatory Authority: Investigation or Prosecution Includes Detection

“The rule provides that the term ‘investigation or prosecution,’ used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity...[DHS] is defining the term to include the detection of qualifying activity because the detection of criminal activity is within the scope of a law enforcement officer’s investigative duties...[DHS] is defining the term to include the conviction and sentencing of the perpetrator

⁴⁹ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Pub L. 106-386 §1513.

⁵⁰ New Classification for Victims of Criminal Activity, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) (emphasis added).

⁵¹ New Classification for Victims of Criminal Activity, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007) (emphasis added).

⁵² New Classification for Victims of Criminal Activity, 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007) (emphasis added).

because these extend from the prosecution... Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which *permits judges to sign certifications* on behalf of U nonimmigrant status applications... Judges neither investigate crimes nor prosecute perpetrators. Therefore, [DHS] believes that the term ‘investigation or prosecution’ should be interpreted broadly.”⁵³

Statutory Authority: Helpfulness

“[T]he alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a *Federal or State judge*, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity...”⁵⁴

Regulatory Authority: Helpfulness

“USCIS [United States Citizenship and Immigration Services] interprets ‘helpful’ to mean assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.”⁵⁵

“The requirement was written with several verb tenses, recognizing that an alien may apply for U nonimmigrant status at different stages of the investigation or prosecution. By allowing an individual to petition for U nonimmigrant status upon a showing that he or she may be helpful at some point in the future, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of the investigation. This suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status. If the alien victim only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation, the purpose of BIWPA [Battered Immigrant Women Protection Act] is not furthered.”⁵⁶

“In addition, in order to qualify for permanent residence status on the basis of U nonimmigrant classification, the alien must not have unreasonably refused to provide assistance in the criminal investigation or prosecution. This requirement further suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status.”⁵⁷

⁵³ New Classification for Victims of Criminal Activity, 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007) (emphasis added).

⁵⁴ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Pub L. 106-386, *codified at* 8 U.S.C.

§1101(a)(15)(U)(i)(III).

⁵⁵ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

⁵⁶ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

⁵⁷ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

“The rule provides that the determination of whether an alien’s refusal to provide assistance was unreasonable will be based on all available affirmative evidence and take into account the totality of the circumstances and such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant.”⁵⁸

“Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”⁵⁹

“Although there are no specific data on alien crime victims, statistics maintained by DOJ [Department of Justice] have shown that aliens, especially those aliens without legal status, are often reluctant to help in the investigation or prosecution of crimes. U visas are intended to help overcome this reluctance and aid law enforcement accordingly.”⁶⁰

Agency Authority: Scope of Certification

“The role of the police in visa requests is simply to certify that an individual was a crime victim or witness.”⁶¹

⁵⁸ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Interim Rule. DHS Docket USCIS-2006-0067. page 25 (December 8, 2008).

⁵⁹ 72 Fed. Reg. 53014, 53014-53015 (2007).

⁶⁰ 73 Fed. Reg. 75540, 75554 (2008).

⁶¹ See Janell Ross, *Metro Nashville police block visas for crime victims, witnesses*, THE TENNESSEAN (Apr. 18, 2010), <http://www.tennessean.com/article/20100418/NEWS01/4180357/1001/NEWS> (paraphrasing DHS spokeswoman).

U Visa Certification by Judges and Magistrates: Frequently Asked Questions⁶²

BACKGROUND

What is the purpose of the U visa?

In keeping with humanitarian interests of the United States, Congress created the U visa to encourage immigrant crime victims to report crimes without fear of deportation and to “encourage law enforcement to better serve immigrant crime victims.”⁶³

CERTIFICATION

What is the U visa certification?

The U visa certification is a Department of Homeland Security (DHS) form (I-918 Supplement B) that a U visa applicant submits with a U visa application to the United States Citizenship and Immigration Services (USCIS) of DHS.⁶⁴ The certification is a sworn statement that says an individual is a victim of a qualified criminal activity and has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of that criminal activity.⁶⁵

What is U visa qualifying criminal activity?

U visa qualifying criminal activity involves a violation of federal, state, or local criminal law (or any similar activity), and specifically includes:

*Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.*⁶⁶

⁶² This document was modeled after the *Questions and Answers about U Visas* document, created by the International Institute of the Bay Area. Legal Momentum and the Vera Institute of Justice wish to acknowledge Susan Bowyer..

⁶³ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a) (OCT. 28, 2000).

⁶⁴ USCIS is the agency within DHS responsible for adjudicating applications for immigration benefits, work authorization, and naturalization. Two other branches of DHS are responsible for immigration enforcement activities: Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

⁶⁵ INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2000).

⁶⁶ INA § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii) (2000). As amended by the Violence Against Women Reauthorization Act of 2013.

Although not all-inclusive, the list of qualifying criminal activity represents the many types of behavior that can constitute domestic violence, sexual abuse, trafficking, or are crimes that often target vulnerable immigrants as victims.⁶⁷

What constitutes *helpfulness*?

Helpfulness refers to the victim's willingness to assist during the detection, investigation, or prosecution of criminal activity. Helpfulness can be as simple as a victim reporting a crime to the police or the victim's willingness to seek a protection order or a temporary protection order. When a victim obtains a temporary protection order, the victim does so knowing that the order will be served on the perpetrator by local law enforcement. Victims who seek civil protection orders demonstrate willingness to be helpful by obtaining an order the violation of which is a crime that they can enforce by calling the police to report future protection order violations. Some of those future protection order violations will be crimes in and of themselves (e.g. assault, threats to kill) other protection order violations become crimes because the actions violate the protection order issued by the judge against the perpetrator. (e.g. violation of a no contact provision). Victims may also demonstrate helpfulness through evidence in the protection order application or testimony before the court about steps they have taken to help police or prosecutors. It may also include participating in other aspects of the investigation or prosecution, such as identifying a perpetrator, appearing at court hearings, testifying, or filing victim-impact statements. It may also occur at the victim's first contact with the justice system, such as the filing of a protection order. Once a victim has been cooperative, the individual has a continuing responsibility to assist officials and is required to provide reasonable ongoing cooperation in order to apply for lawful permanent residence.⁶⁸ To prevent further harm to victims, there is an exception to the ongoing cooperation requirement when victims can demonstrate that their inability or refusal to cooperate is not unreasonable.⁶⁹ In some cases it may be unsafe for a victim to fully cooperate with law enforcement. Such situations include trauma or threats of retaliation.⁷⁰ If a victim has been helpful in detection or investigation of criminal activity, law enforcement can issue U visa certification even if the victim later found it too difficult to continue cooperating.

Which judicial officers are eligible to sign U visa certifications?

⁶⁷ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 7 (2007).

⁶⁸ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 85 (2007).

⁶⁹ U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 4, January 2012, available at, http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf.

⁷⁰ USCIS will consider in deciding reasonableness of non-cooperation "general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant." 8 C.F.R. 245.24(a)(5); 73 Fed. Reg. 75540, 75547, 75560 (Dec. 12, 2008).

Any federal, state or local judge may sign a U visa certification. The term “judge” has been defined as a “public official appointed or elected to hear and decide legal matters in court.”⁷¹ The Supreme Court has defined the term as “a public officer, who, by virtue of his office, is clothed with judicial authorit[y].”⁷² Such a term can include public officers named as judges, associate judges, justices, magistrates, administrative law judges, adjudicators, referees, masters, commissioners and hearing officers in federal, state, or local courts or other places where “justice is judicially administered.”⁷³ Arbitrators, mediators, and conciliators may also be considered judges if appointed or elected by law to administer justice.

Why is certification by a judge or magistrate so important to immigrant victims?

The U visa affords undocumented victims temporary legal immigration status. Without this, victims may be afraid to seek assistance from law enforcement, prosecutors, and courts when they are victimized by a spouse, family member, employer, or even a stranger. Undocumented victims fearing deportation may risk exploitation and ongoing victimization rather than coming forward to report crimes, seek protection, and/or cooperate in the detection, investigation, prosecution, conviction, or sentencing in criminal cases. The U visa also provides a victim with employment authorization and protection against deportation, critical tools in establishing economic independence and long-term safety.

Who can sign a U visa certification?

