

U VISA TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS

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Legal Momentum
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NIWAP: 4801 Massachusetts Avenue NW, Washington, DC 20016
T: 202.274.4457 www.wcl.american.edu/niwap

VERA: 233 Broadway, 12th Floor, New York, NY 10279
T: 212.334.1300 www.vera.org

¹ By: Leslye E. Orloff, Pradine Saint-Fort, Rocio Molina, and Benish Anver. This toolkit was adapted from materials developed by Legal Momentum and the Vera Institute for Justice. The authors would like to thank Rodolfo Estrada, Sameera Hafiz and Kavitha Sreeharsha for their contributions in developing this toolkit.

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Questions and comments regarding this toolkit may be directed to: iwp@legalmomentum.org.

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REINFORCING PUBLIC SAFETY IN IMMIGRANT COMMUNITIES: THE IMPACT OF THE U VISA LAW ENFORCEMENT CERTIFICATION

Introduction

(Last Updated November 2012)

Law enforcement agencies¹ with a practice or policy for signing U visa certifications have an additional tool to reduce crime and ensure safer communities. The U visa is a federal program available to immigrant victims of crime who are helpful to law enforcement. U visa applicants must submit, among other documentation, a law enforcement certification. This section provides details on the U visa program and guidance on how law enforcement agencies, in particular police and prosecutors, can develop a certification practice.

Creation of the U visa. Congress created the U visa² to (1) strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, and other criminal activities; and (2) to protect immigrant victims of such activities.³ Lawmakers recognized that a victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of crimes.⁴ However, victims who fear deportation are unlikely to participate or cooperate in investigative efforts. The U visa program works to dismantle that fear, thereby encouraging victims to report crime and participate in the various stages of the investigation. This process fosters increased trust between law enforcement agencies and the immigrant population they serve.⁵

The Law Enforcement Certification

What's the purpose of the law enforcement certification?

The law enforcement certification (Form I-918B) is a three-page form that immigrant crime victims must submit as part of their U visa application. The form includes six short parts and must be signed by a **certifying law enforcement official or agency** that attests to the following:

¹ The Department of Homeland Security (DHS) recognizes law enforcement officials to include federal, state, local law enforcement agencies, prosecutors, judges or other authority that has the responsibility for investigation or prosecution of a qualifying crime or criminal activity. Hereinafter, the phrases "law enforcement" and "law enforcement agencies" are to include the aforementioned authorities.

² U visa was created in the Violence Against Women Act (VAWA) under the Victims of Trafficking and Violence Prevention Act of 2000.

³ 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)).

⁴ 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).

⁵ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a) (OCT. 28, 2000).

- 1) The type of criminal activity perpetrated against the victim (I-918B Form: Part 1)
- 2) The fact that the person seeking the certification has been a victim of criminal activity;
- 3) Include notes of any injuries or other facts about the criminal activity they witnessed; and (I-918B Form: Part 3)
- 4) That the person possesses information about the criminal activity; I-918B Form: Part 4).⁶
- 5) That the victim has been helpful, is being helpful or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a U visa listed criminal activity; (I-918B Form: Part 4)
- 6) Information they have about any perpetrators who are family members of the victim.(I-918B Form: Part 5)

To increase victims' access to certifications, Congress explicitly included federal, state, and local law enforcement officials, prosecutors, and judges in the list of U visa certifiers.⁷

Qualifying Criminal Activities for the U visa Certification (I-918B Form: Part 3)

The U visa statute includes a “non-exclusive”⁸ list of qualifying criminal activities, which appears in part 3 of the certification form. The list includes rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, 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, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law. The list also includes attempts or conspiracy to commit any of the listed activities. This list of criminal activities is not exhaustive, but rather it represents the various types of behavior that can be classified as domestic violence, sexual abuse, trafficking, or other criminal activities to which often impact immigrants.⁹

Congress intentionally chose the term “criminal activity” in the statutory language to accomplish two goals: 1) to broadly include “any similar activity” and 2) to focus on the victim’s actions in coming to state or federal government officials with information about criminal activity.

⁶ 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).

⁷ 8 U.S.C. § 1101(a)(15)(U)(I) (2006); 72 Fed. Reg. 53,014, 53,023-53,024 (Sept. 17, 2007).

⁸ INA § 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).

⁹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 7 (2007).

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.”¹⁰ For example, the statute lists domestic violence as a U visa–qualifying crime. However, most state statutes 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.¹¹ Even though these crimes are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence for U visa purposes.

In cases when crime perpetrators are charged with unrelated crimes, U visa certifications are still appropriate and explicitly encouraged by the United States Department of Homeland Security.¹² An illustrative example is provided in the U visa regulations: if a government agent is investigating federal embezzlement charges and learns that the offender is abusing his wife, the wife may be eligible for a U visa as a victim of domestic violence, even if her husband is charged only with the non-qualifying federal embezzlement crimes.¹³

I. DOES U VISA STATUS REQUIRE THE INITIATION OF A LAW ENFORCEMENT INVESTIGATION OR A SUCCESSFUL PROSECUTION?

No. Congress explicitly crafted the U visa immigration protections for victims so as not to interfere with the discretion that investigators and prosecutors have to investigate and choose whether to prosecute criminal activity in any particular case. Additionally, per Congress, the certification process does not hinge on or require a victim’s testimony or completion of a prosecution, as long as that victim is cooperative when the situation requires it.

Congress also recognized that for many crimes, particularly those that can be serial in nature (e.g., rape), a victim could come forward, provide evidence, and only much later—after a number of victims have come forward—can police build a criminal case against the perpetrator. The U visa was designed to provide protection for immigrant victims, to encourage them to come forward and provide evidence and information about criminal activity committed against them. If an immigrant crime victim has offered or is willing to offer assistance to law enforcement officials or prosecutors regarding such activity, the outcome of the case (or whether authorities ever proceed with the case) is not relevant to a victim’s U visa eligibility. In addition, investigation or prosecution of some criminal activity is impossible because the perpetrator cannot be located, has diplomatic immunity, or has been deported.

10 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007).

11 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).

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

13 *Id.*

U visa status can therefore be granted even when police decline to investigate or prosecutors decline to charge perpetrators, when charges are later dropped, or when prosecutors are unable to secure convictions.¹⁴

II. WHAT DOES THE U VISA DO?

As described above, in 2000 Congress created a specific avenue for immigrant crime victims to obtain temporary lawful immigration status. This was done by amending sections of the Immigration and Nationality Act to create the U visa.¹⁵

If approved for a U visa, an victim will receive legal status for up to four years. This status will permit the crime victim to live and work in the United States for the duration of the U visa. 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.

In addition to being a tool for immigrant victims of crime, the U visa also serves as a tool for law enforcement officials and agencies to not only to pursue criminal activity, but to also foster trusting and lasting relationships with their local immigrant population. It assists in their efforts to bring perpetrators of violent crimes to justice and to provide protection and a sense of security for immigrant victims.

III. APPLICATION PROCESS

The United States Citizenship and Immigration Services (USCIS) of DHS has sole jurisdiction over adjudication of petitions for U visa status.¹⁶

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, “U Nonimmigrant Status Certification,” along with supporting documents required to prove the four requirements for U visa eligibility. A copy of Form I-918, Supplement B, with instructions is included in the tool kit on page 14.

14 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).”).

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

16 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).

Form I-918, Supplement B must be signed by a qualifying certifier, such as a law enforcement official.¹⁷

The victim sends the completed 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.

By preparing and signing Form I-918, Supplement B, a certifier is not conferring legal immigration status upon a noncitizen victim or making a determination of the victim'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. In addition to the certification, the victim must meet the other eligibility criteria, such as demonstrating that he or she suffered substantial mental or physical abuse as a result of having been a victim of the qualifying criminal activity.¹⁸ To be granted a U visa, victims are also required to prove that they are eligible for admission to the United States. DHS may grant a discretionary waiver and approve a U visa for immigrant victims who cannot prove admissibility. In making this determination DHS will consider the totality of the victim's case and circumstances.

IV. LAW ENFORCEMENT OFFICIALS AND PROSECUTORS AS U VISA CERTIFIERS

A U visa victim must obtain a certification from a sheriff, a prosecutor, designated law enforcement official, judge, or other federal or state authority that is detecting, investigating, or prosecuting any of the criminal activities listed in the U visa statute or regulations.¹⁹ Congress specifically listed federal, state, and local law enforcement officials and prosecutors as U visa certifiers in the statute.²⁰ The U visa is an effective tool for law enforcement and prosecutors because it allows both to hold perpetrators of these crimes accountable and to receive assistance from victims in investigations. It also allows law enforcement and prosecutors to foster a trusting relationship with the local immigrant population in its efforts to bring perpetrators to justice.

