

SB0608 U Nonimmigrant Status Petitions Testimony (

Uploaded by: Amanda Rodriguez

Position: FAV



BILL NO: SB 608

TITLE: Criminal Procedure – U Nonimmigrant Status Petitions

COMMITTEE: Judicial Proceedings

HEARING DATE: February 7th, 2025

POSITION: FAVORABLE

The Maryland Human Trafficking Task Force (MD-HTTF), established in 2007, is a multidisciplinary collaborative that includes law enforcement, prosecutors, victim service organizations, and state government agencies dedicated to combating human trafficking.

Violent crime can affect anyone, regardless of race, gender, sexuality, income level, or citizenship status. However, undocumented victims are often reluctant to report crimes due to fear of deportation. This fear allows perpetrators to remain free and continue harming others. In anti-trafficking work, members of the MD-HTTF frequently witness traffickers exploiting this fear to silence and control victims. The U Nonimmigrant Status Petition (U-Visa) serves as a critical tool to counteract this dynamic by allowing victims and their families to remain in the United States for up to four years to assist in the prosecution of crimes committed against them.

Despite its importance, the U-Visa process currently lacks clarity regarding what qualifies as “helpful” assistance from victims and at what stage in the process that assistance must occur. As a result, law enforcement officers often find themselves making de facto immigration determinations rather than focusing solely on certification. This can lead to inconsistencies and unnecessary barriers for victims seeking justice. SB 608 provides essential clarification on the definition of “helpful,” ensuring a more straightforward process for both victims and law enforcement, ultimately leading to more effective investigations and prosecutions.

Additionally, Maryland’s list of qualifying crimes for U-Visa eligibility does not currently align with federal guidelines. SB 608 addresses this discrepancy, which the MD-HTTF believes will streamline the U-Visa process—particularly in cases where crimes span multiple states.

SB 608 also expands the list of individuals authorized to certify that a crime occurred and that the victim has been helpful. Trafficking victims are often conditioned to distrust law enforcement, making it difficult for them to come forward. By broadening certification authority, the bill ensures that victims have viable pathways to seek justice, even in cases where law enforcement involvement is a barrier.

Furthermore, SB 608 removes the statute of limitations for U-Visa petitions relative to the crime committed. This provision acknowledges the complex trauma that victims endure and grants them the necessary time to process their experiences and make the decision to report. Justice should never be time-barred.

For these reasons, **the Maryland Human Trafficking Task Force urges a favorable report on SB 608.**

SB0608 U Nonimmigrant Status Petitions Testimony U

Uploaded by: Amelia Rubenstein

Position: FAV

BILL NO: SB 608

TITLE: Criminal Procedure – U Nonimmigrant Status Petitions

COMMITTEE: Judicial Proceedings

HEARING DATE: February 7th, 2025

POSITION: FAVORABLE

The Prevention of Adolescent Risks Initiative, established in 2014, is a research center within the University of Maryland School of Social Work that furthers the mission to improve health and well-being outcomes for youth across Maryland, with particular attention to violence prevention and reproductive health. PARI has worked for over 10 years to identify, respond and prevent sex and labor trafficking of children, adolescents, and adults in Maryland.

Violent crime can affect anyone, regardless of race, gender, sexuality, income level, or citizenship status. However, undocumented victims are often reluctant to report crimes due to fear of deportation. This fear allows perpetrators to remain free and continue harming others. In our anti-trafficking work, we have seen how traffickers exploit this fear to silence and control victims. The U Nonimmigrant Status Petition (U-Visa) serves as a critical tool to counteract this dynamic by allowing victims and their families to remain in the United States for up to four years to assist in the prosecution of crimes committed against them.

Despite its importance, the U-Visa process currently lacks clarity regarding what qualifies as “helpful” assistance from victims and at what stage in the process that assistance must occur. As a result, law enforcement officers often find themselves making de facto immigration determinations rather than focusing solely on certification. This can lead to inconsistencies and unnecessary barriers for victims seeking justice. In Maryland, the approval rate for U visas fell from 87.8% in 2018 to 76.3% in 2020 (USCIS). **SB 608 provides essential clarification on the definition of "helpful," ensuring a more straightforward process for both victims and law enforcement, ultimately leading to more effective investigations and prosecutions.**

Additionally, Maryland’s list of qualifying crimes for U-Visa eligibility does not currently align with federal guidelines. SB 608 addresses this discrepancy, which PARI believes will streamline the U-Visa process—particularly in cases where crimes span multiple states.

SB 608 also expands the list of individuals authorized to certify that a crime occurred and that the victim has been helpful. Trafficking victims are often conditioned to distrust law enforcement, making it difficult for them to come forward. By broadening certification authority, the bill ensures that victims have viable pathways to seek justice, even in cases where law enforcement involvement is a barrier.

Furthermore, SB 608 removes the statute of limitations for U-Visa petitions relative to the crime committed. This provision acknowledges the complex trauma that victims endure and grants them the necessary time to process their experiences and make the decision to report. Justice should never be time-barred.

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POSITION: FAVORABLE

For these reasons, **the Prevention of Adolescent Risks Initiative (PARI) urges a favorable report on SB 608.**

Amelia Rubenstein

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SB 608 Criminal Procedure - U Nonimmigrant Status

Uploaded by: Catherine OMalley

Position: FAV

BILL NO: Senate Bill 0608
TITLE: Criminal Procedure - U Nonimmigrant Status Petitions
COMMITTEE: Judiciary
HEARING DATE: February 7, 2025
POSITION: **SUPPORT**

The Women's Law Center of Maryland is dedicated to ensuring the physical safety, economic security, and bodily autonomy of women throughout the State. The clients that we represent have all experienced intimate partner violence, which may include physical, mental, and sexual abuse.

While violent crime has continued to decline in the U.S. since the 1990s, it can still affect anyone, regardless of race, gender, sexuality, income level, or citizenship status. Because undocumented victims are often reluctant to report crimes due to fear of deportation, this allows perpetrators to remain free and continue harming others. We have heard harrowing stories from our clients, as well as our colleagues in the Maryland Human Trafficking Task Force, of traffickers exploiting this fear to silence and control victims. The U Nonimmigrant Status Petition (U-Visa) serves as a critical tool to counteract this dynamic by allowing victims and their families to remain in the country for up to four years to assist in the prosecution of crimes committed against them.

Unfortunately, the U-Visa process currently lacks clarity regarding what qualifies as "helpful" assistance from victims and at what stage in the process that assistance must occur. In our experience, this has resulted in law enforcement officers making de facto immigration determinations rather than focusing solely on certification. This can lead to inconsistencies and unnecessary barriers for victims seeking justice. SB 608 provides essential clarification on the definition of "helpful," ensuring a more straightforward and effective process for both victims and law enforcement, ultimately leading to more prosecutions of dangerous and violent criminals and fewer abusers on our streets.

SB 608 also addresses the discrepancy between Maryland's list of qualifying crimes for U-Visa eligibility and current federal guidelines. It expands the list of individuals authorized to certify that a crime occurred and that the victim has been helpful beyond just law enforcement to include any agency that has civil, family, administrative or prosecutorial jurisdiction. Trafficking victims are often conditioned to distrust law enforcement, so by broadening certification authority, SB 608 ensures that victims have multiple viable pathways to seek justice.

Lastly, SB 608 removes the statute of limitations for U-Visa petitions relative to the crime committed. This provision acknowledges the complex trauma that victims endure and grants them the necessary time to process their experiences and make the decision to report. The Women's Law Center of Maryland firmly believes that no justice should ever be time-barred.

With these considerations, we strongly urge a favorable report on SB608.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

SB0608_U_Nonimmigrant_Status_Petitions_MLC_FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0608 Criminal Procedure – U Nonimmigrant Status Petitions

Bill Sponsor: Senator Augustine

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in strong support of SB0608 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

The U non-immigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. This bill makes several changes to the process of qualifying for a U visa

- If the person requesting the U visa is a victim of more than one crime that qualifies for certification, each crime should be listed on the certification
- The person requesting the visa is considered to be helpful if they have not refused to cooperate or failed to provide information reasonably requested by a certifying entity
- There is no statute of limitations on when a qualifying crime occurred
- The certification only provides factual evidence but does not determine eligibility for the visa

The U non-immigrant visa is an important program that helps correct the underreporting of crimes committed against or witnessed by our immigrant community for fear of compromising their immigration status. This bill clarifies the process so that it is clearer to both the applicants and the persons certifying.

We strongly support this bill and recommend a **FAVORABLE** report in committee.

HPP SB 608 Testimony- FAV (U-Visa).pdf

Uploaded by: Jessica Emerson

Position: FAV

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 608
TITLE: Criminal Procedure – U Nonimmigrant Status Petitions
COMMITTEE: Judicial Proceedings
HEARING DATE: February 7, 2025
POSITION: **FAVORABLE**

Senate Bill 608 would make crucial changes to the U-Visa process by clarifying what qualifies as “helpful” assistance, aligning Maryland’s list of qualifying crimes with the federal guidelines, expanding the list of individuals authorized to certify that a crime has occurred and that a victim has cooperated, as well as removing the statute of limitations for U-Visa petitions relative to the crime committed. The Human Trafficking Prevention Project supports this bill because it will improve outcomes for crime victims and reduce re-victimization during the process of seeking this crucial form of relief.

Violent crime can affect anyone, regardless of race, gender, sexuality, income level, or citizenship status. However, undocumented victims are often reluctant to report crimes due to fear of deportation. This fear allows perpetrators to remain free and continue harming others. In our anti-trafficking work, the HTPP frequently witness traffickers exploiting this fear to silence and control victims. The U Nonimmigrant Status Petition (U-Visa) serves as a critical tool to counteract this dynamic by allowing victims and their families to remain in the United States for up to four years to assist in the prosecution of crimes committed against them.

Despite its importance, the U-Visa process currently lacks clarity regarding what qualifies as “helpful” assistance from victims and at what stage in the process that assistance must occur. As a result, law enforcement officers often find themselves making de facto immigration determinations rather than focusing solely on certification. This can lead to inconsistencies and unnecessary barriers for victims seeking justice. SB 608 provides essential clarification on the definition of “helpful,” ensuring a more straightforward process for both victims and law enforcement, ultimately leading to more effective investigations and prosecutions.

Additionally, Maryland’s list of qualifying crimes for U-Visa eligibility does not currently align with federal guidelines. SB 608 addresses this discrepancy, which we believe will streamline the U-Visa process—particularly in cases where crimes span multiple states. SB 608 also expands the list of individuals authorized to certify that a crime occurred and that the victim has been helpful. Trafficking victims are often conditioned to distrust law enforcement, making it difficult for them to come forward. By broadening certification authority, the bill ensures that victims have viable pathways to seek justice, even in cases where law enforcement involvement is a barrier.

Furthermore, SB 608 removes the statute of limitations for U-Visa petitions relative to the crime committed. This provision acknowledges the complex trauma that victims endure and grants them the necessary time to process their experiences and make the decision to report. Justice should never be time-barred.

For these reasons, the Human Trafficking Prevention Project supports Senate Bill 680 and respectfully urges a favorable report.

The Human Trafficking Prevention Project is dedicated to ending the criminalization of sex workers and survivors of human trafficking through access to civil legal services and support for policies that dismantle harmful systems and increase access to basic human rights and legal relief.

*For more information, please contact:
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SB 608 - MNADV - FAV.pdf

Uploaded by: Laure Ruth

Position: FAV



BILL NO: Senate Bill 608
TITLE: Criminal Procedure - U Nonimmigrant Status Petitions
COMMITTEE: Judicial Proceedings
HEARING DATE: February 7, 2025
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the COMMITTEE to favorably Report on SB608.**

Undocumented victims of crime often hesitate to come forward due to fears of deportation. This reluctance allows perpetrators to go unpunished, enabling them to continue harming others. In cases where the victims of domestic violence or sexual assault are undocumented, we often see the perpetrators of abuse using their status to frighten the victim into silence. The U Nonimmigrant Status Petition (U-Visa) plays a crucial role in counteracting this issue by allowing victims and their families to stay in the U.S. for up to four years while assisting in the prosecution of their offenders. In order to be granted a U-Visa, the applicant must obtain a certification letter that they were “helpful” in the prosecution of the abuser.

Despite its significance, the U-Visa process remains unclear regarding what qualifies as “helpful” assistance from victims and when that assistance must take place. As a result, law enforcement officers who provide the letter often find themselves making immigration-related decisions rather than focusing strictly on certification. This lack of clarity leads to inconsistencies and unnecessary barriers for victims seeking justice. SB 608 provides much-needed guidance on the definition of “helpful,” simplifying the process for both victims and law enforcement and ultimately improving investigations and prosecutions.

Additionally, Maryland’s list of U-Visa-eligible crimes does not currently align with federal guidelines. SB 608 addresses this gap, which will help streamline the process, particularly in cases involving crimes that cross state lines.

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The bill also expands the range of individuals authorized to certify that a crime occurred and that the victim has been cooperative. Many undocumented victims have been conditioned to distrust law enforcement, making it difficult for them to report their experiences. By broadening certification authority, SB 608 ensures victims have more accessible pathways to seek justice, even in cases where law enforcement involvement is a barrier.

Finally, SB 608 removes the statute of limitations for U-Visa petitions related to the crime committed. This recognizes the profound trauma victims endure and gives them the necessary time to process their experiences before deciding to come forward.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB608.**

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1. U and T Visa Certification State Law Requiremen

Uploaded by: Leslye Orloff

Position: FAV

U and T Visa Certification State Law Requirements: Review, Comparison, and Trends¹

By: Abigail Wolfe, Leslye E. Orloff, and Esma Karakas²
December 31, 2024

1. Introduction

As an important part of the Violence Against Women Act of 2000 (VAWA 2000), there was a bipartisan effort to create the U visa and T visa programs as crime-fighting tools, that would enhance access to justice and help from law enforcement, prosecutors, courts, and other government officials and provide humanitarian relief for immigrant victims of crime.³ Congress created the U and T visas in order to strengthen the justice system's ability to detect, investigate, prosecute, convict and sentence perpetrators of domestic violence, child abuse, sexual assault, stalking, human trafficking and other criminal activities. One significant way to achieve these goals was to offer much needed protection, safety, and stability through immigration relief, protection from deportation, employment authorization, and a path to lawful permanent residency to immigrant victims of these offenses who mustered the courage to report crime victimization to government officials.⁴

Victims of criminal activities perpetrated against them in the United States must obtain a U visa certification from a government official that is a required prerequisite to filing the victim's application for a U visa. Unless a U visa applicant files a signed U visa certification along with their U visa application, USCIS will reject the victim's U visa application as incomplete.⁵ For victims of human trafficking filing for T visas, the T visa declaration is an optional form of evidence that is one of the primary ways a victim demonstrates cooperation for the victims T visa case.⁶

Nationally, 96% of the U visa certifications filed were signed by state or local government agencies, with 65% signed by law enforcement and 32% signed by a prosecutor, district attorney or judge.⁷ With state and local police, prosecutors, and judges signing U visa certifications and reaping the benefits of U visa certification as a tool to build trust and fight crime in communities across the country,⁸ twenty (20) states have enacted U visa certification and T visa declaration state statutes.

¹ This project was supported by Grant No: 15JOVW-23-GK-05119-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

² The authors would like to thank Sarah Register, Dean's Fellow, American University, Washington College of Law for her assistance with the citations for this article.

³ See VAWA 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464.

⁴ See generally Katrina Castillo et al., *Legislative History of VAWA (94, 00, 05), T and U-Visas, Battered Spouse Waiver, and VAWA Confidentiality*, (January 5, 2023). <https://niwaplibrary.wcl.american.edu/pubs/vawa-t-u-leg-history/>

⁵ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 2, 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

⁶ *T-Visa Law Enforcement Resource Guide* at 1, 5 (October 20, 2021), <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide/>.

⁷ USCIS, *Trends in U Visa Law Enforcement Certifications, Qualifying Crimes and Evidence of Helpfulness* at 3 (July 2020), https://niwaplibrary.wcl.american.edu/pubs/u_vis_a_lea-certs-report/.

⁸ See generally, IACP, *Support for Education and Awareness on U Visa Certifications and T Visa Declarations*: <https://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations/>; Police Chief Magazine, *Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims* (April 2018) https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims/; National Center for State Courts, *Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Policy Recommendations* (2018), <https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>.

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)

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This article reviews and charts the provisions of each of the U and T visa certification laws that have been passed by state legislatures in twenty states. State U and T visa statutes are designed to encourage state and local agencies to sign U visa certifications and T visa endorsements statewide while fostering consistency and transparency in victim’s ability to access certifications. State U and T visa certification law provisions are broken down into topics. The section on each topic includes a brief overview of the topic, a bulleted list comparing the various ways state laws address the topic, and a chart with the text of the provisions in each states’ laws addressing that topic. The charts facilitate swift identification on trends and emerging issues related to each topic and will help advocates, attorneys, judges, and government agency staff quickly identify the U and T visa certification laws that apply in their states, in neighboring states, or other states to which a victim of domestic violence, sexual assault, stalking, dating violence, child abuse, elder abuse, or human trafficking is considering moving when fleeing an abusive home, workplace, or trafficker.

2. Certifying Agencies

A noncitizen applying for a U Visa must obtain a U Visa certification from a qualifying certifying agency. According to 8 C.F.R. § 214.14, a “Certifying agency” is defined as any Federal, State, or local law enforcement agency, prosecutor, judge, or other authority responsible for investigating or prosecuting a qualifying crime or qualifying criminal activity. This definition also includes state and federal agencies with criminal, civil, or administrative investigative or prosecutorial jurisdiction in specific areas,⁹ examples include child and adult protective services, the Equal Employment Opportunity Commission (EEOC), and state and federal Departments of Labor.

State laws that require government agency officials in their states to sign U visa certifications apply their state law requirements to some or all of the state agencies authorized by federal law¹⁰ and regulations¹¹ to sign U visa certifications. Some states authorize and apply state certification requirements to all state agencies that fall within the federal law definition of U visa certifying agencies outlined in 8 C.F.R. § 214.14(a)(2). Other state U visa certification laws only apply their state law certification requirements to certain specific types of state agencies authorized to certify under federal law. State laws that apply state certification requirements to a subset of federally authorized certifying agencies commonly apply state certification requirements to law enforcement agencies and prosecutors, and in a growing number of jurisdictions judges.

State statutes that require any state agency authorized to certify under federal law to comply with state certification requirement are more effective at promoting U visa certification in their states. When law enforcement, prosecutors, or judges sign U visa certifications, research has found that this promotes trust by immigrant victims and communities in certifying agencies and promotes greater access to the justice by immigrant victims.¹²

Below is a list of states and the certifying agencies they recognize in their respective statutes, categorized by the type of agency:

⁹ DEP’T HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE at 6 (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

¹⁰ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

¹¹ 8 C.F.R. § 214.14(2); 72 Fed. Reg. 53014 (September 17, 2007), <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>; USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 4 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

¹² Leslye E. Orloff et al., *Executive Summary Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status* (2021), <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final/>; National Center for State Courts, *Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Policy Recommendations* (2018), <https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>; Police Chief Magazine, *Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims* (April 2018), http://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims/.

- All federally authorized certifying agencies “As defined in 8 C.F.R. § 214.14 (a)(2)”:
 - Colorado, Oregon, Nebraska
- Law enforcement agencies (including but not limited to: police, sheriffs, state police, university police, school district police):
 - Arkansas (U and T visas), California (U, T, and S visas), Colorado, Connecticut, Delaware, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, Rhode Island, Utah, Virginia, Washington
- Prosecutors (including but not limited to prosecutors, district attorneys, city attorneys, county attorneys, municipal prosecutor, and any of their deputies, and the office of the state attorney general):
 - California (U, T, and S visas), Colorado, Delaware, Illinois, Louisiana, Maryland, Massachusetts, Nebraska, Nevada, Oregon, U.S. Virgin Islands (Attorney General), Utah, Virginia, Washington
- Judges/Courts Included:
 - California (U, T, and S visas), Colorado, Nebraska, Nevada, Oregon, Utah, Washington
 - Administrative judge or hearing officer
 - Washington
 - Courts defined to include the Supreme Court, Court of Appeals, Business or Chancery Court, district courts, juvenile courts, and justice courts
 - Utah
- Child Protective Services, Departments of Human or Social Services:
 - California (U, T, and S visas), Colorado, Illinois, Massachusetts, Maryland, Nebraska, Nevada, Oregon, Utah, Washington
- Adult Protective Services
 - California (U, T, and S visas), Colorado, Illinois, Massachusetts, Maryland, Nebraska, Nevada, Oregon, Washington
- Civil Rights Divisions:
 - California (U, T, and S visas), Maryland
- Departments of Labor, Employment, and/or Industrial Relations:
 - California (U, T, and S visas), Colorado, Maryland, Nebraska, Oregon, Utah, Washington
- Other state authority in their respective areas of expertise responsible for detection, investigating or prosecuting a qualifying crime, human trafficking, or criminal activity:
 - California (U, T, and S visas), Colorado, Illinois, Massachusetts, Maryland, Nebraska, Nevada, Oregon, Utah, Washington
- Any other state or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.
 - California (T visa)
- Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise
 - California (S visa), Utah (U visa)

| Jurisdiction | Text |
|---|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). https://niwaplibrary.wcl.american.edu/pubs/arkansas-u-visa-certification-law-2015/ | 12-19-104. Law enforcement agency nonimmigrant visa certification. (a) Each law enforcement agency shall adopt a policy for the completion and signing of T and U nonimmigrant visa certification forms for human trafficking victims. |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (a) For purposes of this section, a “certifying entity” is any of the following: (1) A state or local law enforcement agency, including, without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code. (2) A prosecutor. (3) A judge. (4) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or |

| | |
|--|--|
| | <p>criminal activity. (5) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Civil Rights Department, and the Department of Industrial Relations.</p> <p>T visa 679.11. (a) For purposes of this section, a “certifying entity” is any of the following: (1) A state or local law enforcement agency, including, without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code. (2) A prosecutor. (3) A judge. (4) The Department of Industrial Relations. (5) Any other state or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking</p> <p>S visa 679.13. (a) For purposes of this section, a “certifying entity” is any of the following: (1) A state or local law enforcement agency, including, without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code. (2) A prosecutor. (3) A judge. (4) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity. (5) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Civil Rights Department, and the Department of Industrial Relations.</p> |
| <p>Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/</p> | <p>"Certifying agency" or "agency" has the same meaning as defined in 8 C.F.R. § 214.14 (a)(2) and includes but is not limited to: (a) A state or local law enforcement agency; (b) The office of a district, county, or city attorney; (c) A court; (d) The office of the attorney general; (e) Any other agency that is responsible for the detection, investigation, or prosecution of a qualifying crime or criminal activity; or (f) Entities that have criminal detection or investigative jurisdiction in their respective areas of expertise, including but not limited to a county department of human or social services and the department of labor and employment.</p> |
| <p>Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/</p> | <p>5(A)...each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (i) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the criminal activity, and (ii) any subsequent certification required by the victim.</p> |
| <p>Delaware Del. Code Ann. tit. 11, § 787(n) (2007). https://niwaplibrary.wcl.american.edu/pubs/11-del-c-787-u-visa-cert/</p> | <p>“(n) Law-enforcement agency protocol. (1) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended from time to time...”</p> |
| <p>Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/</p> | <p>"Certifying agency" means a State or local law enforcement agency, prosecutor, or other public authority that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity, including an agency that has criminal investigative jurisdiction in its respective areas of expertise, but not including any State court.</p> |
| <p>Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). https://niwaplibrary.wcl.american.edu/pubs/la-u-visa-cert-law/</p> | <p>A. Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a district attorney’s office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall...</p> <p>B. Law enforcement assistance with respect to immigration. (I) After the agency or office makes a preliminary assessment pursuant to Paragraph (A)(2) of this Section that a victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act, and upon the request of such victim, the agency or office shall provide the victim or possible victim of human trafficking with a completed and executed United States Citizenship and Immigration Services (USCIS) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification, or both. These forms shall be completed by the certifying officer in accordance with the forms’ instructions and applicable rules and regulations. (2) The victim or possible victim of human trafficking may choose which form to have the certifying officer complete.</p> |

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| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/</p> | <p>(b) "Certifying entity" means: (1) a State or local law enforcement agency; (2) a State's Attorney or deputy or assistant State's Attorney; (3) any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; or (4) an agency that has criminal detection or investigative jurisdiction in the agency's respective areas of expertise, including child protective services, the Commission on Civil Rights, and the Maryland Department of Labor. (c) "Certifying official" means: (1) the head of a certifying entity; (2) an individual in a supervisory role who has been specifically designated by the head of a certifying entity to provide U Nonimmigrant Status certifications on behalf of that entity; or (3) any other certifying official defined under Title 8, § 214.14(a)(3)(i) of the Code of Federal Regulations.</p> |
| <p>Massachusetts Mass. Gen. Laws ch258F §§ 1-4 (2021). https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/</p> | <p>"Certifying entity", a law enforcement agency, prosecutor or other state or local entity that has the authority to detect, investigate or prosecute severe forms of trafficking in persons or criminal activity.</p> |
| <p>Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/</p> | <p>"certifying entity" means a state or local law enforcement agency</p> |
| <p>Montana Mont. Code Ann. § 44-4-1503 (2017). https://niwaplibrary.wcl.american.edu/pubs/montana-u-visa-certification-law/</p> | <p>44-4-1503. Law enforcement protocol. (1) On request from a person who a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the person to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U) or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the person the Form I-914B or Form I-918B provided by the United States citizenship and immigration services on its website and ask a federal law enforcement officer to request continued presence.</p> |
| <p>Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/</p> | <p>Certifying agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of qualifying criminal activity, as described in 8 C.F.R. § 214.14(a)(2)</p> |
| <p>Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-certification/</p> | <p>"Certifying agency" means: 1. A state or local law enforcement agency; 2. A prosecutor; 3. A judge; or 4. Any other governmental agency that has criminal, civil or administrative investigative or prosecutorial authority.</p> |
| <p>North Dakota N.D. Cent. Code § 12.1-41-18 (2019). https://niwaplibrary.wcl.american.edu/pubs/nd-u-visa-cert-law/</p> | <p>1. On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.</p> |

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| <p>Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/</p> | <p>“Certifying agency” means: (A) A state or local law enforcement agency; (B) A prosecutor’s or district attorney’s office; (C) The Judicial Department, with respect to a judge of a state court acting as a certifying official; (D) A judge other than a judge of a state court; or (E) Any other agency that has responsibility for the detection, investigation or prosecution of a qualifying criminal activity, including but not limited to a certifying agency as defined in 8 C.F.R. § 214.14</p> <p>(C) “Law enforcement agency” has the meaning given that term in ORS 146.003 (Definitions for ORS 146.003 to 146.189 and 146.710 to 146.992) (Sheriff, police, university police, and state police).</p> |
| <p>Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). https://niwaplibrary.wcl.american.edu/pubs/ri-u-t-certification-law/</p> | <p>(a) On request from an individual whom a law enforcement officer or agent thereof reasonably believes is a victim who is, or has been, subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), or 8 U.S.C. § 1101(a)(15)(U), or for continued presence under 22 U.S.C. § 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and request assistance from the local Immigration and Naturalization office.</p> |
| <p>Utah Utah Code Ann Code § 77- 38- 502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/</p> | <p>(1) "Certifying entity" means any of the following: (a) a law enforcement agency, as defined in Section 77-7a-103; (b) a prosecutor, as defined in Section 77-22-4.5; (c) a court described in Section 78A-1-101; (d) any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; and (e) an agency that has criminal detection or investigative jurisdiction in the agency's respective areas of expertise, including: (i) the Division of Child and Family Services; and (ii) the Labor Commission.</p> <p>77-7a-103 (2) "Law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision</p> <p>77-22-4.5 (1) As used in this section, "prosecutor" includes the state attorney general and any assistant, a district attorney and any deputy, a county attorney and any deputy, and a municipal prosecutor and any deputy</p> <p>78A-1-101 Courts of this state -- Courts of record. (1) The following are the courts of this state: (a) the Supreme Court; (b) the Court of Appeals; (c) the Business and Chancery Court; (d) the district courts; (e) the juvenile courts; and (f) the justice courts.</p> |
| <p>Virginia Va. Code Ann. Code §§ 9.1- 1501, 9.1-101 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/</p> | <p>§ 9.1-1501 "Certifying agency" means a state or local law-enforcement agency, an attorney for the Commonwealth, the Attorney General, or any other agency or department employing law-enforcement officers as defined in § 9.1-101 that has responsibility for the investigation or prosecution of a qualifying criminal activity.”</p> <p>§ 9.1-101 "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3; (xii) private police officer employed by a private police department; or (xiii) person designated as a sworn unit investigator by the Attorney General pursuant to subsection A of § 32.1-320.1. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department, sheriff's office, or private police department.</p> |
| <p>U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019).</p> | <p>On request from an individual, who the Attorney General reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. section 1101(a)(15)(T) or 8 U.S.C. section 1101(a)(15)(U), or for continued presence under 22 U.S.C.</p> |

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| https://niwaplibrary.wcl.american.edu/pubs/us-virgin-islands-u-cert-law-2019/ | section 7105(c)(3), the Attorney General, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and ask a federal law enforcement officer to request continued presence. |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | 2) "Certifying agency" means a state or local law enforcement agency, prosecutor, administrative judge, hearing office, or other authority that has responsibility for the investigation or prosecution of criminal activity. A certifying agency includes an agency that has investigative jurisdiction in its respective area of expertise including, but not limited to, the Washington state patrol, the Washington department of labor and industries, and the Washington department of social and health services. (4) "Law enforcement agency" means any agency in Washington that qualifies as a criminal justice agency under RCW 10.97.030(5) and is charged with the enforcement of state, county, municipal, or federal laws, or with managing custody of detained persons in the state, and includes municipal police departments, sheriff's departments, campus police departments, the Washington state patrol, and the juvenile justice rehabilitative administration. (5) "Law enforcement official" means any officer or other agent of a state or local law enforcement agency authorized to enforce criminal statutes, regulations, or local ordinances. |

3. Certifying Officials

As a prerequisite to being able to file U visa applications, immigrant victim applicants must obtain a U visa certification from a government agency official authorized by federal law as a certifying official. According to federal regulations, 8 C.F.R. § 214.14(a)(3), a certifying official is defined as:

- “(i) The head of the certifying agency,
or any person(s) in a supervisory role specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
(ii) A Federal, State, or local judge.”

This federal definition of who is authorized to sign certifications applies to all state, federal, and local certifying officials. Additionally, with regard to all certifiers, except judges, federal law only authorizes the head of the certifying agency or an agency staff member designated by the head of the agency to sign U visas certifications for the agency. The person designated by the head of the agency must be a staff member whose role in the agency includes supervisory responsibilities. Some state statutes mandate that certain certifying agencies under state law are required to designate certifying officials who are authorized to sign certifications on the agency’s behalf. Below is a list of states that address in their state laws which state government officials are responsible for signing certifications under state law:

List of Certifying Officials:

- Head of the certifying entity:
 - California (U, T, and S visas), Colorado, Maryland, Nebraska, Nevada, Oregon, Utah, Virginia.
- A person in a supervisory role designated by the head of the certifying entity to issue Form I-918 Supplement B certifications (U visas), Form I-914 Supplement B certifications (T visas), Form I-854A certifications (S visas):
 - California (U, T, and S visas), Colorado, Connecticut, Illinois, Maryland, Minnesota, Nebraska, Nevada, Oregon, Utah, Virginia, Washington
- A judge:
 - California (U, T, and S visas), Colorado, Oregon, Nebraska, Utah.
- Any other certifying official defined under 8 C.F.R. § 214.14(a):
 - California (U, T, and S visas), Colorado, Maryland, Nebraska, Utah

States laws require that the heads of state certifying agencies designate certifiers:¹³

¹³ Under federal U visa laws if the agency head does not designate certifiers, then by default the only authorized signor of U visa certifications for the agency is the head of that certifying agency. The U visa statute makes all judges directly able to sign certifications. Judges do not need to use the designation process. A number of courts across the counter have found it helpful to the court and for the communities they serve to assign one judge U visa certification authority for the court. *See*, Superior Court of California San Francisco, *U-Visa Certification Protocol* at 1 (2022), <https://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol> (last visited Dec 10, 2024). For a model judicial certification policy for courts *see*, *U and T Visa Certification Protocol for Courts* (October 20, 2020), <https://niwaplibrary.wcl.american.edu/pubs/u-and-t-visa-certification-protocol-for-state-courts/>.

- Law requires that the heads of each certifying agency shall designate certifiers who can sign certifications and recertifications on the agency's behalf:
 - Connecticut (law enforcement only); Illinois, Minnesota, Oregon, Washington, Virginia
 - Designated certifiers are responsible for:
 - Timely processing certification requests
 - Minnesota
 - Providing outreach to victims to inform them of the entity's certification process
 - Minnesota
 - Keeping written or electronic records of all certification requests and responses
 - Minnesota
 - Those seeking certification shall submit the request to any certifying official for the agency that detected, investigated, or prosecuted the criminal activity upon which the request is based
 - Illinois, Virginia

Under the U visa program, the agencies authorized to sign U visas include any agency that detects, investigates, prosecutes, convicts or sentences crime victimization and qualifying criminal activities. The agency that detects the criminal activity need not be the agency with the responsibility for the investigation of that criminal activity. For example, in many cities there are multiple law enforcement agencies that could have jurisdiction over the location of the crime victimization or the location where the victim lives. These include police departments, sheriff's offices, state police, campus police, and the FBI. In rural jurisdictions U visa certification could be obtained from the sheriff's department or state police.

Additionally, an agency can certify when the crime occurred in another jurisdiction within the state or another state when for example the victim was victimized in one state and lives in another state and benefits from protection of local law enforcement in the victim's home state. Examples of cases where law enforcement or prosecution agencies in multiple states would have the connection with the victim or the criminal activity to be an appropriate agency from which the victim could obtain certification include:

- Stalking, domestic violence, and human trafficking cases
- Cases in which a child is sexually assaulted in one state when they are visiting relatives in that state, but only after returning home reports the sexual assault to law enforcement in their home jurisdiction
- Immigrants who are victimized by traffickers who hold them hostage, extort additional money from family members to get them released, and/or force victims into sex or labor trafficking while holding them in one state, who report the victimization after they escape the trafficking once they have fled to safety in another state.

Assisting other state agencies with certification: In some states the laws encourage agencies authorized to sign certifications to work together to help each other benefit from the U visa program's crime fighting and trust building attributes by including provisions in state law that encourage collaboration and cooperation among certifying agencies.¹⁴

- Assisting other agencies eligible to certify

¹⁴ DHS supports such collaboration and cooperation among agencies. DEPT HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE at n15(November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> ("In cases where the information provided by the victim led to the detection of criminal activity, a certifying agency may sign a certification. In these cases it does not matter if another agency will be the one to determine whether to pursue a criminal investigation or prosecution. In cases where the police investigated the crime and prosecutors are now prosecuting the case, both police and prosecutors may sign a certification. The authority of the police to sign a certification does not end when the case is referred for prosecution.").

- A certifying official may act on behalf of another certifying agency through an agreement with the other certifying agency.
 - Virginia
- The head of each certifying agency shall designate an official or officials in supervisory roles, either within the agency or, by agreement with another agency with concurrent jurisdiction over the geographic area or subject matter covered by that agency, within that other agency.
 - Illinois

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| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | <p>U visa (b) For purposes of this section, a “certifying official” is any of the following:</p> <ol style="list-style-type: none"> (1) The head of the certifying entity. (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency. (3) A judge. (4) Any other certifying official defined under Section 214.14 (a) of Title 8 of the Code of Federal Regulations. <p>T visa (b) For purposes of this section, a “certifying official” is any of the following:</p> <ol style="list-style-type: none"> (1) The head of the certifying entity. (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B declarations on behalf of that agency. (3) A judge. (4) Any other certifying official defined under Section 214.14(a) of Title 8 of the Code of Federal Regulations. <p>S Visa (b)For purposes of this section, a “certifying official” is any of the following:</p> <ol style="list-style-type: none"> (1)The head of the certifying entity. (2)A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-854A certifications on behalf of that agency. (3)A judge. (4)Any other certifying official defined under Section 214.14 (a) of Title 8 of the Code of Federal Regulations. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | <p>(3) "Certifying official" has the same meaning as defined in 8 C.F.R. § 214.14 (a)(3) and includes but is not limited to:</p> <ol style="list-style-type: none"> (a) The head of the certifying agency; (b) A person in a supervisory role who has been specifically designated by the head of a certifying agency to issue certifications on behalf of that agency; or (c) A judge or magistrate. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | <p>(5)(A)...each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (A) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity, and (B) any subsequent certification required by the victim.</p> |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | <p>The head of each certifying agency shall designate an official or officials in supervisory roles, either within the agency or, by agreement with another agency with concurrent jurisdiction over the geographic area or subject matter covered by that agency, within that other agency. Designated officials may not be members of a collective bargaining unit represented by a labor organization, unless the official is an attorney or is employed in an agency in which all supervisory officials are members of a collective bargaining unit.</p> <p>Any person seeking completion of a certification form shall first submit a request for completion of the certification form to the certifying official for any certifying agency that detected, investigated, or prosecuted the criminal activity upon which the request is based.</p> |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | <p>(c) "Certifying official" means:</p> <ol style="list-style-type: none"> (1) the head of a certifying entity; (2) an individual in a supervisory role who has been specifically designated by the head of a certifying entity to provide U Nonimmigrant Status certifications on behalf of that entity; or |

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| https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/ | (3) any other certifying official defined under Title 8, § 214.14(a)(3)(i) of the Code of Federal Regulations. |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/ | Subd. 3. Certifying entity; designate agent. (a) The head of a certifying entity shall designate an agent to perform the following responsibilities: (1) timely process requests for certification; (2) provide outreach to victims of criminal activity to inform them of the entity's certification process; and (3) keep a written or electronic record of all certification requests and responses. |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | Certifying official means 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 U nonimmigrant status certifications on behalf of that agency, as described in 8 C.F.R. § 214.14(a) |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaiton/ | “Certifying official” means: 1. The head of a certifying agency; or 2. A person who has been designated by the head of a certifying agency to complete a certification. |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | “Certifying official” means: (A)The head of a certifying agency; (B)A judge; or (C)A person in a supervisory role who has been designated by the head of a certifying agency to issue certifications under this section on behalf of the agency. (10) A certifying agency shall (a) Designate a person or persons within the agency responsible for processing requests for certification under this section. (b) Develop written procedures for processing requests for certification under this section. [2019 c.472 §1; 2021 c.489 §10] |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | (2) "Certifying official" means: (a) the head of the certifying entity; (b) a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency; (c) a judge; or (d) any other certifying official defined under 8 C.F.R. § 214.14. |
| Virginia Va. Code Ann. Code §§ 9.1-1501 and 9.1-101 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | "Certifying official" means the head of the certifying agency, a law-enforcement officer as defined in § 9.1-101, or any person employed by a certifying agency in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency. A certifying official may act on behalf of his employing certifying agency or on behalf of another certifying agency through an agreement with the other certifying agency. Each certifying agency shall designate at least one certifying official for its agency. B. Any person seeking completion of a certification form shall first submit a request for completion of the certification form to the certifying official for any certifying agency that detected, investigated, or prosecuted the criminal activity upon which the request is based. § 9.1-101 "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the security |

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| | division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115 ; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217 ; (viii) animal protection police officer employed under § 15.2-632 or 15.2-836.1 ; (ix) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3 ; (xii) private police officer employed by a private police department; or (xiii) person designated as a sworn unit investigator by the Attorney General pursuant to subsection A of § 32.1-320.1 . Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department, sheriff's office, or private police department. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | The head of each certifying agency shall designate an agent, who performs a supervisory role within the agency, to perform the following responsibilities: (a) Respond to requests for certifications; (b) Provide outreach to victims of criminal activity and trafficking to inform them of the agency's certification process; and (c) Keep written documentation regarding the number of victims who requested certifications, the number of certification forms that were signed, the number of certification forms that were denied, and the number of certifications that were withdrawn, which must be reported to the office of crime victims advocacy on an annual basis. |

4. Covers U and T Visas

A growing number of state laws require certification in both U visa and T visa cases. Victims of human trafficking both sex and labor trafficking qualify under federal law to apply for U visas and for T visas. Many human trafficking victims are initially identified as a victim of another U visa criminal activity (e.g. domestic violence, child abuse, sexual assault) and later are identified as human trafficking victims. Victims of human trafficking may first file for a U visa and later file for a T visa.¹⁵ As a result victims may seek either or both a U visa certification or a T visa declaration.

Additionally, victims of sex or labor trafficking can only obtain continued presence¹⁶ if state and local law enforcement or prosecution officials contact federal law enforcement officials and ask them to file a continued presence request on behalf of an immigrant human trafficking victim. Some state statutes govern requests for continued presence in addition to U and T visas.

The following state certification laws cover:

- U visas:
 - Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Louisiana (trafficking victims only) Massachusetts, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, Rhode Island, Utah, U.S. Virgin Islands, Virginia Washington
- T visas:
 - Arkansas, California, Delaware, Illinois, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, North Dakota, Rhode Island, U.S. Virgin Islands, Virginia, Washington
- S visas:

¹⁵ Identifying human trafficking co-occurring with other U visa crimes including domestic violence, child abuse, sexual assault and stalking can significantly speed up the victims access to legal work authorization, protection from deportation through deferred action, and receipt of the visa because adjudication times for the T visa program are significantly faster than the U visa. Compare the U visa (I-914) with the T visa (I-918), USCIS, CHECK CASE PROCESSING TIMES, <https://egov.uscis.gov/processing-times/>.

¹⁶ DEP'T OF HOMELAND SEC., CENTER FOR COUNTERING HUMAN TRAFFICKING, CONTINUED PRESENCE (2019), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Pamphlet-2019.pdf> (“Continued Presence (CP) is a temporary immigration designation provided to individuals identified by law enforcement as victims of a “severe form of trafficking in persons” who may be potential witnesses. CP allows trafficking victims to lawfully remain in the U.S. temporarily and work during the investigation into the human trafficking-related crimes committed against them and during any civil action under 18 U.S.C. § 1595 filed by the victims against their traffickers. CP is initially granted for two years and may be renewed in up to two-year increments. CP recipients also receive federal benefits and services.”).

- California
- Continued Presence:
 - Delaware, Montana, North Dakota, Rhode Island, U.S. Virgin Islands
- Trafficking victim may elect whether they want a U or T visa certification
 - Louisiana

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). https://niwaplibrary.wcl.american.edu/pubs/arkansas-u-visa-certification-law-2015/ | 12-19-104. Law enforcement agency nonimmigrant visa certification. (a) Each law enforcement agency shall adopt a policy for the completion and signing of T and U nonimmigrant visa certification forms for human trafficking victims. |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visas Section 679.10 of the Penal Code T visas Section 679.11 of the Penal Code S Visas Section 679.13 of the Penal Code |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | (1) "certification form" or "certification" means the Federal form I-918, supplement B, "U nonimmigrant status Certification", or any successor form, required under 8 USC Sec.1184 (p)(1) and 8 C.F.R.§ 214.14 (c)(2)(i) and as defined under 8 C.F.R.§ 214.14 (a)(12), |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | (5)(A)...each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (A) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity, and (B) any subsequent certification required by the victim. |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). https://niwaplibrary.wcl.american.edu/pubs/11-del-c-787-u-visa-cert/ | “(n) Law-enforcement agency protocol. (1)On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended from time to time...” |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | (5 ILCS 825/5)Sec. 5. Definitions. In this Act: “Certification form” means a law enforcement certification form or statement required by federal immigration law certifying that a person is a victim of qualifying criminal activity including, but not limited to, the information required by Section 1184(p) of Title 8 of the United States Code, including current United States Citizenship and Immigration Services FormI-918, Supplement B, or any successor form for purposes of obtaining a U visa or by Section 1184(o) of Title 8 of the United States Code, including current United States Citizenship and Immigration Services Form I-914, Supplement B, or any successor form for purposes of obtaining a T visa. “Certifying agency” means a State or local law |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). https://niwaplibrary.wcl.american.edu/pubs/la-u-visa-cert-law/ | A. Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a district attorney’s office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall (1)Notify the Crime Victims Services Bureau of the Department of Public Safety and Corrections that such person may be eligible for services under this Chapter. (2)Make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act (22 U.S.C. 7101 et seq.) or appears to be otherwise eligible for any federal, state, or local benefits and services. (a)If it is determined that the victim or possible victim appears to meet such criteria, then the agency or office shall report the finding to the victim and shall refer the child victim to appropriate services available, including legal services providers. (b)If the victim or possible victim is under the age of eighteen or is an adult in need of protective services pursuant to the provisions of the Adult Protective Services Act, the agency or office shall also notify the appropriate protective service agency. B. Law enforcement assistance with respect to immigration. (1)After the agency or office makes a preliminary assessment pursuant to Paragraph (A)(2) of this Section that a victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act, and upon the request of such victim, the agency or office shall provide the victim or possible victim of human trafficking with a completed and executed United States Citizenship and Immigration Services (USCIS) Form I-914, Supplement B, Declaration of Law |

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| | <p>Enforcement Officer for Victim of Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification, or both. These forms shall be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations.</p> <p>(2)The victim or possible victim of human trafficking may choose which form to have the certifying officer complete.</p> |
| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/</p> | <p>U visa certification only</p> |
| <p>Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/</p> | <p>Section 3. A certifying entity shall respond to a nonimmigrant status certification request from a victim of criminal activity who intends to petition for a nonimmigrant visa under 8 U.S.C. 1101(a)(15)(U) or from a victim of severe forms of trafficking in persons who intends to petition for a nonimmigrant visa under 8 U.S.C. 1101(a)(15)(T) not later than 90 days after receiving the request for certification.</p> |
| <p>Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/</p> | <p>"certification" means any certification or statement required by federal immigration law, as amended through June 1, 2021,including but not limited to the information required by United States Code, title 8, section 1184(p), and United States Code, title 8,section 1184(o), including current United States Citizenship and Immigration Services Form I-918, Supplement B, and United States Citizenship and Immigration Services Form I-914, Supplement B, and any substantively similar successor forms.</p> |
| <p>Montana Mont. Code Ann. § 44-4-1503 (2017). https://niwaplibrary.wcl.american.edu/pubs/montana-u-visa-certification-law/</p> | <p>44-4-1503. Law enforcement protocol. (1) On request from a person who a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the person to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U) or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the person the Form I-914B or Form I-918B provided by the United States citizenship and immigration services on its website and ask a federal law enforcement officer to request continued presence.</p> |
| <p>Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/</p> | <p>Applies to both U and T visas "(c) Form I-914B means Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of the Department of Homeland Security, United States Citizenship and Immigration Services;</p> <p>(d) Form I-918B means Form I-918, Supplement B, U Nonimmigrant Status Certification, of the Department of Homeland Security, United States Citizenship and Immigration Services;"</p> |
| <p>Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaiton/</p> | <p>U visas only ""Certification" means the certification of a Form 1918, Supplement B, U Nonimmigrant Status Certification, as required by 8 U.S.C. § 1184(p) regarding a Form 1-918, Petition for U Nonimmigrant Status by a certifying agency."</p> |
| <p>North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). https://niwaplibrary.wcl.american.edu/pubs/nd-u-visa-cert-law/</p> | <p>1.On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under <i>8 U.S.C. 1101(a)(15)(T)</i> or <i>8 U.S.C. 1101(a)(15)(U)</i>, or for continued presence under <i>22 U.S.C. 7105(c)(3)</i>, the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.</p> |
| <p>Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/</p> | <p>"Qualifying criminal activity" has the meaning given that term in 8C.F.R. § 214.14. "Victim of qualifying criminal activity" has the meaning given that term in 8 C.F.R. § 214.14.</p> |
| <p>Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). https://niwaplibrary.wcl.american.edu/pubs/ri-u-t-certification-law/</p> | <p>(a) On request from an individual whom a law enforcement officer or agent thereof reasonably believes is a victim who is, or has been, subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), or 8 U.S.C. § 1101(a)(15)(U), or for continued presence under 22 U.S.C. § 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and request assistance from the local Immigration and Naturalization office.</p> |
| <p>Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/</p> | <p>"Qualifying criminal activity" means the same as that term is defined in 8 C.F.R. § 214.14. (U visa regulations)</p> |
| <p>Virginia Va. Code Ann. Code § 9.1-1501 (2021).</p> | <p>"Certification form" means a certification form or declaration completed by a certifying agency that is required by federal immigration law certifying that a person is a victim of qualifying criminal activity. Such form or declaration may include any information required (i) by 8 U.S.C. §</p> |

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| https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | 1184(p), including the current United States Citizenship and Immigration Services Form I-918, Supplement B, or any successor form for purposes of obtaining a U visa, or (ii) by 8 U.S.C. § 1184(o), including the current United States Citizenship and Immigration Services Form I-914, Supplement B, or any successor form for purposes of obtaining a T visa. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). https://niwaplibrary.wcl.american.edu/pubs/us-virgin-islands-u-cert-law-2019/ | (a) On request from an individual, who the Attorney General reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. section 1101(a)(15)(T) or 8 U.S.C. section 1101(a)(15)(U), or for continued presence under 22 U.S.C. section 7105(c)(3), the Attorney General, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and ask federal law enforcement officer to request continued presence. |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (1) Upon the request by the victim or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider, a certifying agency shall: (a) Make a determination on United States citizenship and immigration services form I-918 supplement B or relevant successor certification form, whether the victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity; or (b) make a determination on United States citizenship and immigration services form I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim. |

5. Who May Request Certification and Connecting Victims with Services

Victim's advocates and attorneys provide lifesaving safety planning assistance to immigrant crime survivors and play a crucial role in informing survivors about and helping survivors obtain immigration relief.¹⁷ USCIS research on the U visa program found that 91.6% of all U visa applicants have attorney representation and another 4.6 % have assistance from a victim advocate in preparing the U visa application.¹⁸

Since 63.4% of U visa victims stay in abusive homes and workplaces until they gain work authorization,¹⁹ doing safety planning and having support from victim advocates and attorneys is extremely important.²⁰ This sections discusses how state statutes expand access to U visas by recognizing that many victims will be seeking U visa certification with the assistance of a person who is supporting the victims through the application process. Some state statutes explicitly recognize that a family member, victim advocate, or another person representing the victim is authorized to seek a U visa certification on the victim's behalf. Two states also require certifying agencies to connect victims with victim advocates, attorneys, and agencies providing trauma informed assistance.

Categories of Immigrants Eligible for Certification: The U visa statute grants access to U visa immigration relief to four different categories of eligible immigrants. These include:²¹

- Direct victims of criminal activity
- Indirect victims of criminal activity whose direct victim family member is deceased, incompetent, or incapacitated due to injury, trauma, or age
 - Victims over age 21: Spouse or unmarried children under age 21

¹⁷ Krisztina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending* (July 29, 2014), <https://niwaplibrary.wcl.american.edu/pubs/imm-qref-safetyplanning/>.

¹⁸ USCIS, U VISA DEMOGRAPHICS: U VISA REPORT (March 2020), <https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-demographics/>.

¹⁹ Krisztina E. Szabo, et al., *Early Access to Work Authorization For VAWA Self-Petitioners and U-Visa Applicants* at 21 (February 12, 2014), https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/. The time victims must wait from filing for a U visa through work authorization was 51.5 months at the time of the writing of this article. To check current wait times, go to USCIS, Check Case Processing Times <https://egov.uscis.gov/processing-times/>.

²⁰ Krisztina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending* (July 29, 2014), <https://niwaplibrary.wcl.american.edu/pubs/imm-qref-safetyplanning/>.

²¹ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 7 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

- Victims under age 21:
 - Spouse and parent
 - unmarried children under age 21 and unmarried siblings under the age of 18 (both determined at the time the crime occurred)
- Bystanders who suffer an unusually direct injury as a result of a qualifying crime

Many states have specifically listed in their statutes which of these categories of victims are guaranteed access to U visa certifications under state law. Most state statutes provide certification to direct victims of criminal activity. Some states have expanded certification guarantees to indirect victims and three states ensure access for bystander victims.

- Which victims may obtain certification:

- Direct victim of criminal activity
 - California, Colorado, Connecticut, Delaware, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, Rhode Island, Utah, U.S. Virgin Islands, Virginia, Washington
 - Victim requesting certification cannot be required to provide a government issued ID
 - California
 - Victim may apply for certification while outside of the United States
 - California (U, T and S visas)
- Victim of human trafficking
 - Arkansas, California, Delaware, Louisiana, Massachusetts, Nebraska, Washington
 - Tracks federal human trafficking definition and adds “another act or circumstance involving human trafficking.”
 - Washington
- Indirect victims of criminal activity
 - California, Colorado, Connecticut, Washington
 - Regardless of the direct victim’s immigration or citizenship status
 - Colorado, Washington
 - Defines “incapacitated” victims as unable to interact with law enforcement agency or certifying agency personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disability or age, such as minors.
 - Washington
- Bystander or witness victims
 - California, Colorado, Washington
- More than one victim may be provided certification
 - Colorado, Washington

- Who can obtain certification on the victim’s behalf:

- Victim’s parent
 - California, Maryland, Minnesota, Nevada, Oregon, Virginia
- Victim’s family member
 - California, Minnesota, Oregon, Utah, Virginia
- Victim’s guardian
 - Maryland, Nevada, Virginia, Oregon, Virginia
- Victim’s next friend
 - Maryland, Nevada, Oregon, Virginia
- Victim’s Attorney
 - California, Illinois, Minnesota, Oregon, Virginia, Washington
- Victim’s Accredited Representative
 - California, Illinois, Oregon, Washington, Virginia
- Victim’s victim advocate

- Minnesota, Oregon, Washington
 - Domestic violence or sexual assault services provider
 - Illinois, Oregon, Virginia
 - Any representative of the victim, indirect victim, or bystander victim may request certification
 - Illinois, Nevada, Oregon, Virginia, Washington
 - Licensed Clinical Social Worker:
 - Oregon, Virginia
- Connecting Victim’s With Victim’s and Legal Services: Statute requires that certifying agencies connect victims with victim advocates, victim services agencies or legal services.
 - Connecticut, Louisiana
 - Shall maintain professional relationships for referral and consultations purposes with programs and persons with expertise in trauma-informed care.
 - Connecticut

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). https://niwaplibrary.wcl.american.edu/pubs/arkansas-u-visa-certification-law-2015/ | 12-19-104. Law enforcement agency nonimmigrant visa certification. (a) Each law enforcement agency shall adopt a policy for the completion and signing of T and U nonimmigrant visa certification forms for human trafficking victims. |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (e) A “representative fully accredited by the United States Department of Justice” is a person who is approved by the United States Department of Justice to represent individuals before the Board of Immigration Appeals, the immigration courts, or the Department of Homeland Security. The representative shall be a person who works for a specific nonprofit, religious, charitable, social service, or similar organization that has been recognized by the United States Department of Justice to represent those individuals and whose accreditation is in good standing. (g) (1) Upon the request of the victim, victim’s family member, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. The certifying entity shall forward completed Form I-918 Supplemental B certification to the victim, victim’s family member, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings without requiring the victim to provide government-issued identification. (2) A victim who submits a Form I-918 Supplement B certification to a certifying entity does not have to be present in the United States at time of submitting the certification request or filing the petition with the government and may apply for certification while outside of the United States. (o) (1) A certifying entity may certify a Form I-918 Supplement B certification for direct victims, indirect victims, and bystander or witness victims. (2) A direct victim is any person who has suffered direct harm or who is directly and proximately harmed as a result of the criminal activity. (3) (A) An indirect victim is a qualifying family member of a direct victim if the direct victim is incompetent, incapacitated, or deceased, including spouses, unmarried children under the age of 21, parents if the direct victim was under the age of 21, and siblings under the age of 18 if the direct victim was under 21 years of age. Indirect victims shall cooperate in the investigation or prosecution but are not required to possess information about the crime itself. (B) Indirect victim cooperation includes parents who make their children available to communicate with the certifying entity. (4) A bystander or witness victim is any individual who was not the direct target of a crime, but who nevertheless suffered unusually direct injury as a result of the qualifying crime. T visa (e) A “representative fully accredited by the United States Department of Justice” is a person who is approved by the United States Department of Justice to represent individuals before the Board of Immigration Appeals, the immigration courts, or the Department of Homeland Security. The |

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| <p>California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/</p> | <p>representative shall be a person who works for a specific nonprofit, religious, charitable, social service, or similar organization that has been recognized by the United States Department of Justice to represent those individuals and whose accreditation is in good standing.</p> <p>(f) (1) Upon the request of the victim, victim’s family member, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B declaration, when the victim was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative to the investigation or prosecution of human trafficking. The certifying entity shall forward completed Form I-914 Supplemental B certification to the victim, victim’s family member, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings without requiring the victim to provide government-issued identification.</p> <p>(2) A victim who submits a Form I-914 Supplement B declaration to a certifying entity does not have to be present in the United States at time of submitting the certification request or filing the petition with the government and may apply for certification while outside of the United States.</p> <p>S visa (d)A certifying entity may apply for and may certify a Form I-854A certification for a qualified criminal informant. A qualified informant does not have to be present in the United States for certification pursuant to this section.</p> |
| <p>Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/</p> | <p>(5) "Victim of qualifying criminal activity" or "victim" has The same meaning as defined in 8 C.F.R. § 214.14 (a)(14) and includes an Individual who has suffered direct and proximate harm as a result Of the commission of qualifying criminal activity, including direct Victims; indirect victims, as defined under 8 C.F.R. §214.14 (a)(14)(1), Regardless of the direct victim's immigration or citizenship status; And bystander victims, as recognized under the federal register at 72 FR 53016.</p> <p>(6) more than one victim may be identified and provided with certification, depending upon the circumstances</p> <p>B) By signing a certification of helpfulness, the officer or agency is not making a determination of eligibility for U Nonimmigrant Status. The officer or agency is solely providing information required by the United States Department of Homeland Security on such form as is required by said department and certifying that: (i) The requesting individual or his or her family member is a victim of one of the enumerated crimes eligible for U Nonimmigrant Status, (ii) the victim possesses or possessed information regarding that crime, (iii) the victim has been, is being or is likely to be helpful in an investigation of that crime, and (iv) the victim has not failed or refused to provide reasonably requested information or assistance.</p> |
| <p>Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/</p> | <p>(f) It shall be the responsibility of the peace officer at the scene of a family violence incident to provide immediate assistance to the victim. Such assistance shall include, but need not be limited to: ... (3) informing the victim of services available, including providing the victim with contact information for a regional family violence organization that employs, or provides referrals to, counselors who are trained in providing trauma-informed care; (4) referring the victim to the Office of Victim Services; and (5) providing assistance in accordance with <u>the uniform protocols for treating victims of family violence whose immigration status is questionable</u>, established pursuant to subsection (i) of this section. In cases where the officer has determined that no cause exists for an arrest, assistance shall include: (A) Assistance as provided in subdivisions (1) to (5), inclusive, of this subsection.</p> <p>For the purposes of this subsection, “trauma-informed care” means services (i) directed by a thorough understanding of the neurological, biological, psychological and social effects of trauma and violence on a person; and (ii) delivered by a regional family violence organization that employs, or provides referrals to, counselors who: (I) Make available to the victim of family violence resources on trauma exposure, its impact and treatment; (II) engage in efforts to strengthen the resilience and protective factors of victims of family violence who are impacted by and vulnerable to trauma; (III) emphasize continuity of care and collaboration among organizations that provide services to children; and (IV) maintain professional relationships for referral and consultation purposes with programs and persons with expertise in trauma-informed care.</p> <p>g) (1) Each law enforcement agency shall develop, in conjunction with the Division of Criminal Justice, and implement specific operational guidelines for arrest policies in family violence incidents. Such guidelines shall include, but need not be limited to: (A) Procedures for the conduct of a criminal investigation; (B) procedures for arrest and for victim assistance by peace officers; (C) education as to what constitutes speedy information in a family violence incident; (D) procedures with respect to the provision of services to victims; and (E) such other criteria or</p> |

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| | <p>guidelines as may be applicable to carry out the purposes of sections 46b-1, 46b-15, 46b-38a to 46b-38f, inclusive,</p> <p>(5) (A) [annually] each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status</p> |
| <p>Delaware Del. Code Ann. tit. 11, § 787(n) (2007). https://niwaplibrary.wcl.american.edu/pubs/11-del-c-787-u-visa-cert/</p> | <p>“(n) Law-enforcement agency protocol.</p> <p>(1) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended from time to time, or for continued presence, under 22 U.S.C. § 7105(c)(3), as amended from time to time...”</p> |
| <p>Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/</p> | <p>(c) A request for completion of a certification form under this Section may be submitted by a representative of the person seeking the certification form, including, but not limited to, an attorney, accredited representative, or domestic violence or sexual assault services provider.</p> |
| <p>Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). https://niwaplibrary.wcl.american.edu/pubs/la-u-visa-cert-law/</p> | <p>A. (2) Make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act (22 U.S.C. 7101 et seq.) or appears to be otherwise eligible for any federal, state, or local benefits and services</p> <p>(I) Notify the Crime Victims Services Bureau of the Department of Public Safety and Corrections that such person may be eligible for services under this Chapter.</p> <p>(2) Make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act (22 U.S.C. 7101 et seq.) or appears to be otherwise eligible for any federal, state, or local benefits and services.</p> <p>(a) If it is determined that the victim or possible victim appears to meet such criteria, then the agency or office shall report the finding to the victim and shall refer the child victim to appropriate services available, including legal services providers.</p> <p>(b) If the victim or possible victim is under the age of eighteen or is an adult in need of protective services pursuant to the provisions of the Adult Protective Services Act, the agency or office shall also notify the appropriate protective service agency.</p> <p>B. Law enforcement assistance with respect to immigration.</p> <p>(1) After the agency or office makes a preliminary assessment pursuant to Paragraph (A)(2) of this Section that a victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act, and upon the request of such victim, the agency or office shall provide the victim or possible victim of human trafficking with a completed and executed United States Citizenship and Immigration Services (USCIS) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification, or both. These forms shall be completed by the certifying officer in accordance with the forms’ instructions and applicable rules and regulations.</p> |
| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/</p> | <p>“(a) For purposes of filing a petition with the United States Citizenship and Immigration Services for U Nonimmigrant Status, a victim or the victim's parent, guardian, or next friend may request a certifying official of a certifying entity to certify victim helpfulness on a Form I-918, Supplement B certification.</p> |
| <p>Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/</p> | <p>Section 3. A certifying entity shall respond to a nonimmigrant status certification request from a victim of criminal activity who intends to petition for a nonimmigrant visa under 8 U.S.C. 1101(a)(15)(U) or from a victim of severe forms of trafficking in persons who intends to petition for a nonimmigrant visa under 8 U.S.C. 1101(a)(15)(T) not later than 90 days after receiving the request for certification.</p> |
| <p>Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/</p> | <p>Subd. 2. Certification process. (a) A certifying entity shall process a certification requested by a victim of criminal activity or a representative of the victim, including the victim's attorney, family member, or domestic violence or sexual assault violence advocate, within the time period prescribed in paragraph (b).</p> |
| <p>Montana Mont. Code Ann. § 44-4-1503 (2017). https://niwaplibrary.wcl.american.edu/pubs/montana-u-visa-certification-law/</p> | <p>44-4-1503. Law enforcement protocol. (1) On request from a person who a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the person to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U) or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the person the Form I-914B or Form I-918B provided by the United States citizenship and immigration services on its website and ask a federal law enforcement officer to request continued presence.</p> |

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| <p>Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/</p> | <p>(2)(a) On request from an individual whom a law enforcement agency reasonably believes to be a victim of a severe form of trafficking in persons, for purposes of a nonimmigrant T visa, pursuant to the criteria in 8 U.S.C. 1101(a)(15)(T)(i)(I) and (III), a law enforcement agency, no later than ninety business days after receiving the request:</p> <p>(i) Shall complete, sign, and return to the individual the Form I-914B; and</p> <p>(ii) May submit a written request to an appropriate federal law enforcement officer asking such officer to file an application for continued presence pursuant to 22 U.S.C. 7105(c)(3).</p> <p>(3)(a) On request from an individual whom a certifying agency reasonably believes to be a victim of qualifying criminal activity, for purposes of a nonimmigrant U visa, pursuant to the certification criteria in 8 U.S.C. 1101(a)(15)(U)(i)(II) to (IV) and (iii), a certifying official in the certifying agency, no later than ninety business days after receiving the request, shall complete, sign, and return to the individual the Form I918B.</p> |
| <p>Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrficaiton/</p> | <p>Sec. 7. "Petitioner" means a person who requests a certification.</p> |
| <p>North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). https://niwaplibrary.wcl.american.edu/pubs/nd-u-visa-cert-law/</p> | <p>1. On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.</p> |
| <p>Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/</p> | <p>(1)(d) "Petitioner" means a person requesting certification under this section.</p> <p>(2) Upon the request of a victim or a victim's representative, a certifying official shall in writing certify that a victim has been helpful on a certification form designated by the United States Citizenship and Immigration Services if:</p> <p>(a) The victim is a victim of qualifying criminal activity; and</p> <p>(b) The victim has been helpful, is being helpful or is likely to be helpful to the detection, investigation or prosecution of the qualifying criminal activity.</p> |
| <p>Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). https://niwaplibrary.wcl.american.edu/pubs/ri-u-t-certification-law/</p> | <p>(a) On request from an individual whom a law enforcement officer or agent thereof reasonably believes is a victim who is, or has been, subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), or 8 U.S.C. § 1101(a)(15)(U), or for continued presence under 22 U.S.C. § 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and request assistance from the local Immigration and Naturalization office.</p> |
| <p>Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/</p> | <p>"1) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification if the certifying entity determines the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity.</p> |
| <p>Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/</p> | <p>C. A request for completion of a certification form under this section may be submitted by the victim of qualifying criminal activity or a representative of the person seeking the certification form. Such representative of the person may include an attorney, a licensed clinical social worker, a guardian ad litem, or an employee of a crime victim and witness assistance program or a domestic violence or sexual assault services provider.</p> |
| <p>U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). https://niwaplibrary.wcl.american.edu/pubs/us-virgin-islands-u-cert-law-2019/</p> | <p>a) On request from an individual, who the Attorney General reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. section 1101(a)(15)(T) or 8 U.S.C. section 1101(a)(15)(U), or for continued presence under 22 U.S.C. section 7105(c)(3), the Attorney General, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and ask a federal law enforcement officer to request continued presence.</p> |

Washington
Wash. Rev. Code 7.98.020 (2017).
<https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/>

(6) "Victim of criminal activity" means any individual who has: (a) Reported criminal activity to a law enforcement agency or certifying agency, or otherwise participated in the detection, investigation, or prosecution of criminal activity; and (b) suffered direct or proximate harm as a result of the commission of any criminal activity and may include, but is not limited to, an indirect victim, regardless of the direct victim's immigration or citizenship status, including the spouse, children under twenty-one years of age and, if the direct victim is under twenty-one years of age, parents, and unmarried siblings under eighteen years of age where the direct victim is deceased, incompetent, or incapacitated. Bystander victims must also be considered. More than one victim may be identified and provided with certification depending upon the circumstances. For purposes of this subsection, "incapacitated" means unable to interact with law enforcement agency or certifying agency personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disability or age, such as minors. This definition applies to this chapter only.

Washington
Wash. Rev. Code 7.98.020 (2017).
<https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/>

(7) "Victim of trafficking" means any individual who is or has been a victim of human trafficking, which includes, but is not limited to, the following acts: (a) Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion; (b) sex trafficking and the victim was under the age of eighteen years; (c) recruiting, harboring, transportation of, providing, or obtaining a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery; or (d) another act or circumstance involving human trafficking.

Upon the request by the victim or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider, a certifying agency shall: (a) Make a determination on United States citizenship and immigration services form I-918 supplement B or relevant successor certification form, whether the victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity; or (b) make a determination on United States citizenship and immigration services form I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim.

6. Definitions Consistent with Federal Law.

Many state laws include a section that provides definitions for the terms used in the statutes. Most states include definitions for "criminal activity," "certifying agency," and "certifying official." A growing number of states have implemented the best practice that ensures that the definition of terms in the state laws are consistent with and track immigration law definitions for those terms in federal regulations,²² policies,²³ guidance and instructions.²⁴ Having state law definitions that are the same as federal law definitions ensures that immigrant victims who are eligible under federal law for the U visa are all able to receive U visa certifications in the state that are required for eligible victims to be able to file for U visa immigration relief.

- Definitions of terms:
 - Criminal Activity/Qualifying Crime
 - California, Colorado, Illinois, Maryland, Nebraska, Nevada, Oregon, Utah, Virginia, Washington
 - Regardless of the stage of detection, investigation, or prosecution,
 - Illinois, Virginia
 - Certifying agency
 - Colorado, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, Oregon, Utah, Washington

²² 72 Fed. Reg. 53014, New Classification for Victims of Criminal Activity for Eligibility for "U" Nonimmigrant Status (September 17, 2007), <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>.

²³ USCIS, POLICY MANUAL, VOLUME 3 HUMANITARIAN PROTECTION AND PAROLE, PART C VICTIMS OF CRIME, <https://www.uscis.gov/policy-manual/volume-3-part-c>.

²⁴ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 7 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

- Certifying official
 - Colorado, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, Oregon, Utah
- Certification
 - Colorado, Minnesota, Nevada, Virginia, Washington
- Certification form
 - Colorado, Illinois, Virginia
- Investigation or prosecution
 - Nebraska
- Victim of criminal activity/petitioner (U visa)
 - Colorado, Illinois, Nebraska, Oregon, Virginia, Washington
 - Petitioner – person who requests a certification
 - Nevada, Oregon
- Victim of human trafficking (T visa)
 - California, Louisiana, Maryland, Massachusetts, Nebraska, Washington
- Qualified criminal informant (S visa)
 - California
- Accredited Representative
 - California
- Law enforcement agency
 - Oregon

- Consistency with federal law:
 - Statute incorporates and follows federal statutes and any implementing federal regulations, supplementary information, guidance, and instructions
 - Colorado, Illinois
 - A certifying entity shall determine helpfulness in a manner consistent with federal guidelines.
 - Utah

- How certification forms are to be completed:
 - In accordance with the forms’ instructions and applicable rules and regulations
 - Louisiana
 - Certifying agencies shall determine helpfulness as in a manner consistent with federal guidelines
 - Utah

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | <p>U visa</p> <p>(c) “Qualifying criminal activity” has the same meaning as qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the federal Immigration and Nationality Act which includes, but is not limited to, the following crimes:</p> <p>(1) Rape. (2) Torture. (3) Human trafficking. (4) Incest. (5) Domestic violence. (6) Sexual assault. (7) Abusive sexual conduct. (8) Prostitution. (9) Sexual exploitation. (10) Female genital mutilation. (11) Being held hostage. (12) Peonage. (13) Perjury. (14) Involuntary servitude. (15) Slavery. (16) Kidnapping. (17) Abduction. (18) Unlawful criminal restraint. (19) False imprisonment. (20) Blackmail. (21) Extortion. (22) Manslaughter. (23) Murder. (24) Felonious assault. (25) Witness tampering. (26) Obstruction of justice. (27) Fraud in foreign labor contracting. (28) Stalking.</p> <p>(d) A “qualifying crime” includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.</p> <p>(e) A “representative fully accredited by the United States Department of Justice” is a person who is approved by the United States Department of Justice to represent individuals before the Board of</p> |

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| <p>California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/</p> | <p>Immigration Appeals, the immigration courts, or the Department of Homeland Security. The representative shall be a person who works for a specific nonprofit, religious, charitable, social service, or similar organization that has been recognized by the United States Department of Justice to represent those individuals and whose accreditation is in good standing.</p> <p>T visa (c) "Human trafficking" has the same meaning as "severe forms of trafficking in persons" pursuant to Section 7102 of Title 22 of the United States Code and includes either of the following: (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.</p> <p>(d) "Human trafficking" also includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.</p> <p>(e) A "representative fully accredited by the United States Department of Justice" is a person who is approved by the United States Department of Justice to represent individuals before the Board of Immigration Appeals, the immigration courts, or the Department of Homeland Security. The representative shall be a person who works for a specific nonprofit, religious, charitable, social service, or similar organization that has been recognized by the United States Department of Justice to represent those individuals and whose accreditation is in good standing.</p> <p>S Visa (c) "Qualified criminal informant" is an individual who meets the following requirements: (1) The informant must have reliable information about an important aspect of a crime or pending commission of a crime. (2) The informant must be willing to share that information with United States law enforcement officials or become a witness in court. (3) The informant's presence in the United States is important and leads to the successful investigation or prosecution of that crime.</p> |
| <p>Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/</p> | <p>(1) "Certification form" or "Certification" means the federal form I-918, supplement B, "U nonimmigrant status certification", or any successor form, required under 8 USC sec. 1184 (p)(1) and 8 C.F.R. § 214.14 (c)(2)(i) and as defined under 8 C.F.R. § 214.14 (a)(12), which confirms that the petitioner is a victim of qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which the petitioner is a victim.</p> <p>(2) "Certifying agency" or "Agency" has the same meaning as defined in 8 C.F.R. § 214.14 (a)(2) and includes but is not limited to: (a) a state or local law enforcement agency; (b) the office of a district, county, or city attorney; (c) a court; (d) the office of the attorney general; (e) any other agency that is responsible for the detection, investigation, or prosecution of a qualifying crime or criminal activity; or (f) entities that have criminal detection or investigative jurisdiction in their respective areas of expertise, including but not limited to a county department of human or social services and the department of labor and employment.</p> <p>(3) "certifying official" has the same meaning as defined in 8 C.F.R. § 214.14 (a)(3) and includes but is not limited to: (a) the head of the certifying agency; (b) a person in a supervisory role who has been specifically designated by the head of a certifying agency to issue certifications on behalf of that agency; or (c) a judge or magistrate.</p> <p>(4) "qualifying criminal activity" has the same meaning as defined in 8 C.F.R. § 214.14 (a)(9), including any activity that constitutes a crime as defined pursuant to Colorado law, regardless of the statutory language or title used pursuant to Colorado law, for which the nature and elements of the offenses are substantially similar to the general categories of offenses enumerated in 8 USC sec. 1101 (a)(15)(u), or any other similar criminal activities, and the attempt, conspiracy, or solicitation to commit any of those offenses.</p> |

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| | (5) "victim of qualifying criminal activity" or "victim" has the same meaning as defined in 8 C.F.R. § 214.14 (a)(14) and includes an individual who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity, including direct victims; indirect victims, as defined under 8 C.F.R. § 214.14 (a)(14)(1), regardless of the direct victim's immigration or citizenship status; and bystander victims, as recognized under the federal register at 72 FR 53016. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | <p>In this Act: "Certification form" means a law enforcement certification form or statement required by federal immigration law certifying that a person is a victim of qualifying criminal activity including, but not limited to, the information required by Section 1184(p) of Title 8 of the United States Code, including current United States Citizenship and Immigration Services Form I-918, Supplement B, or any successor form for purposes of obtaining a U visa or by Section 1184(o) of Title 8 of the United States Code, including current United States Citizenship and Immigration Services Form I-914, Supplement B, or any successor form for purposes of obtaining a T visa</p> <p>"Certifying agency" means a State or local law enforcement agency, prosecutor, or other public authority that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity, including an agency that has criminal investigative jurisdiction in its respective areas of expertise, but not including any State court.</p> <p>"Qualifying criminal activity" means any activity, regardless of the stage of detection, investigation, or prosecution, designated in Section 1101(a)(15)(U)(iii) of Title 8 of the United States Code, any implementing federal regulations, supplementary information, guidance, and instructions.</p> <p>"Victim of qualifying criminal activity" means a person described in Section 1101(a)(15)(U)(i)(I) of Title 8 of the United States Code, in the definition of "victim of a severe form of trafficking" in Section 7102(14) of Title 22 of the United States Code, or in any implementing federal regulations, supplementary information, guidance, and instructions. (Source: P.A. 100-1115, eff. 1-1-19.)</p> |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). https://niwaplibrary.wcl.american.edu/pubs/la-u-visa-cert-law/ | <p>B. Law enforcement assistance with respect to immigration.</p> <p>(1) After the agency or office makes a preliminary assessment pursuant to Paragraph (A)(2) of this Section that a victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act, and upon the request of such victim, the agency or office shall provide the victim or possible victim of human trafficking with a completed and executed United States Citizenship and Immigration Services (USCIS) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification, or both. These forms shall be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations.</p> |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/ | <p>(a) In this part the following words have the meanings indicated.</p> <p>(b) "Certifying entity" means:</p> <ol style="list-style-type: none"> (1) a State or local law enforcement agency; (2) a State's Attorney or deputy or assistant State's Attorney; (3) any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; or (4) an agency that has criminal detection or investigative jurisdiction in the agency's respective areas of expertise, including child protective services, the Commission on Civil Rights, and the Maryland Department of Labor. <p>(c) "Certifying official" means:</p> <ol style="list-style-type: none"> (1) the head of a certifying entity; (2) an individual in a supervisory role who has been specifically designated by the head of a certifying entity to provide U Nonimmigrant Status certifications on behalf of that entity; or (3) any other certifying official defined under Title 8, § 214.14(a)(3)(i) of the Code of Federal Regulations. <p>(d) "Qualifying crime" includes a criminal offense for which the nature and elements of the offense are substantially similar to the criminal activity described in subsection (e) of this section and the attempt, conspiracy, or solicitation to commit the offense.</p> <p>(e) "Qualifying criminal activity" means criminal activity under § 1101(a)(15)(U)(iii) of the United States Code.</p> <p>Md. Code, CP § 11-930</p> |
| Massachusetts Mass. Gen. Laws ch258F §§ 1-4 (2021) | Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings: |

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| <p>https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/</p> | <p>"Certifying entity", a law enforcement agency, prosecutor or other state or local entity that has the authority to detect, investigate or prosecute severe forms of trafficking in persons or criminal activity. "Criminal activity", as described in 8 U.S.C. 1101(a)(15)(U)(iii). "Severe forms of trafficking in persons", as defined in 22 U.S.C. 7102.</p> |
| <p>Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/</p> <p>Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/</p> | <p>Subdivision 1. Definitions. For purposes of this section, the following terms have the meanings given:</p> <p>(1) "certifying entity" means a state or local law enforcement agency;</p> <p>(2) "criminal activity" means qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Immigration and Nationality Act, as amended through June 1, 2021, and includes the attempt, conspiracy, or solicitation to commit such crimes; and</p> <p>(3) "certification" means any certification or statement required by federal immigration law, as amended through June 1, 2021, including but not limited to the information required by United States Code, title 8, section 1184(p), and United States Code, title 8, section 1184(o), including current United States Citizenship and Immigration Services Form I-918, Supplement B, and United States Citizenship and Immigration Services Form I-914, Supplement B, and any substantively similar successor forms.</p> |
| <p>Montana Mont. Code Ann. § 44-4-1503 (2017).</p> | <p>N/A</p> |
| <p>Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/</p> | <p>(1) For purposes of this section:</p> <p>(a) Certifying agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of qualifying criminal activity, as described in 8 C.F.R. § 214.14(a)(2);</p> <p>(b) Certifying official means 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 U nonimmigrant status certifications on behalf of that agency, as described in 8 C.F.R. § 214.14(a)(3) ;</p> <p>(c) Form I-914B means Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of the Department of Homeland Security, United States Citizenship and Immigration Services;</p> <p>(d) Form I-918B means Form I-918, Supplement B, U Nonimmigrant Status Certification, of the Department of Homeland Security, United States Citizenship and Immigration Services;</p> <p>(e) Investigation or prosecution has the same meaning as in 8 C.F.R. § 214.14 ;</p> <p>(f) Law enforcement agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of severe forms of trafficking in persons, as described in 8 C.F.R. § 214.11(a) ;</p> <p>(g) Qualifying criminal activity has the same meaning as in 8 C.F.R. § 214.14 ;</p> <p>(h) Victim of qualifying criminal activity has the same meaning as in 8 C.F.R. § 214.14 ;</p> <p>(i) Victim of a severe form of trafficking in persons has the same meaning as in 8 C.F.R. § 214.11 ;</p> |
| <p>Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-certification/</p> | <p>Sec. 2. As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.</p> <p>Sec. 3. "Certification" means the certification of a Form I-918, Supplement B, U Nonimmigrant Status Certification, as required by 8 U.S.C. § 1184(p) regarding a Form I-918, Petition for U Nonimmigrant Status by a certifying agency.</p> <p>Sec. 4. "Certifying agency" means:</p> <ol style="list-style-type: none"> 1. A state or local law enforcement agency; 2. A prosecutor; 3. A Judge or 4. Any other governmental agency that has criminal, civil or administrative investigative or prosecutorial authority. <p>Sec. 5. "Certifying official" means:</p> <ol style="list-style-type: none"> 1. The head of a certifying agency; or 2. A person who has been designated by the head of a certifying agency to complete a certification. |

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| | <p>Sec. 6. "Criminal activity" means an offense for which the elements are substantially similar to an offense described in 8 U.S.C. § 1101(a)(15)(U)(iii) or the attempt, solicitation or conspiracy to commit such an offense.</p> <p>Sec. 7. "Petitioner" means a person who requests a certification.</p> <p>Sec. 6 "Criminal activity" means an offense for which the elements are substantially similar to an offense described in 8 U.S.C. § 1101(a)(15)(U)(iii) or the attempt, solicitation or conspiracy to commit such an offense."</p> |
| <p>North Dakota N.D. Cent. Code, § 12.1-41-18 (2019).</p> | N/A |
| <p>Oregon Or. Rev. Stat. § 147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/</p> | <p>(1) <i>As used in this section:</i></p> <p>(a) "Certifying agency" means:</p> <p>(A) A state or local law enforcement agency;</p> <p>(B) A prosecutor's or district attorney's office;</p> <p>(C) The Judicial Department, with respect to a judge of a state court acting as a certifying official;</p> <p>(D) A judge other than a judge of a state court; or</p> <p>(E) Any other agency that has responsibility for the detection, investigation or prosecution of a qualifying criminal activity, including but not limited to a certifying agency as defined in 8 C.F.R. § 214.14.</p> <p>(b) "Certifying official" means:</p> <p>(A) The head of a certifying agency;</p> <p>(B) A judge; or</p> <p>(C) A person in a supervisory role who has been designated by the head of a certifying agency to issue certifications under this section on behalf of the agency.</p> <p>(c) "Law enforcement agency" has the meaning given that term in ORS 146.003 (Definitions for ORS 146.003 to 146.189 and 146.710 to 146.992).</p> <p>(d) "Petitioner" means a person requesting certification under this section.</p> <p>(e) "Qualifying criminal activity" has the meaning given that term in 8 C.F.R. § 214.14.</p> <p>(f) "Victim of qualifying criminal activity" has the meaning given that term in 8 C.F.R. § 214.14.</p> |
| <p>Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017).</p> | N/A |
| <p>Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/</p> | <p>(1) "Certifying entity" means any of the following: (a) a law enforcement agency, as defined in Section 77-7a-103; (b) a prosecutor, as defined in Section 77-22-4.5; (c) a court described in Section 78A-1-101; (d) any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; and (e) an agency that has criminal detection or investigative jurisdiction in the agency's respective areas of expertise, including: (i) the Division of Child and Family Services; and (ii) the Labor Commission.</p> <p>(2) "Certifying official" means: (a) the head of the certifying entity; (b) a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency; (c) a judge; or (d) any other certifying official defined under 8 C.F.R. § 214.14.</p> <p>(3) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.</p> <p>(4) (a) "Qualifying criminal activity" means the same as that term is defined in 8 C.F.R. § 214.14. (b) "Qualifying criminal activity" includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in Subsection (4)(a), and the attempt, conspiracy, or solicitation to commit any of those offenses.</p> <p>77-38-503 Guidelines for prosecutors.</p> <p>(1) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, if the certifying entity determines the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity.</p> <p>(2) A certifying entity shall determine helpfulness as described in Subsection (1) in a manner consistent with federal guidelines.</p> <p>(3) A certifying entity shall process a Form I-918 Supplement B certification...</p> |
| <p>Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/</p> | <p>"Certification form" means a certification form or declaration completed by a certifying agency that is required by federal immigration law certifying that a person is a victim of qualifying criminal activity. Such form or declaration may include any information required (i) by 8 U.S.C. § 1184(p), including the current United States Citizenship and Immigration Services Form I-918, Supplement B, or any successor form for purposes of obtaining a U visa, or (ii) by 8 U.S.C. § 1184(o), including the current United States Citizenship and Immigration Services Form I-914, Supplement B, or any successor form for purposes of obtaining a T visa.</p> |

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| | <p>"Qualifying criminal activity" means any activity, regardless of the stage of detection, investigation, or prosecution, designated in 8 U.S.C. § 1101(a)(15)(U)(iii), or in any implementing federal regulations, supplementary information, guidance, and instructions.</p> <p>"Victim of qualifying criminal activity" means a person described in 8 U.S.C. § 1101(a)(15)(U)(i)(III), in the definition of "victim of a severe form of trafficking" in 22 U.S.C. § 7102(11), or in any implementing federal regulations, supplementary information, guidance, and instructions.</p> |
| <p>U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019).</p> | <p>N/A</p> |
| <p>Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/</p> | <p>Sec. 3. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.</p> <p>(1) "Certification" means any law enforcement certification or statement required by federal immigration law including, but not limited to, the information required by 8 U.S.C. Sec. 1184 (o) and (p), or any successor statutes regarding T or U nonimmigrant visas or their successor programs, including current United States citizenship and immigration services form I-914 supplement B or form I-918 supplement B, respectively, and any successor forms.</p> <p>(2) "Certifying agency" means a state or local law enforcement agency, prosecutor, administrative judge, hearing office, or other authority that has responsibility for the investigation or prosecution of criminal activity. A certifying agency includes an agency that has investigative jurisdiction in its respective area of expertise including, but not limited to, the Washington state patrol, the Washington department of labor and industries, and the Washington department of social and health services.</p> <p>(3) "Criminal activity" includes any activity that constitutes a crime as defined in RCW 7.69.020, for which the nature and elements of the offenses are substantially similar to the offenses described in 8 U.S.C. Sec. 1101(a)(15)(U), and the attempt, conspiracy, or solicitation to commit any of those offenses.</p> <p>(4) "Law enforcement agency" means any agency in Washington that qualifies as a criminal justice agency under RCW 10.97.030(5) and is charged with the enforcement of state, county, municipal, or federal laws, or with managing custody of detained persons in the state, and includes municipal police departments, sheriff's departments, campus police departments, the Washington state patrol, and the juvenile justice rehabilitative administration.</p> <p>(5) "Law enforcement official" means any officer or other agent of a state or local law enforcement agency authorized to enforce criminal statutes, regulations, or local ordinances.</p> <p>(6) "Victim of criminal activity" means any individual who has: (a) Reported criminal activity to a law enforcement agency or certifying agency, or otherwise participated in the detection, investigation, or prosecution of criminal activity; and (b) suffered direct or proximate harm as a result of the commission of any criminal activity and may include, but is not limited to, an indirect victim, regardless of the direct victim's immigration or citizenship status, including the spouse, children under twenty-one years of age and, if the direct victim is under twenty-one years of age, parents, and unmarried siblings under eighteen years of age where the direct victim is deceased, incompetent, or incapacitated. Bystander victims must also be considered. More than one victim may be identified and provided with certification depending upon the circumstances. For purposes of this subsection, "incapacitated" means unable to interact with law enforcement agency or certifying agency personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disability or age, such as minors. This definition applies to this chapter only.</p> <p>(7) "Victim of trafficking" means any individual who is or has been a victim of human trafficking, which includes, but is not limited to, the following acts: (a) Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion; (b) sex trafficking and the victim was under the age of eighteen years; (c) recruiting, harboring, transportation of, providing, or obtaining a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery; or (d) another act or circumstance involving human trafficking.</p> |

7. Established Time Limit to Respond

All states with U Visa statutes include a section that addresses how quickly state agencies are required to respond to U visa certification requests. Eleven (14) states require responses to requests within 90 days or 90 business days. Three (3) states establish shorter timeframes for responses to certification requests of 30- or 60-days. Six (6) states require responses “as soon as practicable” which is an approach that is less predictable and

therefore can jeopardize victim safety. As will be discussed in the next section of this report many state laws also require responses to certification requests be expedited under certain circumstances.