In order to approve a U visa, DHS requires a U visa certification. Any agency that detects, investigates, prosecutes, convicts, or sentences perpetrators of criminal activity may sign a certification.⁷⁴ The U visa statute and DHS regulations explicitly list judges as U visa certifiers: federal, state and local law enforcement agencies and prosecutors, Child Protective Services, Adult Protective Services, the Equal Employment Opportunity Commission, Department of Labor, NLRB, state labor law enforcement entities, and other government agencies that meet these guidelines.⁷⁵ Individual Federal, state, and local judges adjudicating any type of proceeding (family, civil, criminal, administrative) are authorized by federal statute and federal regulations to act as certifying officials.⁷⁶

Why did Congress authorize multiple certifiers?

⁷¹ *Leber v. Stretton*, 928 A.2d 262, 267 (Pa. Super. Ct. 2007) (quoting a dictionary definition of the term “judge” to support the argument that the term includes district justices). The Court includes magisterial district judges in the exercise of criminal or quasi-criminal jurisdiction as judges.

⁷² *Todd v. United States*, 158 U.S. 278 (1895). The original quote is “authorities.”

⁷³ *Id.* at 284.

⁷⁴ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000).

⁷⁵ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000); New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 23 (2007).

⁷⁶ 8 C.F.R. 214.14(a)(2). Unlike other certifying officials, approval by any supervisor is needed for judicial certifications. Each individual judge or magistrate is authorized to sign certifications.

In designing the U visa Congress sought to provide U visas to protect immigrant crime victims and encourage their cooperation in criminal investigations and prosecutions as early as possible after the victim was identified as a crime victim. Congress understood that immigrant victims first come in contact with the justice system in a variety of ways. Some victims find their way to advocates who assist them in filing for a civil protection order and only after receiving the protection order do victims feel able to cooperate in the criminal prosecution of their abuser. Other victims call the police to report domestic violence, sexual assault or other crimes committed against them. The goal was to provide a range of avenues for U visa certification from justice system professionals whose jobs include making determinations about whether or not there was probable cause or more to believe that criminal activity was perpetrated and against which victim. The authority to issue U visa certifications was not designed to be consecutive or mutually exclusive among authorized certifiers, but rather was designed to facilitate certification as early as possible in the case and to provide multiple avenues to certification so that eligible victims could obtain certification even when they lived in a jurisdiction in which one agency eligible to issue certifications as a matter of practice never did so.

Is a judge required to sign the certifications?

No. Judges are not required to sign the certifications.⁷⁷ The decision to sign a certification is discretionary.⁷⁸ However, Congress enacted the U visa protections with the expectation that judges are in a good position to detect criminal activity and assess the victim's helpfulness and willingness or likelihood to be helpful.⁷⁹ A victim cannot obtain a U visa without a certification.⁸⁰

CERTIFICATION SCENARIOS

Can a judge certify an application for a crime that happened long ago?

Yes. There is no applicable statute of limitations that precludes signing a certification. The U visa was enacted in January 2001 as part of the Victims of Trafficking and Violence Prevention Act of 2000.⁸¹ However, USCIS did not promulgate regulations until September 2007.⁸² As a result, many individuals who were crime victims and likely eligible for U visas were unable to apply. Many of them still reported crimes, despite the lack of immigration protections. Many more were too scared to report crimes to law enforcement for the reasons Congress contemplated.⁸³ Similarly, by not creating a reporting statute of limitations, Congress protected individuals who were victimized before the law took effect (and before regulations were clarified) by allowing them to meet the

⁷⁷ See *Orosco v. Napolitano*, 598 F.3d 222 (5th Cir. 2010) (holding that the decision to decline to issue certification is discretionary).

⁷⁸ *Id.*

⁷⁹ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a)(2)(B) (OCT. 28, 2000).

⁸⁰ INA § 214(p)(1); 8 U.S.C. § 1184 (p)(1).

⁸¹ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 (OCT. 28, 2000).

⁸² New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 (2007).

⁸³ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a) (OCT. 28, 2000).

criteria required for a law enforcement officer to sign a certification. Evidence that may be useful for granting U visa certification includes the case number of prior cases dealing with the qualifying activity. Applicants may also provide a declaration describing the activity and helpfulness or willingness to be helpful, proposed orders, police reports, protection orders, and other supporting documentation.

Can a judge sign a certification when the crime being investigated or prosecuted is not listed as a qualifying crime under the U visa statute?

Yes. There are many instances in which the crime being prosecuted (e.g., Drug distribution) is not a crime listed in the U visa, but where a witness in that prosecution has also been a victim of a U visa listed crime (e.g., domestic violence perpetrated by the drug dealer). When the victim has come forward and is willing to assist with the investigation or prosecution of the domestic violence, the certification can be based on the domestic violence case. The certifying judge need only state that the individual is a victim of a qualifying crime.⁸⁴ It is not necessary that the qualifying criminal activity be the crime that law enforcement and prosecutors have chosen to investigate or prosecute.⁸⁵

Can a judge sign a certification if the victim is not needed in the course of the investigation or prosecution?

Yes. Per Congress, the certification process does not hinge on or require a victim's testimony or completion of a prosecution.

Can a judge sign a certification if the prosecutors decide(d) not to prosecute the perpetrator?

Yes. A victim willing to help in the investigation or prosecution of criminal activity is able to access U visa protections regardless of whether the perpetrator is investigated or prosecuted.⁸⁶ In many cases prosecutors do not prosecute, such as when the alleged offender has absconded, enjoys diplomatic immunity, or may be a perpetrator against whom law enforcement has not yet fully built a case. The accused person will usually know at least that a police report has been filed against him (or her), even if charges are never filed. The victim needs protection in these cases because risk of retaliation for reporting the crime can be considerable.

⁸⁴ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 38 (2007).

⁸⁵ "For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity. For example, in the course of investigating Federal embezzlement and fraud charges, the investigators discover that the perpetrator is also abusing his wife and children, but because there are no applicable Federal domestic violence laws, he is charged only with non-qualifying Federal embezzlement and fraud crimes." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 18 (2007).

⁸⁶ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Information for Law Enforcement Officials, Immigration Relief for Victims of Human Trafficking and Other Crimes*, available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf.

Can a judge sign a certification if the perpetrator is not convicted?

Yes. Prosecutors must build a case considering the full evidence, including the victim's statement. Ultimately, obtaining a conviction depends on many factors. Regardless of how the prosecution moves forward, however, the victim is at risk. The victim may be at a greater risk if the perpetrator is not convicted. The U visa certification is designed to be issued when the judge believes that the individual is a victim of a qualifying criminal activity. The criminal burden of proof does not apply and an acquittal in a criminal case does not affect certification, which requires only an assessment of victimization and helpfulness or willingness to be helpful.

Can a judge sign a certification if the individual seeking certification does not appear to be a victim of a qualifying criminal activity?

No. If the judge does not believe that the individual seeking certification is a victim of a qualifying criminal activity, the judge should not sign the certification unless it is for an indirect victim (see below). The Department of Homeland Security recognizes that a "qualifying criminal activity may occur during the commission of non-qualifying criminal activity. For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity."⁸⁷ Whether an immigrant has been a victim of a qualifying criminal activity is not, however determined by the crimes being alleged in the case that the prosecutor has brought before the court. A victim of domestic violence can be a witness in a drug, gang, or firearms prosecution. Drug, gang and firearms crimes are not U visa crimes. However, in some instances the witness the prosecution needs in the drug case, was the girlfriend of the drug dealer who was also a victim of domestic violence. When the immigrant victim has been helpful or is willing to be helpful in a domestic violence case and the prosecutors, instead of prosecuting her abuser for the domestic violence bring a prosecution for the drug offence. The domestic violence victim who is a witness in the drug prosecution can receive certification based the domestic violence. What crime is being ultimately prosecuted against the perpetrator of a qualifying criminal activity is not the determining factor in the certification. The controlling factor is what criminal activities the victim/witness has suffered and their willingness to be helpful.

Can a judge sign a certification if the victim's testimony conflicts with earlier statements or is harmful to the case?