As first responders, police departments, sheriffs' offices, and marshals regularly encounter victims whose allegations of criminal victimization they believe to be credible. During the process of detecting criminal activity, taking police reports, obtaining warrants, and engaging in crime investigations, officers routinely determine whether they believe the criminal activity occurred and whether a person has been a victim of such activity.²¹ When the crime victim is or

¹⁷ The implementing regulations of the U visa require that the law enforcement official that is the certifying official be the head of the certifying agency, or any supervisor specifically designated by the head of the certifying agency to issue U visa certifications. See 8 CFR §§ 214.14(a)(3) & 214.14(c)(2)(i).

¹⁸ See U visa Flowchart, attached to this toolkit.

¹⁹ INA § 214(p)(1), 8 U.S.C. 1184(p)(1); 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

²⁰ INA § 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).

²¹ It is important to note that U visa certification can and should occur as early as possible after taking a police report or interviewing a credible crime victim. See 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007). Certification need

may be a noncitizen, the agency, under the federal U visa statute, is authorized to issue a U visa certification. Based upon the law enforcement officer's contact with the immigrant victim during detection or investigation of criminal activity, the officer is well positioned to certify an immigrant victim's helpfulness or willingness to be helpful.

Although the manner in which prosecutions are initiated vary by jurisdiction, prosecutors encounter persons who have been victims of criminal activity. These encounters occur in the process of making charging decisions or when police, magistrates, commissioners or even the victim's own perpetrator, have brought criminal charges. When the crime victim is or may be a non-citizen, DHS has authorized prosecutors to issue U visa certifications. Prosecutors can complete U visa certification for victims of crimes listed in the statute. This authority to certify exists whether or not the prosecutor ultimately pursues prosecution of the perpetrator for the crime listed in the U visa statute. If a prosecution witness becomes a victim of criminal activity listed in the U visa, prosecutors can sign certifications in cases of victims who are assisting in prosecutions that are not included on the U visa list (e.g. drug or gang offenses). Prosecutors and victim witness personnel in prosecutor's offices are in a good position to both identify U visa eligible crime victims and assess the immigrant victim's helpfulness or willingness to be helpful. This helpfulness can include past assistance to the police in reporting the case and cooperating in the investigation, current helpfulness to the prosecution or willingness to be helpful in providing information to prosecutors and potentially testifying as a witness.

The DHS regulations envision that the U visa certification process fits within routine activities of law enforcement. The U visa certification can be completed at the same time officers are completing their police reports and can then be reviewed and approved by supervisors who are also signing off on the police reports. The U visa regulations allow the head of the certifying agency to grant any supervisory person(s) the authority to issue U visa certifications.²² The regulations contemplate granting certification authority to multiple supervisory personnel. DHS encourages law enforcement agencies to develop internal policies and procedures to respond to requests for U visa certifications. To facilitate the authorization of personnel to sign U visa certification forms, a sample "Designee Letter" is included in the tool kit on page 20.

Certifying agencies may also develop internal policies and procedures to inform victims where and with whom to file requests for certifications; to provide certifying officials with the relevant and necessary information needed for supervisors to sign U visa certifications; and to implement practices that result in certifications being issued. A sample U visa certification policy is included in the tool kit on page 26.

not wait until the case reaches a probable cause determination. However, for cases in which probable cause has been found, noncitizen victims should receive U visa certifications.

²² See 8 CFR §§ 214.14(a)(3) & 214.14(c)(2)(i).

Evaluating Helpfulness

Law enforcement officials may complete U visa certifications once they are able to assess a victim's helpfulness. An investigation need not be complete prior to signing a certification. The certification signed by a certifying official demonstrates that the victim "has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity."²³

The "helpfulness" requirement was written using several verb tenses, recognizing that a victim may apply for status at different stages of an investigation or prosecution.²⁴ Congress intended to allow an individual to petition for status at virtually any stage of the investigation or prosecution.²⁵ Likewise, the definition of "investigation or prosecution" in the statute is interpreted broadly.²⁶ Some examples of helpful actions include, but are not limited to, calling 911 to report the crime, providing a statement to the police, filing a police report, or seeking a protection order.

A victim who received certification and was granted a U visa has an ongoing obligation to provide assistance.²⁷ Law enforcement officials may notify USCIS directly for cases in which victims are no longer helpful. However, such notification is appropriate only when the victim's lack of cooperation is not reasonable.

Congress included witness tampering because threats from perpetrators can deter the cooperation of crime victims who initially come forward and report crimes. The following are a few common examples of when a victim's lack of ongoing cooperation is not unreasonable: 1) when perpetrators, through coercion and threats, make the victim unavailable for trial or 2) when a victim reasonably fears for her safety or her children's safety or 3) the victim fears retaliation from her perpetrator if she testifies at trial. Police and prosecutors working with domestic violence and sexual assault victims understand that perpetrators can be held accountable through evidence based prosecutions even when victims do not testify at in criminal trials. Receiving a U visa approved by DHS and protection from deportation can bolster the victim's courage to cooperate despite these fears and concerns. Based on the understanding that victim's level and ability to cooperate may fluctuate over time, the law requires that for U visa victims to attain lawful permanent residency, they must provide DHS proof of cooperation or they must prove to DHS that their did not unreasonably refuse to cooperate in the investigation or prosecution of criminal activity.

²³ 8 U.S.C. § 1184(p)(1)

²⁴ 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

²⁵ *Id.*

²⁶ *Id.* at 53,020; 8 C.F.R. § 214.14(a) (5).

²⁷ *Id.*

VII. APPLICATIONS FOR LAWFUL PERMANENT RESIDENCY BY U VISA RECIPIENTS

U visa status is issued for a period of up to four years.²⁸ A U visa holder can live and work legally in the United States and file petitions with USCIS to provide immigration status for family members.²⁹ Upon certification by a qualifying official, U visa status can be extended.³⁰

After three years of continuous presence in the United States, a U visa holder is eligible to apply for lawful permanent residency.³¹ Not all U visa holders will qualify for lawful permanent residency. To qualify, U visa holders must 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.

Who is eligible?

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.³² 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;³³

(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 that occurred in the United States or violated the laws of the United States.³⁴

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

29 8 C.F.R. § 214.4(g) (2008).

33 See INA § 214(p)(6), 8 USC § 1184(p)(6); 8 CFR § 214.4(g)(2008).

31 See INA § 245(m), 8 U.S.C. § 1255(m).

32 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 occurred or was reported.); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

³³ Note that the Immigration and Customs Enforcement’s Toolkit (April 2011) stated that the certifier determines whether the victim has suffered substantial mental or physical abuse (*see page 20, available at* <http://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>). The Department of Homeland Security published a U visa Resource Guide in January of 2012 and supercedes ICE’s language requiring the certifier to determine substantial harm. DHS stated that it is responsible for determining substantial harm by requesting supporting evidence from the victim (*see pages 10-11, available at* http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf).

³⁴ 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).

Who can provide the required U visa certification?

In order to approve a victim's U visa application, USCIS requires a U visa certification. The U visa statute states that federal, state, or local law enforcement officials or prosecutors are qualified to provide certifications for victims filing U visa applications.³⁵ Law enforcement officials that are in supervisory positions and prosecutors qualify because their roles place them in direct contact with immigrant victims of crime. Certifying agencies include all law enforcement authorities that are responsible for investigation, prosecution, and/or conviction or sentencing for qualified criminal activities.³⁶ Additionally, within law enforcement agencies, only an individual in a supervisory role specifically designated by the head of the agency may sign the certification.³⁷

Law enforcement officials are the first responders to immigrant victims of crime. Police departments, sheriffs' offices, marshals, and other law enforcement officials have firsthand knowledge of a victim's helpfulness in reporting the crime and participating in any subsequent investigations. Law enforcement officials, therefore, are well positioned to provide U visa certifications and verify a victim's helpfulness in the detection or investigation of qualifying criminal activity.

When a qualifying criminal activity is prosecuted, prosecutors work closely with both law enforcement and victims. The prosecutors might need the victim to testify in court, or otherwise help during the prosecution, which might include the sentencing phase. During the prosecution of a qualifying criminal activity when there is an immigrant victim, the prosecutors are well positioned to verify a victim's eligibility for a U visa certification and to provide the certification.

Determining eligibility is important because the U visa certification must affirm the immigrant victim's past, present, or future helpfulness in the detection, investigation, or prosecution of certain qualifying criminal activity.³⁸ **Prosecutors or law enforcement officials who sign certifications do not confer any immigration status upon the victim**, but rather 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).³⁹ Only DHS has the discretion to grant or deny U visa status to the victim.

³⁵ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

³⁶ DHS, U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Jan.01/2012 at p 3, *available at* http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf

³⁷ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000).