Four (4) state statutes provide a mechanism for certifying agencies to obtain an extension of the statutory certification deadlines. Among these states the option that best addresses victim safety concerns that can be associated with certification delays require certifying agencies that need additional time for certification to obtain a written agreement from the victim to the extension of time.

Lastly, three (3) states set timeframes for certifying agencies responding to requests for U visa recertification. Each of these states require that state agencies respond within the same time limitations for both initial certification requests and requests for recertification. There are three common reasons a victim may need to request a U visa recertification. First, the victim must file their U visa application within 6 months of the date that the U visa certification is issued. Certain types of evidence that are best practice to include in the U visa application can sometimes take time to obtain (e.g. birth certificates from the victim's home country or replacement of a passport that the abuser destroyed). In these cases if the U visa certification 6-month validity time runs out before the victim can file their U visa application the victim will need to request recertification. Secondly, when the victim applies for lawful permanent residency after being granted a U visa, USCIS encourages victims to obtain recertifications.

Statutory certification response times are:

- 30-days:
 - Arkansas, California
- 60-days:
 - Connecticut (includes subsequent certification requests)
- 90-days:
 - Colorado, Illinois (business days), Massachusetts, Maryland, Minnesota, Nebraska (business days), Nevada, Oregon, Utah, Virginia (business days), Washington
 - Applies this 90 business day response time to requests for continued presence by human trafficking victims
 - Nebraska
- 120-days:
 - Virginia
- As soon as practicable:
 - Delaware, Louisiana, Montana, North Dakota, Rhode Island, U.S. Virgin Islands

Extension of time:

- Extension of time for certification, recertification, or expedited recertification is only available to the state certifying agency with written agreement of immigrant victim U or T visa applicant:
 - Illinois, Virginia
- Exception under circumstances in which there is good cause for delay
 - Oregon
- In extenuating circumstances outside the control of the certifying entity that prevent the certifying entity from responding to the certification request in the required time period, issuing a written explanation of the delay, the process the certifying entity will undertake to respond and a projected time frame for such response.
 - Massachusetts

Recertification requests:

- The statute requires that a certifying agency reissue certifications within the following time limits after receiving a request:
 - 90 days

- Illinois (business days), Virginia (business days), Washington
 - If the victim requesting recertification has a deadline from USCIS to respond to a request for further evidence the recertification must be completed within
 - 21 business days
 - Illinois, Virginia
 - Requests for expedited recertification shall be affirmatively raised by the victim or victim's representative in writing and shall establish that the victim is eligible for expedited review
 - Illinois, Virginia
- 60 days
 - Connecticut

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104(2024). https://niwaplibrary.wcl.american.edu/pubs/arkansas-u-visa-certification-law-2015/ | 12-19-104. Law enforcement agency nonimmigrant visa certification (b) The policy adopted under subsection (a) of this section shall include a requirement that a law enforcement official shall complete the certification no later than thirty (30) days after receipt of the request for certification. |
| California Cal. Penal Code. § 679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (1) A certifying entity shall process a Form I-918 Supplement B certification within 30 days of request... T visa (i) (1) A certifying entity shall process a Form I-914 Supplement B declaration within 30 days of request... |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | (3) Except as provided in subsection (4) of this section addressing expedited processing, a certifying agency shall process and either sign or decline to sign a certification form within 90 days after receipt of a request. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | 5) (A) ... each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (i) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the criminal activity, and (ii) any subsequent certification required by the victim. As used in this subparagraph, "expeditiously" means not later than sixty days after the date of receipt of the request for certification of helpfulness. |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). https://niwaplibrary.wcl.american.edu/pubs/11-del-c-787-u-visa-cert/ | (n) Law-enforcement agency protocol. — (1) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended from time to time, or for continued presence, under 22 U.S.C. § 7105(c)(3), as amended from time to time, the police officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in that police officer's or prosecutor's law-enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal law-enforcement officer to request continued presence. |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | d) Upon receiving a request for completion of a certification form, a certifying official shall complete the certification form for any victim of qualifying criminal activity. If the certifying official cannot determine that the applicant is a victim of qualifying criminal activity, the certifying official may provide written notice to the person or the person's representative explaining why the available evidence does not support a finding that the person is a victim of qualifying criminal activity. The certifying official shall complete the certification form and provide it to the person within 90 business days of receiving the request... (e) A certifying official who issued an initial certification form shall complete and reissue a certification form within 90 business days of receiving a request from a victim to reissue. If the victim seeking recertification has a deadline to respond to a request for evidence from United States Citizenship and Immigration Services, the certifying official shall complete and issue the form no later than 21 business days after the request is received by the certifying official. Requests for expedited recertification shall be affirmatively raised by the victim or victim's representative in writing and shall establish that the victim is eligible for expedited review. A certifying official may extend the deadline by which he or she will complete and reissue the certification form only upon written agreement with the victim or victim's representative. |

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| <p>Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). https://niwaplibrary.wcl.american.edu/pubs/la-u-visa-cert-law/</p> | <p>Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a district attorney's office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall:</p> <p>.B Law enforcement assistance with respect to immigration. (1) After the agency or office makes a preliminary assessment pursuant to Paragraph (A)(2) of this Section that a victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act, and upon the request of such victim, the agency or office shall provide the victim or possible victim of human trafficking with a completed and executed United States Citizenship and Immigration Services (USCIS) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification, or both. These forms shall be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations.</p> |
| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/</p> | <p>(d)(1) Except as provided in paragraph (2) of this subsection [regarding expedited certifications], the certifying entity shall certify or decline certification of the Form I-918, Supplement B certification within 90 days after receiving a request under subsection (a) of this section.</p> |
| <p>Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/</p> | <p>Section 3. A certifying entity shall respond to a nonimmigrant status certification request from a victim of criminal activity who intends to petition for a nonimmigrant visa under 8 U.S.C. 1101(a)(15)(U) or from a victim of severe forms of trafficking in persons who intends to petition for a nonimmigrant visa under 8 U.S.C. 1101(a)(15)(T) not later than 90 days after receiving the request for certification. The certifying entity shall respond to the request by: (i) completing and signing the certification forms; (ii) issuing a written denial of the request, without prejudice, informing the victim of the reason that the request does not meet the requirements of the certifying entity's policy under section 2; or (iii) in extenuating circumstances outside the control of the certifying entity that prevent the certifying entity from responding to the certification request in the required time period, issuing a written explanation of the delay, the process the certifying entity will undertake to respond and a projected time frame for such response.</p> |
| <p>Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/</p> | <p>(b) A certifying entity shall process the certification within 90 days of request, unless the victim is in removal proceedings, in which case the certification shall be processed within 14 days of request. Requests for expedited certification must be affirmatively raised at the time of the request.</p> |
| <p>Montana Mont. Code Ann. § 44-4-1503 (2017). https://niwaplibrary.wcl.american.edu/pubs/montana-u-visa-certification-law/</p> | <p>Law enforcement protocol. (1) On request from a person who a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the person to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U) or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the person the Form I-914B or Form I-918B provided by the United States citizenship and immigration services on its website and ask a federal law enforcement officer to request continued presence.</p> |
| <p>Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/</p> | <p>(2)(a) On request from an individual whom a law enforcement agency reasonably believes to be a victim of a severe form of trafficking in persons, for purposes of a nonimmigrant T visa, pursuant to the criteria in 8 U.S.C. 1101(a)(15)(T)(i)(I) and (III), a law enforcement agency, no later than ninety business days after receiving the request...</p> <p>(3)(a) On request from an individual whom a certifying agency reasonably believes to be a victim of qualifying criminal activity, for purposes of a nonimmigrant U visa, pursuant to the certification criteria in 8 U.S.C. 1101(a)(15)(U)(i)(II) to (IV) and (iii), a certifying official in the certifying agency, no later than ninety business days after receiving the request, shall complete, sign, and return to the individual the Form I918B.</p> |
| <p>Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-certification/</p> | <p>NRS 217.585 Time for processing of request for certification. A certifying agency shall process a request for a certification within 90 days after the date of the request pursuant to NRS 217.580...</p> |
| <p>North Dakota N.D. Cent. Code § 12.1-41-18 (2019). https://niwaplibrary.wcl.american.edu/pubs/nd-u-visa-cert-law/</p> | <p>1. On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.</p> |
| <p>Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/</p> | <p>(6) Except under circumstances in which there is good cause for delay, a certifying agency shall grant or deny a request for certification: (a) Within 90 days of the date of the certification request...</p> |

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| <p>Rhode Island 11 R.I. Gen Laws § 11- 67.1-22 (2017). https://niwaplibrary.wcl.american.edu/pubs/ri-u-t-certification-law/</p> | <p>(a) On request from an individual whom a law enforcement officer or agent thereof reasonably believes is a victim who is, or has been, subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), or 8 U.S.C. § 1101(a)(15)(U), or for continued presence under 22 U.S.C. § 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and request assistance from the local Immigration and Naturalization office.</p> |
| <p>Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/</p> | <p>(3) A certifying entity shall process a Form I-918 Supplement B certification within 90 days of request...</p> |
| <p>Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/</p> | <p>Upon receiving a request for completion of a certification form, a certifying official shall provide a response to the request within 120 days....</p> <p>E. A certifying official who issued an initial certification form shall complete and reissue a certification form within 90 business days of receiving a request from a victim to reissue the certification form.</p> <p>If the victim seeking recertification has a deadline to respond to a request for evidence from United States Citizenship and Immigration Services, the certifying official shall complete and issue the form no later than 21 business days after the request is received by the certifying official. Requests for expedited recertification shall be affirmatively raised by the victim or victim's representative in writing and shall establish that the victim is eligible for expedited review. A certifying official may extend the deadline by which he will complete and reissue the certification form only upon written agreement with the victim or victim's representative.</p> |
| <p>U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). https://niwaplibrary.wcl.american.edu/pubs/us-virgin-islands-u-cert-law-2019/</p> | <p>(a) On request from an individual, who the Attorney General reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. section 1101(a)(15)(T) or 8 U.S.C. section 1101(a)(15)(U), or for continued presence under 22 U.S.C. section 7105(c)(3), the Attorney General, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and ask a federal law enforcement officer to request continued presence.</p> |
| <p>Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/</p> | <p>(3) A certifying agency shall process the certification within ninety days of request... (8) A certifying agency shall reissue any certification within ninety days of receiving a request from the victim of criminal activity or trafficking or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider.</p> |

8. Expedited Certification Available

There are two circumstances in which 11 states require that certifying agencies expedite their responses to U visa certification requests. Eleven (11) states impose swifter response times to U visa certification requests when the immigrant victim is in removal, exclusion, or deportation proceedings. Of these states 7 also require expedited responses to U visa certification requests when a qualifying family will lose U visa eligibility if the U visa application is not filed by a particular date. The date is most often the date that a child or a sibling will turn an age after which they cannot be included in their family member's U visa application. Additionally, some states (4) require that requests to expedite be submitted writing. Two (s) states require a written agreement between the certifying agency and the immigrant victim U or T visa applicant for an extension of time for certification, recertification, or expedited recertification.

- Noncitizen victim is in removal, exclusion, or deportation proceedings:
 - 7-days of the 1st business day after the request is received:
 - California
 - 14-days:
 - Connecticut (or detained), Maryland, Minnesota, Nevada, Oregon, Utah, Washington
 - Maryland (includes where the victim has an open order of removal, deportation, or exclusion issued against them)
 - 21 business days:
 - Illinois (or detained), Virginia (or detained)

- 30-days:
 - Colorado
- Noncitizen victim asserts that a qualifying family will lose U visa eligibility:
 - 5 business days
 - Illinois (if relative will age out losing eligibility within 21 business days of filing)
 - 7-days:
 - California (Of the 1st business day after the request is received U sand T visas)
 - 14-days:
 - Connecticut, Nevada
 - 21 business days
 - Illinois (if relative will age out losing eligibility within 90 business days of filing)
 - 30-days:
 - Colorado (if a child or sibling will age out within 60 business days of receiving the certification request), Virginia (if a child or sibling will age out less than 21 business days after filing response time 7 days)
 - 90-days:
 - Washington (or within 14 days of the victim or child turning 21 years of age whichever is shorter)
- Expedite requests must be in writing: Requests to expedite must be affirmatively raised in writing by the immigrant victim applicant:
 - Colorado (requestor must provide documentation), Illinois, Minnesota, Virginia, Washington
 - Shall establish that the person is eligible for expedited review
 - Illinois, Virginia
- Extensions of time: Extension of time for certification, recertification, or expedited recertification available to the state certifying agency with written agreement of immigrant victim U or T visa applicant:
 - Illinois, Virginia

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (j) (1) A certifying entity shall process a Form I-918 Supplement B certification within 30 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 7 days of the first business day following the day the request was received. (2) A certifying agency shall process a Form I-918 Supplement B certification within 7 days of the first business day following the day the request was received if the victim asserts a qualifying family member of the victim will lose eligibility for U nonimmigrant status in 60 days or fewer because the victim’s noncitizen sibling will turn 18 years of age, the victim’s noncitizen child will turn 21 years of age, or the victim will turn 21 years of age. T visa (i) (1) A certifying entity shall process a Form I-914 Supplement B declaration within 30 days of request, unless the noncitizen is in removal proceedings, in which case the declaration shall be processed within 7 days of the first business day following the day the request was received. (2) A certifying agency shall process a Form I-918 Supplement B certification within 7 days of the first business day following the day the request was received if the victim asserts a qualifying family member of the victim will lose eligibility for T nonimmigrant status in 60 days or fewer because the victim’s noncitizen sibling will turn 18 years of age, the victim’s noncitizen child will turn 21 years of age, or the victim will turn 21 years of age. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | (4) ... a certifying agency shall process and either sign or decline to sign a certification form within thirty days after receipt of a request if: (a) The requestor provides documentation that he or she is in federal immigration removal proceedings; or |

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| | (b) The requestor provides documentation that one or more children, parents, or siblings of the requestor would become ineligible for U nonimmigrant status by virtue of age within sixty business days after the date that the certifying official receives the certification form request. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | 5) (A) ... each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (i) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the criminal activity, and (ii) any subsequent certification required by the victim. As used in this subparagraph, “expeditiously” means not later than sixty days after the date of receipt of the request for certification of helpfulness, or not later than fourteen days after the date of receipt of such request if (I) the victim is in federal immigration removal proceedings or detained, or (II) the victim’s child, parents or siblings would become ineligible for an immigration benefit by virtue of the victim or the sibling of such victim attaining the age of eighteen years, or the victim’s child attaining the age of twenty-one years. |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | (d) Upon receiving a request for completion of a certification form, a certifying official shall complete the certification form for any victim of qualifying criminal activity. If the certifying official cannot determine that the applicant is a victim of qualifying criminal activity, the certifying official may provide written notice to the person or the person’s representative explaining why the available evidence does not support a finding that the person is a victim of qualifying criminal activity. The certifying official shall complete the certification form and provide it to the person within 90 business days of receiving the request, except: (1) if the person making the request for completion of the certification form is in federal immigration removal proceedings or detained, the certifying official shall complete and provide the certification form to the person no later than 21 business days after the request is received by the certifying agency; (2) if the children, parents, or siblings of the person making the request for completion of the certification form would become ineligible for benefits under Sections 1184(p) and 1184(o) of Title 8 of the United States Code by virtue of the person’s children having reached the age of 21 years, the person having reached the age of 21 years, or the person’s sibling having reached the age of 18 years within 90 business days from the date that the certifying official receives the certification request, the certifying official shall complete and provide the certification form to the person no later than 21 business days after the request is received by the certifying agency; (3) if the person’s children, parents, or siblings under paragraph (2) of this subsection (d) would become ineligible for benefits under Sections 1184(p) and 1184(o) of Title 8 of the United States Code in less than 21 business days of receipt of the certification request, the certifying official shall complete and provide a certification form to the person within 5 business days; or (4) a certifying official may extend the time period by which it must complete and provide the certification form to the person as required under this subsection (d) only upon written agreement with the person or person’s representative. Requests for expedited completion of a certification form under paragraphs (1), (2), and (3) of this subsection (d) shall be affirmatively raised by the person or that person’s representative in writing to the certifying agency and shall establish that the person is eligible for expedited review. |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/ | (d)(1) Except as provided in paragraph (2) of this subsection, the certifying entity shall certify or decline certification of the Form I-918, Supplement B certification within 90 days after receiving a request under subsection (a) of this section.(2) If a noncitizen victim is the subject of removal, exclusion, or deportation proceedings or subject to a final order of removal, exclusion, or deportation, the certifying entity shall certify or decline certification of the Form I-918, Supplement B certification within 14 days after receiving a request under subsection (a) of this section. |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/ | (b) A certifying entity shall process the certification within 90 days of request, unless the victim is in removal proceedings, in which case the certification shall be processed within 14 days of request. Requests for expedited certification must be affirmatively raised at the time of the request. |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). | A certifying agency shall process a request for a certification within 90 days after the date of the request pursuant to <u>NRS 217.580</u> , unless the petitioner is 20 years of age or a party to a federal immigration proceeding for his or her removal, in which case the certifying agency shall process the certification within 14 days after the date of the request. |

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| https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-certification/ | |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | (6) Except under circumstances in which there is good cause for delay, a certifying agency shall grant or deny a request for certification: (a) Within 90 days of the date of the certification request; or (b) Within 14 days of the date of the certification request if the victim is in removal proceedings. |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38- 502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | (3) A certifying entity shall process a Form I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request. |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | C. Upon receiving a request for completion of a certification form, a certifying official shall provide a response to the request within 120 days. Within such time, the certifying official shall complete the certification except i. if the person making the request for completion of the certification form is in federal immigration removal proceedings or detained, the certifying official shall complete and provide the certification form to the person no later than 21 business days after the request is received by the certifying agency; ii. if the twenty-first birthdate of the applicant's children or the eighteenth birthdate of the applicant's sibling is within 120 days of the date of the request, the certifying official shall respond within 30 days; iii. if the person's children, parents, or siblings under clause (ii) would become ineligible for benefits under 8 U.S.C. § 1184(p) and 1184(o) in less than 21 business days of receipt of the certification request, the certifying official shall complete and provide a certification form to the person within seven days; or iv. a certifying official may extend the time period by which it must complete and provide the certification form to the person as required under this subsection upon written agreement with the person or person's representative. If the certifying official cannot determine whether the applicant is a victim of qualifying criminal activity or determines that the applicant does not qualify, the certifying official shall provide a written explanation to the person or the person's representative setting forth reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity. Requests for expedited completion of a certification form under clause (i), (ii), or (iii) shall be affirmatively raised by the person or that person's representative in writing to the certifying agency and shall establish that the person is eligible for expedited review. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (3) A certifying agency shall process the certification within ninety days of request, unless the victim is in federal immigration removal proceedings, in which case the certifying agency shall execute the certification no later than fourteen days after the request is received by the agency. In any case in which the victim or the victim's children would lose any benefits under 8 U.S.C. Sec. 1184 (o) and (p) by virtue of having reached the age of twenty-one years within ninety days after the certifying agency receives the certification request, the certifying agency shall execute the certification no later than fourteen days before the date on which the victim or child would reach the age of twenty-one years or ninety days from the date of the request, whichever is earlier. Requests for expedited certification must be affirmatively raised by the victim. |

9. Helpfulness Federal Law Exceptions and Presumption of Helpfulness

Under federal U visa laws victims are eligible for a U visa when they have been a victim of criminal activity committed against them in the United States and when they are being, have been, or are likely to be

helpful²⁵ to a judge, law enforcement, prosecutors, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of a U visa criminal activity.²⁶ Once a victim has provided helpfulness, “at the point of detection” is the earliest point in time that as a matter of federal U visa law the victim is eligible for certification.²⁷

Should a victim who was helpful stop providing helpfulness or cooperation with reasonable requests from government officials at some future point, the victim will remain eligible for certification, for the U visa, and for lawful permanent residency based on a U visa if the victim demonstrates that they did not unreasonably refuse to cooperate with reasonable requests for assistance based on the totality of circumstances in the case.²⁸ Two states have states laws, Nebraska and Utah, that are fully consistent with the federal U visa laws, regulations, and policies

A number of other states (5) include in their statutes a presumption of helpfulness for purposes of U Visa certification if the victim has not failed or refused to provide information and assistance reasonably requested by law enforcement. This presumption approach is helpful for many victims but does not include the full federally authorized exception to helpfulness and cooperation that is part of the federal law which is that a victim may not unreasonably refuse to cooperate with reasonable requests. In assessing helpfulness California allows the victim to demonstrate that they were unaware of the request for cooperation and Colorado requires that the certifying agency’s inability to communicate with a victim due to the victim’s language must not be considered a refusal by the victim to provide assistance. State statutes take the following approaches:

- Tracking federal law:
 - Victim shall be considered helpful for certification purposes if victim has not unreasonably refused to cooperate with reasonable requests:
 - Nebraska
 - A certifying entity shall determine helpfulness as described in Subsection (1) in a manner consistent with federal guidelines
 - Utah
- Consider only qualifying activity and helpfulness: The certifying agency shall not consider any other factors in deciding whether to sign the certification form, except whether the individual was a victim of qualifying criminal activity and the victim’s helpfulness
 - Colorado
- Rebuttable presumption of helpfulness:
 - California (U and T), Colorado (U visa; worded as shall, not presumption language) Illinois (U and T), Nevada (U), Oregon (U).
 - Exceptions
 - If the victim after having provided helpfulness and the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
 - California (U and T), Colorado (U only if no documentation that the victim failed or refused) Illinois (U and T), Nevada (U); Oregon (U).

²⁵ Under federal law a victim is eligible for U visa certification once they have provided helpfulness. The helpfulness could be being provided at the time of the certification (are being helpful), or it could have been provided prior to the request for certification (have been helpful), or the victim could be likely in the judgement of the certifier to provide helpfulness in the future (likely to be helpful). There are three separate options, all three are or even two of the three are not required.

²⁶ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 14 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

²⁷ DEPT HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE at 18 (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

²⁸ 8 C.F.R. § 245.24(a)(5); 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008).

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| | <p>(3) The certifying agency shall not consider any other Factors in deciding whether to sign the certification form, except Whether the individual was a victim of qualifying criminal activity and the victim's helpfulness, as specified in subsection (1) Of this section. 24-4.1-403.</p> <p>(5) The certifying agency is neither a sponsor nor a decision-maker in the granting of a u visa. a certifying official's completion of a certification form is not sufficient evidence that an applicant for a u visa has met all eligibility requirements and does not guarantee that the victim will receive a u visa. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a u visa. Completion of a certification form by a certifying official merely verifies factual information relevant for federal immigration officials to determine eligibility for a u visa. By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge.</p> |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | d) Upon receiving a request for completion of a certification form, a certifying official shall complete the certification form for any victim of qualifying criminal activity. In completing the certification form, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | (b) For purposes of determining helpfulness pursuant to 8 U.S.C. 1101(a)(15)(U)(i)(III), an individual shall be considered helpful if, since the initiation of cooperation, the individual has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement or the prosecutor. |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaiton/ | 4. For the purpose of determining helpfulness pursuant to subsection 1, there is a rebuttable presumption that a petitioner has been helpful, is being helpful or is likely to be helpful to the investigation or prosecution of the criminal activity, unless the petitioner refused or failed to provide assistance that was reasonably requested by a law enforcement agency in the investigation or prosecution of that criminal activity. |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | (4) For purposes of determining victim helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful or is likely to be helpful to the detection, investigation or prosecution of a qualifying criminal activity if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement officials. |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | (2) A certifying entity shall determine helpfulness as described in Subsection (1) in a manner consistent with federal guidelines (no presumption) |

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| https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). | N/A |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). | N/A |

10. Statute Consistent with Federal Law – Do Not Impose Requirements Not Present in Federal Law

Many state U visa certification laws include provisions that prevent state agencies from denying certification requests for reasons that are contrary to or not authorized or recognized by federal statutes,²⁹ regulations,³⁰ and United States Citizenship and Immigration Services policies,³¹ guidance and publications³² on U visa certification. Additionally, following the approach taken in by the federal law some state statutes explicitly confirm that under state law there is no statute of limitations with regard certifications.³³ This includes no limitation on how long after the criminal activity took place, how long after a report of the criminal activity was made, or how much time passed between the criminal activity and when it was reported to government officials.

Many state statutes incorporate DHS and USCIS expert guidance into their state laws by guaranteeing that under state law certifications cannot be denied because the agency is requiring any of the following: a current investigation, the filing of charges, apprehension of the suspect, case closure, a prosecution, a conviction or because the agency is imposing a statute of limitations. This approach recognizes that cooperation with law enforcement and other government officials can occur even in cases where the legal process has not advanced to include a criminal case, investigation, or prosecution. This ensures that victims of qualifying criminal activities have the flexibility to obtain certification, and the stability offered by U and T visa protections without regard to whether or not, or when a criminal investigation or prosecution may at some point in the past, present, or future be initiated by the government against the perpetrator.

The states that allow certification without imposing requirements not present in federal law include:

- No statute of limitations imposed:
 - California (U and T), Colorado, Nevada
- No current or active investigation required:
 - California (U and T), Colorado, Connecticut, Maryland, Minnesota, Nebraska, Nevada, Oregon, Utah, Washington
- No filing of charges required:
 - California (U and T), Colorado, Connecticut, Maryland, Minnesota, Nebraska, Nevada, Utah, Washington

²⁹ 8 U.S.C.1101(a)(15)(U); 8 U.S.C. 1184(p); VAWA 2000, § 1513(a) and (b)), Pub. L. No. 106-386, 114 Stat. 1464 (legislative history).

³⁰ 8 C.F.R. 214.14; 72 Fed. Reg. 53013 (Sept. 17, 2007) (U visa rule regulatory history); 8 C.F.R. 245.24; 73 Fed. Reg. 75540 (Dec. 12, 2008) (T and U visa adjustment of status to lawful permanent residency rule regulatory history).

³¹ USCIS, POLICY MANUAL, VOLUME 3 HUMANITARIAN PROTECTION AND PAROLE, PART C VICTIMS OF CRIME, <https://www.uscis.gov/policy-manual/volume-3-part-c>.

³² USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; DEPT HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

³³ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 8(February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; DEPT HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE at 7, 19 (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

- Apprehension of a suspect not required:
 - California (U and T), Colorado
- Closing of a case not required:
 - California (U and T), Colorado
- Prosecution not required:
 - California (U and T), Colorado, Connecticut, Minnesota, Nebraska, Nevada, Oregon, Utah, Washington
- Conviction not required:
 - California, Colorado, Connecticut, Maryland, Minnesota, Nebraska, Nevada, Oregon, Utah, Washington
- Cannot refuse certification because:
 - Case is closed
 - California (U and T), Colorado
 - Case has already been prosecuted
 - California (U and T), Colorado
 - Victim has an open case being pursued by another agency
 - California, (U and T), Colorado
 - Certification available regardless of the stage of detection, investigation, or prosecution
 - Illinois, Virginia
 - Victim’s immigration history
 - California (U and T), Colorado
 - The extent of harm the victim suffered
 - California, Colorado,
 - Victim’s inability to produce a crime report from a law enforcement agency
 - California (U and T), Colorado
 - Victim’s cooperation or refusal to cooperate in a separate case
 - California (U and T), Colorado
 - Victim’s criminal history
 - California (U and T), Colorado
 - Victim’s gang membership or gang affiliation
 - California (U and T), Colorado
 - Certifier’s views on whether or not the victim’s case will be approved by USCIS
 - California (U and T), Colorado, Connecticut
 - Certifier’s belief that the victim is eligible for a U visa or another forms of immigration relief
 - California (T visa)
 - Certifying agencies cannot consider any other factors in deciding whether to sign the certification except whether the individual was a victim of qualifying criminal activity and the victim's helpfulness
 - Colorado
 - Statute incorporates and follows federal statutes and any implementing federal regulations, supplementary information, guidance, and instructions
 - Illinois, Virginia

| Jurisdiction | Text |
|---|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (k) (1) A current investigation, the filing of charges, an apprehension of the suspect who committed the qualifying crime, closing of a case, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official. (2) A certifying official shall not refuse to complete the Form I-918 Supplement B certification or to otherwise certify that a victim has been helpful, solely because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired. (3) A certifying entity shall not refuse to complete the Form I-918 Supplement B certification and provide it to the victim, the victim’s family member, licensed attorney representing the victim, or representative fully |

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| | <p>accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings for any of the following reasons:</p> <p>A) The victim’s criminal history information.</p> <p>(B) The victim’s immigration history.</p> <p>(C) The victim’s gang membership, membership or gang affiliation.</p> <p>(D) The certifying entity’s belief that the Form I-918 Supplement B certification petition will not be approved by United States Citizenship and Immigration Services.</p> <p>(E) The victim has an open case with another certifying entity.</p> <p>(F) The extent of the harm the victim suffered.</p> <p>(G) The victim’s inability to produce a crime report from a law enforcement agency.</p> <p>(H) The victim’s cooperation or refusal to cooperate in a separate case</p> <p>T visa (j) (1) A current investigation, an apprehension of the suspect who committed the qualifying crime, the filing of charges, closing of a case, or a prosecution or conviction is not required for the victim to request and obtain the Form I-914 Supplement B declaration from a certifying official.</p> <p>(2) A certifying official shall not refuse to complete the Form I-914 Supplement B declaration and provide it to the victim, the victim’s family member, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings or to otherwise certify that a victim has been helpful, solely because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.</p> <p>(3) A certifying entity shall not refuse to complete the Form I-914 Supplement B declaration for any of the following reasons:</p> <p>(A) The victim’s criminal history information.</p> <p>(B) The victim’s immigration history.</p> <p>(C) The victim’s gang membership or gang affiliation.</p> <p>(D) The certifying entity’s belief that the Form I-914 Supplement B petition will not be approved by United States Citizenship and Immigration Services.</p> <p>(E) The victim has an open case with another certifying entity.</p> <p>(F) The certifying entity’s belief that the victim is eligible for relief or protection under Section 679.10 or any other provision of law.</p> <p>(G) The victim’s inability to produce a crime report from a law enforcement agency.</p> <p>(H) The victim’s cooperation or refusal to cooperate in a separate case.</p> |
| <p>Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/</p> | <p>3) The certifying agency shall not consider any other factors in deciding whether to sign the certification form, except whether the individual was a victim of qualifying criminal activity and the victim's helpfulness, as specified in subsection (1) of this section.</p> |
| <p>Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/</p> | <p>A current or ongoing investigation, filing of criminal charges, prosecution or conviction is not required for a victim to request and obtain certification under this subdivision.</p> |
| <p>Delaware Del. Code Ann. tit. 11, § 787(n) (2007).</p> | <p>N/A</p> |
| <p>Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/</p> | <p>"Victim of qualifying criminal activity" means a person described in Section 1101(a)(15)(U)(i)(I) of Title 8 of the United States Code, in the definition of "victim of a severe form of trafficking" in Section 7102(14) of Title 22 of the United States Code, or in any implementing federal regulations, supplementary information, guidance, and instructions.</p> <p>Qualifying criminal activity" means any activity, regardless of the stage of detection, investigation, or prosecution, designated in Section 1101(a)(15)(U)(iii) of Title8 of the United States Code, any implementing federal regulations, supplementary information, guidance, and instructions.</p> |
| <p>Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019).</p> | <p>N/A</p> |
| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019).</p> | <p>(e) A current investigation, the filing of charges, a prosecution, or a conviction is not required for a victim or the victim's parent, guardian, or next friend to request and obtain the Form I-918, Supplement B certification under this section.</p> |

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| https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/ | |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/ | (c) An active investigation, the filing of charges, or a prosecution or conviction are not required for the victim of criminal activity to request and obtain the certification, provided that the certifying entity initiated an investigation and the victim cooperated in it. |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | (4) An investigation, the filing of charges, a prosecution, or a conviction are not required for an individual to request and obtain the signed and completed Form I-914B or Form I-918B from a law enforcement agency or certifying official. |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaiton/ | 3. For the purpose of determining whether the petitioner meets the requirements of subsection 1, the certifying agency shall not consider: (a) The period of time between when the petitioner was victimized by the criminal activity and when the petitioner submitted his or her request for certification; (b) Whether there is an active investigation of the criminal activity; (c) Whether a formal statement of charges has been filed regarding the alleged criminal activity; or (d) Whether there was a prosecution or conviction of the criminal activity. |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | An ongoing investigation, a prosecution or a conviction is not required for a certification under this section |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | (4) A current investigation, the filing of charges, a prosecution, or a conviction are not required for the victim to request the Form I-918 Supplement B certification from a certifying official. |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | "Qualifying criminal activity" means any activity, regardless of the stage of detection, investigation, or prosecution, designated in 8 U.S.C. § 1101(a)(15)(U)(iii), or in any implementing federal regulations, supplementary information, guidance, and instructions. "Victim of qualifying criminal activity" means a person described in 8 U.S.C. § 1101(a)(15)(U)(i)(III), in the definition of "victim of a severe form of trafficking" in 22 U.S.C. § 7102(11), or in any implementing federal regulations, supplementary information, guidance, and instructions. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (4) A current investigation, the filing of charges, and a prosecution or conviction are not required for a victim to request and obtain the certification from a certifying official. |

11. Requires Detailed Certifications, Copies of Documents, Police Reports

State U visa statutes in six (6) states provide direction to certifying agencies on how the certification forms shall be completed. This includes the specific details about the crime being detected, investigated, or prosecuted. These same six (6) states also require certifying agencies to provide detailed descriptions of the victim's past, present, or likely future helpfulness regarding the criminal activity that is being detected, investigated, prosecuted, convicted, or sentenced. In three (3) states these requirements about the details of the certification apply to both U visa certifications and T visa declarations. This section also lists state law requirement regarding returning completed signed forms to the requestors and providing victims copies of police reports and other forms of evidence that could help a victim prove the harm they endured due to the criminal activity.

Detailed Certifications: Statues provide direction to certifying agencies in the state about the level of detail certifiers are required to put in completed U visa certifications under state law:

- Specific details about the nature of the crime being detected,³⁴ investigated, or prosecuted
 - California (U, T, and S visas), Illinois (U and T visas), Maryland, Nevada, Oregon, Washington (U and T visas)
 - Limits the detail provided in the certification when the criminal activity was perpetrated by an adjudicated youth the youth’s name, case number, and a description of the criminal activity
 - Oregon
- A detailed description of the U visa victim’s past, or present, or likely helpfulness with regard to detection, investigation or prosecution of the criminal activity
 - California (U, T, and S visas), Illinois (U and T visas), Maryland, Nevada, Oregon, Washington (U and T visas)
- A detailed description of the T visa victim’s cooperation or likely cooperation with regard to detection, investigation or prosecution of the criminal activity
 - California
- A detailed description of the S visa qualified criminal informant’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.
 - California

Return Certification to Victim or Requestor: State statutes provide direction to state certifying agencies that include returning the form to the requestor because the victim is required to file the U visa certification form I-918B with USCIS as part of their U visa application

- Requires officials to complete and sign the certification forms and return them to the requestor³⁵
 - Colorado, Delaware, Illinois (U and T visas), Massachusetts, Montana, Nebraska, North Dakota, Rhode Island, U.S. Virgin Islands, Virginia, Washington

Police Reports and Evidence of Harm: State laws require that state agencies police reports, offense reports, and documentation of harm suffered by the victim:

- Copies of documents in the possession of the certifying agency that provide evidence of harm endured by the victim due to the criminal activity
 - Maryland
- The certifying agency shall provide, free of charge, relevant pages of offense reports related to the qualifying criminal activity subject to release by law, unless already provided by another agency
 - Colorado
 - The timing of release of such reports for open investigations or prosecutions is subject to the certifying agency's discretion
 - Colorado
- Law enforcement agencies required to provide victims copies of police reports
 - California. Colorado (if the certifying agency signs the certification form)
 - Must provide police reports within statutorily required time
 - 7 days
 - California

| Jurisdiction | Text |
|---|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (i) (1) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity. |

³⁴ In this description “detection” is added here because federal U visa regulations define “investigation or prosecution” is defined to include this full list: detection, investigation, prosecution, conviction, or sentencing” see, 8 CF.R. 214.14(a)(5).

³⁵ Requirements for denials of requests of U visa certification are addressed in Section12.

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| <p>California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/</p> | <p>T visa (h) The certifying official shall fully complete and sign the Form I-914 Supplement B declaration and, regarding victim cooperation, include specific details about the nature of the crime investigated or prosecuted and detailed description of the victim’s cooperation or likely cooperation to the detection, investigation, or prosecution of the criminal activity.</p> <p>S visa (e) The certifying official shall fully complete and sign the Form I-854A certification and, regarding the qualified criminal informant’s helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the qualified criminal informant’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.</p> <p>(f) Upon the request of a victim, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings, a state or local law enforcement agency with whom the victim had filed a police report shall provide a copy of the police report within seven days of the request.</p> |
| <p>Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/</p> | <p>24-4.1-403. Certification forms - signature requirement -limitation on factors for consideration. (1) upon request, a certifying official from a certifying agency shall execute and sign the certification form when it is determined that the victim: (a) was a victim of qualifying criminal activity; and (b) has been helpful, is being helpful, or is likely to be Helpful to the detection, investigation, or prosecution of that Qualifying criminal activity.</p> <p>(4) If a certifying official or agency signs the certification form, the official or agency shall return the signed certification form to the requestor, along with, free of charge, relevant pages of offense reports related to the qualifying criminal activity subject to release by law, unless already provided by another agency. the timing of release of such reports for open investigations or prosecutions is subject to the certifying agency's discretion.</p> |
| <p>Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023).</p> | <p>N/A</p> |
| <p>Delaware Del. Code Ann. tit. 11, § 787(n) (2007). https://niwaplibrary.wcl.american.edu/pubs/11-del-c-787-u-visa-cert/</p> | <p>“(n) Law-enforcement agency protocol (1)... the police officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in his or her law-enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal law-enforcement officer to request continued presence”</p> |
| <p>Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/</p> | <p>(d) ...The certifying official shall fully complete and sign the certification form and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity. The certifying official shall complete the certification form and provide it to the person...</p> |
| <p>Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019).</p> | <p>N/A</p> |
| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/</p> | <p>(e) If the victim or the victim's parent, guardian, or next friend satisfies the criteria specified under subsection (a) of this section, the certifying official shall fully complete and sign the Form I-918, Supplement B certification and, with respect to victim helpfulness, include: (1) specific details about the nature of the crime investigated or prosecuted; (2) a detailed description of the victim's helpfulness or likely helpfulness to the detection, investigation, or prosecution of the criminal activity; and (3) copies of any documents in the possession of the certifying official that evince the harm endured by the victim due to the criminal activity.</p> |
| <p>Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/</p> | <p>The certifying entity shall respond to the request by: (i) completing and signing the certification forms...</p> |
| <p>Minnesota Minn. Stat. § 611A.95 (2023).</p> | <p>N/A</p> |
| <p>Montana Mont. Code Ann. § 44-4-1503 (2017). https://niwaplibrary.wcl.american.edu/pubs/montana-u-visa-certification-law/</p> | <p>the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the person the Form I-914B or Form I- 918B provided by the United States citizenship and immigration services on its website...</p> |
| <p>Nebraska Neb. Rev. Stat. § 29-217 (2020).</p> | <p>...shall complete, sign, and return to the individual the Form I-918B.</p> |

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| https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrficaiton/ | <p>“1. Upon the request of a petitioner for a certification, a certifying agency shall determine whether the petitioner:</p> <p>(a) Was the victim of criminal activity; and</p> <p>(b) Has been helpful, is being helpful or is likely to be helpful to the investigation or prosecution of the criminal activity.</p> <p>2. If a certifying agency determines that a petitioner satisfies the requirements of subsection 1, the certifying official shall complete and sign the certification. A completed certification must include, without limitation, a detailed description of:</p> <p>(a) The nature of the criminal activity described in subsection 1; and</p> <p>(b) The helpfulness of a petitioner or the likeliness that a petitioner will be helpful in the investigation or prosecution of that criminal activity.</p> |
| North Dakota N.D. Cent. Code § 12.1-41-18 (2019). https://niwaplibrary.wcl.american.edu/pubs/nd-u-visa-cert-law/ | the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website... |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | <p>A certifying official processing a certification under this section shall: Fully complete and sign the certification form; and except as provided in paragraph (b) of this subsection, include in the form specific details about the nature of the qualifying criminal activity investigated or prosecuted and a detailed description of the victim’s helpfulness or likely helpfulness.</p> <p>(b) If the qualifying criminal activity was committed by an adjudicated youth as defined in ORS 419A.004 (Definitions), the certifying official shall include on the certification form only the following information: The name of the adjudicated youth; The case number, if applicable; and A description of the qualifying criminal activity.</p> |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). https://niwaplibrary.wcl.american.edu/pubs/ri-u-t-certification-law/ | The law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration services on its internet website... |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | N/A |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | D....the certifying official shall complete and provide the certification form to the person... |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). https://niwaplibrary.wcl.american.edu/pubs/us-virgin-islands-u-cert-law-2019/ | The Attorney General, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website... |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (2) Upon a certifying agency's affirmative determination under subsection (1) of this section, the certifying official shall fully complete and sign the certification, including, if applicable, the specific details certifying details regarding the nature of the crime investigated or prosecuted and a detailed description of the victim’s regarding victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of criminal activity |

12. Victim Shall Be Informed of Reasons for Denial

Several states (12) require certifying agencies to inform applicants of the reasons for denial when their U or T visa certification request is rejected. This ensures transparency and provides applicants with the necessary information to address issues identified and then resubmit the U visa certification request to the same agency or another government agency. In seven (7) states, a certifying agency must provide a written explanation to why a certification request was denied. In five (5) other states the statutes only require the agency to inform the applicant of why the request was denied.

Two states, Oregon and Colorado, in addition to requiring written denials include a best practice in their state laws by statutorily limiting the grounds on which state certifying agencies are authorized to deny U visa certifications. The Illinois statute directs that the written notice of denial be mailed to the address the victim provided when the victim requested the certification. In an event that a certification is denied, ten (10) states

allow the applicant to submit additional evidence along with another U visa certification request to the same or another certifying agency.

Written explanation for denial required:

- That a written explanation for the denial of the certification be provided to the victim:
 - California, Colorado, Delaware, Illinois (“may provide”), Massachusetts, Oregon, Virginia
- Written denial notification must contain a detailed explanation of the reasons for denial with denial only authorized by state statute for one of the following reasons:
 - Lack of qualifying criminal activity
 - Oregon
 - The requestor was not a victim of qualifying criminal activity
 - Colorado, Illinois (permissive not mandatory requirement), Oregon.
 - Lack of jurisdiction over the certification form request due to the certifying agency not having been involved in the detection, investigation, or prosecution of the qualifying criminal activity:
 - Colorado, Oregon
 - Lack of helpfulness, including documented instances of failure or refusal to comply with reasonable requests for assistance:
 - Colorado, Oregon
 - Explanation of other circumstances for which a certifying official or agency may lawfully deny certification:
 - Oregon
- Written denial shall contain the agency’s internal case number and the date of denial:
 - Oregon
- The written explanation shall provide specific details about reasonable requests for cooperation and a detailed description of how the victim refused to cooperate:
 - California
- If the certifying official cannot determine whether the applicant is a victim of qualifying criminal activity or determines that the applicant does not qualify, the certifying official shall provide a written explanation setting forth reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity.
 - Virginia
- The certifying official shall submit the notice to the address provided in the request
 - Illinois
 - This notice shall also provide contact information should the requester desire to appeal the decision
 - Illinois

State laws require that the victim be informed about the reasons for denial

- Agency shall inform the person of reasons for denial
 - Montana, Nebraska, North Dakota, Rhode Island, U.S. Virgin Islands

Ability to make multiple certification requests: Victim must under state law be provided another opportunity to request certification from the agency that denied the victim a certification or another agency:

- Inform the victim that they may make another request for certification and may submit additional evidence:
 - Delaware (mandates victim is informed of this), Illinois, Massachusetts, Montana, Nebraska, North Dakota, Rhode Island, U.S. Virgin Islands
- Agency is required to accept another request for certification following a denial:
 - Colorado, Nebraska

- The state statute allows victims to seek certification from multiple certifying agencies
 - Colorado

| Jurisdiction | Text |
|---|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | (i) (1) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity. (2) If a certifying entity does not certify a Form I-918 Supplement B certification, they shall provide a written explanation for the denial of the Form I-918 Supplement B certification. The written denial shall include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | (7) If a certifying official or agency declines to sign the certification form, the official or agency shall, in writing, notify the requestor of the reason or reasons for the denial within the times set forth in section 24-4.1-402. The denial notification must contain a detailed explanation of the reason or reasons for the denial, consisting of one of the following:(a) Lack of jurisdiction over the certification form request due to the certifying agency not having been involved in the detection, investigation, or prosecution of the qualifying criminal activity;(b) The requestor was not a victim of qualifying criminal activity; or(c) Lack of helpfulness, including documented instances of failure or refusal to comply with reasonable requests for assistance. (8) Upon receiving notice that a request for a certification form pursuant to this section is denied, a requestor may provide supplemental information to the certifying agency and request that the certification form denial be reviewed by the certifying agency. (9) a requestor may seek a subsequent certification from the same certifying agency or may seek certification from multiple certifying agencies. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). https://niwaplibrary.wcl.american.edu/pubs/11-del-c-787-u-visa-cert/ | (2) If the law-enforcement agency having responsibility under paragraph (n)(1) of this section determines that an individual does not meet the requirements for such agency to comply with paragraph (n)(1) of this section, that agency shall inform the individual of the reason and that the individual may make another request under paragraph (n)(1) of this section and submit additional evidence satisfying the requirements. |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | If the certifying official cannot determine that the applicant is a victim of qualifying criminal activity, the certifying official may provide written notice to the person or the person's representative explaining why the available evidence does not support a finding that the person is a victim of qualifying criminal activity. The certifying official shall submit the notice to the address provided in the request and shall provide contact information should the requester desire to appeal the decision. The certifying agency or certifying official shall accept all appeals and must respond to the appeals within 30 business days. (b) Notwithstanding subsection (a), no requester is required to exhaust an administrative appeal under subsection (a) before filing a mandamus action or seeking other equitable relief in circuit court for a completed certification form required under Section 10. |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/ | The certifying entity shall respond to the request by: (i) completing and signing the certification forms; (ii) issuing a written denial of the request, without prejudice, informing the victim of the reason that the request does not meet the requirements of the certifying entity's policy under section 2; |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). https://niwaplibrary.wcl.american.edu/pubs/montana-u-visa-certification-law/ | (2) If the law enforcement agency determines that a person does not meet the requirements for the agency to comply with subsection (1), the agency shall inform the person of the reason and that the person may make another request and submit additional evidence satisfying the requirements. |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). | (b) If the law enforcement agency determines that an individual does not meet the requirements of the law enforcement agency for completion of a Form I-914B, the law enforcement agency shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make |

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| https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | another request with additional evidence or documentation to satisfy such requirements. The law enforcement agency shall permit the individual to make such additional request. (c) If the certifying official determines that an individual does not meet the requirements of the certifying agency for completion of a Form I-918B, the certifying official shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make another request with additional evidence or documentation to satisfy such requirements. The certifying official shall permit the individual to make such additional request. |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). | N/A |
| North Dakota N.D. Cent. Code § 12.1-41-18 (2019). https://niwaplibrary.wcl.american.edu/pubs/nd-u-visa-cert-law/ | 2. If the law enforcement agency determines that an individual does not meet the requirements for the law enforcement agency to comply with subsection 1, the law enforcement agency shall inform the individual of the reason and that the individual may make another request under subsection 1 and submit additional evidence satisfying the requirements. |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | (a) If a certifying official or agency denies certification under this section, the official or agency shall in writing notify the petitioner of the reason for the denial. The denial notification must contain the following information: (A) An internal case number that allows the certifying agency to individually identify each certification request; (B) The date of the denial; and (C) The reason for the denial consisting of one of the following: (i) Lack of qualifying criminal activity; (ii) Lack of helpfulness; (iii) Lack of jurisdiction over certification request; or (iv) Other circumstances for which a certifying official or agency may lawfully deny certification. |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). https://niwaplibrary.wcl.american.edu/pubs/ri-u-t-certification-law/ | (b) If the law enforcement agency or officer determines that an individual does not meet the requirements for the agency to comply with subsection (a) of this section, the agency shall inform the individual of the reason and that the individual may make another request under subsection (a) of this section and submit additional evidence satisfying the requirements. |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | N/A |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | D (iv) If the certifying official cannot determine whether the applicant is a victim of qualifying criminal activity or determines that the applicant does not qualify, the certifying official shall provide a written explanation to the person or the person's representative setting forth reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). https://niwaplibrary.wcl.american.edu/pubs/us-virgin-islands-u-cert-law-2019/ | (b) If the Attorney General determines that an individual does not meet the requirements for the Attorney General to comply with subsection (a), the Attorney General shall inform the individual of the reason and that the individual may make another request under subsection (a) and submit additional evidence satisfying the requirements. |
| Washington Wash. Rev. Code 7.98.020 (2017). | N/A |

13. Withdrawing Certifications

As discussed in Section 9 above, once an immigrant victim of criminal activity provides helpfulness to a certifying agency the victim is eligible for certification.³⁶ After that point the victim continues to remain eligible for certification and to file their U visa application and have the victim’s application for a U visa and lawful permanent residency based on the U visa approved so long as the victim does not unreasonably refuse to cooperate with reasonable requests³⁷ for assistance from law enforcement, prosecutors, or another certifying agency.³⁸ The U.S. Department of Homeland Security and the U.S. Department of Justice use the following approach to determinations of whether a U visa applicant victim’s refusal to cooperate was unreasonable. Both agencies:

³⁶ DEPT HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE at 18 (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

³⁷ The applicant may provide to USCIS and to the certifying agency requesting cooperation a detailed description about why the victim refused to comply with a request for assistance that the victim believed was unreasonable. 8 C.F.R. § 245.24(e)(2)(ii).

³⁸ 8 C.F.R. § 245.24(e)(1)-(4).

“will determine whether the alien’s refusal was unreasonable under the totality of the circumstances based on all available affirmative evidence...[and] may take into account 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 traumatization (both mental and physical), and the age and maturity of the applicant.”³⁹

This is the federal standard that has been adopted by the states of Nebraska, Utah, and Washington in the sections of their state statutes that govern when and under what circumstances a certifying agency or certifying official in these states can withdraw or disavow a U visa certification or T visa declaration. Other state laws have included some parts, but not the full federal law standards, into their state legislation. The Illinois and Virginia statutes permit withdrawal of certification if the victim unreasonably refuses to cooperate but omits the part of the federal law that also requires that the requests be reasonable. The state statutes in Maryland, Nevada and California do the opposite; their statutes authorize withdrawing of certifications when the victims refuse to provide assistance reasonably requested but omit federal law exemption that allows victims to gain access to the U visa and lawful permanent residency so long as they do not unreasonably refuse to cooperate with reasonable requests. Lastly three (3) states authorize withdrawal of certifications when the certifying agency later determines that the person receiving the certification was not a victim of a qualifying criminal activity.⁴⁰

- Tracks federal law
 - For U visas allowing withdrawal of applications provided the request of assistance was reasonable and the victim unreasonably refused to assist. This approach accurately reflects federal law 8 C.F.R. § 214.14(h)(2)(i)(A)
 - Nebraska, Utah, Washington
 - For T visas allows disavowal or withdrawal of declarations provided they include a detailed explanation in writing 8 C.F.R. § 214.204(h)
 - Nebraska
- Permits certifying officials to notify USCIS if one of the following occurs:
 - The victim unreasonably refuses to assist in the investigation or prosecution of the criminal activity
 - Illinois, Virginia
 - The victim fails provide information and assistance when reasonably requested
 - Utah
 - If the person who received the certification was later determined not to be a victim of a qualifying criminal activity.
 - Illinois, Virginia, Utah
- Certifying agency may not withdraw the certification unless
 - The victim refuses to provide assistance reasonably requested
 - California (U visa), Maryland, Nevada
 - When an under 16-year-old victim’s parent, guardian, or next friend refused to provide information reasonably requested
 - Maryland
 - The victim refuses to provide information and assistance reasonably requested
 - California (T and S visas)

³⁹ 8 C.F.R. § 245.24(a)(5).

⁴⁰ For additional information on the process for certifying agencies withdrawing or disavowing U visa certifications *see*, USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 14 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (l) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested. T visa (k) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested. S visa (f) A certifying official may only withdraw the certification if the qualified criminal informant refuses to provide information and assistance when reasonably requested. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). | N/A |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | “If, after completion of a certification form, the certifying official later determines the person was not the victim of qualifying criminal activity or the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, the certifying official may notify United States Citizenship and Immigration Services in writing.” |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/ | A certifying official may withdraw the certification provided under this section only on refusal to provide information and assistance when reasonably requested of: (1) the victim; or (2) the victim's parent, guardian, or next friend if the victim was under the age of 16 years on the date that an act that constitutes an element of qualifying criminal activity first occurred or if the victim is incapacitated or incompetent. |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | (6) A law enforcement agency, certifying agency, or certifying official has the discretion to revoke, disavow, or withdraw a previous completion of a Form I-914B or Form I-918B at any time after initial completion, as provided in 8 C.F.R. § 214.11(d)(3)(ii) [replaced by 214.204(h)] and 8 C.F.R. § 214.14(h)(2)(i)(A). |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-certification/ | The certifying agency shall not (b) Withdraw a certification unless the petitioner refuses to provide assistance that was reasonably requested by a law enforcement agency in the investigation or prosecution of the criminal activity described in section 8 of this act. |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). | N/A |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | (5) A certifying official may withdraw a Form I-918 Supplement B certification if: (a) the victim refuses to provide information and assistance when reasonably requested; or (b) the certifying entity determines that the individual is not a victim of a qualifying criminal activity. |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | “If, after completion of a certification form, the certifying official later determines that the person was not the victim of qualifying criminal activity or the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he is a victim, the certifying official may notify United States Citizenship and Immigration Services in writing.” |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). | (5) A certifying agency may only withdraw the certification if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated |

14. What Certification Is and Is Not

Several states (10), include information in their statutes designed to clarify for certifiers what U visa certification is and is not under both the state statute which is most cases in consistent with federal immigration laws, regulations, policies, and guidance issued by USCIS and DHS. These statutes describe what is being certified when a certifying agency signs a U visa certification and confirm that the state certifying agency is not granting a U visa by signing the U visa certification which is a required prerequisite that an eligible immigrant crime victim must obtain from a government official to be able to file a U visa application.⁴¹ State statutes describing what is being certified:

- Individual or their family member⁴² was a victim of qualifying criminal activity:
 - Colorado, Connecticut, Maryland, Nevada, Oregon, Utah, Washington
- Victim's helpfulness: A victim who has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution⁴³ of that qualifying criminal activity qualifies for U visa certification
 - Colorado, Connecticut (missing detection), Maryland, Oregon, Utah, Washington
 - Helpfulness can be offered by victim's parent, guardian, or next friend when the victim is
 - Under the age of 16 when an act which constitutes an element of the criminal activity first occurred
 - Maryland
 - Incapacitated or incompetent
 - Maryland
 - For purposes of determining helpfulness a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity if there is no documentation that the victim refused or failed to provide assistance reasonably requested by law enforcement.
 - Colorado
 - The certifying agency shall not consider any other factors in deciding whether to sign the certification form, except whether the individual was a victim of qualifying criminal activity and the victim's helpfulness
 - Colorado
- Victim possesses information about the criminal activity:
 - Connecticut⁴⁴

⁴¹ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 2, 3, 10 (February 28, 2022), (<https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>).

⁴² Immigrant parents whose child or stepchild was a victim is eligible to file a U visa. Also in cases of murder, manslaughter spouses and children are considered direct victims. USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 7 (February 28, 2022), (<https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>).

⁴³ The U visa regulations define "investigation or prosecution" to include detection, investigation, prosecution, conviction, or sentencing. 8 C.F.R. § 214.14(a)(5). All of these state laws are missing conviction and sentencing and Connecticut is missing detection.

⁴⁴ In case of a victim who is a child, incapacitated or incompetent a parent, guardian or next friend can provide the required helpfulness. USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 8 (February 28, 2022), (<https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>).

- That the victim had not refused to provide information reasonably requested by a law enforcement, prosecutors, or other certifying official⁴⁵
 - Colorado, Connecticut

Some state statutes provide additional descriptions about the U visa and T visa certification process that provide helpful clarification for certifiers and the public. These statutory provisions can also be useful as a basis for jury instructions and training of certifiers. The following state statute clarifications are consistent with federal law and include:

- Certification shall not be considered sufficient evidence that an applicant for a U or T visa has met all eligibility requirements for the visa⁴⁶
 - Colorado, Illinois, Virginia
- Completion of a certification form by a certifying official shall not be construed to guarantee that the victim will receive federal immigration relief.⁴⁷
 - Colorado, Illinois, Virginia
- It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U or T visa.⁴⁸
 - Illinois, Nebraska, Virginia
- Completion of a certification form by a certifying official merely verifies factual information relevant to the federal immigration benefit sought, including information relevant for federal immigration officials to determine eligibility for a U or T visa.⁴⁹
 - Colorado, Illinois, Nebraska, Virginia
- By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge⁵⁰
 - Colorado, Illinois, Virginia
- No provision in this Act limits the manner in which a certifying officer or certifying agency may describe whether the person has cooperated or been helpful to the agency or provide any additional information the certifying officer or certifying agency believes might be relevant to a federal immigration officer's adjudication of a U or T visa application.
 - Illinois, Virginia

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |

⁴⁵ As described above in Sections 9 and 13, this description of the exemption from the U visa's ongoing requirement of U visa applicants to cooperate with law enforcement and prosecutors is not fully correct because the Colorado and Connecticut statutes only include the part of the exemption that requires that a certifying agency's requests for cooperation from victims be reasonable. The statutes omit the victim's statutory ability to remain eligible for certification, a U visa, and lawful permanent residency based on the U visa so long as the victim did not unreasonably refuse to cooperate with reasonable requests from law enforcement. 8 C.F.R. 245.24(e)(1)-(4).

⁴⁶ DEPT HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE at 21 (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

⁴⁷ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; DHS U and T Visa Law Enforcement Resource Guide (November 30, 2015) at 4, 8 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

⁴⁸ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 2, 7, 10 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; DHS U and T Visa Law Enforcement Resource Guide (November 30, 2015) at 3, , 8 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

⁴⁹ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 10 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>;

⁵⁰ DEPT HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE at 8, 13 (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

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| <p>California Cal. Penal Code. §679.10 (2023).</p> | <p>N/A</p> |
| <p>Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/</p> | <p>24-4.1-403. (1) upon request, a certifying official from a certifying agency shall execute and sign the certification form when it is determined that the victim: (a) was a victim of qualifying criminal activity; and (b) has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity. (2) (a) for purposes of determining helpfulness pursuant to subsection (1)(b) of this section, a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity if there is no documentation that the victim refused or failed to provide assistance reasonably requested by law enforcement. (3) The certifying agency shall not consider any other factors in deciding whether to sign the certification form, except whether the individual was a victim of qualifying criminal activity and the victim's helpfulness, as specified in subsection (1) of this section. (5) The certifying agency is neither a sponsor nor a decision-maker in the granting of a u visa. a certifying official's completion of a certification form is not sufficient evidence that an applicant for a u visa has met all eligibility requirements and does not guarantee that the victim will receive a u visa. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a u visa. Completion of a certification form by a certifying official merely verifies factual information relevant for federal immigration officials to determine eligibility for a u visa. By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge.</p> |
| <p>Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/</p> | <p>(5) (A) [Annually], each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (i) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the criminal activity, and (ii) any subsequent certification required by the victim. (B) By signing a certification of helpfulness, the officer or agency is not making a determination of eligibility for U Nonimmigrant Status. The officer or agency is solely providing information required by the United States Department of Homeland Security on such form as is required by said department and certifying that: (i) The requesting individual or his or her family member is a victim of one of the enumerated crimes eligible for U Nonimmigrant Status, (ii) the victim possesses or possessed information regarding that crime, (iii) the victim has been, is being or is likely to be helpful in an investigation of that crime, and (iv) the victim has not failed or refused to provide reasonably requested information or assistance.</p> |
| <p>Delaware Del. Code Ann. tit. 11, § 787(n) (2007).</p> | <p>N/A</p> |
| <p>Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/</p> | <p>f) Notwithstanding any other provision of this Section, a certifying official's completion of a certification form shall not be considered sufficient evidence that an applicant for a U or T visa has met all eligibility requirements for that visa and completion of a certification form by a certifying official shall not be construed to guarantee that the victim will receive federal immigration relief. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U or T visa. Completion of a certification form by a certifying official merely verifies factual information relevant to the federal immigration benefit sought, including information relevant for federal immigration officials to determine eligibility for a U or T visa. By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge. No provision in this Act limits the manner in which a certifying officer or certifying agency may describe whether the person has cooperated or been helpful to the agency or provide any additional information the certifying officer or certifying agency believes might be relevant to a federal immigration officer's adjudication of a U or T visa application...</p> |
| <p>Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019).</p> | <p>N/A</p> |
| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/</p> | <p>(a) For purposes of filing a petition with the United States Citizenship and Immigration Services for U Nonimmigrant Status, a victim or the victim's parent, guardian, or next friend may request a certifying official of a certifying entity to certify victim helpfulness on a Form I-918, Supplement B certification if the victim:(1) was a victim of a qualifying criminal activity and has been helpful</p> |

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| | <p>to the certifying entity in the detection, investigation, or prosecution of that qualifying criminal activity;”).</p> <p>(2) was under the age of 16 years on the date that an act that constitutes an element of qualifying criminal activity first occurred and the victim's parent, guardian, or next friend has been helpful to the certifying entity in the detection, investigation, or prosecution of that qualifying criminal activity; or</p> <p>(3) is incapacitated or incompetent and the victim's parent, guardian, or next friend has been helpful to the certifying entity in the detection, investigation, or prosecution of that qualifying criminal activity. (b) For purposes of determining helpfulness under subsection (a) of this section, if the victim or the victim's parent, guardian, or next friend is assisting, has assisted, or is likely to assist law enforcement authorities in the detection, investigation, or prosecution of qualifying criminal activity, the victim or the victim's parent, guardian, or next friend shall be considered to be helpful, to have been helpful, or likely to be helpful.</p> |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | (5) It is the exclusive responsibility of the federal immigration authorities to determine whether a person is eligible for a T or U visa. Completion of a Form I-914B or Form I-918B by a law enforcement agency or certifying official only serves to verify information regarding certain criteria considered by the federal government in granting such visas. |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaion/ | <p>“1. Upon the request of a petitioner for a certification, a certifying agency shall determine whether the petitioner:</p> <p>(a) Was the victim of criminal activity; and</p> <p>(b) Has been helpful, is being helpful or is likely to be helpful to the investigation or prosecution of the criminal activity.</p> <p>2. If a certifying agency determines that a petitioner satisfies the requirements of subsection 1, the certifying official shall complete and sign the certification. A completed certification must include, without limitation, a detailed description of:</p> <p>(a) The nature of the criminal activity described in subsection 1; and</p> <p>(b) The helpfulness of a petitioner or the likeliness that a petitioner will be helpful in the investigation or prosecution of that criminal activity.</p> |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | Upon the request of a victim or a victim’s representative, a certifying official shall in writing certify that a victim has been helpful on a certification form designated by the United States Citizenship and Immigration Services if: the victim is a victim of qualifying criminal activity; and the victim has been helpful, is being helpful or is likely to be helpful to the detection, investigation or prosecution of the qualifying criminal activity. |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | <p>“1) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, if the certifying entity determines the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity.</p> <p>(2) A certifying entity shall determine helpfulness as described in Subsection (1) in a manner consistent with federal guidelines.</p> <p>(3) A certifying entity shall process a Form I-918 Supplement B certification...</p> |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | “F. Notwithstanding any other provision of this section, a certifying official's completion of a certification form shall not be considered sufficient evidence that an applicant for a U or T visa has met all eligibility requirements for that visa, and completion of a certification form by a certifying official shall not be construed to guarantee that the victim will receive federal immigration relief. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U or T visa. Completion of a certification form by a certifying official merely verifies factual information relevant to the federal immigration benefit sought, including information relevant for federal immigration officials to determine eligibility for a U or T visa. By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge. No provision in this chapter limits the manner in which a certifying official or certifying agency may describe whether the person has cooperated or been helpful to the agency or provide any additional information the certifying |

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| | official or certifying agency believes might be relevant to a federal immigration officer's adjudication of a U or T visa application. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (1) Upon the request by the victim or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service victim's service provider, a certifying agency shall: (a) Make a determination on United States citizenship and provider, and immigration services form I-918 supplement B or relevant successor certification form, whether the victim immigration victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the was the detection or investigation or prosecution of that criminal activity; or (b) make a determination on United States citizenship and immigration services form I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim. |
| Washington Wash. Rev. Code 7.98.020 (2017). | |

15. Confidentiality Protections

A number of states (10) prohibit the disclosure of an applicant's immigration status, except in limited circumstances, such as when required to comply with federal law or legal processes, or if authorized by the victim. These state law provisions supplement and promote compliance with federal VAWA confidentiality laws. Congress created federal VAWA confidentiality laws⁵¹ that protect immigrant victims of domestic violence, child abuse, sexual assault, stalking, human trafficking and other U visa listed criminal activities from having information about the existence of, actions taken in, or information contained in their VAWA, T visa, and U visa applications for immigration relief disclosed or released to their perpetrator or anyone who could provide the information to the perpetrator.⁵² U visa victims receive VAWA confidentiality protections when the victim is seeking to file a U or T visa or when a DHS employee has reason to believe they may victim eligible to file for T or U visa protection.⁵³ When a victim requests a U visa certification from state government officials that is a required prerequisite to filing a U visa application the victim is in the process of seeking a U visa and receives VAWA confidentiality protections.

When states include confidentiality protections in state U visa certification laws these state laws work in tandem with federal VAWA confidentiality protections offering significant benefits to both victims and government agencies. Confidentiality protections encourage crime reporting, enhance victim protection, and foster trust in government officials. By maintaining confidentiality, victims can seek U Visa certification with less fear of perpetrator retaliation including through treats of deportation and enhancing victim safety enabling more immigrant victims to seek access to justice and the services and support they need to rebuild their lives and the lives of their children. Ultimately, these protections ensure that victims feel supported and better able to cooperate with law enforcement, prosecutors, and other government officials and more willing to seek help from courts contributing to improved public safety and community trust.⁵⁴

The following states that prohibit disclosure of:

- **Immigration status:** Information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless required to do so by
 - Applicable state or federal law or court order:

⁵¹ 8 U.S.C. § 1367

⁵² For a full legislative and regulatory history and DHS regulations and policies implementing VAWA confidentiality protections, including for U visa applications, see Alina Husain, Daliana Gomez Garcia, and Leslye Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (June 7, 2022), <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>.

⁵³ 8 U.S.C. § 1367(a)(1)(E)-(F); DEP'T HOMELAND SEC., INSTRUCTION NUMBER: 002-02-001.01, SECTION IV(F)(1), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 3 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

⁵⁴ Leslye E. Orloff, et al., *Executive Summary – Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status* (June 8, 2021), <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final/>.

- California (U, T, and S visas), Colorado, Illinois, Maryland, Minnesota, Nevada, Oregon (of the victim or other petitioner), Utah, Virginia, Washington
 - Prosecutor’s or law enforcement’s constitutional obligations to disclose exculpatory information in a criminal proceeding
 - Nevada, Utah, Virginia
- Waiver of VAWA confidentiality victims: States that prohibit disclosure of immigration status except if authorized by the victim or criminal informant:⁵⁵
 - California (U, T, and S visas), Illinois, Maryland⁵⁶, Minnesota, Nevada, Oregon, Utah, Virginia, Washington.
 - Victim’s authorization/consent must be in writing
 - Maryland, Nevada, Utah, Washington
 - If the victim is a minor or is otherwise not legally competent, written authorization can be provided by the victim's parent or guardian.⁵⁷
 - Utah
- Personal identifying information except to comply with federal law or legal process:
 - Colorado, Minnesota, Utah, Washington
- Documents related to certification: Documents submitted with a request for certification under this section and any written response to a certification request from a certifying official or agency are confidential and may not be disclosed unless the disclosure is (one of the following):
 - Required by federal law or legal process
 - Oregon
 - Required by state law regarding disclosure to the defendant
 - Oregon
 - Constitutionally required
 - Oregon
 - Requested by a law enforcement agency and necessary for the investigation of a criminal charge
 - Oregon
 - Authorized by the victim.
 - Oregon
- Court records related to judicial review of certification denials: Courts are required to maintain all court records related on enforcement actions under seal absent court order⁵⁸
 - Virginia

| Jurisdiction | Text |
|---|---|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (m) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification. T visa (l)A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-914 Supplement B declaration, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-914 Supplement B declaration. |

⁵⁵ Under federal VAWA confidentiality immigration laws waivers are only available to adults and all adults in the case must agree to waivers of VAWA confidentiality protections. 8 U.S.C. § 1367(b)(4).

⁵⁶ Maryland’s limitation of waivers of confidentiality under state law is consistent with the adults only approach to waivers under federal VAWA confidentiality immigration laws. 8 U.S.C. § 1367(b)(4).

⁵⁷ Utah’s waivers for child victims are inconsistent with the bar on waivers federal VAWA confidentiality in cases involving children. 8 U.S.C. § 1367(b)(4). See, DEP’T HOMELAND SEC., INSTRUCTION NUMBER: 002-02-001.01, VI(A)(1)(D)(4), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 6-7(May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

⁵⁸ See Section 21 below.

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| | S visa (g) A certifying entity is prohibited from disclosing the immigration status of the qualified criminal informant for whom Form I-854A certification has been completed, except to comply with federal law or legal process, or if authorized by the qualified criminal informant. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | A certifying agency is prohibited from disclosing the personal identifying information or immigration status of a victim or person requesting the certification except to comply with federal or state law or process. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | (g) A certifying official or agency receiving requests for completion of certification forms shall not disclose the immigration status of a victim or person requesting the certification form, except to comply with federal law or State law, legal process, or if authorized, by the victim or person requesting the certification form. |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/ | (g) A certifying entity may disclose information relating to a victim who is seeking or has obtained U Nonimmigrant Status only:(1) in order to comply with federal law, court order, or a discovery obligation in the prosecution of a criminal offense; or (2) after adult petitioners for U Nonimmigrant Status or adult U Nonimmigrant Status holders have provided written consent for the disclosure of the information. |
| Massachusetts Mass. Gen. Laws ch258F §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/ | Subd. 4.Disclosure prohibited; data classification.(a) A certifying entity is prohibited from disclosing the immigration status of a victim of criminal activity, except to comply with federal law or legal process, or if authorized by the victim of criminal activity or representative requesting the certification.(b) Data provided to a certifying entity under this section is classified as private data pursuant to section 13.02, subdivision 12. |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaiton/ | A certifying agency shall not: (a) Disclose the immigration status of a petitioner unless such a disclosure is mandated by federal law or court order or the petitioner consents, in writing, to such a disclosure... 4. Nothing in this section shall be construed to relieve any obligation placed upon a prosecuting attorney or law enforcement official by the Nevada Constitution or the United States Constitution to disclose exculpatory evidence to a defendant. |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | (8)(a) Certifying agencies and certifying officials are prohibited from disclosing the immigration status of a victim or other petitioner unless the disclosure is: (A)Required by federal law or legal process; or (B)Authorized by the victim or other petitioner. (b) Documents submitted with a request for certification under this section and any written response to a certification request from a certifying official or agency are confidential and may not be disclosed unless the disclosure is: (A) Required by federal law or legal process; or (B) Required by ORS 135.815 (Disclosure to defendant); (C) Constitutionally required; (D) Requested by a law enforcement agency and necessary for the investigation of a criminal charge; or (E) Authorized by the victim. |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ Utah | (6) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law, or if authorized by the victim or person requesting the Form I-918 Supplement B certification. (8) (a) A certifying entity may not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless: (i) required to do so by applicable state or federal law or court order; or (ii) the certifying agency has written authorization from: |

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| Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | (A) the victim; or (B) if the victim is a minor or is otherwise not legally competent, from the victim's parent or guardian. (b) Subsection (8)(a) does not modify legal obligations of a prosecutor or law enforcement to disclose information and evidence to a defendant. |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | G. A certifying official or agency receiving requests for completion of certification forms shall not disclose the immigration status of a victim or person requesting the certification form, except to comply with federal or state law or a legal process or if authorized by the victim or person requesting the certification form. Petitions to courts for enforcement actions for refusals to certify – C.-Any petition filed pursuant to subsection B, along with the record of all hearings and all other pleadings and papers filed, and orders entered in connection with such petition shall be kept under seal by the clerk unless otherwise ordered by the court. D. Nothing in this chapter shall be construed to alter or diminish the duties and requirements of a law-enforcement officer, as defined in § 9.1-101, the attorney for the Commonwealth, or the Attorney General from disclosing exculpatory information to a defendant in a criminal case. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | 9) A certifying agency shall not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless required to do so by applicable federal law or court order, or unless the certifying agency has written authorization from the victim or, if the victim is a minor or is otherwise not legally competent, by the victim's parent or guardian. This subsection does not modify prosecutor or law enforcement obligations to disclose information and evidence to defendants under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), or Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555; 131 L. Ed. 2d 490 (1995), or any related Washington case law, statutes, or court rules. |

16. Adopting Certification Policies

Several state laws (5) require certifying agencies to adopt U visa certification policies. This is to ensure people are informed of the process and the certifying agency has a uniform policy for signing certifications. Some state statutes require that certifying agency's U visa certification policies be made public.