Maybe, depending on why the testimony conflicts with earlier statements. For example, language barriers and the use of unqualified interpreters often create the perception that an immigrant victim's testimony has changed when the conflict is the result of faulty or no translation. In cases of

⁸⁷ Department of Homeland Security, New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed.Reg. 53018 (September 17, 2007).

particularly traumatic crimes, it may take some time before a victim is able to provide complete information, even if the victim is being helpful. This can also lead to unintended conflicting statements.

Can a judge sign a certification if there is evidence that the victim is also a crime perpetrator?

Yes. Certification can be granted when a judge believes that the immigrant has been the victim of criminal activity, even if the victim has been arrested as a crime perpetrator in the past. Victims filing U visa applications are required to disclose their criminal history and their fingerprints are taken before their U visa case is adjudicated. Congress anticipated that some U visa applicants may have a history that includes a criminal conviction and gave DHS the discretion to decide whether to grant waivers of inadmissibility on a case-by-case basis to U visa victims when the waiver is in the public or national interest.⁸⁸ Many immigrant crime victims have been controlled in such a way that they end up being arrested based on information from the perpetrator or because of poor interpretation or fear of disclosing the truth about abuse to law enforcement. Despite federal and state policies to the contrary, some domestic violence incidents result in arrest of both the perpetrator and the victim, despite government policies discouraging arrest of the victim. Such arrests fail to acknowledge an overall power and control dynamic that exists in abusive relationships.⁸⁹ DHS will screen the criminal background of every U visa applicant and the agency will investigate every arrest. If a U visa applicant is found to be the perpetrator of the crime (e.g., someone identified as a trafficking victim is actually the trafficker), DHS precludes the individual from obtaining U visa relief.

Can a judge sign a certification if there are concerns about the victim’s credibility?

The judge is responsible for ensuring that the information on the certification is true and complete. If the judge believes that a crime was committed, the U visa applicant is the victim, and the victim has been, is being or is likely to be helpful, the judge can sign the certification even when the victim may not turn out to be the best witness and prosecutors decide not to use this victim as a witness at trial. The certification is one required piece of evidence in the victim’s application. The application submitted to DHS also includes a detailed affidavit from the crime victim, evidence of substantial harm as a result of the criminal activity and fingerprints from which DHS does a full criminal background check. DHS employs rigorous standards to check the credibility of every applicant.

Are there times when someone might be an indirect victim and still seek certification?

⁸⁸ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007)

⁸⁹ See “Family Violence: A Model State Code sec. 205A(2)” The National Council for Juvenile and Family Court Judges (1994) for an outline of considerations in dual arrest cases. Many states have adopted policies that encourage arrest of the predominant aggressor in domestic violence cases.

Yes. Indirect victims are able to seek U visas in cases when the direct victim is deceased as a result of the crime (e.g., murder or manslaughter), incompetent, incapacitated, or under the age of 18.⁹⁰ The indirect victims can include spouses, children under 21 years of age, and parents of the direct victim. If the direct victim is or was under 21 years of age, parents and unmarried siblings under 18 years of age can also apply as indirect victims.⁹¹ Parents of U.S. citizen crime victims can be considered indirect victims. By extending the victim definition to include certain family members of deceased, incapacitated, or incompetent victims, family members are encouraged to fully participate in the investigation or prosecution and may provide valuable information that would otherwise not be available.⁹²

What if a crime victim does not have an immigration attorney, practitioner, or advocate but the judge wants to sign a certification?

Judges may sign certifications for victims who have not yet secured legal representation or victim advocate assistance.⁹³ U visa certifiers should recommend that victims have representation and/or victim advocate assistance before applying. Judges should also refer crime victims to agencies in the community with experience assisting immigrant victims.⁹⁴ These agencies will provide social services and assist victims in securing representation before the victim applies for a U visa. Judges are encouraged to sign certifications, provide the victim a copy, and refer victims to community groups or organizations that can provide legal advice or representation or to advocates who can access technical assistance and support.

Can the judge maintain relationships with community organizations that work with immigrant victims of violence?

A report funded by the National Institute of Justice recommends that courts work with community-based organizations as part of an effective response to the needs of domestic violence victims with limited-English proficiency. The report suggests coordination with justice system partners, domestic violence service providers, and organizations working with immigrant communities. It further

⁹⁰ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at pages 12-15 (2007); 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

⁹¹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at pages 12-15 (2007); 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

⁹² New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at pages 12-15 (2007); 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

⁹³ If an officer signs a certification before the victim has located counsel, the officer may need to reissue the certification at a future date to certify additional or different crimes or if the certification expired due to delays in the victim attaining legal representation. Note, victims are not required to because the attorney has to apply for the U visa.

⁹⁴ For a list of victims services, victim advocates, and legal representation programs with experience working with immigrant victims in your state or local jurisdiction see the *National Directory of Programs With Experience Serving Immigrant Victims* at <http://iwp.legalmomentum.org/reference/service-providers-directory>

encourages courts to reach out proactively to community-based organizations in order to discover barriers to access for immigrant domestic violence victims.⁹⁵

If a judge signs the certification, does the victim automatically obtain lawful immigration status?

No. DHS requires U visa applicants to provide significant further documentation to meet all other U visa requirements.⁹⁶ This documentation includes evidence of helpfulness, substantial harm, criminal history, or lack thereof, and history of immigration violations.

Can the certification be considered a benefit for the victim in the course of a prosecution of the perpetrator?

This may be a concern for prosecutors. Please refer any prosecutors to The Vera Institute, Legal Momentum or the National Immigrant Women’s Advocacy Project staff and we will provide technical assistance specific to that situation by sending an e-mail to niwap@wcl.american.edu or calling (202) 274-4457.

CONCERNS

Once a certification is signed, what are the ongoing obligations for a judge?

If a victim later appears not to be a victim or is no longer being helpful, a certifying officer should contact the Victims and Trafficking Unit at the Vermont Service Center of the U.S. Citizenship and Immigration Services to report any such changes.⁹⁷ However, such notification is appropriate only when the victim’s lack of cooperation is not reasonable. A victim may choose not to continue to provide information or testimony for a number of reasons, including the crime perpetrator’s coercing the victim not to testify or threatening the victim or family members with further harm or other retaliation if s/he continues cooperating. The regulations use a “totality of circumstances” test to assess whether a U visa holder unreasonably refused to provide assistance.⁹⁸ Some factors to consider in ascertaining whether the victim’s lack of cooperation is reasonable are the amount of time that has passed since the victimization, the level of trauma, the availability of victim services and resources, and financial stability.⁹⁹

What if the victim is arrested after the certification is signed?

⁹⁵ See Brenda K. Uekert et al., *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts’ Capacity to Provide Protection Orders* 10 (2006).

⁹⁶ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 39 (2007); 72 Fed. Reg. 53014 (Sept. 17, 2007).

⁹⁷ Send the victim’s name, date of birth, A-file number (if available) and the reason for the certification’s withdrawal to: U.S. Citizenship and Immigration Services/Vermont Service Center, Attn: T/U visa Unit/75 Lower Welden Street St. Albans, VT 05479-0001

⁹⁸ 8 CFR 245.24(a)(5) (2009)

⁹⁹ 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008).

DHS will investigate the arrest of every person with a pending application. Certifying officials have no duty to track the criminal history of every victim receiving a U visa certification. U visa applicants with criminal convictions must disclose these convictions and apply for a waiver related to criminal convictions as part of the U visa adjudication process. USCIS has the discretion to grant waivers if it is in the national or public interest to do so. After the U visa is granted, DHS will review an individual's updated criminal history when the U visa holder applies for lawful permanent residence.¹⁰⁰ If the U visa holder is arrested, fingerprint sharing agreements between DHS and local law enforcement will bring the case to the attention of DHS officials. Once an immigrant is granted lawful permanent status, a criminal conviction can have immigration consequences that may lead to removal of the immigrant from the United States and criminal convictions are closely monitored by the Department of Homeland Security.

What if the victim is in immigration removal proceedings or immigration detention?