³⁸ *Id.*

³⁹ 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 QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS

Purpose of the U-visa	<ul style="list-style-type: none"> The U-visa facilitates the reporting of crimes to law enforcement officials by immigrant victims of crime, including domestic violence, sexual assault, human trafficking and other crimes listed in the U-visa statute.
Benefits of the U-visa	<ul style="list-style-type: none"> This type of visa strengthens law enforcement agencies' ability to detect, investigate, and prosecute crime while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.
Who is eligible for a U-visa?	<ul style="list-style-type: none"> To be eligible for a U-visa <ul style="list-style-type: none"> an individual must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities; the individual must possess information concerning the criminal activity; the individual must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local official in the detection, investigation, or prosecution of the criminal activity; and the criminal activity must have occurred in the United States or its territories and possessions or violated U.S. laws.
U-visa Qualifying Criminal Activity	<ul style="list-style-type: none"> U-visa qualifying criminal activity includes, but is not limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, 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, 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 that may have names different from the criminal activity listed in the statute but are comparable in nature and elements to the enumerated criminal activity.
Status of Crime Perpetrator	<ul style="list-style-type: none"> A victim may qualify for a U-visa certification regardless of whether there is any familial relationship between the victim and the perpetrator. The perpetrator may have any immigration or citizenship status such as U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.
Certification Requirements	<ul style="list-style-type: none"> A certifying official must complete U.S. Citizenship and Immigration Services (USCIS) Form I-918, Supplement B. A certifying official is the head of a law enforcement agency or a person(s) with supervisory responsibility designated by the head of the agency to provide certifications. 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 certain eligibility requirements, in addition to obtaining a U-visa certification. USCIS has sole authority to grant or deny a U-visa.

	<ul style="list-style-type: none"> • The certification should provide specific details about the nature of the crime being detected, investigated, or prosecuted, and describe the petitioner’s helpfulness in the case. • U-visa certification does not require that law enforcement investigate the criminal activity beyond reporting of the crime. The certification attests only to the U-visa petitioner’s willingness to be helpful or past or present helpfulness in detection, investigation, prosecution, or investigation efforts.
Assessing the Helpfulness of the U-visa Applicant	<ul style="list-style-type: none"> • If a U-visa petitioner filed a police report and is willing to assist—or has assisted or cooperated—with detection, investigation, or prosecution of criminal activity, a certification may be provided even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction. • Law enforcement officials may issue a certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and identifies a person as a victim of criminal activity. The investigation need not be complete prior to issuing a certification. • Congress intended to allow victims to obtain U-visa certifications at very early stages of crime detection—during investigations into criminal activity. • To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance when reasonably requested, as the statute specifies.

**Instructions for I-918, Supplement B,
U Nonimmigrant Status Certification****Instructions**

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet(s) of paper. Write your name and Alien Registration Number (A #), if any, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.

What Is the Purpose of This Form?

You should use Form I-918, Supplement B, to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that activity.

When Should I Use Form I-918, Supplement B?

If you, the certifying official, determine that this individual (better known as the petitioner) is, has been, or is likely to be helpful in your investigation or prosecution, you may complete this supplement form. The **petitioner** must then submit the supplement to USCIS with his or her petition for U nonimmigrant status.

NOTE: An agency's decision to provide a certification is entirely discretionary; the agency is under no legal obligation to complete a Form I-918, Supplement B, for any particular alien. However, without a completed Form I-918, Supplement B, the alien will be ineligible for U nonimmigrant status.

To be eligible for U nonimmigrant status, the alien must be a victim of qualifying criminal activity. The term "victim" generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The alien spouse, unmarried children under 21 years of age and, if the victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where:

1. The direct victim is deceased due to murder or manslaughter, or
2. Where a violent qualifying criminal activity has caused the direct victim physical harm of a kind and degree that makes the direct victim incompetent or incapacitated, and, therefore, unable to provide information concerning the criminal activity or to be helpful in the investigation or prosecution of the criminal activity.

An alien may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, conspiracy, or solicitation to commit one or more of those offenses if:

1. The victim has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; **and**
2. There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:
 - A. To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
 - B. To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim.

A victim of qualifying criminal activity must provide evidence that he or she (or in the case of an alien under the age of 16 years or who is incapacitated or incompetent, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity as listed in **Part 3** of this form. Being "helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

General Instructions.**Fill Out the Form I-918, Supplement B**

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.

3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none, write "none."

This form is divided into **Parts 1** through **7**. The following information should help you fill out the form.

Part 1 - Victim information.

- A. Family Name** (Last Name) - Give victim's legal name.
- B. Given Name** (First name) - Give victim's full first name, do not use "nicknames." (Example: If victim's name is Albert, do not use Al.)
- C. Other Names Used** - Provide all the names the victim has used that you are aware of, including maiden name if applicable, married names, nicknames, etc.
- D. Date of Birth** - Use eight numbers to show his or her date of birth (example: May 1, 1979, should be written 05/01/1979).
- E. Gender** - Check the appropriate box.

Part 2 - Agency information.

- A. Name of certifying agency** - The certifying agency must be a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, that has responsibility for the investigation or prosecution, conviction or sentencing of the qualifying criminal activity of which the petitioner was a victim.

This includes traditional law enforcement branches within the criminal justice system, and other agencies that have criminal investigative jurisdiction in their respective areas of expertise, such as the child protective services, Equal Employment Opportunity Commission, and Department of Labor.

- B. Name of certifying official** - A certifying official is:
 - 1. The head of the certifying agency or any person in a supervisory role, who has been specifically designated by the head of the certifying agency to issue a U Nonimmigrant Status Certification on behalf of that agency; **or**
 - 2. A Federal, state or local judge.

If the certification is not signed by the head of the certifying agency, please attach evidence of the agency head's written designation of the certifying official for this specific purpose.

- C. Agency address** - Give the agency's mailing address.

Part 3 - Criminal acts.

- A. Check all of the crimes of which the petitioner is a victim that your agency is investigating, prosecuting, or sentencing** - If the crime(s) of which the petitioner is a victim is not listed, please list the crime(s) and provide a written explanation regarding how it is similar to one of the listed crimes. Similar activity refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the list of criminal activity found on the certification form itself.
- B. Indicate whether the qualifying criminal activity violated the laws of the United States or occurred within the United States (including in Indian country and military installations) or the territories and possessions of the United States** - Qualifying criminal activity of which the applicant is a victim had to violate U.S. law or occur within the United States.

Please indicate whether the qualifying criminal activity occurred within the United States (including in Indian country and military installations) or the territories and possessions of the United States.

- 1. **United States** means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands.
- 2. **Indian country** refers to all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.
- 3. **Military installation** means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.

-
- 4. Territories and possessions of the United States** means American Samoa, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

If the qualifying criminal activity did not occur within the United States as discussed above, but was in violation of U.S. law, it must violate a Federal extraterritorial jurisdiction statute. There is no requirement that a prosecution actually occur. Please provide the statutory citation for the extraterritorial jurisdiction.

Part 4 - Helpfulness of the victim.

- A. Indicate whether the victim possesses information about the crime(s).** A petitioner must be in possession of information about the qualifying criminal activity of which he or she is a victim. A petitioner is considered to possess information concerning qualifying criminal activity of which he or she is a victim if he or she has knowledge of details concerning that criminal activity that would assist in the investigation or prosecution of the criminal activity. Victims with information about a crime of which they are not the victim will not be considered to possess information concerning qualifying criminal activities.

When the victim is under 16 years of age, incapacitated or incompetent, he or she is not required to personally possess information regarding the qualifying criminal activity. The parent, guardian, or "next friend" of the minor petitioner may provide that information. "Next friend" is a person who appears in a lawsuit to act for the benefit of an alien victim. The "next friend" is not a party to the legal proceeding and is not appointed as a guardian.

- B. Provide an explanation of the victim's helpfulness to the investigation or prosecution of the criminal activity.** A victim must provide evidence to USCIS that he or she (or, in the case of an alien child under the age of 16 or who is incapacitated or incompetent, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a certifying law enforcement official in the investigation or prosecution of the qualifying criminal activity.

Being "helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. Alien victims who, after initiating cooperation, refuse to provide continuing assistance when needed will not meet the helpfulness requirement. There is an ongoing responsibility on the part of the victim to be helpful, assuming there is an ongoing need for the victim's assistance.

You, the certifying official, will make the initial determination as to the helpfulness of the petitioner. USCIS will give a properly executed Supplement B, U Nonimmigrant Status Certification significant weight, but it will not be considered conclusory evidence that the victim has met the eligibility requirements. USCIS will look at the totality of the circumstances surrounding the alien's involvement with your agency and all other information known to USCIS in determining whether the alien meets the elements of eligibility.

Part 5 - Family members implicated in criminal activity.

List whether any of the victim's family members are believed to have been involved in the criminal activity of which he or she is a victim. An alien victim is prohibited from petitioning for derivative U nonimmigrant status on behalf of a qualifying family member who committed battery or extreme cruelty or trafficking against the alien victim which established his or her eligibility for U nonimmigrant status. Therefore, USCIS will not grant an immigration benefit to a qualifying family member who committed qualifying criminal activities in a family violence or trafficking context.

Part 6 - Certification.

Please read the certification block carefully. **NOTE:** If the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, even after this form is submitted to USCIS, you **must** notify USCIS by sending a written statement to: USCIS - Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001. Please include the victim's name, date of birth, and A-number (if available) on all correspondence.