- U visa certification included in crime scene family violence response protocols:
 - Statue requires implementation at crime scenes with officer's responsibilities described under the state's Uniform protocols for treating victims of family violence whose immigration status is questionable
 - Connecticut
- Adopt U visa certification policies
 - Statute requires each certifying agency to adopt a policy for completing and signing U and T visa certifications
 - Massachusetts
 - Statute requires each certifying agency to develop written procedures for processing requests for U visa certification
 - Oregon
 - Statute requires certifying agencies to make their procedures for U and T visa certification publicly available
 - Illinois, Virginia

| Jurisdiction | Text |
|---|------|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). | N/A |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). | N/A |

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| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | (f) It shall be the responsibility of the peace officer at the scene of a family violence incident to provide immediate assistance to the victim. Such assistance shall include, but need not be limited to: ... (3) informing the victim of services available, including providing the victim with contact information for a regional family violence organization that employs, or provides referrals to, counselors who are trained in providing trauma-informed care; (4) referring the victim to the Office of Victim Services; and (5) providing assistance in accordance with <u>the uniform protocols for treating victims of family violence whose immigration status is questionable</u> , established pursuant to subsection (i) of this section. In cases where the officer has determined that no cause exists for an arrest, assistance shall include: (A) Assistance as provided in subdivisions (1) to (5), inclusive, of this subsection. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | (i) The Police Officer Standards and Training Council shall establish uniform protocols for treating victims of family violence whose immigration status is questionable and shall make such protocols available to law enforcement agencies. Each law enforcement agency shall adopt and use such protocols on and after the date they are established by the council. |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | Section 10. Certifications for victims of qualifying criminal activity. (a) ... Certifying officials shall: (1) respond to requests for completion of certification forms received by the agency, as required by this Section; and (2) make information regarding the agency's procedures for certification requests publicly available for victims of qualifying criminal activity and their representatives. (Assumes development of procedures) |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/ | “Section 2. A certifying entity shall adopt a policy for completing and signing nonimmigrant status certification forms for: (i) victims of criminal activity who intend to petition for nonimmigrant visas under 8 U.S.C. 1101(a)(15)(U); and (ii) victims of severe forms of trafficking in persons who intend to petition for nonimmigrant visas under 8 U.S.C. 1101(a)(15)(T).” |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrficaiton/ | N/A Requires adoption protocol to assist Limited English Proficient victims see below. |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | (10) A certifying agency shall (a) Designate a person or persons within the agency responsible for processing requests for certification under this section. (b) Develop written procedures for processing requests for certification under this section. [2019 c.472 §1; 2021 c.489 §10] |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | N/A |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | A certifying official shall (i) respond to requests for completion of certification forms received by the agency, as required by this section, and (ii) make information regarding the agency's procedures for certification requests publicly available for victims of qualifying criminal activity and their representatives. (Assumes development of procedures) |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington | N/A |

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| Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | Requires adoption protocol to assist Limited English Proficient victims see below. |
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17. Procedures Made Publicly Available

A few states require certifying agencies to make their certification request procedures and other information publicly available. Publicly available procedures allow for members of the public, including noncitizens to access information regarding certifications. It allows for more uniform information about certification procedures among the public and the certifying agencies.

- States that require certifying agencies to publish their certification procedures to provide public notice are:
 - Colorado, Illinois, Maryland, Minnesota, Virginia, Washington

| Jurisdiction | Text |
|---|---|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. § 679.10 (2023). | N/A |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | Certifying agencies shall provide information regarding the U visa and the agency's procedures for certification to victims. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11 § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | Section 10. Certifications for victims of qualifying criminal activity. (a) ... Certifying officials shall: (1) respond to requests for completion of certification forms received by the agency, as required by this Section; and (2) make information regarding the agency's procedures for certification requests publicly available for victims of qualifying criminal activity and their representatives. |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/ | Subd. 3. Certifying entity; designate agent. (a) The head of a certifying entity shall designate an agent to perform the following responsibilities: (1) timely process requests for certification; (2) provide outreach to victims of criminal activity to inform them of the entity's certification process; and (3) keep a written or electronic record of all certification requests and responses. |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). | N/A |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). | N/A |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | N/A |

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| <p>Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/</p> | <p>A certifying official shall (i) respond to requests for completion of certification forms received by the agency, as required by this section, and (ii) make information regarding the agency's procedures for certification requests publicly available for victims of qualifying criminal activity and their representatives.</p> |
| <p>U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019).</p> | <p>N/A</p> |
| <p>Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/</p> | <p>The head of each certifying agency shall designate an agent, who performs a supervisory role within the agency, to perform the following responsibilities ... (b) Provide outreach to victims of criminal activity and trafficking to inform them of the agency's certification process....</p> <p>RCW 7.98.030 Crime victim certification steering committee. The office of crime victims advocacy shall convene a crime victim certification steering committee within ninety days of June 7, 2018.... The committee is responsible for the following: (1) Monitoring compliance under this chapter; (2) Developing and implementing training of law enforcement, prosecutors, victim advocates, state agency personnel, court personnel, and others about this chapter; (3) Dissemination of information about this chapter to affected communities and the general public; (4) Establishing mechanisms by which the public can report concerns and recommendations regarding implementation of this chapter; (5) Identifying implementation issues and other trends, and providing recommendations to the governor and the legislature for addressing these issues; (6) Other responsibilities relating to this chapter identified by the committee. [2018 c 86 s 5.]</p> |

18. Involves a State Oversight

Statutes in six (6) assign the responsibility for U visa certification oversight to the state legislature, the State Attorney General, or a state oversight committee. This section provides an outline of each approach. State oversight helps ensure that certifying agencies are following certification procedures and federal law. For additional information on the roles of and requirements regarding annual reports and training see Sections 19 and 22 below.

- **State Legislature:** State statute requires that certifying agencies report annually to a state agency responsible for oversight and reporting to the state legislature
 - California, Colorado, Massachusetts, Nevada, Oregon, Utah
- **State's Attorney General** is involved in enforcement of the certification statute
 - Illinois
- **State Multi-Disciplinary Committee of Appointees:** State statute created a multi-disciplinary committee of members who serve voluntarily that is staffed by the state's office of crime victim advocacy that is responsible for:
 - Monitoring compliance with certification in the state
 - Washington
 - Developing and implementing training of law enforcement, prosecutors, victim advocates, state agency personnel, court personnel about certification requirements
 - Washington
 - Distributing information about certification to immigrant communities and the general public
 - Washington
 - Establishing mechanisms by which the public can report concerns and recommendations regarding implementation of certification in the state
 - Washington
 - (5) Identifying implementation issues and other trends, and providing recommendations to the governor and the legislature for addressing these issues
 - Washington

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. § 679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (n) A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature annually the number of victims that requested Form I-918 Supplement B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code. |
| California Cal. Penal Code. § 679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | T visa (m)A certifying entity that receives a request for a Form I-914 Supplement B declaration shall report to the Legislature, on or before January 1, 2018, and annually thereafter, the number of victims who requested Form I-914 Supplement B declarations from the entity, the number of those declaration forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | (1) Annually a certifying agency that receives a request for a certification shall report to the Division of Criminal Justice In The Department Of Public Safety on an annual basis ... (2) The division shall make the reports available to the public upon request. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | Attorney General enforcement provisions. In order to ensure compliance with this Act: (a) The Attorney General shall have authority to conduct investigations into violations of this Act. |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/ | Section 4. (a) Annually, each certifying entity shall report to The Executive Office of Public Safety And Security (b) Annually, The Executive Office Of Public Safety And Security shall file a report with the clerks of the house of representatives and the senate, the joint committee on the judiciary and the joint committee on public safety and homeland security on the information received under subsection (a)...The executive office shall also make the report publicly available on its website. |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). | 3. Annually each certifying agency that receives a request for a certification pursuant to NRS 217.580 shall submit a report to the Director of the Legislative Counsel Bureau for transmittal to the Legislature that sets forth: (a) The number of such requests received by the certifying agency; (b) The number of certifications completed by the certifying agency; (c) The number of certifications denied by the certifying agency; and (d) For each denial of a certification by the certifying agency, the reasons for that denial. Sec. 11. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.0 |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | Sec. 2. (1)(a) Annually all certifying agencies that received certification requests under section 1 of this 2019 Act [147.620 (Certification procedures)] within the previous calendar year shall report to the Oregon Criminal Justice Commission in the manner described in this subsection. (1)(b) A report required under this subsection shall be in a format specified by the commission by rule... (2) The commission shall maintain a list of certifying agencies other than individual judges within the state in order to monitor compliance with the reporting requirement described in subsection (1) of this section. (3)(a) Within 90 days of receiving reports under subsection (1) of this section, the commission shall prepare a comprehensive report on the certification process within this state and submit the comprehensive report, in the manner described in ORS 192.245 (Form of report to legislature), |

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| | to the committees of the Legislative Assembly related to the judiciary. The report shall identify any certifying agency that did not submit a report as required by subsection (1) of this section. |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | 3) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201. b) Each certifying entity shall report the information described in Subsection (7)(a) to the commission before June 30, 2021, and each year thereafter. (c) The commission shall report the information received pursuant to Subsection (7)(b) to the Judiciary Interim Committee of the Legislature on or before November 30 of each year. 63M-7-201. Creation -- Purpose. (1) The State Commission on Criminal and Juvenile Justice is created within the governor's office. (2) The commission's purpose is to: (a) promote broad philosophical agreement concerning the objectives of the criminal and juvenile justice system in Utah; (b) provide a mechanism for coordinating the functions of the various branches and levels of government concerned with criminal and juvenile justice to achieve those objectives; (c) coordinate statewide efforts to reduce crime and victimization in Utah; and (d) accomplish the duties enumerated in Section 63M-7-204 . |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). | N/A |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | RCW 7.98.030 Crime victim certification steering committee. The office of crime victims advocacy shall convene a crime victim certification steering committee within ninety days of June 7, 2018. The office of crime victims advocacy shall provide administrative support for the committee. The committee must include members representing immigrant communities, law enforcement, prosecutors, the criminal justice training commission, providers of services to survivors of crime victims including domestic violence, sexual assault, human trafficking, and other crimes, a representative from the department of labor and industries charged with enforcement of workplace standards, and may include other entities concerned with victim safety and effective collaboration between immigrant communities and local law enforcement entities. The members of the committee shall serve without compensation. Members are reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, subject to available resources and other limitations in chapter 43.03 RCW. The committee is responsible for the following: (1) Monitoring compliance under this chapter; (2) Developing and implementing training of law enforcement, prosecutors, victim advocates, state agency personnel, court personnel, and others about this chapter; (3) Dissemination of information about this chapter to affected communities and the general public; (4) Establishing mechanisms by which the public can report concerns and recommendations regarding implementation of this chapter; (5) Identifying implementation issues and other trends, and providing recommendations to the governor and the legislature for addressing these issues; (6) Other responsibilities relating to this chapter identified by the committee. |

19. Annual Reports

State statutes in ten (10) states require annual reporting on U visa certification requests, denials, and withdraws and five (5) of these states also require reporting on T visa declarations. The annual reports assist in providing statistics to the state about U and T visa certifications by certifying agencies in the state each year. Annual reporting also assists the state in identifying existing and emerging problems with compliance by agencies in the state with the state's U and T visa certification laws. Annual reports are generally required to be submitted to a state government agency or the legislature. Two state statutes require that annual reports be made publicly available.

- Made annually to:
 - State Government Agency
 - Colorado (Dept. Of Public Safety)
 - Connecticut (Commissioner of Emergency Services and Public Protection)
 - Illinois (U and T visas) (State Attorney General)
 - Massachusetts (Executive Office on Public Safety) (U and T visas)
 - Oregon (Criminal Justice Commission)
 - Washington (Office of Crime Victim Advocacy) (U and T visas)
 - Legislature:
 - State agency required to prepare a report to the legislature on certification annually
 - California (U and T visas), Nevada
 - Massachusetts: Executive Office on Public Safety which is required to report total numbers requested, signed, and denied by certifying agency to the legislature)
 - Oregon: Criminal Justice Commission which is required to maintain a list of certifying agencies and provide a report to the legislature which includes identifying certifying agencies who failed to file reports
 - Utah: State Commission on Criminal and Juvenile Justice on the number of certification requests, number signed, and number denied.
 - Data kept by the certifying agency:
 - Data on certification requests, number signed, and number denied must be kept by each certifying agency
 - Nebraska (U and T visas for 3 years), Utah
- Reporting on
 - The number of:
 - Certification requests
 - California (U and T visas), Colorado, Massachusetts (U and T visas), Nevada, Oregon, Utah, Washington (U and T visas)
 - Certifications signed
 - California (U and T visas), Colorado, Massachusetts (U and T visas), Nevada, Oregon, Utah, Washington (U and T visas)
 - Certifications denied
 - California (U and T visas)
 - Colorado (must separately report on each statutorily permitted reason for denial),
 - Massachusetts (U and T visas),
 - Nevada (report must include reasons for denials),
 - Oregon (must separately report on each statutorily permitted reasons for denial),
 - Utah,
 - Washington (U and T visas)
 - Certifications withdrawn
 - Washington (U and T visas)
 - Certifications pending on the date report submitted
 - Oregon (U and T visas)
 - Certification decisions that did not meet required statutory deadlines
 - Colorado

- Timeliness:
 - States require certifying agencies to report the date they received the certification request and the date of their decision.
 - Illinois (U and T visas)

- Agency not receiving certification requests:
 - If an agency receives no requests for completion of a certification form during a reporting period, the agency shall certify and report that it received no such requests.
 - Illinois (U and T visas)

- Reports publicly available:
 - Statute requires that reports are made publicly available:
 - Colorado (on request), Massachusetts (U and T visas)

- No personally identifying information:
 - Statute requires that reports not contain any personally identifying information
 - Illinois (U and T visas), Massachusetts (U and T visas), Oregon

| Jurisdiction | Text |
|---|---|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | U visa (n) A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature annually the number of victims that requested Form I-918 Supplement B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code. T visa (m)A certifying entity that receives a request for a Form I-914 Supplement B declaration shall report to the Legislature, on or before January 1, 2018, and annually thereafter, the number of victims who requested Form I-914 Supplement B declarations from the entity, the number of those declaration forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | (1) Annually a certifying agency that receives a request for a certification shall report to the Division of Criminal Justice In The Department Of Public Safety on an annual basis and in aggregate form, subject to the restrictions set forth in section 24-4.1-404, the following: (a) The number of requests for certification received; (b) The number of certifications that were signed; (c) The total number that were denied; (d) The number of certifications that were denied for each reason specified pursuant to section 24-4.1-403(7); and (e) The number of decisions that fell outside the prescribed completion deadlines. (2) The division shall make the reports available to the public upon request. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | Annually ...each law enforcement agency shall submit a report to the Commissioner of Emergency Services and Public Protection, in such form as the commissioner prescribes, regarding the law enforcement agency's compliance with the model law enforcement policy on family violence for the state. This training includes requirements regarding information and referral to be provide to immigrant victims and law enforcement agency duties regarding U visa certification |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | (5 ILCS 825/20) Sec. 20. Reporting requirements. (a) In order to ensure compliance with this Act, starting on the effective date of this amendatory Act of the 102nd General Assembly, law enforcement agencies shall submit a report annually to the Attorney General. This report shall include the following information regarding any requests for completion of a certification form under Section 10 of this Act: (1) the date of receipt of such request; and |

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| | <p>(2) the date on which the law enforcement agency provided the completed certification form to the requester or provided written notice explaining why the available evidence does not support a finding that the requester is a victim of qualifying criminal activity. If an agency receives no requests for completion of a certification form during a reporting period, the agency shall certify and report that it received no such requests.</p> <p>(b) Law enforcement agencies shall not include names or other personally identifying information in any reports required under this Section.</p> |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/ | <p>Section 4. (a) Annually, each certifying entity shall report to the executive office of public safety and security: (i) the number of individuals that requested nonimmigrant status certification; (ii) the number of certification forms that were completed and signed; and (iii) the number of such requests that were denied. The information reported under this subsection shall not include any personal identifying information of an individual requesting nonimmigrant status certification.</p> <p>(b) Annually, The Executive Office Of Public Safety And Security shall file a report with the clerks of the house of representatives and the senate, the joint committee on the judiciary and the joint committee on public safety and homeland security on the information received under subsection (a). The report shall include, but not be limited to: (i) the number of individuals that requested nonimmigrant status certification, delineated by certifying entity; (ii) the number of certification forms that were completed and signed, delineated by certifying entity; (iii) the number of such requests that were denied, delineated by certifying entity; and (iv) total statewide statistics on nonimmigrant status certifications and denials. The report shall not include information that would allow the public to ascertain the identity of an individual requesting nonimmigrant status certification. The executive office shall also make the report publicly available on its website.</p> |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. § 29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | (7) A law enforcement agency or certifying agency that receives a request under this section shall maintain an internal record of such request, including whether such request was granted or denied and, if denied, the reasons for such denial. Such record shall be maintained for at least three years from completion or denial of the request |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaiton/ | <p>3. Annually each certifying agency that receives a request for a certification pursuant to NRS 217.580 shall submit a report to the Director of the Legislative Counsel Bureau for transmittal to the Legislature that sets forth:</p> <ul style="list-style-type: none"> (a) The number of such requests received by the certifying agency; (b) The number of certifications completed by the certifying agency; (c) The number of certifications denied by the certifying agency; and (d) For each denial of a certification by the certifying agency, the reasons for that denial. <p>Sec. 11. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.0</p> |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | <p>Sec. 2.</p> <p>(1)(a) Annually all certifying agencies that received certification requests under section 1 of this 2019 Act [147.620 (Certification procedures)] within the previous calendar year shall report to the Oregon Criminal Justice Commission in the manner described in this subsection.</p> <p>(1)(b) A report required under this subsection shall be in a format specified by the commission by rule and must include the following information:</p> <ul style="list-style-type: none"> (A)The total number, within the previous year, of certification requests received, requests granted and requests denied, and the number of pending certifications on the date of the report; and (B)For denied certification requests, the number of times each of the following were the reason for the denial: <ul style="list-style-type: none"> (i) Lack of qualifying criminal activity; (ii) Lack of helpfulness; (iii) Lack of jurisdiction over certification request; or (iv) Other circumstances for which a certifying official or agency may lawfully deny certification. <p>(1)(c)A report made under this subsection may not contain any personally identifying information.</p> |

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| <p>Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/</p> | <p>(2) The commission shall maintain a list of certifying agencies other than individual judges within the state in order to monitor compliance with the reporting requirement described in subsection (1) of this section.</p> <p>(3)(a) Within 90 days of receiving reports under subsection (1) of this section, the commission shall prepare a comprehensive report on the certification process within this state and submit the comprehensive report, in the manner described in <u>ORS 192.245 (Form of report to legislature)</u>, to the committees of the Legislative Assembly related to the judiciary. The report shall identify any certifying agency that did not submit a report as required by subsection (1) of this section.</p> <p>(3)(b) Notwithstanding section 1 (8)(b) of this 2019 Act, in preparing the report under paragraph (a) of this subsection, the commission may request from a certifying agency or official copies of denial notifications containing personally identifying information if the information is needed in order to prepare an accurate report. The certifying agency or official shall provide the denial notification to the commission on request. A denial notification received under this paragraph is confidential. [2019 c.472 §2]</p> |
| <p>Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017).</p> | <p>N/A</p> |
| <p>Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/</p> | <p>(7) (a) Each certifying entity shall maintain records of the following information related to each request for a Form I-918 Supplement B certification: (i) the number of victims that requested Form I-918 Supplement B certifications from the entity; (ii) the number of those Form I-918 Supplement B certifications that were signed; and (iii) the number of Form I-918 Supplement B certifications that were denied.</p> <p>(b) Each certifying entity shall report the information described in Subsection (7)(a) to the commission before June 30, 2021, and each year thereafter.</p> <p>(c) The commission shall report the information received pursuant to Subsection (7)(b) to the Judiciary Interim Committee of the Legislature on or before November 30 of each year.</p> <p>(3) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.</p> |
| <p>Virginia Va. Code Ann. Code § 9.1-1501 (2021).</p> | <p>N/A</p> |
| <p>U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019).</p> | <p>N/A</p> |
| <p>Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/</p> | <p>(6) The head of each certifying agency shall designate an agent, who performs a supervisory role within the agency, to perform the following responsibilities:</p> <p>(a) Respond to requests for certifications;</p> <p>(b) Provide outreach to victims of criminal activity and trafficking to inform them of the agency's certification process; and</p> <p>(c) Keep written documentation regarding the number of victims who requested certifications, the number of certification forms that were signed, the number of certification forms that were denied, and the number of certifications that were withdrawn, which must be reported to the office of crime victims advocacy on an annual basis.</p> |

20. Maintaining Copies of Certifications

USCIS encourages certifying agencies to make two originals of the signed U visa certification and to provide one original to the victim to include in their U visa application and keep the second original in the certifying agency's records.⁵⁹ Four (4) state statutes require certifying agencies to keep copies of their U visa certifications including generally certifications requested, granted, denied (with reasons for denial), and withdrawn. Best practice is to written or electronic copies of U visa certifications issues for a sufficient amount of time until the victim's U visa case and their application for lawful permanent residence based on receipt of a U visa can both be adjudicated. This approach ensures that U visa certifications remain accessible by the certifying agency to meet the victim's recertification needs when they apply for lawful permanent residence. This also supports the ability of the certifying agency to swiftly respond to questions should USCIS contact the agency about a U visa certification the agency signed.⁶⁰

⁵⁹ USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 12 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/> (This helps the certifying agency locate and refer to the certification should USCIS contact the certifying agency with questions about the certification).

⁶⁰ Although these states only require that state agencies maintain certifications for three years, as of December 2024 it was taking over 51 months for USCIS to issue bona fide determinations in U visa cases and up to 15 years for a U visa applicant to be granted a U visa. U visa recipients are eligible to apply for lawful permanent residence after 3 years as a U visa holder and those cases are taking up to over two years to adjudicate. As a result the total time from filing to lawful permanent residence for a U visa applicant will be over two

- Certifying agency shall keep:
 - Written or electronic records of all certification requests
 - Minnesota, Nebraska, Utah, Washington
 - Written or electronic records of all certification responses
 - Minnesota, Nebraska, Utah, Washington
 - Granted
 - Nebraska, Utah, Washington
 - Denied
 - Nebraska, Oregon, Utah, Washington
 - Reasons for denial
 - Nebraska
 - Withdrawn
 - Washington
 - Copies of written denials must be kept and are to be available in response to requests from the Oregon Criminal Justice Commission
 - Oregon
- Maintain records for specific period of time
 - Nebraska (3 years), Oregon (3 years)

| Jurisdiction | Text |
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| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | Reporting requirements are silent on whether records need to be retained. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). | N/A |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). | N/A |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) https://niwaplibrary.wcl.american.edu/pubs/ma-u-visa-cert-law-2021/ | Reporting requirements are silent on whether records need to be retained. |
| Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/ | Subd. 3. Certifying entity; designate agent. (a) The head of a certifying entity shall designate an agent to perform the following responsibilities: (1) timely process requests for certification; (2) provide outreach to victims of criminal activity to inform them of the entity's certification process; and (3) keep a written or electronic record of all certification requests and responses |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. §29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | 7) A law enforcement agency or certifying agency that receives a request under this section shall maintain an internal record of such request, including whether such request was granted or denied and, if denied, the reasons for such denial. Such record shall be maintained for at least three years from completion or denial of the request |
| Nevada | N/A |

decades. *See*, USCIS, CHECK CASE PROCESSING TIMES, <https://egov.uscis.gov/processing-times/>; USCIS, FORM I-918, PETITION FOR U NONIMMIGRANT STATUS, BY FISCAL YEAR, QUARTER, AND CASE STATUS AND FORM I-918, PETITION FOR U NONIMMIGRANT STATUS, BONA FIDE DETERMINATION REVIEW (FISCAL YEAR 2024, QUARTER 4), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.uscis.gov%2Fsites%2Fdefault%2Ffiles%2Fdocument%2Fda%2Fi918u_visastatistics_fy2024_q4.xlsx&wdOrigin=BROWSELINK.

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| Nev. Rev. Stat. §§ 217.580-217.585 (2019). | |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | (7)(d) A certification agency shall keep a copy of a denial notification for at least three years from the date of the notification. (3)(b) Notwithstanding section 1 (8)(b) of this 2019 Act, in preparing the report under paragraph (a) of this subsection, the commission may request from a certifying agency or official copies of denial notifications containing personally identifying information if the information is needed in order to prepare an accurate report. The certifying agency or official shall provide the denial notification to the commission on request. A denial notification received under this paragraph is confidential. [2019 c.472 §2] |
| Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/ | |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). https://niwaplibrary.wcl.american.edu/pubs/utah-u-cert-law-2024/ | (7)(a) Each certifying entity shall maintain records of the following information related to each request for a Form I-918 Supplement B certification: (i) the number of victims that requested Form I-918 Supplement B certifications from the entity; (ii) the number of those Form I-918 Supplement B certifications that were signed; and (iii) the number of Form I-918 Supplement B certifications that were denied. |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). | N/A |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (c) Keep written documentation regarding the number of victims who requested certifications, the number of certification forms that were signed, the number of certification forms that were denied, and the number of certifications that were withdrawn, which must be reported to the office of crime victims advocacy on an annual basis. |

21. Immunity and Enforcement Including Judicial or Agency Review

Four (4) state statutes provide immunity from liability for certifying agencies who act in good faith to comply with state certification requirements, with three states including immunity exceptions for willful or wonton misconduct or gross negligence.

States that include mechanism of appeal of U visa certification denials or delays in issuance of certifications beyond the state’s statutorily imposed deadlines take three different approaches outlined below – judicial review by a state court judge (Virginia); state Attorney General review (Illinois), or appeal to the certifying agency (Colorado, Illinois). Three states authorize attorney’s fees and court costs or the prevailing party related to enforcement actions for certification denials and delays.

- Immunity from liability provided to certifying agencies and certifying officials who act or fail to act in good faith to comply with state statutory certification requirements
 - Illinois, Maryland, Oregon
 - Except in cases of
 - Willful or wanton misconduct
 - Illinois, Maryland, Virginia
 - Gross negligence
 - Virginia
- Court Review: Victims authorized to seek court review
 - Within 30 days of a certifying agency’s failure to respond within statutory timeframes or refusal to certify that an applicant was a victim of qualifying criminal activity
 - Virginia

- The circuit court shall hold an evidentiary hearing within 30 days and if the court finds by a preponderance of the evidence that the certifying agency's failure to sign the certification, the court may execute the certification
 - Virginia (statute includes details about court enforcement proceedings)
 - Upon finding that the certifying agency denied the application without a factual or legal justification, or failed to respond to the applicant, the circuit court shall make an award of reasonable costs and attorney fees to a prevailing applicant.
 - Virginia
 - Courts are required to maintain all court records related on enforcement actions under seal absent court order
 - Virginia
- Enforcement by the State Attorney General
 - The Attorney General
 - Shall have authority to conduct investigations into violations of this Act
 - Illinois
 - Including requiring certifying officials to provide written statements and testimony under oath and comply with subpoenas
 - Illinois
 - May compel compliance may maintain an action for declaratory, injunctive or any other equitable relief through a circuit court action
 - Illinois
- Appeal to the Certifying Agency:
 - Certifying agencies required to notify victims denied certification or their right to appeal the denial to the certifying agency
 - Colorado, Illinois
 - Certifying agency shall respond to appeals within 30 business days
 - Illinois
 - Victim is not required to exhaust administrative appeal before filing a mandamus action or seeking other equitable relief:
 - Illinois
- Attorney's Fees:
 - Attorney's fees and court costs authorized only when the victim can demonstrate willful and wanton misconduct
 - Illinois, Maryland
 - Upon finding that the certifying agency denied the application without a factual or legal justification, or failed to respond to the applicant, the circuit court shall make an award of reasonable costs and attorney fees to a prevailing applicant.
 - Virginia

| Jurisdiction | Text |
|--|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). | N/A |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | (8) Upon receiving notice that a request for a certification form pursuant to this section is denied, a requestor may provide supplemental information to the certifying agency and request that the certification form denial be reviewed by the certifying Agency. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |

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| <p>Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/</p> | <p>If the certifying official cannot determine that the applicant is a victim of qualifying criminal activity, the certifying official may provide written notice to the person or the person's representative explaining why the available evidence does not support a finding that the person is a victim of qualifying criminal activity. The certifying official shall submit the notice to the address provided in the request and shall provide contact information should the requester desire to appeal the decision. The certifying agency or certifying official shall accept all appeals and must respond to the appeals within 30 business days.</p> <p>(b) Notwithstanding subsection (a), no requester is required to exhaust an administrative appeal under subsection (a) before filing a mandamus action or seeking other equitable relief in circuit court for a completed certification form required under Section 10.</p> |
| <p>Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/</p> | <p>A certifying agency or certifying official acting or failing to act in good faith in compliance with this Act shall have immunity from civil or criminal liability that might otherwise occur as a result of so acting or failing to act, with the exception of willful or wanton misconduct. Any action brought to seek enforcement of this Act shall be ineligible to seek attorney's fees and costs, unless the action demonstrates willful or wanton misconduct by a certifying agency or certifying official.</p> <p>Attorney General enforcement provisions. In order to ensure compliance with this Act:</p> <p>(a) The Attorney General shall have authority to conduct investigations into violations of this Act. The Attorney General may:</p> <ol style="list-style-type: none"> (1) require a law enforcement agency, law enforcement official, or any other person or entity to file a statement or report in writing under oath or otherwise, as to all information the Attorney General may consider necessary; (2) examine under oath any law enforcement official or any other person alleged to have participated in or with knowledge of the alleged violation; or (3) issue subpoenas, obtain records, conduct hearings, or take any other actions in aid of any investigation. In the event a law enforcement agency, law enforcement official, or other person or entity fails to comply, in whole or in part, with a subpoena or other investigative request issued pursuant to this paragraph, the Attorney General may compel compliance through an action in the circuit court. <p>(b) Upon his or her own information or upon the complaint of any person, the Attorney General may maintain an action for declaratory, injunctive or any other equitable relief in the circuit court against any law enforcement agency, law enforcement official, or other person or entity who violates any provision of this Act. These remedies are in addition to, and not in substitution for, other available remedies. (Source: P.A. 102-234, eff. 8-2-21.)</p> <p>C. Any petition filed pursuant to subsection B, along with the record of all hearings and all other pleadings and papers filed, and orders entered in connection with such petition shall be kept under seal by the clerk unless otherwise ordered by the court.</p> |
| <p>Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019).</p> | <p>N/A</p> |
| <p>Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). https://niwaplibrary.wcl.american.edu/pubs/md-u-and-t-visa-certification/</p> | <p>(h)(1) Except in cases of willful or wanton misconduct, a certifying entity or certifying official who acts or fails to act in good faith in compliance with this section has the immunity from liability described under § 5-643 of the Courts Article.</p> <p>(2) A person who brings an action to seek enforcement of this section may not be awarded attorney's fees or costs unless the action demonstrates willful or wanton misconduct by a certifying entity or certifying official.</p> <p><i>Md. Code, CP § 11-931</i></p> |
| <p>Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021)</p> | <p>N/A</p> |
| <p>Minnesota Minn. Stat. § 611A.95 (2023).</p> | <p>N/A</p> |
| <p>Montana Mont. Code Ann. § 44-4-1503 (2017).</p> | <p>N/A</p> |
| <p>Nebraska Neb. Rev. Stat. §29-217 (2020).</p> | <p>N/A</p> |
| <p>Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019).</p> | <p>N/A</p> |
| <p>North Dakota N.D. Cent. Code § 12.1-41-18 (2019).</p> | <p>N/A</p> |
| <p>Oregon Or. Rev. Stat. §147.620 (2023). https://niwaplibrary.wcl.american.edu/pubs/oregon-u-visa-cert-2019-1/</p> | <p>(7)(e) A decision by a certifying agency to deny certification under this section is not appealable under ORS chapter 19.</p> <p>(9) A certifying official is immune from civil and criminal liability for, in good faith, certifying or denying certification under this section.</p> |

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| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | N/A |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | A. A certifying agency or certifying official acting or failing to act in good faith in compliance with this chapter shall have immunity from civil or criminal liability that may otherwise occur as a result of so acting or failing to act, except for gross negligence or willful or wanton misconduct. |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). https://niwaplibrary.wcl.american.edu/pubs/va-u-visa-cert-law-2021/ | B. If a certifying agency fails to respond within the statutory timeframes or refuses to certify that an applicant was a victim of qualifying criminal activity, the applicant may petition a circuit court to review the determination of the certifying agency within 30 days of such determination or within 30 days of the expiration of the statutory timeframe in subsection D. The circuit court shall conduct an evidentiary hearing on such petition within 30 days of the filing of the petition. Upon conducting a hearing and the circuit court being satisfied that the applicant having proven their eligibility for completion of a certification form by a preponderance of the evidence and the circuit court having found that the certifying agency's refusal to sign was unreasonable, a circuit court judge may execute the certification form. In assessing the reasonableness of the certifying agency's decision or failure to respond, the circuit court may consider whether the applicant has complied with the terms of this section and whether circumstances exist that would justify a deferral of a decision including whether a certification would jeopardize an ongoing criminal investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, result in the destruction of evidence, or the applicant's cooperation is not complete. |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14 § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). | N/A |
| | Upon finding that the certifying agency denied the application without a factual or legal justification, or failed to respond to the applicant, the circuit court shall make an award of reasonable costs and attorney fees to a prevailing applicant. Such determination shall be without prejudice to any future proceeding premised upon a material change in circumstances. |
| | C. Any petition filed pursuant to subsection B, along with the record of all hearings and all other pleadings and papers filed, and orders entered in connection with such petition shall be kept under seal by the clerk unless otherwise ordered by the court. |

22. Training Requirements

To create a uniform certification process, three (3) states have statutes that require training on U and T visa certification for certifying agency officials and staff. Aside from U and T Visas, some states incorporate other training topics related to best practices for working on family violence cases and particularly with immigrant victims.

- Includes training on U and T visas
 - Connecticut (U visa only), Illinois, Washington
- Requires training on the state's Family Violence Model Policy which includes
 - Requirements regarding treatment of persons whose immigration status is questionable and building relationships with family violence organizations who provide trauma-informed care to victims
 - Connecticut (U visa only)
- Requires development and adoption of minimum standards for a course of study on U and T nonimmigrant visas, other legal protections for immigrant survivors of criminal activity, and promising practices in working with immigrant victims:
 - Washington

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| Jurisdiction | Text |
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). | N/A |

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|---|---|
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). | N/A |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | Annually ... the chairperson of the Police Officer Standards and Training Council shall provide notice of updates to the model policy, if any, adopted by the council during the prior calendar year, to the chief law enforcement officer of each municipality having a police department, the law enforcement instructor of each such police department, and the Commissioner of Emergency Services and Public Protection. (h) The Police Officer Standards and Training Council, in conjunction with the Division of Criminal Justice, shall establish an education and training program for law enforcement officers, supervisors and state's attorneys on the handling of family violence incidents. Training under such program shall: (1) Stress the enforcement of criminal law in family violence cases and the use of community resources, and include training for peace officers at both recruit and in-service levels; and (2) include, but not be limited to: (A) The nature, extent and causes of family violence; (B) factors for determining a dominant aggressor in a family violence case; (C) legal rights of and remedies available to victims of family violence and persons accused of family violence; (D) services and facilities available to victims and persons who commit acts of family violence; (E) legal duties imposed on police officers to make arrests and to offer protection and assistance, including applicable probable cause standards; and (F) techniques for handling incidents of family violence that minimize the likelihood of injury to the officer and promote the safety of the victim. Training under such program shall also include, within available appropriations, information on (i) the impact of arrests of multiple parties in a family violence case on the immigration status of the parties; (ii) crime scene investigation and evaluation practices in family violence cases designed by the council to reduce the number of multiple arrests in family violence cases; and (iii) practical considerations in the application of the general statutes related to family violence. Such training shall also address, within available appropriations, eligibility for federal T Visas for victims of human trafficking and federal U Visas for unauthorized immigrants who are victims of family violence and other crimes. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). https://niwaplibrary.wcl.american.edu/pubs/connecticut-u-visa-statutes-2014/ | |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). https://niwaplibrary.wcl.american.edu/pubs/il-u-visa-cert-law/ | Sec. 25. Training. Each certifying agency shall arrange for regular training for officials designated under subsection (a) of Section 10 of this Act regarding all requirements of this Act. |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. §29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). | N/A |
| North Dakota N.D. Cent. Code § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). | N/A |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | N/A |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). | N/A |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code § 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (10) The Washington state criminal justice training commission, in collaboration with the office of crime victims advocacy and the crime victim certification steering committee, shall develop and adopt minimum standards for a course of study on U and T nonimmigrant visas, other legal protections for immigrant survivors of criminal activity, and promising practices in working with immigrant crime victims. |

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| | RCW 7.98.030 Crime victim certification steering committee. The office of crime victims advocacy shall convene a crime victim certification steering committee... The committee is responsible for the following: (2) Developing and implementing training of law enforcement, prosecutors, victim advocates, state agency personnel, court personnel, and others about this chapter; |
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23. Legislative History

Two states, Nevada and Washington, include legislative history in their state U visa certification statutes. Legislative history can be useful to help with U and T visa certification implementation as it helps certifying agencies understand in greater detail the legislative intent behind the statute and how legislators expect the state certification process to be implemented by certifying governmental agencies in the state.

- Legislative history included in statute
 - Nevada (U visa), Washington (U and T visa)

| Jurisdiction | Text |
|---|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. § 679.10 (2023). | N/A |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). | N/A |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11 § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. § 825/10 (2017). | N/A |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. §29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-certification/ | Legislative Counsel's Digest: Existing federal law establishes the U nonimmigrant status, or U visa, to provide temporary immigration benefits for victims of certain crimes who have suffered mental or physical abuse and who are helpful to law enforcement in the investigation or prosecution of criminal activity. Existing federal law requires the petitioner of a U visa to submit several documents, including a Form I-918, Supplement B, U Nonimmigrant Status Certification. Existing federal law authorizes a certifying official to complete and sign the petitioner's Form I-918, Supplement B, if the official determines that the petitioner was the victim of certain criminal activity and that the victim was helpful, is being helpful or is likely to be helpful to the investigation or prosecution of criminal activity. (8 U.S.C. §§ 1101(a)(15)(U), 1184(p)) Section 8 of this bill authorizes the petitioner of a U visa to request, from a certifying agency, the certification of his or her Form I-918, Supplement B. If a certifying agency receives such a request, section 8 requires the certifying agency to determine whether the petitioner was the victim of applicable criminal activity and was helpful, is being helpful or is likely to be helpful to the investigation or prosecution of that criminal activity. Section 8 then requires a certifying official from the certifying agency to: (1) complete and sign the Form I-918, Supplement B; and (2) include specific details concerning the nature of the criminal activity and the helpfulness of the petitioner. |

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| <p>Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrificaiton/</p> | <p>Section 8 also provides a rebuttable presumption of the petitioner's helpfulness, unless the petitioner refused or failed to aid law enforcement in the investigation or prosecution of the criminal activity. Further, when determining whether the petitioner meets the requirements of the Form 1-918, Supplement B, section 8 prohibits a certifying agency from considering the period of time between when the petitioner was victimized by the criminal activity and when the petitioner requested certification or whether there is an active criminal investigation, the filing of charges or a prosecution or conviction of the criminal activity.</p> <p>Section 9 of this bill requires a certifying agency to process the certification of the Form 1-918, Supplement B, within 90 days after the date of the petitioner's request, unless the petitioner is 20 years of age or in the process of being deported, in which case the request must be processed within 14 days.</p> <p>Section 10 of this bill prohibits a certifying agency from withdrawing the certification of the Form 1-918, Supplement B, unless the petitioner refuses or fails to assist a law enforcement agency in the prosecution or investigation of the criminal activity. Section 10 also prohibits a certifying agency from disclosing the immigration status of a petitioner unless the certifying agency is required to do so because of federal law or a court order or the petitioner consents, in writing, to such a disclosure. Section 10 does not relieve a prosecutor or law enforcement officer from his or her duty to disclose exculpatory evidence to a defendant in a criminal case.</p> <p>Section 10 also requires certifying agencies to develop a protocol to help petitioners who have a limited proficiency in the English language or who are deaf, hard of hearing or speech impaired in the certification process. Section 10 also requires each certifying agency that receives a request for certification to submit an annual report to the Legislature concerning certain statistics related to the certification process.</p> |
| <p>North Dakota N.D. Cent. Code § 12.1-41-18 (2019).</p> | <p>N/A</p> |
| <p>Oregon Or. Rev. Stat. §147.620 (2023).</p> | <p>N/A</p> |
| <p>Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017).</p> | <p>N/A</p> |
| <p>Utah Utah Code Ann Code § 77- 38-502 (2024).</p> | |
| <p>Virginia Va. Code Ann. Code § 9.1-1501 (2021).</p> | |
| <p>U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019).</p> | <p>N/A</p> |
| <p>Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/</p> | <p>RCW 7.98.005 Finding. The legislature finds that ensuring that all victims of crimes are able to access the protections available to them under law is in the best interest of victims, law enforcement, and the entire community. Immigrants are frequently reluctant to cooperate with or contact law enforcement when they are victims of crimes, and the protections available to immigrants under the law are designed to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of trafficking in persons, domestic violence, sexual assault, and other crimes while offering protection to such victims. [2018 c 86 s 2.]</p> <p>RCW 7.98.900 Short title-2018 c 86. This act may be known and cited as the safety and access for immigrant victims act.</p> |

24. Language Access

In order to promote limited English (LEP) proficient crime victim's access justice and the services and support certifying government agencies provide, four (4) states required all certifying agencies in the state to implement language access protocols. Implementing language access protocol is a best practice that promotes compliance by state certifying agencies with federal language access laws.⁶¹

⁶¹ For more information on federal language access laws and requirements to provide LEP persons access to government agency services through the use of qualified interpreters and translators, *see*, LEP.gov, <https://www.lep.gov/>; DOJ Law Enforcement Language Access Initiative, <https://www.lep.gov/law-enforcement>; State Courts, <https://www.lep.gov/state-courts>; Asian Pacific Institute on Gender Based Violence, Language Access, Interpretation, and Translation, <https://www.api-gbv.org/culturally-specific-advocacy/language-access/> (Provides resources to support development of language access plans and interpreter training); *See also*, NIWAP, *Speaking Justice: Providing Language Access in the Courts – Webinar & Training Materials Language Access* (April 2, 2024)

Colorado includes statutory requirement that promote access to U visa certification by LEP victims by ensuring that the certifying agencies' inability to communicate using a qualified interpreter cannot be considered for purposes of the U visa certification program as factor in evaluating whether a U visa victim refused or failed to provide assistance.

- All certifying entities shall implement language access protocols
 - Minnesota (U and T visas), Nebraska (U and T visas), Nevada, Washington (U and T visas)
- A certifying agency's inability to communicate with a Victim due to the victim's language must not be considered a refusal or failure to provide assistance.
 - Colorado

| Jurisdiction | Text |
|---|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). | N/A |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). https://niwaplibrary.wcl.american.edu/pubs/colorado-u-visa-cert/ | 2) (a) For purposes of determining helpfulness pursuant to Subsection (1)(b) of this section, a victim is helpful, has been Helpful, or is likely to be helpful to the detection, investigation, Or prosecution of that qualifying criminal activity if there is no documentation that the victim refused or failed to provide Assistance reasonably requested by law enforcement. (b) a certifying agency's inability to communicate with a Victim due to the victim's language must not be considered a refusal or failure to provide assistance. |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). | N/A |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). https://niwaplibrary.wcl.american.edu/pubs/minnesota-u-visa-statute-2023/ | b) All certifying entities shall implement a language access protocol for non-English-speaking victims of criminal activity. |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. §29-217 (2020). https://niwaplibrary.wcl.american.edu/pubs/neb-u-and-t-certification-law/ | (b) All certifying entities shall implement a language access protocol for non-English-speaking victims of criminal activity. |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). https://niwaplibrary.wcl.american.edu/pubs/nevada-u-visa-cetrficaiton/ | 2. A certifying agency shall develop a protocol to assist petitioners: (a) Who have a limited proficiency in the English language. (b) Who are deaf, hard of hearing or speech impaired. |
| North Dakota N.D. Cent. Code,§ 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). | N/A |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah | N/A |

<https://niwaplibrary.wcl.american.edu/language-access/>; and NIWAP, *September 25, 2024: Webinar: Overcoming Language Barriers in Policing: Grants and Resources that Support Language Access Programs in Law Enforcement Agencies*
<https://niwaplibrary.wcl.american.edu/language-access-lea-prosecutors/>.

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|---|---|
| Utah Code Ann Code § 77- 38-502 (2024). | |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). | N/A |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). https://niwaplibrary.wcl.american.edu/pubs/washington-u-visa-certification-statute-2024/ | (7) All certifying agencies shall develop a language access protocol for limited English proficient and deaf or hard of hearing victims of criminal activity. |

25. Cost Allocation

The California law delegates to the Commission on State Mandates to determine whether U and T visa certification in under the California law is a state mandate that requires reimbursements by the state to local governments for the costs of statutorily required U visa certification.

| Jurisdiction | Text |
|---|--|
| Arkansas Ark. Code Ann. § 12-19-104 (2024). | N/A |
| California Cal. Penal Code. §679.10 (2023). https://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/ | SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. |
| Colorado Colo. Rev. Stat. § 24-4.1-401 (2021). | N/A |
| Connecticut Conn. Gen. State. Ann. § 46b38b(e)(5) (2023). | N/A |
| Delaware Del. Code Ann. tit. 11, § 787(n) (2007). | N/A |
| Illinois 5 Ill. Comp. Stat. 825/10 (2017). | N/A |
| Louisiana La. Stat. Ann. §§ 46:2162-46:2163 (2019). | N/A |
| Maryland Md. Code Ann., Crim. Proc. § 11-931 (2019). | N/A |
| Massachusetts Mass. Gen. Laws ch258F, §§ 1-4 (2021) | N/A |
| Minnesota Minn. Stat. § 611A.95 (2023). | N/A |
| Montana Mont. Code Ann. § 44-4-1503 (2017). | N/A |
| Nebraska Neb. Rev. Stat. §29-217 (2020). | N/A |
| Nevada Nev. Rev. Stat. §§ 217.580-217.585 (2019). | N/A |
| North Dakota N.D. Cent. Code, § 12.1-41-18 (2019). | N/A |
| Oregon Or. Rev. Stat. §147.620 (2023). | N/A |
| Rhode Island 11 R.I. Gen Laws § 11- 67.1- 22 (2017). | N/A |
| Utah Utah Code Ann Code § 77- 38-502 (2024). | N/A |
| Virginia Va. Code Ann. Code § 9.1-1501 (2021). | N/A |
| U.S. Virgin Islands V.I. Code Ann. Tit. 14, § 151 (2019). | N/A |
| Washington Wash. Rev. Code 7.98.020 (2017). | N/A |

2. U-Visa-Law-Enforcement-Resource-Guide.pdf

Uploaded by: Leslye Orloff

Position: FAV



U VISA LAW ENFORCEMENT RESOURCE GUIDE

For Federal, State, Local, Tribal and Territorial
Law Enforcement, Prosecutors, Judges and
other Government Agencies



**Homeland
Security**



**U.S. Citizenship
and Immigration
Services**

PROMOTING A VICTIM-CENTERED APPROACH

DHS strives to use a trauma-informed, victim-centered approach to combat serious crime.

This approach includes practices to minimize victimization and additional trauma, and equally values:

- The identification and stabilization of victims, including providing immigration relief, and
- The detection, investigation, and prosecution of perpetrators of serious crimes.

Noncitizens who have been victimized often:

- Distrust law enforcement, and fear arrest and deportation;
- Fear for themselves and family members;
- Worry about immediate needs (food, shelter, family);
- Have medical needs, including psychological support;
- Are confused about the U visa process; and
- May face language and cultural barriers.

When encountering a noncitizen victim, it is critical to develop rapport and establish trust by:

- Connecting the victim to a victim assistance specialist who can connect the victim to support services;
- Explaining your role, answering their questions, and addressing their fears and urgent needs;
- Being sensitive to cultural differences and language barriers and using a competent interpreter when needed;
- Conducting interviews in a neutral location, only after the victim's urgent needs have been met; and
- Being patient and giving the victim time to stabilize.

For more information and strategies for implementing a victim-centered approach, go to:

<https://www.dhs.gov/blue-campaign/victim-centered-approach>.

QUICK REFERENCE GUIDE FOR CERTIFYING AGENCIES

Why is the U Visa Important?

- Strengthens law enforcement's ability to detect, investigate, and prosecute crimes
- Offers protections to noncitizen victims of qualifying crimes in keeping with U.S. humanitarian interests

What does a U visa provide?

- Lawful status for up to 4 years
- Employment authorization (Work permit)
- May provide lawful status to qualifying family members

What are the requirements for a U visa?

- » The petitioner:
 - Was a victim of a qualifying criminal activity, that occurred in the U.S. or violated U.S. law;
 - Has specific, credible, and reliable information about the qualifying crime;
 - Was, is being, or is likely to be helpful to the certifying agency in the detection, investigation, prosecution, conviction, or sentencing of the qualifying crime;
 - Suffered substantial physical or mental abuse as a result of the qualifying crime; and
 - Is admissible to the United States.

What are the benefits of completing the Form I-918B?

- Part of a victim-centered approach
- Creates trust within your community
- Encourages others to report serious crimes

What is the certifying agency's role in the U visa process?

- Detects, investigates, and/or prosecutes qualifying crime(s), or convicts or sentences the perpetrator of the qualifying crime(s)
- Completes and signs Form I-918B
- Confirms victim is complying with reasonable requests for assistance

What does "helpful to law enforcement or a certifying agency" mean?

- The victim has *been*, is *being*, or is *likely to be* helpful to law enforcement, prosecutors, judges, or other government officials in the investigation or prosecution of the qualifying criminal activity of which they were a victim.
- Includes detection, conviction, or sentencing of the qualifying criminal activity they were a victim of.
- A current investigation, the filing of charges, a prosecution, or a conviction are not required to sign the law enforcement certification.

Who can complete the Form I-918B?

- Any federal, state, tribal, territorial, or local law enforcement agency, prosecutor, judge, or other authority that has responsibility to detect, investigate, or prosecute the qualifying criminal activity, or convict or sentence the perpetrator.
- Agencies with criminal investigative jurisdiction, such as child and adult protective services, the Equal Employment Opportunity Commission, and federal and state Departments of Labor.

WHAT ARE THE GENERAL CRIME CATEGORIES THAT QUALIFY THE VICTIM FOR A U VISA?

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Felonious Assault
- Female Genital Mutilation
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint

*Any similar activity in which the nature and elements of the criminal offenses are substantially similar to the list above. **Includes:** Attempt, conspiracy, or solicitation to commit these crimes.*

» Have Questions?

» Need help with the Supplement B?

Call the U and T Visa Hotline for Certifying Agency Inquiries:

(240) 721-3333 *This line is for certifying agencies only*



**U.S. Citizenship
and Immigration
Services**

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The information provided in this Guide is intended for general educational purposes only. It is not intended to provide legal advice. The information in this Guide may or may not apply to individual circumstances. Readers should review local policies and seek legal counsel regarding any specific applications of federal and state laws. This Guide supersedes all previous versions of the U and U/T Visa Law Enforcement Resource Guides. There is a separate [T Visa Law Enforcement Resource Guide](#).

INTRODUCTION

As part of the Victims of Trafficking and Violence Prevention Act of 2000, Congress created specific immigration benefits, including U nonimmigrant status (also known as the “U visa”) for noncitizen victims of certain crimes. In creating the U visa, Congress recognized that people without lawful immigration status can be vulnerable to victimization, and may be reluctant to help in the detection, investigation, or prosecution of criminal activity due to:

- » fear of removal from the United States,¹
- » trauma suffered as a result of the crime they experienced, and
- » general mistrust of law enforcement.

U.S. Citizenship and Immigration Services (USCIS) is the federal agency within the Department of Homeland Security (DHS) that adjudicates immigration and citizenship benefits and has jurisdiction to determine who is eligible for a U visa.

The U visa was designed with **the dual purpose of protecting noncitizen victims of serious crimes and promoting cooperation between law enforcement and victims by:**

- Strengthening law enforcement’s ability to detect, investigate, and prosecute serious crimes, such as domestic violence, sexual assault, and human trafficking;
- Encouraging victims to report crimes committed against them and participate in the investigation and prosecution of those crimes, even if victims lack lawful immigration status;
- Bolstering relationships between law enforcement and noncitizens, which leads to safer communities as a whole; and
- Offering protections to victims of certain crimes by allowing them to temporarily remain and work in the U.S., generally for 4 years.

Purpose of this Guide:

USCIS has developed this Guide as a resource for certifying agencies, including federal, state, local, tribal and territorial law enforcement agencies, prosecutors, judges, and other government officials who have important roles in identifying and assisting victims, and stakeholders. This Guide makes references to law enforcement agencies throughout when describing the roles of certifying officials in the U visa process. These references to law enforcement agencies include all potential certifying agencies.

This Guide provides information about the U visa, including:

- The U visa law enforcement certification;
- Best practices for certifying agencies and officials;
- Answers to frequently asked questions; and
- Contact information for DHS personnel on U visa issues.

1. See VTVPA, Pub. L. No. 106-386, 1502(a)(3), 114 Stat. 1464-1548 (2000)

ROLES AND RESPONSIBILITIES

The victim, the certifying agency, and USCIS each have different roles and responsibilities related to U visas.

VICTIM

- Provides information to the certifying agency to assist with the detection, investigation, or prosecution of qualifying crime(s), or the conviction, or sentencing of the perpetrator.
- Is available to be helpful in the detection, investigation and/or prosecution of a qualifying crime(s), when reasonably requested and there is an ongoing need.²
- Submits the Petition for U Visa (Form I-918) with the required Form I-918 Supplement B, U Visa Certification (Form I-918B), to USCIS.

CERTIFYING AGENCY

- Detects, investigates, and/or prosecutes allegations of qualifying crimes, including the conviction, or sentencing of the perpetrator.
- Determines, within the certifying agency's discretion, whether to complete and sign Form I-918B, in accordance with the agency's procedures and designated signing authority.
- Confirms to USCIS that the victim is complying with reasonable requests for assistance.

USCIS

- Determines eligibility for U visas.
- Communicates, as needed, with law enforcement to confirm information provided on Form I-918B, and any other evidence submitted with a U visa petition.
- Provides U nonimmigrant status to eligible victims.

2. See the discussion regarding helpfulness on page 8 of this Guide as well as within Federal Register DHS Docket No. USCIS-2006-0069 (<https://www.federalregister.gov/documents/2007/09/17/E7-17807/new-classification-for-victims-of-criminal-activity-eligibility-for-u-nonimmigrant-status>).

FORM I-918B CERTIFICATION BASICS

- » For up-to-date USCIS U visa policies, forms, and instructions, see the [U Nonimmigrant Status](#)³ page.
- » The [Information for Law Enforcement Agencies and Judges](#)⁴ page is another helpful resource.

PARTICIPATION BY CERTIFYING AGENCIES

Certifying agencies play a key role in the U visa program. They are often in the best position to provide information about the reported qualifying crime(s) and the victim’s helpfulness, as they are frequently the first to encounter victims. Form I-918B⁵ is a required piece of evidence victims submit to USCIS to establish eligibility for U nonimmigrant status. This certification is completed and signed by law enforcement, or the certifying agency involved in the detection, investigation, or prosecution of the criminal activity, but is submitted by the victim with their petition for U nonimmigrant status. Such agencies may include state and local agencies that enforce relevant labor and employment laws (when such violations are also qualifying criminal activities). Completing Form I-918B does not automatically guarantee eligibility for a U visa. In determining a victim’s eligibility, USCIS will carefully examine all the evidence provided in a U visa petition, including Form I-918B and any attached records.

Answer Questions Completely: USCIS encourages you to answer all form questions as completely as possible. If there is missing information, the victim may ask that you complete Form I-918B a second time with more information due to a request from USCIS for additional information.

Signing Authority: The head of the certifying agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications.⁶ Federal, state, local, tribal, or territorial judges have direct authority to sign and may not delegate that authority. Judges may sign certifications based on a review of court records involving the victim. A judge may sign the certification based on having conducted the sentencing in a criminal case. A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which they presided.

Timing: USCIS must receive the U visa petition **within 6 months** of the date the certifying official signed Form I-918B. If USCIS receives the U visa petition from the petitioner or their attorney more than six months after the Form I-918B was signed and dated, the Form I-918B will have expired and will not be accepted. In these situations, the petitioner or their attorney will need to obtain a newly signed and dated Form I-918B from the certifying agency.

Certifying Agencies

The following types of agencies can certify Form I-918B:

- Any federal, state, tribal, territorial, or local law enforcement office or agency, prosecutor, judge, or other authority that has the responsibility to detect, investigate, or prosecute the qualifying criminal activity, or convict or sentence the perpetrator.
- Agencies with criminal investigative jurisdiction, such as child and adult protective services, the Equal Employment Opportunity Commission, and federal and state Departments of Labor.

3. <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

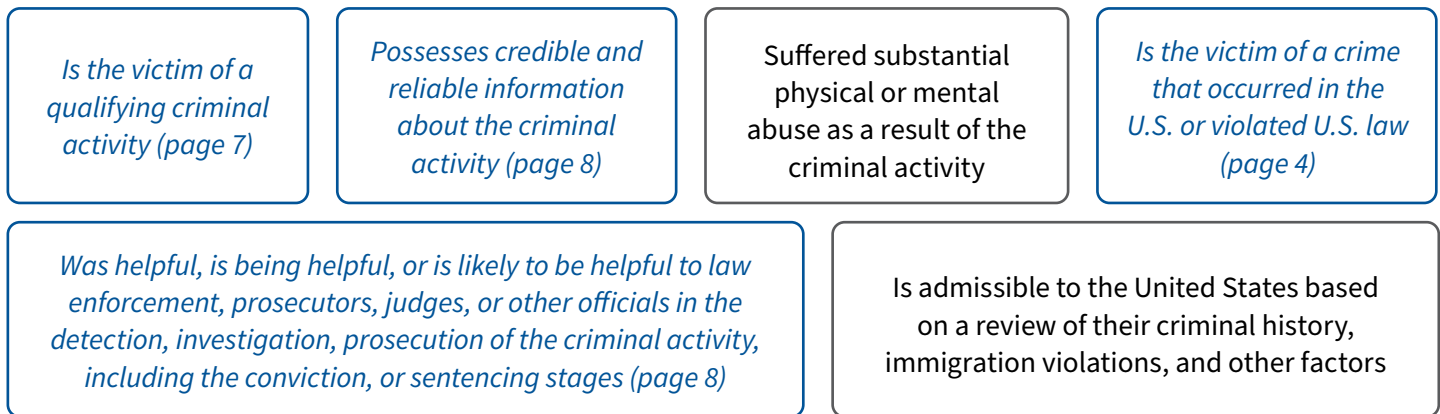
4. <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>

5. The terms “Form I-918B”, “U Visa Certification”, “certification,” and “law enforcement certification” will be used interchangeably throughout this Guide and all refer to the same document.

6. See 8 CFR 214.14(c)(2)(i).

ELIGIBILITY REQUIREMENTS

USCIS finds a victim eligible for a U visa if the person:⁷



This guide will discuss the eligibility requirements *italicized and highlighted in blue* more thoroughly, as the law enforcement declaration focuses on these areas.

Defining Qualifying Criminal Activities

Congress established the qualifying criminal activities⁸ listed below for the U visa. These are general categories, and not specific crimes or citations to a criminal code. The one exception is “Fraud in Foreign Labor Contracting,”⁹ which is a specifically cited federal offense. The criminal activity must have occurred in the U.S., its territories, or possessions, or have violated U.S. law.¹⁰ A victim may also qualify based on an attempt, conspiracy, or solicitation to commit any of the below qualifying criminal activities.

- » Abduction
- » Abusive Sexual Contact
- » Blackmail
- » Domestic Violence
- » Extortion
- » False Imprisonment
- » Felonious Assault
- » Female Genital Mutilation
- » Fraud in Foreign Labor Contracting
- » Hostage
- » Incest
- » Involuntary Servitude
- » Kidnapping
- » Manslaughter
- » Murder
- » Obstruction of Justice
- » Peonage
- » Perjury
- » Prostitution
- » Rape
- » Sexual Assault
- » Sexual Exploitation
- » Slave Trade
- » Stalking
- » Torture
- » Trafficking
- » Witness Tampering
- » Unlawful Criminal Restraint

Various federal, state, and local statutes may contain specific crimes that fall into these more general categories. For example, child abuse and elder abuse could be considered forms of domestic violence if the perpetrator/victim relationship and the abuse experienced by the child, incompetent or incapacitated adult, or senior meets the statutory elements of domestic violence under relevant statutes.

In the case of witness tampering, obstruction of justice, or perjury, a person may be considered a victim of these crimes if they can reasonably demonstrate that the perpetrator principally committed the offense to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring the perpetrator to justice, or to further their abuse, exploitation of, or control over the person through manipulation of the legal system.¹¹

7. See Immigration and Nationality Act (INA) 101(a)(15)(U)(iii), 8 U.S. Code (U.S.C.) 1101(a)(15)(U)(iii).

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

9. See 18 U.S.C. 1351.

10. See 8 CFR 214.14(a)(11).

11. See 8 CFR 214.14(a)(14)(ii).

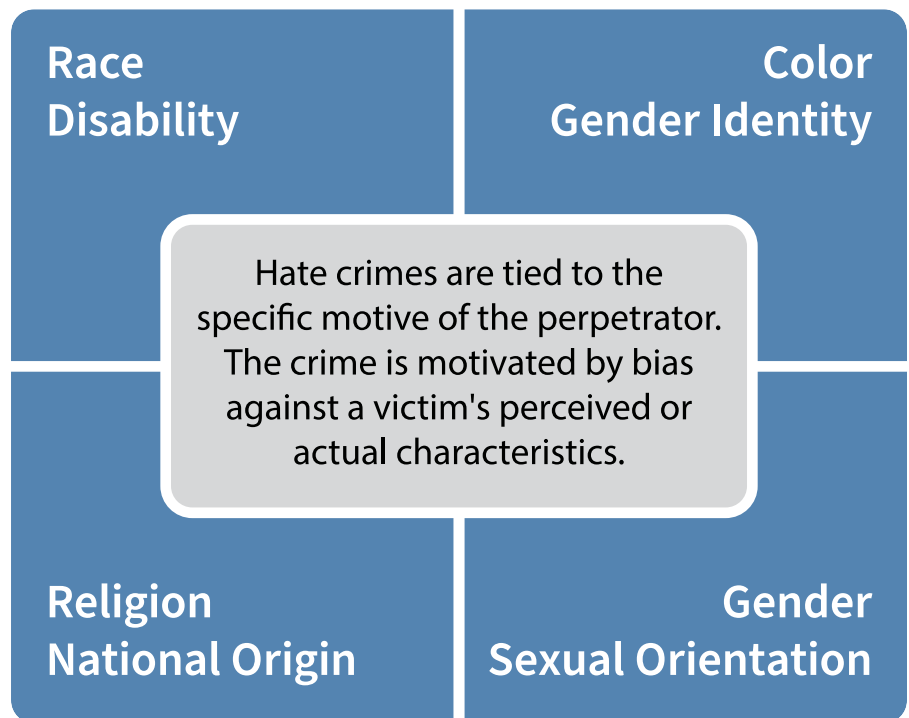
Similar Criminal Activities May Qualify

There are a wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list of qualifying criminal activities for the U visa, but the nature and elements of those activities are comparable. As such, a victim may also qualify for a U Visa if the crime detected, investigated, or prosecuted by a certifying agency involves activity where the nature and elements of the crime are substantially similar to a qualifying crime listed on page 4.

To determine whether the crime qualifies, USCIS considers information and other documentation provided by a certifying agency, such as police reports, charging documents, etc. (if available) regarding the criminal activity that occurred and the statutory violation that it detected, investigated, or prosecuted. USCIS determines whether the crime is substantially similar to a qualifying criminal activity based on the totality of the evidence.

For example, a victim of a hate crime may be eligible for a U visa if the nature and elements of the crime are substantially similar to the categories of crime listed on page 4. Certifications may be based on violations of federal or state hate crime laws.¹²

Additionally, aggravated robbery and robbery, which are not specifically listed as qualifying criminal activities, could nevertheless be considered substantially similar to the qualifying criminal activity of felonious assault, depending on state robbery statutes and evidence of the crime that law enforcement detected, investigated, or prosecuted. Where the state aggravated robbery statute includes assault with a deadly weapon, assault with a threat to cause serious bodily injury, or otherwise includes what could be considered a felonious assault under applicable state law, and law enforcement records of the offense show that such an assault actually occurred, USCIS may determine that aggravated robbery is substantially similar to the qualifying criminal activity of felonious assault.¹³



12. For more information, visit <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>.

13. If the applicable state felony assault statute requires a distinct aggravating factor not included within the aggravated robbery statute of the same state (for example, assault against a specific age or class of people) and no such factor is present, then the crime would generally not be considered substantially similar to felonious assault.

DOCUMENTING CRIMES INVESTIGATED AND/OR PROSECUTED¹⁴

Provide the dates on which the criminal activity occurred.

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

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

Jurisdictions use different terms for criminal activity. Each jurisdiction's crime definitions may also include slightly different elements. As such, it is important that you list accurate and precise citations for any crimes you detected, investigated, or prosecuted. For family court cases, list the criminal code section(s) that apply to the facts found by the court in the case, reflecting the qualifying criminal activity detected. The initiation of a criminal case is not required to establish eligibility for a U visa.

USCIS will examine which qualifying crime(s) you have indicated were detected, investigated, or prosecuted on Form I-918B (more than one qualifying crime may apply) and analyze whether the nature and elements of the crime(s) listed in the statutory citations section are substantially similar.

PEOPLE CULPABLE FOR THE QUALIFYING CRIME(S) ARE NOT ELIGIBLE

A person is not eligible for a U visa if they are culpable for the qualifying crime(s) being investigated or prosecuted.¹⁵ If you believe a person requesting a certification is or may be culpable, you, as the certifying official, may still complete a certification for a victim, and note your concerns about culpability on the form for USCIS to consider. USCIS will determine the person's eligibility for a U visa.

Note: Victims of domestic violence may be accused of committing domestic violence themselves by their abusers as part of the abuser's attempts to assert power and control over the victim. When evidence suggests these allegations were fabricated by the victim's abuser, they do not preclude you, the certifying official, from completing a certification for the victim, or preclude the victim from qualifying for U nonimmigrant status.

14. The Form I-918B screenshots depicted in this Guide are from Version 04/30/2021. **Note:** USCIS forms are periodically revised. Check the USCIS website (www.uscis.gov) to ensure that you are certifying the current version of the form.

15. See 8 CFR 214.14(a)(14)(iii).

VICTIM OF A QUALIFYING CRIMINAL ACTIVITY

Various people may request certification as a victim, including direct victims and indirect victims.

DIRECT VICTIMS

The person against whom the crime was perpetrated and who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. Bystanders who suffer an unusually direct injury as a result of a qualifying crime may also qualify.

INDIRECT VICTIMS

A person may be eligible as an indirect victim if the following requirements are met:

- » The person must have a qualifying family relationship to the direct victim:
 - If the direct victim is age 21 or older at the time the qualifying crime was committed, their spouse and unmarried children under age 21 may qualify.
 - If the direct victim is under age 21 at the time the qualifying crime was committed, their spouse, unmarried children under age 21, parents, and unmarried siblings under age 18 may qualify.¹⁶
- » The direct victim is unable to assist law enforcement because they are:
 - *Deceased* due to murder or manslaughter; or
 - *Incompetent or incapacitated*, including due to injury, trauma, or age.¹⁷
- » The indirect victim must meet all other eligibility requirements for U nonimmigrant status.

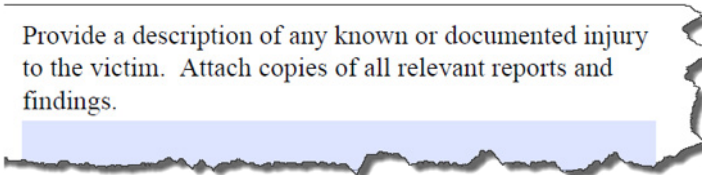
Note: Certifying officials may sign Form I-918B for a noncitizen family member as the indirect victim regardless of whether the direct victim is a U.S. citizen or a noncitizen (such as a noncitizen parent of a U.S. citizen child who is the direct victim).

VICTIM MUST HAVE SUFFERED SUBSTANTIAL PHYSICAL OR MENTAL ABUSE

As the certifying official, you should provide information about any known or observed physical or mental harm or abuse sustained by the victim. Indicate whether the victim received any medical care to treat their injuries.

USCIS encourages you to attach supplemental documentation related to any injuries sustained (for example, police reports).

USCIS is responsible for determining whether a person meets this eligibility requirement. USCIS will consider all supporting evidence the certifying agency provides when determining whether a person is eligible for U nonimmigrant status and may request additional information before adjudicating the petition.



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

16. USCIS considers the age of the direct victim at the time the qualifying crime(s) occurred.

17. For example, USCIS may consider a 13-year-old U.S. citizen direct victim to be incompetent or incapacitated due to age, and therefore the parent may assist on the victim's behalf and may be eligible for a U visa as an indirect victim, if the parent meets all other requirements.

VICTIM MUST POSSESS CREDIBLE AND RELIABLE INFORMATION

A victim must possess credible and reliable information, including specific facts about the qualifying criminal activity(ies) or events leading up to the victimization. However, when a victim is under 16 years of age on the date the qualifying criminal activity occurred, or a victim is incapacitated or incompetent, a parent, guardian, or next friend¹⁸ may provide information on their behalf.

A VICTIM'S RESPONSIBILITY TO ASSIST

A victim seeking a U visa must provide ongoing assistance with the investigation or prosecution related to the qualifying crime(s) when reasonably requested, including after reporting a crime and after the certifying agency signs Form I-918B. This responsibility continues even after the U nonimmigrant status is granted to the victim. A victim applying for lawful permanent residence based on a U visa will have to show that they did not unreasonably refuse to comply with requests for assistance.

VICTIM WAS “HELPFUL” IN THE INVESTIGATION OR PROSECUTION

Your agency can certify a Form I-918B based on past helpfulness, present helpfulness, or the likelihood of a victim's future helpfulness. By signing the form, you are certifying that the victim has been, is being, or is likely to be helpful to law enforcement, prosecutors, judges, or other government officials in the detection, investigation, or prosecution of the qualifying criminal activity of which they were a victim. Federal U visa regulations do not set a specific statute of limitations for signing the Form I-918B. The key is the victim's helpfulness, not the timing of the helpfulness.

A parent, guardian, or next friend may also provide the required assistance if the victim is under 16 years of age or incapacitated or incompetent and therefore unable to be helpful in the investigation.

There is no requirement that you sign the certification at a specific stage of the investigation or prosecution (for example, active/open or closed) or that the investigation or prosecution result in a specific outcome (for example, the perpetrator was charged, arrested, or convicted). There is no requirement that an investigation or prosecution be initiated or completed after the victim reports the crime and makes themselves available to reasonable requests for assistance. The initiation or progress of an investigation or prosecution is outside of the victim's control.

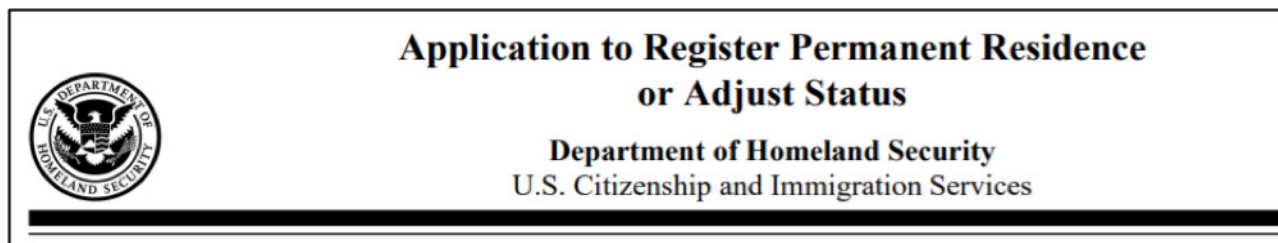
In determining whether the victim is, has been, or will be helpful, USCIS considers the facts of each case, including:

- The level of assistance that law enforcement requests of the victim;
- The victim's responsiveness to requests from law enforcement for assistance; and
- The victim's individual circumstances (such as age/maturity, trauma, etc.).

18. A “next friend” is defined at 8 CFR 214.14(a)(7) as a person who appears in a lawsuit to act for the benefit of a victim who is under the age of 16, or is incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of a qualifying criminal activity. The next friend is not a party to a legal proceeding and is not appointed as a guardian. A next friend does not qualify for a U visa or any immigration benefit, but may provide helpful information about the criminal activity(ies).

FUTURE CERTIFICATION REQUESTS FROM THE VICTIM

If your agency signed a U visa certification, the victim may request your support in the future when adjusting their status by filing an application to become a lawful permanent resident (also known as a “Green Card” application).



To be eligible for lawful permanent residence, the victim must demonstrate that they did not unreasonably refuse to comply with requests for assistance in the investigation or prosecution since receiving a U visa. While a new Form I-918B or similar documentation from your agency is not required, it can help the victim meet their evidentiary burden. There is no federal requirement that a case must have progressed to a certain stage (for example, prosecution or conviction) prior to re-certification. Support for a victim’s adjustment of status application may be provided even if the case never resulted in a criminal prosecution. Providing this second certification will help the victim apply for adjustment of status—a crucial step in a noncitizen’s path to citizenship.

To certify the victim’s helpfulness at this stage, certifying officials have three options:

- Complete a new Form I-918B;
- Provide a signed letter of support (preferably on official agency letterhead), including the certifier’s badge/ identification number, if applicable; or
- Re-sign and newly date a copy of the previously certified Form I-918B.

TOP SIX

THINGS TO KNOW ABOUT FORM I-918B



Serves as Required Evidence for Victims

Victims must file Form I-918B with Form I-918. Signing strengthens your certifying agency's ability to detect, investigate, and prosecute serious crimes. Your certifying agency should exercise this discretion on a case-by-case basis consistent with U.S. and state laws and regulations, as well as the internal policies of your certifying agency. However, under federal law, there is no obligation to complete and sign Form I-918B.

1

2

Signing Means Attesting to the Facts

By signing the certification, you are stating:

- The person is a victim of a qualifying criminal activity;
- Whether the person has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity (or is exempt), and has complied with all reasonable requests for assistance;
- The information listed on the form is accurate to the best of your knowledge; and
- You have direct knowledge of the information listed or have reviewed relevant records.

Note: Form I-918B must include the certifying official's **original signature**.

3

Who Completes the Form Matters

The certifying agency – not the victim, nor their attorney or representative – should complete Form I-918B. Additionally, only sign Form I-918B if:

- You are the head of your agency, or in a supervisory role, and your agency has designated you a “certifying official”; or
- You are a federal, state, local, tribal, or territorial judge.

4

Investigation and Prosecution is Not Required

Whether a crime is investigated or prosecuted depends on many factors outside of the victim's control. If your agency has identified a person as a victim of a qualifying crime, you can choose to complete and sign the Form I-918B. There is no requirement that an investigation or prosecution be initiated or completed after the victim reports the crime and makes themselves available to reasonable requests for assistance.

5

Signing Does Not Grant Immigration Status

Your agency is not responsible for determining whether a person is eligible for an immigration status; this is the responsibility of USCIS.

USCIS will review the entire file, including the Form I-918B you signed and any other evidence you provided. USCIS also evaluates the victim's criminal history, but it does not automatically render a victim ineligible.

6

A Certification Has a 6-Month Validity Period

A victim must submit their U visa petition within 6 months of the date the Form I-918B was signed. Once received and accepted by USCIS, the signed law enforcement certification does not expire.



ESTABLISH AND PERIODICALLY UPDATE LOCAL PROCEDURES AND/OR POLICIES

Certifying agencies are not required to have an internal policy or procedure before they can sign a U visa certification. However, USCIS encourages you to develop a policy and train relevant personnel in your agency on that policy to promote consistency and transparency and improve the quality of certifications. Some examples of topics to cover in a certifying agency's internal policy could include:

- Expectations regarding attaching relevant police reports and other documentation regarding the victimization and the victim to Form I-918B;
- Procedures regarding the agency's verification of the qualifying criminal activity, victimization, and the victim's helpfulness in the detection, investigation, prosecution, conviction or sentencing related to the qualifying criminal activity;
- Procedures to safeguard against fraud, such as centralizing final review of certifications, especially in agencies where there are multiple certifying officials, to promote consistency before they are returned to the victim;
- Procedures for handling future requests for a new or re-signed Form I-918B;
- Establishing general expectations around anticipated response timeframes; and
- Processes for increasing transparency of the agency's certification policies (if any) to the public.

KEEP RECORDS OF SIGNED FORMS

Throughout the adjudicative process, USCIS may reach out to the certifying official or certifying agency to verify information on a signed Form I-918B. To increase the ease of responding and to provide your own internal data analytics, your agency may find it useful to create and maintain a searchable database or other mechanism to track certification requests and create a historical record of certifications. Some agencies find it useful to include a specific identifier on each page of the form that corresponds to information in the database. For example, a certifying agency could use a meaningful combination of numbers and letters to easily track the signed forms.

Note: Any database should comply with applicable state and federal privacy and confidentiality requirements. DHS, Department of State, and Department of Justice databases should ensure compliance with privacy and confidentiality protections provided by 8 U.S.C. § 1367 and 8 CFR 214.14(e)(2).

USCIS VERIFIES PROPER SIGNING AUTHORITY - UPDATE USCIS WHEN SIGNING AUTHORITY CHANGES

For U visas, you can assist with this effort by updating USCIS when your certifying agency adds or removes a certifying official by emailing a copy of a signed letter from the head of your agency delegating certifying authority to LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov.

PROVIDE SPECIFIC DETAILS

USCIS carefully considers the information you provide on Form I-918B. Be as specific and detailed as possible when answering the form questions.

Note: Completing the Form I-918B does not automatically confer eligibility for a U visa. USCIS will assess eligibility by examining all the evidence provided by the victim in their complete U visa petition, including the information you provide on the form as well as supplemental evidence provided by the victim.

ATTACH ADDITIONAL RELEVANT DOCUMENTS – AND NOTE ON FORM I-918B

If available, provide additional relevant documents (for example, a copy of the police report or court order, judicial findings, additional statements, photos, etc.) along with the signed form. If you provide additional documents, please note on the form itself what is being provided in case the documents and the form are accidentally separated in transit to USCIS.