An immigrant in removal proceedings and/or detention may still be eligible for and granted a U visa. Many circumstances, including reports about the victim to DHS by the perpetrator, can lead a crime victim to be detained and placed in removal proceedings. Immigration enforcement actions are subject to prosecutorial discretion and DHS policies discourage initiation or continuation of removal proceedings against crime victims and witnesses and in particular victims of domestic violence, sexual assault, human trafficking, U visa and other serious crimes. Judges should encourage immigrants in removal proceedings to obtain legal advice from an experienced immigration attorney. The fact that an immigrant victim is in immigration detention or is in immigration proceedings before an immigration judge is not relevant to whether a judge signs the U visa certification.

CONTACTS

If a judge has questions about a particular case, who can provide guidance?

For questions about U visa certification:

Thomas Pearl, Assistant Center Director, Victims and Trafficking Unit Vermont Service Center, USCIS: Thomas.pearl@dhs.gov or Scott Whelan, Office of Policy and Strategy, USCIS: (202) 272-8137 or scott.whelan@dhs.gov.

For judges seeking technical support or consultation, please contact the National Immigrant Women's Advocacy Project (NIWAP) at niwap@wcl.american.edu or call (202) 274-4457 to receive technical support from U visa certification experts including law enforcement experts on U visa certification.

¹⁰⁰ U visa holders who apply for lawful permanent residence must also meet several other requirements and do not automatically receive permanent immigrant status in the United States. INA §245(m).

Redacted I-918 Supplement B, U Nonimmigrant Status Certification

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

OMB No. 1615-0104; Expires 08/31/2010

I-918 Supplement B, U Nonimmigrant Status Certification

START HERE - Please type or print in black ink.

Part 1. Victim information.	For USCIS Use Only.	
Family Name <input type="text" value="[REDACTED]"/>	Given Name <input type="text" value="[REDACTED]"/>	Middle Name <input type="text" value=""/>
Other Names Used (Include maiden name/nickname) <input type="text" value="none"/>		
Date of Birth (mm/dd/yyyy) <input type="text" value="[REDACTED]"/>	Gender <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	
Part 2. Agency information.		
Name of Certifying Agency <input type="text" value="[REDACTED] Police Department"/>		
Name of Certifying Official <input type="text" value="[REDACTED]"/>	Title and Division/Office of Certifying Official <input type="text" value="Captain [REDACTED] Division"/>	
Name of Head of Certifying Agency <input type="text" value="Chief [REDACTED]"/>		
Agency Address - Street Number and Name <input type="text" value="[REDACTED]"/>		Suite # <input type="text" value="515"/>
City <input type="text" value="[REDACTED]"/>	State/Province <input type="text" value="CA"/>	Zip/Postal Code <input type="text" value="[REDACTED]"/>
Daytime Phone # (with area code and/or extension) <input type="text" value="[REDACTED]"/>		Fax # (with area code) <input type="text" value="[REDACTED]"/>
Agency Type <input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local		
Case Status <input type="checkbox"/> On-going <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Other		
Certifying Agency Category <input type="checkbox"/> Judge <input checked="" type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other		
Case Number <input type="text" value="070 840 654"/>	FBI # or SID # (if applicable) <input type="text" value=""/>	
Part 3. Criminal acts.		
1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)		
<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury
<input checked="" type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes
		<input type="checkbox"/> Slave Trade
		<input type="checkbox"/> Torture
		<input type="checkbox"/> Trafficking
		<input type="checkbox"/> Unlawful Criminal Restraint
		<input type="checkbox"/> Witness Tampering
		<input type="checkbox"/> Related Crime(s)
		<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	
Remarks	

Form I-918 Supplement B (08/31/07)

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)
08/18/2007			

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

California Penal Code 273.5

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.

N/A

c. Where did the criminal activity occur?

CA

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.

The victim's former live in boyfriend pushed her and then threw a shoe at her, striking her in the eye.

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

The victim's right eye reddened. Bruise below the right eye. Victim's vision in right eye affected.

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

Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

Victim spoke freely with the responding officers.

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

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.

[Redacted Signature]

Date (mm/dd/yyyy)

05/28/2010

Form I-918 Supplement B Sample Judges' Certification

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

OMB No. 1615-0104; Expires 08/31/2010

I-918 Supplement B, U Nonimmigrant Status Certification

START HERE - Please type or print in black ink.

Part 1. Victim Information.

Family Name Orloff	Given Name Leslye	Middle Name E
Other Names Used (Include maiden name/nickname)		
Date of Birth (mm/dd/yyyy) 08/28/1956		
Gender <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female		

Part 2. Agency information.

Name of Certifying Agency Washington, D.C.		
Name of Certifying Official		Title and Division/Office of Certifying Official Superior Court Judge.
Name of Head of Certifying Agency Judge Lora Livingston		
Agency Address - Street Number and Name 555 Indiana Avenue NW		
City Washington	State/Province DC	Zip/Postal Code 20005
Daytime Phone # (with area code and/or extension) 202-555-5555		Fax # (with area code) 202-555-5556
Agency Type <input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local		
Case Status <input type="checkbox"/> On-going <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Other		
Certifying Agency Category <input checked="" type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other		
Case Number H-62632-11		FBI # or SID # (if applicable)

For USCIS Use Only.

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Reloc Rec'd	
Date	
Remarks	LEAVE BLANK

Part 3. Criminal acts.

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

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

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?

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.

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

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

Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck. She came to court seeking a protection order, which was granted.

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
William Orloff	Husband	Defendant
Based on Probable Cause and my issuance of a protection order,		

Part 6. Certification.

I am the head of the agency listed **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 **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)

Judge Lora Livingston

January, 2014

Sample Information Flyer for Victims

WERE YOU THE VICTIM OF A CRIME?

If you or a close family member were the victim of crime or abuse, you may be able to get a temporary visa, the U visa, that can protect you from being deported—if you are willing to help investigate or prosecute that crime or abuse.

You may be eligible for a U visa if you or your family member were the victim of one of these crimes:

rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting¹⁰¹, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law

Were you a victim of one of the crimes listed above?

Was a close family member of yours a victim of a crime listed above?

Were you or a close family member the victim of a similar crime?

If your answer is YES, you and/or your family member may be able to apply for a U visa.

The U visa is a temporary visa for victims who report the crime to police or the courts. The U visa protects you from being deported for four years. It provides temporary legal immigration status if you are a crime victim and allows you to work legally. You may be able to apply for a U visa if you helped or will help investigate or prosecute a crime.

If you have an emergency, call 911 right away.

To learn more about the U visa program, contact an immigration attorney, a victim services or family justice center, or someone with expertise in immigration law.

¹⁰¹ § 8 U.S.C. 1351

¿FUE VÍCTIMA DE UN CRIMEN?

Si usted—o un familiar cercano—fue víctima de un crimen, puede calificar para obtener una visa-U temporal que le proteja de la deportación, si ayuda en la investigación y procesamiento de un crimen.

Para calificar para una visa-U, si usted o un miembro de su familia fue víctima de cualquiera de estos crímenes:

violación, tortura, tráfico de personas, incesto, violencia doméstica, asalto sexual, contacto sexual abusivo, prostitución, explotación sexual, acoso, mutilación sexual femenina, toma de rehenes, servidumbre por deudas, servidumbre involuntaria, trata de esclavos, secuestro, rapto, detención criminal ilegal, encarcelamiento falso, chantaje, extorsión, homicidio imprudencial, homicidio, asalto con mala intención, alteración de testigos, obstrucción de justicia, perjurio, fraude en contratos laborales extranjeros, sollicitación para cometer cualquier de los crímenes aquí mencionados, o *cualquier actividad similar* que viole la ley.

¿Fue usted víctima de alguno de los crímenes mencionados anteriormente?

¿Fue un familiar cercano suyo, víctima de alguno de los crímenes mencionados anteriormente?

¿Fue usted, o un familiar cercano, víctima de un crimen similar?

Si su respuesta es Sí, usted y/o su familiar pueden calificar para recibir una visa-U.

La visa-U es una visa temporal para víctimas que reportan su crimen a la policía. La visa-U le protege de la deportación durante cuatro años. La visa-U le da status legal de inmigración si usted ha sido víctima de un crimen y le permite trabajar legalmente. Si usted ayudó o va a ayudar en la investigación o procesamiento de un crimen.

Para emergencias llame al 911 inmediatamente.

