

ASISTA Practice Pointer: Assessing Whether to File a U Visa Petition for Victims at Risk of Removal

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Through ASISTA's work helping advocates with their individual cases, we often identify common themes and areas of concern. A frequent concern for advocates is how to evaluate U visa cases with high risk factors. These factors can include, but are not limited to:

- Prior orders of removal
- Other serious immigration violations
- Recent or significant criminal history

Consider the following scenario: A potential client comes to you after being a victim of a serious assault and helping law enforcement in the investigation of the crime. They explain they have reentered unlawfully in 2018 after being removed in 2016, have a DUI from 5 years ago and have a second DUI since the reentry. You have assessed for all forms of relief and believe the only relief available is a U Visa petition. They ask for assurances that they won't be removed if they apply for a U visa. What do you advise?

Start with the following assessments:

1. What are the high risk factors?

Make a list of all serious immigration and criminal violations that may result in ICE contact outside of the filing of a U Visa petition.

- For immigration violations, review any violations more serious than entry without inspection or remaining in the U.S. after expiration of visa status.
- For criminal violations, take into account any outstanding warrants, even for minor violations. Local arrests may lead to ICE detection in jurisdictions with a Memorandum of Understanding (MOU) with ICE and in jurisdictions with **ICE presence** at local/state courthouses.

After reviewing and listing all immigration and criminal violations, you'll have a better idea of the risk that already exists even before any affirmative application is filed.

2. Are they statutorily eligible to file for U Visa?

Review the [statute](#), [regulations](#) and [policy](#) on U eligibility. Are they a victim of a [qualifying crime](#)? Did they suffer substantial physical or mental harm? Are/were they helpful to law enforcement in the investigation of the crime? DOJ Accredited Representatives and attorneys may find our presentation, [Supporting Your Legal Arguments](#), useful in honing your research skills.

If you think your potential client meets the definition at [101\(a\)\(15\)\(U\)](#), and can secure a I-918 Supplement B law enforcement certification, move on to the third assessment.

3. Are they eligible for a U Visa waiver for all grounds of inadmissibility?

Generally speaking, a [212\(d\)\(14\)](#) waiver can waive anything (except national security and terrorism grounds of inadmissibility at INA 212(a)(3)) if it is in the national or public interest to do so. Assuming they are not subject to security or terrorism grounds, the question is whether the client has evidence to establish that they warrant a favorable exercise of discretion because approval is in the national or public interest. What are the positive equities in this case? How will you address recent criminal history or immigration violations? [ASISTA's resource library](#) has useful waiver information that may help you through this step.

After discussing all possible equities with the potential client, is there is an argument to be made that they are eligible for a waiver under INA 212(d)(14)? If so, move on to the fourth assessment.

4. Are they at greater risk of detention of removal if they file as opposed to not filing?

We have heard of U petitioners with outstanding orders of removal being arrested by ICE, but there is usually something other than the filing of the application that triggers the arrest. Technically, approval of the U can overcome reinstatement if the U visa/U waiver are approved. This [AAO unpublished decision](#) confirms U petitioners with a reinstated order still qualify for U status.

Because in this scenario, the potential client has a recent DUI and it's their second one, those convictions are more likely to trigger an ICE arrest. ICE is reviewing police/jail/court records looking for immigrants who are a priority for removal. Your potential client may have the same risk of arrest even if they don't file a U visa petition. If they are arrested and detained, having a pending U petition may actually help when filing an I-246 stay request with ICE as it shows your client has a viable route to lawful status and are therefore less of a flight risk.

After going through this filing vs. not filing assessment, you can then get to the final assessment.

5. Can you provide assurances they won't be removed while the application is pending?

Ultimately, no. There can be no guarantees, only calculated risks.

As a preventative measure, we are recommending that attorneys with clients who have

outstanding orders of removal draft an I-246 Stay of Removal request and have it ready to go in the file. In the event of a work-site raid or home raid where ICE claims they did not have information about the pending U visa, you can be ready to file the stay and a request that VSC expedite processing. [Take a look at our recommendations](#) to prepare your clients who have outstanding removal orders and who may be targets of the Trump administration's raids.

It's your client who must decide whether or not to file. Going through the steps above should help you provide them with a thorough risk analysis to make an informed decision about their case.

The information provided in this advisory is legal information only and does not constitute legal advice. Have questions about your case? We're here to help! ASISTA Members can submit a [Request for Technical Assistance](#). Not a Member yet? [Join Us Today!](#)

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