VERIFY ALL INFORMATION ON THE FORM PRIOR TO SIGNING

Your agency should fully complete the certification form. Prior to signing Form I-918B, ensure that all information is complete and accurate.

PROVIDE AN ORIGINAL INK SIGNATURE

You must provide an original signature on Form I-918B.

RETURN THE FORM TO THE VICTIM

You should return the signed Form I-918B to the victim; certifying officials should not send the signed form separately to USCIS. The victim is required to submit the original, photocopy, fax, or scan of the signed certification to USCIS when filing their completed U visa petition.

USCIS suggests the following best practices for certifying officials:

First, make two copies of the original completed and signed Form I-918 B and any supporting documents. Keep one copy for your records. Give the other copy to the victim.

Second, if possible, prepare the original completed and signed Form I-918 B for submission to USCIS by the victim:

1. Place the Form I-918 B and any supporting documentation into an envelope;
2. Seal the envelope;
3. On the front, write in capital letters: “DO NOT OPEN. FOR USCIS USE ONLY;”
4. On the back, write your initials across the seal where the flap meets the envelope;
5. Seal the entire flap with clear tape. Make sure the tape covers your initials as well as the flap; and
6. Give the sealed envelope to the petitioner for submission with their Form I-918.

USCIS’ fraud detection units investigate cases where there is suspicion of fraud and work with other Federal, State, and local law enforcement agencies where fraud is suspected. If USCIS suspects fraud in a U visa petition or Form I-918B, USCIS may reach out to the certifying agency and request further information. Furthermore, USCIS may contact certifying agencies to confirm the accuracy and source of the information submitted to USCIS on Form I-918B.

ANSWERS

TO QUESTIONS FREQUENTLY ASKED BY CERTIFYING OFFICIALS



WHO DECIDES WHETHER A VICTIM SHOULD APPLY FOR A U VISA?

A victim makes this decision. Neither USCIS nor the certifying agency determines whether a victim should apply for a U visa.

HOW MAY SIGNING A U VISA CERTIFICATION BENEFIT MY AGENCY?

Signing may strengthen your agency's ability to detect, investigate, and prosecute serious crimes and may encourage victims to report crimes committed against them and to participate in the investigation and prosecution of those crimes. These actions bolster relationships between law enforcement and the communities they protect and make communities safer as a whole.

HOW DOES USCIS DETERMINE WHETHER SOMEONE IS ELIGIBLE FOR A U VISA?

Based on a review of the complete petition, USCIS examines the totality of the evidence and circumstances of each individual case. USCIS considers many factors when determining eligibility (see page 4 for eligibility requirements), including the signed Form I-918B, and conducting a full background check, which includes an FBI fingerprint check, a Name/Date of Birth search in federal databases, and immigration status checks.

CAN I CERTIFY FORM I-918B IF A PROSECUTION HAS NOT OCCURRED?

Yes. The decision to complete Form I-918B is within your agency's discretion. However, as a certifying official, you may sign a Form I-918B regardless of the status or stage of the investigation or prosecution. Charges do not have to be filed, nor does an investigation or prosecution need to be open or completed at the time a certification is signed. For example, a victim may establish eligibility for a U visa if the certifying agency detected the qualifying crime based on the information provided by the victim.

CAN I COMPLETE A CERTIFICATION IF THE CRIMINAL ACTIVITY OCCURRED OUTSIDE THE JURISDICTION MY LEA OPERATES IN?

Yes. In certain circumstances, LEAs may have the authority to detect, investigate, or prosecute qualifying criminal activity occurring outside of their jurisdiction. Victims may also choose to report the criminal activity outside of the jurisdiction where it occurred for a variety of reasons. While the criminal activity does not need to have occurred within the jurisdiction of the LEA, the certifying agency completing Form I-918B should provide information about how the certifying official detected or investigated the criminal activity. LEAs may also provide any available information about why the victim sought a certification outside of the jurisdiction where the criminal activity occurred. This can include information provided by the victim about lingering trauma, relocation to escape a perpetrator, fear, lack of experience with local law enforcement, or referral from other LEAs.

CAN I CERTIFY A FORM FOR A VICTIM WHO IS NO LONGER IN THE U.S.?

For U visa eligibility, the qualifying criminal activity must have occurred in the U.S., its territories, or possessions, or have violated U.S. law. However, victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply when outside of the country.

CAN I APPLY FOR CONTINUED PRESENCE FOR THE VICTIM IF THEY ALSO HAVE A PENDING U VISA PETITION?

Yes. Filing for Continued Presence (CP) utilizes the victim-centered approach and allows for the support and stabilization of the victim while their I-918B is being processed by USCIS. CP also helps build rapport and establish trust between you and the victim. See the CCHT Continued Presence Resource Guide for law enforcement agencies and civil attorneys: www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf.

WHY IS A VICTIM REQUESTING ANOTHER CERTIFICATION WHEN MY AGENCY PREVIOUSLY PROVIDED ONE?

Completing another certification is always at the discretion of the certifying agency. However, there are a few circumstances that may warrant a new certification. Victims applying for a U visa must submit Form I-918B within six months after it is signed by a certifying official. If the Form I-918B expired before the victim was able to file a petition or application with USCIS, they would require a new form. The certifying agency has the option of printing the previous version of the Form I-918B, signing and dating it with the new date, or completing a new version of Form I-918B. This is an instance where it may be helpful to retain copies of Form I-918B that your agency has completed for your records. When completing a new form, please ensure you have [the current version](#) of the form and sign it with a new date. Victims may also request another Form I-918B if the original form was incomplete or when significant additional information regarding the detection, investigation, or prosecution, the victimization, and/or the victim's helpfulness becomes available.

Additionally, if a victim applies for lawful permanent residence (also known as a Green Card), they must demonstrate they did not unreasonably refuse to comply with requests for assistance since receiving a U visa. As evidence of this, the victim may request a newly signed Form I-918B, or other signed document from your agency. There is no federal requirement that a case must have progressed to a certain stage (for example, prosecution or conviction) prior to re-certification.

CAN I SAY “NO” TO REQUESTS FOR CERTIFICATION?

While there are no federal requirements to certify, please refer to your state's laws regarding certifications. The decision whether to complete Form I-918B is at the discretion of the certifying agency. However, if the victim's U visa petition does not include a completed Form I-918B, the victim will be ineligible for U nonimmigrant status.

CAN AGENCIES WORKING WITH DHS UNDER THE 287(G) PROGRAM CERTIFY?

Law enforcement agencies may sign Form I-918B regardless of whether they have a Memorandum of Understanding with DHS under the 287(g) program.

WHEN CERTIFYING FOR AN INDIRECT U VISA VICTIM, WHOSE NAME SHOULD I LIST ON THE FORM – THE DIRECT VICTIM OR THE INDIRECT VICTIM (FAMILY MEMBER)?

Always list the name of the person for whom you are certifying in Part 1 (“Victim Information”) of Form I-918B. When certifying Form I-918B for an indirect victim, include that person's name and other details in Part 1 of the form. Do not put the direct victim's name in Part 1 when certifying for an indirect victim. Record the direct victim's name elsewhere in the document. ([See form instructions.](#))

HOW DO I TERMINATE, WITHDRAW, OR REVOKE A CERTIFICATION?

Certifying agencies play an important role in supporting the integrity of the U visa program by providing information to USCIS, including (but not limited to):

- Notifying USCIS when a victim refuses or fails to provide assistance when reasonably requested;
- Informing USCIS of any known criminal activity; and
- Alerting USCIS of any suspected fraud.

To terminate, withdraw, or revoke a certification, the certifying official should contact USCIS by emailing LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. This request should include:

- The certifying agency's name and contact information;
- Victim's name and date of birth;
- Victim's alien registration number (A-number), if known;
- Name of person who signed certification and the date it was signed;
- The reason the agency is withdrawing/disavowing the certification;
- Signature and title of official withdrawing/disavowing; and
- A copy of original certification attached, if available.

Additionally, if USCIS suspects fraud in a U visa petition, USCIS may reach out to the certifying agency and request further information. USCIS may also contact certifying agencies to confirm the accuracy and source of the information submitted to USCIS on Form I-918B.

USCIS' fraud detection units investigate cases where there is suspicion of fraud and work with other federal, state, and local law enforcement agencies when fraud or abuse of the program is discovered.

CAN I RUN CHECKS SUCH AS NATIONAL CRIME INFORMATION CENTER (NCIC) ON THOSE ASKING FOR A CERTIFICATION?

USCIS does not require certifying agencies to run background or criminal history checks on people asking for a certification. However, prior to signing Form I-918B, certifying agencies may choose to run background and criminal history checks on people asking for a certification, consistent with their legal authority under federal, state, and local law. The fact that a victim has a criminal history does not automatically preclude approval of a U visa petition.

HOW DOES USCIS CONSIDER CRIMINAL HISTORY WHEN DETERMINING ELIGIBILITY FOR A U VISA?

Prior to approving or denying a U visa petition, USCIS evaluates each petition on a case-by-case basis. USCIS reviews all available information concerning arrests, immigration violations, criminal activities, and security issues before making a final decision. USCIS runs background and security checks for principal petitioners and all qualifying family members. This includes fingerprint checks, Name/Date of Birth search in federal databases, and immigration status checks. USCIS takes into account whether there is a nexus between a victim's criminal behavior and their victimization. USCIS also carefully considers any evidence of rehabilitation that the victim provides with their U visa petition. USCIS considers the facts of each case separately when determining whether a person is eligible for U nonimmigrant status.

If a certifying official believes USCIS should know something particular about a victim's criminal history, this information can be included on the certification or with an attached report or statement.

The fact that a victim has a criminal history does not automatically preclude approval of the U visa petition. However, in most cases, a person will not be able to meet the statutory requirements for approval of a U visa petition if they have a serious or violent criminal record. USCIS also generally will not approve a petition if the victim was complicit or culpable in the qualifying criminal activity of which they claim to be a victim.

MAY I TYPE MY RESPONSE TO FORM I-918B?

You may either type or write your response to Form I-918B, except for the signature, **which must be original and signed by hand**. Please ensure answers are legible.

WHICH OFFICIALS MEET THE DEFINITION OF A JUDGE FOR U VISA CERTIFICATION PURPOSES?

Any official with delegated authority from a federal, state, local, tribal or territorial court to preside over or decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.

WHAT TRAINING OPPORTUNITIES ARE AVAILABLE FOR CERTIFYING OFFICIALS?

USCIS provides webinar trainings for law enforcement officials. Contact T.U.VAWATraining@uscis.dhs.gov to find out information on the next webinar for law enforcement officials. Live, on-site trainings may also be available upon request.

HOW DOES USCIS DETERMINE IF THE "SUBSTANTIAL PHYSICAL OR MENTAL ABUSE" REQUIREMENT HAS BEEN MET?

USCIS will make the determination as to whether the victim has met the “substantial physical or mental abuse” standard on a case-by-case basis during its adjudication of the U visa petition. Certifying agencies and officials may provide any information they deem relevant regarding injuries or abuse on the Form I-918B. If the certifying official has documentary evidence of injuries to the victim, the severity of the perpetrator’s conduct, or the emotional impact on the victim’s mental health as affected by the criminal activity, it is helpful to attach any relevant evidence of these facts, such as, photographs, police reports, findings, or court orders. While USCIS will consider any evidence of substantial physical or mental abuse provided by the certifying agency, the victim has the burden of establishing that they meet the substantial physical or mental abuse requirement. The determination of what evidence is credible and the weight to be given to that evidence is within the sole discretion of USCIS.

Some factors that USCIS uses to make this determination are:

- The nature of the injury inflicted;
- The severity of the perpetrator’s conduct;
- The severity of the harm suffered;
- The duration of the infliction of the harm; and
- The extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.

MORE RESOURCES

FOR CERTIFYING AGENCIES AND OFFICIALS



ICE Homeland Security Investigations (HSI)

This investigative branch of DHS participates in over 120 human trafficking task forces across the country.

www.ice.gov/contact/hsi/

866-872-4973 or victimassistance.ice@ice.dhs.gov

For human trafficking investigations with a transnational nexus, contact your local HSI office or the HSI tip line at 866-347-2423 (866-DHS-2-ICE).

DHS Center for Countering Human Trafficking (CCHT)

The CCHT is the first unified, intercomponent coordination center for countering human trafficking and the importation of goods produced with forced labor. The CCHT also processes and authorizes Continued Presence applications from federal law enforcement agents for victims of severe forms of human trafficking.

See the CCHT Continued Presence Resource Guide for law enforcement agencies and civil attorneys: www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf

For direct assistance regarding Continued Presence, please email: ContinuedPresence@ccht.dhs.gov. For other CCHT inquiries, contact: info@ccht.dhs.gov

Office for Civil Rights and Civil Liberties (CRCL):

Contact CRCL to:

- Refer individuals who would like to file a complaint concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion by DHS employees and officials.
- Report a violation of T visa, U visa, or VAWA confidentiality protections by a federal employee. See 8 U.S.C. 1367(a)(2).

Toll Free: 866-644-8360

crcl@dhs.gov or VAWA@hq.dhs.gov

Office for State and Local Law Enforcement (OSLLE):

(202) 282-9545 or OSLLE@hq.dhs.gov

OSLLE serves as the liaison between DHS and non-federal law enforcement agencies across the country. OSLLE leads the coordination of DHS- wide policies related to state, local, tribal, and territorial law enforcement's role in preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man- made disasters within the United States.

Request Technical Assistance via the T and U Visa Hotline for Certifying Agency Inquiries:

240-721-3333

This line is for certifying agencies only.

Request Training:

T_U_VAWATraining@uscis.dhs.gov

DHS FEDERAL LAW ENFORCEMENT TRAINING CENTER

<https://www.fletc.gov/training-program/human-trafficking-awareness-training>

Ask a Question about a Specific Case, Withdraw/Disavow a Signed Form, or Report Concerns about Fraud or Misuse of U Visas:

LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov

This e-mail is for certifying agencies personnel only.

Immigration and Customs Enforcement (ICE) Resources:

ICE TOOL KIT FOR PROSECUTORS

<https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>

ICE LAW ENFORCEMENT SUPPORT CENTER

802-872-6050

www.ice.gov/lesc

LOCAL ICE OFFICES

Enforcement and Removal Operations

www.ice.gov/contact/ero/

OFFICE OF THE PRINCIPAL LEGAL ADVISOR

www.ice.gov/contact/opla/

For Additional Anti-Trafficking Resources, go to the DHS Blue Campaign page:

<https://www.dhs.gov/blue-campaign>

APPENDIX A

U VISA PROCESS

This is the general process for a victim to seek a U visa, from the victim's initial encounter with the certifying agency to USCIS' final eligibility determination. A victim must show that they have not refused to comply with reasonable requests for assistance during all stages of the petition process.

The time between initial filing, review for bona fide determination/waiting list placement, and the final adjudication of a case (approval or denial) can vary significantly due to several factors, including USCIS staffing levels and resource availability, U visa availability, and number and complexity of petitions and applications.

By law, USCIS cannot provide U nonimmigrant status to more than **10,000** principal victims per year. This statutory limit does not apply to derivative family members. This cap has been reached every year since 2010.

Information about victims filing U visa petitions is protected by specific privacy and confidentiality laws.¹⁹

| Cooperation STEP 1 | Filing STEP 2 | BFD/Waiting List STEP 3 | Approval STEP 4 | Green Card STEP 5 |
|---|--|---|--|--|
| Victim assists the certifying agency in the detection, investigation, and/or prosecution of qualifying crime. | Victim applies for U visa with USCIS, including a signed Form I-918 B, dated within 6 months of when the victim files their U visa petition. | USCIS reviews the petition and determines if principal petitioner may receive employment authorization (EAD) and deferred action (DA) based on a bona fide determination (BFD). ²⁰ | Once a visa is available, USCIS reviews each petition in receipt date order to verify eligibility. | After at least 3 years after a grant of U nonimmigrant status, if victim meets certain requirements, victim applies to become a lawful permanent resident. |
| Victim requests a certification and the certifying agency decides whether to sign Form I-918 B. | | If the victim cannot receive a BFD-based EAD and DA, USCIS issues a notice and requests more evidence to evaluate the petition for potential placement on the waiting list. | If determined eligible, USCIS approves the victim's petition for U nonimmigrant status. | If determined eligible, USCIS approves victim's application for lawful permanent resident status. |
| | | If placed on the waiting list, the victim also receives employment authorization and deferred action. | | |

19. See 8 U.S.C. 1367.

20. See <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> for more information on the Bona Fide Determination Process.

3. DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide

Uploaded by: Leslye Orloff

Position: FAV

U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial
Law Enforcement, Prosecutors, Judges, and
Other Government Agencies



U and T Visa Resource Guide

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Introduction

As a federal, state, local, tribal or territorial law enforcement officer, prosecutor, judge, or other government official, you play an important role in the application process for U nonimmigrant status (also known as a U visa) for victims of certain crimes and T nonimmigrant status (also known as a T visa) for victims of human trafficking. U and T visas not only help protect victims of crime, but are also key tools for you in your work. Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims' lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to providing victims of crime a greater sense of security that also makes it easier for them to assist you with your law enforcement and prosecutorial efforts.

In order to qualify for the U and T visa, the victim must prove to U.S. Citizenship and Immigration Services (USCIS) that he or she cooperated with law enforcement.¹ USCIS is the federal component of the Department of Homeland Security (DHS) responsible for adjudicating (approving or denying) U and T visa applications. One of the primary ways that a victim may demonstrate cooperation is by submitting a signed statement from law enforcement as part of the application. In the U visa context, this statement is a required part of the petition and is known as USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B or certification). In the T visa context, this statement is known as USCIS Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim in Trafficking of Persons (Form I-914B or declaration). While not required in the T visa context, the signed declaration provides valuable evidence of the victim's cooperation.

Because these signed statements from law enforcement are such critical pieces of U and T visa applications, victims may approach you to request that you certify their cooperation. You may also encounter victims who are afraid or reluctant to cooperate in a criminal investigation because they lack a lawful immigration status, and who are not aware that they may qualify for a U or T visa.

DHS has created this Resource Guide to inform you and address concerns about the role of law enforcement agencies within these visa programs. This Guide includes information about U and T visa requirements; the I-918B certification and I-914B declaration processes; best practices; answers to important and frequently asked questions from judges, prosecutors, law enforcement agencies, and other officials; where to look for more resources; and contact information for DHS personnel on U and T visa issues.

¹ See 8 CFR 1.1, 1.2, 100.1. Exceptions to the cooperation requirement exist for U and T visa applicants who are under age 18 or who have suffered trauma.

U Visa Basics

Why was the U visa created? How does it help law enforcement?

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000² was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the U nonimmigrant status program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but to also strengthen relations between law enforcement and immigrant communities.

What is the U visa? What are the benefits to the victim?

The U visa is an immigration benefit for victims of certain crimes who meet eligibility requirements.³

USCIS may find an individual eligible for a U visa if the victim:

- Is the direct or indirect victim of qualifying criminal activity⁴;
- Has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;
- Has information about the criminal activity;⁵ and
- Was helpful, is being helpful, or is likely to be helpful to law enforcement, prosecutors, judges, or other officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.⁶

Additionally, the victim must be admissible to the United States based on a review of his or her criminal history, immigration violations, and other factors. If found inadmissible, an individual may apply for a waiver of inadmissibility for which he or she may be eligible.

The U visa allows eligible victims to temporarily remain and work in the United States, generally for four years. While in U nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement and cannot unreasonably refuse to assist with the investigation or prosecution of the

² Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

³ <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>. See also INA 101(a)(15)(U).

⁴ The criminal activity occurred in the United States or violated U.S. laws.

⁵ If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the criminal activity on the individual's behalf.

⁶ If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist on behalf of the individual.

criminal activity. If certain conditions are met, an individual with a U visa may apply for adjustment to lawful permanent resident status (i.e., seek a green card in the United States) after three years.

Additionally, certain family members of a U visa recipient may also be eligible to live and work in the United States as “derivative” U visa recipients based on their relationship with the principal recipient. These include:

- Unmarried children under the age of 21;
- Spouse;
- Parents of U visa petitioners under age 21; and
- Unmarried siblings under 18 years old of U visa petitioners under age 21.

By law, there is a 10,000 annual cap on U visas for principal applicants. However, USCIS continues to adjudicate applications even after the annual cap has been reached. Cases that qualify for approval after the cap has been reached receive "conditional approval" and work authorization based on "deferred action" until U visas become available.

How does USCIS review U visa petitions?

USCIS takes several steps to determine whether a victim is eligible for a U visa. USCIS reviews the entire application, which includes the petition (Form I-918), Form I-918B certification, the victim’s affidavit, as well as supporting evidence such as police reports, medical records, photographs, court documents, and witness affidavits. If the applicant is inadmissible due to, for example, prior criminal history, immigration violations, or security concerns, USCIS also reviews any application received for a waiver of inadmissibility. However, some inadmissibilities cannot be waived. As a part of its review of the U visa certification (Form I-918B), USCIS may contact the certifying official to ask if the victim has continued to provide assistance reasonably requested or to request other information. USCIS may also contact the certifying agency if any issues or questions arise during the adjudication based on information provided in the certification.

For all U visa petitioners and their qualifying family members, USCIS conducts a thorough background investigation including a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS also reviews the petitioner’s immigration records to assess whether any inadmissibility issues exist, such as the petitioner’s criminal history, immigration violations, or any security concerns. The results of these checks, as well as any evidence that certifying officials and immigration authorities possess, may be considered when determining eligibility for a U visa. Because qualifying “derivative” family members are subject to the same background checks, it is possible that a derivative’s adverse criminal or immigration background could result in a denial of derivative status even when the principal’s petition has been approved.

What is a U visa certification?

In order to be eligible for a U visa, the victim must submit a U visa certification completed by a certifying agency or official. USCIS Form I-918, Supplement B (Form I-918B or certification) is the U visa certification that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official can complete for a victim who is petitioning USCIS for a U visa. The law enforcement certification explains the role the victim had, has, or will have in being helpful to the investigation or prosecution of the case.

Form I-918B and its instructions are available on the USCIS website at www.uscis.gov with the Form I-918

for the U visa. The certification must be signed by the certifying official with an original signature within the six months (6 months minus one day) immediately preceding the U visa petitioner's submission of Form I-918.

What kind of information does the U visa certification provide?

The certification, Form-I-918B, is a required piece of evidence to help demonstrate:

- That a qualifying criminal activity has occurred;
- That the victim has information about the criminal activity; and
- That the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of criminal activity.

Law enforcement may also report information about any known or observed harm sustained by the victim. While Form I-918B asks the law enforcement official to provide information about the injury to the victim, the certifying official is not required to assess whether the victim suffered substantial physical or mental abuse as a result of the criminal activity. This is a requirement that the U visa petitioner must establish to the satisfaction of USCIS.

Without a completed and signed U visa certification, the victim will not qualify for a U visa, as it is a required part of the application, and there is no exception to this requirement. However, by signing a U visa certification, the certifying agency, official, or judge is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. USCIS determines the victim's credibility and whether to approve the petition based on the totality of the evidence and circumstances of each case.

The decision whether to sign a certification is at the certifying agency's discretion. Each certifying agency should exercise its discretion on a case-by-case basis consistent with applicable U.S. laws and regulations, and the policies and procedures outlined in this guide as well as any internal policies of the certifying agency.

Which agencies may sign a U visa certification?

Certifying agencies include all authorities responsible for the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity, including but not limited to:

- Federal, State Local, Tribal, and Territorial law enforcement agencies;
- Federal, State, Local, Tribal, and Territorial prosecutor's offices;
- Federal, State, Local, Tribal, and Territorial Judges;
- Federal, State, and Local Child and Adult Protective Services;
- Equal Employment Opportunity Commission;
- Federal and State Departments of Labor; and
- Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority.

What does "Helpful" in the detection, investigation, prosecution, conviction, or sentencing mean?

“Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim. This includes providing assistance when reasonably requested. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the visa revoked by USCIS. Certifying agencies should contact and inform USCIS of the victim’s unreasonable refusal to provide assistance in an investigation or prosecution: LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

Law enforcement, prosecutors, judges or government officials can certify a U visa based on past, present, or the likelihood of future helpfulness of a victim. A current investigation, the filing of charges, a prosecution or conviction is not required to sign the law enforcement certification. An instance may occur where the victim has reported criminal activity, but an arrest, prosecution, or conviction cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials. There is no statute of limitations on signing the certification – one can be signed for a crime that happened many years ago or recently. A certification may also be submitted for a victim in a closed case. However, the victim must submit a recently signed certification with his or her U visa petition (signed within six months of submission), even if the crime certified did not recently occur.

What constitutes a qualifying crime?

The following table shows the criminal activities that qualify a victim for the U visa.⁷

| | | |
|--|--|---|
| <ul style="list-style-type: none"> • Abduction • Abusive Sexual Contact • Blackmail • Domestic Violence • Extortion • False Imprisonment • Felonious Assault • Female Genital Mutilation • Fraud in Foreign Labor Contracting | <ul style="list-style-type: none"> • Hostage • Incest • Involuntary Servitude • Kidnapping • Manslaughter • Murder • Obstruction of Justice • Peonage • Perjury • Prostitution • Rape | <ul style="list-style-type: none"> • Sexual Assault • Sexual Exploitation • Slave Trade • Stalking • Torture • Trafficking • Witness Tampering • Unlawful Criminal Restraint • Related Criminal Activities⁸ |
|--|--|---|

⁷ These are not specific crimes or citations to a criminal code; various federal, state, and local statutes could fall into these general categories of crime. One exception is “Fraud in Foreign Labor Contracting,” which is the federal offense defined at 18 USC 1351.

⁸ Includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes, as well as any similar activity where the elements of the crime are substantially similar. “Substantially similar” typically refers to a crime detected, investigated or prosecuted by a qualified certifying official that contains the same key elements as a qualifying criminal activity. For example, a simple robbery would not typically be a qualifying criminal activity. However, if the statute cited for the detection, investigation,

Review and Tips for Completing Form I-918B

The following are important notes and tips on filling out the Form I-918B:

- USCIS has the sole authority to grant or deny a U visa. The certification does not guarantee that the U visa petition will be approved by USCIS.
- A certifying official's decision to sign a certification is completely discretionary and under the authority of that agency or official. Neither DHS nor any other federal agency has the authority to require or demand that any agency or official sign the certification. There is also no legal obligation to complete and sign Form I-918B.
- The Form I-918B should be completed by the certifying agency or official (and not the victim, or the victim's advocate or attorney).
- By signing a certification, the certifying agency or official attests that the information is true and correct to the best of the certifying official's knowledge.
- The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications. You should only sign the certification if your agency has given you this authority.
- If a certifying agency has a written delegation of authority, provide a copy to USCIS to keep on file by emailing it to LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov.
- Federal, state, local, tribal, or territorial judges may sign U visa certifications. Delegation of authority is not applicable to or required of certifications by judges.
- Return the signed Form I-918B to the victim (or the victim's attorney, representative, etc.). The certifying official should not send the signed certification separately to USCIS. The victim is required to send the original signed certification form along with his or her complete U visa petition to USCIS.
- Be prompt in providing the signed certification to the victim or the victim's attorney or representative. USCIS must receive the U visa petition, which includes the Form I-918B, within six (6) months of the date the Form I-918B was signed.
- If the certifying official is providing additional documents (e.g., a copy of the police report or court order, or judicial findings, additional statements, photos, etc.) along with the certification or if more space is needed to fill out any of the information on the form, the official should provide that additional information as advised by the form instructions.
- When completing the Form I-918B, certifying officials are encouraged to check the boxes for all qualifying criminal activities detected based on the facts of the case at the time of certification. Certifying officials should not limit the boxes that are checked to the criminal activities that the agency has decided to investigate or prosecute and should check all qualifying criminal activities present in the case.
- As requested on the Form I-918B, the certifying official should document the helpfulness of the victim and whether that victim refused to be helpful at any time throughout the investigation or prosecution.
- The certification form **must contain an original signature** and should be signed in a color of ink other than black for verification purposes. Photocopies, faxes, or scans of the certification form cannot be accepted by USCIS as an official certification.

or prosecution is armed robbery, this may be a qualifying criminal activity. In most jurisdictions, armed robbery contains the elements of felonious assault as delineated in the federal criminal statutes, therefore armed robbery may be "substantially similar" to the qualifying crime of felonious assault.

T Visa Basics

Why was the T visa created? How does it help law enforcement?

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000⁹ was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the T nonimmigrant status (“T visa”) program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.

What is the T visa? What are the benefits to the victim?

The T visa is an immigration benefit for victims of human trafficking who meet certain eligibility requirements.

USCIS may find an individual eligible for a T visa if the victim:

- Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;¹⁰
- Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking;¹¹ and
- Would suffer extreme hardship involving unusual and severe harm if removed from the United States.¹²

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for a waiver of inadmissibility for which he or she may be eligible.

The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement’s

⁹ Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

¹⁰ “Sex trafficking” is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(10).

¹¹ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

¹² <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>. See also INA 101(a)(15)(T).

reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier.

Additionally, certain family members of a T visa recipient may also be eligible to live and work in the United States as “derivative” T visa holders. These are:

- Unmarried children under the age of 21;
- Spouse;
- Parents of principal T visa recipients under age 21 at the time of application;
- Unmarried siblings under 18 years old of principal T visa applicants under age 21; and
- Adult or minor children of certain immediate family members of the T visa recipient

While in the United States, the victim has an ongoing duty to cooperate with law enforcement’s reasonable requests for assistance in the investigation or prosecution of human trafficking.

Congress capped the number of available T visas for principal applicants at 5,000 per fiscal year. However, to date, the annual cap has never been reached and visas remain available to applicants who qualify.

How does USCIS Review T visa applications?

USCIS takes several steps to determine whether a victim is eligible for a T visa. USCIS reviews the victim’s entire application, which includes the Form I-914 as well as the Form I-914B or other evidence of the victim’s cooperation, the victim’s affidavit, and supporting evidence. Supporting evidence may include court documents, witness affidavits, medical reports, and any other credible evidence to show that the victim is eligible for a T visa. If the applicant is inadmissible, USCIS also considers all evidence relevant to any potential waivers of inadmissibility.

For all T visa applicants and their qualifying family members, USCIS conducts a thorough background investigation, including a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS will also review the applicant’s immigration records to assess whether any inadmissibility issues exist, such as criminal history, immigration violations, or security concerns. Any evidence that law enforcement and immigration authorities possess may be used in determining eligibility for a T visa. USCIS may contact the certifying law enforcement agency if there are any issues or questions that arise during the adjudication based on information provided in the law enforcement declaration. Because qualifying family members (derivatives) are subject to the same criminal background review, fingerprint checks, and immigration status checks as the principal victim applicant, it is possible that a derivative’s adverse criminal or immigration background would result in a denial of derivative status even when the principal has been approved.

What Is a T visa declaration?

The T visa declaration is supplementary evidence of a victim’s assistance to law enforcement that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official can complete for a T visa applicant. The declaration must be provided on Form I-914, Supplement B, and instructions are available on the USCIS website at www.uscis.gov. The T visa declaration is not a required document for a T visa application, but USCIS gives significant weight to the

declaration when reviewing the victim’s application.

What kind of information does the T visa declaration provide?

Form I-914B is not a required piece of evidence, but when provided, it is helpful evidence to demonstrate that:

- The victim is or was a victim of a severe form of trafficking in persons; and
- The victim has complied with any reasonable requests from law enforcement in an investigation or prosecution of human trafficking.¹³

The T visa declaration is not conclusive evidence that the applicant meets these eligibility requirements, as only USCIS can make this determination. In addition, **by signing a T visa declaration, the certifying agency, official or judge is not sponsoring or endorsing the victim for a T visa. USCIS considers the T visa declaration as one part of the evidence in the T visa application.** USCIS also conducts a full background check and, in considering each T visa application and the applicant’s credibility, examines the totality of the evidence and the circumstances of each case.

Signing a declaration is at the certifying agency’s discretion which should be exercised on a case-by-case basis consistent with U.S. laws and regulations, and the policies and procedures outlined in this Guide, as well as internal policies of the certifying agency.

If the T visa applicant does not include a law enforcement declaration, the applicant must present credible evidence that he or she meets the cooperation requirement. The applicant must include an original personal statement that indicates the reason the law enforcement declaration doesn’t exist or is unavailable and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the law enforcement declaration, including describing the efforts the applicant undertook. USCIS will assess the evidence presented to determine whether the applicant satisfies the cooperation requirement.

Which agencies may sign a T visa declaration?

Certifying agencies include all authorities responsible for the detection, investigation, prosecution, conviction or sentencing of human trafficking, including but not limited to:

- Federal, State Local, Tribal, and Territorial law enforcement agencies;
- Federal, State, Local, Tribal, and Territorial prosecutors’ offices;
- Federal, State, Local, Tribal, and Territorial Judges;
- Federal and State Departments of Labor; and
- Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority related to human trafficking.

¹³ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

Who is a victim of severe forms of trafficking in persons?

A victim of severe forms of trafficking in persons is an individual who is a victim of either:

- Sex Trafficking, which is defined as:
 - the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,
 - or in which the person induced by any means to perform such act has not attained 18 years of age;¹⁴ or
- Labor Trafficking, which is defined as:
 - the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹⁵

State, local, territorial, and tribal law enforcement officers can play a key role in recognizing potential victims of human trafficking. **If you have identified a potential victim of trafficking, you should contact U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations, which investigates incidents of human trafficking, as soon as possible either through your local ICE office or through the national tipline at 1-866-347-2423 (1-866-DHS-2-ICE).** Specially trained federal agents may be dispatched to make sure the victim is safe and secure, as well as provide the victim with immediate services until longer term relief can be found.

What does “reasonable request for assistance” mean?

Whether a particular law enforcement request to a victim for assistance in the investigation or prosecution of human trafficking is “reasonable” depends on the totality of the circumstances. USCIS is responsible for making this determination. In determining “reasonableness” of the request, USCIS will consider certain factors such as, general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.

There are certain times when a victim is not required to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.

If the T visa applicant does not include a law enforcement declaration, the applicant must present credible evidence that he or she meets the cooperation requirement. The applicant must include an original personal statement that indicates the reason the law enforcement declaration does not exist or is unavailable and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence should demonstrate that good-faith attempts were made to obtain the law enforcement declaration, including describing the efforts the applicant undertook. USCIS will assess the evidence presented to determine whether the applicant satisfies the cooperation requirement.

¹⁴ 22 U.S.C. § 7102(10).

¹⁵ 22 U.S.C. § 7102(9).

Review and Tips for Completing Form I-914B

The following are important notes and tips on filling out the Form I-914B:

- USCIS has the sole authority to grant or deny a T visa. The declaration does not guarantee that the T visa will be approved by USCIS.
- An agency's decision to sign a declaration is completely discretionary and under the authority of that agency or official. Neither DHS nor any other federal agency has the authority to require or demand that any law enforcement agency sign the declaration. There is also no legal obligation to complete and sign Form I-914B.
- The Form I-914B should be completed by the law enforcement agency or official (and not the victim or the victim's advocate or attorney).
- By signing a declaration, the law enforcement agency attests that the information is true and correct to the best of the official's knowledge.
- The head of the agency has the authority to sign declarations or to delegate authority to other agency officials in a supervisory role to sign declarations. You should only sign the declaration if your agency has given you this authority.
- If a certifying agency has a written delegation of authority, provide a copy to USCIS to keep on file by emailing it to LawEnforcement_UTVAWA.VSC@uscis.dhs.gov
- Federal, state, local, tribal, or territorial judges have direct authority to sign T visa declarations. Delegation of authority is not applicable to or required of declarations by judges.
- Return the signed Form I-914B to the victim (or the victim's attorney, representative, etc.). The law enforcement agency should not send the signed declaration separately to USCIS. The victim will send the original signed declaration form along with his or her complete T visa application to USCIS.
- If the law enforcement official is providing additional documents (e.g., a copy of the police report, additional statements, photos) along with the declaration or if more space is needed to fill out any of the information on the form, law enforcement should indicate on Form I-914B a note of "see attachment" or "see addendum." Each additional page should be provided on agency letterhead.
- The official must document on Form I-914B the cooperation of the victim and whether the victim refused to comply with requests at any time throughout the investigation or prosecution.
- The declaration form must contain an original signature. That signature must either be typed or printed legibly in a color other than black ink for verification purposes. Photocopies, faxes, or scans of the declaration form cannot be accepted by USCIS as an official declaration.
- The victim has an ongoing duty to cooperate with law enforcement even after they receive the T visa. If a victim stops cooperating, you can contact USCIS to withdraw or disavow your certification.

Best Practices for Agencies Signing Certifications and Declarations

Across the United States, law enforcement agencies, officials, and judges have taken different procedural approaches to signing U visa certifications and T visa declarations. Some examples of how various agencies or officials educate their officials about U visa certifications and T visa declarations and how they designate a certifier or certifiers in their agencies include:

- Distributing department policy or a general order on the process and use of the U visa certification or T visa declaration;
- Distributing a letter or memorandum from the Chief or Sheriff to the agency's designee in charge of signing U visa certifications or T visa declarations designating a process and authority to certify;
- Designating the head of the Victim Witness Assistance Program as the certifier;
- Sending written notification, via email or other method, from the Chief or Sheriff to the entire department explaining the purpose of the U or T visa, the certification/declaration process, and who is/are designated as the certifier(s); and
- Assigning the Investigations Bureau Chief as the certifier to delegate an officer or supervisor to review requests made by both law enforcement officers and the community and make a recommendation on the certification to the Bureau Chief.

This Resource Guide can be distributed for informational and training purposes. Certifying agencies are not required to have an internal policy or procedure before they can sign U visa certifications or T visa declarations. DHS encourages certifying agencies to implement policies that accurately reflect and conform with the statute, regulations and DHS policies and with the information contained in this and other publications issued by USCIS and DHS on the U visa and T visa programs. If a policy exists, the certifying agency is encouraged to send a copy to the Vermont Service Center of USCIS to keep on file to LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

Answers to Frequently Asked Questions for U Visa Certifications (Form I-918B) and T Visa Declarations (Form I-914B)

For several years, DHS has been providing training and holding external stakeholder events and outreach, as well as working with law enforcement, judges, and other officials on U visa certifications and T visa declarations. As a result, DHS has developed this list of answers to frequently asked questions grouped by topic. In addition, law enforcement agencies may request additional training and information by emailing USCIS at: T_U_VAWATraining@uscis.dhs.gov.

Questions Regarding the Certification and Declaration Process

Which law enforcement agencies are eligible to sign certifications or declarations?

A federal, state, local, tribal, or territorial law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the detection, investigation, prosecution, conviction or sentencing of a qualifying crime or criminal activity or human trafficking is eligible to sign Form I-918B or Form I-914B. This includes agencies with investigative jurisdiction in their respective areas of expertise, including but not limited to: child and adult protective services, the Equal Employment Opportunity Commission (EEOC), and Federal and State Departments of Labor (DOL). Law enforcement agencies that can provide T visa declarations include components of the Department of Justice (United States Attorney's Offices, the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation (FBI), and the U.S. Marshals Service), components of the Department of Homeland Security (U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP)), the Department of Labor, and the Diplomatic Security Service of the Department of State.

In cases where the information provided by the victim led to the detection of criminal activity, a certifying agency may sign a certification. In these cases it does not matter if another agency will be the one to determine whether to pursue a criminal investigation or prosecution. In cases where the police investigated the crime and prosecutors are now prosecuting the case, both police and prosecutors may sign a certification. The authority of the police to sign a certification does not end when the case is referred for prosecution.

Who in the certifying agency can sign Form I-918B or Form I-914B?

Form I-918B: A certifying official(s) can sign Form I-918B. The U visa regulation defines a certifying official as a judge or "[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency." 8 C.F.R. § 214.14(a)(3). Although not required with each certification, it is helpful to include a letter showing the designation of the signing official(s). The letter would be signed by the agency head and would reflect that person with a particular rank or title within the agency is to be the signing official(s).

Form I-914B: A supervising official of a Federal, state or local law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons or other related activity may sign Form I-914B.

Which Officials Meet the Definition of a Judge For U Visa Certification Purposes?

Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.

Is my agency required to create a policy for reviewing and signing Form I-918B and Form I-914B? Is there a template policy I may refer to in creating my agency's policy?

No. A law enforcement agency is not required under federal regulations to create a policy to review and sign Form I-918B or Form I-914B; however, many agencies have found this to be helpful. There is no federal template for creating an agency policy; however, you may find helpful information among similarly-situated federal, state, and local law enforcement agencies.

I am a designated official, but my agency and/or I have never signed a Form I-918B/I-914B. Should I notify USCIS that I will be signing the form or is there a training I should go through before signing the certification/declaration?

You are not required to submit any information to USCIS in advance or attend a training in order to sign Form I-918, Supplement B or Form I-914, Supplement B. However, if you would like to notify USCIS that you are the designated official, you may contact the Vermont Service Center directly at LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. You may pose questions to USCIS or provide notification that you are the head of your agency and/or the designated official. Also, USCIS provides webinar trainings for law enforcement officials. You may contact T_U_VAWATraining@uscis.dhs.gov to find out information on the next webinar for law enforcement officials.

If I sign a certification or declaration, does the victim automatically get a U visa, T visa or lawful immigration status?

No. There are many additional eligibility requirements that USCIS evaluates based on a victim's U visa petition or T visa application, depending on which visa the victim is seeking (see above sections.) Upon receiving a U visa petition, including Form I-918B, or T visa application, USCIS will conduct a full review of all evidence and a thorough background check of the victim before approving or denying the petition or application. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds.

A victim may be found inadmissible if the victim does not meet required criteria in the Immigration and Nationality Act to gain admission to or lawful immigration status in the United States. Victims may seek a waiver of inadmissibility, which USCIS has discretion to grant. Waivers are considered based on the totality of the evidence in the case and the results of the background check. USCIS may also contact the certifying official for further information if necessary.

Note that, independent of the T and U visa processes, law enforcement agencies may seek "Continued Presence" for trafficking victims. Continued Presence is a form of temporary immigration relief that may be granted by ICE's Homeland Security Investigations, Law Enforcement Parole Unit. Continued

Presence enables the victim to work legally and remain in the United States without accruing unlawful presence. State or local law enforcement officials who identify a victim of human trafficking who is a potential witness should coordinate with their federal law enforcement partners to submit a request for Continued Presence with their local ICE office for a particular individual. Even if the victim may ultimately apply for and be granted a T or U visa, Continued Presence may provide greater stability to the victim before the petition or application is submitted or while it is pending. Please see more information about Continued Presence in this guide under the Other Protections for Victims section.

Am I legally required to sign this declaration or certification?

No. A law enforcement agency is under no legal obligation to complete a declaration or certification. Signing is at the discretion of each law enforcement agency, in accordance with that agency's policy. However, it is important to note that:

- Without a certification, a U visa petition will be denied.
- The declaration is not required for a T visa, but it is an important piece of evidence submitted by the applicant.¹⁶

Will my certifying agency be liable for any future conduct of someone who is granted a U or T visa?

What if I signed a certification or declaration for someone who later commits a crime?

No. A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa. The U visa certification simply addresses whether the petitioner was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the detection, investigation, prosecution, conviction, or sentencing of that crime. The T visa declaration simply addresses whether the victim was a victim of human trafficking and has complied with all reasonable requests for assistance. The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa. USCIS is the only agency that can grant a U or T visa. If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues. If a certifying agency or official later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency or official wishes to withdraw the certification, the agency or official should contact USCIS by emailing the Vermont Service Center at LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

Who decides which benefit to seek, a U or T visa?

The victim or victim's advocate or attorney should make that decision and indicate the appropriate certification or declaration for law enforcement to sign. It is possible that an individual may qualify for both a U and a T visa.

¹⁶

http://www.uscis.gov/sites/default/files/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAf%20orLawEnforcement.pdf

Helpfulness and Cooperation of the Victim:

A victim is requesting Form I-918B or Form I-914B, but I am unsure whether he or she meets the helpfulness requirement or the compliance with reasonable requests requirement. May I sign this certification or declaration?

Yes. Both the I-918B and the I-914B provide an opportunity for law enforcement to provide information to USCIS about the extent of the victim's assistance in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. You may complete the form including all information you find relevant about the victim's assistance. USCIS will ultimately determine whether the victim meets these requirements.

- Form I-918B asks whether the victim possesses information concerning the criminal activity; was, is, or is likely to be helpful in the investigation and/or prosecution of the criminal activity; was asked to provide further assistance; and has unreasonably refused to provide assistance. You may select "yes" or "no" to these questions and further explain your answers.
- Form I-914B asks the certifying officer to provide information about the victim's cooperation and includes several options to select regarding the victim's cooperation with law enforcement.

What constitutes "helpfulness" or "enough cooperation" for a U visa certification?

USCIS regulation requires that the U petitioner has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. This means that since the initiation of cooperation, the victim has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement or prosecution in connection with a criminal investigation or prosecution.

USCIS will not provide a U visa to those petitioners who, after initially cooperating with the certifying official, refuse to provide continuing assistance when reasonably requested. USCIS also will not approve the petitions of those who are culpable for the qualifying criminal activity.

What constitutes "complying with any reasonable request" for a T visa declaration?

USCIS regulations require that the victim of trafficking comply with reasonable requests from law enforcement officials for assistance in the investigation or prosecution of the acts of trafficking in persons. To determine whether the request from law enforcement is reasonable, USCIS takes into account the totality of the circumstances, such as general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.

Law Enforcement Certification Authority and Timing:

At what stage in the criminal case can I sign a certification?

There is no required time when you may or may not sign a certification. It is possible to sign a certification at any stage in the case, including at the point of detection, during an investigation, when the prosecutor initiates a prosecution, before a trial, whether or not the victim is needed to testify, and

after the case is concluded.

You may sign a certification regardless of the outcome of the qualifying criminal case, including in the following instances:

- the prosecutor decided not to prosecute;
- the grand jury did not issue an indictment;
- the case was dismissed by the prosecutor or a judge;
- a case brought by the EEOC or DOL resulted in a judgment, settlement, or dismissal;
- a judge issued a protection order or custody ruling;
- a child abuse case was settled;
- the defendant entered a plea, whether or not the plea was to an offense that is a qualifying criminal activity; and
- the defendant was found not guilty.

If an investigation or case is closed, may law enforcement still complete Form I-918B or Form I-914B?

Is there a statute of limitations?

Certifying officials may complete Form I-918B or Form I-914B for an investigation or prosecution that is closed. There is no statute of limitations regarding the time frame in which the criminal activity must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful *in the past* to the detection, investigation, prosecution, conviction, or sentencing of criminal activity. A crime victim may be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial and whether or not the prosecution resulted in a conviction. A trafficking victim could be eligible to receive a T visa declaration when a case is closed for similar reasons. The petitioner must still meet all the eligibility requirements for a U or T visa to be approved.

Does the victim have to testify to be eligible for certification or declaration?

No. As mentioned above, there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U or T visa. While there is no requirement for the victim to testify at a trial to be eligible for a U or T visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with the certifying law enforcement agency. If the victim unreasonably refuses to testify, the agency or official should notify USCIS and may withdraw the previously signed Form I-918B or Form I-914B.

What if the victim or witness has been detained or ordered removed for an immigration violation?

Individuals currently in removal proceedings or with final orders of removal may still apply for a U or T visa. A petitioner for U nonimmigrant status or an applicant for T nonimmigrant status has administrative remedies and is not prejudiced by completion of removal proceedings. Specifically, a victim who is the subject of a final order of removal, deportation, or exclusion may still file a petition or application for U or T nonimmigrant status directly with USCIS. If a victim is granted U or T nonimmigrant status prior to, or after, removal, the regulations provide a procedure whereby the victim may remain in or return to the United States. To avoid deterring individuals from reporting crimes, ICE

officers, special agents, and attorneys are expected to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention is paid to victims of domestic violence, human trafficking, sexual assault, or other serious crimes, and witnesses involved in pending criminal investigations or prosecutions. It is common for perpetrators to report immigrant crime victims and witnesses to immigration enforcement officials to gain advantage in a civil or family law case and/or to avoid prosecution in a criminal case. Congress created the U visa as a tool to counter such efforts by perpetrators.¹⁷

If a judge, law enforcement official, prosecutor, or other certifying official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact his or her local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Chief Counsel to make ICE aware of the situation. Specifically with regard to a lodged detainer, the law enforcement official may notify the ICE Law Enforcement Support Center at (802) 872-6020 if the individual may be the victim of a crime or if the officials want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness. If a victim is scheduled to appear in court as a witness in a criminal or civil case, as a party in a protective order case or as a parent in a case involving the victim's children, judges and other certifying officials may contact the Law Enforcement Support Center to arrange for ICE officials to bring the victim to court or to facilitate participation in the court hearing electronically.¹⁸

Can I complete a U visa certification for a victim who is no longer in the United States?

Yes. While the criminal activity must have occurred in the United States, its territories, or possessions, or have violated U.S. law, victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply from outside the United States.

Can I complete a T visa declaration for a victim who is no longer in the United States?

Yes. You may note, however, that one requirement of the T visa petition is that the victim be in the United States on account of the severe form of human trafficking. USCIS, not the law enforcement agency, determines whether the victim meets this physical presence requirement. Note that human trafficking victims who have left the United States may be eligible for a U visa because trafficking is a qualifying criminal activity. The decision whether to seek a T or U visa should be made by the victim, or the victim's advocate or attorney.¹⁹

Can I still certify if the perpetrator is no longer in the jurisdiction or prosecution is unlikely for some reason?

¹⁷ VTPA, Pub. L. No. 106-386, §§ 1502(a)(3), 1512(a)(2)(B), 114 Stat. 1464-1548 (2000).

¹⁸ See U.S. Immigration and Customs Enforcement, 11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities (Aug. 23, 2013)(hereinafter "ICE Parental Directive") available at: https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf and U.S. Immigration and Customs Enforcement, *FAQs on the Parental Interests Directive*, available at: <https://www.ice.gov/about/offices/enforcement-removal-operations/parental-directive-faq.htm>.

Yes. There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to apply for a U or T visa. Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another agency in another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations. A U visa petitioner 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. A T visa applicant will still have to comply with all reasonable requests for assistance.

Can a victim’s petition still be approved if the defendant is acquitted or accepted a plea to a lesser charge, accepted a plea to an offense that is not qualifying criminal activity, or if the case was dismissed?

Yes. As mentioned above, a conviction is not required for someone to be eligible for a U or T visa. Plea agreements and dismissals do not negatively impact the victim’s eligibility. As long as the victim has been helpful in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity and meets all other eligibility requirements, the victim may petition for a U visa. In the case of a T visa, as long as the individual has been subject to human trafficking and has complied with reasonable requests for assistance, plea agreements and dismissals do not negatively impact the victim’s eligibility. If the victim unreasonably refuses to assist the investigation or prosecution and harms the criminal case, this will negatively impact the victim’s ability to receive an approval. The certifying law enforcement agency should notify USCIS if the victim has unreasonably refused to cooperate in the investigation or prosecution of the crime.

If a victim reports a crime that does not require investigation or cannot be investigated by my agency, because, for example, the victim cannot identify the perpetrator or the perpetrator is deported or fled the jurisdiction, may I certify that the person was helpful?

Yes. The law enforcement agency may sign Form I-918B or I-914B if the victim was helpful in the detection of criminal activity. Each law enforcement agency may determine its own policy on reviewing and signing Form I-918B or Form I-914B. USCIS will review each petition or application on a case-by-case basis to determine whether the victim meets all eligibility requirements, including whether the person is a victim of a qualifying crime or a victim of a severe form of trafficking and whether the person was helpful or complied with reasonable requests for assistance.

What if the victim stops cooperating after I sign his/her certification or declaration?

At its discretion, a certifying agency may withdraw or disavow a Form I-918B or Form I-914B at any time if a victim stops cooperating. When this occurs, the victim’s petition or application will be denied, and all derivative family member applications associated with the original application or petition will also be denied.

To withdraw or disavow a certification, the certifying agency must notify the USCIS Vermont Service Center in writing or via email. Written notification regarding withdrawal or disavowal should include:

- The agency’s name and contact information (if not included in the letterhead);
- The name and date of birth of the individual certified;
- The name of the individual who signed the certification and the date it was signed;
- The reason the agency is withdrawing/disavowing the certification, including information

- describing how the victim's refusal to cooperate in the case is unreasonable;
- The signature and title of the official who is withdrawing/disavowing the certification; and
- A copy of the certification the agency signed (if a copy was retained by the agency).

The letter should be either scanned and emailed to the Vermont Service Center at LawEnforcement_UTVAWA.vsc@uscis.dhs.gov, or mailed to:

USCIS-Vermont Service Center
 ATTN: VAWA, T, and U Section
 75 Lower Welden Street
 St. Albans, VT 05479.

U Visa Specific:

For a U visa, if one crime is initially detected or investigated but a different crime is eventually prosecuted, does that have an impact on the certification?

A certification is valid regardless of whether the initial criminal activity detected or investigated is different from the crime that is eventually prosecuted. As long as the person is a victim of a qualifying criminal activity, that person may be eligible for a U visa. Examples include:

- An initial investigation of rape eventually leads to a charge and prosecution of sexual assault. Both rape and sexual assault are qualifying crimes.
- An initial investigation of embezzlement leads to a charge and prosecution of extortion. While embezzlement is not a qualifying crime, the investigation eventually led to a charge of extortion, which is a qualifying crime. If the person assisting in the investigation or prosecution is a victim of extortion, that person may qualify for a U visa.
- In the process of investigating drug trafficking allegations, police determine that the drug trafficker's wife is a victim of domestic violence. The victim reported the domestic abuse. The state brings a prosecution against the husband for drug offenses but not domestic violence crimes. The wife is cooperating in the drug prosecution. Law enforcement may complete a Form I-918B certification for reporting the domestic abuse case that is not being prosecuted.
- An initial investigation of Fraud in Foreign Labor Contracting leads to a charge and prosecution of obstruction of justice.

Form I-918B certifications may also be submitted for criminal activities similar to the list of qualifying criminal offenses. Examples include:

- An investigation or prosecution into a charge of video voyeurism may fall under the qualifying crime of sexual exploitation. This may be determined by state or local criminal law and the facts and evidence in that specific case. Please note that while video voyeurism is not specifically listed as a qualifying crime, it may be considered a type of sexual exploitation, which is a qualifying crime. The victim would need to show how these crimes are related and present this evidence to USCIS, along with the Form I-918B certification form signed by a certifying law enforcement agency.
- An investigation or prosecution of child abuse or elder abuse may fall under the qualifying criminal activity of domestic violence. This occurs under the state domestic violence protection order statute or criminal domestic violence statute when the abuse experienced by the child, disabled adult, or senior meets the statutory elements of domestic violence. When the perpetrator/victim relationship is covered by the state protection order statute or criminal

domestic violence laws, the child, dependent adult, or elder abuse is considered domestic violence under state law. When this occurs, child, elder and dependent adult abuse cases may be considered a form of domestic violence.

- An investigation or prosecution of dating violence may fall under the qualifying criminal activity of domestic violence or stalking. When a state's domestic violence statute includes dating violence, then dating violence may be considered a form of domestic violence, a qualifying criminal activity. Similarly, stalking can be a part of the pattern of abuse co-occurring with dating violence. When the facts and evidence in the specific case meet the definition of stalking under state criminal laws or under a state's stalking protection order statute, dating violence may be considered stalking which is a qualifying criminal activity.

A victim would need to show how these crimes are related and present this evidence to USCIS, along with the Form I-918B certification signed by a certifying agency or official.

A victim has approached me to request certification of Form I-918B for a crime not listed on the form. How may I fill out Form I-918B in this circumstance?

A law enforcement official may sign Form I-918B to indicate a person's helpfulness in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. Each jurisdiction uses different terms for criminal activity. Also, each jurisdiction's crime definitions may include slightly different elements. Form I-918B requests the official to list statutory citations for the criminal activity. The official should provide those citations and may also provide information about the elements of the criminal activity and how it involves or is similar to the statutory list of criminal activity for the U visa.

Who would qualify to file for a U visa as an indirect victim?

Under certain circumstances, an indirect victim of a qualifying criminal activity may file as the principal applicant in a U visa petition. These circumstances include:

- In the case of murder, manslaughter, incompetent or incapacitated victims (which include children under 21 years of age):
 - Spouses; and
 - Children under 21 years of age at the time of filing.
- If the victim of the criminal activity is under 21 years of age at the time the qualifying criminal activity occurred:
 - Parents; and
 - Unmarried siblings under 18 years of age at the time of the qualifying criminal activity.

In the case of witness tampering, obstruction of justice or perjury, a victim can demonstrate that he or she has been directly or proximately harmed by one of these criminal activities if he or she can show that there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity, or to further his or her abuse, exploitation of, or control over the immigrant through manipulation of the legal system.

If the victim is a child, why would a non-citizen parent ask for a Form I-918B certification stating that the parent was the victim?

In many cases where a child is the victim of criminal activity, the child may not be able to provide law

enforcement with adequate assistance. This may be due to the child's age or trauma suffered, among various other reasons. Parents of a child victim play a crucial role in detecting and reporting criminal activity, providing information and assisting certifying officials in the detection, investigation, prosecution, conviction, or sentencing of the crime committed against the child. Recognizing this, an alien parent can apply for a U visa seeking to be recognized as an "indirect victim" if the principal victim is a child under 21 years of age and is incompetent or incapacitated to provide assistance to certifying officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity committed against the child or if the child is deceased due to murder or manslaughter. The immigration status of the child victim is not relevant to this determination; Form I-918B can be submitted for an alien parent whether or not the child is a U.S. citizen or a non-citizen. The parent(s), in order to qualify as an "indirect victim," must meet the remaining eligibility requirements for a U visa to receive an approval. Therefore, the "indirect victim" parent(s) must have information about the criminal activity, and must have been or be currently helpful, or must be willing to be helpful, to certifying officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity and the criminal activity must have occurred in the United States or violated U.S. law. The parent(s) must also demonstrate that he, she, or they suffered substantial physical or mental abuse as a result of the criminal activity and will be subject to the standard background checks (FBI fingerprint and name/DOB check) and immigration records review as well.

What constitutes "possesses information" for U visa petitioners?

To be eligible for a U visa, the victim of the criminal activity must possess credible and reliable information establishing that the victim has knowledge of the details of the criminal activity or events leading up to the criminal activity, including specific facts about the crime/victimization leading the certifying agency or official to determine that the victim has assisted, is assisting, or is likely to provide assistance in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. If the victim was under 16 years of age or incompetent or incapacitated at the time the qualifying criminal activity occurred, a parent, guardian, or next friend may possess the information. A "next friend" is defined as a person who acts for the benefit of an alien who is under 16 or incompetent or incapacitated. The next friend is someone dedicated to the best interests of a victim who cannot appear on his or her own behalf because of inaccessibility, mental incompetence, or other disability. A next friend cannot be a party to a legal proceeding involving the victim and cannot be a court appointed guardian. A next friend also does not qualify for a U visa or any immigration benefit simply by acting as a next friend for the victim, but he or she may possess information about the criminal activity and may provide the required assistance. It is important to note that both "direct" and "indirect" victims can qualify to petition for U visas. Although they were not the direct victim of the criminal activity, indirect victims may possess information that is helpful to the detection, investigation, prosecution, investigation, conviction, or sentencing of criminal activity.

Who determines if the "substantial physical or mental abuse" requirement has been met for the U Visa?

USCIS will make the determination as to whether the victim has met the "substantial physical or mental abuse" standard on a case-by-case basis during its adjudication of the U visa petition. Certifying agencies and officials do not make this determination. Certifying agencies and officials may, however, provide any information they deem relevant regarding injuries or abuse on the Form I-918B. The Form I-918B asks the certifying official to provide information about any injuries the agency or official knows about, has

documented, or has made findings about. If the certifying agency or official has documentary evidence of injuries to the victim, the severity of the perpetrator’s conduct, or the emotional impact on the victim’s mental health as affected by the criminal activity, it is helpful to attach any relevant evidence of these facts, such as, photographs, police reports, findings, or court orders. While USCIS will consider any evidence of substantial physical or mental abuse provided by law enforcement, the U visa petitioner has the burden of proving the substantial physical or emotional abuse.

Factors that USCIS uses to make this determination are:

- the nature of the injury inflicted;
- the severity of the perpetrator’s conduct;
- the severity of the harm suffered;
- the duration of the infliction of the harm; and
- the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.

The existence of one or more of these factors does not automatically signify that the abuse suffered was substantial.

USCIS Processing:

What do I do with a completed certification or declaration?

Once the certifying official completes and signs the Form I-918B or Form I-914B, the original should be given to the victim or the victim’s legal representative or advocate, so that it can be added to the original U visa petition or T visa application packet before submission to USCIS. Please also note that only a law enforcement official, prosecutor, judge, or other government official authorized to sign certifications/declarations may complete and sign the Form I-918B or Form I-914B. The victim or the victim’s attorney or advocate may not sign the Form I-918B or Form I-914B.

I already signed Form I-918B or Form I-914B, but the victim has returned asking for another newly signed form. Why is this happening?

This may occur for two reasons. An application or petition must be submitted within six months after Form I-918B certification has been signed by law enforcement. If the Form I-918B expired before the petitioner was able to file the petition with USCIS, the victim would require a new form in order to properly file the U visa petition.

Also, a victim who has an approved U or T visa may become eligible and apply for lawful permanent resident status (i.e. a green card). To be eligible for adjustment of status, U visa holders cannot unreasonably refuse to provide assistance to an official or law enforcement agency, and T visa holders must continue to cooperate with reasonable requests from law enforcement. As evidence, the victim may request the law enforcement official to provide a newly signed Form I-918B, or Form I-914B or a signed document from the official or law enforcement agency.

Is there an “expiration date” on the Form I-918B or Form I-914B?

Form I-918B expires six months after the certifying official signs the form. USCIS must receive the

properly filed U visa petition including the Form I-918B within six months of the date on the Form I-918B. There is no expiration date for the Form I-914B.

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

USCIS recognizes that certifying agencies and officials may be in the best position to determine if a qualifying crime has taken place. If, in the normal course of duties, a certifying official or agency has determined that a qualifying criminal activity has taken place, the victim possessed information related to the criminal activity, and the victim has been helpful, law enforcement may sign the U visa certification. Whether a certifying agency or official signs the certification is under the authority of the agency or official. The certification also acts as a check against fraud and abuse, as the certification is required in order to be eligible for a U visa.

USCIS takes fraud and abuse of the U and T visa programs seriously. If USCIS suspects fraud in a U visa petition or T visa application, USCIS may request further evidence from the petitioner and may also reach out to the certifying official or agency for further information. USCIS also has a dedicated unit with the sole purpose of targeting and identifying fraudulent immigration applications. The Fraud Detection and National Security (FDNS) unit of USCIS conducts investigations of cases that appear fraudulent and works with other Federal, State, and local law enforcement agencies when fraud or abuse is discovered.

As an additional check against fraud, a U visa recipient cannot obtain a green card unless the victim proves that he or she cooperated, when requested, with law enforcement or prosecutors. In order to obtain a green card, if the U visa victim did not cooperate, he or she must prove to DHS' satisfaction that his or her refusal to cooperate was not unreasonable. A T visa recipient cannot obtain a green card unless he or she continues to comply with law enforcement's reasonable requests for assistance and has maintained good moral character since issuance of the T visa.

Will USCIS approve a victim with a criminal history?

USCIS may deny a U visa petition or T visa application for a variety of reasons including the victim's criminal history. Denials may occur in cases where a victim has multiple arrests or convictions, or has a serious or violent criminal arrest record. USCIS may also deny a petition if the victim was complicit or culpable in the qualifying criminal activity of which he or she claims to be a victim. USCIS conducts background and security checks (FBI fingerprint check, name/date of birth check, and a check of immigration records) on U visa petitioners and T visa applicants and reviews all available information concerning arrests, immigration violations, and security issues before making a final decision. The fact that a victim has a criminal history does not automatically preclude approval of U or T nonimmigrant status. Each petition or application is evaluated on a case-by-case basis, and USCIS takes into account whether any criminal behavior was related to the victimization. If the certifying official believes USCIS should know something particular about a victim's criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim's criminal history with that law enforcement agency or his or her involvement in the crime.

Other Law Enforcement Tools to Assist in Investigations and Prosecutions

There are two significant tools law enforcement agencies can use to benefit immigrant victims who may not qualify for a T or U visa, but who may need a means of temporarily being in the United States lawfully during the course of an investigation. These tools include Continued Presence and Significant Public Benefit Parole.

Continued Presence

Continued Presence (CP) is a form of temporary immigration relief available to individuals who are identified by law enforcement as victims of human trafficking and who are potential witnesses in an investigation or prosecution. CP is authorized by ICE Homeland Security Investigations (HSI) Parole and Law Enforcement Program Unit and *can only be sponsored by a federal law enforcement agent*. **An application for CP should be initiated immediately upon identification of a victim of human trafficking.** CP allows victims of human trafficking to remain in the United States during an ongoing investigation into human trafficking- related crimes committed against them. CP is initially granted for one year and may be renewed in one-year increments. Recipients of CP also receive work authorization and social service benefits through the Department of Health and Human Services Office of Refugee Resettlement, which provides a sense of stability and protection. These conditions improve victim cooperation with law enforcement, which leads to more successful prosecutions and the potential to identify and rescue more victims.

CP is available to all trafficking victims, even if a human trafficking violation is not charged, if charges are never brought, or the victim is not cooperating in a law enforcement investigation. However, once an investigation has ended and a decision not to prosecute has been made, CP is no longer appropriate.

State, local, tribal, and territorial law enforcement officials who would like to request CP for human trafficking victims are encouraged to work with the local HSI office in their area. In addition, Victim Assistance Coordinators can assist law enforcement officials in obtaining referrals to non-governmental victim services providers who can offer a variety of services to assist crime victims, such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job skills training, and case management.

Significant Public Benefit Parole

Significant Public Benefit Parole (SPBP) may be utilized as a means of permitting an individual outside of the U.S. to enter the U.S. temporarily to serve as a witness, defendant, or cooperating source, and if necessary in extremely limited cases, the individual's immediate family members. It must be emphasized that SPBP will only be granted for the minimum period required to accomplish the requested purpose, for example, if a trial is 3 months long, parole will be granted for 3 months. SPBP is a temporary measure used on a case by case basis to allow an individual who is otherwise inadmissible to enter the United States.

Other Forms of Legal Status for Immigrant Victims

Federal law provides additional options for immigration status to victims and witnesses of crime who may or may not be eligible for a T or U visa, including status under the Violence Against Women Act (VAWA) and Special Immigrant Juvenile Status (SIJS):

VAWA

Recognizing that immigrant victims of domestic violence may remain in an abusive relationship when their immigration status is tied to their abuser, the Violence Against Women Act of 1994 (VAWA) created a self-petitioning process that removes control from the abuser and allows the victim to submit his or her own petition for permanent residence without the abuser's knowledge or consent. Those eligible for VAWA protection include the abused spouse or former spouse of a U.S. citizen or Lawful Permanent Resident, the abused child or step-child of a U.S. citizen or lawful permanent resident, or the abused parent of a U.S. citizen. VAWA immigration relief applies equally to women and men. To file for VAWA immigration relief, the self-petitioner must send a completed [Form I-360](#) (Petition for Amerasian, Widow(er), or Special Immigrant) along with corroborating evidence to USCIS. A law enforcement certification is not needed in these cases.

Special Immigrant Juvenile Status

Some children present in the United States without legal immigration status may be in need of humanitarian protection because they have been abused, abandoned, or neglected by a parent. The abuse may have occurred in the United States or prior to the child's arrival in the United States. Special Immigrant Juvenile (SIJ) status is an immigration classification that may allow vulnerable children to immediately apply for Lawful Permanent Resident status. To be eligible for SIJ, a child must:

- be unmarried, under 21 years of age at the time of filing Form I-360 with USCIS;
- be physically present in the United States; and
- have an order from a state court with jurisdiction over the child that: (1) declares the child is a dependent of the court/dependent on the court, or legally commits or places the child under the custody of either a state agency or department or an individual or entity appointed by a juvenile court; (2) declares reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and (3) finds it would not be in the child's best interest to be returned to his or her country of origin.

DHS Contact Information

USCIS Contacts

| Type of Information/Inquiry | Where to go/Who to contact |
|---|--|
| For more information about the U and T visa programs and law enforcement certifications and declarations: | www.uscis.gov www.uscis.gov/humantrafficking |
| To ask a question about a specific case or to rescind a signed certification or declaration: | The question or rescind letter should be scanned and emailed to the Vermont Service Center at: LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. <i>Please note that this e-mail address is for law enforcement personnel only. Any e-mail sent by any person or entity that is not law enforcement to this specific e-mail address will not be answered.</i> or mailed to: USCIS-Vermont Service Center Attn: VAWA,T, & U Section 75 Lower Welden Street St. Albans, VT 05479 |
| To request T or U visa training for your agency: | T_U_VAWATraining@uscis.dhs.gov |
| To ask specific policy questions about T and U visa certifications: | Call (202) 272-1470 |
| Representatives may submit an inquiry regarding a specific case by emailing: | hotlinefollowupI918I914.vsc@uscis.dhs.gov |

Citizenship and Immigration Services Ombudsman

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman) is dedicated to improving the quality of citizenship and immigration services delivered to the public by providing individual case assistance, as well as making recommendations to improve the administration of immigration benefits by USCIS. Created by section 452 of the Homeland Security Act of 2002, the Ombudsman is an impartial and confidential resource that is independent of USCIS. Customers can request case assistance by visiting the website listed below. The Ombudsman's Office also has a duty officer available Monday-Friday between 11 a.m. and 3 p.m. to answer emails and phone calls for those who are unable to file through the online process.

| Type of Information/Inquiry | Where to go/Who to contact |
|--|---|
| For more information about the CIS Ombudsman and protections for victims: | www.dhs.gov/cisombudsman |
| To refer U visa petitioners or T visa applicants who are experiencing problems that have not been able to be resolved through DHS customer assistance avenues: | http://cisomb.dhs.gov/oca/form7001.aspx |

| | |
|--|--|
| To request telephonic case assistance: | Toll Free: (855) 882-8100 Phone: (202) 357-8100 |
| To share specific policy concerns about T and U visa certifications or request information about a pending request for assistance: | cisombudsman@dhs.gov |

U.S. Immigration and Customs Enforcement (ICE)

If a law enforcement official is aware of a victim of human trafficking, the official should promptly contact his or her local ICE Homeland Security Investigations (HSI) office. If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact his or her local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Principal Legal Advisor (OPLA) to make ICE aware of the situation.

| <i>Type of Information/Inquiry</i> | <i>Where to go/Who to contact</i> |
|---|---|
| To contact your local ICE HSI office: | http://www.ice.gov/contact/hsi/ |
| To contact your local ICE ERO office: | http://www.ice.gov/contact/ero/ |
| To contact your local ICE OPLA office: | http://www.ice.gov/contact/opla/ |
| Specifically with regard to a lodged detainer, the law enforcement official should notify the ICE Law Enforcement Support Center: | Phone: (802) 872-6050 LESC Computer Services Division 188 Harvest Lane Williston, Vermont 05495 https://www.ice.gov/contact/lesc |

Office for Civil Rights and Civil Liberties

| <i>Type of Information/Inquiry</i> | <i>Where to go/Who to contact</i> |
|--|---|
| To refer individuals who would like to file a complaint concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security: | By Mail: Office for Civil Rights and Civil Liberties U.S. Department of Homeland Security Building 410, Mail Stop #0190 Washington, D.C. 20528 By Phone or Email: Phone: (202) 401-1474 Toll Free: (866) 644-8360 TTY: (202) 401-0470 Toll Free TTY: (866) 644-8361 Fax: (202) 401-4708 E-mail: crcl@dhs.gov |

To report a violation of T visa, U visa, or VAWA relief confidentiality protections by a federal employee (*see* 8 U.S.C. § 1367(a)(2)).

By Mail:
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security Building 410,
Mail Stop #0190
Washington, D.C. 20528

By Phone or Email:
Phone: (202) 401-1474
Toll Free: (866) 644-8360
TTY: (202) 401-0470
Toll Free TTY: (866) 644-8361
Fax: (202) 401-4708
crcl@dhs.gov
VAWA@hq.dhs.gov

Office for State and Local Law Enforcement

On the recommendation of the 9/11 Commission, Congress created the Office for State and Local Law Enforcement (OSLLE) in 2007 to serve as the liaison between the Department of Homeland Security and non-Federal law enforcement agencies across the country. The primary mission of OSLLE is to lead the coordination of DHS-wide policies related to state, local, tribal, and territorial law enforcement's role in preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disaster within the United States. For more information about DHS coordination with federal, state, local, tribal, and territorial law enforcement, please contact the DHS Office for State and Local Law Enforcement.

Phone: (202) 282-9545
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| | <p><u>Roll-Call Video (Part 1) featuring law enforcement experts explaining human trafficking</u></p> <p><u>Roll-Call Video (Part 2) featuring law enforcement experts explaining immigration relief</u></p> <p>The DHS Federal Law Enforcement Training Center (FLETC) offers a <u>web-based human trafficking training course</u> which teaches law enforcement officers how to recognize human trafficking during routine duties, protect victims, and initiate human trafficking investigations.</p> |
| <p>Non-Governmental Organization Support</p> | <p>Anti-human trafficking task forces comprise federal, state, local, county, and tribal law enforcement and prosecutors, as well as non-governmental organizations (NGOs) providing victim services. To find out whether there is a task force in your area, visit the Bureau of Justice Assistance, <u>Anti-Human Trafficking Task Force Initiative Web page</u>.</p> |

4. U visa Rule 2007 and Regulatory History.pdf

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Federal Register

**Monday,
September 17, 2007**

Part IV

**Department of
Homeland Security**

8 CFR Parts 103, 212, et al.

**New Classification for Victims of Criminal
Activity; Eligibility for “U” Nonimmigrant
Status; Interim Rule**

DEPARTMENT OF HOMELAND SECURITY**8 CFR Parts 103, 212, 214, 248, 274a and 299**

[CIS No. 2170-05; DHS Docket No. USCIS-2006-0069]

RIN 1615-AA67

New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status**AGENCY:** U.S. Citizenship and Immigration Services, DHS.**ACTION:** Interim rule with request for comments.

SUMMARY: This interim rule amends Department of Homeland Security regulations to establish the requirements and procedures for aliens seeking U nonimmigrant status. The U nonimmigrant classification is available to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.

This interim rule outlines the eligibility and application requirements for the U nonimmigrant classification and the benefits and limitations relating to those granted U nonimmigrant status. This interim rule also amends existing regulations to include U nonimmigrants among the nonimmigrant status holders able to seek a waiver of documentary requirements to gain admission to the United States, and to permit nonimmigrants to change status to that of a U nonimmigrant where applicable. This rule also establishes a filing fee for U nonimmigrant petitions.

Aliens who have been granted interim relief from USCIS are encouraged to file for U nonimmigrant status within 180 days of the effective date of this interim rule. USCIS will no longer issue interim relief upon the effective date of this rule; however, if the alien has properly filed a petition for U nonimmigrant status, but USCIS has not yet adjudicated that petition, interim relief will be extended until USCIS completes its adjudication of the petition.

DATES: *Effective date.* This rule is effective October 17, 2007.*Comment date.* Written comments must be submitted on or before November 16, 2007.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2006-0069 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2006-0069 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Laura Dawkins, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone: (202) 272-8350.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

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- I. Paperwork Reduction Act

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS-2006-0069. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background and Legislative Authority

Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA). *See* Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Battered Immigrant Women Protection Act of 2000, Pub. L. 106-386, sec. 1513, 114 Stat. 1464, 1533-37 (2000), *amended by* Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), tit. VIII, Pub. L. 109-162, 119 Stat. 2960 (2006), *amended by* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (2006). 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. In

passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering protection to victims of such crimes. See BIWPA, sec. 1513(a)(2)(A). Congress also sought to encourage law enforcement officials to better serve immigrant crime victims. *Id.*

The U nonimmigrant classification was established under section 1513(b) of the BIWPA. Notwithstanding the title of the legislation, the U nonimmigrant classification is available to qualified victims of crimes, without regard to gender. The U nonimmigrant classification provides temporary immigration benefits to certain victims of criminal activity who: (1) Have suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; (2) have information regarding the criminal activity; and (3) assist government officials in the investigation and prosecution of such criminal activity. USCIS can only grant U nonimmigrants status to 10,000 principal aliens in each fiscal year. See INA sec. 214(p)(2), 8 U.S.C. 1184 (p)(2). (Note: this number does not include persons eligible for U nonimmigrant derivative status—e.g. spouses, children, or parents of applicants—as discussed in Section III. C. of this rule below).

Aliens granted U nonimmigrant status can remain in the United States for a period of up to four years, with possible extensions upon certification of need by certain government officials. INA sec. 214(p)(6), 8 U.S.C. 1184(p)(6). Section 1513(f) of the BIWPA provides DHS with discretion to convert the temporary U nonimmigrant status to permanent resident status if (1) the alien has been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant; and (2) DHS determines that the “alien’s continued presence in the United States is justified on humanitarian grounds, to ensure the family unity, or is otherwise in the public interest.”

To qualify for the U nonimmigrant classification:

- The alien must have suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;
- The alien must be in possession of information about the criminal activity of which he or she has been a victim;
- The alien must be of assistance to a Federal, State, or local law enforcement official or prosecutor, a Federal or State judge, the Department of Homeland Security (DHS), or other

Federal, State, or local authority investigating or prosecuting criminal activity; and

- The criminal activity must have violated U.S. law or occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States.

INA sec. 101(a)(15)(U)(i), 8 U.S.C. 1101(a)(15)(U)(i). 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: 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]” *Id.*(iii). The list of qualifying crimes represents the myriad types of behavior that can constitute domestic violence, sexual abuse, or trafficking, or are crimes of which vulnerable immigrants are often targeted as victims.

U nonimmigrant status can also extend to certain family members of the alien victim. If the alien victim is under 21 years of age, the victim’s spouse, children, unmarried siblings under 18 years of age, and the victim’s parents may qualify for U nonimmigrant status. INA sec. 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I). If the alien victim is 21 years of age or older, his or her spouse and children may also qualify for U nonimmigrant status. INA sec. 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

Aliens applying for U nonimmigrant status must provide a certification from a Federal, State or Local law enforcement official demonstrating that the applicant “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the qualifying criminal activity. INA sec. 214(o), 8 U.S.C. 1184(o). The BIWPA further directs DHS to provide aliens who are eligible for U nonimmigrant status with referrals to nongovernmental organizations (NGOs) to advise the aliens regarding their options in the United States. *Id.* Further, USCIS is required to provide U nonimmigrants with employment authorization. *Id.*

Section 1513(e) of the BIWPA amended section 212(d) of the INA, 8

U.S.C. 1182(d), to provide for a waiver of inadmissibility if the Secretary of Homeland Security determines that such a waiver is in the public or national interest.¹ Finally, the BIWPA added a new paragraph (1)(E) to 8 U.S.C. 1367(a) to prohibit adverse determinations of admissibility or deportability and disclosure of information pertaining to an alien seeking U nonimmigrant status, except in certain circumstances. BIWPA sec. 1513(d) (amending section 384(a) of the Illegal Immigration and Immigrant Reform Act (IIRIRA), div. C of the Omnibus Appropriations Act of 1996, Pub. L. 104–208, 110 Stat. 3009 (1996)).

Following passage of the BIWPA in October 2000, USCIS implemented procedures to ensure that those aliens who appeared to be eligible for U nonimmigrant status under the BIWPA would not be removed from the United States until they had an opportunity to apply for such status. See *e.g.*, Memorandum from Michael D. Cronin, Acting Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service (Aug. 30, 2001); Memorandum from William R. Yates, Associate Director of Operations, USCIS, Centralization of Interim Relief for U Nonimmigrant Status Applicants (Oct. 8, 2003) (<http://www.uscis.gov/graphics/services/tempbenefits/antitraf.htm>); Memorandum from William R. Yates, Associate Director of Operations, USCIS, Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status Eligible Aliens in Removal Proceedings (May 6, 2004) (<http://www.uscis.gov/graphics/services/tempbenefits/antitraf.htm>).² Alien victims who may be eligible for U nonimmigrant status were given the opportunity to ask USCIS for interim relief pending the promulgation of implementing regulations. Family members seeking to derive immigration benefits from such aliens were accorded the same treatment. Interim relief provides alien victims with parole, stays of removal, or assessed deferred action, as well as an opportunity to apply for employment authorization.³

¹ Unless waived, a ground of inadmissibility can preclude an alien from receiving nonimmigrant status. 8 CFR 214.1(a)(3). Section 212(a) of the INA, 8 U.S.C. 1182(a), contains a list of the grounds of inadmissibility.