Para más información sobre el programa de la visa-U, contacte a un abogado de inmigración, un centro de servicios para víctimas, un centro de justicia para la familia, o una persona con experiencia en las leyes de inmigración.

Resource List

For Technical Assistance on the use of the U visa contact the National Immigrant Women's Advocacy Program (NIWAP). To receive assistance from NIWAP staff or one of our law enforcement U visa trainers, please call or email: (202) 274-4457 or orloff@wcl.american.edu.

Department of Homeland Security Policy Guidelines on U visa certifications:

- U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement:
http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf.
- Information for Law Enforcement Officials, Immigration Relief for Victims of Human Trafficking and Other Crimes:
http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf.

Copies of the following U visa forms are available for download at:

- Form I-918, Petition for U Nonimmigrant Status (U visa application form):
<http://www.uscis.gov/files/form/i-918.pdf>
- Form I-918, Supplement B, U Nonimmigrant Status Certification (U visa certification form):
<http://www.uscis.gov/files/form/i-918.pdf> (scroll down to page 17).
- Immigration Options for Victims of Crime (United States Citizenship and Immigration Services Brochure): <http://www.uscis.gov/USCIS/Humanitarian/Battered Spouse, Children & Parents/Immigration Options for Victims of Crimes.pdf>

For additional materials and information on the U visa and other forms of immigration relief available for immigrant victims, including multilingual materials, please visit:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges>

For further information on U visa certification, please visit

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors>

For DHS training videos on U visa certification, please visit

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration>

For webinars on the U visa and immigrant crime victims legal rights, please visit

<http://niwaplibrary.wcl.american.edu/reference/webinars>

Case Law:

- *Garcia v. Audubon Communities Management, LLC*, 2008 WL 1774584 (E.D. La. 2008):
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/Garcia-v-Audubon.pdf/view>
(Holding that a federal judge is qualified to certify U visa applications).

Sample Memorandum in Support of Motion for U Visa Certification

(begins on the next page)¹⁰²

¹⁰² Developed by Jennie Pasquarella, ACLU of Southern California; Madhu Sharma, Stone & Grzegorek LLP (California); Brianna Fuller, Jeffrey Aaron & Kay Otani, Federal Public Defender for the Central District of California; and Legal Momentum.

[INSERT COURT NAME AND JURISDICTION]

[INSERT PARTY NAME]

v.

[INSERT PARTY NAME]

.

NO. [INSERT DOCKET NUMBER]

**MEMORANDUM IN SUPPORT OF
MOTION FOR U VISA
CERTIFICATION**

Judge: [INSERT JUDGE NAME]

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8 C.F.R. § 214.14(c)(2)(i)	X
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72 Fed. Reg. 53019	X
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INTRODUCTION

[*Insert applicant name*] (hereinafter "Applicants") file this motion to respectfully request this Court to sign [*his/her/their*] certification form[s] so that the [*he/she/they*] may apply for the U visa.

The U visa is a form of immigration relief specially designed to protect victims of certain criminal activity who are helpful to the investigation, prosecution, detection, conviction, or sentencing of criminal activity. With the required certification, which may be signed by a state or federal judge, Applicants can then apply for the U visa with the U.S. Citizenship and Immigration Service ("USCIS").

Applicants currently reside in the United States. However, they have not received any immigration protection to legalize their status and enable them to work to support themselves despite their helpfulness in the [*investigation/prosecution/detection/sentencing/conviction*] of criminal activity. The U visa would provide them lawful status for a four-year period, as well as employment authorization.

U visa certification is appropriate in this case because Applicants are detected victims of qualifying criminal activity and [*have been helpful/will be helpful*] in the [*investigation/prosecution*] of the perpetrators. Applicants' need for immigration relief and a work permit has grown more exigent. [*explain exigent circumstances*] Given the exigencies of their circumstances, we ask this Court to consider this motion and sign Applicants' U visa certifications on an expedited basis.¹⁰³ Attached as Exhibit[s] are proposed completed certification form[s], which may simply be signed by this Court.

FACTUAL BACKGROUND

[Describe the qualifying criminal activity that was perpetrated against the victim. Qualifying criminal activity includes: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting, solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state, or local criminal law. Describe any evidence of applicants' helpfulness or willingness to be helpful to the detection, investigation, or prosecution of the criminal activity.]

¹⁰³ Although Immigration and Customs Enforcement ("ICE") and law enforcement agencies are also certifying officials for the purpose of the U visa certification, this Court is the most appropriate certifying entity because it can neutrally execute the certification in accordance with the statute and the governing regulations.

ARGUMENT

I. This Court Has Jurisdiction to Consider this Motion and Certify Applicants for the U visa.

This Court has jurisdiction to consider this motion. Congress has authorized the granting of U visas, and regulations implementing that provision make clear that judges can certify victims for the U visa. 8 C.F.R. § 214.14(c)(2)(i) (certifying official may be a "Federal, State, or local judge"); 8 U.S.C. § 1101(a)(15)(U)(i)(III). *See also Garcia v. Audubon Communities Management, LLC*, 2008 WL 1774584 (E.D. La. 2008) ("It is undisputed that a federal judge is qualified to 'certify' U visa applications.").

II. This Court Should Certify Applicants for U visa Relief.

Congress created the U visa in order to "strengthen the ability of law enforcement agencies to investigate and prosecute" certain crimes, while offering "protection to victims of such offenses in keeping with the humanitarian interests of the United States." 72 Fed. Reg. 53015; Battered Immigrant Women Protection Act of 2000, §1513(a)(2)(A), 114 Stat. at 1533-34 (codified at 8 U.S.C. § 1101 (2000)). "Congress also sought to encourage law enforcement officials to better serve immigrant crime victims." 72 Fed. Reg. 53015.

In order to apply to USCIS for a U visa, an applicant must obtain a certification of "helpfulness" from a "certifying agency" on Supplement B to Form I-918, also known as "U Nonimmigrant Status Certification." 72 Fed. Reg. 53020; *see* 8 C.F.R. § 214.14(c)(2)(i). The "U Nonimmigrant Status Certification" confirms that the applicant "has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim." 8 C.F.R. § 214.14(a)(12).¹⁰⁴

The crimes that qualify for U visa protection include "one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States":

Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction;

¹⁰⁴ An individual is eligible for the U visa if he or she (1) suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; (2) possesses information concerning the qualifying criminal activity; (3) was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal act to, *inter alia*, a federal law enforcement official, a federal prosecutor, or a federal judge; and (4) the criminal activity violated the laws of the United States or occurred in the United States. 8 U.S.C. § 1101(a)(15)(U)(i) (eligibility criteria); 8 C.F.R. § 214.14(b)(1)-(4) (same). An applicant must demonstrate to the satisfaction of the USCIS that he or she meets all of the U visa eligibility requirements in order for USCIS to grant the U visa application. 8 C.F.R. § 214.14(c)(4). At the certification stage, however, a certifying official need only consider the requirements for certification. *See* 8 C.F.R. § 214.14(c)(2)(i) (certification requirements).

*unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.*¹⁰⁵

8 C.F.R. § 214.14(a)(9). "The term 'any similar activity' refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." *Id.*

To certify a victim for the U visa, the certifying official must be able to attest that six factors are present: (1) the person certifying is "the head of the certifying agency...or is a Federal, State, or local judge;" (2) that the authority is responsible for the "detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity;" (3) that the applicant has been a victim of a qualifying criminal activity that the certifying agency is "investigating or prosecuting;" (4) that the petitioner possesses information concerning the qualifying criminal activity; (5) that the petitioner "has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity;" and (6) that the qualifying criminal activity violated U.S. law or occurred within the United States. 8 C.F.R. § 214.14(c)(2)(i).

U visa certification is appropriate in this case because the five factors required for certification are present.

A. The Honorable Judge [insert name] is a "certifying official."

The first factor is satisfied because a judge is a "certifying official" who may sign the certification. 8 C.F.R. § 214.14(c)(2)(i) (certifying official may be a "Federal, State, or local judge"). *See also Garcia v. Audubon Communities Management, LLC*, 2008 WL 1774584 (E.D. La. 2008) ("It is undisputed that a federal judge is qualified to 'certify' U visa applications."); 72 Fed. Reg. 53023-24.