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

I-918 Supplement B, U Nonimmigrant Status Certification

START HERE - Please type or print in black ink.

Part 1. Victim information.

Family Name	Given Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Other Names Used (Include maiden name/nickname)		
<input type="text"/>		
Date of Birth (mm/dd/yyyy)	Gender	
<input type="text"/>	<input type="checkbox"/> Male <input type="checkbox"/> Female	

Part 2. Agency information.

Name of Certifying Agency		
<input type="text"/>		
Name of Certifying Official	Title and Division/Office of Certifying Official	
<input type="text"/>	<input type="text"/>	
Name of Head of Certifying Agency		
<input type="text"/>		
Agency Address - Street Number and Name		Suite #
<input type="text"/>		<input type="text"/>
City	State/Province	Zip/Postal Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Daytime Phone # (with area code and/or extension)		Fax # (with area code)
<input type="text"/>		<input type="text"/>
Agency Type		
<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local		
Case Status		
<input type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> Other: _____		
Certifying Agency Category		
<input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other: _____		
Case Number	FBI # or SID # (if applicable)	
<input type="text"/>	<input type="text"/>	

For USCIS Use Only.

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

Remarks

Remarks

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 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 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 | <input type="text"/> |



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)

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

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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.

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- c. Where did the criminal activity occur?

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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.

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

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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.



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. _____ Date (mm/dd/yyyy) _____

Date (mm/dd/yyyy)

SAMPLE DESIGNEE LETTER

[LAW ENFORCEMENT AGENCY or PROSECUTOR'S OFFICE LETTERHEAD]

Date

Victims and Trafficking Unit Vermont Service Center
Vermont Service Center
U.S. Citizenship and Immigration Services
75 Lower Welden Street
St. Albans, VT 05479

Dear Sir or Madam:

I am the [Chief of Police/ Sheriff/Prosecutor's Office] of City [or County], State. In this capacity, I am the head of the [Police Department /Sheriff's Office/Prosecutor's Office] of [County, State], which office is responsible for investigating [or prosecuting] crimes committed in [County, State], which is a certifying agency, as such term is defined at 8 C.F.R. §214.14(a)(2).

Pursuant to 8 C.F.R. § 214.14(a)(3) and 8 C.F.R. § 214.14(c)(2)(i), I hereby specifically designate **Person A, Person B, and Person C**, all of whom have supervisory responsibilities, to sign I-918 Supplement B, U Nonimmigrant Status Certification forms on my Department's behalf. This specific designation shall remain in force until revoked in writing.

Sincerely,

[Name]
[Title]
[County, State]

[Police Department Letterhead]

SAMPLE U-VISA CERTIFICATION OFFICER'S DUTIES¹

GENERAL PURPOSE

In addition to performing duties listed under *[reference job description that covers officer]*, the U-visa certification officer(s) will perform a variety of tasks associated with the U-visa certification process, including evaluating U-visa certification requests, and completing and signing I-918 Supplement B forms (certification forms).

SUPERVISION EXERCISED

U-visa certification officer is in a supervisory position and is designated by the head of the agency.

ESSENTIAL DUTIES AND RESPONSIBILITIES

- Serves as liaison between police department and agency personnel seeking U-visa certification
- Reviews and signs I-918 Supplement B certification forms prepared by agency personnel
- Completes and signs I-918 Supplement B certification forms
- Assists the police department in developing programs and practices that will enhance community-outreach activities related to the U-visa and noncitizen crime victims
- Oversees programs to educate the public about police department's U-visa certification function and purposes
- Meets and acts as a liaison with community groups
- Liaises with other local government agencies on U-visa issues as assigned
- Supports patrol officers at crime, fire, and accident scenes with U-visa information, materials, and outreach activities

¹ This model duties document was created by Legal Momentum and the Vera Institute of Justice, two not-for-profit organizations that provide national technical assistance to law enforcement agencies on the U-visa certification process.

- Completes monthly reports of activities detailing the number of U-visa certification requests and grants

PERIPHERAL DUTIES

- Serves on various law enforcement and other committees as assigned
- Performs related U-visa work as assigned

DESIRED MINIMUM QUALIFICATIONS

Education and Experience:

(A) Same as for *[job description]*

Preferred Knowledge, Skills, and Abilities:

(A) Knowledge and experience working with immigrant and noncitizen crime victims, including those eligible for immigration benefits related to the Violence Against Women Act (VAWA) (e.g., VAWA self-petitions, T-visas, and U-visas)

(B) Knowledge of U-visa statute and regulations, the U-visa certification process, and other victim-based forms of immigration relief available to immigrant crime victims (e.g., VAWA self-petitions and T-visas).

(C) Knowledge and command (reading, writing, and speaking) of one or more foreign languages prevalent in the community

(D) Experience in community policing

(E) Familiarity with agency's limited English proficient policies and procedures (e.g., how to access telephonic interpreters and how to work with bilingual personnel); and

ADDITIONAL DESIRED QUALIFICATIONS

[for agency to complete]

SPECIAL REQUIREMENTS

[for agency to complete]

TOOLS AND EQUIPMENT USED

Personal computer, including word processing and specialized software; phone, typewriter, calculator, fax machine, copy machine; police car, police radio, pager, first aid equipment, vehicle lock-out tools, camera, outreach materials (pamphlets, palm cards) with information for noncitizen crime victims

SELECTION GUIDELINES

Written application by existing officer; rating of education and experience; oral interview; additional related tests may be required.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude those duties from the position if the work is similar and related to a logical assignment for the position.

SAMPLE OUTREACH FLYER

WERE YOU THE VICTIM OF A CRIME?

If you or a close family member were the victim of a crime, 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 police and prosecutors investigate and prosecute that crime.

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, domestic violence, sexual assault, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, blackmail, extortion, murder, or *any similar activity* that violates the 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 should call [Name] at **X Police Department** to make a police report. You and your family member may be able to apply for a U-visa.

The U-visa is a temporary visa for victims who make a report to the police. The U-visa protects you from being deported for four years. It provides 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 police and prosecutors investigate or prosecute a crime.

If you have an emergency, call 911 right away.

The **X Police Department [X Prosecutor's Office]** wants to help victims of crime who report crime. This helps us protect the public safety. To learn more about the **X Police Department's [Prosecution's Office]** U-visa program, contact _____ at _____.

¿FUE VÍCTIMA DE UN CRIMEN?

Si usted -o un familiar cercano- fue víctima de un crimen, puede calificar para obtener una visa temporal, la visa-U, que le proteja de la deportación, si ayuda a la policía a o la procuraduría investigar y juzgar dicho 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, violencia doméstica, asalto sexual, prostitución, explotación sexual, mutilación sexual femenina, toma de rehenes, servidumbre involuntaria, trata de esclavos, secuestro, rapto, chantaje, extorsión, homicidio o *cualquier actividad similar* violatoria de 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, llame a [nombre] del **Departamento de Policía o Procuraduría X** [department name] para reportar el crimen a la policía. Usted y 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 a la policía y la procuraduría a investigar o juzgar un crimen.

Para emergencias llame al 911 inmediatamente.

El **Departamento de Policía o Procuraduría X** quiere ayudar a las víctimas que reportan estos crímenes. Esto nos ayuda a garantizar la seguridad pública. Para más información sobre el programa de la visa-U del **Departamento de Policía o Procuraduría X** llame a _____ al teléfono _____.

SAMPLE U VISA CERTIFICATION PROTOCOL

	POLICE DEPARTMENT	
	GENERAL ORDERS, POLICIES, AND PROCEDURES	
	Enforcement Operations	
	Specialized Situations and Services	

Police Department GENERAL ORDER	Date of Issue	Page	Number
Subject: CERTIFICATION OF U VISA – NON- IMMIGRANT STATUS (FORM I-918, SUPPLEMENT B)			
CALEA STANDARDS		BY AUTHORITY OF	

I. PURPOSE

The purpose of this General Order is to establish guidelines and procedures for officers who receive requests for a U-Visa Certification (Form I-918, Supplement B). This General Order also specifies the certifying supervisor who will sign Form I-918, Supplement B.

II. POLICY

- A. It is the policy of this police department that “any person(s) in a supervisory role” and specifically any supervisor in the domestic violence unit, sexual assault unit, and/or investigatory units, is designated to issue U-Visa Certification on behalf of the chief of police by completing Form I-918, Supplement B.
- B. It is also the policy of this police department to assist immigrant crime victims with their U-visa applications if they cooperate with agency officials.