² Copies of these documents are accessible on the public docket for this rulemaking at www.regulations.gov, Docket Number USCIS–2006–0069.

³ Parole is permission given by DHS that allows an alien to physically enter the United States temporarily for urgent humanitarian reasons or

III. Analysis of Requirements and Procedures Under This Interim Rule

To implement the BIWPA and its creation of the U nonimmigrant classification, this interim rule outlines the eligibility and application requirements for the U nonimmigrant classification and the benefits and limitations relating to those granted U nonimmigrant status. Specifically, this interim rule provides definitions of relevant terms contained in the BIWPA and establishes procedures and standards for adjudicating petitions for U nonimmigrant status. It also describes the filing procedures and adjudication standards for applications for the waiver of inadmissibility created by the BIWPA that is available to those seeking U nonimmigrant status. New 8 CFR 212.17. The rule amends 8 CFR 212.1 to include U nonimmigrant status recipients among the nonimmigrant status holders able to seek a waiver of documentary requirements to gain admission to the United States. This rule also amends 8 CFR 248.2 to permit nonimmigrants to change status to that of a U nonimmigrant; 8 CFR 274a.12(a) to add U nonimmigrant status recipients to the list of aliens authorized to accept employment; 8 CFR 274a.13(a) to require an application to be filed for certain U nonimmigrants seeking evidence of employment authorization; 8 CFR 299.1 to prescribe the petition form for U nonimmigrant status; and 8 CFR 103.7 to prescribe the filing fee for U nonimmigrant petitions.

As discussed below, USCIS encourages petitioners and accompanying or following to join family members who have been granted interim relief to file Form I-918 within 180 days of the effective date of this rule. After the effective date of this rule, the interim relief process will no longer be in effect, and USCIS will not consider initial requests for interim relief. After the 180-day time period, USCIS will reevaluate previous grants of deferred action, parole, and stays of removal and terminate such interim relief for those aliens who fail to file

significant public benefit; the entry is not deemed to be an admission to the United States. INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); 8 CFR 212.5. A stay of deportation or removal is an administrative decision to stop temporarily the deportation or removal of an alien who has been ordered deported or removed from the United States. See 8 CFR 241.6; 8 CFR 1241.6. Deferred action is an exercise of prosecutorial discretion that defers the removal of the alien based on the alien's case being made a lower priority for removal. Immigration and Customs Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). Deferred action does not confer any immigration status upon an alien.

Form I-918 within the 180-day time period. However, if the alien has properly filed a Form I-918, but USCIS has not yet adjudicated that petition, interim relief will be extended until USCIS completes its adjudication of Form I-918.

A. Eligibility Requirements for U Nonimmigrant Status

There are four statutory eligibility requirements for U nonimmigrant status, the alien (1) Has suffered physical or mental abuse as a result of having been a victim of certain criminal activity; (2) possesses information concerning such criminal activity; (3) has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the crime; and (4) the criminal activity violated the laws of the United States or occurred in the United States. This section of the **SUPPLEMENTARY INFORMATION** describes each statutory eligibility requirement for U nonimmigrant status and this rule's implementation of each requirement.

1. Victims of Qualifying Criminal Activity Who Have Suffered Physical or Mental Abuse

The first eligibility requirement for U nonimmigrant status is that the alien must have suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. INA sec. 101(a)(15)(U)(i)(I), 8 U.S.C. 1101(a)(15)(U)(i)(I). This interim rule defines the following terms that relate to this eligibility requirement: Victims of qualifying criminal activity, physical or mental abuse, and qualifying crime or qualifying criminal activity. New 8 CFR 214.14(a). These definitions are discussed below.

a. Victims of Qualifying Criminal Activity

The meaning of "victim of qualifying criminal activity" is provided by new 8 CFR 214.14(a)(14). Within this definition, the rule provides for indirect victims of the criminal activities in the case of deceased victims of murder and manslaughter and victims of violent criminal activity who are incapacitated or incompetent. See new 8 CFR 214.14(a)(14)(i). The definition also clarifies how victims of witness tampering, obstruction of justice, and perjury can constitute victims of qualifying criminal activity. See new 8 CFR 214.14(a)(14)(ii). This interim rule also excludes alien victims who are themselves culpable of criminal activity from the definition of victim, subject to certain exceptions. See 8 CFR 214.14(a)(14)(iii).

(i) Direct Victims

This rule generally defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by qualifying criminal activity. 8 CFR 214.14(a)(14). To formulate the general definition, USCIS drew from established definitions of "victim." Federal statutory provisions consistently define "victim" as one who has suffered direct harm or who is directly and proximately harmed as a result of the commission of a crime. See e.g., 42 U.S.C. 10603(c) (relating to terrorism); 18 U.S.C. 3663(a)(2) (relating to restitution); 18 U.S.C. 3771(e) (relating to crime victim rights); Fed. R. Crim. P. 32(a)(2) (defining victim for sentencing purposes); see also *United States v. Terry*, 142 F.3d 702, 710-11 (4th Cir. 1998) (reviewing the possible definitions of "victim"). The Department of Justice's (DOJ's) Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) adopts a similar definition of the term "victim." See Attorney General Guidelines for Victim and Witness Assistance at 9 (May 2005) (<http://www.ojp.usdoj.gov/ovc/publications/welcome.html>). The AG Guidelines serve to guide federal investigative, prosecutorial, and correctional agencies in the treatment of crime victims and, therefore, were viewed by USCIS as an informative resource in the development of this rule's definition of victim.⁴

The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS does not anticipate approving a significant number of applications from bystanders, but will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime. An example of an unusually direct injury suffered by a bystander would be a pregnant

⁴ The AG Guidelines, and some of the aforementioned statutes, also include pecuniary crimes within the scope of qualifying activities. The BIWPA, however, limits the qualification requirements to aliens who suffer substantial physical or mental abuse and did not expressly reference pecuniary crimes. Therefore, pecuniary crimes are not included as qualifying criminal activities for U nonimmigrant status. In addition, the AG Guidelines include business entities in the definition of "victim." USCIS, however, only grants non-immigrant status to individuals, not to business entities and therefore limits the definition of "victim" under this rule to persons.

bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage.

(ii) Indirect Victims

USCIS believes that the U nonimmigrant classification contemplates encompassing certain indirect victims in addition to direct victims. This is because the list of qualifying criminal activity at section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), includes the crimes of murder and manslaughter, the direct targets of which are deceased. The list also includes witness tampering, obstruction of justice, and perjury, which are not crimes against a person. Therefore, this rule extends the definition of victim beyond the direct victim of qualifying criminal activity in certain circumstances. *See* new 8 CFR 214.14(a)(14)(i) & (ii).

The AG Guidelines also cover those persons who are not direct victims of a crime where the direct victim is deceased as a result of the qualifying crime (e.g. murder or manslaughter), incompetent or incapacitated, or under the age of 18. AG Guidelines, at 9. In these situations, the direct victim is not available or sufficiently able to help in an investigation or prosecution of the criminal activity. *Id.* The AG Guidelines list such indirect victims to be a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court. *Id.* Under the AG Guidelines, however, only the first available person on the list is eligible to be considered a victim. *Id.* For instance, the parent of a murder victim is only considered a victim if his or her child is unmarried. The spouse, as the first person on the list, would be deemed the victim.

Drawing from the AG Guidelines in conjunction with the U classification statutory provision describing qualifying family members (section 101(a)(15)(U)(ii) of the INA, 8 U.S.C. 1101(a)(15)(U)(ii)), this rule extends the victim definition to the following list of indirect victims in the case of murder, manslaughter, or incompetent or incapacitated victims: Spouses; children under 21 years of age;⁵ and, if the direct victim is or was under 21 years of age, parents and unmarried siblings under 18 years of age. *See* new 8 CFR 214.14(a)(14)(i). This rule does not extend the victim definition beyond these family members since the U nonimmigrant classification does not apply to other individuals. Unlike the

AG Guidelines, the rule does not restrict the victim definition only to the first available person on the list of indirect victims. USCIS has determined that such a restrictive definition of victim would not adequately serve the purpose behind the U nonimmigrant classification. Family members of murder, manslaughter, incompetent, or incapacitated victims frequently have valuable information regarding the criminal activity that would not otherwise be available to law enforcement officials because the direct victim is deceased, incapacitated, or incompetent. By extending the victim definition to include certain family members of deceased, incapacitated, or incompetent victims, the rule encourages these family members to fully participate in the investigation or prosecution. Extending immigration benefits only to the first available person on the AG Guidelines list could separate families and lead to anomalous results. For example, in the case of a mother who is murdered and leaves behind her husband and young children, extending benefits only to the husband, as the first person on the list, could leave minor children without U nonimmigrant status protection.

USCIS notes, however, that while family members on the list of indirect victims under this rule may apply for U nonimmigrant status in their own right as principal petitioners, there is no requirement that they do so. For example, in the scenario described above of a mother who is murdered and leaves behind a husband and minor children, the husband and minor children could each apply as principal petitioners. In the alternative, the husband could file as a principal petitioner and the children could be included as family members on his petition, as will be discussed later in this Supplementary Information. Likewise, the children potentially could be principal petitioners and their father (the husband of the deceased), could be included as a family member on one of the children's petitions. Family members who are recognized as indirect victims and, therefore, eligible to apply for U nonimmigrant status as principal petitioners must meet all of the eligibility requirements that the direct victim would have had to meet in order to be accorded U nonimmigrant status.

In the case of witness tampering, obstruction of justice, or perjury, the interpretive challenge for USCIS was to determine whom the BIWPA was meant to protect, given that these criminal activities are not targeted against a person. USCIS looked to the purpose of the BIWPA—to encourage cooperation

with criminal investigations and protect vulnerable victims (BIWPA sec. 1502)—and to the federal definitions of the term “victim.” As discussed above, in order to be classified as a victim under Federal law, an individual must suffer direct and proximate harm. Therefore, USCIS considered which categories of people would suffer direct and proximate harm from witness tampering, obstruction of justice, and perjury. USCIS identified one such category as individuals who are harmed when a perpetrator commits one of the three crimes in order to avoid or frustrate the efforts of law enforcement authorities. USCIS identified another such category as individuals who are harmed when the perpetrator uses the legal system to exploit or impose control over them.

Accordingly, this rule provides that a victim of witness tampering, obstruction of justice, or perjury is an alien who has been directly and proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of or undue control over the alien through manipulation of the legal system. New 8 CFR 214.14(a)(14)(ii). In developing this definition, USCIS considered whether or not the criminal activity of witness tampering, obstruction of justice, or perjury must have been committed in relation to one of the other qualifying crimes listed in the statute. However, the text of section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), listing qualifying criminal activity explicitly states that the criminal activity must involve “one or more” of the 27 categories of crimes listed. USCIS reads the phrase “one or more” to mean that each of the crimes listed thereafter may qualify independently. Therefore, this rule does not require such a nexus.

(iii) Culpability of the Victim

This rule excludes a person who is culpable for the qualifying criminal activity being investigated or prosecuted from being deemed a victim. *See* new 8 CFR 214.14(a)(14)(iii). Although the statutory provision at section 101(a)(15)(U)(i) of the INA, 8 U.S.C. 1101(a)(15)(U)(i), describing who qualifies as a U nonimmigrant neither explicitly covers nor explicitly excludes culpable persons, USCIS believes that this exclusion is warranted.

⁵ Qualifying children also must be unmarried. *See* INA sec. 101(b), 8 U.S.C. 1101(b).

This exclusion does not apply to an alien who committed a crime other than the one under investigation or prosecution, even if the crimes are related. For instance, an alien who agrees to be smuggled into the United States, but is then held in involuntary servitude may still be deemed to be a victim of involuntary servitude even though he or she also may be culpable in the smuggling crime and for illegally entering the United States. USCIS has concluded that, while it is reasonable to exclude culpable individuals from being defined as a victim, it is not reasonable to exclude individuals simply based on any criminal activity in which they may have at one time engaged. USCIS notes that this approach of distinguishing between those who are culpable for the qualifying crime and those who are culpable for other crimes is supported by the AG Guidelines. See AG Guidelines, at 10.

b. Physical or Mental Abuse

This rule defines physical or mental abuse to mean injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim. New 8 CFR 214.14(a)(8). In considering how to define the term physical or mental abuse, USCIS examined existing regulations that use similar terms. In particular, USCIS looked to regulations promulgated following the enactment of VAWA 1994 that allow battered spouses and children of U.S. citizens and lawful permanent residents to seek immigration status. See 8 CFR 204.2(c), 216.5(e)(3). These regulations use the terms "battery" and "extreme cruelty" to refer to any act or threatened act of violence that results in physical or mental injury. See 8 CFR 204.2(c)(2)(vi); 8 CFR 216.5(e)(3)(i). Battery and extreme cruelty are terms that the regulations use interchangeably with the term "abuse." See 8 CFR 204.2(c)(1)(vi); (2)(iv); 216.5(e)(3)(i); and 216.5(e)(3)(iii).

The term, "physical or mental abuse," encompasses a wide range of physical or mental harm. Section 101(a)(15)(U)(i)(I) of the INA, 8 U.S.C. 1101(a)(15)(U)(i)(I), which establishes this as a requirement, qualifies "physical or mental abuse" with the term, "substantial." The statutory provision does not make clear, however, whether the standard of "substantial" physical or mental abuse is intended to address the severity of the injury suffered by the victim, or the severity of the abuse inflicted by the perpetrator. USCIS has concluded that it is reasonable to consider both. Rather than define what constitutes abuse that is "substantial," however, USCIS believes that a better approach would be

to make case-by-case determinations, using factors as guidelines.

This rule lists a number of factors USCIS will consider when determining whether the physical or mental abuse at issue qualifies as substantial. New 8 CFR 214.14(b)(1). These factors are: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. Through these factors, USCIS will be able to evaluate the kind and degree of harm suffered by the individual applicant based upon that applicant's individual experience. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial.

USCIS recognizes the possibility that some victims will have a pre-existing physical or mental injury or condition at the time of the abuse. In evaluating whether the harm is substantial, this rule requires USCIS to consider the extent to which any pre-existing conditions were aggravated. *Id.* Some abuse may involve a series of acts or occur repeatedly over a period of time. USCIS will consider the abuse in its totality to determine whether the abuse is substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level. *Id.*

c. Qualifying Criminal Activity

The statutory list of qualifying criminal activity in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), is not a list of specific statutory violations, but instead a list of general categories of criminal activity. It is also a non-exclusive list. Any similar activity to the activities listed may be a qualifying criminal activity. This interim rule adopts the statutory list of criminal activity and further defines what constitutes "any similar activity." See new 8 CFR 214.14(a)(9). The rule provides that for a criminal activity to be deemed similar to one specified on the statutory list, the similarities must be substantial. USCIS bases this definition on the fact that the statutory list of criminal activity is not composed of specific statutory violations. Instead, the criminal activity listed is stated in broad terms. The rule's definition of "any similar activity" takes into account the wide

variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list, while the nature and elements of both criminal activities are comparable. In addition, qualifying criminal activity may occur during the commission of non-qualifying criminal activity. For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity. 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.

2. Possession of Information Concerning the Qualifying Criminal Activity

In passing the BIWPA, Congress wanted to encourage aliens who are victims of criminal activity to report the criminal activity to law enforcement and fully participate in the investigation and prosecution of the perpetrators of such criminal activity. BIWPA sec. 1513(a)(1)(B). The second eligibility requirement for U nonimmigrant status is that the alien must possess information about the qualifying criminal activity of which he or she is a victim. INA sec. 101(a)(15)(U)(i)(II), 8 U.S.C. 1101(a)(15)(U)(i)(II). This rule adopts this statutory requirement at new 8 CFR 214.14(b)(2). Possessing information about a crime of which the alien is not a direct or indirect victim would not satisfy this requirement and, therefore, is not included in the rule.

USCIS will consider an alien victim to possess information concerning qualifying criminal activity of which he or she was a victim if he or she has knowledge of the details (i.e., specific facts) concerning the criminal activity that would assist in the investigation or prosecution of the criminal activity. See new 8 CFR 214.14(b)(2). The findings that Congress expressed in sections 1513(a)(1) and (2) of the BIWPA make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity. USCIS believes that, to give effect to congressional intent, the information that the alien must possess must be related to the crime of which he or she is a victim. If not, the stated purpose of the statute is thwarted. Possession of information concerning

the criminal activity necessarily means that the alien must have knowledge of it.

When the alien victim is under 16 years of age, the statute does not require him or her to possess information regarding the qualifying criminal activity. Rather, the parent, guardian, or next friend of the alien victim may possess that information if the alien victim does not. INA sec. 101(a)(15)(U)(i)(II), 8 U.S.C. 1101(a)(15)(U)(i)(II). This rule reiterates this exception at new 8 CFR 214.14(b)(2). This provision specifies that the age of the alien victim on the day on which an act constituting an element of the qualifying criminal activity first occurred is the applicable age to consider for purposes of establishing whether the exception is triggered. The purpose of the exception is to allow for alternative mechanisms for possessing information when a child is at an age where he or she may be too young to adequately understand and relay traumatic and sensitive information. As such, USCIS believes that the date on which the qualifying criminal activity began is the appropriate date for triggering this exception.

The rule also permits a parent, guardian, or next friend to provide information when the alien victim is incapacitated or incompetent. New 8 CFR 214.14(b)(2). Permitting certain family members or guardians to act in lieu of incapacitated or incompetent victims is supported by the AG Guidelines, at 9.

This rule also defines the term "next friend." New 8 CFR 214.14(a)(7). An individual will qualify as a next friend under this rule if he or she appears in a lawsuit to act for the benefit of an alien who is under the age of 16 or who is incapacitated or incompetent. *See Whitmore v. Arkansas*, 495 U.S. 149, 163-4 (1990) (describing next friend as someone dedicated to the best interests of the individual who cannot appear on his or her own behalf because of inaccessibility, mental incompetence, or other disability). The next friend is not a party to the legal proceeding and is not appointed as a guardian.

3. Helping Law Enforcement in the Investigation or Prosecution of Criminal Activity

The third eligibility requirement for U nonimmigrant status is that the alien victim of qualifying criminal activity (or, in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a government official or authority in the

investigation or prosecution of the qualifying criminal activity. INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III). This requirement is set forth in new 8 CFR 214.14(b)(3), which further provides that the alien victim cannot refuse or fail to provide reasonably requested information and assistance in order to remain eligible for U nonimmigrant status. The rule also provides for alien victims who are incompetent or incapacitated. Additionally, this rule provides that the official or authority receiving the assistance be a "certifying agency," as defined in new 8 CFR 214.14(a)(2).

a. Helpfulness

USCIS 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. USCIS is excluding from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested. New 8 CFR 214.14(b)(3). USCIS believes that the statute imposes an ongoing responsibility on the alien victim to provide assistance, assuming there is an ongoing need for the applicant's assistance. USCIS bases this interpretation on the plain text of the statutory provision that sets forth this requirement. *See* INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III). 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 an investigation. This suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status. If the alien victim only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the BIWPA is not furthered. *See* BIWPA sec. 1513(a)(2).

In addition, in order to qualify for permanent resident status on the basis of the U nonimmigrant classification, the alien must not have unreasonably refused to provide assistance in a criminal investigation or prosecution. INA sec. 245(m)(1), 8 U.S.C. 1255(m)(1). This requirement further suggests an

ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status.

An exception to the helpfulness requirement applies to alien victims who are under 16 years of age. Such alien victims can satisfy the helpfulness requirement if their parent, guardian, or next friend provides the required assistance. INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(III). This exception is the same exception applicable to the previous requirement that the alien victim possess information regarding the criminal activity. *See* new 8 CFR 214.14(b)(2). This rule reiterates the exception with respect to the helpfulness requirement at new 8 CFR 214.14(b)(3). The provision specifies that the age of the victim on the day on which an act constituting an element of the qualifying criminal activity first occurred is the applicable age to consider for purposes of establishing whether the exception is triggered. New 8 CFR 214.14(b)(3). It also extends the exception to individuals who are incapacitated or incompetent and allows a parent, guardian, or next friend to be helpful in those instances. *Id.*

b. Certifying Agency

This rule requires that the assistance in the investigation or prosecution of qualifying criminal activity be provided to a "certifying agency." As discussed later in this Supplementary Information, an alien victim must include a certification from such agency in support of his or her request for U nonimmigrant status. INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1).

A "certifying agency" is one of the government officials and entities identified in the statute that is investigating or prosecuting qualifying criminal activity. INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III). The rule defines a "certifying agency" as a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of the qualifying criminal activities designated in the BIWPA. New 8 CFR 214.14(a)(2). This includes traditional law enforcement branches within the criminal justice system. However, USCIS also recognizes that other agencies, such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor, have criminal investigative jurisdiction in their respective areas of expertise. The rule specifies these agencies. *See id.*

The rule provides that the term “investigation or prosecution,” used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity. New 8 CFR 214.14(a)(5). Referring to the AG Guidelines, USCIS is defining the term to include the detection of qualifying criminal activity because the detection of criminal activity is within the scope of a law enforcement officer’s investigative duties. AG Guidelines, at 22–23. Also referring to the AG Guidelines, USCIS is defining the term to include the conviction and sentencing of the perpetrator because these extend from the prosecution. *Id.* at 26–27. Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications. INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1). Judges neither investigate crimes nor prosecute perpetrators. Therefore, USCIS believes that the term “investigation or prosecution” should be interpreted broadly as in the AG Guidelines.

4. Criminal Activity That Violated U.S. Law or Occurred in the United States

The fourth requirement for U nonimmigrant classification is that the qualifying criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States. INA 101(a)(15)(U)(i)(IV), 8 U.S.C. 1101(a)(15)(U)(i)(IV). This requirement is adopted in new 8 CFR 214.14(b)(4).

The term United States is defined in section 101(a)(38) of the INA, 8 U.S.C. 1101(a)(38), to mean the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands. The BIWPA does not define the term “Indian country,” but for purposes of this rule, USCIS is adopting the definition contained in 18 U.S.C. 1151. Under this rule, “Indian country” means all land within the limits of any Indian reservation under the jurisdiction of the United States, all dependent Indian communities within the borders of the United States, and all Indian allotments. New 8 CFR 214.14(a)(4). Although 18 U.S.C. 1151 is a criminal jurisdiction statute, tribal and federal courts have applied this statutory definition to both criminal and civil matters. *See California v. Cabazon*

Band of Mission Indians, 480 U.S. 202, 208 n.5 (1996).

Similarly, the term “military installation” is not defined in the BIWPA. This rule defines that term as meaning any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, or any location under military control, including any leased facility. New 8 CFR 214.14(a)(6). To develop this definition, USCIS looked to other statutory definitions of the term. *See, e.g.*, 10 U.S.C. 2687(e) (defining the term in the context of base closures and realignments); 10 U.S.C. 2801(c)(2) (relating to military construction). A review of the federal case law reveals that this is a nebulous concept with no absolute definition. *United States v. Buske*, 2 M.J. 465, 467 (A.C.M.R. 1975). In order to realize the purpose of the U nonimmigrant classification, to facilitate criminal investigations and prosecutions, USCIS interpreted the term broadly to encompass a wide range of military locations.

New 8 CFR 214.14(a)(11) defines the term “territories and possessions of the United States” to mean American Samoa, Swains Island, 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. This definition is based on current information that the Department of Interior provided to USCIS. Although Guam, Puerto Rico, and the U.S. Virgin Islands are also considered territories or possessions of the United States, USCIS has not included them in this regulatory definition because they are already incorporated into the INA definition of United States. *See* INA sec. 101(a)(38), 8 U.S.C. 1101(a)(38).

Section 101(a)(15)(U)(i)(IV) of the INA, 8 U.S.C. 1101(a)(15)(U)(i)(IV), requires that the criminal activity either violated the laws of the United States or occurred in the United States. USCIS does not believe that this distinction is based on which laws are violated—U.S. laws or foreign laws—because elsewhere in the statute, qualifying criminal activity is defined as criminal activity that is “in violation of Federal, State, or local criminal law.” *See* INA sec. 101(a)(15)(U)(iii), 8 U.S.C. 1101(a)(15)(U)(iii). Instead, USCIS believes that the distinction refers to where the violation occurred, whether inside or outside the United States. Accordingly, USCIS interprets the phrase, “occurred in the United States,” to mean qualifying criminal activity that occurred in the United States that is in

violation of U.S. law. USCIS interprets the phrase, “violated the laws of the United States,” as referring to criminal activity that occurred outside the United States that is in violation of U.S. law.

This rule provides that criminal activity that has occurred outside of the United States, but that fits within a type of criminal activity listed in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), will constitute a qualifying criminal activity if it violates a federal statute that specifically provides for extraterritorial jurisdiction. *See* new 8 CFR 214.14(b)(4). Such criminal activity will have “violated the laws of the United States.” Congress has enacted a variety of statutes governing criminal activity occurring outside the territorial limits of the United States. These statutes establish extraterritorial and federal, criminal jurisdiction. Statutes establishing extraterritorial jurisdiction generally require some nexus between the criminal activity and U.S. interests. For example, pursuant to 18 U.S.C. 2423(c), the United States has jurisdiction to investigate and prosecute cases involving U.S. citizens or nationals who engage in illicit sexual conduct outside the United States, such as sexually abusing a minor. *See also* 18 U.S.C. 32 (destruction of an aircraft); 15 U.S.C. 1 (extraterritorial application of the Sherman Act governing antitrust laws).

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). Prosecution may be impossible due to a number of factors, such as an inability to extradite the defendant.

B. Application Process

By statute, the petition for U nonimmigrant status must be filed by the alien victim and contain a certification of helpfulness from a certifying agency. *See* INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1). Based upon these statutory requirements, this rule designates the form that petitioners must use to request U nonimmigrant status and describes the evidence that must accompany the form, including the certification of helpfulness. The rule also sets forth filing requirements and procedures. This section of the **SUPPLEMENTARY INFORMATION** discusses these requirements, as well as eligibility and filing requirements for those qualifying family members of the alien victim who also are seeking U nonimmigrant status.

1. Filing the Petition To Request U Nonimmigrant Status

This interim rule designates Form I-918, "Petition for U Nonimmigrant Status," as the form an alien victim must use to request U nonimmigrant status. See New 8 CFR 214.14(c)(1). This provision also requires petitioners to follow the instructions to Form I-918 for proper completion and accompany Form I-918 with initial evidence and the correct fee(s).⁶ Form I-918 requests information regarding the applicant's eligibility for U nonimmigrant status and admissibility to the United States. Jurisdiction over all petitions for U nonimmigrant status rests with USCIS. The instructions to Form I-918 specify where petitioners must file (by mail) their application package. At present, USCIS has centralized the adjudication process for Forms I-918 at its Vermont Service Center. This centralization will allow adjudicators to develop expertise in handling U nonimmigrant petitions and provide for uniformity in the adjudication of these petitions.

The rule addresses several special considerations that may affect certain petitioners seeking to file Form I-918: Filing petitions from outside the United States; the effect of a petition on interim relief; petitioners subject to grounds of inadmissibility; petitioners in removal proceedings or subject to a final order of exclusion, deportation, or removal; changing nonimmigrant classifications; and the effect of a petition on other immigration benefits. These considerations are discussed below.

a. Alien Victims of Qualifying Criminal Activity Filing Form I-918 From Outside the United States

This interim rule does not require petitioners to file Form I-918 from within the United States. USCIS has determined that the statutory framework for U nonimmigrant status permits alien victims of qualifying criminal activity to apply for U nonimmigrant status classification from either inside or outside the United States. For example, the statute does not require petitioners to be physically present in the United States to qualify for U nonimmigrant status. By contrast, other nonimmigrant classifications, such as the T nonimmigrant classification (INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T)), explicitly require an alien's physical presence in the United States as a condition of eligibility. Moreover, under section 101(a)(15)(U)(i)(IV) of the INA, 8 U.S.C. 1101(a)(15)(U)(i)(IV), qualifying

criminal activity may occur outside the territorial jurisdiction of the United States under certain circumstances. USCIS recognizes that for qualifying criminal activity that occurred outside the United States, the investigation may take place either outside or inside the United States. The alien victim may be needed in the United States to assist the certifying agency in its investigation or subsequent prosecution of the criminal activity. Allowing alien victims to submit petitions from outside the United States provides the certifying agency with the necessary flexibility to further the investigation or prosecution.

To apply from outside the United States, petitioners must submit a complete application package for U nonimmigrant status to the USCIS location specified in the form instructions.

b. Petitioners With Interim Relief From Removal

This rule does not impose a deadline for submission of U nonimmigrant status petitions. However, USCIS encourages petitioners and accompanying or following to join family members who were granted interim relief to file Form I-918 within 180 days of the effective date of this rule. After the effective date of this rule, the interim relief process will no longer be in effect, and USCIS will not consider initial requests for interim relief. After the 180-day time period following the effective date of the rule, USCIS will reevaluate previous grants of deferred action, parole, and stays of removal and terminate such interim relief for those aliens who fail to file Form I-918 within the 180-day time period. However, if the alien has properly filed a Form I-918, but USCIS has not yet adjudicated that petition, interim relief will be extended until USCIS completes its adjudication of Form I-918. USCIS believes that 180 days provides an interim relief recipient a sufficient period of time within which to file and perfect a U nonimmigrant petition, taking into account the time it may take for individuals to learn of this rule and put together a complete package requesting U nonimmigrant status.

c. Petitioners Who Are Inadmissible

To be eligible for U nonimmigrant status, the alien requesting status must be admissible to the United States. 8 CFR 214.1(a)(3)(i); see also INA sec. 214(a)(1), 8 U.S.C. 1184(a)(1). Therefore, those who are inadmissible to the United States, or who become inadmissible for conduct that occurs while their petition for U nonimmigrant

status is pending, will not be eligible for U nonimmigrant status unless the ground of inadmissibility is waived by USCIS. See INA sec. 212(a), 8 U.S.C. 1182(a) (grounds of inadmissibility). USCIS has general authority to waive many grounds of inadmissibility for nonimmigrants and may prescribe conditions on their temporary admission to the United States. See INA sec. 212(d)(3)(B), 8 U.S.C. 1182(d)(3)(B).

In addition, the BIWPA created a waiver specific to U nonimmigrant status. Under this waiver, the Secretary of Homeland Security has the discretion to waive any ground of inadmissibility with respect to applicants for U nonimmigrant status, except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings. INA sec. 212(d)(14), 8 U.S.C. 1182(d)(14). However, the Secretary of Homeland Security first must determine that such a waiver would be in the public or national interest. *Id.*

It is important to note that the determination that a waiver would be in the public or national interest and the decision to grant a waiver are made at the discretion of the Secretary. In the immigrant context, the Board of Immigration Appeals has held that, in assessing whether an applicant has met the burden that a waiver is warranted in the exercise of discretion, the adjudicator must balance adverse factors evidencing inadmissibility as a lawful permanent resident with the social and humane considerations presented to determine if the grant of the waiver appears to be in the best interests of the United States. *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996). More recently, in the context of a case involving a waiver of a criminal ground of inadmissibility under section 209(c) of the Act, the Attorney General determined that favorable discretion should not be exercised for waivers under section 212(h) of the Act involving violent or dangerous crimes, except in extraordinary circumstances. *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

In view of these considerations, this rule provides a general rule that DHS will only exercise favorable discretion in U nonimmigrant status cases in which a waiver for violent or dangerous crimes or the security and related grounds under section 212(a)(3) of the Act is requested, in extraordinary circumstances. Moreover, depending on the nature and severity of the underlying offense/s to be waived, the Secretary retains the discretion to determine that the mere existence of

⁶ A fee waiver is available for the Form I-918 filing fee. Fee waivers are governed by 8 CFR 103.7(c).

extraordinary circumstances is insufficient.

Additionally, this rule provides that the Secretary will not exercise discretion under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), to waive the ground of inadmissibility under section 212(a)(3)(E) applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings. New 8 CFR 212.17(b). Because Congress determined not to make a waiver available for this ground of inadmissibility in the waiver provision created for U nonimmigrant applicants at section 212(d)(14) of the Act, DHS has determined that it would not be logical to allow these applicants to be eligible for a waiver of this ground of inadmissibility under section 212(d)(3) of the Act.

To apply for a waiver of inadmissibility, a petitioner must file Form I-192, "Application for Advance Permission to Enter as Nonimmigrant," with USCIS. New 8 CFR 212.17(a); new 8 CFR 214.14(c)(2)(iv). USCIS will evaluate the application to determine whether it is in the public or national interest to exercise discretion to waive the applicable ground(s) of inadmissibility. New 8 CFR 212.17(b)(1). As with inadmissibility waiver applications for other nonimmigrant classifications, there is no appeal of a decision to deny Form I-192. New 212.17(b)(2); see also 8 CFR 212.4(a)(1). This rule also provides that an applicant whose waiver application is denied is not prevented from re-filing a request for a waiver. New 8 CFR 212.17(b)(2). This is to allow those petitioners whose Forms I-918 and concurrently filed Forms I-192 are denied an opportunity to have a subsequently filed Form I-192 considered in the context of other immigration benefits.

USCIS has determined that implicit in its discretionary authority to grant a waiver is the authority to determine the conditions under which a waiver is granted, including revocation of previously granted waiver. Therefore, this interim rule establishes USCIS' authority to revoke its approval of a waiver of inadmissibility that was previously granted. The decision to revoke a waiver is not appealable. New 8 CFR 212.17(c).

d. **Petitioners Who Are in Removal, Deportation, or Exclusion Proceedings or Who Are Subject to a Final Order of Removal, Deportation, or Exclusion**

Aliens who are in removal proceedings under section 240 of the INA, 8 U.S.C. 1229a, or in deportation or exclusion proceedings under former

sections 242 and 236 of the INA, 8 U.S.C. 1252, 1226 (as in effect before April 1, 1997), or who are the subject of a final order of removal, deportation, or exclusion, may be eligible for U nonimmigrant status.⁷ Because jurisdiction over U nonimmigrant petitions rests solely with USCIS, aliens who are in removal proceedings or who are subject to a final removal order nevertheless must file their petition for U nonimmigrant status directly with USCIS. Filing a petition for U nonimmigrant status will not affect the proceedings or the order. However, in instances in which the U nonimmigrant status petitioner or a derivative family member of the petitioner listed on the Form I-918 is in removal, deportation, or exclusion proceedings before the Immigration Court or has a matter pending before the Board of Immigration Appeals (Board),⁸ this rule provides that the alien may seek the agreement of DHS' Bureau of Immigration and Customs Enforcement (ICE)⁹ to file a joint motion to terminate the proceedings without prejudice while a petition for U nonimmigrant status is being adjudicated by USCIS.¹⁰ New 8 CFR 214.14(c)(1)(i) and (f)(2)(i). The

⁷ An order of deportation is an order issued prior to April 1, 1997, in deportation proceedings, to an alien physically present in the United States requiring the alien to leave the United States. See INA sec. 242B, 8 U.S.C. 1252b (1996) *repealed by* IIRIRA, Pub. L. 104-208, div. C, sec. 308(b)(6), 110 Stat. 3009, 3615 (effective April 1, 1997). An order of exclusion is an order issued prior to April 1, 1997, in exclusion proceedings, that refuses the admission to the United States of an alien who is physically outside the United States (or who is treated as being so). See generally INA sec. 236, 8 U.S.C. 1226 (1996) (amended by IIRIRA sec. 303(a), 110 Stat. at 3585). Since April 1, 1997, there has been one unified removal process for persons formerly subject to deportation and exclusion proceedings; this process may result in the issuance of a removal order by either DHS or an immigration judge. INA sec. 240(a)(3), 8 U.S.C. 1229a(a)(3) (added by IIRIRA sections 304(a)(3) & 309(d)(2), 110 Stat. at 3587-3589, 3627). During proceedings, DHS or an immigration judge makes a determination regarding whether an alien is removable from the United States. INA sec. 240(c)(1), 8 U.S.C. 1229a(c)(1). If such a determination is made, a removal order is issued ordering the alien to leave the United States. INA sec. 240(c)(5), 8 U.S.C. 1229a(c)(5). The alien must leave the United States on his or her own, or will be returned to his or her country of origin (or in some cases to a third country that agrees to accept that person) by the United States. See INA sections 240B & 241, 8 U.S.C. 1229c & 1231.

⁸ The Immigration Court and Board of Immigration Appeals are within the Department of Justice's Executive Office for Immigration Review. See 8 CFR 1003.0(a).

⁹ ICE counsel are authorized to represent DHS in Immigration Court and before the Board. See 6 U.S.C. 252(c); DHS Delegation No. 7030.2, para. 2(C).

¹⁰ While this rule specifically addresses joint motions to terminate, it does not preclude the parties from requesting a continuance of the proceeding.

joint motion to terminate must be filed with the Immigration Court or the Board, whichever has jurisdiction. *Id.* The agreement to pursue termination of the pending proceedings lies within the sole prosecutorial discretion of ICE. DHS is including a specific provision on motions to terminate in this rule to identify a mechanism that conserves prosecutorial resources with respect to a class of aliens who are providing assistance in investigating and prosecuting criminal activity.

This rule further provides that if proceedings are terminated, and USCIS subsequently denies the petition for U nonimmigrant status, DHS may file a new Notice to Appear¹¹ to place the individual into proceedings again. New 8 CFR 214.14(c)(5)(ii) and (f)(6)(iii).

With respect to petitioners who are the subject of an administrative final order, this rule provides that they are not precluded from filing a petition for U nonimmigrant status directly with USCIS. New 8 CFR 214.14(c)(1)(ii) and (f)(2)(ii). However, the filing of a petition for U nonimmigrant status has no effect on ICE's authority to execute a final order. Therefore, those aliens subject to a final order of removal, deportation, or exclusion who are physically present in the United States should apply separately for a discretionary stay of removal if they wish to remain in the United States while their petition is pending with USCIS. To do so, such aliens must file Form I-246, "Application for Stay of Removal," as provided in 8 CFR 241.6(a) and 8 CFR 1241.6(a). For those petitioners who are subject to a final order of removal and are detained in ICE's custody while USCIS adjudicates their petition, rules of detention still apply. Under the post-order detention rules, an alien who has been subject to post-order detention for more than six months (dating from the beginning of the removal period as described in INA § 241(a)(1)) may request release from detention. See 8 CFR 241.13. If, after six months of post-order detention, the alien can provide "good reason to believe there is no significant likelihood of removal * * * in the reasonably foreseeable future," the alien, with certain exceptions, will be released on an order of supervision. 8 CFR 241.13(a); see *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Clark v. Martinez*, 543 U.S. 371, 386 (2005). However, under this rule, the time during which a stay of removal is in effect will extend

¹¹ Removal proceedings are initiated when an alien is provided notice of proceedings through the service of a Notice to Appear. The contents of the Notice to Appear are prescribed in section 239(a)(1) of the Act.

the period of detention reasonably necessary to bring about the petitioner's eventual removal. New 8 CFR 214.14(c)(1)(ii) and (f)(2)(ii). As the petitioner has, of his or her own choosing, requested that his or her removal be stayed, the reasonably necessary period for removal justifiably is extended. ICE will have a full and fair period to effect removal if USCIS denies the petition. See 8 CFR 241.4.

If USCIS grants the petition for U nonimmigrant status, an order of exclusion, deportation, or removal issued by the Secretary will be canceled by operation of law as of the date of the grant. New 8 CFR 214.14(c)(5)(i) & (f)(6). However, if USCIS subsequently revokes approval of the petition, DHS may place the petitioner in removal proceedings. In cases where an order of exclusion, deportation, or removal was issued by an immigration judge or the Board, the alien may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23. *Id.*

e. Aliens Seeking Change of Nonimmigrant Classification

Aliens who currently are in a nonimmigrant status may seek to change their classification to the U nonimmigrant classification. Section 248 of the INA, 8 U.S.C. 1258, and implementing regulations at 8 CFR 248 govern change of nonimmigrant classification. These provisions permit nonimmigrants to change status to another nonimmigrant classification, unless they fall within certain nonimmigrant classifications. INA sec. 248(a)(1)–(4), 8 U.S.C. 1258(a)(1)–(4); 8 CFR 248.2. For example, aliens classified under sections 101(a)(15)(C), (D), (K), or (S) of the INA, 8 U.S.C. 1101(a)(15)(C), (D), (K), or (S), as well as certain aliens classified under section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), may not change nonimmigrant status. VAWA 2005 amended section 248 of the INA, 8 U.S.C. 1258, so that even aliens within the excepted classifications may seek a change of nonimmigrant status if the status sought is U nonimmigrant status. INA sec. 248(b), 8 U.S.C. 1258(b). This rule adopts this statutory amendment in revised 8 CFR 248.2(b) and makes structural modifications to 8 CFR 248.2 to accommodate the revisions. The rule also clarifies that the procedures for applying for U nonimmigrant status, even when changing nonimmigrant

status, are contained in new 8 CFR 214. Revised 8 CFR 248.1(a).

f. Aliens Seeking Other Immigration Benefits

Aliens seeking U nonimmigrant status are free to seek any other immigration benefit or status for which they are eligible. INA sec. 214(p)(5), 8 U.S.C. 1184(p)(5). Therefore, nothing in this rule limits a qualified petitioner from applying for U nonimmigrant status as well as other immigration benefits, including immigrant status. However, USCIS will only grant one nonimmigrant or immigrant status at a time. Where multiple applications or petitions are filed and pending at the same time, USCIS will grant the status for the application or petition that is approved first. USCIS will deny any remaining petitions or applications for status.

2. Initial Evidence

This rule requires petitioners filing Form I–918 to accompany the petition with supporting documentation, or “initial evidence,” in order for USCIS to consider the request for U nonimmigrant status complete. New 8 CFR 214.14(c)(1). If all required initial evidence is not submitted with the petition or does not demonstrate eligibility, USCIS, in its discretion, may deny the application for lack of initial evidence or for ineligibility, or request that the missing or insufficient initial evidence be submitted within a specified period of time as determined by USCIS. 8 CFR 103.2(b)(8)(ii). This rule provides the following list of required initial evidence:

- Form I–918, Supplement B, “U Nonimmigrant Status Certification,” properly and timely executed;
- Any additional evidence the petitioner wants USCIS to consider to establish further that:
 - The petitioner is a victim of qualifying activity;
 - The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;
 - The petitioner possesses information concerning the qualifying criminal activity of which he or she was a victim;
 - The petitioner has been, is being, or is likely to be helpful to a certifying agency;
 - The criminal activity is qualifying and occurred in the United States, including in Indian country and military installations, or the territories and possessions of the United States, or violated a U.S. federal law that provides for extraterritorial

jurisdiction to prosecute the offense in a U.S. Federal court;

- A statement by the petitioner describing the facts of the victimization; and
- If the petitioner is inadmissible, Form I–192, “Application for Advance Permission to Enter as Non-Immigrant.” New 8 CFR 214.14(c)(2).

a. U Nonimmigrant Status Certification

This rule designates Form I–918, Supplement B, “U Nonimmigrant Status Certification,” as the form that petitioners must obtain from a certifying official of a certifying agency. New 8 CFR 214.14(c)(2)(i). Form I–918, Supplement B must be prepared by the certifying agency conducting an investigation or prosecution of the qualifying criminal activity in accordance with the instructions to the form, and must have been signed by the certifying official within the six months immediately preceding the submission of Form I–918. *Id.* USCIS is setting a six-month requirement to seek a balance between encouraging the filing of petitions and preventing the submission of stale certifications. USCIS believes that this requirement provides petitioners enough time to prepare the necessary paperwork for the petition package, while also precluding the situation where petitioners delay filing the package until some time after the certification is signed, and they cease to be helpful to the certifying agency. If a petitioner requested and received interim relief prior to the effective date of this rule, USCIS will consider the evidence submitted to meet the certification requirements for interim relief purposes in lieu of Form I–918, Supplement B. New 8 CFR 214.14(c)(1).

This rule defines “certifying official” as the head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or a Federal, State, or local judge. New 8 CFR 214.14(a)(3). USCIS believes that this definition is reasonable and necessary to ensure the reliability of certifications. It also should encourage certifying agencies to develop internal policies and procedures so that certifications are properly vetted.

Under this rule, the certifying official must affirm the following in the certification: (1) That the person signing the certificate is the head of the certifying agency or person(s) in a supervisory role who has been specifically designated with the authority to issue U nonimmigrant

status certifications on behalf of that agency, or a Federal, State, or local judge; (2) that the agency is a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; (3) that the petitioner has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; (5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories and possessions, Indian country, or at military installations abroad. New 8 CFR 214.14(c)(2)(i). The certification also should provide relevant, specific details about the nature of the crime being investigated or prosecuted and describe, in detail, the petitioner's helpfulness to the case.

USCIS developed the requirements for Form I-918, Supplement B based upon the eligibility requirements petitioners must meet and the purposes for which the certification will be used. USCIS determined that since the certifying agency is the primary point of contact between the petitioner and the criminal justice system, the certifying agency is in the best position to verify certain factual information. In addition, USCIS does not believe that petitioners are in the best position to know the specific violation of U.S. law the certifying agency is investigating or prosecuting, or what specific statute provides the certifying agency with the extraterritorial jurisdiction to investigate or prosecute criminal activity that occurred outside the United States. Therefore, USCIS determined that information regarding the eligibility requirements should be addressed by the certifying agency on Form I-918, Supplement B. USCIS will use Form I-918, Supplement B in the course of adjudicating whether the eligibility requirements have been met.

b. Additional Evidence To Satisfy the Eligibility Requirements

While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusive evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine

whether a petitioner meets the eligibility requirements as established and defined in this rule. In addition to Form I-918, Supplement B, this interim rule permits the petitioner to provide any additional evidence that is relevant and credible to help demonstrate that the petitioner meets each of the eligibility requirements. New 8 CFR 214.14(c)(2)(ii) and (iii). For petitioners with interim relief, USCIS will consider evidence previously submitted with the request for interim relief as part of the petition package. Petitioners with interim relief may file additional evidence with Form I-918 to supplement this previously submitted evidence. New 8 CFR 214.14(c)(1).

Evidence to further establish that the petitioner is a victim of qualifying criminal activity may include: trial transcripts, court documents, news articles, police reports, orders of protection, and affidavits of other witnesses, such as medical personnel.

Evidence to further establish the nature of the abuse suffered may include such documentation as reports and affidavits from police, judges, other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Petitioners who have obtained an order of protection against the perpetrator or taken other legal steps to protect themselves against the perpetrator should submit copies of the relating legal documents. A combination of documents such as a photograph of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity may be relevant as well.

Evidence to further establish that the petitioner possesses information about the qualifying criminal activity may include documents establishing that he or she has knowledge of the details of the criminal activity. Examples of relevant evidence include: reports and affidavits from police, judges, and other court officials. In cases where the petitioner is a child under the age of 16, or is incapacitated or incompetent, this requirement can be satisfied by the parent, guardian, or next friend submitting the necessary evidence on behalf of the petitioner. Such person must provide evidence of his or her qualifying relationship to the petitioner and evidence establishing the age, incapacity, or incompetence of the petitioner. Examples of such evidence include: birth certificates, court documents demonstrating recognition of an individual as the petitioner's next friend, medical records, or reports of licensed medical professionals

demonstrating the incapacity or incompetence of the applicant.

Evidence to further establish that the petitioner has provided the necessary assistance in the investigation or prosecution of qualifying criminal activity may include such documentation as: Trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits of other witnesses or officials. If USCIS has reason to believe that there is a question about the petitioner's helpfulness to, or continuing cooperation with, the investigation or prosecution, USCIS may contact the certifying official for further explanation. In cases where the petitioner is a child under the age of 16 or is incapacitated or incompetent, this requirement can be satisfied by the parent, guardian, or next friend submitting the necessary evidence on behalf of the petitioner. Such person must provide evidence of their qualifying relationship to the petitioner and evidence that the petitioner is a child under the age of 16, incapacitated, or incompetent. Evidence that was submitted to satisfy the possession of information requirement will satisfy this requirement and need not be submitted twice.

Examples of evidence to further establish that the criminal activity is qualifying and violated U.S. law or occurred in the United States include: A copy of the statutory provision(s) showing the elements of the offense or factual information about the crime demonstrating that it is similar to the list of qualifying criminal activity contained in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii). If the criminal activity occurred outside the United States, the additional evidence submitted may include a copy of the statutory provision(s) providing for the extraterritorial jurisdiction and documentation showing that the criminal activity violated federal law and is prosecutable in a federal court.

c. Statement by the Petitioner

In support of Form I-918, this rule requires the petitioner to submit a separate statement describing the facts of his or her victimization. 8 CFR 214.14(c)(2)(iii). USCIS is requiring that the petitioner submit a statement because USCIS believes that it is important to learn about the facts of the victimization from the petitioner in his or her own words. This statement should include the following information: The nature of the criminal activity, when the criminal activity occurred, who was responsible, the

events surrounding the criminal activity, how the criminal activity came to be investigated or prosecuted, and what substantial physical and/or mental abuse was suffered as a result of having been the victim of the criminal activity. The statement also may include information supporting any of the other eligibility requirements.

When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend must submit a statement in lieu of the petitioner that contains as much information surrounding the criminal activity and physical and/or mental abuse as possible.

d. Petitioners Who Are Inadmissible

As stated earlier in this Supplementary Information, this rule requires petitioners seeking a waiver of inadmissibility to file Form I-192, "Application for Advance Permission to Enter as Nonimmigrant." New 8 CFR 212.17(a). USCIS has listed the Form I-192 in this rule as initial evidence which must be filed concurrently with Form I-918, along with a separate filing fee. New 8 CFR 214.14(c)(2)(iv). Form I-192 is an established form to waive grounds of inadmissibility for aliens seeking immigration benefits. *See, e.g.*, 8 CFR 212.4 (general authority for waivers in nonimmigrant cases); 8 CFR 212.16 (providing for use of Form I-192 in T nonimmigrant status cases).

3. Derivative Family Members

Section 101(a)(15)(U)(ii) of the INA, 8 U.S.C. 1101(a)(15)(U)(ii), permits certain family members accompanying or following to join the alien victim to obtain U nonimmigrant status, regardless of whether or not they are in the United States or overseas. USCIS refers to such family members as derivatives, and the alien victim as the principal. Which family members are considered "qualifying" depends on the age of the principal. If the principal is under 21 years of age, qualifying family members include the principal's spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal's petition), and parents. INA sec. 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I). If the principal is 21 years of age or older, qualifying family members include the spouse and children of the principal. INA sec. 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II). This rule provides the eligibility requirements and petition procedures for qualifying family members seeking derivative status. *See* new 8 CFR 214.14(f).

a. Eligibility

New 8 CFR 214.14(f)(1) sets forth two eligibility requirements for derivative U nonimmigrant status. First, the alien must be a qualifying family member. New 8 CFR 214.14(f)(1)(i). Second, the alien must be admissible to the United States. New 8 CFR 214.14(f)(1)(ii); *see also* INA sec. 214(a)(1), 8 U.S.C. 1184(a)(1); 8 CFR 214.1(a)(3)(i).

Generally, in order to be considered a qualifying family member, the relationship between the principal petitioner and the family member must exist at the time Form I-918 was filed. New 8 CFR 214.14(f)(4). The relationship must continue to exist at the time the petition for derivative status is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States. *Id.* Otherwise, the family member would not meet section 101(a)(15)(U)(ii) of the INA, 8 U.S.C. 1101(a)(15)(U)(ii), describing who qualifies as a family member.

Note that parents are only considered qualifying family members if the principal is under 21 years of age and a "child." New 8 CFR 214.14(f)(1). Although the statutory language at section 101(a)(15)(U)(ii), 8 U.S.C. 1101(a)(15)(U)(ii), naming parents as qualifying family members does not specify that the principal must be a child under the age of 21 for the parents to qualify, USCIS believes that this qualification is required by section 101(b)(2) of the INA, 8 U.S.C. 1101(b)(2). This provision defines the term, "child," as an unmarried person under 21 years of age. INA sections 101(b)(1), 8 U.S.C. 1101(b)(1).

A special rule applies to unmarried siblings under age 18 of petitioners who are under 21 years of age. For such siblings, the statute provides that the siblings' age on the date that Form I-918 is filed is controlling. INA sec. 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I). Therefore, in new 8 CFR 214.14(f)(4)(ii), if the principal petitioner was under 21 years of age, and requested U nonimmigrant status for an unmarried sibling under the age of 18 at the time Form I-918 was filed, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status at the time of adjudication even if circumstances change. This rule also provides that children born to the principal petitioner after Form I-918 has been filed will be eligible for derivative U nonimmigrant status. New 8 CFR 214.14(f)(4)(i).

This rule excludes certain qualifying family members from eligibility. Section

204(a)(1)(L) of the INA, 8 U.S.C. 1154(a)(1)(L), prohibits an alien victim 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. The rule incorporates this prohibition at new 8 CFR 214.14(f)(1). USCIS has interpreted the prohibition as applying to qualifying family members who committed qualifying criminal activity in a family violence or trafficking context. In making this determination, USCIS considered the plain text of section 204(a)(1)(L) of the INA, 8 U.S.C. 1154(a)(1)(L), and found it to be unclear regarding its intended application. In addition to trafficking, the statute lists battery and extreme cruelty as disqualifying activity even though those terms are not listed as qualifying criminal activity in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), and are not included in the standard of harm necessary to establish eligibility for U nonimmigrant status. However, when the terms battery or extreme cruelty are used in other contexts in the INA, they are used to refer to harm occurring as a result of domestic violence or child abuse. *See* INA sections 204(a)(1)(A) & (B), 216(c)(4)(C), 240A(b)(2), 8 U.S.C. 1154(a)(1)(A) & (B), 1186(c)(4)(C), 1229b. USCIS believes it is reasonable to conclude that by using these terms, Congress intended to prohibit approval of petitions for U nonimmigrant status where the petition is based on qualifying criminal activity for which the qualifying family member is responsible that occurred in a family violence or trafficking context.

b. Filing Procedures

This rule requires that a principal petitioner for U nonimmigrant status or a principal alien who has been granted U nonimmigrant status must petition for derivative status on behalf of qualifying family members by submitting a Form I-918, Supplement A, "Petition for Qualifying Family Member of U-1 Recipient," for each qualifying family member. New 8 CFR 214.14(f)(2). Principal petitioners can file Form I-918, Supplement A either at the same time or after filing his or her Form I-918. *Id.* Principal aliens who have already received U nonimmigrant status may file Form I-918, Supplement A at any time while maintaining U nonimmigrant status. *Id.* This provides principals with maximum flexibility to request derivative status for qualifying family members.

This rule further requires that Form I-918, Supplement A must be accompanied by supporting evidence ("initial evidence") and the fees required by the instructions to the form. *Id.* If the principal petitioner files Form I-918, Supplement A while his or her Form I-918 is pending adjudication with USCIS, the principal petitioner must accompany Form I-918, Supplement A with a copy of his or her Form I-918. *Id.* If the principal already has been granted U nonimmigrant status, then he or she must accompany Form I-918, Supplement A with a copy of the Form I-94 he or she received when the Form I-918 was approved. *Id.* This will be considered evidence of the principal's U nonimmigrant status. Requiring evidence of the principal's pending petition or status will enable USCIS to match up the derivative petition with the principal's petition.

New 8 CFR 214.14(f)(3) sets forth the initial evidence that must accompany each Form I-918, Supplement A: (1) Evidence of the family member's qualifying relationship with the principal; and (2) if the alien is inadmissible under section 212(a) of the INA, 8 U.S.C. 1182(a), Form I-192, with fee. Such initial evidence corresponds to the two eligibility requirements for derivative U nonimmigrant status.

4. Designations

This rule amends 8 CFR 214.1(a)(1) to codify the derivative subclassifications established by section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U). *See* new 8 CFR 214.1(a)(1)(ix). In addition, the rule provides for the following designations for qualifying family members of the principal applicant (U-1): Spouse (U-2), child (U-3), the child's parents (U-4), and siblings (U-5). New 8 CFR 214.14(f)(1). This rule likewise adds these designations to current 8 CFR 214.1(a)(2), to add to the list of designations assigned to all other nonimmigrant classifications. These designations are a matter of administrative convenience, providing a shorthand notation for identifying the principal petitioner and each derivative based upon the relationship to the principal.

C. Adjudication and Post-Adjudication

The statutory provisions establishing U nonimmigrant status contain a number of parameters guiding the adjudication of U nonimmigrant petitions. Specifically, in determining whether to grant U nonimmigrant status, the statute requires that the adjudicator consider any credible evidence relevant to the petition. *See* INA sec. 214(p)(4), 8 U.S.C. 1184(p)(4). In addition, the

statute protects information relating to applicants for U nonimmigrant status from disclosure. 8 U.S.C. 1367(a)(2). Moreover, the statute precludes adjudicators from making adverse determinations on inadmissibility or deportability with respect to petitions for U nonimmigrant status based on information provided by the perpetrator of abuse and criminal activity. 8 U.S.C. 1367(a)(1)(E). The number of grants of U nonimmigrant status that may be made in a fiscal year is limited by an annual cap of 10,000. INA sec. 214(p)(2), 8 U.S.C. 1184(p)(2).

In this section of the **SUPPLEMENTARY INFORMATION**, these parameters are discussed, as well as the steps that follow a decision to grant or deny a petition for U nonimmigrant status.

1. Credible Evidence

This rule adopts the statutory requirement that any credible evidence relevant to the petition must be considered in the adjudication of petitions for U nonimmigrant status. New 8 CFR 214.14(c)(4) & (f)(5). As in the case of all other immigration benefits, the burden of establishing eligibility for U nonimmigrant status rests with the petitioner. *Id.* USCIS will consider all evidence de novo and will not be bound by any of its prior determinations made during the course of adjudicating an application for interim relief on any essential element of U nonimmigrant status. *Id.* A grant of interim relief means only that the alien presented *prima facie* evidence that he or she was eligible for U nonimmigrant status and does not constitute a binding determination that any given eligibility requirement had been proven. In adjudicating Form I-918, USCIS will review all evidence submitted in conjunction with the interim relief application along with any additional evidence submitted by the petitioner in conjunction with his or her Form I-918, including the certification, Form I-918, Supplement B.

This rule also provides that USCIS may review documentation submitted by the alien in conjunction with any other applications he or she has made for immigration benefits in the past. *Id.* This will enable USCIS to review the petition for U nonimmigrant status in the context of the petitioner's past immigration history and verify that statements made in his or her petition are consistent with information he or she provided to USCIS in the past. In addition, this rule provides that USCIS may investigate any aspect of the petition. *Id.* This means that if, during its adjudication of Form I-918, USCIS has reason to believe that there is a

question about the petitioner's helpfulness to, or continuing cooperation with, the investigation or prosecution, or any other aspect of the petition, USCIS may contact the certifying official for further explanation. USCIS then will be able to verify the veracity of the contents of the petition and safeguard the integrity of the U nonimmigrant status program.

2. Prohibitions on Disclosure of Information

Information concerning U nonimmigrant petitioners is protected against disclosure in two ways. *See* 8 U.S.C. 1367. First, adverse determinations of admissibility or deportability cannot be made based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity. 8 U.S.C. 1367(a)(1)(E). Second, the disclosure of information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited except in certain circumstances. 8 U.S.C. 1367(a)(2). The statute allows information to be released to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of either of those Departments, for legitimate Department, bureau, or agency purposes. *Id.*

There are eight specific exemptions from the general nondisclosure rule:

(1) At the discretion of the Secretary of Homeland Security or Attorney General, officials may disclose information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8.

(2) At the discretion of the Secretary of Homeland Security or Attorney General, officials may provide for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(3) In connection with judicial review of a determination, information may be disclosed in a manner that protects the confidentiality of such information.

(4) Information may be disclosed if all the crime victims in the case are adults, and they have waived the general restrictions on disclosure of information provided by 8 U.S.C. 1367(a)(2).

(5) Information may be disclosed to Federal, State, and local public and private agencies providing benefits, to be used solely to make determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c).

(6) Information may be disclosed after a petition for U nonimmigrant status has been finally denied.

(7) Information may be disclosed on closed cases to the chairmen and ranking members of the Committee on the Judiciary of the Senate, or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals).

(8) With prior written consent from the principal petitioner or derivative family member, information may be disclosed to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims. 8 U.S.C. 1367(b). Appropriate disciplinary action must be taken and a monetary penalty of up to \$5,000 may be imposed on anyone who willfully uses, publishes, or permits information to be disclosed in violation of the nondisclosure provisions. 8 U.S.C. 1367(c). This rule incorporates the prohibitions and restrictions on information relating to U nonimmigrant petitions into new 8 CFR 214.14(e).

Within the bounds of the statutory prohibitions and restrictions against disclosure of information relating to a U nonimmigrant petitioner, USCIS may provide information taken from the petition about any Federal, State or local crimes to investigative agencies that have a reason to know based on a legitimate law enforcement purpose. Possible agencies or bureaus to which information may be disclosed include: The Federal Bureau of Investigation (FBI); the U.S. Attorney's Office or the Civil Rights or Criminal Divisions of the Department of Justice; or U.S. Immigration and Customs Enforcement (ICE). As part of the adjudication process, USCIS also may contact the certifying agency for the purpose of assessing whether the petitioner is, has been, or is likely to be helpful to the investigation or prosecution of the qualifying criminal activity. Because the certifying agency has submitted a certification on behalf of the petitioner and, therefore, has already been informed about the fact of the petition as well as the facts upon which the petition is based, USCIS has determined that contacting the certifying agency would not violate the statutory prohibitions and restrictions against disclosure. USCIS recognizes the sensitive nature of application information and takes seriously its

obligation to protect confidentiality. USCIS will make any disclosure to an investigative agency in a manner that provides the maximum confidentiality under the circumstances.

In addition to disclosures to investigative agencies, DHS may have an obligation to provide portions of petitions for U nonimmigrant status to federal prosecutors for disclosure to defendants in pending criminal proceedings. This obligation stems from constitutional requirements that pertain to the government's duty to disclose information, including exculpatory evidence or impeachment material, to defendants. See U.S. Const. amend. V & VI; *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972). Accordingly, this rule incorporates this requirement at new 8 CFR 214.14(e)(1)(ix).

3. Annual Numerical Limitation on Grants of U Nonimmigrant Status

Before USCIS may grant U nonimmigrant status, it must consider the statutory cap on the number of aliens who may receive a grant of status each fiscal year. See INA sec. 214(p)(2), 8 U.S.C. 1184(p)(2). No more than 10,000 principal aliens may be granted U nonimmigrant status in a given fiscal year (October 1 through September 30). INA sec. 214(p)(2)(A), 8 U.S.C. 1184(p)(2)(A). This numerical limitation does not apply to spouses, children, parents, and unmarried siblings who are accompanying or following to join the principal alien victim. INA sec. 214(p)(2)(B), 8 U.S.C. 1184(p)(2)(B).

USCIS anticipates that within the first few fiscal years after publication of this regulation, it will receive petitions for U nonimmigrant status from more than 10,000 principal aliens. USCIS is cognizant of the fact that law enforcement agencies and prosecutors need a stable mechanism through which to regularize the status of victims and witnesses, but is equally cognizant of the fact that Congress saw fit to limit the number of aliens who may be granted U nonimmigrant status in any given fiscal year. USCIS has determined that to balance the statutorily imposed numerical cap against the dual goals of enhancing law enforcement's ability to investigate and prosecute criminal activity and providing protection to alien victims of crime, it will create a waiting list should the cap be reached in a given fiscal year before all petitions are adjudicated. USCIS's goal is to respect the intent of the numerical limitation imposed by Congress while still allowing the legislation to achieve maximum efficacy. USCIS believes that this rule's waiting list methodology will

provide a stable mechanism through which victims cooperating with law enforcement agencies can regularize their immigration status.

Under this rule, once the numerical limit has been reached in a particular fiscal year, all pending and subsequently submitted petitions will continue to be reviewed in the normal process to determine eligibility. See new 8 CFR 214.14(d)(2). USCIS will deny petitions that are not approvable. Eligible petitioners who are not granted U-1 nonimmigrant status due solely to the numerical limits will be notified by USCIS that they have been placed on a waiting list. *Id.* Each fiscal year, as new numbers for U-1 nonimmigrant status become available, USCIS will grant U nonimmigrant status to petitioners on the waiting list. *Id.* Petitioners on the waiting list will be given priority based on the date the petition was properly filed. *Id.* Petitioners on the waiting list must continue to meet the eligibility requirements for U nonimmigrant status and be admissible at the time status is granted. *Id.* After USCIS has granted U nonimmigrant status to petitioners on the waiting list, USCIS will continue to grant petitions, up to the annual limit, to new petitioners in the order in which each petition was properly filed. *Id.*

This rule also provides that, USCIS will give petitioners on the waiting list deferred action or parole until the start of the next fiscal year. *Id.* Those petitioners will be eligible to apply for employment authorization. *Id.* The rule further provides that petitioners on the waiting list will not accrue unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B). New 8 CFR 214.14(d)(3). However, at its discretion, USCIS may remove a petitioner from the waiting list and terminate deferred action or parole. *Id.* For example, USCIS may terminate deferred action or parole if the petitioner is convicted of a crime that renders him or her removable. USCIS also may terminate deferred action or parole if it becomes aware that a petitioner has failed to disclose a criminal conviction or has misrepresented a material fact in his or her petition.

4. Decisions on Petitions

USCIS will issue decisions granting or denying U nonimmigrant petitions in writing. New 8 CFR 214.14(c)(5) (principal petitioners); new 8 CFR 214.14(f)(6) (derivative family members). If USCIS denies a petition, it will also provide reasons for the denial in writing. New 8 CFR 214.14(c)(5)(ii); new 8 CFR 214.14(f)(6)(iii). In any case in which USCIS denies a petition for U

nonimmigrant status, the petitioner may appeal to USCIS's Administrative Appeals Office (AAO) under established procedures outlined in 8 CFR 103.3. *Id.*

a. Granting U Nonimmigrant Status

If USCIS finds that the petitioner has satisfied the requirements for U nonimmigrant status, it will grant U nonimmigrant status to the petitioner and derivative family members, unless the annual numerical limit applicable to principal petitioners has been reached. New 8 CFR 214.14(c)(5)(i); new 8 CFR 214.14(f)(6). If a number is available for the principal petitioner, USCIS will send a notice of approval on Form I-797, "Notice of Action," to the principal petitioner or, if the principal petitioner is overseas, to the Department of State for forwarding to the appropriate U.S. Embassy or Consulate or to the appropriate port of entry (visa exempt alien). New 8 CFR 214.14(c)(5)(i)(A) and (B). USCIS also will send to the principal petitioner a notice of approval on Form I-797 for derivative family members for whom USCIS has approved Form I-918, Supplement A. New 8 CFR 214.14(f)(6)(i) and (ii). If a number is not available, USCIS will notify the petitioner that, in accordance with new 8 CFR 214.14(d)(2), he or she has been placed on the waiting list, given deferred action or parole, and may request employment authorization. USCIS will also grant deferred action or parole to derivative family members with an opportunity to request employment authorization. New 8 CFR 214.14(d)(2).

For those principal petitioners and derivative family members who are within the United States, a Form I-94, "Arrival-Departure Record," indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status. New 8 CFR 214.14(c)(5)(i)(A); new 8 CFR 214.14(f)(6)(i). For those principal petitioners or qualifying family members who are outside the United States, USCIS will follow the standard procedures for issuing grants as applied to other nonimmigrant categories. USCIS will forward the notice of approval to the Department of State for delivery to the U.S. Embassy or Consulate designated on the petition, which should be the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or to the appropriate port of entry for a visa exempt alien. New 8 CFR 214.14(c)(5)(i)(B); new 8 CFR

214.14(f)(6)(ii).¹² The principal petitioner and any derivative family members should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant.

This rule provides that principal petitioners and derivative family members who were granted interim relief and whose petition for U nonimmigrant status is approved will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. New 8 CFR 214.14(c)(6); new 8 CFR 214.14(f)(6)(i). USCIS has determined that according status as of the date that interim relief was approved is appropriate so that the time a petitioner spent with interim relief will count towards the three years of continuous physical presence in U nonimmigrant status required before the petitioner may adjust status to that of a lawful permanent resident under section 245(m) of the INA, 8 U.S.C. 1255(m). Memorandum from Michael Aytes, Acting Associate Director, Domestic Operations, USCIS, Applications for U Nonimmigrant Status (Jan. 6, 2006). In fact, the House Report for VAWA 2005 indicates that members of Congress expect this result. *See* H.R. Rep. No. 109-233, at 114 (2005); *see also* 151 Cong. Rec. E2605, E2608 (statement of Representative John Conyers). Therefore, under this rule, recipients of U nonimmigrant status will be eligible to submit an application to adjust status three years after the date that interim relief was accorded, rather than having to wait until three years after the date on which USCIS approves their petition for U nonimmigrant status.

b. Duration of U Nonimmigrant Status

Section 214(p)(6) of the INA, 8 U.S.C. 1184(p)(6), provides that the duration of U nonimmigrant status cannot exceed four years. Extensions are permitted upon certification from a certifying agency that the alien's presence in the United States is required to assist in the investigation or prosecution of qualifying criminal activity. This rule incorporates this provision in new 8 CFR 214.14(g).

New 8 CFR 214.14(g)(1) provides that U nonimmigrant status for both principals (U-1) and derivative family members (U-2, U-3, U-4, and U-5) may be approved for a period not to exceed

an aggregate of four years. Because derivative status is based on the principal's status, derivative status initially will be approved for a period that does not exceed the period initially approved for the principal. New 8 CFR 214.14(g)(1). Just as with all other nonimmigrant classifications, the U nonimmigrant's Form I-94 issued to evidence status will indicate the approved period of stay. For petitioners who were previously accorded interim relief, USCIS necessarily will indicate on Form I-94 an approved period of stay that is less than four years. Therefore, for example, USCIS will issue a petitioner, who was accorded interim relief two years ago, a Form I-94 reflecting an approved period of stay for up to another two years upon the grant of U nonimmigrant status.

This rule further provides that U nonimmigrants can apply for an extension of status in two circumstances. A U nonimmigrant may apply for an extension of status where his or her status was granted for an approved period of stay of less than four years in the aggregate. New 8 CFR 214.14(g)(2)(i). This may be the case, for example, where a U nonimmigrant is outside the United States and experiences delays in consular processing. Because the petition for U nonimmigrant status is granted for a specified four-year period, which runs from the date of approval by USCIS, delays in entering the United States would mean that the alien would not be admitted to the United States in U nonimmigrant status until after a portion of the four-year period stated in the approved petition has already run.

The rule specifically addresses the situation where an overseas derivative family member receives an approved period of stay that expires on the same date as the principal's, but that is less than four years because the derivative was unable to enter the United States in a timely fashion due to delays in consular processing. Under this rule, such derivative may apply for an extension of status even though the principal cannot since the principal's period of stay was already approved for a four-year period. New 8 CFR 214.14(g)(2)(i). Necessarily, an approved period of stay based upon such extension of status application will exceed the date on which the principal's approved period of stay expired. The reason for this provision is so that the derivative is able to attain at least three years in U nonimmigrant status. Such period of time in U nonimmigrant status is necessary before the alien may apply to adjust status to that of a lawful permanent resident pursuant to section

¹² A visa exempt alien is an alien for whom a valid, unexpired passport is not required for admission to the United States. INA sec. 212(d)(4)(B), 8 U.S.C. 1182(d)(4)(B); 8 CFR 212.1(i).

245(m) of the INA, 8 U.S.C. 1255(m). To permit extensions of status for derivatives in this rule, USCIS considered the text of section 214(p)(6) of the INA, 8 U.S.C. 1184(p)(6). This statutory provision applies the four-year limit for U nonimmigrant status to all U nonimmigrants equally, and not just to principal petitioners. In addition, it does not include a requirement that the derivative's period of stay run concurrently with the principal's period of stay.

To apply for an extension of U nonimmigrant status under new 8 CFR 214.14(g)(2)(i), this rule provides that the U nonimmigrant must file Form I-539, "Application to Extend/Change Nonimmigrant Status," in accordance with the instructions to the form. USCIS requires this application of most nonimmigrants seeking to extend or change their nonimmigrant status. USCIS cannot grant an extension to exceed an aggregate period of four years in U nonimmigrant status. *Id.*

If the aggregate period of four years in U nonimmigrant status has been reached, a U nonimmigrant nevertheless may apply for an extension of status beyond such period if the certifying official attests that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of the qualifying criminal activity. New 8 CFR 214.14(g)(2)(ii). Therefore, in order to obtain an extension of U nonimmigrant status on this basis, the U nonimmigrant must file Form I-539 in accordance with the instructions to the form and a newly executed Form I-918, Supplement B. *Id.*

5. Benefits for U Nonimmigrants

Section 214(p)(3) of the INA, 8 U.S.C. 1184(p)(3), directs the Secretary of Homeland Security to provide those granted U nonimmigrant status certain benefits along with their status. The Secretary of Homeland Security and other government officials, where appropriate, must provide U nonimmigrants referrals to nongovernmental organizations which can advise such nonimmigrants of their options while in the United States and the resources available to them. INA sec. 214(p)(3)(A), 8 U.S.C. 1184(p)(3)(A). In addition, the Secretary of Homeland Security must provide employment authorization to U nonimmigrants. INA sec. 214(p)(3)(B), 8 U.S.C. 1184(p)(3)(B). This rule implements these requirements in new 8 CFR 214.14(c)(5), (c)(7), (f)(6), and (f)(7), 8 CFR 274a.12(a)(19) and (20), and 8 CFR 274a.13(a).

a. Referrals to Nongovernmental Organizations

New 8 CFR 214.14(c)(5) and (f)(6) adopt the requirement in section 214(p)(3)(A), 8 U.S.C. 1184(p)(3)(A), that, where appropriate, USCIS provide U nonimmigrants referrals to nongovernmental organizations. USCIS has determined that it is appropriate to provide such referrals to all U nonimmigrants, including principals and derivatives alike, because, as crime victims or family members of crime victims, they may be in need of additional assistance and information. Accordingly, new 8 CFR 214.14(c)(5) and (f)(6) require USCIS to include in the notice approving the U nonimmigrant petition a list of nongovernmental organizations. The nongovernmental organizations that will be included on the list are those that can provide information and advice regarding the U nonimmigrant's options while in the United States, including information regarding options for long-term immigration relief. Such organizations can also provide the principal with necessary resource tools.

b. Employment Authorization

This rule provides for automatic employment authorization upon a grant of U nonimmigrant status, implementing the requirement at section 214(p)(3)(B) of the INA, 8 U.S.C. 1184(p)(3)(B), that the Secretary of Homeland Security confer employment authorization on aliens granted U nonimmigrant status. Under new 8 CFR 214.14(c)(7) and 8 CFR 214.14(f)(7), principal aliens and derivative family members granted U nonimmigrant status are employment authorized incident to their U nonimmigrant status. This is also reflected in new 8 CFR 274a.12(a)(19) and (20), where the rule adds these two new categories of aliens to the existing list of aliens who are employment authorized incident to status. Automatically conferring employment authorization obviates the need for the ministerial step of affirmatively granting employment authorization during the adjudication of each petition.

c. Evidence of Employment Authorization

In addition to conferring employment authorization automatically on U nonimmigrants, this rule also provides for the issuance of evidence of employment authorization, an Employment Authorization Document (EAD). To do so, this rule amends 8 CFR 274a.12(a) and 274a.13(a), which govern employment authorization

documentation for all classes of aliens. This rule also includes more specific provisions regarding employment authorization documentation for U nonimmigrants in new 8 CFR 214.14(c)(7) and 214.14(f)(7).

The EAD can serve as evidence of both employment authorization and identity. 8 CFR 274a.2(b)(1)(v)(A)(4). Aliens seeking new employment or maintaining current employment can present their EAD to employers verifying employment authorization and identity pursuant to the requirements of section 274A(b) of the INA, 8 U.S.C. 1324a(b), and 8 CFR 274a.2.

For principal aliens seeking their first EAD based upon U nonimmigrant status, USCIS will use the information contained in Form I-918 to automatically generate an EAD, such that a separate request for an EAD is not necessary. *See* new 8 CFR 214.14(c)(7). USCIS has designed the Form I-918 so that it serves the dual purpose of requesting U nonimmigrant status and employment authorization to streamline the application process. Therefore, principal aliens will not have to file additional paperwork to obtain an initial EAD.

For principal aliens applying for U nonimmigrant status from outside the United States, this rule provides that the initial EAD will not be produced until the alien has been admitted to the United States in U-1 nonimmigrant status. *Id.* To receive an EAD, the alien must make a request to USCIS for an EAD accompanied by a copy of his or her Form I-94, "Arrival-Departure Record," proving the alien's admission to the United States in U-1 nonimmigrant status. *Id.* No forms or filing fees are required. *Id.* Form I-94 should be submitted to the office having jurisdiction over petitions for U nonimmigrant status as indicated on the instructions to Form I-918.

Derivative family members seeking an EAD must make their EAD request on a form separate from Form I-918, Supplement A requesting U nonimmigrant status. To request an EAD, derivative family members must file Form I-765, "Application for Employment Authorization," with the appropriate filing fee (or a request for a fee waiver) stated in the instructions to the form. New 8 CFR 214.14(f)(7); revised 8 CFR 274a.13(a). USCIS could not design Form I-918, Supplement A to serve as a dual purpose form for derivative family members because the form is filed by the principal alien on behalf of, rather than directly by, derivative family members.

For derivative family members who are within the United States, Form I-

765 may be filed concurrently with Form I-918, Supplement A, or it may be filed at a later time. New 8 CFR 214.14(f)(7). For derivative family members who are outside the United States, Form I-765 must be filed with the office having jurisdiction over petitions for U nonimmigrant status, as specified in the instructions to the Form I-765, after their admission to the United States in U nonimmigrant status. *Id.* They should include a copy of their approval notice for U nonimmigrant classification, a copy of their passport, and a copy of their Form I-94. This supporting documentation is necessary to verify identity and confirm the alien's physical presence in the United States and U nonimmigrant status.

Whether automatically generated or generated based on Form I-765, USCIS will issue the initial EAD on Forms I-766 or I-688B, valid for no longer than the approved period of stay in U nonimmigrant status. U nonimmigrants whose EADs will expire earlier may request a renewal EAD. Renewal requests must be made on Form I-765 in accordance with form instructions and with the appropriate fee or request for a fee waiver.

This rule also makes conforming amendments to 8 CFR parts 274a.12 and 274a.13. New 8 CFR 274a.12(a)(19) provides that principal nonimmigrants in U-1 status are employment authorized incident to status and do not need to apply to USCIS for a document evidencing this employment authorization. New 8 CFR 274a.12(a)(20) and revised 8 CFR 274a.13(a) provide that derivative family members in U-2, U-3, U-4, and U-5 nonimmigrant status are employment authorized incident to status, but must apply to USCIS for employment authorization documentation.

This rule also makes technical corrections to 8 CFR parts 274a.12 and 274a.13(a) to eliminate certain errors. The corrections clarify: (1) That asylees described in 8 CFR 274a.12(a)(5) and T nonimmigrants described in 8 CFR 274a.12(a)(16) do not need to apply to USCIS in order to receive a document evidencing their employment authorization incident to status; and (2) that aliens granted Family Unity benefits under the LIFE Act described in 8 CFR 274a.12(a)(14) and V nonimmigrants described in 8 CFR 274a.12(a)(15) must apply to USCIS in order to receive a document evidencing such employment authorization. This rule also reserves 8 CFR 274a.12(a)(17) and (18) for future use.