B. This Court has before it sufficient evidence establishing that there is probable cause to believe that the immigrant has been a victim of qualifying criminal activity.

The second factor is satisfied because this Court is authorized by the Department of Homeland Security to detect of qualifying criminal activity in the case before the court anytime the court hears a case or at any stage of a case has probable cause to believe that a non-citizen has been a victim of criminal activity and has been, is being or is likely to be helpful detection, investigation, prosecution, conviction or sentencing.¹⁰⁶ *[Describe the court's role in the present case. This may*

¹⁰⁵ As amended by the Violence Against Women Reauthorization Act of 2013.

¹⁰⁶ 8 C.F.R. § 214.14(a)(5). In defining the U visa statutory requirement regarding the victim's helpfulness in a "investigation or prosecution", the Department of Homeland Security determined that "Investigation or prosecution should be interpreted broadly" in

include participation in a criminal case, a judicial finding of violence in a protection order or custody case, detection of criminal activity in a civil, probate, small claims, immigration, or employment case.]

The U visa regulations explicitly provide that judges, whether state or federal, can certify for the U visa at the outset of the case, before a finding of fact or criminal disposition in the case, by requiring only that the criminal activity be *detected*. Detection is akin to probable cause. Indeed, the regulations state "an alien may apply for U nonimmigrant status at different stages of the investigation or prosecution. By allowing an individual to petition for U nonimmigrant status upon a showing that he or she may be helpful at some point, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation." 72 Fed. Reg. 53019. *See Audubon Communities Management*, 2008 WL 1774584, *3 (E.D. La. 2008) (discussing when certification is appropriate).¹⁰⁷

First, this court has probable cause to believe, and has under DHS rules therefore *detected* that one or more the qualifying criminal activities occurred, including, *inter alia*, [*Insert each of the types of qualifying criminal activities that apply in the case.*]¹⁰⁸

[*Define the applicable qualifying criminal activity. Include relevant statutory offenses, judicial interpretation of those offenses, and other authorities.*]

Here, the court has probable cause to believe, and under DHS rules has therefor *detected* that the Applicants [*is/are*] are victims of these criminal activities. [*Explain how the activity perpetrated against the victim constitutes the specified qualifying criminal activity.*]

Second, this Court is "investigating or prosecuting" these qualifying crimes within the meaning of the statute and the regulations. Recognizing that "[j]udges neither investigate crimes nor prosecute perpetrators," USCIS interprets the term "investigation or prosecution" broadly, 72 Fed. Reg. 53020, to encompass the "the *detection* of qualifying crime or criminal activity" as well as the "prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." 8 C.F.R. 214.14(a)(5) (emphasis added). Accordingly, when this court has probable cause to believe that a qualifying criminal activity occurred and that he applicants are victims of one or more of these criminal activities, the Court has *detected*, under the DHS rules, the

order to give effect to the statute, which authorizes judges to sign certifications. The DHS rule defines "investigation or prosecution" to include helpfulness in detection, investigation, prosecution, conviction or sentencing. 72 Fed. Reg. 53020.

¹⁰⁷ The government need not be prosecuting the qualifying crimes in order for a judge to "detect" that the victims suffered qualifying criminal activity. *See, e.g., Audubon Communities Management*, 2008 WL 1774584 (E.D. La. 2008) (judge in a civil case involving labor exploitation granted Plaintiffs' motion for U visa certification and signed the certifications even though the government was not prosecuting the qualifying criminal activity).

¹⁰⁸ This Court need only "detect" that Applicants were victims of one of the qualifying crimes, even if they may be victims of more than one qualifying crime. 8 C.F.R. § 214.14(a)(9) (qualifying crimes include "one or more" of the enumerated crimes).

qualifying criminal activity based on the facts before it in order to certify at the outset of a case. This Court has [*Insert court actions that represent detection of qualifying criminal activity*] that is able to confirm that the criminal activity occurred and that the applicant is the victim of the criminal activity..

C. Applicants possess information concerning the qualifying criminal activity.

The fourth factor is satisfied because Applicants possess information concerning the qualifying criminal activity. The regulations explain that a U visa applicant must have "knowledge of the details" and "possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution." 8 C.F.R. § 214.14(b)(2). [*Explain how the victim has knowledge of the details of the criminal activity.*]

D. Applicants are "helpful" to the investigation or prosecution.

Similarly, the fifth factor is satisfied. [*Explain how the victim has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity. Include instances where the victim provided information regarding the qualifying criminal activity to law enforcement authorities, investigative agencies, and courts.*]

E. Applicants are victims of qualifying criminal activity that violated U.S. law or occurred within the United States.

Finally, the sixth factor is clearly satisfied as the qualifying criminal activity was perpetrated in [*Insert location*] and, as discussed above, violated numerous state and federal criminal laws.

CONCLUSION

Applicants are detected to be victims of serious criminal activity and have [*Insert explanation of helpfulness or willingness to be helpful*]. Congress created the U visa precisely for this situation: to enable immigrant victims of crimes, such as Applicants, to lawfully reside in the United States while they assist the government's law enforcement efforts. It is not in the interest of any of the parties involved in this case that Applicants be required to reside in the United States unlawfully – without immigration status or employment authorization. This is particularly true where, as here, an immigration benefit precisely designed for this purpose is available.

For these reasons, we respectfully request that the Court sign Applicants' certification forms for the U visa. A set of proposed completed Form I-918 Supplement B corresponding to each Applicant is attached hereto as Exhibits X-XX. USCIS instructions regarding Form I-918 Supplement B are also attached as Exhibit X.

DATED:

Respectfully Submitted,

Sample Declaration for Motion for Certification

(begins on next page)

[INSERT COURT NAME AND JURISDICTION]

[INSERT NAME OF PARTY])
)
 Plaintiffs,)
)
 v.) Action No. [DOCKET NUMBER]
)
 [INSERT NAME OF PARTY])
)
 Defendants.)
)

DECLARATION OF [INSERT NAME OF APPLICANT]

Declarant, [*Insert name of applicant*], comes now upon penalty of perjury and declares that the following is true to his knowledge, recollection and belief.

1. My name is [*Insert name of applicant*], and I am over eighteen years old and am in all respects competent to give this Declaration. This Declaration is submitted in support of Petitioners' motion for certification.

2. I am an applicant for a U nonimmigrant visa. The application for a U visa requires a certification from the head of a certifying agency or a Federal, State, or local judge.

3. On or about [*Insert date of criminal activity. If criminal activity occurred on multiple dates, include the phrase "and on dates prior" or the date of the most recent criminal activity*], in [*Insert location of criminal activity*], [*Describe criminal activity. Provide descriptions of physical*

conditions, length of conditions, actions of the perpetrators, injuries, subsequent effects on the victim, etc. Description of the actions of the perpetrators should include physical violence committed against the victim or the victim's family members or property; verbal abuse; withholding of food, water, or money; and threats, including, but not limited to, threats of violence, threats to report the victim to immigration authorities.]

4. *[Describe other instances of criminal activity committed against the victim by the same perpetrators.]*

5. I possess information about the criminal activity described. *[Describe how the victim possesses such information.]*

6. I *[have been/am being/am likely to be]* helpful in the detection, investigation and/or prosecution of the criminal activity described. *[Describe reports about the specific criminal activity made to police, government agencies, or courts, including phone calls, formal complaints, protection orders, testimony in civil, criminal, or family proceedings. There is no time limit on when these reports were made as long as the reports were about the criminal activity described above. Highlight any prior contact with the court from which the victim is seeking certification.]*

7. Despite my willingness to help Federal/state/local law enforcement, I live in fear of deportation. A U visa certification will allow me to apply to the Department of Homeland Security for the U visa. Without temporary lawful immigration status, I do not have employment authorization and cannot work to support my family and myself. *[Describe circumstances that make immigration status critical to the victim, such as safety and family concerns.]*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on *[Enter date]*.

Glossary of Terms¹⁰⁹

Adjustment of Status – An eligible individual, such as a non-citizen holding a U visa for at least three years may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion as to whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (*commonly referred to as a “green card,” see definition below*) and will become a lawful permanent resident.