III. DEFINITIONS

- A. “Qualifying criminal activity” is defined by statute to be “activity involving one or more of the following or any similar activity in violation of federal, state, or local criminal law.” The statute also includes the attempt, conspiracy, or solicitation to commit any of the crimes listed below:

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Abduction	Incest	Rape
Abusive sexual contact	Involuntary servitude	Sexual assault
Blackmail	Kidnapping	Sexual exploitation
Domestic violence	Manslaughter	Slave trade
Extortion	Murder	Torture
False imprisonment	Obstruction of justice	Trafficking
Felonious assault	Peonage	Perjury
Unlawful criminal restraint	Female genital mutilation	Witness tampering
Being held hostage	Prostitution	Other related crimes

- B. “Any Similar Activity” refers to other criminal activity when the similarities are substantial and the nature and elements of the criminal activity are comparable.
- C. The “U-visa” is the common name for the U nonimmigrant status.

IV. PROCEDURE

Before completing a Form I-918, Supplement B (a request for a U-visa certification), the certifying official shall have verified the following:

- A. The noncitizen was or is
1. a victim of a criminal activity (listed in Part III-A above) that took place in the United States or its territories or occurred outside the United States but violates U.S. extraterritorial law; or
 2. the spouse or under-21-year-old child of a victim who is deceased because of murder or manslaughter, or who is incompetent or incapacitated; or
 3. the parents and unmarried under-18-year-old siblings of an under-21-year-old victim who is deceased because of murder or manslaughter, or who is incompetent or incapacitated.
- B. The noncitizen has been, is being, or is likely to be helpful to the investigation. This department’s policy describes the victim as being helpful when s/he
1. possesses information about a qualifying criminal activity; and
 2. demonstrates cooperation during the detection or investigation of that criminal activity, even if the investigation is not completed.
- C. When a certification is based on a prior investigation or a criminal case that has been closed or suspended, or when a statute of limitations has passed, the certification shall be completed after the above verification has been conducted.
- D. No request for certification will be accepted unless it is made on the proper U.S. Citizenship and Immigration Services form (Form I-918, Supplement B) and has been completed by the referring legal entity (such as a private attorney, nonprofit organization, or victim).

- E. The request for certification shall be completed within 14 days from the time it was presented to this department.
- F. All requests for Form I918, Supplement B certifications presented to this department shall be forwarded to the designated certifying officials.
- G. The certifying official may contact the VAWA Unit of the U.S. Citizenship and Immigration Services to report the U-visa applicant's failure to continue cooperating with the department only when the failure to cooperate is considered unreasonable. To determine whether failure to cooperate is unreasonable, officials should review and consider the victim's history of abuse and victimization, and any threats the victim has experienced or is experiencing.

V. ADDITIONAL CONSIDERATIONS

Department policy authorizes its members to distribute to any crime victim who may be a noncitizen an informational flyer describing immigration relief and services available to immigrant crime victims.

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

START HERE - Please type or print in black ink.

Part 1. Victim information.

Family Name	Given Name	Middle Name
[REDACTED]	[REDACTED]	
Other Names Used (Include maiden name/nickname)		
none		
Date of Birth (mm/dd/yyyy)	Gender	
[REDACTED]	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	

Part 2. Agency information.

Name of Certifying Agency		
[REDACTED] Police Department		
Name of Certifying Official	Title and Division/Office of Certifying Official	
[REDACTED]	Captain [REDACTED] Division	
Name of Head of Certifying Agency		
Chief [REDACTED]		
Agency Address - Street Number and Name		Suite #
[REDACTED]		515
City	State/Province	Zip/Postal Code
[REDACTED]	CA	[REDACTED]
Daytime Phone # (with area code and/or extension)		Fax # (with area code)
[REDACTED]		[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	FBI # or SID # (if applicable)	
070 840 654		

For USCIS Use Only.

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

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 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 | |

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

U-visa News Articles

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://www.fbi.gov/publications/leb/2009/october2009/visa_feature.htm

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.lasclev.org/2010%20News%20Clippings/03-28-2010_Sprecher_and_McGrath_Op-Ed.pdf

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://www.womensenews.org/story/100302/visas-out-hell-women-need-know-they-exist>

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. Mark Shurtleff and Doug Gansler, *Opinion: Weakening Violence Against Women Act betrays immigrant victims*, Politico (Sept. 11, 2012, 9:20 PM), <http://www.politico.com/news/stories/0912/81048.html>.

6. 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.”).

7. Kerr, Kevin, *Illegal Immigrants Targeted in Assaults*, DUNCAN BANNER (Oct. 3, 2010), <http://duncanbanner.com/local/x231067851/Illegal-immigrants-targeted-in-assaults/print>.
8. Abernathy, Michael, *U visas Gaining Prominence*, TIMES-NEWS (December 30, 2011), <http://www.thetimesnews.com/articles/burlington-51037-visa-prominence.html>.
9. 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/lake-worth-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.”).
10. Simmons, Andria, *From Crime Victims to U.S. Citizens*, ATLANTA JOURNAL-CONSTITUTION (Feb. 20, 2011), at 1B.
11. Rojas, Leslie Berestein, *‘I don’t trust them’: How Fear of Deportation is Keeping Some Miramonte Parents Quiet*, SOUTHERN CALIFORNIA PUBLIC RADIO: MULTI-AMERICAN (Feb. 9, 2012), <http://multiamerican.scpr.org/2012/02/i-dont-trust-them-how-fear-of-deportation-authorities-is-keeping-some-miramonte-parents-quiet/>.
12. 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> (“ . . . 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.’”).
13. Comment of Senator Patrick Leahy on the Success of the U Visa Program to Protect Victims of Domestic Violence and Sexual Assault (August 21, 2012), <http://www.leahy.senate.gov/press/u-visa-program-release>.

U-VISA STATUTORY AND REGULATORY BACKGROUND: PURPOSE AND HELPFULNESS REQUIREMENT

The following excerpts from the Victims of Trafficking and Violence Prevention Act of 2000 and its implementing regulations summarize the statutory and regulatory background on the U-visa's purpose and its helpfulness requirement.

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."¹

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..."²

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."³

"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

¹ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Pub L. 106-386 §1513.

² 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).

³ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006- 0069, page 21 (Sept. 17, 2007).

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.”⁴

“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.”⁵

“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.”⁶

“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.”⁷

“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.”⁸

⁴ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

⁵ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

⁶ 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).

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

⁸ 73 Fed. Reg. 75540, 75554 (2008).

DHS Victim Policy, Guidance, and Legal Memorandum

Blue Campaign on Human Trafficking and DHS Announcement of Computerized 384 Red Flag VAWA Confidentiality System (December 10, 2010)

This memo describes the DHS Human Trafficking Blue Campaign and the launch of a new computerized system designed to notify all DHS officers, including enforcement officials, about persons that are to be provided VAWA confidentiality protection. The “384” flag signifies that the individual has a pending or approved VAWA confidentiality-protected case. This system will help stop removal of victims with pending and approved VAWA, T- and U-visa cases.

John Morton, Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs Memo (June 17, 2011)

This memo discusses the ICE policy of prosecutorial discretion in cases involving victims and witnesses of crimes such as domestic violence and persons making a non-frivolous effort to stand up for their civil rights and liberties. It states that, except for extraordinary circumstances, it is against ICE policy to conduct removal proceedings against a direct witness or victim of a crime. In order to avoid deterring individuals from reporting crimes and asserting their rights, it encourages the exercise of prosecutorial discretion on a case-by-case basis, especially when involving factors outlined in the TVPA and VAWA such as domestic violence, human trafficking, and other serious crimes. Furthermore, the memo notes that victims of trafficking, domestic violence, and other crimes who have filed for immigrant relief are now “flagged” in the Central Index System (CIS).

John Morton, Prosecutorial Discretion in Immigration Enforcement (June 17, 2011)

This memo discusses DHE enforcement priorities and its position on the use of prosecutorial discretion in decisions regarding enforcement of civil administrative violations of immigration laws. It encourages the case-by-case use of prosecutorial discretion to not enforce immigration laws against victims and witnesses in cases of domestic violence, human trafficking, and other serious crimes. This includes U-visa crimes and sexual assault. The memo also recommends case-by-case exercise of prosecutorial discretion in cases of persons in the process of attaining legal immigration status; persons present in the U.S. since childhood; persons who are pursuing or have graduated from U.S. high schools and universities; persons who are children, elderly, physically or mentally disabled and primary caretakers of these individuals, pregnant and nursing women and their spouses, cooperating witnesses in criminal prosecutions, individuals pursuing civil rights remedies for abuses such as discrimination, and others.

Vincent Memo: Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (September 25, 2009)

This memo outlines the proper procedures to follow when dealing with a U-visa applicant currently in removal proceedings or subject to a final order of removal. It discusses the appropriateness – and inappropriateness – of a *prima facie* determination of the applicant's eligibility for U-visa status in given contexts, and it asserts the importance of humanitarian factors in assessing whether to grant an applicant's request for a stay of removal. Finally, the memo outlines certain situations in which termination of removal proceedings against an applicant would be proper.