6. Travel Outside the United States

Aliens with U nonimmigrant status may travel outside the United States. However, in order to return to the United States, such aliens must obtain a U nonimmigrant visa for re-entry to the United States unless they are visa exempt. 8 CFR 212.1. They also should keep in mind that if they accrued more than 180 days of "unlawful presence" prior to obtaining U nonimmigrant status, they may be found inadmissible upon their return to the United States. *See* INA sec. 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B). Any alien other than a lawful permanent resident who was unlawfully present in the United States between 180 days and one year and departs the United States is barred from readmission to the United States for three years from the date of departure. INA sec. 212(a)(9)(B)(i)(I), 8 U.S.C. 1182(a)(9)(B)(i)(I). If the alien was unlawfully present for more than one year, he or she is barred from seeking readmission for a period of 10 years from the date of departure. INA sec. 212(a)(9)(B)(i)(II), 8 U.S.C. 1182(a)(9)(B)(i)(II). An alien is deemed to be unlawfully present in the United States if he or she remains in the United States after the expiration of an authorized period of stay or is present in the United States without being admitted or paroled. INA sec. 212(a)(9)(B)(ii), 8 U.S.C. 1182(a)(9)(B)(ii). U nonimmigrant aliens subject to the unlawful presence ground of inadmissibility may request a waiver of inadmissibility on Form I-192, as discussed earlier in this Supplementary Information, prior to or upon their return to the United States.

For nonimmigrants seeking admission to the United States, a valid, unexpired passport is required in addition to a valid visa, unless an exemption applies. *See* INA sec. 212(a)(7)(B), 8 U.S.C. 1182(a)(7)(B); 8 CFR 212.1. In unforeseen emergency situations, these requirements may be waived for certain categories of nonimmigrants. INA sec. 212(d)(4)(A), 8 U.S.C. 1182(d)(4)(A); 8 CFR 212.1(g). This rule extends eligibility to apply for this waiver to U nonimmigrants and petitioners for U nonimmigrant status. USCIS believes that such an extension is necessary because U nonimmigrants or petitioners for U nonimmigrant status, as crime victims, may be faced with threats to their lives or safety which may make them unable to timely obtain a visa or passport.

Accordingly, this rule amends 8 CFR 212.1(g) to add U-1, U-2, U-3, U-4, and U-5 nonimmigrants and those seeking such status to the list of nonimmigrants

who may seek a waiver of the visa and passport requirements for unforeseen emergencies. *See* revised 8 CFR 212.1(g). This waiver may apply to a U nonimmigrant who needs to travel outside the United States but, due to an unforeseen emergency, is unable to obtain a passport from his or her country of citizenship or nationality or a visa from a U.S. Embassy or Consulate in order to re-enter the United States. This waiver also may apply to a petitioner for U nonimmigrant status who is outside the United States, but who needs to enter the United States due to an unforeseen emergency after Form I-918 is adjudicated but before he or she has received a visa from a U.S. embassy or consular office or obtained a passport from his or her country of citizenship or nationality. For example, USCIS anticipates that this waiver could be needed where government officials from the alien victim's home country are implicated in the criminal activity, and, as a result, the petitioner is unable to obtain a passport or safely travel to the U.S. Embassy or Consulate to obtain a visa. A waiver may also be needed where the perpetrator is not in custody, has made threats against the petitioner, and the petitioner needs to enter the United States immediately to ensure his or her safety.

As under the current regulatory provision, this rule maintains that all eligible nonimmigrants must request a waiver on Form I-193, "Application for Waiver of Passport and/or Visa." Revised 8 CFR 212.1(g). New 8 CFR 212.1(p) authorizes the director of the office having jurisdiction over the adjudication of Form I-918 to adjudicate the waiver application.

This rule makes a technical correction to current 8 CFR 212.1(g) by deleting the reference to "Deputy Commissioner." This position no longer exists after DHS took over the functions of the former Immigration and Naturalization Service in March of 2003. *See* 6 U.S.C. 291(a).

7. Revocation of U Nonimmigrant Status

This rule establishes USCIS's authority to revoke its approval of Form I-918 and Form I-918, Supplement A, and any waivers of inadmissibility that were granted in conjunction with the petition. New 8 CFR 214.14(h). Revocation authority flows from section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1). This provision authorizes the Secretary of Homeland Security to prescribe, by regulation, the time and conditions of admission of any nonimmigrant. Implicit in this authority is the authority to prescribe the conditions under which nonimmigrant status may be revoked. Revocation of an approved U

nonimmigrant status petition necessarily results in the termination of U nonimmigrant status. New 8 CFR 214.14(h)(4).

The rule establishes two forms of revocation: Automatic and by notice. Automatic revocation applies where a principal alien with an approved U nonimmigrant petition who applied from outside the United States notifies USCIS that he or she will not use the approved petition to enter the United States. New 8 CFR 214.14(h)(1).

Revocation by notice is at the discretion of USCIS. See new 8 CFR 214.14(h)(2). This rule establishes the following bases for revocations by notice: (1) Where the certifying official withdraws the U nonimmigrant status certification upon which the principal U nonimmigrant's petition was based or disavows the contents of the certification in writing; (2) where approval of the petition was in error; (3) where there was fraud in the petition; (4) where a derivative's relationship to the principal has terminated; and (5) where the principal's approved petition for U-1 nonimmigrant status is revoked. *Id.* USCIS has determined that revocation of a petition by notice in cases where the certification is withdrawn is appropriate because when that occurs, the principal no longer meets the requirements for U nonimmigrant status as described by section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U), and therefore, is no longer maintaining status. A nonimmigrant who fails to maintain nonimmigrant status is removable from the United States under section 237(a)(1)(C)(i) of the INA, 8 U.S.C. 1227(a)(1)(C)(i). USCIS has determined that revocation of a petition by notice in cases of fraud or error is appropriate because both bases indicate that the petitioner may have obtained a benefit for which he or she was not eligible. USCIS has also determined that revocation of a derivative petition where the relationship to the principal has terminated or where the principal's U-1 nonimmigrant status has been revoked is appropriate because, as a general matter, a derivative's status is dependent upon the principal's status. This rule classifies these bases for revocation as discretionary rather than automatic because USCIS recognizes that there may be instances in which revocation of the derivative petition is not warranted. For example, revocation of the derivative petition may not be warranted where the derivative is providing valuable assistance to the certifying agency in the investigation or prosecution of criminal activity. Providing such assistance is an

eligibility requirement for U nonimmigrants, including derivatives, seeking to adjust status to that of a lawful permanent resident. See INA sec. 245(m), 8 U.S.C. 1255(m).

At new 8 CFR 214.14(h)(2)(ii), this rule provides that the notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation. This provision also states that the alien may submit evidence in rebuttal within 30 days of the date of the notice, which is the standard amount of time given for rebutting a notice of intent to revoke. See, e.g., 8 CFR 214.2(h)(11)(iii)(B); 8 CFR 214.11(s)(2). The rule mandates that USCIS must consider all relevant evidence presented in deciding whether to revoke the approval of the petition. The rule provides that just as with the initial adjudication of Form I-918, the determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation. New 8 CFR 214.14(h)(2)(ii).

For revocations by notice, this rule permits appeals to USCIS's AAO. New 8 CFR 214.14(h)(3). The rule requires appeals to be submitted within 30 days of the date of the notice of revocation. USCIS believes this is a reasonable amount of time for the petitioner to appeal the decision and is in keeping with the desire to promote administrative efficiency and finality in adjudications. In addition, a timeframe of 30 days to file an appeal is a standard period for filing an appeal. See, e.g., 8 CFR 103.3(a)(2)(i); 8 CFR 214.2(h)(12)(ii). Appeals are not permitted for automatic revocations. New 8 CFR 214.14(h)(3). Once the certifying agency has withdrawn the certification, the alien ceases to be statutorily eligible for U nonimmigrant status, and there is no basis for an appeal.

Once USCIS revokes a principal alien's approved petition for U nonimmigrant status, USCIS will also deny any pending U nonimmigrant petitions for qualifying family members. New 8 CFR 214.14(h)(4). Without an approved petition for U nonimmigrant status for the principal, there is no statutory basis for granting U-2, U-3, U-4, or U-5 derivative status.

This rule provides that revocation of a previously approved petition will have no effect on the annual cap. New 8 CFR 214.14(h)(4). Therefore, once a U nonimmigrant status is granted to a

principal alien, the number will be deemed to have been used and cannot be used again. In developing this rule, USCIS considered providing for re-use of the number. However, USCIS determined that not only would it be infeasible to track such numbers, USCIS does not believe it has the statutory authority to recapture the numbers after the end of each fiscal year.

8. Removal Proceedings

This rule provides for another means for terminating U nonimmigrant status. New 8 CFR 214.14(i) states that USCIS may exercise its existing authority to institute removal proceedings under section 239 of the INA, 8 U.S.C. 1229, for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in the Form I-918, Form I-918, Supplement A, or supporting documentation, or after revocation of U nonimmigrant status. Each of these circumstances may give rise to a ground of removability under section 237(a) of the INA, 8 U.S.C. 1227(a).

D. Filing and Biometric Services Fees

USCIS has determined that no fee will be charged for filing Form I-918 or for derivative U nonimmigrant status for qualifying family members. See 72 FR 29851, at 29865. Petitioners must, however, submit the established fee for biometric services for each person ages 14 through 79 inclusive with each U nonimmigrant status petition. New 8 CFR 214.14(c)(2)(iv). USCIS recognizes that many petitioners for U nonimmigrant status may be unable to pay the biometric services fee. Petitioners who are financially unable to pay the biometric services fee may submit an application for a fee waiver, as outlined in 8 CFR 103.7(c). The granting of a fee waiver will be at the sole discretion of USCIS. See 72 FR 29851, at 29865. Further guidance on fee waivers can be found on USCIS's Web site at <http://www.uscis.gov/graphics/formsfee/forms/index.htm>.

This program involves the personal well-being of a few applicants and petitioners, and the decision to waive the petition fee reflects the humanitarian purposes of the authorizing statutes. This blanket fee exemption is because it is consistent with the legislative intent to assist persons in these circumstances. Also, anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver. Thus, USCIS determined that these programs would likely result in such a

high number of waiver requests that adjudication of those requests would overtake the adjudication of the benefit requests themselves.

IV. Regulatory Requirements

A. Administrative Procedure Act

USCIS has determined that delaying this rule to allow public comment would be impracticable and contrary to the public interest; thus, this rule is being published as an interim final rule and is effective 30 days after publication. Nonetheless, USCIS invites comments and will address comments in the final rule.

USCIS finds a compelling public need for rapid implementation of this rule justifying the exception allowed by the Administrative Procedure Act (APA) to the requirements for soliciting public comment before a rule shall take effect. 5 U.S.C. 553(b)(3)(B). This exception should be used by agencies in cases, such as this, where delay could result in serious harm. See, *Jifry v. Fed. Aviation Admin.*, 370 F.3d 1174 (D.C. Cir. 2004) (finding the exception excuses notice and comment where delay could result in serious harm). Congress created the new U classification to curtail criminal activity, protect victims of crimes committed against them in the United States, and encourage victims to fully participate in the investigation of the crimes and the prosecution of the perpetrators. See BIWPA sec. 1513(a)(2). Many immigrant crime victims fear coming forward to assist law enforcement until this rule is effective. Thus, continued delay of this rule further exposes victims of these crimes to danger, and leaves their legal status in an indeterminate state. Moreover, the delay prevents law enforcement agencies from receiving the benefits of the BIWPA and continues to expose the U.S. to security risks and other effects of human trafficking. Therefore, delay in the implementation of these regulations would be contrary to the public interest.

Further, USCIS finds that the good cause exception is warranted by the statutorily imposed deadline and the complicated nature of this rule. Agencies may bypass public comment when a statutorily imposed deadline is combined with a complicated statutory or regulatory scheme and there is either evidence that the agency has been diligent in its efforts to comply with the statutory deadline or a compelling need for rapid implementation of the regulation. See *Methodist Hosp. of Sacramento v. Shalala*, 38 F.3d 1225 (D.C. Cir. 1994) (5 month statutory deadline and complex regulatory framework constituted good cause for

exception); *Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984) (agency's good cause argument was justifiable "in light of extremely limited timeframe given by Congress in relation to amount of work required to produce rule."). Section 828 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, January 5, 2006) requires DHS to publish regulations required by that Act within 180 days after enactment (i.e., July 4, 2006). Unfortunately, the statutory and regulatory framework of U.S. immigration laws is exceedingly complex. See *Zadvydas v. Davis*, 533 U.S. 678 (2001). Plus, these regulations have required input and coordination with law enforcement agencies affected by this rule to balance its humanitarian goals and law enforcement interests.

Accordingly, DHS finds that good cause exists under 5 U.S.C. 553(b) to make this interim rule effective 30 days following publication in the **Federal Register**, before closure of the 60-day public comment period. DHS nevertheless invites written comments on this interim rule, and will consider any timely comments in preparing a final rule.

DHS notes that in compliance with the Paperwork Reduction Act, USCIS published notices in the **Federal Register** requesting public comment on Form I-918, "Petition for U Nonimmigrant Status," Supplement A, "Petition for Qualifying Family Member of U-1 Recipient," and Supplement B, "U Nonimmigrant Status Certification." See 70 FR 72460 (Dec. 5, 2005) (60-day notice); 71 FR 32117 (June 2, 2006) (30-day notice). The instructions to these forms include descriptions of the eligibility and evidentiary requirements for obtaining U nonimmigrant status. USCIS received 55 comments in response to the 60-day notice. The comments addressed the comprehension, readability, and burden estimate of the form, as well as the substance of the form instructions. The substantive comments primarily focused on seven general areas: (1) Changes required by intervening legislation; (2) the certification process; (3) instructions for interim relief recipients; (4) filing deadlines; (5) fees; (6) the admissibility requirement; and (7) the evidence standard. In response to these comments, USCIS revised the forms for the 30-day notice and incorporated the comments, as appropriate, into this interim rule. USCIS received no comments in response to the 30-day notice.

To review the forms, a summary of the public comments, and USCIS' response to the comments, contact the

Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, rfs.regs@dhs.gov (e-mail).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBRFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). USCIS has determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Further, this regulation directly regulates individuals, not small entities as that term is defined under the RFA. Therefore, an RFA analysis is not required for this rule.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866 (Regulatory Planning and Review)

This rule is considered by USCIS to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

This rule establishes the requirements and procedures for aliens seeking nonimmigrant status under the U classification. The U nonimmigrant classification is available to alien victims of certain criminal activity who assist government officials in investigating or prosecuting that criminal activity, and provides temporary immigration benefits (nonimmigrant status and employment authorization), potentially leading to permanent resident status. This rule requires and establishes an application process for U nonimmigrant status and employment authorization, designating Form I-918 as the form that petitioners must use to request U nonimmigrant status. This rule also imposes petition requirements and processing fees.

1. Costs to Petitioners

USCIS estimates the total annual cost of this interim rule to be \$6,182,000. This cost includes the biometric services fee that the petitioner must pay to USCIS, the opportunity cost of time needed to submit the required forms, the opportunity cost of time required for a visit to an Application Support Center, and the cost of traveling to an Application Support Center. Below, these costs are described in more detail.

This rule requires any individual seeking U nonimmigrant status to pay the prescribed biometric services fee. This fee is currently \$80 per person. See 72 FR 29851.

USCIS estimates that it will receive 12,000 Forms I-918 and 24,000 Forms I-918, Supplement A each fiscal year. Therefore, USCIS estimates that this rule will cost petitioners \$960,000 (12,000 × \$80 biometric services charge) in fees for Forms I-918, and \$1,920,000 (24,000 × \$80 biometric services charge) in fees for Forms I-918, Supplement A. The total cost of this rule to petitioners will be \$2,880,000 in biometric services fees each fiscal year.

Additionally, USCIS estimates that each Form I-918 petitioner will spend 5 hours complying with this rule. USCIS estimates that each petitioner will spend 75 minutes reading the Form I-918 instructions. It will take 75 minutes to complete the form and 150 minutes to assemble and submit the form, for a total of 300 minutes of each petitioner's time. USCIS estimates that petitioners also submitting Form I-918, Supplement A will spend 1 hour and 30 minutes complying with this rule. USCIS estimates that each petitioner will spend 30 minutes reading the instructions to Form I-918, Supplement A, 30 minutes to complete the form, and 30 minutes to assemble and submit the form.

Petitioners and qualifying family members will also be required to travel to the nearest USCIS Application Support Center (ASC) to provide biometrics information. While travel times and distances will vary, USCIS estimates the average round-trip to an ASC will be 20 miles, and that the average time for that trip will be an hour. It will take an average of one hour for a petitioner or qualifying family member to wait for service, and to have his or her biometrics collected. Total time for each individual to comply with this requirement is two hours.

As previously discussed, USCIS expects to receive a total of 36,000 forms (12,000 Forms I-918 and 24,000 Forms I-918, Supplement A) annually. However, USCIS does not know how many of these forms will be filed by adults on behalf of children.

Consequently, it is difficult for USCIS to estimate the opportunity cost of time for the 36,000 petitioners and qualifying family members with precision. For the purpose of this economic analysis, USCIS will assume that all petitioners and qualifying family members are adults and use an opportunity cost of time based on national wage rates. Specifically, USCIS is using the mean national hourly wage rate from the Bureau of Labor Statistics (BLS) for 2003 as a proxy for the opportunity cost of an individual's time. BLS estimates for "All Occupations" the mean hourly wage was \$17.75 in 2003. Using this BLS wage data, USCIS estimates the total cost for petitioner time spent is \$1,491,000 (12,000 persons × 7.0 hours × \$17.75) for Form I-918 petitioners, and \$1,491,000 (24,000 persons × 3.5 hours × \$17.75) for Form I-918, Supplement A petitioners and qualifying family members.

Additionally, there is the cost of travel. USCIS anticipates that most petitioners will drive privately-owned vehicles to the ASCs. The General Services Administration (GSA) establishes a reimbursement rate that is used when privately owned vehicles are used by federal employees while on official travel. We consider this GSA reimbursement rate to be a reasonable proxy for the cost of driving to an ASC. This reimbursement rate fluctuates over time; however, as of January 1, 2006, GSA calculates the cost of operating a privately-owned vehicle as 44.5 cents a mile. Therefore, USCIS calculates the transportation costs as \$320,400 (36,000 persons × 44.5 cents per mile × 20 miles).

In summary, USCIS estimates the total cost of the program would be \$2,880,000 in biometric services fees, \$2,982,000 million in time and \$320,400 in

transportation costs. The total cost of compliance to this rule each fiscal year by 36,000 persons is \$6,182,000 (\$2,880,000 + \$2,982,000 million + \$320,400).

2. Treatment of Petitions That Exceed the Statutory Cap

The number of petitions for U-1 nonimmigrant status that USCIS may grant is limited to 10,000 in any fiscal year (October 1 through September 30). INA sec. 214(p)(2), 8 U.S.C. 1184(p)(2). USCIS anticipates receiving 12,000 petitions each fiscal year. Therefore, the potential exists that the number of approvable petitions per fiscal year will exceed the numerical limit (i.e., cap). USCIS has identified the following four alternatives, the first being chosen for this rule:

1. USCIS would adjudicate petitions on a first in, first out basis. Petitions received after the limit has been reached would be reviewed to determine whether or not they are approvable but for the numerical cap. Approvable petitions that are reviewed after the numerical cap has been reached would be placed on a waiting list and written notice would be sent to the petitioner. Priority on the waiting list would be based upon the date on which the petition is filed. USCIS would provide petitioners on the waiting list with interim relief until the start of the next fiscal year in the form of deferred action, parole, or a stay of removal. At the beginning of the next fiscal year, petitions on the waiting list would be granted first. Advantages to this alternative include: assisting law enforcement agencies by allowing the alien victim to remain in the United States to assist in the investigation or prosecution of criminal activity while waiting for new numbers to become available; improving customer service by allowing victims to remain in the United States, giving them an opportunity to access victims services to which they may be entitled; and providing employment authorization to alien victims so they will have a lawful means through which to support themselves and their families. Disadvantages include additional administrative and case management costs to USCIS due to the need to maintain a waiting list during the fiscal year and to adjudicate interim relief. In addition, those applying for U nonimmigrant status from outside the United States may be disadvantaged because they will not be able to enter the United States while waiting for a new number to become available.

2. USCIS would adjudicate petitions on a first in, first out basis, establishing

a waiting list for petitions that are pending or received after the numerical cap has been reached. Priority on the waiting list would be based upon the date on which the petition was filed. USCIS would not provide interim relief to petitioners whose petitions are placed on the waiting list. This means that petitioners who are not in status would be accruing unlawful presence and would be removable. At the beginning of the next fiscal year, petitions on the waiting list would be adjudicated first. The primary advantage of this alternative is that it eliminates the need for petitioners to file a new petition each year and keeps petitions in process. Disadvantages of this alternative include: little assurance that the alien victim will not be removed from the United States; law enforcement has no assurance that the alien victim will be present in the United States to assist in the investigation or prosecution of criminal activity; without permission to remain in the U.S., the alien victim may be deprived of victims services to which they may be entitled. This approach would also result in additional administrative and case management costs by creating the need to maintain a waiting list during the fiscal year and could create a perpetual waiting list/backlog.

3. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be reviewed to identify particularly compelling cases for adjudication. New filings would be rejected once the numerical cap is reached. No official waiting list would be established; however, interim relief until the start of the next fiscal year would be provided for some compelling cases. If a case was not particularly compelling, the filing would be denied or rejected. The advantage to this approach is that it would provide a mechanism to ensure that certain alien victims needed for the investigation or prosecution of criminal activity would be able to remain in the United States. Disadvantages include: difficulty in establishing balanced standards regarding who will receive interim relief; depriving alien victims not given interim relief of victims' services to which they may be entitled; and depriving law enforcement of assistance of victims not given interim relief. An additional disadvantage would be that petitioners would have to pay the filing fee in order for USCIS to review the petition to determine whether it was particularly compelling and merited interim relief. A large percentage of the petitions would likely be denied or

rejected which would result in financial losses to the petitioners.

4. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be rejected once the numerical cap is reached. No waiting list would be established, nor would interim relief be granted. Advantages to this approach include no additional administrative or case management costs since it would allow rejection once the cap is reached, and equal treatment for those applying from outside the United States. Disadvantages include: depriving law enforcement of cooperating alien victims for those whose petitions are rejected; depriving rejected petitioners access to victims services to which they may be entitled; disadvantaging those who are unable to file early in the fiscal year; and potentially impeding case processing efficiency by causing adjudication to occur in waves (i.e., busy during the beginning of the fiscal year and then slow once the cap is reached).

USCIS chose the first alternative for this rule because USCIS believes that it best meets the goals of the BIWPA by both ensuring the protection of alien victims and minimizing the risk of disruptions to criminal investigations and prosecutions.

USCIS solicits comments on these alternatives, as well as other proposals for managing the numerical limitation on grants of U nonimmigrant status.

F. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Family Assessment

I have reviewed this regulation and have determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105-277, Div. A. Accordingly, I have assessed this action in accordance with the criteria specified by section 654(c)(1). This regulation will enhance

family well-being by encouraging vulnerable individuals who have been victims of certain criminal activity, or in some cases, whose family members have been victims of certain criminal activity, to report the criminal activity, and by providing critical assistance and benefits. Additionally, this regulation allows qualifying family members to obtain U nonimmigrant status once the principal petitioner has received status.

I. Paperwork Reduction Act

This rule establishes application requirements and procedures for aliens to receive U nonimmigrant status, defined in section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U). Some of the information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5. Display Control Numbers, and are noted herein. Form I-192, "Application for Advance Permission to Enter as Nonimmigrant," OMB Control Number 1615-0017; Form I-193, "Application for Waiver of Passport and/or Visa," OMB Control Number 1653-0004; Form I-539, "Application to Extend/Change Nonimmigrant Status," OMB Control Number 1615-0003; Form I-765, "Application for Employment Authorization," OMB Control Number 1615-0040.

In addition, this rule requires that an alien submit a completed Form I-918, "Petition for U Nonimmigrant Status," and supporting documentation to apply for U nonimmigrant status. This Form I-918 and supporting documentation is considered a new information collection under the Paperwork Reduction Act. OMB has approved this new information collection in accordance with the Paperwork Reduction Act of 1995 and assigned it OMB Control Number 1615-0104.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students, victims.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2335 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.7(b)(1) is amended by adding, in proper alpha/numeric sequence, a new “Form I–918” and “Form I–918, Supplement A” to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–918. For filing a petition to classify an alien as a nonimmigrant under section 101(a)(15)(U)(i) of the Act, 8 U.S.C. 1101(a)(15)(U)(i)—\$270. For filing a petition to classify an alien as a nonimmigrant under section 101(a)(15)(U)(ii) of the Act, 8 U.S.C. 1101(a)(15)(U)(ii), on Form I–918, Supplement A concurrently with Form I–918—\$120 per family member, up to a maximum amount of \$540.

Form I–918, Supplement A. For filing a petition to classify an alien as a nonimmigrant under section 101(a)(15)(U)(ii) separately from Form I–918—\$120.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSABLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

■ 4. Section 212.1 is amended by revising paragraph (g) and adding a new paragraph (p) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act, 8 U.S.C. 1182(a)(7), or a valid biometric border crossing card, issued by the DOS on Form DSP–150, at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f) or (i), (o), or (p) of this section. Upon a nonimmigrant’s application on Form I–193, “Application for Waiver of Passport and/or Visa,” a district director may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements, if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

(p) *Alien in U–1 through U–5 classification.* Individuals seeking U–1 through U–5 nonimmigrant status may avail themselves of the provisions of paragraph (g) of this section, except that the authority to waive documentary requirements resides with the director of the USCIS office having jurisdiction over the adjudication of Form I–918, “Petition for U Nonimmigrant Status.”

■ 5. Section 212.17 is added, to read as follows:

§ 212.17 Applications for the exercise of discretion relating to U nonimmigrant status.

(a) *Filing the waiver application.* An alien applying for a waiver of inadmissibility under section 212(d)(3)(B) or (d)(14) of the Act (waivers of inadmissibility), 8 U.S.C. 1182(d)(3)(B) or (d)(14), in connection with a petition for U nonimmigrant status being filed pursuant to 8 CFR

214.14, must submit Form I–192, “Application for Advance Permission to Enter as Non-Immigrant,” in accordance with the form instructions, along with Form I–918, “Petition for U Nonimmigrant Status,” or Form I–918, Supplement A, “Petition for Qualifying Family Member of U–1 Recipient.” An alien in U nonimmigrant status who is seeking a waiver of section 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B) (unlawful presence ground of inadmissibility triggered by departure from the United States), must file Form I–192 prior to his or her application for re-entry to the United States in accordance with the form instructions.

(b) *Treatment of waiver application.* (1) USCIS, in its discretion, may grant Form I–192 based on section 212(d)(14) of the Act, 8 U.S.C. 1182(d)(14), if it determines that it is in the public or national interest to exercise discretion to waive the applicable ground(s) of inadmissibility. USCIS may not waive a ground of inadmissibility based upon section 212(a)(3)(E) of the Act, 8 U.S.C. 1182(a)(3)(E). USCIS, in its discretion, may grant Form I–192 based on section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), except where the ground of inadmissibility arises under sections 212(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), or (3)(E) of the Act, 8 U.S.C. 1182(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), or (3)(E).

(2) In the case of applicants inadmissible on criminal or related grounds, in exercising its discretion USCIS will consider the number and severity of the offenses of which the applicant has been convicted. In cases involving violent or dangerous crimes or inadmissibility based on the security and related grounds in section 212(a)(3) of the Act, USCIS will only exercise favorable discretion in extraordinary circumstances.

(3) There is no appeal of a decision to deny a waiver. However, nothing in this paragraph is intended to prevent an applicant from re-filing a request for a waiver of ground of inadmissibility in appropriate cases.

(c) *Revocation.* The Secretary of Homeland Security, at any time, may revoke a waiver previously authorized under section 212(d) of the Act, 8 U.S.C. 118(d). Under no circumstances will the alien or any party acting on his or her behalf have a right to appeal from a decision to revoke a waiver.

PART 214—NONIMMIGRANT CLASSES

■ 6. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–

1305 and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

- 7. Section 214.1 is amended by:
 - a. Adding a new paragraph (a)(1)(ix); and by
 - b. Adding classification designations in proper numeric/alphabetical sequence in the table in paragraph (a)(2).

The additions read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

- (a) * * *
- (1) * * *

(ix) Section 101(a)(15)(U)(ii) is divided into (U)(ii), (U)(iii), (U)(iv), and (U)(v) for the spouse, child, parent, and siblings, respectively, of a nonimmigrant classified under section 101(a)(15)(U)(i); and

- (2) * * *

| Section | Designation |
|-------------------------|---------------------|
| 101(a)(15)(U)(i) | U–1. |
| 101(a)(15)(U)(ii) | U–2, U–3, U–4, U–5. |

* * * * *

- 8. A new § 214.14 is added to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

(a) *Definitions.* As used in this section, the term:

(1) *BIWPA* means Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Pub. L. 106–386, 114 Stat. 1464, (2000), amended by Violence Against Women and Department of Justice Reauthorization Act of 2005, tit. VIII, Pub. L. 109–162, 119 Stat. 2960 (2006), amended by Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109–271, 120 Stat. 750 (2006).

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or

(ii) A Federal, State, or local judge.

(4) *Indian Country* is defined as:

(i) 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;

(ii) 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

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

(6) *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.

(7) *Next friend* means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.

(8) *Physical or mental abuse* means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

(10) *Qualifying family member* means, in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U), the spouse or child(ren) of such alien; and, in the case of an alien victim under the age of 21 who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, *qualifying family member* means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien.

(11) *Territories and Possessions of the United States* means American Samoa, Swains Island, 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.

(12) *U nonimmigrant status certification* means Form I–918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

(13) *U interim relief* refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations.

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct 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 the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age

of the victim at the time the qualifying criminal activity occurred.

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) 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:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

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

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity

leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(c) *Application procedures for U nonimmigrant status—(1) Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U-1 nonimmigrant status must submit, by mail, Form I-918, "Petition for U Nonimmigrant Status," applicable fees (or request for a fee waiver as provided in 8 CFR 103.7(c)), and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I-918. A petitioner who received interim relief is not required to submit initial evidence with Form I-918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

(i) *Petitioners in pending immigration proceedings.* An alien who is in removal

proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who would like to apply for U nonimmigrant status must file a Form I-918 directly with USCIS. U.S. Immigration and Customs Enforcement (ICE) counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Petitioners with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-1 nonimmigrant status directly with USCIS. The filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the petitioner's removal.

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated

U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

(ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

(iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner; and

(iv) If the petitioner is inadmissible, Form I-192, "Application for Advance Permission to Enter as Non-Immigrant," in accordance with 8 CFR 212.17.

(3) *Biometric capture.* All petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I-918.

(4) *Evidentiary standards and burden of proof.* The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS

shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

(5) *Decision.* After completing its de novo review of the petition and evidence, USCIS will issue a written decision approving or denying Form I-918 and notify the petitioner of this decision. USCIS will include in a decision approving Form I-918 a list of nongovernmental organizations to which the petitioner can refer regarding his or her options while in the United States and available resources.

(i) *Approval of Form I-918, generally.* If USCIS determines that the petitioner has met the requirements for U-1 nonimmigrant status, USCIS will approve Form I-918. For a petitioner who is within the United States, USCIS also will concurrently grant U-1 nonimmigrant status, subject to the annual limitation as provided in paragraph (d) of this section. For a petitioner who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918. A petitioner who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(A) *Notice of Approval of Form I-918 for U-1 petitioners within the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from within the United States, USCIS will notify the alien of such approval on Form I-797, "Notice of Action," and include Form I-94, "Arrival-Departure Record," indicating U-1 nonimmigrant status.

(B) *Notice of Approval of Form I-918 for U-1 petitioners outside the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from outside the United States,

USCIS will notify the alien of such approval on Form I-797, "Notice of Action," and will forward notice to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or, for a visa exempt alien, to the appropriate port of entry.

(ii) *Denial of Form I-918.* USCIS will provide written notification to the petitioner of the reasons for the denial. The petitioner may appeal a denial of Form I-918 to the Administrative Appeals Office (AAO) in accordance with the provisions of 8 CFR 103.3. For petitioners who appeal a denial of their Form I-918 to the AAO, the denial will not be deemed administratively final until the AAO issues a decision affirming the denial. Upon USCIS' final denial of a petition for a petitioner who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(c)(1)(i), DHS may file a new Notice to Appear (see section 239 of the Act, 8 U.S.C. 1229) to place the individual in proceedings again. For petitioners who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(6) *Petitioners granted U interim relief.* Petitioners who were granted U interim relief as defined in paragraph (a)(13) of this section and whose Form I-918 is approved will be accorded U-1 nonimmigrant status as of the date that a request for U interim relief was initially approved.

(7) *Employment authorization.* An alien granted U-1 nonimmigrant status is employment authorized incident to status. USCIS automatically will issue an initial Employment Authorization Document (EAD) to such aliens who are in the United States. For principal aliens who applied from outside the United States, the initial EAD will not be issued until the petitioner has been admitted to the United States in U nonimmigrant status. After admission, the alien may receive an initial EAD, upon request and submission of a copy of his or her Form I-94, "Arrival-Departure Record," to the USCIS office having jurisdiction over the adjudication of petitions for U nonimmigrant status. No additional fee is required. An alien granted U-1 nonimmigrant status seeking to renew his or her expiring EAD or replace an EAD that was lost, stolen, or destroyed, must file Form I-765 in accordance with the instructions to the form.

(d) *Annual cap on U-1 nonimmigrant status—(1) General.* In accordance with

section 214(p)(2) of the Act, 8 U.S.C. 1184(p)(2), the total number of aliens who may be issued a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal year.

(2) *Waiting list.* All eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U-1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U-1 nonimmigrant numbers for that fiscal year will be issued to new qualifying petitioners in the order that the petitions were properly filed. USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.

(3) *Unlawful presence.* During the time a petitioner for U nonimmigrant status who was granted deferred action or parole is on the waiting list, no accrual of unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), will result. However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.

(e) *Restrictions on use and disclosure of information relating to petitioners for U nonimmigrant classification—(1) General.* The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited unless the disclosure is made:

(i) By the Secretary of Homeland Security, at his discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8;

(ii) By the Secretary of Homeland Security, at his discretion, to law enforcement officials to be used solely

for a legitimate law enforcement purpose;

(iii) In conjunction with judicial review of a determination in a manner that protects the confidentiality of such information;

(iv) After adult petitioners for U nonimmigrant status or U nonimmigrant status holders have provided written consent to waive the restrictions prohibiting the release of information;

(v) To Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c);

(vi) After a petition for U nonimmigrant status has been denied in a final decision;

(vii) To the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals);

(viii) With prior written consent from the petitioner or derivative family members, to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims; or

(ix) To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(2) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(3) Officials of the Department of Homeland Security are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity.

(f) *Admission of qualifying family members—(1) Eligibility.* An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if

accompanying or following to join such principal alien. A qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 nonimmigrant status. To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:

(i) The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

(ii) The qualifying family member is admissible to the United States.

(2) *Filing procedures.* A petitioner for U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting a Form I-918, Supplement A, "Petition for Qualifying Family Member of U-1 Recipient," for each family member either at the same time the petition for U-1 nonimmigrant status is filed, or at a later date. An alien who has been granted U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting Form I-918, Supplement A for each family member. All Forms I-918, Supplement A must be accompanied by initial evidence and the required fees specified in the instructions to the form. Forms I-918, Supplement A that are not filed at the same time as Form I-918 but are filed at a later date must be accompanied by a copy of the Form I-918 that was filed by the principal petitioner or a copy of his or her Form I-94 demonstrating proof of U-1 nonimmigrant status, as applicable.

(i) Qualifying family members in pending immigration proceedings. The principal alien of a qualifying family member who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who is seeking U nonimmigrant status, must file a Form I-918, Supplement A directly with USCIS. ICE counsel may agree to file, at the request of the qualifying family member, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while the petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) Qualifying family members with final orders of removal, deportation, or exclusion. An alien who is the subject

of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-2, U-3, U-4, or U-5 nonimmigrant status directly with USCIS. The filing of a petition for U-2, U-3, U-4, or U-5 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the alien's removal.

(3) *Initial evidence.* Form I-918, Supplement A, must include the following initial evidence:

(i) Evidence demonstrating the relationship of a qualifying family member, as provided in paragraph (f)(4) of this section;

(ii) If the qualifying family member is inadmissible, Form I-192, "Application for Advance Permission to Enter as a Non-Immigrant," in accordance with 8 CFR 212.17.

(4) *Relationship.* Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to exist at the time Form I-918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.

(i) If the U-1 principal alien proves that he or she has become the parent of a child after Form I-918 was filed, the child shall be eligible to accompany or follow to join the U-1 principal alien.

(ii) If the principal alien was under 21 years of age at the time he or she filed Form I-918, and filed Form I-918, Supplement A for an unmarried sibling under the age of 18, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status even if the principal alien is no longer under 21 years of age at the time of adjudication, and even if the sibling is no longer under 18 years of age at the time of adjudication.

(5) *Biometric capture and evidentiary standards.* The provisions for biometric capture and evidentiary standards in paragraphs (c)(3) and (c)(4) of this section also are applicable to petitions for qualifying family members.

(6) *Decision.* USCIS will issue a written decision approving or denying Form I-918, Supplement A and send notice of this decision to the U-1 principal petitioner. USCIS will include

in a decision approving Form I-918 a list of nongovernmental organizations to which the qualifying family member can refer regarding his or her options while in the United States and available resources. For a qualifying family member who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918, Supplement A. A qualifying family member who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(i) *Approvals for qualifying family members within the United States.* When USCIS approves a Form I-918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien U-2, U-3, U-4, or U-5 nonimmigrant status. USCIS will notify the principal of such approval on Form I-797, "Notice of Action," with Form I-94, "Arrival-Departure Record," indicating U-2, U-3, U-4, or U-5 nonimmigrant status. Aliens who were previously granted U interim relief as defined in paragraph (a)(13) of this section will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. Aliens who are granted U-2, U-3, U-4, or U-5 nonimmigrant status are not subject to an annual numerical limit. USCIS may not approve Form I-918, Supplement A unless it has approved the principal alien's Form I-918.

(ii) *Approvals for qualifying family members outside the United States.* When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval on Form I-797. USCIS will forward the approved Form I-918, Supplement A to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the qualifying family member is located, or, for a visa exempt alien, to the appropriate port of entry.

(iii) *Denial of the Form I-918, Supplement A.* In accordance with 8 CFR 103.3(a)(1), USCIS will provide written notification of the reasons for the denial. The principal alien may

appeal the denial of Form I-918, Supplement A to the Administrative Appeals Office in accordance with the provisions of 8 CFR 103.3. Upon USCIS' final denial of Form I-918, Supplement A for a qualifying family member who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(f)(2)(i), DHS may file a new Notice to Appear (see section 239 of the INA, 8 U.S.C. 1229) to place the individual in proceedings again. For qualifying family members who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(7) *Employment authorization.* An alien granted U-2, U-3, U-4, or U-5 nonimmigrant status is employment authorized incident to status. To obtain an Employment Authorization Document (EAD), such alien must file Form I-765, "Application for Employment Authorization," with the appropriate fee or a request for a fee waiver, in accordance with the instructions to the form. For qualifying family members within the United States, the Form I-765 may be filed concurrently with Form I-918, Supplement A, or at any time thereafter. For qualifying family members who are outside the United States, Form I-765 only may be filed after admission to the United States in U nonimmigrant status.

(g) *Duration of U nonimmigrant status—(1) In general.* U nonimmigrant status may be approved for a period not to exceed 4 years in the aggregate. A qualifying family member granted U-2, U-3, U-4, and U-5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.

(2) *Extension of status.* (i) Where a U nonimmigrant's approved period of stay on Form I-94 is less than 4 years, he or she may file Form I-539, "Application to Extend/Change Nonimmigrant Status," to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. USCIS may approve an extension of status for a qualifying family member beyond the date when the U-1 nonimmigrant's status expires when the qualifying family member is unable to enter the United States timely due to delays in consular processing, and an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.

(ii) Extensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539 and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539.

(h) *Revocation of approved petitions for U nonimmigrant status—(1) Automatic revocation.* An approved petition for U-1 nonimmigrant status will be revoked automatically if, pursuant to 8 CFR 214.14(d)(1), the beneficiary of the approved petition notifies the USCIS office that approved the petition that he or she will not apply for admission to the United States and, therefore, the petition will not be used.

(2) *Revocation on notice.* (i) USCIS may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

(A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing;

(B) Approval of the petition was in error;

(C) Where there was fraud in the petition;

(D) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the relationship to the principal petitioner has terminated; or

(E) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the principal U-1's nonimmigrant status is revoked.

(ii) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the U nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation.

(3) *Appeal of a revocation of approval.* A revocation on notice may be

appealed to the Administrative Appeals Office in accordance with 8 CFR 103.3 within 30 days after the date of the notice of revocation. Automatic revocations may not be appealed.

(4) *Effects of revocation of approval.* Revocation of a principal alien's approved Form I-918 will result in termination of status for the principal alien, as well as in the denial of any pending Form I-918, Supplement A filed for qualifying family members seeking U-2, U-3, U-4, or U-5 nonimmigrant status. Revocation of a qualifying family member's approved Form I-918, Supplement A will result in termination of status for the qualifying family member. Revocation of an approved Form I-918 or Form I-918, Supplement A also revokes any waiver of inadmissibility granted in conjunction with such petition.

(i) *Removal proceedings.* Nothing in this section prohibits USCIS from instituting removal proceedings under section 240 of the Act, 8 U.S.C. 1229(a), for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in Form I-918 or Form I-918, Supplement A and supporting documentation, or after revocation of U nonimmigrant status.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 9. The authority citation for section 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 10. Section 248.1 is amended by revising paragraph (a) to read as follows:

§ 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status pursuant to section 247 of the Act, 8 U.S.C. 1257, who is continuing to maintain his or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fianc(e), or the child of such alien, under section 101(a)(15)(K) of the Act, 8 U.S.C. 1101(a)(15)(K), or as an alien in transit under section 101(a)(15)(C) of the Act, 8 U.S.C. 1101(a)(15)(C). An alien defined by section 101(a)(15)(V), or 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(V) or 8 U.S.C. 1101(a)(15)(U), may be accorded nonimmigrant status in the United States by following the procedures set

forth respectively in § 214.15(f) or § 214.14 of this chapter.

* * * * *

■ 11. Section 248.2 is amended by:

■ a. Revising the introductory text;

■ b. Redesignating the revised introductory text through paragraph (f) as paragraphs (a) introductory text through (a)(6); and by

■ c. Adding a new paragraph (b) to read as follows:

§ 248.2 Ineligible Classes.

(a) Except as described in paragraph (b) of this section, the following categories of aliens are not eligible to change their nonimmigrant status under section 248 of the Act, 8 U.S.C. 1258:

* * * * *

(b) The prohibition against a change of nonimmigrant status for the categories of aliens described in paragraphs (a)(1) through (6) of this section is inapplicable to aliens applying for a change of nonimmigrant status to that of a nonimmigrant under section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U).

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 12. The authority citation for section 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 13. Section 274a.12 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Amending paragraph (a)(14) by removing the word "or" at the end of the paragraph;

■ c. Removing the period at the end of paragraph (a)(16) and inserting a semicolon in its place;

■ d. Adding and reserving paragraphs (a)(17) and (18); and by

■ e. Adding new paragraphs (a)(19) and (20).

The revision and additions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3), (a)(4), (a)(6)–(a)(8), (a)(10)–(a)(15), or (a)(20) of this section, and who seeks to be employed in the United States, must apply to U.S.

Citizenship and Immigration Services (USCIS) for a document evidencing such employment authorization. USCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States.

* * * * *

(17) [Reserved]

(18) [Reserved]

(19) Any alien in U-1 nonimmigrant status, pursuant to 8 CFR 214.14, for the period of time in that status, as evidenced by an employment authorization document issued by USCIS to the alien.

(20) Any alien in U-2, U-3, U-4, or U-5 nonimmigrant status, pursuant to 8

CFR 214.14, for the period of time in that status, as evidenced by an employment authorization document issued by USCIS to the alien.

* * * * *

■ 14. Section 274a.13 is amended by revising paragraph (a) introductory text to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* Aliens authorized to be employed under section 274a.12(a)(3), (a)(4), (a)(6)–(8), (a)(10)–(15), and (a)(20) must file an Application for Employment Authorization (Form I-

765) in order to obtain documentation evidencing this fact.

* * * * *

PART 299—IMMIGRATION FORMS

■ 15. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

■ 16. Section 299.1 is amended in the table by adding the entries for Forms “I-918,” “I-918 Supplement A,” and “I-918 Supplement B” in the proper alpha/numeric sequence.

§ 299.1 Prescribed forms.

* * * * *

| Form No. | Edition date | Title |
|--------------------------|--------------|---|
| I-918 | 8/15/07 | Petition for U Nonimmigrant Status. |
| I-918 Supplement A | 8/15/07 | Petition for Qualifying Family Member of U-1 Recipient. |
| I-918 Supplement B | 8/15/07 | U Nonimmigrant Status Certification. |

■ 17. Section 299.5 is amended in the table by adding the entries for Forms “I-918,” “I-918 Supplement A,” and “I-

918 Supplement B” in the proper alpha/numeric sequence.

§ 299.5 Display of control numbers.

* * * * *

| Form No. | Form title | Currently assigned OMB control No. |
|--------------------------|--|------------------------------------|
| I-918 | Petition for U Nonimmigrant Status | 1615-0104 |
| I-918 Supplement A | Petition for Qualifying Family Member of U-1 Recipient | 1615-0104 |
| I-918 Supplement B | U Nonimmigrant Status Certification | 1615-0104 |

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U VISA CERTIFICATION *and* T VISA DECLARATION TOOLKIT *for* LAW ENFORCEMENT AGENCIES AND PROSECUTORS

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Questions and comments regarding this toolkit may be directed to: niwap@wcl.american.edu or (202)274-4457

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

(Last Updated July 2020)

Law enforcement agencies² with a practice or policy for signing U visa certifications and T visa declarations have an additional tool to reduce crime and ensure safer communities. The U visa and the T visa are federal programs available to immigrant victims of crime who are helpful to law enforcement. U visa applicants must submit, among other documentation, a law enforcement certification as part of their U visa application. A law enforcement declaration is not a required document for a T visa declaration, but is useful³ and valuable evidence of a victim's cooperation.⁴ This toolkit provides an overview and details about the U visa and T visa programs and guidance on how law enforcement agencies, in particular police and prosecutors, can develop a certification practice.

This toolkit provides the following background information on the U and T visa programs: an overview of the U and T visas, information on who qualifies for these visas, which criminal activities are covered by the U and T visas, the application process, and other information that will assist law enforcement agencies, in particular police and prosecutors, in their role as certifiers. The U visa certification form, the T visa declaration form and a sample forms completed by a law enforcement official are included in this toolkit.

U VISA

Overview of the U visa

When Congress created the U visa in the Violence Against Women Act of 2000 (VAWA), its intent was (1) to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute, convict and sentence in cases of domestic violence, sexual assault, human trafficking, and other crimes; and (2) to offer protection to victims of such criminal activities.⁵ Lawmakers recognized that a victim's helpfulness, cooperation, assistance, and safety are essential to the effective detection, investigation, prosecution, conviction and sentencing of

² 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.

³ 72 Fed. Reg. 92266, 92276 (2016).

⁴ DEP'T OF HOMELAND SECURITY, U and T Visa Law Enforcement Resource Guide 3 & 10 (2015) [hereinafter *DHS U and T Visa Resource Guide*], <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

⁵ 72 Fed. Reg. 53014, 53015 (2007) (citing Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464).

crimes.⁶ Victims who fear deportation, however, will be unlikely to come forward to help government officials detect criminal activities, cooperate and assist in investigative efforts, and/or participate in criminal prosecutions of crime perpetrators.⁷ Thus, Congress created the U visa program to provide specific avenue through which immigrant crime victims who are helpful in detecting criminal activity or who cooperate with law enforcement, prosecutors or other government officials investigating, prosecuting, convicting or sentencing their perpetrator, can obtain lawful immigration status and protection against deportation. This program was designed to foster increased trust between law enforcement agencies and the immigrant population they serve.⁸

Who is eligible for a U visa?

To be eligible for a U visa, immigrant victims must meet four statutory requirements. They must also include in their application a certification from a certifying official or agency describing that they have been, are being, or are likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a qualifying criminal activity.⁹ The law requires that a person who is eligible for a U visa must:

- (1) have been the victim of a criminal activity perpetrated in the United States or that violated the laws, state or federal, of the United States;
- (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 suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity.¹⁰

⁶ 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. Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464.

⁷ “Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims’ lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to providing victims of crime a greater sense of security that also makes it easier for them to assist [law enforcement officials] with [their] law enforcement and prosecutorial efforts.” *DHS U and T Visa Resource Guide* at 3.

⁸ VAWA 2000, § 1513(a), Pub. L. No. 106-386, 114 Stat. 1464; *DHS U and T Visa Resource Guide* at 9; 67 Fed. Reg. 4782, 4785 (2002) Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a) (OCT. 28, 2000).

⁹ I.N.A. § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U visa eligibility and contains non-exhaustive list of qualifying criminal activities. Congress used the term “criminal activity” rather than “crime” to provide victims access to U visa protection as early as possible after the crime was committed or was reported.); I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

¹⁰ I.N.A. § 101(a) (15) (U), 8 U.S.C. § 1101(a) (15) (U). If the petitioner is under 16 years of age, incapacitated, or incompetent, the victim 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).

In addition, the victim must be admissible to the United States. Under U.S. immigration law a person is “admissible” if they are eligible to be granted lawful entry into the United States.¹¹ Immigrant victims who are inadmissible,¹² may apply for any waiver of inadmissibility for which the victim may be eligible. The Violence Against Women Act of 2000 created a waiver specific to U visa, under which DHS has the discretion to waive any ground of inadmissibility except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.¹³ However, DHS first must determine that such a waiver would be in the public or national interest.¹⁴

The U visa certification requirement

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

- 1) The type of criminal activity perpetrated against the victim (I-918B Form: Part 3)
- 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).¹⁵
- 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.¹⁶

¹¹ I.N.A. § 101(a)(13), 8 U.S.C. 1101(a)(13).

¹² Grounds of inadmissibility are listed in I.N.A. § 212, 8 U.S.C. 1182.

¹³ I.N.A. § 212(d)(14), 8 U.S.C. 1182(d)(14).

¹⁴ *Id.*

¹⁵ 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, they are 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).

¹⁶ 8 U.S.C. § 1101(a)(15)(U)(I) (2006); 72 Fed. Reg. 53014, 53023–24 (Sept. 17, 2007).

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

The U visa statute includes a “non-exclusive”¹⁷ 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, stalking, female genital mutilation,¹⁸ being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, fraud in foreign labor contracting, 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 that often impact immigrants.¹⁹

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.

¹⁷ INA § 101(a)(15)(U)(iii), 8 U.S.C. 1101 (a)(15)(U)(iii); 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (explaining that the list is non-exclusive).

¹⁸ The United States federal government defines Female Genital Mutilation or Cutting (“FGM/C”) as follows:

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia major or labia minor or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

(b) A surgical operation is not a violation of this section if the operation is –

(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioners, midwife, or person in training to become such a practitioner or midwife.

(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

(d) Whoever knowingly transports from the United States and its territories a person in foreign commerce for the purpose of conduct with regard to that person that would be a violation of subsection (a) if the conduct occurred within the United States, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both. 18 U.S.C. § 116 (2013).

DHS developed a brochure that provides information clarifying the criminal consequences for performing FGM/C on a minor, attempting to send her outside the United States for FGM/C to be performed, or performing FGM/C on a woman over the age of 18 without consent. In addition, this brochure details the immigration consequences to performing or assisting in FGM/C, and that immigration relief may be available for those that have undergone FGM/C or are at risk of undergoing FGM/C. Department of Homeland Security, “Female Genital Mutilation/Cutting,” available at http://library.niwap.org/wp-content/uploads/FGMC_Brochure_FINAL.pdf.

¹⁹ 72 Fed. Reg. 53014, 53015 (Sept. 17, 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.”²⁰

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 criminal activities 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.²¹ 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 perpetrators are charged with unrelated crimes, U visa certifications are still appropriate and explicitly encouraged by the United States Department of Homeland Security.²² 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.²³

- **Evaluating U Visa Helpfulness (I-918B Form: Part 5)**

Law enforcement, prosecution, judges, and other government officials may complete U visa certifications once they are able to assess a victim’s helpfulness.²⁴ 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, prosecution, conviction or sentencing of the qualifying criminal activity.”²⁵

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.²⁶ Congress intended to allow an individual to petition for status at virtually any stage of the investigation or prosecution.²⁷ Likewise, the definition of “investigation or prosecution” in the statute is interpreted broadly²⁸ to include victim assistance in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.²⁹ Some examples of helpful actions include,

²⁰ 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

²¹ 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, 849–76 (1993).

²² See 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

²³ *Id.*

²⁴ “Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim.” *DHS U and T Visa Resource Guide* at 7.

²⁵ 8 U.S.C. § 1184(p)(1).

²⁶ 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007).

²⁷ *Id.*

²⁸ *Id.* at 53020; 8 C.F.R. § 214.14(a) (5).

²⁹ *Id.*

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.³⁰

It is important to note that a victim who received certification and a victim who was granted a U visa has an ongoing obligation to provide assistance or cooperation reasonably requested by law enforcement or prosecutors.³¹ According to DHS “This means that since the initiation of cooperation, the victim has not unreasonably refused to cooperate or failed to provide information and assistance reasonable requested by law enforcement or prosecution in connection with a criminal investigation or prosecution.”³² Certifiers may inform USCIS if a victim is no longer helpful. However, such notification is appropriate only if the certifier determines that the victim’s unwillingness to provide ongoing helpfulness was unreasonable.³³ Whether the victim’s lack of helpfulness is unreasonable is to be assessed in light of the totality of the circumstances.³⁴

The full system of checks and balances involving the U visa certification process is designed to encourage the U visa victim to provide ongoing assistance when reasonably requested by law enforcement or prosecutors who pursue a criminal investigation or prosecution against the perpetrator of the criminal activity perpetrated against the victim. Once a U visa has been granted the U visa regulations impose an ongoing requirement of assistance when reasonably requested. However, recognizing that dangers to crime victims posed by perpetrators and the dynamics of domestic violence, child abuse, sexual assault and human trafficking cases in particular, Congress created an exception to this cooperation/assistance requirement when victims can show that their refusal to cooperate was *reasonable* in light of the circumstances. Any U visa victim who applies for lawful permanent residence based upon having received a U visa must prove that they did not unreasonably refuse to comply with reasonable requests for assistance.

Congress included witness tampering because threats from perpetrators can deter the cooperation of crime victims who initially come forward and report criminal activities. The following are common examples of when a victim’s lack of ongoing cooperation is “not unreasonable”:³⁵

³⁰ See Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist*, NIWAP (2019), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>. (for more examples of helpfulness)

³¹ *Id.* “The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the U visa revoked by USCIS.” *DHS U and T Visa Resource Guide* at 7.

³² *DHS U and T Visa Resource Guide* at 18.

³³ 8 CFR 245.24(a)(5).

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

³⁵ I.N.A. § 245(m)(1); 8 U.S.C. 1255(m)(1).

- 1) When perpetrators, through coercion and threats, make the victim unavailable for trial;
- 2) When perpetrators use other tactics of power and control, such as isolation, economic abuse, and emotional abuse to manipulate the victim;
- 3) When a victim reasonably fears for her safety or her children's safety; or
- 4) 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 participate. Receiving a U visa approved by DHS and protection from deportation can bolster the victim's courage to cooperate despite these fears and concerns.³⁶ 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 they did not unreasonably refuse to cooperate in the investigation or prosecution of criminal activity.³⁷

It is important to understand that the standard for certification is whether the victim has been, is being, or is likely to be helpful. This is different than the assistance/cooperation requirement imposed by regulations on victims once their U visa case has been filed. The Congressional goal was first to get victims to come forward and give government agencies a tool to encourage them to do so. Once victims file for the U visa, the ongoing cooperation/assistance requirement, and its safety promoting exceptions, apply.³⁸

It can take up to 6 years to adjudicate the U visa application. If a certifying official signs a certification and later determines that the facts were other than they believed to be true at the time they signed the certification or believes that the immigrant U visa victim's failure to provide ongoing assistance was unreasonable, the official can notify DHS. DHS will use the

³⁶ "It is common for perpetrators to report immigrant crime victims and witnesses to immigration enforcement officials to gain advantage in a civil or family law case and/or to avoid prosecution in a criminal case. Congress created the U visa as a tool to counter such efforts by perpetrators." *DHS U and T Visa Resource Guide* at 20.

³⁷ "[T]he I-918B...provide an opportunity for law enforcement to provide information to USCIS about the extent of the victim's assistance in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. [Law enforcement officials] may complete the form including all information [they] find relevant about the victim's assistance. USCIS will ultimately determine whether the victim meets these requirements. Form I-918B asks whether the victim possesses information concerning the criminal activity; was, is, or is likely to be helpful in the investigation and/or prosecution of the criminal activity; was asked to provide further assistance; and has unreasonably refused to provide assistance. [Law enforcement officials] may select "yes" or "no" to these questions and further explain [their] answers." *DHS U and T Visa Resource Guide* at 18.

³⁸ Research has found that that this statutory and regulatory structure with its safety focused victim protection based exception results over time in high levels of U visa victim participation in criminal investigations and prosecutions of perpetrators. See generally, Leslye Orloff, Levi Wolberg, and Benish Anver, *U Visa Victims and Lawful Permanent Residency* (September 6, 2012), <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12> (70% of U visa applicants and U visa holders provided continued cooperation with law enforcement and prosecutors. Further, another 29.5% of U visa applicants and recipients wanted to offer additional ongoing cooperation but such assistance was not requested by law enforcement officials or prosecutors. This occurs for many reasons including, because the criminal case had stalled (e.g. the perpetrator could not be identified or served), police and/or prosecutors did not end up pursuing criminal prosecution of the perpetrator, or the perpetrator took a plea ending the criminal case.

information provided by the certifier to investigate whether the U visa should be revoked. DHS will also use this information in adjudicating the victim's application for lawful permanent residency as evidence of non-cooperation that the victim will have to overcome by proving to DHS' satisfaction that they did not unreasonably refuse to assist.

T VISA

Overview of the T visa

Congress, in the Trafficking Victims Protection Act of 2000 (TVPA) created the T visa program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the detection, investigation or prosecution of this human trafficking related criminal activities.³⁹

Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.⁴⁰ Accordingly, in both the TVPA and VAWA, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, including human trafficking, but also to strengthen relations between law enforcement and immigrant communities.⁴¹ The T visa assists in law enforcement efforts to bring perpetrators of trafficking to justice and to provide protection and a sense of security for immigrant victims.

The T visa allows eligible victims to temporarily remain and work in the U.S. for up to four years. The visa may be extended in limited cases, such as when the presence of the victim is necessary to assist the investigation or prosecution of the trafficking activity.⁴² If certain conditions are met, an individual with a T visa may apply for lawful permanent residency (i.e., apply for a green card in the United States) after three years in the United States with a T visa or upon completion of the investigation or prosecution, whichever occurs earlier.⁴³

Who is eligible for a T visa?

USCIS may find an individual eligible for a T visa if the victim:

- (1) Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;

³⁹ *DHS U and T Visa Resource Guide* at 4.

⁴⁰ *Id.*

⁴¹ *Id.*; See Victims of Trafficking and Violence Protection Act of 2000, § 1513(c), Pub. L. No. 106-386, 114 Stat. 1464.

⁴² INA § 214(o)(7)(B), 8 U.S.C. 1184(o)(7)(B).

⁴³ See generally 73 Fed. Reg. 75540 (2008).

22 U.S.C. 7102(12): **The term “severe forms of trafficking in persons” means—**

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subsection to involuntary servitude, peonage, debt bondage, or slavery.

- (2) Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- (3) Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking⁴⁴ (except victims who are under 18 years of age, or those who are unable to cooperate due to physical or psychological trauma⁴⁵);
- (4) Would suffer extreme hardship involving unusual and severe harm if removed from the United States.⁴⁶

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for any waiver of inadmissibility for which the victim may be eligible.⁴⁷

The T visa declaration

The T visa declaration is supplementary evidence of a victim’s assistance to law enforcement or prosecutors that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official can complete for a T visa applicant.⁴⁸ DHS adopts an “any credible evidence” standard for the T visa.⁴⁹ The declaration is not a required document for a T visa application, and is not given any special evidentiary weight.⁵⁰ DHS encourages judges and other government officials to sign U visa certifications and by assuring certifiers that the declaration is useful, rather than controlling evidence in the case should result

⁴⁴ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)(i)) (2016).

⁴⁵ See I.N.A. § 101(a)(15)(T)(i) (III), 8 U.S.C. 1101(a)(15)(T)(i)(III). ⁴⁵ “There are certain times when a victim is not required to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.” *DHS U and T Visa Resource Guide* at 12.

⁴⁶ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

⁴⁷ *DHS U and T Visa Resource Guide* at 4; 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(i)) (2016). Limayli Huguét, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (January 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>

⁴⁸ *Id.* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁴⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016).

⁵⁰ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

in judges and other certifiers “more likely to sign endorsements, increasing the likelihood that T visa will be utilized as the law enforcement tool that it is intended to be.”⁵¹

The T visa declaration must be provided on Form I-914, Supplement B. The declaration helps demonstrate that the victim is or was a victim of a severe form of trafficking in persons, and/or that the victim has complied with any reasonable requests from law enforcement in an investigation or prosecution of human trafficking.⁵² **Certifying officials who sign declarations do not confer any visa upon the victim, nor do they decide whether the victim meets the eligibility standards.**⁵³ The declaration is not conclusive evidence that the applicant meets the eligibility requirements. Only USCIS has the discretion to grant or deny T visa to the victim.⁵⁴

What’s the purpose of the law enforcement declaration?

The law enforcement, prosecutor, judge or government agency declaration (Form I-914B) is a three-page form that immigrant trafficking victims can submit as part of their T visa application. The declaration is not required, but when provided, is useful⁵⁵ and valuable evidence of a victim’s cooperation.⁵⁶

The form includes six short parts and must be signed by a ***law enforcement or other government agency authorized to sign declarations*** (see definition below) that attests to the following:

- 1) The applicant is or has been a victim of a severe form of trafficking in persons. (I-914B Form: Part C)
- 2) The applicant has complied with requests for assistance in the detection, investigation, or prosecution of a human trafficking related crime. (I-914B Form: Part D)
- 3) Information the agency signing the declaration has about any family members of the victim believed to have been involved in the victim’s trafficking to or within the United States. (I-914B Form: Part E)

USCIS applies the VAWA “any credible evidence” standard for T visa applications. The government agency declaration is not conclusory evidence. The determination of whether the victim meets the eligibility standards is made by USCIS.⁵⁷

- **Victimization (I-918B Form: Part C)**

⁵¹ 72 Fed. Reg. 92266, 92276 (2016).

⁵² *Id.*

⁵³ *Id.*; 72 Fed. Reg. 92266, 92276 (2016); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS at 1 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>

⁵⁴ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016).

⁵⁵ 72 Fed. Reg. 92266, 92276 (2016).

⁵⁶ *DHS U and T Visa Resource Guide* at 3, 10.

⁵⁷ 72 Fed. Reg. 92266, 92272 (2016).

“Severe form of trafficking in persons” is defined as:⁵⁸

- (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- (2) sex trafficking in which the person induced to perform such an act is under the age of 18; or
- (3) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.

DHS clarifies that an individual need not actually perform labor, services, or a commercial sex act to meet the definition; even if the illicit end is never realized, the definition is met as long as a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery) is present in the case.⁵⁹ This would include, for example, a situation where the victim was recruited and came to the United States through force, fraud or coercion for the purpose of a commercial sex act, but the victim was rescued or escaped before performing a commercial sex act.⁶⁰

USCIS will accept any credible evidence of victimization, including but not limited to a T visa declaration signed by a law enforcement agency.⁶¹ An law enforcement agency does not determine if the victim meets the “severe form of trafficking” definition under Federal law. That is a determination that is made by USCIS.⁶²

- **The Assistance Requirement (I-918B Form: Part D)**

The T visa requires that the victim has complied with any reasonable requests from law enforcement or prosecutors in an investigation or prosecution of human trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.⁶³ USCIS will accept any credible evidence of assistance, including but not limited to a T visa declaration signed by a law enforcement, prosecution, or government agency, or a judge.⁶⁴ The government official signing the declaration does not determine if the victim meets the assistance requirement; that is a determination made by USCIS.

In determining “reasonableness” of the request, USCIS will consider the totality of the circumstances using a broad range of factors, including but not limited to: general law enforcement and prosecutorial practices; the nature of the victimization; and the specific

⁵⁸ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁵⁹ 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(f)(1)) (2016); 72 Fed. Reg. 92266, 92270 (2016); Freedom Network, General Tips for T Visas for Victims of Severe Form of Trafficking in Persons (Apr. 2018), <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

⁶⁰ 72 Fed. Reg. 92266, 92270 (2016).

⁶¹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016); 72 Fed. Reg. 92266, 92272 (2016).

⁶² 72 Fed. Reg. 92266, 92272 (2016).

⁶³ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

⁶⁴ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016); 72 Fed. Reg. 92266, 92272 (2016).

circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.⁶⁵ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.⁶⁶ It is generally reasonable for law enforcement or prosecutors to ask a victim similar things they would ask other comparably situated crime victims, such as domestic violence or sexual assault victims.⁶⁷

The victim must fulfill an ongoing responsibility to provide assistance from the time of their initial application through the time they apply for lawful permanent residency.⁶⁸ At their discretion, a government agency signing a declaration may revoke or disavow a declaration if a victim stops cooperating; after revocation or disavowal, the declaration will no longer be considered as evidence.⁶⁹

Who can provide the T visa declaration?

DHS regulations define the range of government agencies authorized to sign T visa declarations to be a federal, state, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.⁷⁰

LAW ENFORCEMENT OFFICIALS AND PROSECUTORS AS U/T VISA CERTIFIERS

Congress and DHS specifically listed federal, state, and local law enforcement officials and prosecutors as U visa and T visa certifiers in the statute and regulations.⁷¹ The two visas are effective tools for law enforcement and prosecutors because they allow both to hold perpetrators of crimes accountable and to receive assistance from victims in investigations.⁷² They also allow law enforcement and prosecutors to foster a trusting relationship with the local immigrant population in their 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

⁶⁵ 72 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

⁶⁶ 72 Fed. Reg. 92266, 92275 (2016).

⁶⁷ *Id.*

⁶⁸ 72 Fed. Reg. 92266, 92274 (2016).

⁶⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

⁷⁰ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁷¹ INA § 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁷² "In cases where the information provided by the victim led to the detection of criminal activity, a certifying agency may sign a certification. In these cases it does not matter if another agency will be the one to determine whether to pursue a criminal investigation or prosecution. In cases where the police investigated the crime and prosecutors are now prosecuting the case, both police and prosecutors may sign a certification. The authority of the police to sign a certification does not end when the case is referred for prosecution." *DHS U and T Visa Resource Guide* at 15.

occurred and whether a person has been a victim of such activity.⁷³ 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 U visa certification or T visa declaration.⁷⁴

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. The prosecutors might need the victim to testify in court, or otherwise help during the prosecution, which might include the sentencing phase. When the crime victim is or may be a non-citizen, DHS has authorized prosecutors to issue U visa certifications and T visa declarations. This authority to certify exists whether the prosecutor ultimately pursues prosecution of the perpetrator for the crime.⁷⁵

Although the U visa and T visa statutes clearly authorize all law enforcement and prosecution agencies to sign declarations, DHS and USCIS refer to agencies authorized to sign certifications and declarations as Law Enforcement Agencies (LEA). Federal LEAs include but are not limited to the following: U.S. Attorneys' Offices, Civil Rights Division, Criminal Division, U.S. Marshals Service, Federal Bureau of Investigation (Department of Justice); U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP); Diplomatic Security Service (Department of State); and Department of Labor.⁷⁶

The head of any federal, state or local law enforcement, protection, or other government agency authorized to sign certifications and declarations can sign or they can designate signing authority to any person who works for the agency whose job includes supervision. The head of the agency or a designated supervising official at federal, state or local government agency that has the responsibility and authority for the detection, investigation, prosecution, conviction or sentencing of U visa listed criminal activities or in T visas cases of severe forms of trafficking in persons or other related activity may sign the certification or declaration.⁷⁷

The DHS regulations envision that the certification process fits within routine activities of law enforcement. The certification/declaration can be completed at the same time officers are completing their police reports and can then be reviewed and approved by supervisors who are

⁷³ It is important to note that U visa certification and T visa regulation can and should occur as early as possible after taking a police report or interviewing a credible crime victim. *See* 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). Certification need not wait until the case reaches a probable cause determination, reasonable suspicion is sufficient. For cases in which probable cause has been found, best practices are to provide noncitizen victims with certifications.

⁷⁴ "When completing the Form I-918B, certifying officials are encouraged to check the boxes for all qualifying criminal activities detected based on the facts of the case at the time of certification. Certifying officials should not limit the boxes that are checked to the criminal activities that the agency has decided to investigate or prosecute and should check all qualifying criminal activities present in the case." *DHS U and T Visa Resource Guide* at 8.

⁷⁵ "Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations." *DHS U and T Visa Resource Guide* at 21.

⁷⁶ *Id.*

⁷⁷ *DHS U and T Visa Resource Guide* at 15.

also signing off on the police reports. The U and T visa regulations allow the head of the certifying agency to grant any supervisory person(s) the authority to issue U visa certifications and T visa declarations.⁷⁸ The regulations contemplate granting certification authority to multiple supervisory personnel.⁷⁹ DHS encourages law enforcement agencies to develop internal policies and procedures to respond to requests for U visa certifications and T visa declarations. To facilitate the authorization of personnel to sign certification forms, a sample “Designee Letter” is included in the tool kit.⁸⁰

The International Association of Chiefs of Police issued a resolution encouraging law enforcement agency leadership to adopt U and T visa training and polices.⁸¹ Receiving training on U visa and T visa certification is recommended for courts and for staff at any government agency signing certifications.⁸²

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 certifications; and to implement practices that result in certifications being issued.⁸³ A number of police departments collaborated on the development of a model U and T visa certification policy.⁸⁴

⁷⁸ See 8 CFR §§ 214.14(a)(3) & 214.14(c)(2)(i); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

⁷⁹ “The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign [certifications/declarations]. [A law enforcement official] should only sign a [certification/declaration] if [his or her] agency has given [him or her] this authority.” *DHS U and T Visa Resource Guide* at 8, 13.

⁸⁰ “If a certifying agency has written delegation of authority, provide a copy to USCIS to keep on file by emailing it to LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov.” *DHS U and T Visa Resource Guide* at 8.

⁸¹ International Association of Chiefs of Police, 2018 Resolutions – Support for Education and Awareness on U Visa Certification and T Visa Declaration, <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

⁸² On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

⁸³ *DHS U and T Visa Resource Guide* at 8. (“Some examples of how various agencies or officials educate their officials about U visa certifications...and how they designate a certifier or certifiers in their agency include: Distributing department policy or a general order on the process and use of the U visa certification...; Distributing a letter or memorandum from the Chief or Sherriff to the agency’s designee in charge of signing U visa certifications...designating a process and authority to certify;...Sending written notification, via email or other method, from the Chief or Sheriff to the entire department explaining the purpose of the U or T visa, the certification/declaration process, and who is/are designated as the certifier(s).”)

⁸⁴ The model policies for law enforcement and prosecution agencies are available at <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

Prosecutors or law enforcement officials who sign certifications do not grant a visa to the victim, but rather help demonstrate the eligibility requirements in the victim’s application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Only DHS has the discretion to grant or deny a visa to the victim.

III. APPLICATION PROCESS

The United States Citizenship and Immigration Services (USCIS) of the United States Department of Homeland Security (DHS) has sole jurisdiction over all petitions for U and T visas.⁸⁵ A person seeking a U visa must submit, by mail, Form I-918, “Petition for U Nonimmigrant Status” along with supporting documents establishing eligibility and is required to include a U visa certification that must be completed using Form I-918 Supplement B.⁸⁶ Form I-918 Supplement B must be signed by a qualifying certifier, such as a federal, state, or local law enforcement or prosecution official or a judge, within the six months immediately preceding the filing of Form I-918.⁸⁷

A person seeking a T visa must submit Form I-914, “Application for T Nonimmigrant Status” and supporting documents establishing eligibility.⁸⁸ A T visa declaration (Form I-914 Supplement B) may be submitted with the application and is helpful but is not required.⁸⁹

All U and T visa applications are filed with the specialized VAWA Victims and Trafficking Unit of USCIS. This specialized unit is trained to adjudicate cases involving crime victims and is the only adjudication unit within DHS that can grant U visas or T visas.⁹⁰

By preparing and signing U visa certification (Form I-918 Supplement B) or the T visa declaration (Form I-914 Supplement B), a certifier is not conferring a visa upon an immigrant applicant or making a determination of the applicant’s eligibility for a U or T visa.

For the U visa, the certification is a mandatory part of the evidence the victim must submit to USCIS to prove eligibility to receive a U visa. The certification is limited to verification that the individual is a victim of a qualifying criminal activity and that the victim has been, is being or is

⁸⁵ 72 Fed. Reg. 53014, 53022 (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016).

⁸⁶ “Without a completed and signed U visa certification, the victim will not qualify for a U visa, as it is a required part of the application, and there is no exception to this requirement. However, by signing a U visa certification, the certifying agency or official is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. USCIS determines the victim’s credibility and whether to approve the petition based on the totality of the evidence and circumstances of each case.” *DHS U and T Visa Resource Guide* at 6.

⁸⁷ “Federal, state, local, tribal, or territorial judges may sign U visa certifications. Delegation of authority is not applicable to or required of certifications by judges.” *DHS U and T Visa Resource Guide* at 8; 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)) (2007).

⁸⁸ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016).

⁸⁹ 72 Fed. Reg. 92266, 92276 (2016).

⁹⁰ Even where a case is before an immigration judge, adjudication for visas may still only be conducted by the USCIS Vermont Service Center.

likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.⁹¹ In addition to the certification, the applicant must meet several other eligibility criteria, including demonstrating that they suffered substantial mental or physical abuse⁹² as a result of having been a victim of qualifying criminal activity and providing a statement describing the facts of the victimization in the victim's own words.⁹³

For the T visa, the declaration is not mandatory and is just one type of evidence of victimization and assistance.⁹⁴ The declaration is limited to helping demonstrate victimization and compliance with reasonable requests.⁹⁵ Even if the declaration, along with other evidence the applicant submits, successfully demonstrate these two prongs, the applicant must meet several other requirements, including demonstrating victim of human trafficking would suffer extreme hardship involving unusual and severe harm upon removal.⁹⁶

To be granted a U or T visa, victims are also required to prove that they are eligible for admission to the United States. DHS may grant specified discretionary waivers authorized by the U or T visa statutes and approve a U or T visa for immigrant victims who cannot prove admissibility. In making this determination DHS will consider the totality of the victim's case and circumstances.⁹⁷

⁹¹ See Janell Ross, *Metro Nashville Police Block Visas for Crime Victims, Witnesses*, THE TENNESSEAN (Apr. 18, 2010), <http://www.tennessean.com/article/20100418/NEWS01/4180357/1001/NEWS>. (quoting DHS spokeswoman clarifying that the role of certifying officials including police filling out U visa certifications is to verify that an individual was a crime victim).

⁹² U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 11, January 2012, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visas_certification_guide.pdf (stating that USCIS will make the determination as to whether the victim has met the "substantial physical or mental" standard on a case-by-case basis during its adjudication of the U visa petition).

⁹³ "While Form I-918B asks the law enforcement official to provide information about the injury to the victim, the certifying official is not required to assess whether the victim suffered substantial physical or mental abuse as a result of the criminal activity. This is a requirement that the U visa petitioner must establish to the satisfaction of USCIS." *DHS U and T Visa Resource Guide* at 6.

⁹⁴ 72 Fed. Reg. 92266, 92272 (2016).

⁹⁵ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)) (2016).

⁹⁶ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

⁹⁷ "For all U visas petitioners and their qualifying family members, USCIS conducts a thorough background investigation including a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS also reviews the petitioner's immigration records to assess whether any inadmissibility issue exist, such as the petitioner's criminal history, immigration violations, or any security concerns. The results of these checks, as well as any evidence that certifying officials and immigration authorities possess, may be considered when determining eligibility for a U visa." *DHS U and T Visa Resource Guide* at 5.

BENEFITS OF THE U AND T VISAS AND APPLICATIONS FOR LAWFUL PERMANENT RESIDENCY

Benefits to Victims

In general, U visas and T visas are issued for a period of four years.⁹⁸ A U or T visa holder can live and work legally in the United States without fear of deportation, and gains access to legal work authorization. Victims of human trafficking who have continued presence or file T visa applications gain broad access to federal, state and local public benefits. U visa victims access to public benefits is much more limited, however victims in some states gain access to state funded public benefits, wait-list approved U visa victims in some states gain some access to health care, and U visa victims with lawful permanent residency gain additional access over time to other public benefits programs.⁹⁹

A U or T visa holder can include petitions with their application seeking U visas or T visas for eligible family members.¹⁰⁰

- For the U visa, if the victim is under 21 years of age, qualifying family members include the principal victim's spouse, parents, and children, unmarried siblings under 18 years of age (on the filing date of the principal victim's petition).¹⁰¹
- For the U visa if the victim is 21 years of age or older, qualifying family members include their spouse and children.¹⁰²
- For the T visa, eligible family members include:
 - Children;
 - Spouse;
 - Parents of child trafficking victims who are under age 21 at the time of application, or any victim's parents who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement;
 - Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim's unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement; and

⁹⁸ See I.N.A. § 214(p)(6), 8 U.S.C. § 1184(p)(6); I.N.A. § 214(o)(7)(A), 8 U.S.C. § 1184(o)(7)(A).

⁹⁹ NIWAP has developed a series of tools to assist courts, victim advocates working in law enforcement and prosecution agencies and non-profit based victim advocates and attorneys determine which immigrant victims qualify for which public benefits and services in each state. See NIWAP, *A Guide to Public Benefits Map for Immigrant Survivors of Crime* (June 11, 2019), <http://niwaplibrary.wcl.american.edu/pubs/benefits-map-guide/>; NIWAP, *Interactive Public Benefits Map* <http://map.niwap.org/>; NIWAP, *All State Public Benefits Charts* (June 7, 2019), <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>; Jordan Tacher, Aditi Kumar, and Leslye E. Orloff, *U-Visa Victim Benefits Eligibility Process* (Oct. 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard/>.

¹⁰⁰ 72 Fed. Reg. 53013, 53039 (codified at 8 C.F.R. § 214.14(f)) (2007); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(c)(2)) (2016).

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

¹⁰² I.N.A. § 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

- Adult or minor children of any T visa recipient (including eligible family members of the victim), if the children face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement.¹⁰³

The U visa and T visa application process includes a bona fide determination. For U visa cases an immigrant victim applicant receives a bona fide determination after USCIS reviews the case and finds that the application contains required initial evidence, the applicant successfully completed a background check, and the U visa application was made in good faith, without fraud or deceit.¹⁰⁴ Recipients of U visa bona fide determinations are granted “deferred action status” which is formal protection against deportation and receive legal work authorization, both of which last for 4 years and can be renewed.¹⁰⁵ U visa applicants and recipients have limited access to state and federally funded public benefits.¹⁰⁶

Similarly when T visa applicants receive bona fide determinations¹⁰⁷ they receive deferred action and work authorization.¹⁰⁸ T visa applicants with bona fide determinations also are granted access to a broad array of federally and state funded public benefits.¹⁰⁹

T and U visas are granted for a period of 4 years. Once a victim is granted the visa, both U and T visas can be extended beyond 4 years. Extensions are permitted in three circumstances:¹¹⁰

- If the U or T visa recipient has a pending application for lawful permanent residency;
- If DHS determines that an extension is needed due to exceptional circumstances; or
- The duration of the U or T visa shall be extended upon certification from a federal, state or local law enforcement official, prosecutor, judge or other government official investigating or prosecuting criminal activity or trafficking that the presence of the immigrant in the United States is required to assist in the investigation or prosecution of the criminal activity or human trafficking.