Alien –The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

Battery or Extreme Cruelty – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. “*Battery or extreme cruelty*” is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction that is a part of an overall pattern of abuse, power, or control.¹¹⁰ These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. Rape, molestation, forced prostitution, incest, and other forms of sexual abuse are also considered forms of battery.¹¹¹

Child – Under immigration laws the definition of child is different than under many state family law statutes. The immigration law definition of child is important because children can be eligible to receive legal immigration status based upon their relationship to a parent who is a citizen or lawful permanent resident or who received legal immigration status. Under immigration law a person qualifies as a child of someone if they are:

- Under the age of 21;
- Unmarried; and

¹⁰⁹ This glossary is excerpted from a training manual supported by Grant No. 2005-WT-AX-K005 awarded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice. Some of the glossary entries were adapted and reprinted with the permission of the Immigrant Legal Resource Center.

¹¹⁰ See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (holding any act of physical abuse constitutes domestic violence while “extreme cruelty” refers to “all other nonphysical manifestations of domestic abuse”)

¹¹¹ See 8 C.F.R. § 204.2(c)(1)(vi) for CIS regulations defining “battery and extreme cruelty. See also Orloff, *supra* note 33, Chapter 3.5, “Additional Remedies Under VAWA: Battered Spouse Waiver.”

- Biologically the child, whether legitimated or not;
- A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- A child adopted while under the age of 16; or when the child was an orphan.¹¹²

Customs and Border Patrol (CPB) – This is the division of the Department of Homeland Security that oversees borders and ports.

Department of Homeland Security – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service (“USCIS”), a division of DHS, oversees adjudications of immigration benefits, such as the U visa. Another division of DHS, called the United States Immigration and Customs Enforcement (“ICE”), handles immigration enforcement, detention, and removal. United States Customs and Border Patrol (“CBP”) is the division that oversees borders and ports.

Deportation – This term was used prior to 1996 to describe what is now called removal. (*See “removal” explanation below*).

Detection - “The rule provides that the term ‘investigation or prosecution,’ used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity.¹¹³ ...Also referring to the AG Guidelines, USCIS is defining the term to include the conviction and sentencing of the perpetrator because these extend from the prosecution.¹¹⁴ Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications.¹¹⁵ Judges neither investigate crimes nor prosecute perpetrators. Therefore, USCIS believes that the term “investigation or prosecution” should be interpreted broadly as in the AG Guidelines.”

Documented immigrants – They reside in the U.S. pursuant to a valid visa, and either entered the U.S. with valid visas or obtained status after entry. Those entering on immigrant visas are often petitioned for by a family member or an employer. Some obtain visas to become lawful permanent residents. Other examples of documented immigrants¹¹⁶ include individuals holding tourist visas, student visas, exchange visitor visas, or employment visas.

¹¹² INA §101(b)(1), 8 U.S.C. §1101(b)(1) Not only are these terms of art as defined in the statute, but there is substantial case law interpretation with respect to these different categories.

¹¹³ Department of Homeland Security, *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status’ Interim Rule 53020* (Sept. 17, 2007) (citing New 8 C.F.R. 214.14(a)(5)).

¹¹⁴ *Id.* (citing AG Guidelines, at 26-27).

¹¹⁵ *Id.* (citing INA § 214(p)(1), 8 U.S.C. 1184(p)(1)).

¹¹⁶ Immigration experts may refer to immigrants with these visas as “non-immigrants.”

Employment Authorization – All non-U.S. citizens and those who are not lawful permanent residents are required to receive permission from the Department of Homeland Security in order to accept employment. Some temporary forms of legal immigration statuses, such as H-1B visas, T-visas, and U visas, allow the status holder to work. Some other forms of temporary legal immigrant statuses, such as tourist visas and student visas, do not allow for employment. If an immigrant is in a status that allows for work only with a specific employer, he or she will not need anything other than the visa approval notice as evidence of employment authorization. If he or she is in a status that allows for work without restrictions, he or she generally may obtain an employment authorization card by filing a request on a Form I-765. Employment authorization documents are normally valid for one year. Employment authorization is not a “stand alone” benefit. It is only granted to a person who has demonstrated eligibility for some type of temporary or pending immigrant status.

Green Card (Lawful Permanent Resident Card) – Popular term for the I-551, the card that shows a person is a lawful permanent resident. Lawful permanent residency cards may expire after 10 years. Although these cards on their face state that they expire in 10 years, lawful permanent residency does not end at that time. The immigrant with lawful permanent residency needs only to file to receive a new card once every 10 years. Some immigrant victims seeking help will have a lawful permanent residency card with an end date two years after the card was issued.

Immigration and Customs Enforcement (ICE) – This is the largest investigative arm of the Department of Homeland Security. Its officers are involved with immigration enforcement, detention, and removal within the interior of the nation. ICE is composed of functions of the former Customs Service, Federal Protective Service, and the investigative and enforcement functions of the former INS (other than those border functions assumed by Customs and Border Protection (CBP). Additionally, trial attorneys who represent DHS in removal proceedings before immigration judges are ICE employees.

Lawful Permanent Residency (LPR) – A lawful permanent resident is a foreign-born individual who has the right under U.S. immigration law, to live and work permanently in the United States. Lawful permanent residents can still be put in removal proceedings and deported, particularly if they are convicted of crimes. An individual who has a green card is either a lawful permanent resident or a conditional permanent resident. See “adjustment of status.”

Naturalization – This is the process by which foreign-born persons, including lawful permanent residents, obtain citizenship. Requirements include a period of continuous residence in the U.S. and physical presence in the United States, an ability to read, write, and speak English, and good moral character. Some requirements can be waived depending on the circumstances. Immigrants married to U.S. citizens can apply for Naturalization after 3 years in lawful permanent residency.

Removal – Removal, also known as deportation, is the process through which a non-citizen who is determined to be unlawfully in the U.S. is ordered to leave the United States and is returned to his

or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

Self-Petition – Under the Violence Against Women Act, certain abused spouses, children, parents, or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent, or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment applicants, VAWA HRIFA (Haitian), VAWA NACARA (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners. Children of the self-petitioner can also obtain legal immigration status by being included in their parent’s self-petition. Undocumented immigrant children included in their parent’s self-petition are called “derivatives” or “derivative beneficiaries” because they derive a benefit from their parent’s application for legal immigration status.

Undocumented – Undocumented immigrants are individuals who do not have lawful immigration status granting them permission to reside in the United States. Some are individuals who entered the United States without being inspected by immigration authorities (i.e., illegally crossed the border). Others entered the U.S. on valid immigration visas but stayed beyond their period of authorized stay. Some forms of temporary legal immigration status also place restrictions on the holder’s activities while in the United States, such as barring them from working in the U.S. or requiring them to attend a particular school or maintain employment with a particular employer. Individuals who fail to comply with the terms of their visa (e.g., working when they are not allowed or failing to attend school when they are required) become undocumented.

Unlawful Entrants – Individuals who entered the U.S. without admission are unlawful entrants and may be inadmissible. Depending on their date of entry and the relief they apply for, applicants, such as victims of domestic violence, may qualify for an exception to this inadmissibility criteria for unlawful entry.¹¹⁷

U.S. Citizen (USC) – An individual may become a U.S. citizen through several means. An individual born in the United States or in certain U.S. territories such as Guam, U.S. Virgin Islands, and Puerto Rico is automatically a citizen at birth. Additionally, an individual born abroad may acquire or derive U.S. citizenship through a U.S. citizen parent or parents. Many lawful permanent residents apply through the naturalization process to become a U.S. citizen. Finally, certain people serving in active-duty status for the U.S. military may qualify for expedited U.S. citizenship.

United States Citizenship and Immigration Services (CIS) –The division of the Department of Homeland Security (DHS) responsible for adjudicating immigration benefits. CIS adjudicates a range of applications filed for immigrants seeking legal immigration status including: visas, asylum, and naturalization applications. Cases of immigrant victims filing VAWA self-petitions, U and T

¹¹⁷ INA § 212(a)(6)(A); 8 U.S.C. § 1182(a)(6)(A).

visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

Violence Against Women Act (VAWA) – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system’s approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA’s dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g., immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

VAWA Confidentiality – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners’ information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.