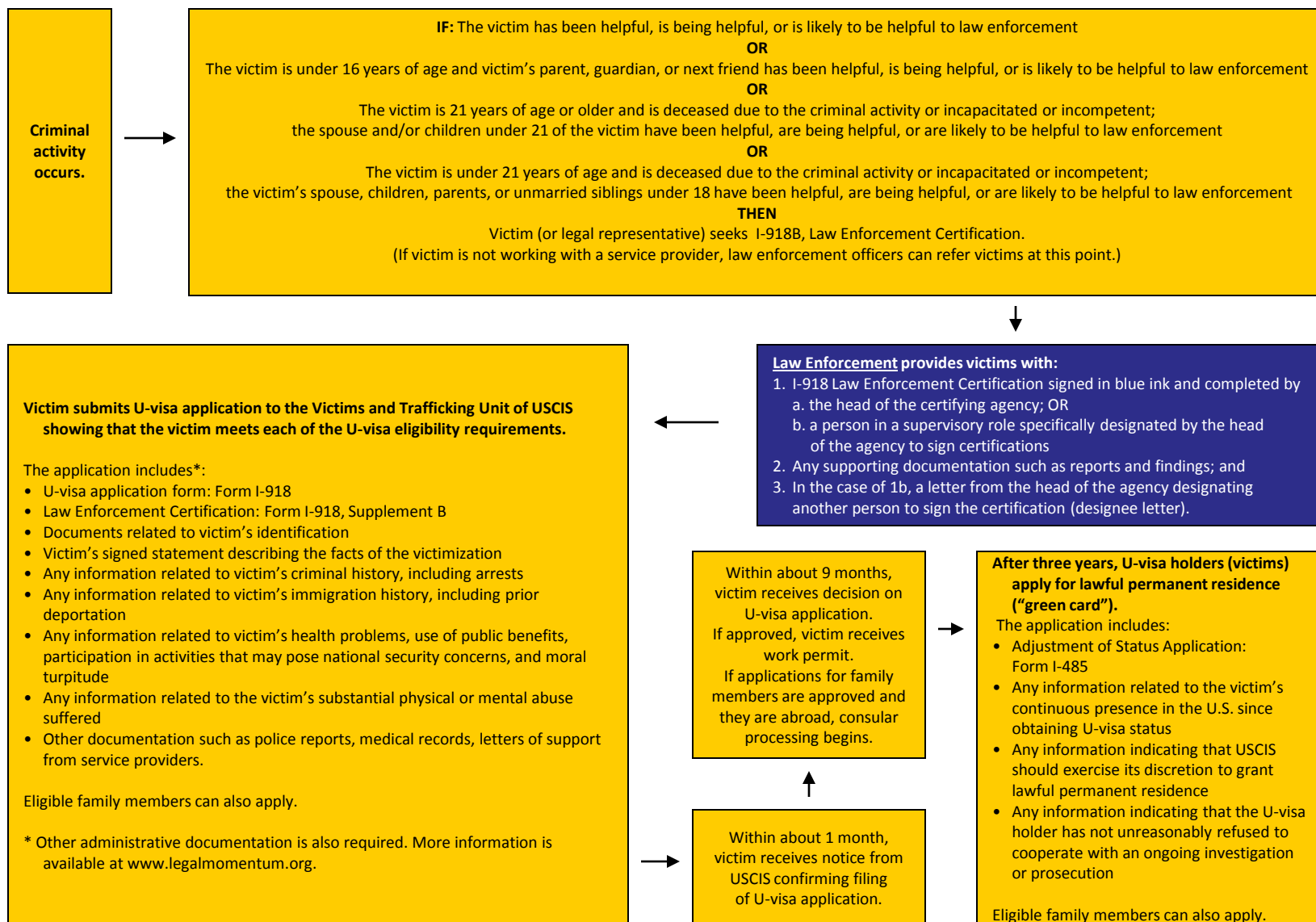
John Morton, Civil Immigration Enforcement Priorities for the Apprehension, Detention and Removal of Aliens Memo (March 2, 2011)

This memo asserts that due to the large number of violations, ICE must prioritize where to utilize its limited resources most effectively in order to promote its goals of national security, public safety, and border and immigration control integrity. It ranks the following three categories as priorities (high-low): 1) aliens who pose a danger to national security or a risk to public safety; 2) recent illegal entrants; and 3) aliens who are fugitives or otherwise obstruct immigration controls. It states that, except for in special circumstances, detention resources should not be used on aliens that are disabled, elderly, pregnant, or nursing; suffer from a severe mental or physical illness; serve as the primary caretakers of children or an infirm person; or whose detention would not be in the public interest. The memo also says that those who do not fall into the mandatory detention categories should not be detained without the approval of the ICE field office director.

John Morton, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children Memo (June 15, 2012)

This announcement permits certain young people who 1) were brought to the United States as young children, 2) do not present a risk to national security or public safety, and 3) meet several key criteria (brought to U.S. before the age of 16; continuously present for 5 years preceding the date of the memo and present on the date of the memo; currently in school, has graduated from high school, has obtained a GED, or is an honorably discharged veteran of the military; no serious criminal record; under the age of 30) to be considered for relief from removal from the country or from entering into removal proceedings. Those who demonstrate that they meet the criteria will be eligible to receive deferred action for a period of two years, subject to renewal, and will be eligible to apply for work authorization. DHS is currently developing procedures for those eligible to apply.

U-visa Application Victim Flow Chart



U VISA CERTIFICATION FREQUENTLY ASKED QUESTIONS¹

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.”² Congress recognized that victims that do not have legal status may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States. The Victims of Trafficking and Violence Protection Act (VTVPA) of 2000³ was enacted to strengthen the ability of law enforcement⁴ to investigate and prosecute cases of domestic violence sexual assault, trafficking of persons, and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country. Congress also sought to encourage law enforcement officials to serve immigrant crime victims.⁵ The U visa creates a symbiotic relationship between law enforcement and victims wherein they can work together to maintain safety for victims and facilitate investigations of crimes in immigrant communities.

How do law enforcement agencies benefit from the U visa?

As a crime-fighting tool, the U visa reinforces a law enforcement agency's commitment to hold offenders accountable, promote victim safety, enhance protection, and assist victims in their recovery from trauma as a result of criminal activity. Victims without immigration status are more likely to report crimes and cooperate in the perpetrator's prosecution if they have no reason to fear that doing so could cause them to be deported. Immigrant victims with U visas will be less susceptible to and less likely to succumb to the perpetrator's intimidation. The community itself will also be safer as a result. Law enforcement agencies that use the U visa in conjunction with other community policing measures also prove to immigrants and the community that they are serious about protecting immigrants from crime.

¹ 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.

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

³ *Id.*

⁴ The Department of Homeland Security (DHS) recognizes law enforcement officials to include federal, state, local law enforcement agencies, prosecutors, judges or other authority that has the responsibility for investigation or prosecution of a qualifying crime or criminal activity. Hereinafter, the phrases “law enforcement” and “law enforcement agencies” are to include the aforementioned authorities.

⁵ VTVPA, Pub.L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533-34 (2000). *See also* New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007) (amending 8 C.F.R. §§ 103, 212, 214, 248, 274a and 299).

CERTIFICATION PROCESS AND REQUIREMENTS

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.⁶ The certification is a sworn statement that asserts that 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.⁷

Which crimes are considered to be “qualified criminal activity” for the purposes of a U visa certification?

A U visa qualified criminal activity involves a violation of federal, state, or local criminal law (or any similar activity), and specifically includes “rape; torture; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.”⁸ Although this list is not all-inclusive, it represents the many types of behavior that can constitute domestic violence, sexual abuse, trafficking, or are crimes that often target vulnerable immigrants as victims.⁹

What constitutes “helpfulness in the investigation or prosecution” for the purposes of a U visa certification?

“Helpfulness” means the victims was, is or is likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he or she was a victim or indirect victim of. This includes being helpful and providing assistance when reasonably requested.¹⁰ Helpfulness can be as simple as a victim calling and reporting a crime to the police. It may also include participating in other aspects of the investigation or prosecution, such as identifying a perpetrator, appearing at court hearings, testifying, or preparing victim-impact statements. Cooperation does not conclude after sentencing, it can also continue to include cooperation in motion hearings and parole or probation determinations. 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

⁶ 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).

⁷ INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2000).

⁸ INA § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii) (2000).

⁹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 7 (2007).

¹⁰ DHS, U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Jan.01/2012 at p 3, *available at* http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf

residence.¹¹ To prevent further harm to victims, an exception to the ongoing cooperation requirement exists when victims can demonstrate that their inability or refusal to cooperate is not unreasonable. In some cases it may be unsafe for a victim to fully cooperate with law enforcement investigation or the prosecution of a perpetrator. Such situations include trauma or threats of retaliation.¹² If a victim has been helpful in detection or investigation of criminal activity, certifying agencies can issue U visa certification even if the victim later found it too difficult to continue cooperating.

Why is the U visa certification from law enforcement and/or from prosecutors 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 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. The U visa also provides a victim with employment authorization and protection against deportation, critical tools in establishing economic independence and long-term safety.