For the U visa, the government official can demonstrate the need for the U visa extension by completing a new U visa certification form.¹¹¹ For the T visa, government officials may demonstrate the need for the T visa extension by signing a new T visa declaration or by

¹⁰³ Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016).

¹⁰⁴ USCIS, Policy Manual Chapter 5 Bona Fide Determination Process (June 14, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process--uscis>

¹⁰⁵ USCIS Policy Alert (PA-2021-13), Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners (June 14, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/u-visa-bona-fide>

¹⁰⁶ Access to public benefits varies by state, by benefits program and by immigration status. To look up what state or federal public benefits an immigrant victim qualifies to receive go to: <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹⁰⁷ 8 C.F.R. Section 214.11(a).

¹⁰⁸ 67 Fed. Reg. 4784, 4790 (January 31, 2002).

¹⁰⁹ Section 107(b), Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 [H.R. 3244], (October 28, 2000).

¹¹⁰ I.N.A. § 214(p)(6), 8 U.S.C. § 1184(p)(6); I.N.A. § 214(o)(7), 8 U.S.C. § 1184(o)(7).

¹¹¹ I.N.A. § 214(p)(6), 8 U.S.C. 1184(p)(6).

sending a letter, fax or email to DHS.¹¹² The government agency that signs the certification or declaration related to the request for the extension need not be the same agency that signed the victim's original certification or declaration form.

Applying for Lawful Permanent Residency: U Visa

If approved for a U visa, a 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. After three years of continuous presence in the U.S. since receiving the U visa, a U visa holder is eligible to apply for lawful permanent residency.¹¹³ Not all U visa holders will qualify for lawful permanent residency. To qualify, a U visa holder must also provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution and that the victim's continued presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.¹¹⁴

Additionally, in connection with the application for lawful permanent residency, if the U visa holder departed the U.S. for any single period of time exceeding 90 days, or for shorter periods in the aggregate exceeding 180 days, they must include a certification – from the original certifier – that verifies that the absences were justified.¹¹⁵

Applying for Lawful Permanent Residency: T Visa

A T visa holder is eligible to apply for lawful permanent residency after three years of continuous presence in the U.S. since receiving the T visa, or, when the trafficking case has been concluded.¹¹⁶ If at the time the victim is granted a T visa, the any criminal investigation or prosecution of their trafficker has already been concluded, the victim receiving the T visa is immediately eligible to apply for lawful permanent residency. Not all T visa holders will qualify for lawful permanent residency. To qualify, a T visa holder must also provide evidence that they have complied with any reasonable request for assistance, and would suffer extreme hardship involving unusual and severe harm upon removal from the United States.¹¹⁷

Additionally, in connection with the application for lawful permanent residency, a T visa holder is not permitted to depart the U.S. for any single period of time exceeding 90 days, or for shorter periods in the aggregate exceeding 180 days.¹¹⁸ Unlike the U visa, T visa holders are not permitted to exceed the maximum time allowed by statute for being outside of the United States for any reason.¹¹⁹

¹¹² See 72 Fed. Reg. 92266, 92311 (codified at 8 C.F.R. § 214.11(l)) (2016).

¹¹³ Under immigration law the process of applying for lawful permanent residency with the application filed while the immigrant is living in the United States is called *adjustment of status*.

¹¹⁴ 73 Fed. Reg. 75540, 75550 (codified at 8 C.F.R. § 245.24(b)) (2008).

¹¹⁵ I.N.A. § 245(l)(3), 8 U.S.C. 1255(l)(3).

¹¹⁶ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)(3)) (2008).

¹¹⁷ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)(6)) (2008).

¹¹⁸ I.N.A. § 245(m)(2), 8 U.S.C. 1255(m)(2).

¹¹⁹ 73 Fed. Reg. 75540, 75541(2008).

U Visa Quick Reference for Law Enforcement and Prosecutors¹¹⁴

By Leslye E. Orloff, Alina Husain, Alisha Lineswala,
Benish Anver, Daniel Enos and Sylvie Sheng
March 24, 2021

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| <p>Purpose of the U visa¹¹⁵</p> | <ul style="list-style-type: none"> ● The U visa facilitates the reporting of criminal activities to government officials including but not limited to law enforcement, prosecutors, courts, adult and child protective services and state and federal administrative agency officials by immigrant victims of domestic violence, child abuse, sexual assault, dating violence, stalking and human trafficking, and other U visa listed criminal activities and ensures immigrant victims receive access to justice in civil, family, criminal and administrative law cases. |
| <p>Benefits of the U visa¹¹⁶</p> | <ul style="list-style-type: none"> ● Strengthens the ability of the law enforcement officers, prosecutors, courts, as well as state and federal government agencies to detect, investigate, prosecute, convict and/or sentence perpetrators of criminal activity while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation. ● Immigrant victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the criminal, family, and civil justice systems. The U visa certification promotes access to justice by enhancing accessibility and ensuring fairness. |
| <p>Who is eligible for a U visa?</p> | <ul style="list-style-type: none"> ● To be eligible for a U visa an individual: <ul style="list-style-type: none"> ○ Must be a victim of a criminal activity listed in the U visa statute or a similar criminal activity; ○ Must possess information concerning the criminal activity; ○ Must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local government agency or family, civil, or criminal court in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity;¹¹⁷ ○ Must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities; and ○ The criminal activity must have violated the federal or state laws of the U.S. or been perpetrated in the U.S. or its territories and possessions.¹¹⁸ ● To prove helpfulness, the applicant must obtain a certification from a law enforcement official, prosecutor, judge, Department of Homeland Security (DHS) official, or other federal or state authority involved in detecting, investigating, prosecuting, convicting or sentencing any of the qualifying criminal activities.¹¹⁹ |

¹¹⁴ U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018)

<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors>

¹¹⁵ See VAWA 2000, § 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464.

¹¹⁶ *Id.*

¹¹⁷ An exception to the helpfulness requirement applies to alien victims who are under 16 years of age, incapacitated, or incompetent. Such alien victims can satisfy the helpfulness requirement if their parent, guardian, or next friend provides the required assistance. I.N.A. § 101(a)(15)(U)(i)(II), 8 U.S.C. 1101(a)(15)(U)(i)(II).

¹¹⁸ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)) (2007).

¹¹⁹ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(2)) (2007).

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| Eligible Family Members | <ul style="list-style-type: none"> ● The victim may apply for their eligible family members to receive U visas. ● For victims under 21 years of age, qualifying family members include the principal crime victim’s spouse, children, parents, and unmarried siblings who are under 18 years of age (on the filing date of the principal crime victim’s petition).¹²⁰ ● For victims who are 21 years of age or older, qualifying family members include their spouse and children.¹²¹ |
| U visa Qualifying Criminal Activities | <ul style="list-style-type: none"> ● U visa qualifying criminal activities include, but are not limited to the following non-exclusive list: <ul style="list-style-type: none"> Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting, solicitation to commit any of the above-mentioned criminal activity, or <i>any similar activity</i> in violation of federal, state, or local criminal law and solicitation, attempts or conspiracy to commit any such criminal activity. ● The term “<i>criminal activity</i>” in the statutory language was intentionally chosen by Congress to accomplish two goals – to be broadly inclusive of “<i>any similar activity</i>” and to focus on the actions of the victim in coming to state or federal government officials and courts with information about criminal activity. This language is meant to take into account “the wide variety of state criminal statutes in which the terminology used to describe the criminal activity may not be identical to that found on the statutory list, although the nature and elements of both criminal activities are comparable.”¹²² ● For example, the statute lists domestic violence as a U visa qualifying crime. However, many states do not specify domestic violence as a crime, but instead list crimes that constitute domestic violence, such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, child abuse, elder abuse, or malicious property damage. Even though these criminal activities are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence. |
| Status of Crime Perpetrator | <ul style="list-style-type: none"> ● The U visa applicant does not have to be married to the crime perpetrator and there may or may not be any family relationship between the victim and the perpetrator. The crime perpetrator may have any immigration or citizenship status including but not limited to U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant. |

¹²⁰ I.N.A. § 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I).

¹²¹ I.N.A. § 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

¹²² 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

Certification Requirements

- U.S. Citizenship and Immigration Services (USCIS) Form I-918 Supplement B, must be completed by a qualifying certifier, such as a law enforcement official or prosecutor. On the I-918B certification form that certifying official verifies that the victim applying for a U visa meets the following four criteria:
 - The victim has been the victim of qualifying criminal activity;
 - The victim possesses information about the qualifying criminal activity;
 - The qualifying criminal activity was perpetrated in the U.S. or violated U.S. federal or state law.
 - The victim has been, is being or is likely to be helpful in the detection or investigation, or prosecution, or conviction, or sentencing of one or more qualifying criminal activities;
 - ***For law enforcement:*** Helpfulness includes but is not limited to reporting a criminal activity, making or attempting to make a police report, providing information at the crime scene, participating in interviews with police, allowing police to photograph injuries, or attempting to provide information to police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter;¹²³
 - ***For prosecutors:*** Helpfulness includes but is not limited to providing evidence used in charging document, attending a hearing, participating in interviews with prosecution office staff, providing information needed for restitution, attending and/or testifying at the initial appearance, bond hearing, preliminary hearing, arraignment, pre-trial motions, sentencing, or trial;
- The criminal activity may have occurred at **any time** in the past. There is no statute of limitation and certification can be made even when the state statute of limitation for the criminal activity has passed. Once the certification is completed, the victim is required file the U visa application within six (6) months of the date the certification was signed.
- The certification should provide specific details about the nature of the criminal activity being detected, investigated, prosecuted, convicted and/or sentenced and describe the victim's helpfulness in the case.
- U visa certification does not require the criminal prosecution to be initiated, completed, or successful, nor does it require law enforcement to investigate the criminal activity. U visa certification can be based solely on the victim having taken any number of actions including but not limited to: calling police for help, making a police report, seeking a civil protection order, providing a history of violence to law enforcement or the court, providing statements in a line-up, or providing a victim impact statement. The certification only attests to the U visa petitioner's helpfulness in one or more of the following: detection, investigation, prosecution, conviction or sentencing.

¹²³ See Benish Anver, Rocio Molina, Andrea Carcamo-Cavazos, Chief Peter Helein, Devon E. Turner, and Spencer Cantrell, *U-Visa: "Helpfulness"* (Oct. 21, 2019), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

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| <p>Law Enforcement and Prosecutors as U visa Certifiers</p> | <ul style="list-style-type: none"> ● Law enforcement officials and prosecutors are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B.¹²⁴ A certifying official is the head of a law enforcement or prosecution agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.¹²⁵ ● The certification is necessary to establish eligibility for the U visa, but by itself does not grant immigration status to the victim. To obtain a U visa, a victim must meet eligibility requirements, in addition to obtaining a U visa certification. The Department of Homeland Security (DHS) has sole authority to grant or deny a U visa and completes full background checks on all applicants. |
| <p>Assessing the Helpfulness of the U visa Applicant</p> | <ul style="list-style-type: none"> ● “Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which they are a victim.¹²⁶ ● There is no degree of helpfulness required. Instead, once the victim receives a U visa certification and files their U visa application, the victim must not unreasonably refuse to provide help, information, or assistance to law enforcement and prosecutors that is reasonably requested. <ul style="list-style-type: none"> ○ Note -- if the victim’s ongoing cooperation in the criminal investigation or case may jeopardize the victim’s safety or the safety of family members in the U.S. or abroad, then the victim’s failure to cooperate is not unreasonable. The victim’s helpfulness must be examined in the totality of the circumstances including the nature of the victimization, victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse. ● Being helpful is not related to whether the perpetrator of the criminal activity has been issued a warrant, is prosecuted, is arrested, is convicted, or the case is ongoing or is closed. Being helpful is independent from the results of the case.¹²⁷ For example, if the victim has reported a criminal activity, and the perpetrator cannot be found or identified, the victim can still be deemed helpful. ● The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of a criminal case including providing information that helps government officials detect, investigate, or prosecute the criminal activity. This includes past helpfulness or willingness to be helpful in the future. Congress intended for individuals to be eligible for U visa at the very early stages of a case.¹²⁸ |

¹²⁴ 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).

¹²⁵ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(3)) (2007).

¹²⁶ Helpfulness is defined in the U visa statute 8 U.S.C. 1101(a)(15)(U)(i)(III); The U visa regulations 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows: “Investigation or prosecution refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

¹²⁷ *DHS U and T Visa Resource Guide* at 7; 72 Fed. Reg. 53013, 53020 (2007).

¹²⁸ *See Id.*

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| <p>Assessing the Helpfulness of the U visa Applicant</p> | <ul style="list-style-type: none"> ● In order to apply for lawful permanent residency after being granted a U visa, the victim must prove that they fulfilled an ongoing responsibility to provide assistance or they must prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance from government officials investigating or prosecuting the criminal activity. ● DHS confirms that officials may sign a certification if they are unsure whether the victim meets the helpfulness requirement. USCIS will ultimately determine whether the victim meets these requirements.¹²⁹ |
| <p>Attesting to Helpfulness on the Certification Form</p> | <ul style="list-style-type: none"> ● Law enforcement and prosecutors should provide on the certification form a general description of victim helpfulness which may include (for example): <ul style="list-style-type: none"> ○ Victim called police to report the criminal activity ○ Victim spoke freely with responding officers ○ Victim participated in pre-arrest identification ○ Victim sought a protection order that law enforcement would serve on the perpetrator and that the victim can enforce if violated in the future ○ Victim provided photographs of injuries ○ Victim attended prep sessions with prosecutor ○ Victim testified before the grand jury or at other stages of a criminal case. |
| <p>Applicant’s Responsibility After Helpfulness Is Established</p> | <ul style="list-style-type: none"> ● In order to obtain a U visa, the victim must provide continuing assistance when reasonably requested by law enforcement or prosecutors,¹³⁰ or the certifier may revoke the certification.¹³¹ Similarly, in order to apply for lawful permanent residency after being granted a U visa, the victim must prove that they fulfilled an ongoing responsibility to provide assistance or they must prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance from government officials.¹³² However, “continuing assistance” is a standard used <i>after</i> the victim files for and after the victim obtains their U visa. For the purpose of obtaining an initial certification, only the victim’s helpfulness or likelihood of future helpfulness should be considered. ● Note: If the victim’s ongoing cooperation in the criminal investigation or case may jeopardize the victim’s safety or the safety of family members in the U.S. or abroad, then the victim’s failure to cooperate is not unreasonable. The victim’s helpfulness must be examined in the totality of the circumstances including the nature of the victimization, victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse.¹³³ |

¹²⁹ *DHS U and T Visa Resource Guide* at 18.

¹³⁰ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)(3)) (2007); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 4 (expires 04/30/2021).

¹³¹ 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)(A)) (2007).

¹³² 73 Fed. Reg. 75540, 75561 (codified at 8 C.F.R. § 245.24(e)) (2008).

¹³³ 73 Fed. Reg. 75540, 75560 (codified at 8 C.F.R. § 245.24(a)(5)) (2008).

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| <p>Timing of U Visa Certification</p> | <ul style="list-style-type: none"> ● Law enforcement and prosecution officials may complete U visa certifications once they are able to assess a victim’s helpfulness. Congress intended that U visa certifications be signed early after detection of the criminal activity. An investigation need not be complete prior to signing a certification.¹³⁴ ● 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, prosecution, conviction or sentencing of the qualifying criminal activity. 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 police reports or when prosecutors begin working with the victim. Law enforcement and prosecutors can provide certifications at any time after they assess the helpfulness. Waiting to sign certifications until after the criminal case has been concluded increases the ability of perpetrators to intimidate immigrant victim witnesses using threats and calls to DHS to have the victim deported and is not consistent with best practices.¹³⁵ ● A completed certification will be valid for six months from the date of signature.¹³⁶ |
| <p>When Law Enforcement & Prosecutors are Able to Provide U visa Certification</p> | <ul style="list-style-type: none"> ● If a law enforcement official or prosecutor has reasonable suspicion that criminal activity occurred, that the person seeking certification was a victim, and that the victim was helpful, is being helpful or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing, a certification can be signed at any stages of the criminal investigation, prosecution, or court case. ● Examples include when victims have been helpful to prosecutors making charging decisions, when they cooperated in a criminal investigation or filed a police report. This authority to certify exists whether or not law enforcement opens an investigation or the prosecutor ultimately pursues prosecution of the perpetrator for the criminal activity listed in the U visa statute. |
| <p>U visa, Time Line & Attaining Lawful Permanent Residency</p> | <ul style="list-style-type: none"> ● Within a few weeks after filing the U visa, the victim’s case is logged in a specialized computer VAWA confidentiality system at the DHS that provides victims some protection from deportation. DHS will run a background check based on the applicant’s fingerprints. ● Approximately 4-6 years¹³⁷ after filing DHS will adjudicate the case and conduct another fingerprint check. Approvable cases receive wait-list approval, “deferred action status” which provides formal protection from deportation, and legal work authorization. ● The victim is placed on a waitlist for a U visa. Only 10,000 visas can be issued each year and the current waiting time is 11-14 years. Once the victim’s case reaches the top of the waitlist, fingerprint checks are run again prior to issuing the victim a U visa. ● The U visa lasts for 4 years. It is at this point that U visa holders may be able to travel abroad. |

¹³⁴ See *DHS U and T Visa Resource Guide* at 19.

¹³⁵ See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>.

¹³⁶ DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 2 (expires 04/30/2021).

¹³⁷ The time frames in this section were current as of April 2020. See, USCIS, Visa Report: U Visa Filing Trends (April 2020). https://www.uscis.gov/sites/default/files/USCIS/statistics/Mini_U_Report-Filing_Trends_508.pdf

**U visa, Time
Line &
Attaining
Lawful
Permanent
Residency**

- After three (3) years as a U visa holder, the victim may apply for lawful permanent residency. To obtain lawful permanent residency as a U visa holder the victim must prove:
 - Their helpfulness in the detection, investigation, prosecution, conviction or sentencing of criminal activity or that they did not unreasonably refuse to cooperate with reasonable requests for assistance. Some victims may return to the certifying agency for a new certification to provide evidence of their helpfulness to support the victim’s application for lawful permanent residency.
 - That they are eligible for lawful permanent residency as a U visa holder due to either:
 - Humanitarian need;
 - Family unity; or
 - Public interest
 - That they have continuous presence in the U.S., since receiving they U visa. Due to the “continuous presence” requirement, if a U visa holder departed the U.S. for any single period of time longer than 90 days, or for shorter periods in the aggregate exceeding 180 days, they must include a certification with their application for lawful permanent residency– from the original U visa certifying agency – that verifies that the absence was necessary for the investigation or prosecution or otherwise justified.
 - Fingerprint checks are run as part of this adjudication.

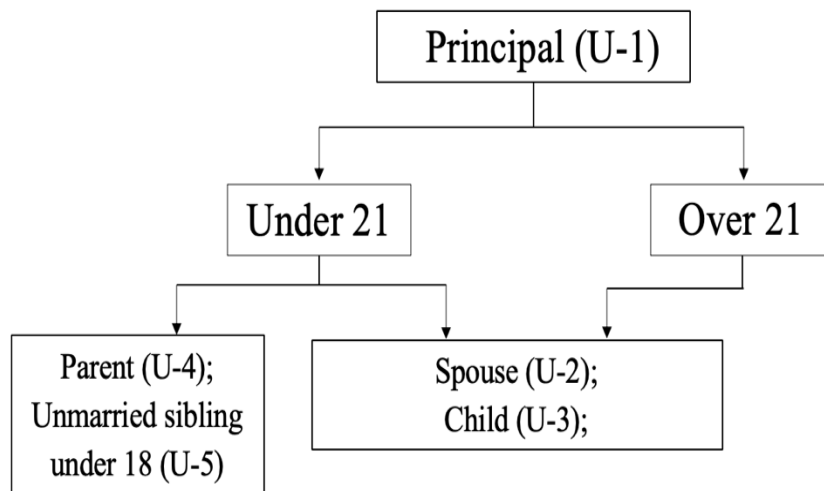
**More
Information**

- Please visit the NIWAP’s web library for more information, training or technical assistance at <http://niwaplibrary.wcl.american.edu/>

U Visa: Protections for Family Members (INA § 101(a)(15)(U)(ii); 8 CFR 214.14(a)(10))

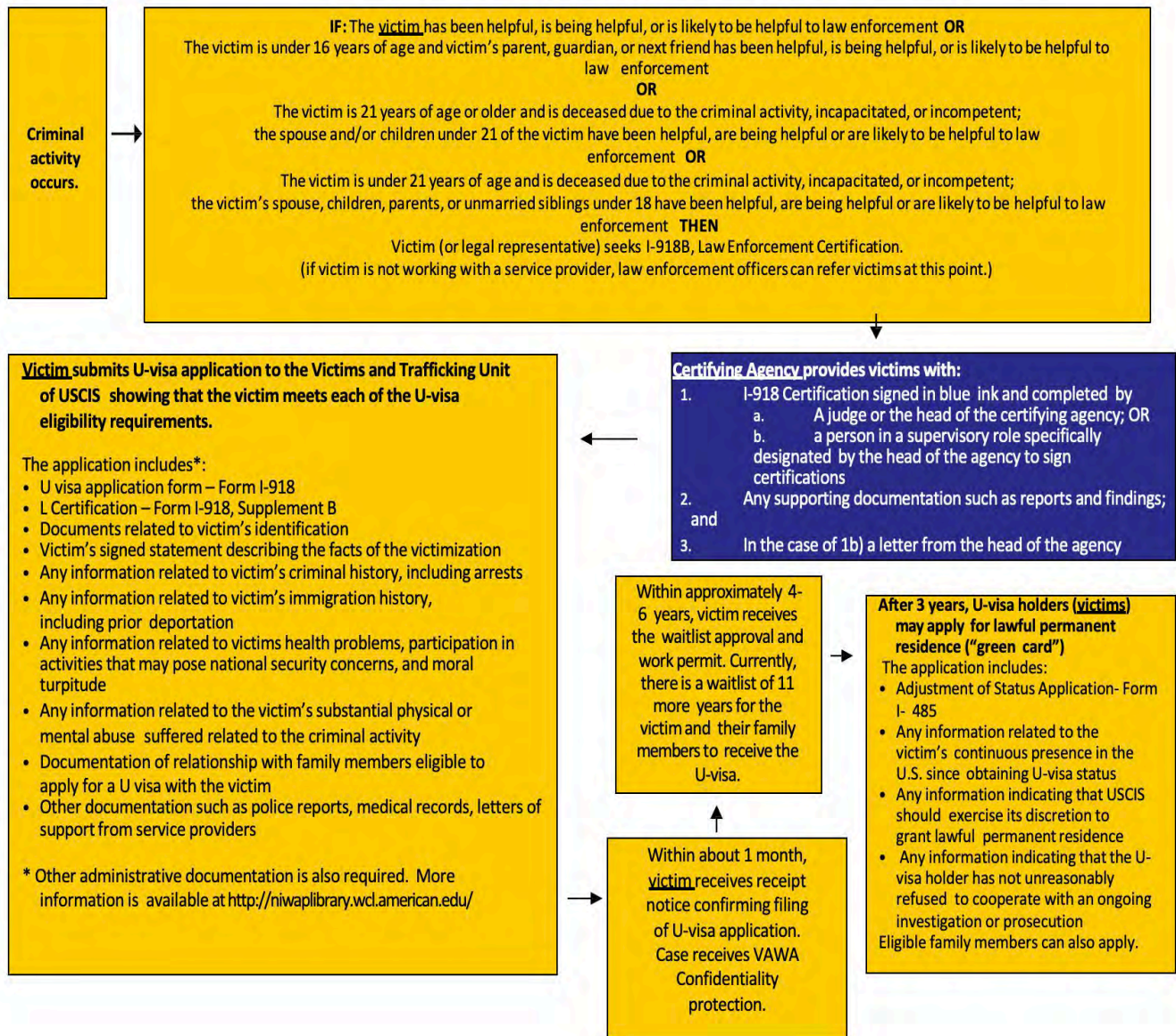
An immigrant crime victim filing a U visa application may file applications seeking that their eligible family members also be granted U visas. Under immigration laws, the applicant is called a principal, and the family members are called derivatives. The following chart outlines each of the types of U visas available to immigrant crime victims and their family members. Age-out protections are provided for U visa principal applicants and for the family members they included in their applications (derivatives) who are under 18 or 21 years of age.¹³⁸

| Code | Name |
|------------|---|
| U-1 | Principal (the victim) |
| U-2 | Principal's spouse (always eligible) |
| U-3 | Principal's child (always eligible) |
| U-4 | Principal's parent (eligible only when principal is under 21 years of age) |
| U-5 | Principal's unmarried sibling under the age of 18 (eligible only when principal is under 21 years of age) |



¹³⁸ See INA § 214(p)(7), 8 U.S.C. 1184(p)(7).

U-visa Application Victim Flow Chart¹³⁹



¹³⁹ Prepared by the National Immigrant Victims Access to Justice Partnership (2010). This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice. This project was also supported by Grant Nos. 2011-TA-AX-K002 and 2013-TA-AX-K009 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women

U Visa Certification Process Flow Chart
By: Gwenyth Szabo, Rocio Molina, and
Sergeant Inspector Antonio Flores (August 30, 2021)

U Visa qualifying criminal activity occurs

Law enforcement or systems-based advocate informs victim about U Visa

Victim is referred to advocate / non-government agency / trusted immigration attorney

U Visa request made by victim, victim advocate or immigration attorney

Applicable certifying agency receives U Visa request

Certifying Agency reviews relevant records to determine eligibility

Based on provided reports from the police and the victim, the certifier determines the following:

1. All qualifying criminal activities in the case;*
2. That criminal activity occurred in the U.S.; and
3. That the victim is/was/ will likely be helpful in the detection, investigation, prosecution or sentencing

If qualified, the agency fills out the required forms and sends all relevant information to a certifying agent

U visa certification signed by chief/sheriff or designee

Agency / victim send the forms and all applicable documents and evidence to USCIS for processing

*For more information on qualifying criminal activities, see NIWAP's "U Visa Certification and T Visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors" (May 6, 2021) https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-toolkit_law-enforcement-prosecutors.

T Visa Quick Reference for Law Enforcement and Prosecutors¹⁴⁰

By Sylvie Sheng and Leslye E. Orloff

March 24, 2021

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| Purpose of the T Visa | <ul style="list-style-type: none"> • Congress created the T visa program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of their human traffickers.¹⁴¹ Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.¹⁴² |
| Benefits of the T Visa | <ul style="list-style-type: none"> • Strengthens the ability of the law enforcement, prosecutors, the courts, and state and federal government agencies to detect, investigate, prosecute, convict and sentence perpetrators of human trafficking while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.¹⁴³ • Immigrant victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the civil, family, and criminal justice systems.¹⁴⁴ The T visa promotes access to justice by enhancing accessibility and ensuring fairness. • If certain conditions are met, an individual with T visa may apply for lawful permanent residency (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier.¹⁴⁵ |
| Who is eligible for a T visa?¹⁴⁶ | <ul style="list-style-type: none"> • U.S. Citizenship and Immigration Services (USCIS) of DHS may find an individual eligible for a T visa if the victim: <ul style="list-style-type: none"> ○ Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law; ○ Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to human trafficking; ○ Has complied with any reasonable request from a law enforcement or prosecution agency for assistance in the detection, investigation or prosecution of human trafficking;¹⁴⁷ and ○ Would suffer extreme hardship involving unusual and severe harm if removed from the U.S.¹⁴⁸ • In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual |

¹⁴⁰ U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018)

<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors>

¹⁴¹ See TVPA 2000, § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

¹⁴² *DHS U and T Visa Resource Guide* at 9; 67 Fed. Reg. 4782, 4785 (2002).

¹⁴³ 72 Fed. Reg. 92266, 92269 (2016).

¹⁴⁴ 67 Fed. Reg. 4782, 4784 (2002); 73 Fed. Reg. 75540, 75554 (2008).

¹⁴⁵ See generally 73 Fed. Reg. 75540 (2008).

¹⁴⁶ *DHS U and T Visa Resource Guide* at 9–10.

¹⁴⁷ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

¹⁴⁸ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

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| <p>Who is eligible for a T visa?</p> | <p>may apply for any waiver of inadmissibility for which they may be eligible.¹⁴⁹</p> <ul style="list-style-type: none"> • Individuals currently in removal proceedings or with final orders of removal are eligible for a T visa.¹⁵⁰ • Certain family members of a T visa recipient may also be eligible to live and work in the United States. These are: <ul style="list-style-type: none"> ○ Children; ○ Spouse; ○ Parents of child trafficking victims who are under age 21 at the time of application, or any victim’s parents who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement; ○ Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim’s unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement; and ○ Adult or minor children of any T visa recipient (including eligible family members of the victim), if the children face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement.¹⁵¹ • While in the United States, the victim has an ongoing duty to comply with reasonable requests from law enforcement or prosecutors for assistance in the investigation or prosecution of human trafficking.¹⁵² • |
| <p>T visa Qualifying Criminal Activities¹⁵³</p> | <ul style="list-style-type: none"> • A victim of severe forms of trafficking in persons is an individual who is a victim of either: <ul style="list-style-type: none"> ○ Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion; ○ Sex trafficking in which the person induced to perform such an act is under the age of 18; ○ The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.¹⁵⁴ • DHS clarifies that an individual need not actually perform labor, services, or a commercial sex act to meet the definition; even if the illicit end is never realized, the definition is met as long as a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery) are present in the case.¹⁵⁵ This |

¹⁴⁹ 72 Fed. Reg. 92266, 92283 (2016). Limayli Huguet, Faiza Chappell and Leslye E. Orloff, Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases (January 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>

¹⁵⁰ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(1)(i)) (2016).

¹⁵¹ Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016).

¹⁵² 72 Fed. Reg. 92266, 92274 (2016); *DHS U and T Visa Resource Guide* at 13.

¹⁵³ *DHS U and T Visa Resource Guide* at 12.

¹⁵⁴ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

¹⁵⁵ 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(f)(1)) (2016); 72 Fed. Reg. 92266, 92270 (2016); Freedom Network, *General Tips for T Visas for Victims of Severe Form of Trafficking in Persons* (Apr. 2018), <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

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| T visa Qualifying Criminal Activities | would include, for example, a situation where the victim was recruited and came to the United States through force, fraud or coercion for the purpose of a commercial sex act, but the victim was rescued or escaped before performing a commercial sex act. ¹⁵⁶ |
| Status of Criminal Case Against Crime Perpetrator | <ul style="list-style-type: none"> • The crime perpetrator may have any immigration or citizenship status including but not limited to U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant. • A declaration may be signed whether or not a criminal investigation or prosecution is brought against the trafficker and regardless of the outcome of the criminal case brought against the trafficker. There is no requirement that an arrest, prosecution, or conviction occur.¹⁵⁷ |
| What Is a T visa Declaration? ¹⁵⁸ | <ul style="list-style-type: none"> • The T visa declaration is supplementary evidence that law enforcement, prosecution, and other authorized agencies can complete for a T visa applicant to help demonstrate victimization and compliance with reasonable requests¹⁵⁹ for assistance in the detection, investigation or prosecution of human trafficking.¹⁶⁰ • The T visa declaration is not a required document or conclusive evidence for a T visa application, but when provided, is useful evidence.¹⁶¹ DHS applies the Violence Against Women Act’s “any credible evidence” standard to T visa cases to encourage government officials including law enforcement and prosecutors to sign T visa declarations.¹⁶² • Signing a declaration is at the government officials authorized to sign the declaration’s discretion, and it does not mean the government official is sponsoring or endorsing the victim for a T visa.¹⁶³ USCIS considers the T visa declaration as one part of the evidence in the T visa application. USCIS also conducts a full background check and, in considering each T visa application and the applicant’s credibility, examines the totality of the evidence and the circumstances of each case.¹⁶⁴ • The T-visa declaration must be provided on Form I-914 Supplement B, and must be completed by a qualifying certifier, such as a judge. On the I-914B form the certifying official verifies that that the victim applying for a T visa meets the following criteria: <ul style="list-style-type: none"> ○ The victim is or was a victim of a severe form of trafficking in persons; and/or ○ The victim has met the “assistance requirement” by either having complied with any reasonable requests from law enforcement or prosecutors in an investigation or prosecution of human trafficking or by being exempt from the requirement because the victim is under 18 years of age, or because the victim is unable to assist due to physical or psychological trauma.¹⁶⁵ |

¹⁵⁶ 72 Fed. Reg. 92266, 92270 (2016).

¹⁵⁷ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016); *DHS U and T Visa Resource Guide* at 21.

¹⁵⁸ *DHS U and T Visa Resource Guide* at 10–11.

¹⁵⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016). Although 8 C.F.R. § 214.11(d)(3)(i) only requires judges to demonstrate victimization *and/or* compliance with reasonable requests, we recommend attesting to both prongs if you have sufficient information. See DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-914B 2 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>

¹⁶⁰ *DHS U and T Visa Resource Guide* at 18–19.

¹⁶¹ 72 Fed. Reg. 92266, 92276 (2016).

¹⁶² 72 Fed. Reg. 92266, 92272 & 92276 (2016).

¹⁶³ *DHS U and T Visa Resource Guide* at 11.

¹⁶⁴ 72 Fed. Reg. 92266, 92276 (2016).

¹⁶⁵ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016).

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| <p>What Is a T visa Declaration?</p> | <ul style="list-style-type: none"> • The criminal activity may have occurred at any time in the past.¹⁶⁶ There is no statute of limitations and certification can be made even when the state statute of limitations for the criminal activity has passed. There is no expiration date for the Form I-914B T visa declaration. The applicant can submit the form any time after the certifying government official signs the form. |
| <p>Law Enforcement and Prosecutors as T visa Certifiers</p> | <ul style="list-style-type: none"> • Law enforcement officials and prosecutors are specifically listed in the regulations as one of the government agencies that are authorized certifiers able to complete the T visa Certification Form I-914, Supplement B.¹⁶⁷ A certifying official is the head of a law enforcement or prosecution agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.¹⁶⁸ • Law enforcement officials are the first responders to immigrant victims of human trafficking. Police departments, sheriffs’ offices, marshals, and other law enforcement officials have firsthand knowledge of a victim’s assistance in reporting the crime and participating in any subsequent investigations. Law enforcement officials, therefore, are well positioned to provide T visa declarations and verify a victim’s assistance in the detection, investigation, or prosecution of human traffickers. • When a human trafficking related crime 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 T visa and to provide the declaration. Although the manner in which prosecutions are initiated vary by jurisdiction, law enforcement officers and prosecutors encounter persons who have been victims of human trafficking. <p>The declaration is not necessary to establish eligibility for the T visa, nor does it by itself grant immigration status to the victim. To obtain a T visa, a victim must meet eligibility requirements. The Department of Homeland Security (DHS) has sole authority to grant or deny a T visa and completes full background checks on all applicants.</p> |
| <p>Assessing the Assistance Requirement</p> | <ul style="list-style-type: none"> • The T visa requires that the victim has complied with any reasonable requests from law enforcement in detection, investigation, or prosecution of human trafficking and/or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.¹⁶⁹ • In determining “reasonableness” of the request for assistance or cooperation made by law enforcement and prosecution officials, USCIS will consider the totality of the circumstances. USCIS is required by regulations to use a broad range of factors, including but not limited to: general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.¹⁷⁰ DHS emphasizes that the proper standard is the reasonableness |

¹⁶⁶ See 72 Fed. Reg. 92266, 92278 (2016). “USCIS will accept applications regardless of when the applicant was victimized.”

¹⁶⁷ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

¹⁶⁸ DHS U and T Visa Resource Guide at 13.

¹⁶⁹ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

¹⁷⁰ 72 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

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| <p>Assessing the Assistance Requirement</p> | <p>of the request, not whether a victim unreasonably refused to assist.¹⁷¹ It is generally reasonable for law enforcement to ask a trafficking victim similar things they would ask other comparably situated crime victims, such as domestic violence or sexual assault victims.¹⁷²</p> <ul style="list-style-type: none"> • There are certain times when the T visa statute does not require a victim to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.¹⁷³ • If a T visa victim has complied with any reasonable request in the detection, investigation, or prosecution the certifying official may prepare the certification even when investigation or prosecution efforts have been abandoned or did not result in conviction.¹⁷⁴ A judge may also certify when the only court case the victim participated in was a family or civil court matter. • If a law enforcement official or prosecutor is unsure whether the victim meets the assistance requirement, they may sign the declaration and include all information that has been found relevant about the victim's assistance (Form I-914B includes several options to select). USCIS will ultimately determine whether the victim meets these requirements.¹⁷⁵ <p>The victim must fulfill an ongoing responsibility to provide assistance from the time of their initial application through the time they apply for lawful permanent residency.¹⁷⁶ At their discretion, a certifying official may revoke or disavow a declaration if a victim stops assisting; after revocation or disavowal, the declaration will no longer be considered as evidence.¹⁷⁷</p> |
| <p>When Officials are Able to Grant T visa Declaration</p> | <ul style="list-style-type: none"> • If the law enforcement, prosecutor, or other government official has reasonable suspicion that criminal activity occurred and that the victim was cooperative, a declaration can be signed at any of the stages of the case.¹⁷⁸ • Law enforcement and prosecution officials may complete T visa declarations once they are able to assess a victim's helpfulness. Congress intended that T visa certifications be signed early after detection of the criminal activity. An investigation need not be complete prior to signing a certification.¹⁷⁹ • The T visa declaration can be completed at the same time officers are completing police reports or when prosecutors begin working with the victim. Law enforcement and prosecutors can provide declarations at any time after they access the assistance. Waiting to sign declarations until after the criminal case has been concluded increases the ability of perpetrators to intimidate immigrant victim witnesses using threats and calls to DHS to have the victim deported and is not consistent with best practices.¹⁸⁰ |

¹⁷¹ 72 Fed. Reg. 92266, 92275 (2016).

¹⁷² *Id.*

¹⁷³ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

¹⁷⁴ DEP'T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS 1 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>; *DHS U and T Visa Resource Guide* at 17, 19.

¹⁷⁵ *Id.* at 18.

¹⁷⁶ 72 Fed. Reg. 92266, 92274 (2016).

¹⁷⁷ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

¹⁷⁸ *DHS U and T Visa Resource Guide* at 18.

¹⁷⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016); *DHS U and T Visa Resource Guide* at 21.

¹⁸⁰ See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>.

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| <p>T visa, Time Line & Attaining Lawful Permanent Residency</p> | <ul style="list-style-type: none"> • Typically within six (6) months after filing the T visa application, if USCIS finds that there is sufficient evidence in the case, the applicant’s case will receive bona fide determination and the victim will receive formal protection from deportation, work authorization,¹⁸¹ and access to state and federal public benefits.¹⁸² DHS will run a background check based on the applicant’s fingerprints before granting bona fide determination.¹⁸³ • Approximately two (2) years after the bona fide determination, that is, about 2.5 years after filing, DHS will adjudicate the case. If the case is approved the applicant receives a T visa that lasts for four (4) years. At this point, if the trafficking case is concluded, the applicant will be able to immediately apply for lawful permanent residency. If not, the applicant will be able to apply for to apply for legal permanent residency three (3) years after receipt of T visa.¹⁸⁴ • To obtain lawful permanent residency as a T visa holder, the victim must prove: <ul style="list-style-type: none"> ○ That they lawfully hold T visa and can prove that they have good moral character; ○ That they meet one of the following: <ul style="list-style-type: none"> ▪ They have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; ▪ They would suffer extreme hardship involving unusual and severe harm if they were removed from the United States; or ▪ They were under 18 years of age at the time of the trafficking. ○ That they have continuous presence in the U.S. since receiving the T visa. Due to the “continuous presence” requirement, the T visa holder cannot depart the U.S. for any single period of time longer than 90 days, or for shorter periods in the aggregate exceeding 180 days. ○ That they are admissible to the United States or have been granted a waiver by USCIS of any waivable grounds of inadmissibility.¹⁸⁵ • Congress capped the number of available T visas for principal applicants at 5,000 per fiscal year.¹⁸⁶ However, to date, the annual cap has never been reached and visas remain available to all applicants who qualify.¹⁸⁷ |
| <p>More Information</p> | <p>Please visit NIWAP’s web library for more information, training or technical assistance at http://niwaplibrary.wcl.american.edu/</p> |

¹⁸¹ 72 Fed. Reg. 92266, 92279 & 92307 (codified at 8 C.F.R. § 214.11(e)) (2016); 8 C.F.R. 274a.12(c)(14); Katelyn Deibler and Leslye E. Orloff, *T-Visa Timeline with Background Checks* (2019), <http://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline>.

¹⁸² To look up what federal and state public benefits human trafficking victims are eligible for in each state see NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *All State Public Benefit Charts* (2019), <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹⁸³ 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(e)(1)(iv)) (2016)

¹⁸⁴ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)(3)) (2008).

¹⁸⁵ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)) (2008).

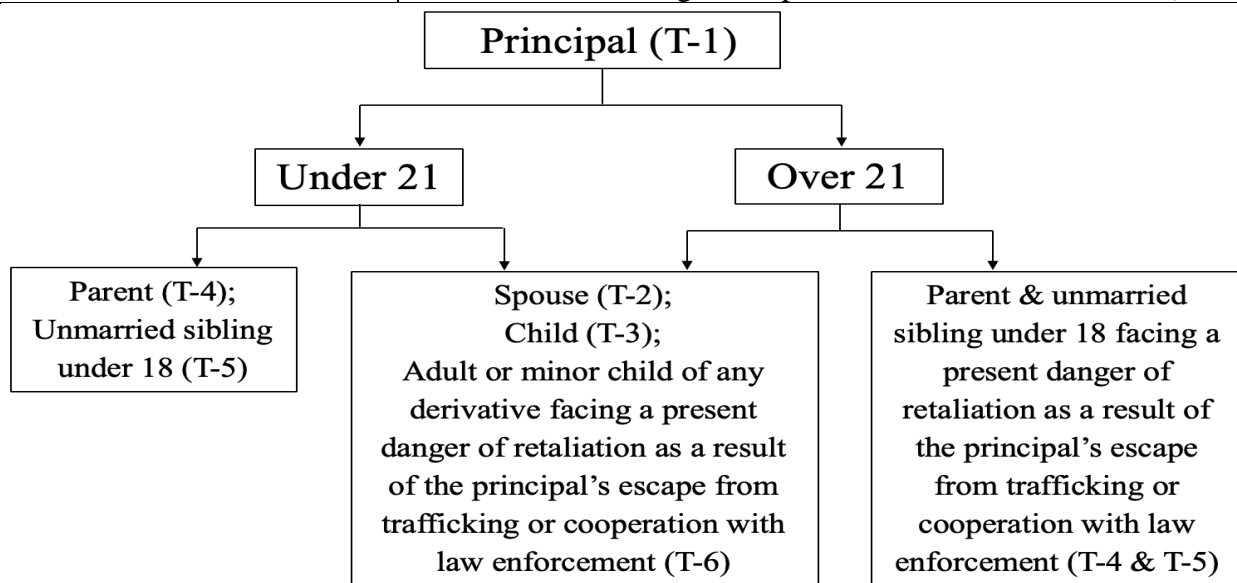
¹⁸⁶ I.N.A. § 214(o)(2)–(3), 8 U.S.C. 1184(o)(2)–(3).

¹⁸⁷ *DHS U and T Visa Resource Guide* at 10.

T Visa: Protections for Family Members (8 CFR 214.11(k)(1))

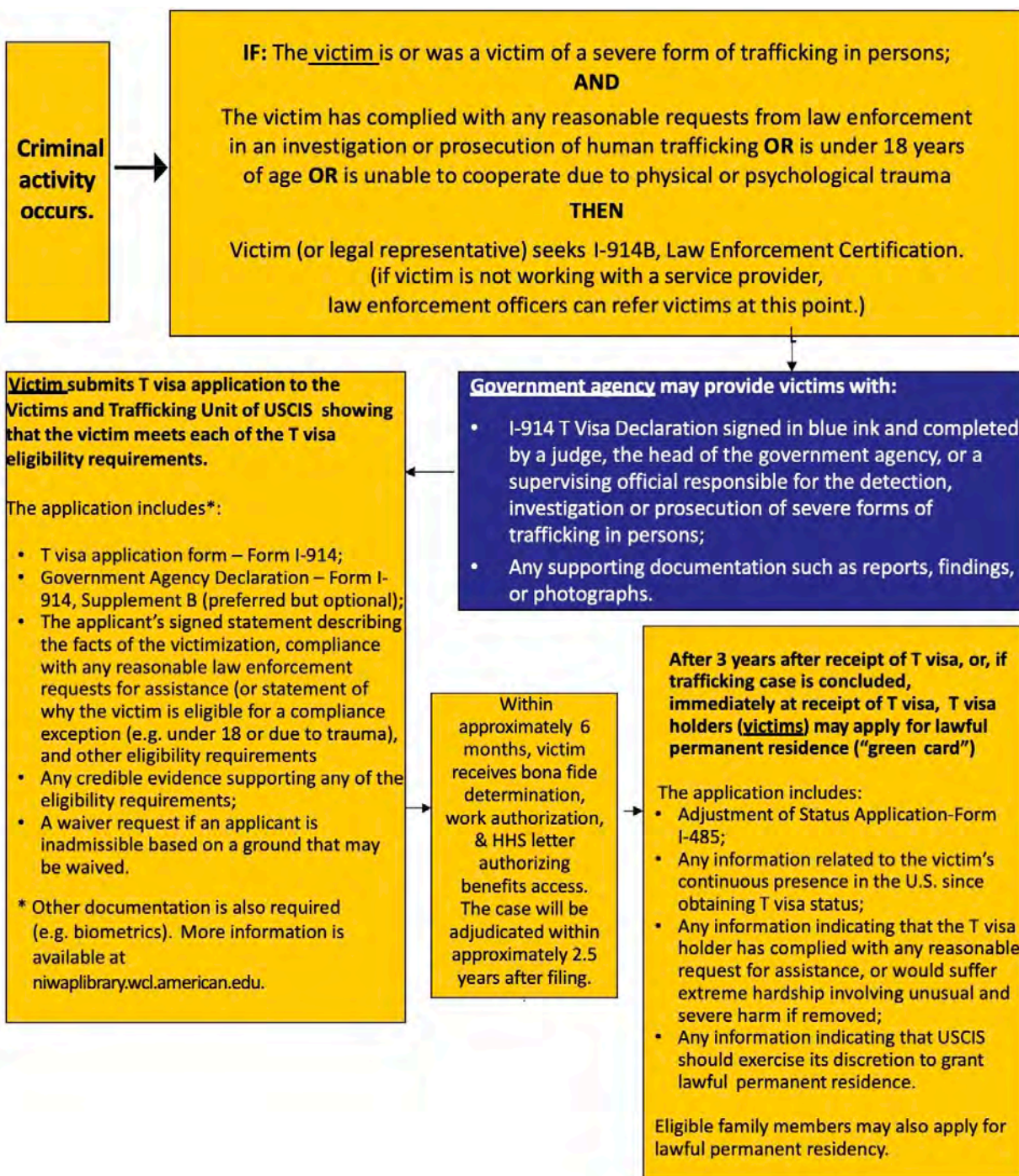
A T visa applicant may apply for the admission of eligible family members. The applicant is called a principal, and the family members are called derivatives. The following chart outlines each classification of the T visa. Age-out protections are provided for principals and derivatives under 21 years of age.¹⁸⁸

| Code | Name |
|------------|---|
| T-1 | Principal (the victim) |
| T-2 | Principal's spouse (always eligible) |
| T-3 | Principal's child (always eligible) |
| T-4 | Principal's parent (eligible only when principal is under 21 years of age, or when the parent faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement) |
| T-5 | Principal's unmarried sibling under the age of 18 (eligible only when principal is under 21 years of age, or when the sibling faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement) |
| T-6 | Adult or minor child of any derivative (T-2–T-5) (eligible only when the adult or minor child of a derivative faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement) |



¹⁸⁸ See I.N.A. § 214(o)(4)–(5), 8 U.S.C. 1184(o)(4)–(5); 8 C.F.R. 214.11(k)(5)(ii)–(iii).

T Visa Application Victim Flow Chart



U Visa Statutory and Regulatory Background

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

Statutory Authority: Purpose of the U visa

“Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.”¹⁸⁹

“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.”¹⁹⁰

“(Sec. 1513 of VAWA) creates new nonimmigrant visa for victims of certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime.”¹⁹¹

“[I]t is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”¹⁹²

Regulatory Authority: Purpose of the U Visa As Described By DHS in the U Visa Regulations

“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.”¹⁹³

¹⁸⁹ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) § 1513, Pub L. 106-386.

¹⁹⁰ *Id.*

¹⁹¹ 146 Cong. Rec. S10196 (2000)

¹⁹² 151 Cong. Rec. E2607 (2005) (Rep. Conyers)

¹⁹³ 72 Fed. Reg. 53013, 53014 (2007).

“Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering protection to victims of such crimes. Congress also sought to encourage law enforcement officials to better serve immigrant crime victims.”¹⁹⁴

“USCIS implemented procedures to ensure that those aliens who appeared to be eligible for U nonimmigrant status under the BIWPA would not be removed from the United States until they had an opportunity to apply for such status.”

Statutory Authority: Law Enforcement/Prosecutor Certification

“(A U visa petition) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien ‘has been helpful, is being helpful, or is likely to be helpful’ in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.”¹⁹⁵

Regulatory Authority: Law Enforcement/Prosecutor Certification

“Certifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.”¹⁹⁶

“Certifying official means: (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or (ii) A Federal, State, or local judge.”¹⁹⁷

Regulatory Authority: Investigation or Prosecution Includes Detection

“The rule provides that the term ‘investigation or prosecution,’ used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity...[DHS] is defining the term to include the detection of qualifying activity because the detection of criminal activity is within the scope of a law enforcement officer’s investigative duties...[DHS] is defining the term to include the conviction and sentencing of the perpetrator because these extend from the prosecution... Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications... Judges neither investigate crimes nor prosecute perpetrators. Therefore, [DHS] believes that the term ‘investigation or prosecution’ should be interpreted broadly.”¹⁹⁸

¹⁹⁴ 72 Fed. Reg. 53013, 53014–15 (2007).

¹⁹⁵ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

¹⁹⁶ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(2)) (2007).

¹⁹⁷ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(3)) (2007).

¹⁹⁸ 72 Fed. Reg. 53014, 53023 (2007) (emphasis added).

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...”¹⁹⁹

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.”²⁰⁰

“The requirement was written with several verb tenses, recognizing that an alien may apply for U nonimmigrant status at different stages of the investigation or prosecution. By allowing an individual to petition for U nonimmigrant status upon a showing that he or she may be helpful at some point in the future, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of the investigation. This suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status. If the alien victim only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation, the purpose of BIWPA [Battered Immigrant Women Protection Act enacted into law as the Violence Against Women Act of 2000] is not furthered.”²⁰¹

“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.”²⁰²

“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.”²⁰³

¹⁹⁹ 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).

²⁰⁰ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006- 0069, page 21 (Sept. 17, 2007).

²⁰¹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

²⁰² New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

²⁰³ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Interim Rule. DHS Docket USCIS-2006-0067, 25 (December 8, 2008).

“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.”²⁰⁴

“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.”²⁰⁵

²⁰⁴ 72 Fed. Reg. 53014, 53014–15 (2007).

²⁰⁵ 73 Fed. Reg. 75540, 75554 (2008).

T Visa Statutory and Regulatory Background²⁰⁶

The following excerpts from the Trafficking Victims Protection Act (TVPA) of 2000 and its implementing regulations summarize the statutory and regulatory background on the T visa's purpose and its authorization of judges as certifiers.

Statutory Authority: Purpose of the T visa

The T visa is created “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”²⁰⁷

“Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. ... Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.”²⁰⁸

“Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. ... Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves. ... Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.”²⁰⁹

“Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”²¹⁰

“One of the most important of these provisions expands assistance and protection to victims of severe forms of trafficking, ensuring that they receive appropriate shelter and care, and are able to remain in the United States to assist in the prosecution of traffickers. Relief from deportation is also critical for victims who could face retribution or other hardship if removed from the United States.”²¹¹

²⁰⁶ The T visa regulations were initially issued in 2002 and were updated in 2016. For the T visa regulations and their full regulatory history *see*, T Visa Regulations 2002 and 2016 (June 23, 2020) <https://niwaplibrary.wcl.american.edu/pubs/t-visa-regulations-2002-and-2016>

²⁰⁷ Victims of Trafficking and Violence Protection Act of 2000, § 102(a), Pub. L. No. 106-386, 114 Stat. 1464.

²⁰⁸ *Id.*, § 102(b)(4)–(5).

²⁰⁹ *Id.*, § 102(b)(14), (17), (19).

²¹⁰ *Id.*, § 102(b)(20)).

²¹¹ 146 Cong. Rec. S10170 (2000). (Sen. Kennedy)

“[I]t is very important that the system of services we provide to ... trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”²¹²

Regulatory Authority: Purpose of the T visa

“In trafficking in persons situations, perpetrators often target individuals who are likely to be particularly vulnerable and unfamiliar with their surroundings. Congress’s intentions in passing the TVPA were to further the humanitarian interests of the United States and to strengthen the ability of government officials to investigate and prosecute trafficking in persons crimes by providing temporary immigration benefits to victims.”²¹³

“Congress established this new classification ... to create a safe haven for certain eligible victims of severe forms of trafficking in persons who are assisting law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.”²¹⁴

Regulatory Authority: Law Enforcement/Prosecutor Declaration

An government agency endorsement (T visa declaration) is “optional evidence that can be submitted to help demonstrate victimization and/or compliance with reasonable requests.”²¹⁵

When DHS discusses the range of agencies authorized to sign declarations they stated:

“Law Enforcement Agency (LEA) means a Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.”²¹⁶

Regulatory Authority: Nature of Declaration

A government agency (LEA) “endorsement is not mandatory and is not given any special evidentiary weight. An LEA endorsement itself does not grant a benefit and is one form of possible evidence but it does not lead to automatic approval of the application for T nonimmigrant status by USCIS. If provided, the LEA endorsement must be submitted on the form designated by USCIS in accordance with the form instructions and must be signed by a supervising official responsible for the detection, investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must attach the results of any name or database inquiries performed and describe the victimization (including dates where known) and the cooperation of the victim. USCIS, not the LEA, will determine if the applicant was or is a victim of a severe form of trafficking in persons, and otherwise meets the eligibility requirements for T nonimmigrant status. The decision whether to complete an LEA endorsement is at the discretion of the LEA. A formal investigation or prosecution is not required to complete an LEA endorsement.”²¹⁷

²¹² 151 Cong. Rec. E2607 (2005). (Rep. Conyers)

²¹³ 67 Fed. Reg. 4782, 4784 (2002).

²¹⁴ 67 Fed. Reg. 4782, 4785 (2002).

²¹⁵ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

²¹⁶ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

²¹⁷ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

U VISA CERTIFICATION AND T VISA DECLARATION BY LAW ENFORCEMENT AND PROSECUTORS: FREQUENTLY ASKED QUESTIONS

BACKGROUND

What is the purpose of the U visa and the T visa?

In keeping with humanitarian interests of the United States, Congress created the U visa and the T visa to encourage immigrant crime victims to report crimes without fear of deportation and to “encourage law enforcement to better serve immigrant crime victims.”²¹⁸

How do law enforcement agencies benefit from the U visa and T visa?

As a crime-fighting tool, the two visas reinforce a law enforcement agency's commitment to hold offenders accountable, promote victim safety, enhance protection, and assist victims in their recovery from trauma resulting from 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 or T 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.²¹⁹ Law enforcement agencies that use the U visa or the T visa in conjunction with other community policing measures also prove to immigrants and the community that they are serious about protecting immigrants from crime.

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.

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.²²⁰ The certification is a sworn statement that says an individual is a victim of a qualified criminal activity and has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of that criminal activity.²²¹

²¹⁸ Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a), Pub. L. 106–386, 114 Stat. 1464.

²¹⁹ See Rodrigues, R., Bates, M., Orloff, L. (2020). Improving Crime Fighting Outcomes in Cases of Immigrant Victims: The Role of Continued Presence U and T Visas as Tools for Law Enforcement.

<https://niwaplibrary.wcl.american.edu/pubs/improving-crime-fighting-outcomes-in-cases-of-immigrant-victims-11-17-20-1>

²²⁰ 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).

²²¹ I.N.A. § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2000).

What is the T visa declaration?

The T visa declaration is a DHS form (I-914 Supplement B) that a T visa applicant may submit when they file a T visa application with USCIS. The declaration is supplementary evidence to demonstrate that the applicant is or was a victim of severe forms of trafficking in persons and has not rejected reasonable requests for assistance from law enforcement.²²²

What is U visa qualifying criminal activity?

U visa qualifying criminal activity involves a violation of federal, state, or local criminal law (or any similar activity). Although not all-inclusive, the list of qualifying criminal activity represents the many types of criminal behavior and includes domestic violence, sexual abuse, human trafficking, and other serious and often violent crimes in which perpetrators often target vulnerable immigrants as victims.²²³ The U visa specifically includes the following criminal activities:²²⁴

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

What is considered T visa qualifying criminal activity?

DHS defines “severe forms of trafficking in persons” as either:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- Sex trafficking in which the person induced to perform such an act is under the age of 18;
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.²²⁵

What are the evidentiary standards for U visa and T visa?

For both visas, federal statutes and DHS regulations apply the Violence Against Women Act’s “any credible evidence” standard.²²⁶ When USCIS conducts its adjudication of the case USCIS reviews all evidence submitted and will determine, in its sole discretion, the evidentiary value of the evidence.²²⁷ The rules reflect the broad protections and flexible evidentiary standards envisioned by Congress.²²⁸

²²² *Id.* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016).

²²³ 72 Fed. Reg. 53014, 53015 (2007).

²²⁴ I.N.A. § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii) (2000) (As amended by the Violence Against Women Reauthorization Act of 2013).

²²⁵ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

²²⁶ 72 Fed. Reg. 53014, 53038 (codified at 8 C.F.R. § 214.11(c)(4)) (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(5)) (2016).

²²⁷ *Id.*

²²⁸ *See, e.g.*, H.R. REP. NO. 103-395, at 38 (1993).

Which family members can be included in a U visa and T visa application?

The federal law permits certain qualifying family members to obtain U or T visas when the family member is accompanying (in the U.S. with together with the victim) or following to join the immigrant victim applying for the U or T visa. USCIS refers to such family members as “derivatives.” The immigrant who was the victim of the criminal activity applying for the U visa or T visa is referred to under immigration law as the “principal” applicant. The determination of which family members are considered “qualifying” depends on their relationship to the principal immigrant victim and the age of the principal immigrant victim.²²⁹

For the U visa, if the immigrant victim applicant is under 21 years of age at the time the victim’s application for a U visa is properly filed, qualifying family members eligible to file for U visas, together with the victim, include the victim’s spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal’s petition), and parents. If the immigrant victim is 21 years of age or older, the only family members who are eligible to apply for U visas are the victim’s spouse and children.²³⁰

For the T visa, as with the U visas, when the immigrant victim applicant is under 21 years old at the time they file a T visa application, qualifying family members eligible to file for T visas, together with the victim, include the victim’s spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal’s petition), and parents. If the immigrant victim is over the age of 21 the family members for which they may seek T visas are the victim’s spouse and children. In addition, T visa victims, without regard to age, can apply for parents, unmarried siblings under 18 years of age, or children (adult or minor) of the principal victim’s eligible family members, if the family member faces a present danger of retaliation as a result of the principal’s escape from the severe form of trafficking in persons or cooperation.²³¹

The law includes “age out” protections for T and U visa victims and their child family members who are under 21 years old on the date their U or T visa application is filed. Once a victim or the family member of a victim who is under the age of 21 files a U or T visa application, the age of the child on the date of filing is by law fixed in time so that when their case is adjudicated even if the applicant is over 21 on the date of adjudication, their case is adjudicated as if they are still under 21 years of age.²³²

CERTIFICATION/DECLARATION PROCESS

Who can sign a U visa certification/T visa declaration?

Any agency that detects, investigates, prosecutes, convicts, or sentences criminal activity or perpetrators of criminal activity may sign a certification/declaration.²³³ Statutes and DHS regulations explicitly lists as agencies and state government officials authorized to sign certifications the following agencies: state and local judges, law enforcement agencies,

²²⁹ USCIS, Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions, PM-602-0102 (April 15, 2015), <https://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TVPR-2013-PM.pdf>.

²³⁰ I.N.A. § 101(a)(15)(U)(ii)(I)–(II); 8 U.S.C. § 1101(a)(15)(U)(ii) (I)–(II).

²³¹ I.N.A. § 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III); 8 C.F.R. 214.11(k)(1)(ii)–(iii).

²³² I.N.A. § 214(p)(7), 8 U.S.C. § 1184(p)(7); I.N.A. § 214(o)(4)–(5), 8 U.S.C. § 1184(o)(4)–(5).

²³³ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1); *DHS U and T Visa Resource Guide* at 15.

prosecutors, Child Protective Services, Adult Protective Services, the Equal Employment Opportunity Commission, Department of Labor, NLRB, state labor law enforcement entities, and other government agencies that have civil, criminal, or administrative investigative authority.²³⁴ Individual federal, state, and local judges adjudicating any type of proceeding (family, civil, criminal, or administrative) are authorized by federal statute and federal regulations to act as certifying officials.²³⁵

Why did Congress authorize multiple certifiers?

Congress sought to protect immigrant crime victims and encourage their cooperation in the detection of crime, criminal investigations, and prosecutions as early as possible after the victim was identified as a crime victim. Immigrant victims first come in contact with the justice system in a variety of ways. For example, some victims find their way to advocates who assist them in filing for a civil protection order and only after receiving the protection order do victims feel able to cooperate in the criminal prosecution of their abuser. Other victims call the police to report domestic violence, sexual assault or other crimes committed against them and system advocates or similar staff members at the police department inform them about the U or T visa program.

The goal was to provide a range of avenues for U visa certification and T visa declaration from justice system professionals whose jobs include making determinations about whether there was reasonable suspicion or probable cause to believe that criminal activity was perpetrated, and against which victim. The authority to issue U visa certifications and T visa declarations was not designed to be consecutive or mutually exclusive among authorized certifiers, but rather was designed to facilitate certification as early as possible in the case. The federal statute is designed to provide multiple avenues to certification/declaration so that eligible victims may obtain a certification even when they live in a jurisdiction in which one agency eligible to issue certifications/declarations, as a matter of practice, never issues them.²³⁶

²³⁴ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1); 72 Fed. Reg. 53014, 53015 & 53019 (2007); *DHS U and T Visa Resource Guide* at 15.

²³⁵ 8 C.F.R. 214.14(a)(2). Unlike other certifying officials, approval by any supervisor is needed for judicial certifications.

Each individual judge or magistrate is authorized to sign certifications.

²³⁶ Several states have begun to address the issue of state agencies who have the authority to sign U visa and T visa certifications whose agencies have policies or practices that result in their agencies not issuing certifications by passing state laws requiring that these state agencies have certification practices that result in their issuance of certifications. A list of state laws regarding U and T visa certification is available at <http://niwaplibrary.wcl.american.edu/state-u-visacertification-laws>. See also Oregon Senate Bill 962 (2019), <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB962/Enrolled>; Alison Kamhi and Sarah Lakhani, A

Guide to State Laws on U Visa and T Visa Certifications, IMMIGRANT LEGAL RES. CTR. (Apr. 2020) (listing IN, NY, RI, VT, Virgin Islands, and WY laws), https://www.ilrc.org/sites/default/files/resources/u_visas_and_t_visas_pa-04.2020.pdf.

Are law enforcement agencies and prosecutor’s offices required to sign the U visa certifications/T visa declarations?

No. Agencies authorized to sign certifications and declarations, including law enforcement and prosecution agencies, are not required to sign the certifications or declarations.²³⁷ Whether a certifying agency signs a certification/declaration is at the discretion of the agency. However, Congress enacted the U visa and T visa protections with the expectation that law enforcement and prosecutors are in a good position to assess the helpfulness or assistance of a victim.²³⁸ A victim cannot obtain a U visa without a certification.²³⁹

The U visa certification (Form I-918B) is one of the required pieces of evidence to confirm that:

- 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.

The declaration is not required for a T visa, but it is a helpful piece of evidence submitted by the applicant.²⁴⁰ In addition, signing a certification or declaration will not subject an agency to liability and does not grant any immigration benefit. USCIS adjudicates the victim’s case based on the totality of the evidence in the record including a full background investigation. Only USCIS has the authority to grant or deny immigration benefits of the U or T visa to an immigrant victim applicant.²⁴¹

Is my agency required to create a policy for reviewing and signing Form I-918B and Form I-914B?²⁴²

No. Certifying agencies are not required under federal regulations to create a policy in order for authorized certifiers to review and sign Form I-918B or Form I-914B. However, many agencies have found this to be helpful. Certifying agencies are also not required to notify DHS in advance that the agency will be signing certifications. The International Association of Chiefs of Police issued a resolution encouraging law enforcement agency leadership to adopt U and T visa training and polices.²⁴³ A number of police departments collaborated on the development of a model U and

²³⁷ See *Orosco v. Napolitano*, 598 F.3d 222 (5th Cir. 2010) (holding that the decision to decline to issue certification is discretionary); *DHS Resource Guide* at 17.

²³⁸ Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a)(2)(B), Pub. L. 106–386, 114 Stat. 1464.

²³⁹ INA § 214(p)(1); 8 U.S.C. § 1184 (p)(1).

²⁴⁰ See 81 Fed. Reg. 92266, 92276 (2016).

²⁴¹ 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>

²⁴² *DHS U and T Visa Resource Guide* at 16.

²⁴³ International Association of Chiefs of Police, 2018 Resolutions – Support for Education and Awareness on U Visa Certification and T Visa Declaration, <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

T visa certification policy.²⁴⁴ Training on U visa and T visa certification is recommended for courts and staff at any government agency signing certifications.²⁴⁵

If I sign a certification or declaration, does the victim automatically get a U visa, T visa or lawful immigration status?²⁴⁶

No. There are many additional eligibility requirements that USCIS evaluates when it adjudicates a victim's U visa or T visa application, depending on which visa the victim is seeking (see above sections for list of eligibility requirements). Upon receiving a U or T visa application, USCIS will conduct a full review of all evidence and a thorough background check of the victim before approving or denying the application. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds.

A victim may be found inadmissible if the victim does not meet required criteria in the Immigration and Nationality Act to gain admission to or lawful immigration status in the United States. Victims may seek a waiver of inadmissibility, which USCIS has discretion to grant. Waivers are considered based on the totality of the evidence in the case and the results of the background check. USCIS may also contact the certifying official for further information if necessary.

Will my certifying agency be liable for any future conduct of someone who is granted a U or T visa? What if I signed a certification or declaration for someone who later commits a crime?²⁴⁷

No. A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa. The U visa certification simply addresses whether the petitioner was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the detection, investigation, prosecution, conviction, or sentencing of that crime. The T visa declaration simply addresses whether the victim was a victim of human trafficking and has complied with all reasonable requests for assistance.

The certification or declaration does not guarantee the future conduct of the victim or grant a U or T visa. USCIS is the only agency that can grant a U or T visa. If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues. If a certifying agency or official later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency or official wishes to withdraw the certification, the agency or official should contact USCIS.

²⁴⁴ The model policies for law enforcement and prosecution agencies are available at <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>. The model policy is included in this toolkit at page 99.

²⁴⁵ On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 17.

Who decides which benefit to seek, a U or T visa?²⁴⁸

The victim or victim's advocate or attorney will usually make that decision and indicate to the certifying agency or judge whether the victim is seeking a U visa certification or a T visa declaration. It is important to note that victims of human trafficking may qualify for and may apply for both a U and a T visa.

U VISA HELPFULNESS AND T VISA ASSISTANCE REQUIREMENTS

What constitutes *helpfulness* for U visa certification purposes?

“Helpfulness” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which they are a victim.²⁴⁹

Helpfulness can be as simple as a victim reporting a crime to the police or the victim's filing for a protection order or a temporary protection order, such as a civil protection order, sexual assault protection order, or a harassment restraining order. Victims who seek civil protection orders demonstrate willingness to be helpful by revealing the facts of the abuse they have suffered to the court and by coming to court to obtain the order. With a protection order, the victim is obtaining an order that the violation of which is a crime that they can enforce by calling the police to report future protection order violations. Some of those future protection order violations will be crimes in and of themselves (e.g. assault, threats to kill) other protection order violations become crimes because the actions violate the provisions of the protection order issued by the judge against the perpetrator. (e.g. violation of a no contact provision). Victims may also demonstrate helpfulness through sworn statements in the protection order application, by providing the court a copy of a police report they made, or by testimony before the court about steps they have taken to help police or prosecutors.

When there is a criminal investigation of the perpetrator, the victim may have provided helpfulness to police or prosecutors by participating in various aspects of the investigation or prosecution, such as identifying a perpetrator, appearing at court hearings, testifying, or filing victim-impact statements.

The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of the case, including past helpfulness and willingness to be helpful in the future.²⁵⁰ Congress intended for individuals to be eligible for a U visa at the very early stages of an

²⁴⁸ *Id.*

²⁴⁹ Helpfulness is defined in the U visa statute 8 U.S.C. § 1101(a)(15)(U)(i)(III); The U visa regulations at 8 C.F.R. § 214.14(5) define investigation or prosecution as follows: Investigation or prosecution refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity. See Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist*, NIWAP (2019), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

²⁵⁰ 72 Fed. Reg. 53013, 53019 (2007). Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist*, NIWAP (2019), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

investigation.²⁵¹ Once a victim has provided any form of helpfulness they are eligible to receive a U visa certification. The victims must file their U visa application within six (6) months of receiving the certification. If the victim needs more time to document their U visa case before filing, they will need to return to the judge or agency that issued the U visa certification and request reissuance of a new certification.

After the victim has provided helpfulness, received certification and filed for the U visa, the victim is required by the U visa regulations to provide ongoing assistance to law enforcement and prosecution officials when reasonably requested. This requirement to offer ongoing assistance or cooperation applies from the time the victim files their U visa application, through adjudication of the U visa case, receipt of wait-list approval, receipt of the U visa, and through the time the victim applies for and is granted lawful permanent residency.²⁵²

To prevent further harm to victims however that could be caused by the cooperation To prevent further harm to victims that could be caused by the cooperation requirement, however, Congress created an exception to the ongoing cooperation requirement when victims can demonstrate that their inability or refusal to cooperate is not unreasonable.²⁵³ In some cases it may be unsafe for a victim to fully cooperate with law enforcement. Such situations include trauma, threats of retaliation, or the victim being physically restrained or monitored by the perpetrator.²⁵⁴ If a victim has been helpful in detection or investigation of criminal activity, judges, law enforcement and other certifying officials can issue U visa certification even if the victim later found it too difficult to continue participating.

It is important to distinguish “continuing assistance” from “helpfulness” because continuing assistance is a standard that applies *after* the victim files their U visa application and also after the victim obtains their U visa. For the purpose of obtaining an initial certification from a judge, only the victim’s past helpfulness, current helpfulness, or the likelihood of future helpfulness can be considered. In actual practice, judges are almost always being asked to issue U visa certifications based on helpfulness the victim has already provided. That helpfulness often has been provided or is being provided to the courts in the filing for a protection order or providing evidence of abuse in a pleading, testimony or

²⁵¹ *Id.*

²⁵² 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)(3)) (2007); 73 Fed. Reg. 75540, 75561 (codified at 8 C.F.R. § 245.24(e) (2008)).

²⁵³ U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 4, January 2012, available at, http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

²⁵⁴ 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).

related to a court proceeding. The court may have also received information or evidence about helpfulness the victim provided to law enforcement or prosecution officials in a criminal investigation or prosecution of a crime the victim suffered.

What constitutes “complying with any reasonable request” for a T visa declaration?

USCIS regulations require that the victim of trafficking comply with reasonable requests from law enforcement or prosecution officials for assistance in the detection, investigation or prosecution of the acts of trafficking in persons.²⁵⁵ To determine whether the request from law enforcement is reasonable, USCIS takes into account the totality of the circumstances, such as general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.²⁵⁶ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.²⁵⁷ It is generally reasonable for law enforcement or prosecutors to ask a victim similar things they would ask other comparably situated crime victims,, such as domestic violence and sexual assault victims.²⁵⁸

A victim is requesting Form I-918B (U Visa Certification) or Form I-914B (T Visa Declaration), but I am unsure whether they meet the “helpfulness” requirement or the “compliance with reasonable requests” requirement. May I sign this certification or declaration?

Yes. Both the I-918B and the I-914B provide an opportunity for the certifying agency completing the form to provide information to USCIS about the extent of the victim’s assistance in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. Certifiers may complete the form including all information they find relevant about the victim’s assistance. USCIS will ultimately determine whether the victim meets these requirements.

- Form I-918B asks whether the victim possesses information concerning the criminal activity; was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the criminal activity; was asked to provide further assistance; and has unreasonably refused to provide assistance. Certifiers may select “yes” or “no” to these questions and further explain their answers.
- Form I-914B asks the certifying official to provide information about the victim’s cooperation and includes several options to select regarding the victim’s cooperation with law enforcement and/or prosecutors.

²⁵⁵ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

²⁵⁶ 72 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

²⁵⁷ 72 Fed. Reg. 92266, 92275 (2016).

²⁵⁸ *Id.*

DECIDING WHETHER TO CERTIFY

Can a law enforcement officer or prosecutor complete Form I-918B/I-914B if an investigation or case is closed or happened a long time ago? What is the statute of limitations for the qualifying criminal activity has lapsed?

Yes. There is no applicable statute of limitations (i.e. time limit) that precludes signing a certification or declaration.²⁵⁹ The two visas were enacted in January 2001 as part of the Violence Against Women Act and the Trafficking Victims Protection Act of 2000 and were drafted to offer access to U and T visas to immigrants who were victims of criminal activity both before and after the date of enactment.²⁶⁰ In addition, T visa regulations were not promulgated until 2002 and the U visa regulations were not issued until September 2007.²⁶¹ There were significant periods of time between enactment of U and T visa protections and the dates on which victims could begin to apply for these protections. Since Congress did not apply any statute of limitations to U and T visa cases the impact of the regulations delays was mitigated and victims who have provided helpfulness remain eligible to file for U and T visas with no requirements imposed regarding the length of time that may have passed between the commission of the crime and date the victims files their U or T visa application.²⁶²

Most victims who report crimes do not know at the time of the report about the existence of the U and T visa programs. Other victims are too scared to report crimes to law enforcement for the reasons Congress contemplated.²⁶³ The Congressional goal of improving trust between law enforcement, courts and immigrant crime victims was best met by providing access to U and T visa certification to any immigrant crime victim who mustered the courage and overcame fear to seek help from the courts, law enforcement, prosecutors and other government officials. When victims who report crimes and seek help from law enforcement, prosecutors, and the courts get U and T visa protections, the word spreads that the courts and justice system officials are willing to help immigrants with the result that more immigrant victims come forward to report crimes and seek help.²⁶⁴

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 or T visa.²⁶⁵ Many circumstances, including reports about the victim to DHS by the perpetrator, can lead a

²⁵⁹ “Certifying officials may complete Form I-918B or Form I-914B for an investigation or prosecution that is closed. There is no statute of limitations regarding the time frame in which the criminal activity must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful *in the past* to the detection, investigation, prosecution, conviction, or sentencing of criminal activity.” *DHS U and T Visa Resource Guide* at 18. “USCIS will accept applications regardless of when the applicant was victimized.” 72 Fed. Reg. 92266, 92278 (2016).

²⁶⁰ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386.

²⁶¹ 72 Fed. Reg. 53013 (2007).

²⁶² For the T visa, a filing deadline was imposed in the 2002 interim rule, but the application volume has not reached expected levels. To protect as many victims as possible, DHS removed the deadline in its 2016 interim rule. 72 Fed. Reg. 92266, 92278 (2016).

²⁶³ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a).

²⁶⁴ “Evidence to further establish that the petitioner is a victim of qualifying criminal activity may include: trial transcripts, court documents, news articles, police reports, orders of protection, and affidavits of other witnesses such as medical personnel.” 72 Fed. Reg. 53013, 53024 (2007).

²⁶⁵ 72 Fed. Reg. 53013, 53041 (2007); 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(d)(9)) (2016);

“Individuals currently in removal proceedings or with final orders of removal may still apply for a U or T visa. A petitioner

crime victim to be detained and placed in removal proceedings. Immigration enforcement actions are subject to prosecutorial discretion and DHS policies discourage initiation or continuation of removal proceedings against crime victims and witnesses and in particular victims of domestic violence, sexual assault, human trafficking, U visa and other serious crimes.²⁶⁶ The fact that an immigrant victim is in immigration detention or is in immigration proceedings before an immigration judge is not relevant to whether an official signs the U visa certification or T visa declaration or whether USICS grants the victim a U or T visa. Officials should encourage immigrants in removal proceedings to obtain legal advice from an experienced immigration attorney.²⁶⁷

Can law enforcement or prosecution 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 or prosecution agency must state only that the individual was a victim of a qualifying criminal activity.²⁶⁸ 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.²⁶⁹ It is important that certifying officials completing certifications check all criminal activities detected in the case on Form I-918 and should not be limited by the specific crimes being investigated or prosecuted by the certifying agency.

Can a law enforcement officer or prosecutor sign a certification/declaration if the victim is not needed in the course of the investigation or prosecution?

Yes. 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 require a victim's testimony or completion of a prosecution, as long as that victim does not unreasonably refuse to provide ongoing assistance reasonably requested after the victim's U visa

for U nonimmigrant status or an applicant for T nonimmigrant status has administrative remedies and is not prejudiced by completion of removal proceedings. Specifically, a victim who is the subject of a final order of removal, deportation, or exclusion may still file a petition or application for U or T nonimmigrant status directly with USCIS. If a victim is granted U or T nonimmigrant status prior to, or after, removal, the regulations provide a procedure whereby the victim may remain in or return to the United States." *DHS U and T Visa Resource Guide* at 19.

²⁶⁶ NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, *ICE Confirms Continued Effectiveness of Victim Witness Protections* (April 19, 2019), <http://niwaplibrary.wcl.american.edu/pubs/ice-confirmation-of-continued-effect-victim-witness-memo>; DEP'T OF HOMELAND SECURITY, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011),

<http://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>.

²⁶⁷ *DHS U and T Visa Resource Guide* at 20.

²⁶⁸ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 38 (2007).

²⁶⁹ 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).

application has been filed.²⁷⁰ T visa victims are required to comply with reasonable requests for assistance from law enforcement and prosecutors investigating human trafficking²⁷¹ unless they fall into one of two statutory exceptions.²⁷² The exceptions listed in the statute apply when the victim is under the age of 18 or if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.

Can a law enforcement officer or prosecutor sign a certification/declaration if the prosecution of the perpetrator may not be able to move forward or if the prosecutor decided not to prosecute the perpetrator?

Yes. A victim willing to help in the detection, investigation, or prosecution of criminal activity is able to access U and T visa protections regardless of whether the perpetrator is investigated or prosecuted.²⁷³ In many cases prosecutors do not prosecute, such as when the alleged offender has absconded, enjoys diplomatic immunity, has been deported, or may be a perpetrator against whom law enforcement has not yet fully built a case. The accused person will usually know at least that a police report has been filed against him (or her), even if charges are never filed. The victim needs protection in these cases because risk of retaliation for reporting the crime can be considerable. For these reasons, a victim can apply for and be granted a U or T visa even when police decline to investigate or prosecutors decline to charge perpetrators, when charges are later dismissed, or when prosecutors are unable to secure convictions.

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 and T visas were 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 or T visa eligibility.

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

Yes. There is no requirement that an arrest, prosecution, or conviction occur for a victim to be eligible for a U visa or T visa. While there is no requirement that a victim testify at a trial to be eligible for a U visa or T visa, if a U visa victim is requested to testify, they cannot unreasonably refuse to cooperate with law enforcement. T visa victims are required to comply with reasonable requests for cooperation from law enforcement and prosecutors in the investigation or prosecution of human trafficking, with two exceptions:

- 1) T visa applicants under age of 18; or
- 2) Victims whose experiences of physical or psychological trauma prevent them from complying with a reasonable request.²⁷⁴

²⁷⁰ *DHS U and T Visa Resource Guide* at 18.