Visa – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a “visa” holder. A “visa” is also an official document issued by the U.S. Department of State at an embassy or consulate abroad. A visa grants an individual permission to request entry into the United States at a port of entry. If permission is granted, the applicant is admitted into the United States in a particular status, such as U nonimmigrant status. Visas may be *immigrant* visas that allow the individual who qualifies to live and work permanently in the United States – lawful permanent residency. Or they may be nonimmigrant visas. An individual having a residence in a foreign country that he or she has no intention of abandoning, who wishes to enter the United States temporarily, will be issued a temporary visa referred to in immigration law as a *non-immigrant* visa. Non-immigrant visas include, but are not limited to:

T visa – This visa is available to individuals who are victims of severe forms of trafficking in persons and who are willing to assist in the investigation and prosecution of their traffickers. Severe forms of trafficking include sex trafficking and transporting, harboring, or obtaining a person for labor by force, fraud, or coercion. For an immigrant under 21, the spouse, children, unmarried siblings under 18, and parents can receive T-visas as derivative beneficiaries. For T-visa applicants 21 years of age or older, the spouse and children of the individual can qualify for derivative

protection as T-visa recipients.¹¹⁸ At the end of three years in T nonimmigrant status or if the Attorney General certifies that the investigation has concluded, T-visa recipients may apply for lawful permanent residency.

U visa – This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, judge, or other certifying agency establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution, as long as they are helpful in an investigation. For a non-citizen under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U visas based upon the immigrant crime victim's receipt of a U visa. For a non-citizen 21 years of age or older, the spouse and children of the non-citizen can receive U visas as derivatives.¹¹⁹

¹¹⁸ INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).

¹¹⁹ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U).

Collection of U-visa News Articles¹²⁰

The following news articles are provided as references that may assist law enforcement better understand their role as U-visa certifiers.

1. Ivie, Stacey and Nanasi, Natalie. "The U Visa An Effective Resource for Law Enforcement." FBI Law Enforcement Bulletin (2009). Available at: <http://leb.fbi.gov/2009-pdfs/leb-october-2009>

Detective Stacey Ivie from the Alexandria (VA) Police Department discusses the advantages of the U-visa for law enforcement and answers several frequently asked questions posed by her peers regarding the U-visa.

2. Sprecher, Megan and McGrath, Michael. "City of Cleveland takes important steps to ensure citizen safety: We all should follow its lead." Cleveland.com (2010). Available at: http://www.cleveland.com/opinion/index.ssf/2010/03/city_of_cleveland_takes_import.html

In this article, the City of Cleveland's efforts to expand the use of the U-visa are chronicled, including working with the Cleveland Police Department to issue a U-visa protocol.

3. Toral, Almudena. "Visas Out of Hell: Women Need to Know They Exist." WeNews (2010). Available at: <http://womensenews.org/story/100302/visas-out-hell-women-need-know-they-exist#.UlwpqBZ8JII>

This article highlights the story of Graciela Beines, a victim of crime, and how assistance that she received from police, advocates, and others led to a U-visa. The article also links to a video of Ms. Beines describing her experiences.

4. Ulloa, Jazmine. "U Visa provides temporary legal status for victims of violent crime." The Brownsville Herald (2010). Available at: <http://www.brownsvilleherald.com/articles/recalls-107822-night-wall.html>.

In this article, the author details the history of the U-visa, including the administrative barriers that have led to the U-visa being an underused tool for law enforcement.

5. Ellison, Katherine, A Special Visa Program Benefits Abused Illegal Immigrants, N.Y. TIMES (Jan. 8, 2010) <http://www.nytimes.com/2010/01/08/us/08sfimmigrant.html?pagewanted=all>

¹²⁰ 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. This document was also developed under grant number SJI-12-E-169 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

(“. . . police certification of the visas was a powerful tool in creating bonds among wary residents who have long been the silent victims of a range of crimes, like the robberies of illegal immigrants known on the streets as ‘amigo checkings.’”).

6. Berestein Rojas, Leslie. *When Immigrants Are Crime Victims, How Much Does Legal Status Matter?*, MULTI-AMERICAN (Feb. 7, 2012), <http://www.scpr.org/blogs/multiamerican/2012/02/07/8051/when-immigrants-are-crime-victims-how-much-does-le/>.
7. Wallace, Ava. *As Demand for U Visa Grows, Visa’s Future for Abused Women Uncertain*, IMMIGRANT CONNECT: CHICAGO (Dec. 9, 2012), <http://www.immigrantconnect.org/2012/12/09/as-demand-for-u-visa-grows-visas-future-uncertain/>.
8. Castellanos, Sara. *Cops Without Borders: Keeping the Peace With Illegal Immigrants*, AURORA SENTINEL (July 3, 2013), <http://www.aurorasentinel.com/news/cops-without-borders-keeping-the-peace-with-illegal-immigrants/>.
9. Kelley, Jeremy P. *Dayton Aims to Help Illegal Immigrant Crime Victims*, DAYTON DAILY NEWS (Feb. 14, 2013), <http://www.daytondailynews.com/news/news/dayton-aims-to-help-illegal-immigrant-crime-victim/nWPPx/>.
10. Anderson, Lindsey. *Special Report: DC Stalemate Leaves Too Few Visas for Crime Victims*, LAS CRUCES SUN-NEWS (June 8, 2013), http://www.lcsun-news.com/las_crucenes-news/ci_23414401/special-report-dc-stalemate-leaves-too-few-visas.
11. Popkey, Dan. *U Visa Program Aids Immigrants, Police in Treasure Valley*, IDAHO STATESMAN (Aug. 4, 2013), <http://www.idahostatesman.com/2013/08/04/2688386/u-visa-program-aids-immigrants.html>.
12. Walter, Shoshana. *U Visa Aids Immigrant Crime Victims*, SAN FRANCISCO CHRONICLE (Oct. 30, 2012), <http://www.sfgate.com/bayarea/article/U-visa-aids-immigrant-crime-victims-3994601.php>.
13. Casey, Chris. *Shut Out: An In-Depth Look at U-Visas*, GREELEY TRIBUNE <http://www.inewsnetwork.org/special-reports/shut-out-an-in-depth-look-at-u-visas/>.
14. Collins, Erin. *Refuge from Violence: Minnesota Lawyers Help Immigrant Crime Victims Find Safe Harbor*, TWIN CITIES DAILY PLANET (July 8, 2013), <http://www.tcdailyplanet.net/news/2013/07/08/refuge-violence-minnesota-lawyers-help-immigrant-crime-victims-find-safe-harbor>.
15. Macchi, Victoria. *Undocumented Immigrants Allowed to Stay in Collier as Crime Victims, Witnesses*, NAPLES NEWS (Nov. 25, 2012), <http://www.naplesnews.com/news/2012/nov/25/hundreds-illegals-allowed-stay-uvisa-alien/?print=1>.

16. McEnroe, Paul. *Protecting Illegal Immigrants to Catch Criminals*, STAR TRIBUNE (Oct. 27, 2011), <http://www.startribune.com/local/132387733.html>.
17. Meltzer, Erica, Boulder DA Stan Garnett Takes a Stand on Crimes Against Immigrants, DAILY CAMERA (Oct. 16, 2011), http://www.dailycamera.com/boulder-county-news/ci_19121370 (“Garnett said he believes more cases are being reported since his office actively reached out to groups that work with immigrant communities.”).
18. Howard, Willie, Lake Worth Liaison Builds Trust Between City’s Immigrants, Law Officers, PALM BEACH POST (March 11, 2012), <http://www.palmbeachpost.com/news/news/lakeworth-liaison-builds-trust-between-citys-im-1/nLhZq/> (“Benito Gaspar [Community Outreach Liaison] has been working for nearly two years to build trust between the city's immigrants and the Palm Beach County Sheriff's Office. . . . Calls to Crime Stoppers from Lake Worth increased 25 percent last year compared with 2010, which the sheriff's office attributes in part to Gaspar's efforts.”).
19. Abernathy, Michael, U visas Gaining Prominence, TIMES-NEWS (December 30, 2011), <http://www.alipac.us/f12/u-visas-gaining-prominence-246800/>