The U visa is also an effective tool for law enforcement and prosecutors because it allows both to hold perpetrators of these crimes accountable and to receive assistance from victims in investigations. It also helps law enforcement and prosecutors to foster a trusting relationship with the local immigrant population in its efforts to bring perpetrators to justice.

Who can sign a U visa certification?

In order to approve a U visa, USCIS requires a U visa certification. Certifying agencies include all authorities responsible for the investigation, prosecution, conviction or sentencing of the qualifying criminal activity.¹³ Including but not limited to judges, federal and local law enforcement agencies and prosecutors, federal, state and local family protective services, the Equal Employment Opportunity Commission, Department of Labor, and other agencies that meet these guidelines.¹⁴ Within law enforcement agencies, only an individual in a supervisory

¹¹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 85 (2007).

¹² 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).

¹³ DHS, U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Jan.01/2012 at p 3, *available at* http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf

¹⁴ 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).

role specifically designated by the head of the agency may sign the certification.¹⁵ An agency head may designate any number of law enforcement officers to sign these certifications. Within prosecutor's offices the head of the agency may sign the certification. An agency head may designate any number of prosecutors to sign U visa certification.

Are law enforcement agencies required to sign the U visa certifications?

No. Law enforcement agencies cannot be compelled to sign the certification. Whether a certifying agency signs a certification is at the discretion of the agency. However, Congress enacted the U visa protections with the expectation that law enforcement is in the best role to assess the helpfulness of a victim. A victim cannot obtain a U visa without a law enforcement or prosecutor certification. The U visa certification, Form I-918B is one of the required pieces of evidence to confirm that:

- 1.) The applicant was a victim or, in some cases, an indirect victim of the qualifying criminal activity;
- 2.) The applicant has specific knowledge and details of the crime; and
- 3.) The applicant was helpful, is being helpful or is likely to be helpful in the detection, investigation or prosecution of the criminal activity.

In addition, signing will not subject an agency to liability. Signing a certification does not grant any immigration benefit. USCIS requires evidence of eligibility and does a full background investigation. Only USCIS has the authority to grant or deny this immigration benefit.¹⁶

DECIDING WHETHER TO CERTIFY

Can a law enforcement officer or prosecutor complete Form I-918B if an investigation or case is closed? What if the statute of limitation for the qualifying criminal activity has lapsed?

Yes, law enforcement and prosecution agencies can still complete Form I-918B for an investigation or case that is closed. There is no applicable statute of limitations that precludes signing a certification. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful in the past to investigate or prosecute a crime.¹⁷ The U visa was enacted in January 2001 as part of the VTPA.¹⁸ However, USCIS did not promulgate regulations until September 2007.¹⁹ 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.²⁰ Similarly, by not creating a reporting

¹⁵ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000).

¹⁶ DHS Blue Campaign, Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and other Crimes at p. 2, available at <http://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>

¹⁷ Supra note 13, DHS U Visa Resource Guide at p. 13.

¹⁸ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 (OCT. 28, 2000).

¹⁹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 (2007).

²⁰ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a) (OCT. 28, 2000).

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 criteria required for law enforcement to sign a certification.

Can law enforcement agency sign a certification if it is investigating a crime that is NOT listed as a qualifying criminal activity under the U visa statute, but in the course of the investigation uncovers a victim of a qualifying crime that is unrelated to the primary investigation?

Yes. The certifying law enforcement agency must state only that the individual that was a victim of a qualifying criminal activity.²¹ An example of this would be the investigation of a drug distribution ring where law enforcement uncovers an instance of domestic violence between a suspected dealer and his girlfriend. This victim would be eligible for a certification even though the domestic violence was not the primary criminal investigation. Also, it is not necessary that the qualifying criminal activity be investigated or prosecuted.²² It is also possible that more than one criminal activity be checked on Form I-918B.

Can a law enforcement officer or prosecutor 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 law enforcement officer or prosecutor sign a certification if the prosecutor decided not to prosecute the perpetrator?

Yes. There is no statutory requirement that an arrest, prosecution, or conviction occur for a victim to be eligible for a U visa.²³ A victim should be protected regardless of whether the perpetrator is investigated or prosecuted. In many cases, prosecutors choose not to pursue a prosecution of a perpetrator, 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 perpetrator will usually know at least that a police report has been filed against him (or her), even if charges are never filed. The risk of retaliation is still considerable. The victim will still have to meet the helpfulness requirement by reasonably assisting the certifying law enforcement agency, and will also have to meet all other eligibility requirements in order to qualify for a U visa.²⁴

Can a prosecutor still certify even if a victim does not testify?

²¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 38 (2007).

²² "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).

²³ *Supra* note 13, DHS U Visa Resource Guide at p. 11.

²⁴ *Id.*

As mentioned above, there is no requirement that an arrest, prosecution, or conviction occur for a victim to be eligible for a U visa. While there is no requirement for the victim to testify at a trial to be eligible for a U visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with law enforcement. If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed Form I-918B²⁵.

Can a law enforcement officer or prosecutor 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. Plea agreements and dismissals do not negatively impact a victim's eligibility.²⁶ 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 law enforcement 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 law enforcement officer or prosecutor sign a certification if the individual seeking certification does not appear to be a victim of a qualifying criminal activity?

No. If the law enforcement officer or prosecutor does not believe that the individual seeking certification is a victim of a qualifying criminal activity, the officer should not sign the certification unless it is for an indirect victim (see below). Law enforcement officers, however, should remember that many of these crimes, including sexual assault and human trafficking, are traumatic and are not immediately reported. Furthermore, many perpetrators fuel immigrant victims' perceptions and expectations about law enforcement based on experiences from their home countries, where law enforcement officers or prosecutors might have been corrupt and unreliable. Therefore, a law enforcement officer or a prosecutor may not immediately identify someone as a victim because the individual is not yet comfortable disclosing the victimization. Careful investigation of possible victims has to be done with the utmost care in instances where victims have not yet disclosed their victimization.

Can a law enforcement officer or prosecutor 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 because of faulty or no translation. In cases of 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.

²⁵ *Id.*

²⁶ *Supra* note 13, DHS U Visa Resource Guide at p. 12.

Can a law enforcement officer or prosecutor sign a certification if there is evidence that the victim is also a criminal perpetrator?

Yes. Certification can be granted when an officer or prosecutor 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. Congress anticipated this problem and specifically allowed USCIS the discretion on a case-by-case basis to grant waivers of U visa victims' criminal convictions when it is in the public or national interest.²⁷ Many immigrant crime victims have been controlled in such a way that they end up being arrested based on information from their 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.²⁸ USCIS 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), USCIS precludes the individual from obtaining U visa relief.

Can a law enforcement officer or prosecutor sign a certification if there are concerns about the victim's credibility?

Yes. The certifier is responsible for ensuring that the information on the certification is true and complete.²⁹ USCIS will adjudicate any issues of credibility beyond the certification, including statements in the application that suggest issues of credibility. USCIS employs rigorous standards to check the credibility of every applicant.

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

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, or incapacitated³⁰. Indirect victims can also seek U visas when the victim of criminal activity was an under 21 year old child victim. When the victim is an immigrant or U.S. citizen child under the age of 21 their parents and under age siblings under the age of 18 can be considered indirect victims and can also apply for U visas.³¹

The preamble to the U Visa regulations reflect DHS' intention to with regard to indirect victims to encourage "these family members to fully participate in the investigation or prosecution"

²⁷ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007)

²⁸ 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.

²⁹ DHS USCIS Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification

³⁰ 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).

³¹ 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).

and avoid results outcomes that “separate families and lead to anomalous results”.³² 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.³³

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

Law enforcement officers and prosecutors may sign certifications for victims who have not yet secured legal representation.³⁴ U visa certifiers should recommend that victims have representation before applying. They should also refer crime victims to agencies in the community with experience assisting immigrant victims. These agencies will provide social services and assist victims in securing representation before the victim applies for a U visa. Law enforcement officers should not provide any legal advice to the crime victims. If law enforcement officers or prosecutors are eager to sign certifications, however, they can refer victims to community groups or organizations that can provide legal advice or representation or to advocates who can access technical assistance and support.

If a law enforcement officer and/or prosecutor signs the certification, does the victim automatically get lawful immigration status?

No. USCIS requires U visa applicants to provide significant further documentation to meet all other U visa requirements.³⁵

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

No. The U visa certification is not a benefit. The certification provides the immigrant victim with a piece of evidence that DHS requires the victim to submit as part of her U visa application. For a victim’s U visa application to be approved, the victim must submit sufficient evidence to convince DHS that the immigrant victim applicant has met all of the U visa’s evidentiary requirements. Congress designed the U visa process to facilitate prosecutions of perpetrators of crimes committed against non-citizens. To ensure that the U visa would not be considered a benefit offered by the prosecution to the victim, Congress gave DHS the sole authority to grant U visas. Additionally, the U visa was created as a temporary visa, conferring no permanent legal immigration status to the victim. Any application for lawful permanent residency for U visa victims requires a separate application and fulfillment of requirements that are in addition

³² 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).

³³ 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).

³⁴ 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 expires due to delays in the victim attaining legal representation. Note: victims are not required to have attorneys to apply for the U visa.

³⁵ 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).

to and not related to the criminal prosecution – humanitarian need, public interest or family unity.

What if a particular jurisdiction has a policy not to protect people who are without lawful immigration status?

Congress created the U visa to:

*strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...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.*³⁶

Law enforcement jurisdictions that, in practice, refuse to sign U visa certifications or that adopt a uniform policy against signing U visa certifications should consider the ramifications for immigrant victims and the safety and trust of law enforcement within the entire community. Law enforcement agencies exist to keep communities safe. Excluding a significant and vulnerable part of the population from protection may have long-lasting and serious effects for the entire community.

Once a certification is signed, what are the ongoing obligations for a law enforcement agency?

If a victim later appears not to be a victim or unreasonably refuses to be helpful in an investigation or prosecution, a certifying agency is required to contact the VAWA Unit at the Vermont Service Center of USCIS to report any such changes. 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.³⁷ 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.³⁸

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

USCIS will investigate the arrest of every person with a pending application. The certifying agency does not have the 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.

³⁶ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a) (OCT. 28, 2000).

³⁷ 8 CFR 245.24(a)(5) (2009)

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

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, USCIS will review an individual's criminal history when the U visa holder applies for lawful permanent residence.³⁹ In some jurisdictions, the U visa holder who is arrested will be brought to the attention of U.S. Immigration and Customs Enforcement. Even to individuals granted lawful permanent status, a criminal conviction can have immigration consequences and the process is 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. These circumstances should have no impact on whether a law enforcement officers or prosecutors sign the certification. Immigration enforcement actions are typically subject to prosecutorial discretion. Law enforcement agencies should encourage immigrants in removal proceedings to obtain legal advice from an experienced immigration attorney.

What are the safeguards for protecting the U visa program against fraud?

Congress and USCIS recognize that law enforcement agencies that investigate and prosecute the qualifying criminal activities are in the best position to determine if a qualifying crime has taken place.

PROSECUTOR'S DISCLOSURE OBLIGATIONS

Under rulings from the Supreme Court and most state case law, prosecutors have discovery obligations to disclose certain information to the defense. Depending on the information and the prosecutor, some of the victim's records that are subject to discovery may include U visa related information. Obligations may differ between federal and state prosecutors because the U visa is a federal immigration remedy adjudicated by the Department of Homeland Security (DHS) which is a federal agency.

Are state and local prosecutors required to obtain and disclose information contained in federal immigration case files and produce such information under Brady or its progeny?

Under the Supreme Court's decision in *Brady v. Maryland*, prosecutors have a constitutional mandate to disclose "material" and "exculpatory" evidence in their "possession" to defendants in criminal cases even absent a request from the defendant for such evidence. In state prosecutions, this will include local police files, records from victim services, and other local agencies that interacted with the victim.

Under the Violence Against Women Act (VAWA), VAWA confidentiality protections prohibit the disclosure of information contained in and information about the existence of immigration cases filed by VAWA self-petitioners, T-visa and U visa applicants. State and local prosecutors are not constitutionally required under the Brady line of cases to seek out, obtain or disclose the existence of or any information contained in an immigration case that maintained in federal

³⁹ 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).

immigration case files. State and Local practice rules may have additional requirements that prosecutors must comply with.

Which agencies are considered to be part of the state prosecutor's team and may also be required to produce information related to victims?

State attorney victim witness or service liaisons, and other county government agencies, such as social services. This is especially true with child and elder abuse records may be required to be turned over if its existence is known or should have been known to the prosecutor.

Is a U visa certification form signed by law enforcement or a prosecutor discoverable under *Brady* or its progeny? Pursuant to most state penal codes and constitutional obligations under *Brady v. Maryland*, a U visa certification issued during the pendency of the case may be considered discoverable as "material" evidence. Most states define "material" to mean information that tends to influence the trier of fact because of the logical connection to the issue. Thus, the prosecutor's duty of disclosure extends to all information and evidence in his/her possession that reasonably appears to be favorable to the accused. Accordingly, this appears to include information that undermines the credibility of the prosecution witness/victim. Therefore, in order to ensure *Brady* and state practice requirements are met and state prosecutions are not vulnerable to appeal, most state prosecutors will disclose the U visa certification.

Post-conviction certification requests do not need to be disclosed to the defense. A recent federal case, *United States v. Mills*⁴⁰, affirms the proposition that the prosecution's failure to disclose the post-trial issuance of a Special Public Benefit Parole Visa to an informant who testified at trial is not a *Brady* violation and would not require a new trial because the document did not exist prior to trial. The federal court also held that even if the post-trial issuance of the visa could be considered *Brady* information, its impeachment value in that case was not material to the outcome of the trial.

In the process of completing U visa certifications what are best practices for law enforcement and how do these practices relate to discovery under *Brady* and its progeny of the U visa certification and related documents the prosecutor receives and reviews as part of the certification process?

Best practices are for state and local law enforcement and prosecutors to base certifications upon information contained in their own agency records and information provided by police or prosecution staff. Since certification is based on government agency records and experiences with the victim regarding helpfulness, the only piece of information contained in the certifying agencies' certification file that is not an already a discoverable government document will be the victim's letter requesting U visa certification and a copy of the signed certification form itself. Police and prosecution agencies will not have copies of the full U visa case file as part of their records. The prosecutor will only be obligated to turn over a full U visa application he or she is in actual possession of the full application itself. Since the application is a federal

⁴⁰ 334 Fed.Appx. 946 (2009).

application that is submitted to DHS only DHS will have that file. In a federal prosecution, however, the full U visa application may be discoverable because the federal agency that is in possession of the application, DHS, will be considered to be a part of the prosecutor's team. Therefore, a federal prosecutor may be obligated to turn over a full U visa application because he or she knows or should know that DHS is in possession of the full application.

Best Practices

In creating the U visa, Congress sought to offer immigrant crime victims access to U visa protections as early as possible after the victim of a crime came forward and made a report to the police about having suffered criminal activity. Congress also wanted to assure that crime victims who came forward to help with any part of the criminal case process from detection and investigation through prosecution, conviction and sentencing could be protected against the perpetrators use of threats of deportation, retaliation and intimidation to coerce victims into not cooperating with government agencies investigating criminal activities.

To accomplish this, Congress authorized a range of government officials to be U visa certifiers. Police, prosecutors, judges, DHS officials, child and adult protective services, FBI, federal and state agencies investigating labor violations including the U.S. Department of Labor and the Equal Employment Opportunity Commission, and state and federal Alcohol, Tobacco and Firearms investigators were each authorized to sign certifications. The goal was to ensure that the any certifying agency that the victim first encounters could sign certifications and if the first agency did not provide language access or was not knowledge about the U visa, victims could obtain certification from another certifying agency that could attest to the veracity of the victimization and the victim's past, present or future likelihood of helpfulness.

U visa certification should be signed by police, prosecutors and/or other certifiers based on police, prosecution, court, or government agency records and information. The following information is the only information called for in the certification: the applicant was a victim or, in some cases, an indirect victim of the qualifying criminal activity; the applicant has specific knowledge and details of the crime; and the applicant was helpful, is being helpful or is likely to be helpful in the detection, investigation or prosecution of the criminal activity.

Prosecutors and police are encouraged to look closely at the facts of the case before them and to identify all of the types of criminal activities listed on the U visa certification that the facts of the case potentially support. Often and the criminal investigation moves forward and criminal prosecution proceeds that exact criminal activities that become the focus of the investigation or prosecution may change. For this reason, it is best practice for prosecutors and police to check off all of the criminal activities listed on the U visa certification form that apply. For example, if the facts demonstrate domestic violence and use of a deadly weapon which would be a felonious assault both boxes should be checked since both criminal activities occurred. The same set of facts can sometimes be charged under multiple statutes.

Since a significant proportion of the population in the United States are foreign born or have one or more foreign born parents (27%), prosecutors and their victim witness liaison staff develop an informational hand out provided to all crime victims that includes form of assistance available to crime victims. This list should include restitution requests, victim assistance grants, compensation assistance programs, and immigration relief remedies, in addition to local resources.

DHS CONTACTS INFORMATION

If a law enforcement agency or prosecutor has questions about a particular case, who can provide guidance?

For questions about U visa certification:

Lynn A. Boudreau, Assistant Center Director, Victims and Trafficking Unit

Vermont Service Center, USCIS: lynn.boudreau@dhs.gov or Scott Whelan, Office of Policy and Strategy, USCIS: (202) 272-8137

For law enforcement officers or prosecutors seeking technical support or consultation, please contact the National Immigrant Women's Advocacy Project (NIWAP) at (202) 274-4457 or email us at info@niwap.org or visit our website and our web library at <http://iwp.legalmomentum.org>.