²⁷¹ *DHS U and T Visa Resource Guide* at 18, 21.

²⁷² 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

²⁷³ *Id.* at 21; U.S. Citizenship and Immigration Services, *Information for Law Enforcement Officials, Immigration Relief for Victims of Human Trafficking and Other Crimes*, available at: <https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>.

²⁷⁴ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed certification or declaration Form I-918B/I-914B.²⁷⁵

Can a law enforcement officer or prosecutor sign a certification/declaration 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.²⁷⁶ The victim may be at a greater risk if the perpetrator is not convicted. The U visa certification and T visa declaration are designed to be issued when 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/declaration 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 (for U visa cases) or a victims of a severe form of human trafficking (for T visa cases), the officer should not sign the certification/declaration. There is one exception, when the immigrant applying for a U visa is 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 must 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/declaration 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 officials failed to obtain the assistance of qualified interpreters when taking police reports or conducting the investigation. 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.

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.

²⁷⁵ *Id.*

²⁷⁶ *DHS T and U Visa Resource Guide* at 12.

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.²⁷⁷ Waivers of inadmissibility for certain criminal grounds may also be available on a case-by-case basis for T visa victims when the criminal activities were caused by or incident to the trafficking victimization²⁷⁸ and in other extraordinary circumstances.²⁷⁹

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.²⁸⁰ USCIS will screen the criminal background of every U and T visa applicant and the agency will investigate every arrest. If an 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 or T visa relief.

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

Yes. The certifier is responsible for ensuring that the information on the certification/declaration is true and complete.²⁸¹ USCIS will adjudicate any issues of credibility beyond the certification/declaration, including statements in the application that suggest issues of credibility. USCIS employs rigorous standards to check the credibility of every applicant.²⁸²

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 incapacitated.²⁸³ 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.²⁸⁴

²⁷⁷ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007); 8 C.F.R. § 212.16(b).

²⁷⁸ INA Section 212(d)(13)(B)(ii); 8 U.S.C. 1182(d)(13)(B)(ii).

²⁷⁹ 8 C.F.R. 212.16(b)(3).

²⁸⁰ 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.

²⁸¹ DHS USCIS Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

²⁸² "A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa...The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa...If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues." DHS U and T Visa Resource Guide at 17.

²⁸³ 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).

²⁸⁴ 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).

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" and avoid results outcomes that "separate families and lead to anomalous results".²⁸⁵ 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.²⁸⁶

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

Law enforcement officers and prosecutors may sign certifications for victims who have not yet secured legal representation.²⁸⁷ 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 or T 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/declaration, does the victim automatically get lawful immigration status?

No. USCIS requires U visa and T visa applicants to provide significant further documentation to meet all other visa requirements.²⁸⁸

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

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

²⁸⁵ 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).

²⁸⁶ 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).

²⁸⁷ 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.

²⁸⁸ 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).

family unity. T visa victims must prove that their deportation would cause unusual and severe harm if removed from the United States.

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

Congress created the two visas 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.*²⁸⁹

Congress noted that:

*[T]he United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses.*²⁹⁰

Law enforcement or prosecutions agencies that, in practice, refuse to sign U visa certifications/T visa declarations or that adopt a uniform policy against signing them 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/declaration is signed, what are the ongoing obligations for a law enforcement agency?

A law enforcement agency cannot be held liable for the future actions of a victim for whom the law enforcement agency signed a certification or declaration and to whom DHS granted a U or T visa.²⁹¹ The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa.²⁹²

If a victim later appears not to be a victim or unreasonably refuses to be helpful or cooperative in an investigation or prosecution, a certifying agency is required to contact the VAWA Unit of USCIS to report any such changes, and may disavow the certification or declaration in writing.²⁹³ DHS may

²⁸⁹ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386, §1513(a).

²⁹⁰ Trafficking Victims Protection Act of 2000, Pub. L. 106–386, §102(b)(24).

²⁹¹ *DHS U and T Visa Resource Guide* at 17.

²⁹² *Id.*

²⁹³ 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)) (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

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

then revoke the visa after providing notice to the victim of the intent to revoke and an opportunity for the victim to respond.²⁹⁴

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 visa holder unreasonably refused to provide assistance.²⁹⁵ 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.²⁹⁶

What if the victim is arrested after the certification/declaration 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/T visa declaration. Applicants with criminal convictions must disclose these convictions and apply for a waiver related to criminal convictions as part of the visa adjudication process. USCIS has the discretion to grant waivers if it is in the national or public interest to do so. After the visa is granted, USCIS will review an individual's criminal history again when the visa holder applies for lawful permanent residency.²⁹⁷ Once any immigrant applies for an immigration benefit through the time the immigrant receives lawful permanent residency until an immigrant becomes a naturalized citizen, Department of Homeland Security closely monitors the criminal history of the immigrant continuously at multiple stages of the immigration case process. Criminal convictions can result in DHS not granting waivers to applicants and can result in loss of lawful permanent residency.

What are the safeguards for protecting the U and T 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. Generally, U visa certifications and T visa declarations are subject to discovery in criminal cases as they are considered to be under the prosecutor's control and are deemed relevant and material to the case as the defense can argue that the U visa/T visa provides a possible bias or motive to lie. Prosecutors should also consider if any related communications or documentation would also be discoverable under this analysis. Courts have ruled that the rest of the information in the victim's U or T visa file, however, is not discoverable by the defendant in the criminal case.²⁹⁸ Obligations may differ for federal prosecutors

²⁹⁴ 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)) (2007); 72 Fed. Reg. 92266, 92312 (codified at 8 C.F.R. § 214.11(m)(2)) (2016).

²⁹⁵ 8 CFR 245.24(a)(5) (2009); 8 CFR 214.11(h)(2) (2016).

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

²⁹⁷ 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).

²⁹⁸ See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017).

because the U visa and T visa are federal immigration remedies 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, and may include records from systems-based victim services staff who work for law enforcement or prosecution agencies.

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 is maintained in federal immigration case files.²⁹⁹

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

System advocates (employed by/within the prosecutor’s office or police department to assist crime victims), and other governmental social service agencies, such as child/adult protective services. This is especially true with child and elder abuse records that may be required to be turned over if its existence is known or should have been known to the prosecutor. Community-based victim services are not considered to be part of the prosecution team and their files are not subject to discovery and could possibly be protected by state statute.

Is a U visa certification/T visa declaration form signed by law enforcement or a prosecutor discoverable under *Brady* or its progeny?

Yes. Pursuant to most state penal codes and constitutional obligations under *Brady v. Maryland*, a U visa certification/T visa declaration 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 could undermine the credibility of the prosecution witness/victim. Therefore, in order to ensure *Brady* and state practice requirements are met, and to avoid vulnerability to an appeal, most state prosecutors will disclose the U visa certifications and the /T visa declarations.

Post-conviction certification requests do not need to be disclosed to the defense. A recent federal case, *United States v. Mills*³⁰⁰, 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.

²⁹⁹ *Id.*

³⁰⁰ 334 Fed. Appx. 946 (2009).

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.

Are there prosecution strategies to combat an anticipated defense that the victim is lying for a U Visa/T Visa?

Relevancy statutes and case law continue to evolve, but it is likely that at trial the defense will be able to admit the fact that the victim sought or received a certification/declaration. In fact, a prosecutor may want to admit evidence related to the victim's immigration status because it could be relevant to the defendant's victim selection, immigration-related abuse suffered by the victim, and the victim's delay in disclosing the criminal activity. NIWAP can provide training and technical assistance on pretrial and trial strategies to combat common defenses related to a victim's immigration status.³⁰¹

What are best practices for law enforcement in completing U visa certifications and T visa declarations and how do these practices impact a prosecutor's discovery obligations, of the U visa certification/T visa declaration 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 and declarations upon information contained in their own agency records and information provided by police or prosecution staff. Additional documentation should not be sought from the victim or the victim's advocate or attorney. Since certifications and declarations are based on government agency records and experiences with the victim regarding helpfulness or assistance, the only piece of information contained in the certifying agencies' certification file that is not already a discoverable government document will be the victim's letter requesting U visa certification or T visa declaration and a copy of the signed certification/declaration form itself. Police and prosecution agencies will not have copies of the full U or T visa case file as part of their records.

Best Practices

In creating the U visa and T visa, Congress sought to offer immigrant crime victims access to visa protections as early as possible after the victim of a crime came forward and made a report to the police, to a court or other government agency revealing the facts of the criminal activity the immigrant victim suffered. Congress also wanted to ensure 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 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 any certifying agency that the victim first encounters could sign certifications. Alternatively, if the first agency did not provide language access or was not knowledgeable about the U visa or T 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 or assistance.

³⁰¹ For information on how to request a training see <https://niwaplibrary.wcl.american.edu/pubs/ta-flyer-lea>

U visa certification and T visa declaration should be signed by police, prosecutors and/or other certifiers based on police, prosecution, court, or government agency records and information. For U visa, the following information is the only information called for in the U visa 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.

For T visa, the following information is the only information called for in the declaration:

- The applicant was a victim of a severe form of trafficking in persons;
- The applicant has complied with requests for assistance in the investigation/prosecution of the crime of trafficking; and
- Information about any family members of the victim believed to have been involved in the victim's trafficking to the United States.

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/T visa declaration that the facts of the case potentially support. Often, the criminal investigation and 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.

DHS CONTACTS INFORMATION

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

The Department of Homeland Security has created a U and T Visa hotline for certifying officials only. Certifiers with questions about U and T visa certification can call (240) 721-3333 for assistance. There is also a certify agency only email to which certifiers can send questions or ask specific case related questions – LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov. Although the email has “law enforcement” in the title the address is for use by all certifiers, not limited to law enforcement officials. It is important to note that DHS officials responding to calls and emails cannot disclose to the caller information contained in U and T visa cases files and cannot reveal the status of a case or decisions made by DHS in the case. Revealing such information is barred by VAWA confidentiality laws 8 U.S.C. 1367.³⁰²

Certifying officials seeking technical assistance, training, support or consultation, please contact the National Immigrant Women’s Advocacy Project (NIWAP), American University, Washington College of Law at niwap@wcl.american.edu or call (202) 274-4457. NIWAP provides this technical assistance and training in collaboration with a national team of law enforcement officers, prosecutors, and judges.³⁰³

³⁰² Zachary B. Perez, Alina Husain, and Leslye E. Orloff, *Quick Reference: VAWA Confidentiality Protections: Quoting Statutes, Regulations and Department of Homeland Security Policies* (Mar. 29, 2019), http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-va-wa-confidentiality-protections_3-29-19; Alina Husain and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (last updated Apr. 4, 2018), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

³⁰³ On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

U-Visa: “Helpfulness” Checklist^{304 305}

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The victim can be said to satisfy the “helpfulness” requirement of the U-Visa

*...when the victim has been helpful, is willing to be helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a **qualifying criminal activity**.*

Qualifying Criminal Activity is defined under immigration law³⁰⁶ as:

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contract (8 U.S.C. 1351)
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other related crimes

³⁰⁴ Copyright © The National Immigrant Women’s Advocacy Project, American University Washington College of Law 2019.

³⁰⁵ This document was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for

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³⁰⁶ Department of Homeland Security, U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. <http://niwaplibrary.wcl.american.edu/pubs/dhs-u-visa-guide-2012/> (Hereinafter DHS U and T Visa Resource Guide)

This includes any similar activity where the elements of the crime are substantially similar, including attempt, conspiracy, or solicitation to commit any of the above, and other related, crimes.³⁰⁷

Who detects a U visa victim's helpfulness in the detection, investigation, prosecution, conviction or sentencing of criminal activity?

- Federal, state, or local law enforcement agency³⁰⁸
- Prosecutor, including city and states' attorneys and state attorneys' general³⁰⁹
- Federal or State Judge,³¹⁰ commissioner, magistrate,³¹¹ or other judicial officer in a civil, family, juvenile, criminal or administrative law case³¹²
- Child Protective Services³¹³
- Equal Employment Opportunity Commission (EEOC)³¹⁴
- Department of Labor (DOL)³¹⁵
- Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority³¹⁶

Certifiers can either detect or receive helpfulness.

Whether a certifier or certifying agency receives the following types of helpfulness or detects this helpfulness will depend on the type of certifier or certifying agency. Below is a non-exhaustive list of examples.

- State police, local police, and sheriffs' offices will receive helpfulness directly and will also be able to detect helpfulness to others. Examples include:
 - Prosecutors, child/adult protective services, FBI, EEOC
- Prosecutors will receive helpfulness directly and will also be able to detect helpfulness to others. Examples include:
 - Police, child/adult protective services; FBI, EEOC

³⁰⁷ DHS U and T Visa Resource Guide at 13.

³⁰⁸ Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule. September 17, 2007. (Hereinafter U Visa Rule) <http://niwaplibrary.wcl.american.edu/pubs/federal-register-new-classification-victims-criminal-activity-eligibility-u-nonimmigrant-status-interim-rule/>.

³⁰⁹ U Visa Rule at 53019.

³¹⁰ U Visa Rule at 53019.

³¹¹ DHS U and T Visa Resource Guide at 16 ("Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.").

³¹² See *Expert Advice for Judges: How to Handle U Visa Certification and T Visa Endorsement Requests* (Webinar), NIWAP (Dec. 1, 2014) <http://niwaplibrary.wcl.american.edu/december-1-2014-expert-advice-for-judges-webinar/>.

³¹³ 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet. USCIS Publishes Rule for Nonimmigrant Victims of Criminal Activity. September 5, 2007 <http://niwaplibrary.wcl.american.edu/pubs/certifying-u-factsheet/> (Hereinafter USCIS Fact Sheet) (e.g. Federal Bureau of Investigation, Human Rights Commissions, and City and State Departments of Labor, Housing, and Human Rights).

³¹⁴ 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet.

³¹⁵ 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet.

³¹⁶ DHS U and T Visa Resource Guide at 6.

- Judges, Commissioners, Magistrates and other judicial officials for example will:
 - Detect helpfulness to police, prosecutors, child/adult protective services, the EEOC, or other state, local or federal agencies that the court observes or learns about through pleadings, court filings, and evidence offered
 - Observe helpfulness when victims seek help from the justice system and/or provide evidence of crime victimization in a criminal case, a protection order, divorce, custody, employment enforcement, housing, administrative law or other civil or family court proceeding
 - Observe helpfulness when a victim discloses criminal activity in pleadings, motions or other documents filed with the court
 - Detect helpfulness when victims register with VINE or other victim notification networks or receive Victims of Crime Act (VOCA) assistance
 - Observe helpfulness when victims attend court proceedings and/or work with sheriffs/police who serve protection orders
- The EEOC, U.S. or state departments of labor: will receive helpfulness of crime victims who come forward to make labor law complaints or cooperate in employment investigations and will detect helpfulness to other agencies when victims that the EEOC of state departments of labor is working with made police reports, provided information to police or prosecutors, or sought protection orders or injunctions
- Child protective services (CPS) and Adult protective services (APS): CPS and APS agencies will receive helpfulness of crime victims directly in child and elder abuse investigations. CPS and APS will also detect helpfulness to other agencies when victims that CPS and APS are working with make police reports, provide information to police or prosecutors, or seek protection orders, or provide evidence of child or elder abuse in family court proceedings.

What constitutes being helpful, having been helpful, or likely to be helpful?

DHS summarizes the U visa statute³¹⁷ and regulations³¹⁸ helpfulness requirement as follows: *“Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim.*”³¹⁹

The U visa was created to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Nonetheless, Congress understood based on social science³²⁰ that in many criminal cases, particularly victims of domestic violence and sexual assault, often find, for very compelling reasons that they cannot further cooperate with requests from law

³¹⁷ I.N.A. Section 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III).

³¹⁸ 8 C.F.R. 214.14(b)(3).

³¹⁹ DHS U and T Visa Resource Guide at 7. The U visa regulations in 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows:

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

³²⁰ Evan Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty* (2012); Edward W. Gondolf, *The Effect of Batterer Counseling on Shelter Outcome*, 3 *Journal of Interpersonal Violence*, No. 3 at 276 (Sept. 1988); Cynthia Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law* at 129 (1989).

enforcement and prosecutors after reporting the crime. The pattern of difficulty these victims have in providing ongoing cooperation is due to many factors and often is primarily based on fears of retaliation or because the victim is experiencing the perpetrator's retaliation and witness tampering efforts³²¹ or part of the trauma due to crime victimization.³²² These retaliation and witness tampering efforts with immigrant victims often include immigration related abuse — threats of deportation and abusers contacting immigration enforcement officials to provide “tips” designed to trigger immigration enforcement actions, detention, and deportation of the crime victim.

Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of immigrants and other crimes while offering protection to victims³²³ who might “be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”³²⁴ U-visas are intended, in part, to help overcome this reluctance.³²⁵

“The findings that Congress expressed in sections 1513(a)(1) and (2) of the [VAWA] make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity.”³²⁶

In 1994, when Congress enacted the Violence Against Women Act (VAWA) and in 2000 when VAWA was amended to add the U Visa, Congress clearly understood how perpetrators of domestic violence, child abuse, sexual assault, human trafficking and other crimes use threats of deportation, coercive control and other forms of intimidation and abuse to impede or interfere with victims ability and willingness to provide ongoing cooperation in investigations, prosecutions and court cases involving the victim's crime perpetrator. DHS describes in its issuance of policies governing VAWA confidentiality an example:

“There are a number of ways DHS employees might receive “tips” from an abuser or an abuser's family, such as: calling ICE to report the victim as illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented, or providing information to USCIS rebutting the basis for the victim's application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect.”³²⁷

³²¹ Kerry Healey, *Victim and Witness Intimidation: New Developments and Emerging Responses*, National Institute of Justice: Research in Action (Oct. 1995) (Only unsuccessful intimidation ever came to the attention of police or prosecutors), <https://www.ncjrs.gov/pdffiles/witintim.pdf>.

³²² 73 Fed. Reg. 75,552 (“Demographics Statistics indicate that aliens may be victimized at even higher rates than citizens”. Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status.).

³²³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,015 (2007).

³²⁴ New Classification for Victims of Criminal Activity; 72 Fed. Reg. 53,014 (2007).

³²⁵ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

³²⁶ New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53,018.

³²⁷ Dept. of Homeland Security, Instruction Number: 002-02-001, Implementation of Section 1367 Information Provisions, 10 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02001/>.

In order to ensure that the U visa would properly offer protection for victims in light of Congress's findings, legislation³²⁸ and regulations³²⁹ were established so that victims would be eligible to file for U visa protections at the very early stages of an investigation. Therefore, victims can receive certification once they demonstrate that they have been, are being, or are likely to be helpful.³³⁰

Once the victim obtains a certification based on their past helpfulness, present helpfulness, or likely future helpfulness and file their U visa application, the U visa regulations impose a responsibility upon the U visa applicant/recipient to provide ongoing assistance when reasonably requested.³³¹ Those who unreasonably refuse to assist after reporting a criminal activity will not be eligible for a U visa.³³²

The U visa statute was structured to offer a realistic flexible approach that would:

- Encourage more victims to come forward and report criminal activity;³³³
- Offer U visa protection early in the case soon after a victim offered helpfulness;³³⁴
- Encourage ongoing cooperation in investigations and prosecutions when reasonably requested;³³⁵ and
- Recognize that few victims of domestic violence, sexual assault, child abuse, elder abuser and human trafficking due to trauma, the perpetrator's threat and action, and/or safety concerns may not be able to consistently provide ongoing cooperation every time requested.³³⁶

To accomplish this, the statute was written to grant immigrant crime victims the ability to attain U visas and lawful permanent residency even when they do not offer ongoing assistance so long as their refusal to provide assistance was not unreasonable.

- U visa applicants and recipients can receive waitlist approval, be granted the U visa, and be granted lawful permanent residency as U visa holders if they provide ongoing cooperation or if they demonstrate to DHS that they did not refuse to provide help, assistance, or

³²⁸ 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(o)(1).

³²⁹ 8 C.F.R. 214.14(a)(12).

³³⁰ 53019 Fed. Reg. Vol. 72, No. 179. (2007); "8 U.S.C. 1101(a)(15)(U)(i)(III) ("USCIS interprets 'helpful' to mean assisting ... authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim."); see also 53019 Fed. Reg. Vol. 72, No. 179 (2007) (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 an investigation.").

³³¹ 8 C.F.R. § 214.14(b)(3).

³³² DHS U and T Visa Resource Guide at 7.

³³³ Kristina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending*, National Immigrant Women's Advocacy Project at 2-3 (2014) (Research has found that once immigrant victims file for immigration relief, they are more willing to turn to the justice system (police, prosecutors, courts) for help), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Qref-SafetyPlanning-06.18.14.pdf>; Kristina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants*, National Immigrant Women's Advocacy Project at 29-30 (2014), http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL_Report-on-Early-Access-to-EAD_02.12.pdf.

³³⁴ 53019 Fed. Reg. Vol. 72, No. 179. (2007).

³³⁵ *Id.*

³³⁶ 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008).

cooperation in an unreasonable manner.³³⁷ Whether a victim’s refusal or inability to cooperate was unreasonable is determined by:

- Examining the totality of the circumstances including the nature of the victimization, victim’s fear or the abuser, trauma suffered, force, fraud or coercion.³³⁸
- If the victim’s ongoing cooperation in the investigation or prosecution may jeopardize the *victim’s safety* or the *safety of her family* members in the U.S. or abroad, then the victim’s failure to cooperate is **not** unreasonable.³³⁹
- Being helpful is **not** related to whether the perpetrator of the criminal activity has a warrant issued, whether the case is ongoing or closed, or whether the perpetrator is charged, arrested, convicted, etc.
- Being “helpful” is **independent** from the results of the case.³⁴⁰ Once the victim has provided helpfulness, the “helpfulness” requirement is satisfied even if:
 - An arrest or prosecution cannot take place due to evidentiary or other circumstances;³⁴¹
 - The victim reported the crime but there was no further investigation;
 - Victims give helpful information to law enforcement, which is documented in a police report, but the charging deputy declines to file charges;

³³⁷ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007. http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim_regs-Fed-Reg.pdf/view;

³³⁸ 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008); Department of Homeland Security, 8 C.F.R. Parts 103, 212, 214, 245 and 299, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status Vol. 73, No 240 Fed Reg. 75540, 75547(December 12, 2008)(Here in after T and U Adjustment Rule) http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%202012.08.08.pdf/view

³³⁹ Leslye E. Orloff, Alina Husain, Alisha Lineswala and Benish Anver, U Visa Quick Reference for Judges (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>; Leslye E. Orloff, Alina Hussain, Alisha Lineswala, Benish Anver and Daniel Enos, U Visa Quick Reference for Law Enforcement and Prosecutors (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-law-enforcement-and-prosecutors>; NIWAP, American University, Washington College of Law, The Vera Institute Of Justice, Legal Momentum, *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (2018)(Funded by the Bureau of Justice Assistance and the Office on Violence Against Women, U.S. Department of Justice and the State Justice Institute) (U Visa Toolkit) <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; NIWAP, American University, Washington College of Law, U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officials (2018) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.

³⁴⁰ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; NIWAP: U-Visas - Victims of Criminal Activity. http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la-u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view; *U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security.* http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view.

³⁴¹ DHS U and T Visa Resource Guide at 11.

- The perpetrator has not been identified, has absconded, or is in hiding to avoid arrest;³⁴²
- The victim has cooperated with law enforcement and the case is dismissed due to the mishandling of evidence or an unlawful search;³⁴³
- The victim is not needed as a witness;
- Victim reported a past crime that at the time of the incident the victim did not feel safe to report (there is no statute of limitations);³⁴⁴
- The perpetrator has been deported;
- The perpetrator is prosecuted for a different crime;
- The criminal case did not result in a guilty plea or conviction;
- The prosecutor initiates a criminal prosecution then discovers irregularities in the crime lab or irregularities with the police officers' investigation and either exercises prosecutorial discretion not to file the case or discharges the matter "in the interest of justice";
- During the course of a criminal investigation for another crime for which the victim is providing evidence, the victim reports a qualifying U visa criminal activity which is not being prosecuted (e.g. a decision is made to prosecute a drug or gang related case instead of the domestic violence or sexual assault);
- The criminal case ends in acquittal or with a hung jury and the prosecutor decides not to refile the criminal case;
- Victim is not needed as a witness;
- Victim is dead (indirect victim qualifies);
- Perpetrator is dead;
- The victim is dead and the immigrant seeking certification is an indirect victim family member;
- The court case related to the criminal activity (criminal, civil, or family) is closed or was completed a long time ago;
- Victim has a criminal history;
- Victim is subject to immigration enforcement;
- Victim is reticent at first to cooperate, but later discloses events or offers helpfulness after better understanding rights or after being provided meaningful language access;
- Victim did not initially report to EEOC, but was identified as a similarly situated class member of the qualifying criminal activity.

Documents that can be used to prove helpfulness:

- Photographs of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity³⁴⁵
- Trial transcripts³⁴⁶

³⁴² U Visa Toolkit at 5.

³⁴³ DHS U and T Visa Resource Guide at 11-12.

³⁴⁴ *Information for Law Enforcement Agencies and Judges: Important Things to Remember*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>.

³⁴⁵ U Visa Rule at 53024.

³⁴⁶ U Visa Rule at 53024.

- Court Findings, rulings and other documents³⁴⁷
- Police reports³⁴⁸
- News articles³⁴⁹
- Copies of Reimbursement form for travel to and from court.³⁵⁰
- Affidavits of other witnesses or officials³⁵¹

In Cases Where the Victim is a Child or Incapacitated:

If a child victim is dead, incapacitated, or incompetent, another person can meet the “helpfulness” requirement:

- On behalf of an immigrant victim who is a child, or who is incapacitated, or incompetent the person who provides the helpfulness may be:³⁵²
 - A parent
 - Guardian; or
 - Next friend
- When a victim has died, is a child, or is incapacitated or incompetent, certain family members are eligible to file for U visas as indirect victims:³⁵³
 - Adult victims
 - Spouses
 - Children under 21 years of age
 - Child victims
 - Spouses
 - Children under 21 years of age
 - Parents
 - Unmarried siblings under the age of 18 years

Checklist for Criminal Cases

Helpfulness can be met in a variety of ways in criminal cases that include but are *not* limited to:

- Victim called police to report the crime
- Victim spoke freely with responding officers
- Victim participated in interviews with police investigators
- Victim allowed the police to take photographs of injuries and/or the crime scene

³⁴⁷ U Visa Rule at 53024.

³⁴⁸ U Visa Rule at 53024.

³⁴⁹ U Visa Rule at 53024.

³⁵⁰ U Visa Rule at 53024.

³⁵¹ U Visa Rule at 53024.

³⁵² 8 C.F.R. 214.14(b)(2) & (3)

³⁵³ Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007.

http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view.

- Making or attempting to make a police report
- Reporting a Crime
- Providing information to police at the crime scene
- Attempting to provide information to the police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter
- Participating in pre-arrest identification on scene
- Victim sought medical assistance provided as evidence or the victim is willing to sign a medical release form
- Participating in a forensic medical, rape kit, or SART medical examination
- Registering for VINE or other victim notification system
- Victim is willing to answer follow-up questions at a later time
- Identifying and providing background information about the perpetrator
- Providing a history of violence perpetrated by the offender
- Disclosing or reporting prior violence and/or criminal activity to others
- Disclosing criminal activity that the suspect may be involved in
- Disclosing whether the suspect has an existing criminal record or any pending charges
- Victim sought a criminal protection order
- Cooperating as a witness for whom prosecutors seek a criminal stay away as part of bond
- Participating in pre-arrest identification of photo array
- Attending a line-up to identify the perpetrator
- Providing a statement to police, even if there is no arrest
- Providing photographs of injuries
- Providing restitution information
- Attending preparation sessions with the prosecutor
- Testifying at or attending the initial appearance, bond hearing, preliminary hearing, or arraignment
- Testifying as a witness before a grand jury
- Testifying at or attending pre-trial motions
- Testifying at or attending the trial
- Testifying at or attending post-trial motions
- Testifying at or attending sentencing
- Providing a victim impact statement
- Reporting parole/ probation violations
- Testifying at or attending parole hearings
- Testifying at or attending parole/probation violation hearings
- Working with social services, if required
- Serving as a witness in another prosecution or investigation involving the perpetrator

Checklist of Family Law Cases

Helpfulness can be met in a variety of ways in family law cases that include but are *not* limited to:

- Victim sought a civil protection order

- Victim sought and/or received a temporary, interim, or ex parte protection order³⁵⁴
- Victim returns to court to receive a permanent protection order
- Victim testifies in a default or contested protection order proceeding
- Provided information to assist with service of a civil or criminal protection order on the perpetrator by local police and/or sheriff's deputies
- Calling police to enforce or report violations of a civil protection order
- Attempting to provide information to the police to report violations of a protection order that could not be communicated because the police did not obtain a qualified interpreter
- Providing evidence of domestic violence, child abuse, and/or other U visa criminal activity in a custody, divorce, paternity, child support or other family court action, including but not limited to providing testimony, photographs of injuries, or medical records
- Providing information regarding child/ elder abuse to protective services/ investigators
- Victim attends court for a family court show cause hearing to report perpetrator's violations or contempt of family court custody and visitation order when threats or other criminal activity occurs
- Providing evidence or testifying in a child or elder abuse or neglect case
- Providing a history of violence perpetrated by the offender
- Victim provides the court with information about calling 911 for help, speaking to responding officers, making a police report of providing any other helpfulness to law enforcement or prosecutors listed on the law enforcement/prosecutors checklist above
- Victim provides the court information about filing or participating in and revealing the U visa listed criminal activity in a civil case including the activities listed in the civil court check list below.

Checklist for Civil Court Cases

Helpfulness can be met in a variety of ways in other civil court cases that include but are *not* limited to

- Victim of sexual assault in the workplace is cooperating with the EEOC or DOL in another investigation of the employer by the EEOC or DOL
- Victim made a police report regarding crimes that occurred at their workplace
- Victim made a report to the EEOC or an equivalent state agency
- Victim provided information to an EEOC investigator
- Victim testified for the EEOC in a federal case regarding the employer
- Victim testified in a landlord tenant case regarding domestic violence, child abuse, or other U visa listed criminal activity
- Victim filed a small claims case against the abuser providing evidence of a U visa criminal activity

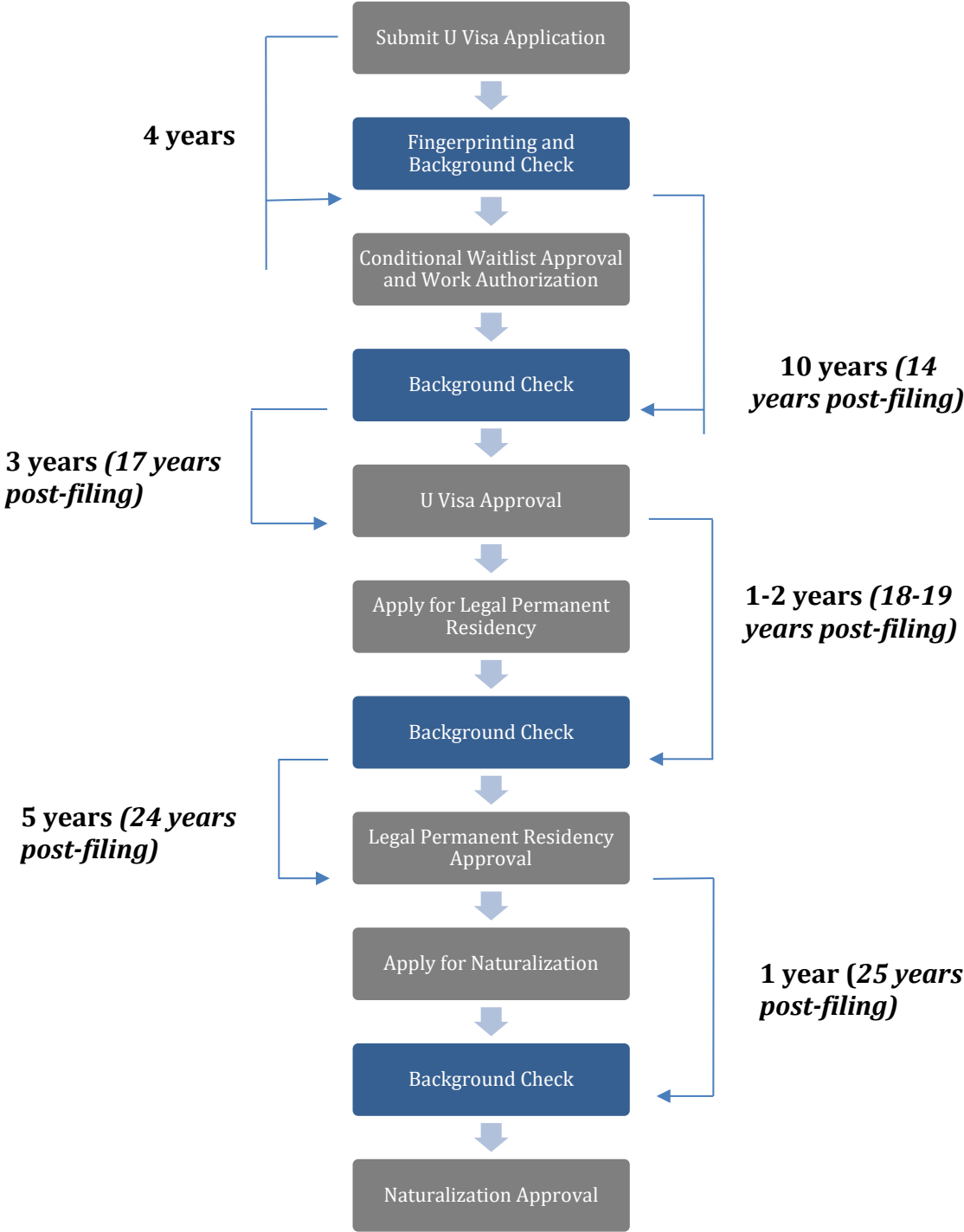
³⁵⁴ Certifications signed after the court proceeding has concluded or after the court has issued its final appealable order are signed as an administrative function of the court. Courts considering requests for certification while a civil, family or criminal case is pending will need to provide the parties an opportunity to be heard on the certification request. Judges signing U visa certifications in open cases may need to consider whether judicial ethics rules will allow the judge to continue to hear the case in the future.

- Victim revealed the U visa criminal activity in a civil court case including but not limited to a tort action
- Providing evidence of domestic violence, child abuse, human trafficking or other U visa criminal activity in a small claims, housing, or other civil court case, including but not limited to providing testimony, photographs of injuries, or medical records
- The victim provides the court in the civil case information listed on the criminal or family court checklists above.

U Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

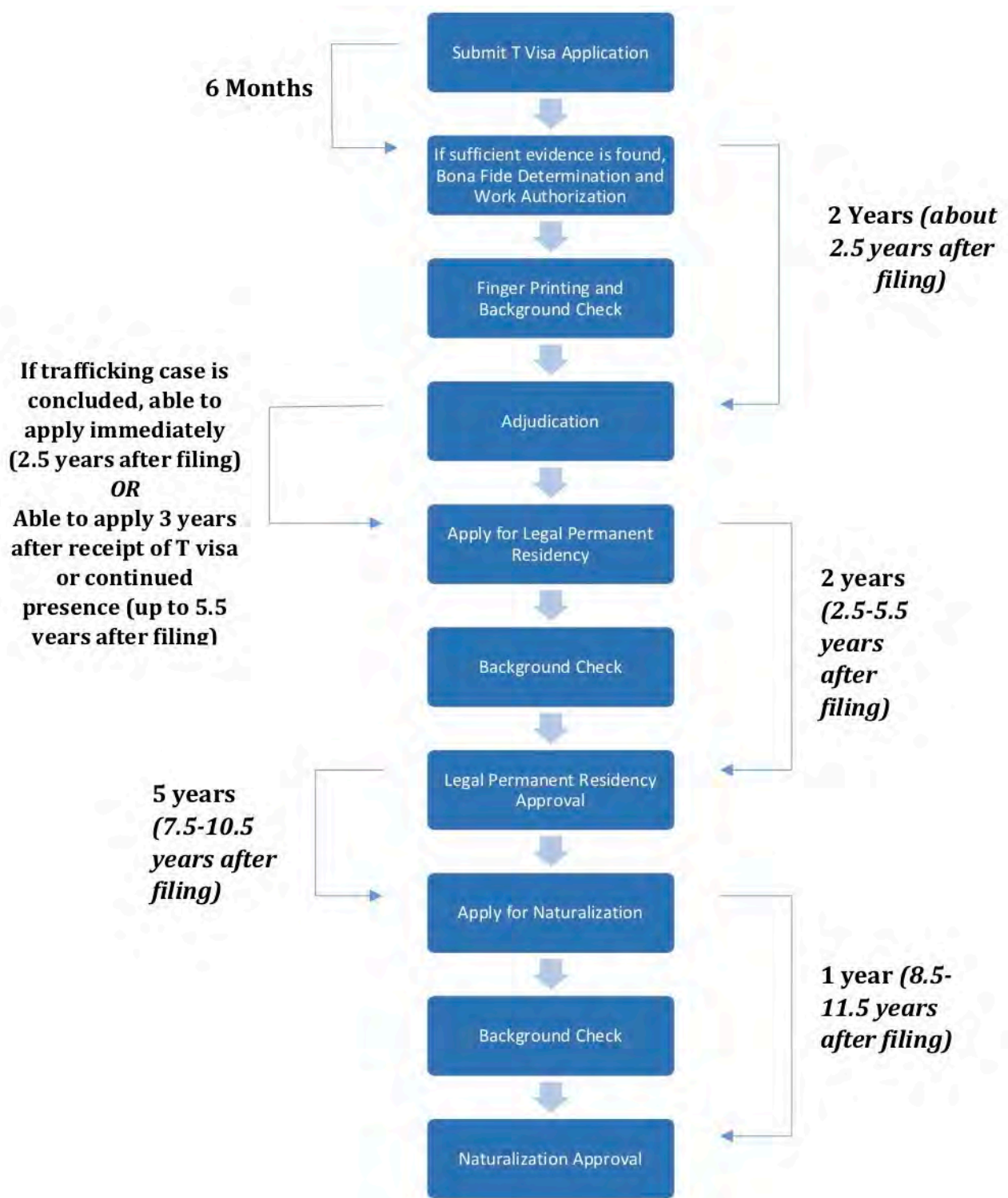
April 9, 2019



T-Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

March 29, 2019



I-918, Supplement B, U Nonimmigrant Status Certification: Instructions, Template and Sample



Instructions for Supplement B, U Nonimmigrant Status Certification

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

USCIS
Form I-918
OMB No. 1615-0104
Expires 04/30/2021

What Is the Purpose of Supplement B?

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

Who May File Supplement B?

If you, the certifying official, determine that this individual (also known as the petitioner and principal) was, is, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity, you may complete Supplement B, U Nonimmigrant Status Certification. The petitioner must submit Supplement B to U.S. Citizenship and Immigration Services (USCIS) with his or her Form I-918.

“Investigation or prosecution” refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

NOTE: The decision whether to complete Supplement B is at the discretion of the certifying agency. However, without a completed Supplement B, the petitioner will be ineligible for U nonimmigrant status.

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

USCIS will consider the petitioner’s spouse and unmarried children under 21 years of age, and the parents and unmarried siblings under 18 years of age if the victim is under 21 years of age, as victims of qualifying criminal activity where:

1. The direct victim is deceased due to murder or manslaughter; or
2. The direct victim is incompetent or incapacitated and, therefore, unable to provide information concerning the criminal activity or unable to be helpful in the investigation or prosecution of the criminal activity.

USCIS will consider a petitioner 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 was 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.

NOTE: 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 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 supplement. In the case of a petitioner under 16 years of age or a petitioner who is incapacitated or incompetent, the parent, guardian, or "next friend" of the petitioner may provide evidence on behalf of the petitioner to be helpful to a certifying official's investigation. "Next friend" is a person who appears in a lawsuit to act for the benefit of a victim under 16 years of age or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian. 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.

NOTE: Once you, the certifying official, have completed Supplement B, it will be valid for six months from the date of signature. If the victim does not file Form I-918, Petition for U Nonimmigrant Status, within six months, the victim will need to obtain a new Supplement B from the certifying agency.

General Instructions

How to Fill Out Supplement B

1. Type or print legibly in black or blue ink.
2. If you need extra space to complete any item within this supplement, use the space provided in **Part 7. Additional Information** or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.
3. Answer all questions fully and accurately. If a question does not apply to you type or print "N/A," unless otherwise directed. If your answer to a question which requires a numeric response is zero or none, type or print "None."
4. Each Supplement B must be properly signed and filed. USCIS will not accept a photocopy of the signature page of the Supplement B or a typewritten name in place of a signature.

Specific Instructions

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

Part 1. Victim Information

Item Number 1. Alien Registration Number (A-Number) (if any). This is the victim's USCIS file number. If the victim does not have an A-Number or you do not know it, leave this space blank.

Item Numbers 2.a. - 2.c. Full Name. Provide the victim's full legal name. Do not provide a nickname.

Item Numbers 3.a. - 3.c. Other Names Used. Provide other names used by the victim, including his or her maiden name, nicknames, and aliases, if applicable.

Item Number 4. Date of Birth (mm/dd/yyyy). Provide his or her date of birth (Example, May 1, 1979, should be written 05/01/1979).

Item Number 5. Gender. Select the appropriate box.

Part 2. Agency Information

Item Number 1. Name of Certifying Agency. The certifying agency must be a Federal, state, local, or tribal law enforcement agency; prosecutor; authority; or Federal, state, or local judge that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which the petitioner was a victim.

This includes traditional law enforcement branches with the criminal justice system and other agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, Child Protective Services, the Equal Employment Opportunity Commission, and the Department of Labor.

Item Number 2.a. - 2.c. Name of Certifying Official.

A certifying official is:

1. The head of the certifying agency or any person in a supervisory role, who was 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, attach evidence of the agency head's written designation of the certifying official for this specific purpose.

Item Numbers 3. - 10. Provide the requested information regarding agency officials, the agency's address, agency type, case status, certifying agency category, case number, and FBI Number or SID Number.

Part 3. Criminal Acts

Item Numbers 1. - 3. Select all of the crimes of which the petitioner is a victim that your agency is investigating, prosecuting, or sentencing and provide the dates of the criminal activity. If the criminal activity occurred over a period of time, provide a date on which at least one act constituting an element of qualifying criminal activity occurred. If multiple incidents occurred, provide the date of each incident investigated or prosecuted. List the statutory citations for the crimes in the space provided. If the crimes of which the petitioner is a victim are not listed, select the crimes that are similar to those crimes. You may provide a written explanation regarding how the crime of which the petitioner is a victim is similar to 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 at section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (INA) and found on the certification form itself.

Item Numbers 4.a. - 7. 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 petitioner is a victim had to violate United States law or occur within the United States.

1. **United States** means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands (CNMI), 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, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, 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. Provide the statutory citation for the extraterritorial jurisdiction.

Part 4. Helpfulness of the Victim

Item Number 1. Indicate whether the victim possesses information about the crimes. A petitioner must possess 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 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 a 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 petitioner may provide that information.

Item Number 2. 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 was, is, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity. In the case of a victim under 16 years of age or a victim who is incapacitated or incompetent, the parent, guardian, or next friend of the victim may provide evidence on behalf of the victim to be helpful to a certifying official's investigation.

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. Petitioner victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested, will not meet the helpfulness requirement. The victim has an ongoing responsibility 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 significant weight, but USCIS will not consider it conclusory evidence that the victim has met the eligibility requirements. USCIS will look at the totality of the circumstances surrounding the petitioner's involvement with your agency and all other information known to USCIS in determining whether the petitioner meets the elements of eligibility.

Item Number 3. Indicate if the victim has refused or failed to provide assistance reasonably requested since the initiation of cooperation. Explain in the space provided. If you need extra space, use the space provided in **Part 7. Additional Information**; type or print the agency's name, petitioner's name, and the A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.

Item Number 4. Include any additional information you would like to provide.

Part 5. Family Members Culpable In Criminal Activity

Item Numbers 1. - 4.e. List whether any of the victim's family members are culpable or are believed to be culpable in the criminal activity of which the petitioner is a victim, their relationship to the victim, and their culpability in the criminal activity. USCIS will not grant U nonimmigrant status to a qualifying family member who committed the qualifying criminal activities that established the victim's eligibility for U nonimmigrant status, in a family violence or trafficking context.

Part 6. Certification

Item Numbers 1. - 4. Read the certification block carefully, and sign and date the supplement. Provide your daytime telephone number and a fax number (if any).

NOTE: At your discretion, you may withdraw or disavow a Form I-918, Supplement B at any time, even after this supplement is submitted to USCIS, if a victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity. To do so, you must notify USCIS by sending a written statement to:

USCIS - Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

Include the victim's name, date of birth, and A-Number (if any) on all correspondence.

Part 7. Additional Information

Item Numbers 1. - 6.d. If you need extra space to provide any additional information within this supplement, use the space provided in **Part 7. Additional Information**. If you need more space than what is provided in **Part 7.**, you may make copies of **Part 7.** to complete and file with your supplement, or attach a separate sheet of paper. Include your agency's name, the petitioner's name, and A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.

DHS Privacy Notice

AUTHORITIES: The information requested on this supplement, and the associated evidence, is collected under the Immigration and Nationality Act, sections 101(a)(15)(U) and Public Law 106-386, section 1513(c).

PURPOSE: The primary purpose for providing the requested information on this supplement is to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of that activity. The Department of Homeland Security (DHS) uses the information you provide to grant or deny the immigration benefit the petitioner is seeking.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, including your Social Security number (if applicable), and any requested evidence, may delay a final decision or result in denial of the Form I-918 petition.

ROUTINE USES: DHS may, where allowable under relevant confidentiality provisions, share the information you provide on this supplement and any additional requested evidence with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records notices [DHS/USCIS-001 - Alien File, Index, and National File Tracking System, DHS/USCIS-007 - Benefits Information System, and DHS/USCIS-018 Immigration Biometric and Background Check] and the published privacy impact assessment [DHS/USCIS/PIA-016a Computer Linked Application Information Management system and Associated Systems] which you can find at www.dhs.gov/privacy. DHS may also share the information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information, unless it displays a current valid OMB control number. The public reporting burden for Supplement B is estimated at 1 hour per response, including the time for reviewing instructions, gathering the required documentation and information, completing the supplement, attaching necessary documentation, and submitting the supplement. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0104. **Do not mail your completed Supplement B to this address.**



Supplement B, U Nonimmigrant Status Certification

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

USCIS
Form I-918
OMB No. 1615-0104
Expires 04/30/2021

| | |
|---------------------------------------|----------------|
| For USCIS Use Only | Remarks |
|---------------------------------------|----------------|

▶ **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
▶ A-
- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

- 3.a. Family Name (Last Name)
- 3.b. Given Name (First Name)
- 3.c. Middle Name
4. Date of Birth (mm/dd/yyyy)
5. Gender Male Female

Part 2. Agency Information

1. Name of Certifying Agency
- Name of Certifying Official
- 2.a. Family Name (Last Name)
 - 2.b. Given Name (First Name)
 - 2.c. Middle Name
 3. Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

- 4.a. Family Name (Last Name)
- 4.b. Given Name (First Name)
- 4.c. Middle Name

Agency Address

- 5.a. Street Number and Name
- 5.b. Apt. Ste. Flr.
- 5.c. City or Town
- 5.d. State 5.f. ZIP Code
- 5.g. Province
- 5.h. Postal Code
- 5.i. Country

Other Agency Information

6. Agency Type
 Federal State Local
7. Case Status
 On-going Completed
 Other
8. Certifying Agency Category
 Judge Law Enforcement Prosecutor
 Other
9. Case Number
10. FBI Number or SID Number (if applicable)

Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select all applicable boxes)

- | | |
|---|---|
| <input type="checkbox"/> Abduction | <input type="checkbox"/> Manslaughter |
| <input type="checkbox"/> Abusive Sexual Contact | <input type="checkbox"/> Murder |
| <input type="checkbox"/> Attempt to Commit Any of the Named Crimes | <input type="checkbox"/> Obstruction of Justice |
| <input type="checkbox"/> Being Held Hostage | <input type="checkbox"/> Peonage |
| <input type="checkbox"/> Blackmail | <input type="checkbox"/> Perjury |
| <input type="checkbox"/> Conspiracy to Commit Any of the Named Crimes | <input type="checkbox"/> Prostitution |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Rape |
| <input type="checkbox"/> Extortion | <input type="checkbox"/> Sexual Assault |
| <input type="checkbox"/> False Imprisonment | <input type="checkbox"/> Sexual Exploitation |
| <input type="checkbox"/> Felonious Assault | <input type="checkbox"/> Slave Trade |
| <input type="checkbox"/> Female Genital Mutilation | <input type="checkbox"/> Solicitation to Commit Any of the Named Crimes |
| <input type="checkbox"/> Fraud in Foreign Labor Contracting | <input type="checkbox"/> Stalking |
| <input type="checkbox"/> Incest | <input type="checkbox"/> Torture |
| <input type="checkbox"/> Involuntary Servitude | <input type="checkbox"/> Trafficking |
| <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Unlawful Criminal Restraint |
| | <input type="checkbox"/> Witness Tampering |

Provide the dates on which the criminal activity occurred.

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4.a. Did the criminal activity occur in the United States (including Indian country and military installations) or the territories or possessions of the United States?

Yes No

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

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

Yes No

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

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

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

Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

- 1. Does the victim possess information concerning the criminal activity listed in **Part 3**? Yes No
- 2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? Yes No
- 3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above? Yes No

If you answer "Yes" to **Item Numbers 1. - 3.**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

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

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

3.d. Relationship

3.e. Involvement

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

4.d. Relationship

4.e. Involvement

Part 6. Certification

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

1. Signature of Certifying Official (sign in ink)

➡

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Part 7. Additional Information

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

1. Agency Name

Petitioner's Name

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. A-Number (if any)
▶ A-

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

4.d.

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

5.d.

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

6.d.

Sample



Supplement B, U Nonimmigrant Status Certification

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

USCIS
Form I-918
OMB No. 1615-0104
Expires 04/30/2021

| For USCIS Use Only | Remarks |
|--------------------|---------|
| | |

▶ **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
▶ A-
- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

- 3.a. Family Name (Last Name)
- 3.b. Given Name (First Name)
- 3.c. Middle Name
4. Date of Birth (mm/dd/yyyy)
5. Gender Male Female

Part 2. Agency Information

1. Name of Certifying Agency
- Name of Certifying Official
- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
3. Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

- 4.a. Family Name (Last Name)
- 4.b. Given Name (First Name)
- 4.c. Middle Name

Agency Address

- 5.a. Street Number and Name
- 5.b. Apt. Ste. Flr.
- 5.c. City or Town
- 5.d. State 5.f. ZIP Code
- 5.g. Province
- 5.h. Postal Code
- 5.i. Country

Other Agency Information

6. Agency Type
 Federal State Local
7. Case Status
 On-going Completed
 Other
8. Certifying Agency Category
 Judge Law Enforcement Prosecutor
 Other
9. Case Number
10. FBI Number or SID Number (if applicable)

Sample

Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select **all applicable** boxes)

- | | |
|---|---|
| <input type="checkbox"/> Abduction | <input type="checkbox"/> Manslaughter |
| <input type="checkbox"/> Abusive Sexual Contact | <input type="checkbox"/> Murder |
| <input type="checkbox"/> Attempt to Commit Any of the Named Crimes | <input type="checkbox"/> Obstruction of Justice |
| <input type="checkbox"/> Being Held Hostage | <input type="checkbox"/> Peonage |
| <input type="checkbox"/> Blackmail | <input type="checkbox"/> Perjury |
| <input type="checkbox"/> Conspiracy to Commit Any of the Named Crimes | <input type="checkbox"/> Prostitution |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Rape |
| <input type="checkbox"/> Extortion | <input type="checkbox"/> Sexual Assault |
| <input type="checkbox"/> False Imprisonment | <input type="checkbox"/> Sexual Exploitation |
| <input type="checkbox"/> Felonious Assault | <input type="checkbox"/> Slave Trade |
| <input type="checkbox"/> Female Genital Mutilation | <input type="checkbox"/> Solicitation to Commit Any of the Named Crimes |
| <input type="checkbox"/> Fraud in Foreign Labor Contracting | <input type="checkbox"/> Stalking |
| <input type="checkbox"/> Incest | <input type="checkbox"/> Torture |
| <input type="checkbox"/> Involuntary Servitude | <input type="checkbox"/> Trafficking |
| <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Unlawful Criminal Restraint |
| | <input type="checkbox"/> Witness Tampering |

Provide the dates on which the criminal activity occurred.

- 2.a. Date (mm/dd/yyyy)
- 2.b. Date (mm/dd/yyyy)
- 2.c. Date (mm/dd/yyyy)
- 2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4.a. Did the criminal activity occur in the United States (including Indian country and military installations) or the territories or possessions of the United States?

Yes No

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

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

Yes No

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

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

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

Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

- 1. Does the victim possess information concerning the criminal activity listed in **Part 3**? Yes No
- 2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? Yes No
- 3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above? Yes No

If you answer "Yes" to **Item Numbers 1 - 3**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck.

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

(Additional Information)

Sample

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in Part 7. Additional Information.)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

3.d. Relationship

3.e. Involvement

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

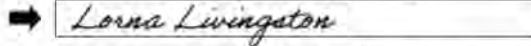
4.d. Relationship

4.e. Involvement

Part 6. Certification

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

1. Signature of Certifying Official (sign in ink)



2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Sample

Part 7. Additional Information

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

1. Agency Name

Petitioner's Name

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. A-Number (if any)
▶ A-

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

4.d. _____

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

5.d. _____

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

6.d. _____

Specify or N/A

I-914, Supplement B, T Nonimmigrant Status Declaration: Instructions, Template and Sample



Instructions for Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons

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

USCIS
Form I-914B
OMB No. 1615-0099
Expires 04/30/2021

What Is the Purpose of This Form?

Federal, State, and local law enforcement officials should use Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, to provide evidence to United States Citizenship and Immigration Services (USCIS) that you believe an individual (the applicant) submitting Form I-914, Application for T Nonimmigrant Status, is a victim of a severe form of trafficking in persons and has cooperated with your reasonable requests for assistance in an investigation or prosecution of a crime where trafficking is at least one central reason for the commission of that crime. USCIS (not the Federal, State, or local law enforcement official) will make the decision if the applicant meets the eligibility requirements for T nonimmigrant status.

By signing the Form I-914, Supplement B, you are not conferring an immigration benefit. USCIS is the only agency that can approve the applicant's Form I-914. USCIS requires fingerprints and police clearances from the victim and conducts background and security checks. The applicant must submit other evidence in addition to the Form I-914, Supplement B. USCIS may contact you if USCIS has any questions about the information provided in the supplement form.

When Should I Use Form I-914, Supplement B?

If **you**, the certifying Federal, State, or local law enforcement official, believe that this individual is or has been a victim of a severe form of trafficking in persons and has cooperated with your reasonable requests for assistance in your investigation or prosecution, **you** may complete this supplement form. **You** should complete all fields of this form yourself. Supplement B must be signed with an original signature. A photocopy of a signed application or a typewritten name in place of a signature is not acceptable. The **applicant** will then submit Form I-914, Supplement B, to USCIS with his or her application for T nonimmigrant status.

You must complete the form based upon your knowledge of the case, including evidence developed by other law enforcement officers involved with the case.

You do not need to formally launch an investigation or file charges to complete Form I-914, Supplement B. You may complete Form I-914, Supplement B, if an investigation does not lead to an arrest or a prosecution. Completing Form I-914, Supplement B, is not contingent on the outcome of a prosecution or investigation. Completing Form I-914, Supplement B, is at your discretion. There is no statute of limitations related to completing Form I-914, Supplement B.

Your agency may have its own procedures related to completing Form I-914, Supplement B.

To be eligible for T nonimmigrant status, the applicant must demonstrate to USCIS that he or she:

1. Is or was a victim of a severe form of trafficking in persons (see Form, **Part C. Statement of Claim**, for a definition);
2. Is present in the United States as a result of being a victim of a severe form of trafficking in persons (including physical presence based on having been allowed entry into the United States to participate in investigative or judicial processes associated with an act or perpetrator of trafficking);
3. Has complied with any reasonable requests from Federal, State or local law enforcement in the investigation or prosecution of the trafficking crime of which he or she was a victim; unless
 - A. The applicant is under 18 years of age; or
 - B. He or she is unable to cooperate due to physical or psychological trauma; and
4. Would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

These qualifying elements may be established without submitting Form I-914, Supplement B, but submission of Supplement B is one piece of evidence. USCIS (not the certifying Federal, State, or local law enforcement official) makes the determination on whether the evidence is sufficient and whether the applicant meets each eligibility requirement.

General Instructions

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach an additional sheet of paper. Write the victim's name and A-Number, if known, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.
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 A. - F.** The following information will help you fill out the form:

Part A. Victim Information

1. **Full Name.** Provide the legal name of the victim, as shown on his or her birth certificate or legal name change document. If the victim has two last names, include both and use a hyphen (-) between the names, if appropriate. Write the victim's last, first and middle names in each appropriate field.
2. **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.
3. **Date of Birth.** Use eight numbers to show the victim's date of birth (example: May 1, 1979, should be written 05/01/1979).
4. **Gender.** Check the appropriate box.
5. **A-Number.** Provide the USCIS (former INS) file number if there is one, and if it is known to you.
6. **Social Security Number.** Provide the Social Security Number if there is one, and if it is known to you.

Part B. Agency Information

1. **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 trafficking in persons of which the applicant was a victim.
2. **Name of Certifying Official.** Give your name, title, and division or office.
3. **Agency Address.** Give the agency's mailing address.
4. **Daytime Phone Number and Fax Number.** Give your phone number and fax number with area code.
5. **Agency Type.** Mark the appropriate box.
6. **Case Information.** Provide the case status information and case identification number, if applicable.

Part C. Statement of Claim

7. In order to qualify for T nonimmigrant benefits, the individual must be or have been a victim of a severe form of trafficking in persons. Mark the box that describes the individual's victimization.
 - A. Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion.
 - B. Sex trafficking and the victim is under 18 years of age.
 - C. Recruiting, harboring, transporting, providing, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery.

-
- D.** Not applicable. You do not believe this individual is a victim of trafficking.
- E.** Other. Attach additional sheets to explain.
- 8.** Describe the victimization on which the applicant's claim is based and identify the relationship of the victimization to the crime under investigation or prosecution by attaching additional sheets. Attach the results of any name or database inquiry and any relevant reports or findings. Attach additional sheets if necessary.
- 9.** Explain if the individual has expressed any fear of retaliation or revenge if they are removed from the United States.
- 10.** Provide the dates on which the acts of trafficking occurred.
- 11.** List the statutory citations that are or were being investigated or prosecuted.
- 12.** Provide the date on which the investigation or prosecution was initiated.
- 13.** Provide the date on which the investigation or prosecution was completed, if any.

Part D. Cooperation of Victim

In order to qualify for T nonimmigrant status, the individual must show that he or she has complied with any reasonable requests from Federal, State, or local law enforcement in the investigation or prosecution of the acts of trafficking of which he or she was a victim (unless he or she is under 18 years of age or he or she is unable to cooperate with the request due to physical or psychological trauma).

Mark the box that describes the individual's cooperation with you and explain, attaching additional sheets if necessary.

Part E. Family Members Implicated in Trafficking

List whether any of the victim's family members are believed to have been involved in the trafficking in persons of which the individual is a victim.

An alien victim is prohibited from filing for derivative T nonimmigrant status on behalf of a family member who participated in trafficking the alien victim that established his or her eligibility for T nonimmigrant status. Therefore, USCIS will not grant an immigration benefit to a family member who committed trafficking.

Part F. Attestation

The law enforcement officer filling out this form (identified in **Part B.** of the form), and their supervisor, must sign and date the form in this section.

The Form I-914, Supplement B, must have an original signature. A photocopy of a signed declaration or a type written name in place of a signature is not acceptable.

How Can I Provide Further Information at a Later Date?

An agency can provide further information to USCIS or formally revoke Form I-914, Supplement B, at a later date, even after this form is submitted to USCIS, if there is new information or if the victim is no longer cooperating with a reasonable request for assistance in an investigation or prosecution. You should notify USCIS by sending a written statement to:

USCIS
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

An agency should send a letter on official agency letterhead to USCIS at the address above describing the reasons for providing further information or the reasons for revoking the declaration. Include the victim's name, date of birth, and A-Number (if available) on all correspondence. USCIS will allow the victim to rebut this information.

DHS Privacy Notice

AUTHORITIES: The information requested on this application, and the associated evidence, is collected under Public Law 106-386 sections 107(e) and 1513(c) and 8 USC 1101(a)(15)(T).

PURPOSE: The primary purpose for providing the requested information on this application is to determine if you have established eligibility for temporary immigration benefits for which you are filing. DHS uses the information you provide to grant or deny the immigration benefit you are seeking.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, including your Social Security number (if applicable), and any requested evidence, may delay a final decision or result in denial of your application.

ROUTINE USES: DHS may, where allowable under relevant confidentiality provisions, share the information you provide on this application and any additional requested evidence with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records notices [DHS/USCIS-001 - Alien File, Index, and National File Tracking System and DHS/USCIS-007 - Benefits Information System] and published the privacy impact assessment [DHS/USCIS/PIA-016(a) Computer Linked Application Information Management System and Associated Systems], which you can find at www.dhs.gov/privacy. DHS may also share this information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for law enforcement agencies for this collection of information is estimated at 3 hours and 30 minutes per response, including the time for reviewing instructions and completing and submitting the form. The public burden for the Form I-914 respondents who will take the action of contacting a law enforcement agency to request that Form I-914, Supplement B, be completed is estimated to require 15 minutes to make such a request to the agency. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW, Washington, DC 20529-2140. OMB No. 1615-0099. **Do not mail your completed Form I-914, Supplement B to this address.**



**Supplement B, Declaration of Law Enforcement Officer for
Victim of Trafficking in Persons**

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

USCIS
Form I-914
OMB No. 1615-0099
Expires 04/30/2021

START HERE - Type or print in blank ink. This form should be completed by Federal, State, or local law enforcement authorities for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386, as amended.

PART A. Victim Information

Family Name (Last Name) **Given Name (First Name)** **Middle Name (if any)**

Other Names Used (include maiden name/nickname)

Date of Birth (mm/dd/yyyy) **Gender**
 Male Female

A # (if known) **Social Security # (if known)**

Part B. Agency Information

Name of Certifying Agency

Name of Certifying Official **Title and Division/Office of Certifying Official**

Agency Address - Street Number and Name **Suite Number**

City **State/Province** **Zip/Postal Code**

Daytime Phone # (area code and/or extension) **Fax # (with area code)** (USPS ZIP Code Lookup)

Agency Type
 Federal State Local

Case Status
 On-going Completed Local

Certifying Agency Category
 Judge Law Enforcement Prosecutor Other

Case Number **FBI or SID Number (if applicable)**

Part C. Statement of Claim

1. The applicant is or has been a victim of a severe form of trafficking in persons. Specifically, he or she is a victim of: *(Check all that apply. Base your analysis on the practices to which the victim was subjected rather than on the specific violations charged, the counts on which convictions were obtained, or whether any prosecution resulted in convictions. Note that the definitions that control this analysis are not the elements of criminal offenses, but are those set forth at 8 CFR 214.11(a).)*

- Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
- Sex trafficking and the victim is under the age of 18.

| For USCIS Use Only | |
|--------------------|---------|
| Returned | Receipt |
| Date | |
| Date | |
| Resubmitted | |
| Date | |
| Date | |
| Reloc Sent | |
| Date | |
| Date | |
| Reloc Rec'd | |
| Date | |

Remarks

Part C. Statement of Claim (Continued)

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery.
- Not applicable.
- Other, specify on attached additional sheets.

2. Please describe the victimization upon which the applicant's claim is based and identify the relationship between that victimization and the crime under investigation/prosecution. Attach the results of any name or database inquiry performed in the investigation of the case, as well as any relevant reports and findings. Include relevant dates, etc. Attach additional sheets, if necessary.

3. Has the applicant expressed any fear of retaliation or revenge if removed from the United States? If yes, explain. Attach additional sheets, if necessary.

4. Provide the date(s) on which the acts of trafficking occurred.

| | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|
| Date (mm/dd/yyyy) | Date (mm/dd/yyyy) | Date (mm/dd/yyyy) | Date (mm/dd/yyyy) |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

5. List the statutory citation(s) for the acts of trafficking being investigated or prosecuted, or that were investigated or prosecuted.

6. Provide the date on which the investigation or prosecution was initiated.

Date (mm/dd/yyyy)

7. Provide the date on which the investigation or prosecution was completed (if any).

Date (mm/dd/yyyy)

Part D. Cooperation of Victim *(Attach additional sheets, if necessary)*

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

Part E. Family Members Implicated In Trafficking

Yes No Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States? If "Yes," list the relative(s) and describe the involvement. Attach additional sheets if necessary.

| Full Name | Relationship | Involvement |
|-----------|--------------|-------------|
| | | |
| | | |
| | | |
| | | |

Part F. Attestation

Based upon investigation of the facts, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTVPA. 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 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 acts of trafficking of which he/she is a victim, I will notify USCIS.

Signature of Law Enforcement Officer *(identified in Part B) (sign in ink)*

Date *(mm/dd/yyyy)*

Signature of Supervisor of Certifying Officer *(sign in ink)*

Date *(mm/dd/yyyy)*

Printed Name of Supervisor

Sample

Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons Department of Homeland Security U.S. Citizenship and Immigration Services



USCIS
Form I-914
OMB No. 1615-0099
Expires 04/30/2021

START HERE - Type or print in blank ink. This form should be completed by Federal, State, or local law enforcement authorities for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386, as amended.

| PART A. Victim Information | | |
|---|--|----------------------|
| Family Name (Last Name) | Given Name (First Name) | Middle Name (if any) |
| Tobias | Leslye | N/A |
| Other Names Used (include maiden name/nickname) | | |
| N/A | | |
| Date of Birth (mm/dd/yyyy) | Gender | |
| 08/28/1976 | <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female | |
| A # (if known) | Social Security # (if known) | |
| 12345678 | 123456789 | |

| Part B. Agency Information | | |
|---|--|-----------------|
| Name of Certifying Agency | | |
| Washington DC Police Department | | |
| Name of Certifying Official | Title and Division/Office of Certifying Official | |
| Lorna Livingston | Captain Third Division | |
| Agency Address - Street Number and Name | | Suite Number |
| 1620 V Street NW | | N/A |
| City | State/Province | Zip/Postal Code |
| Washington | DC | 20009 |
| Daytime Phone # (area code and/or extension) | Fax # (with area code) | |
| 5555555555 | 5555555556 | |
| 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"/> Local | | |
| 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 Number (if applicable) | |
| 070840654 | N/A | |

| For USCIS Use Only | |
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| Resubmitted | |
| Date | |
| Date | |
| Reloc Sent | |
| Date | |
| Date | |
| Reloc Rec'd | |
| Date | |
| Date | |
| Remarks | |
| | |

Part C. Statement of Claim

1. The applicant is or has been a victim of a severe form of trafficking in persons. Specifically, he or she is a victim of: *(Check all that apply. Base your analysis on the practices to which the victim was subjected rather than on the specific violations charged, the counts on which convictions were obtained, or whether any prosecution resulted in convictions. Note that the definitions that control this analysis are not the elements of criminal offenses, but are those set forth at 8 CFR 214.11(a).)*
- Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
 - Sex trafficking and the victim is under the age of 18.

Sample

Part C. Statement of Claim (Continued)

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subject to involuntary servitude, peonage, debt bondage, or slavery.
- Not applicable.
- Other, specify on attached additional sheets.

2. Please describe the victimization upon which the applicant's claim is based and identify the relationship between that victimization and the crime under investigation/prosecution. Attach the results of any name or database inquiry performed in the investigation of the case, as well as any relevant reports and findings. Include relevant dates, etc. Attach additional sheets, if necessary.

Ms. Tobias was subjected to sex trafficking from December 2018 to May 2019. In December 2018, Ms. Tobias entered the United States for better work opportunities. She was introduced to a "beauty salon" to work as a massage therapist, but soon realized the job was actually to provide sex services. Unfamiliar with the country and threatened by her boss, Ms. Tobias was forced to stay until she called 911 in May 2019. Attached are police reports.

3. Has the applicant expressed any fear of retaliation or revenge if removed from the United States? If yes, explain. Attach additional sheets, if necessary.

I have not inquired into whether Ms. Tobias's fear retaliation or revenge if removed from the US.

4. Provide the date(s) on which the acts of trafficking occurred.

| Date (mm/dd/yyyy) | Date (mm/dd/yyyy) | Date (mm/dd/yyyy) | Date (mm/dd/yyyy) |
|-------------------|-------------------|-------------------|-------------------|
| 12/18/2018 | N/A | N/A | N/A |

5. List the statutory citation(s) for the acts of trafficking being investigated or prosecuted, or that were investigated or prosecuted.

DC. Code § 22-1834

6. Provide the date on which the investigation or prosecution was initiated.

Date (mm/dd/yyyy)

05/09/2019

7. Provide the date on which the investigation or prosecution was completed (if any).

Date (mm/dd/yyyy)

06/03/2020

Sample

Part D. Cooperation of Victim (Attach additional sheets, if necessary)

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. (Explain below.)
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. (Explain below.)
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

Ms. Tobias called 911 for help and provided information about her trafficker, which helped the police locate the trafficker.

Part E. Family Members Implicated In Trafficking

- Yes No Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States? If "Yes," list the relative(s) and describe the involvement. Attach additional sheets if necessary.

| Full Name | Relationship | Involvement |
|-----------|--------------|-------------|
| | N/A | |
| | | |
| | | |
| | | |

Part F. Attestation

Based upon investigation of the facts, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTVPA. 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 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 acts of trafficking of which he/she is a victim, I will notify USCIS.

Signature of Law Enforcement Officer (identified in Part B) (sign in ink)

Lorna Livingston

Date (mm/dd/yyyy)

07/03/2020

Signature of Supervisor of Certifying Officer (sign in ink)

Peter Emerman

Date (mm/dd/yyyy)

07/03/2020

Printed Name of Supervisor

Peter Emerman

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) (U visa)/ law enforcement agency, as such term is defined at 8 C.F.R. § 214.11(a) (T visa)].

Pursuant to [8 C.F.R. § 214.14(a)(3) and 8 C.F.R. § 214.14(c)(2)(i) (U visa)/ 8 C.F.R. § 214.11(d)(3)(i) (T visa)], 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/ I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons] on my Department's behalf. This specific designation shall remain in force until revoked in writing.

Sincerely,

[Name]

[Title] [County, State]

SAMPLE U-VISA CERTIFICATION & T-VISA DECLARATION OFFICER'S DUTIES³⁵⁵

GENERAL PURPOSE

In addition to performing duties listed under *[reference job description that covers officer]*, the U-visa certification and T-visa declaration officer(s) will perform a variety of tasks associated with the U-visa certification and T-visa declaration process, including evaluating U-visa certification and T-visa declaration requests, and completing and signing I-918 Supplement B forms (certification forms) and I-914 Supplement B forms (declaration forms).

SUPERVISION EXERCISED

U-visa certification and T-visa declaration 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 and T-visa declaration
- Reviews and signs I-918 Supplement B certification forms and I-914 Supplement B declaration forms prepared by agency personnel
- Completes and signs I-918 Supplement B certification forms and I-914 Supplement B declaration forms
- Assists the police department in developing programs and practices that will enhance community-outreach activities related to the U and T visas and noncitizen crime victims
- Oversees programs to educate the public about police department's U-visa certification and T-visa declaration function and purposes
- Meets and acts as a liaison with community groups

³⁵⁵ 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.

- Liaises with other local government agencies on U-visa and T-visa issues as assigned
- Supports patrol officers at crime, fire, and accident scenes with U-visa and T-visa information, materials, and outreach activities
- Completes monthly reports of activities detailing the number of U-visa certification and T-visa declaration requests and grants

PERIPHERAL DUTIES

- Serves on various law enforcement and other committees as assigned
- Performs related U-visa and T-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 and T-visa statute and regulations, the U-visa and T-visa certification process, and other victim-based forms of immigration relief available to immigrant crime victims (e.g., VAWA self-petitions).

(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, stalking, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, fraud in foreign labor contracting, 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 [X 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 _____.

Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations^{356 357 358}

October 31, 2016

I. Purpose

The purpose of this policy is to endorse the use of the U visa as a crime-fighting tool for police departments to better serve immigrant victims of crime that they encounter in their communities. Departments can better serve this vulnerable population by removing the fear of deportation that results in a lack of reporting violent crimes and cases of human trafficking to local law enforcement.³⁵⁹ By signing U Visa Certifications or T Visa Declarations, police departments encourage the reporting of such crimes and will be able to foster a positive relationship with the immigrant population in their communities. The U.S. Department of Homeland Security (DHS) is seeking the voluntary assistance of state and local law enforcement agencies in identifying immigrant crime victims and providing U Visa Certifications and T Visa Declarations.

II. Policy

It is the policy of this Department to serve immigrant victims of crime and human trafficking by signing U Visa Certifications and T Visa Declarations. This policy has been adopted in the interest of promoting officer, victim, and community safety by encouraging immigrant victims to come forward to report dangerous offenders within the community. In the process of serving immigrant victims through Certifications and Declarations, police departments will strengthen ties to their local immigrant communities and promote safety within those communities.

³⁵⁶ Copyright © The National Immigrant Women’s Advocacy Project, American University, Washington College of Law 2016. This project was supported by Grant No. 2014-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women. This project was also supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

³⁵⁷ Agencies participating in the development of this model policy included: Alexandria Police Department (VA), Amherst Police Department (MA), Appleton Police Department (WI), Boise Police Department (ID), New Orleans Police Department (LA), Riverside Police Department (CA), Salem Police Department (MA), San Francisco Police Department (CA), and San Antonio Police Department (TX).

³⁵⁸ Discussion Paper for Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations (October 31, 2016) <https://niwaplibrary.wcl.american.edu/pubs/discussion-paper-model-policy-u-visa-certification-may-2016>. See also, International Association of Chiefs of Police (IACP) Resolution on Education and Awareness of U and T Visa Certifications (November 2018) <https://niwaplibrary.wcl.american.edu/iacp-resolution-u-t-visa-certification-nov2018>

³⁵⁹ See generally Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, 3 (2015) [hereinafter “*DHS Law Enforcement Resource Guide*”] (stating that “Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims’ lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to provide victims of a crime a greater sense of security that also makes it easier for them to assist [law enforcement officials] with [their] law enforcement and prosecutorial efforts.”)

a. Definitions- U Visa³⁶⁰

U Visa Status: The U visa is an immigration benefit, provided by DHS, that is available to immigrant victims of certain qualifying criminal activities that have helped, are helping, or are likely to help law enforcement and government officials in the detection, investigation, prosecution, conviction and/or sentencing of the offender. If granted by DHS, the U visa provides the victim with temporary immigration status so that they can remain in the United States. The U visa is valid for four (4) years and requires the victim to continue to help law enforcement, if requested. After three (3) years, immigrant victims who have been helpful can apply to for lawful permanent residency if they can demonstrate need due for humanitarian, public interest, or family unity reasons.

U Visa Law Enforcement Certification: A certifying officer, usually the head of the department or a supervising officer designated by the head of the department, confirms, on the U Visa Certification (Form I-918B “U Nonimmigrant Status Certification”) that:

- a qualifying criminal activity occurred,
- the victim had information concerning that criminal activity, and
- the victim was helpful, is being helpful, or will likely be helpful in the investigation, prosecution, and/or sentencing of the perpetrator .

It is important to remember that:

- Signing a U Visa Certification does not grant legal immigration status to the immigrant victim; it is an evidentiary form that has to be included in the victim’s application.
- Certifications are signed at the discretion of the department.
- The department is not held liable for the later actions of the immigrant victim after it signs a Certification. If the individual is later determined to not be a victim or subsequently refuses to help law enforcement, the department may withdraw previously signed Certifications at any time.³⁶¹

The U Visa Certification is a required piece of evidence that must be submitted at part of the victim’s U Visa application without which the case cannot be adjudicated.

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:

| | | |
|--|--|---|
| <ul style="list-style-type: none">• Rape• Torture• Trafficking | <ul style="list-style-type: none">• Female Genital Mutilation• Being Held Hostage | <ul style="list-style-type: none">• Extortion• Manslaughter• Murder |
|--|--|---|

³⁶⁰ For a more extensive list of definitions of U visa terminology, including detailed definitions of the terms included in this section, please refer to Appendix A in the attached supplemental discussion paper. For a more detailed discussion of the U visa and the role of law enforcement in signing certifications, please refer to Appendix E “U Visa Toolkit for Law Enforcement Agencies and Prosecutors,” developed with funding from the Office on Violence Against Women and the Bureau of Justice Assistance at the U.S. Department of Justice (hereinafter “U Visa Toolkit”). This toolkit is also available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors>

³⁶¹ For instructions on how to withdraw a previously signed Certification, please see Section V, “Procedure: Encountering Immigrant Victims of Crime (U Visa).”

| | | |
|--|--|---|
| <ul style="list-style-type: none"> • Incest • Domestic Violence • Sexual Assault • Abusive Sexual Contact • Prostitution • Sexual Exploitation • Stalking | <ul style="list-style-type: none"> • Peonage • Involuntary Servitude • Slave Trade • Kidnapping • Abduction • Unlawful Criminal Restraint • False Imprisonment • Blackmail | <ul style="list-style-type: none"> • Felonious Assault • Witness Tampering • Obstruction of Justice • Perjury • Fraud in Foreign Labor Contracting³⁶² • Other Similar Activity |
|--|--|---|

b. Definitions- T Visa/Continued Presence³⁶³

T Visa Status: The T visa is an immigration benefit available from DHS for immigrant victims of severe forms of human sex and labor trafficking who comply with reasonable requests for assistance from law enforcement in the investigation or prosecution of human trafficking offenders. If granted a T visa by DHS, an immigrant victim is required to continue to comply with reasonable requests for cooperation from law enforcement, if requested. A T visa is valid for four (4) years. After three (3) years, the immigrant victim can apply to DHS for lawful permanent residency.

Severe form of trafficking

The term “severe forms of trafficking in persons” means—

- “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”³⁶⁴

The Federal Criminal Code includes crimes of human trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, and sex trafficking of children or by force, fraud, or coercion that state and local law enforcement should be familiar with.³⁶⁵

T Visa Law Enforcement Declaration: A certifying officer, usually the supervising officer responsible for the investigation or prosecution of the trafficking offense, will confirm that the immigrant was a victim of a severe form of trafficking and complied with reasonable requests for cooperation by law enforcement in a T Visa Declaration (Form I-914B “Declaration of Law Enforcement Officer for Victim of Trafficking of Persons”).

- Unlike the U visa, an immigrant applying for a T visa is **not required** to obtain a signed Declaration from law enforcement. However, since Declarations provide a

³⁶² As defined in 18 U.S.C. § 1351 (2013).

³⁶³ For a more extensive list of definitions of T visa terminology, including detailed definitions of the terms included in this section, please refer to Appendix B.

³⁶⁴ Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013).

³⁶⁵ See Appendix B, “Definitions of T Visa/Continued Presence Terminology” for the complete Federal Penal Code sections that define human trafficking.

key piece of evidence supporting their application, victims may request Declarations from law enforcement.

- Signing a T Visa Declaration does not grant the immigrant victim legal immigration status; the Declaration is one piece of evidence in the victim’s application.
- Declarations are signed at the discretion of the department.
- The department is not held liable for the later actions of the immigrant victim after it signs a Declaration. If the individual is later determined to not be a victim or subsequently has unreasonably refused to cooperate with reasonable requests for assistance from law enforcement, the department may withdraw previously signed Declarations at any time.³⁶⁶

Continued Presence: Continued Presence is the first form of immigration relief available to a victim of human trafficking who is undocumented. Continued presence is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. It allows a victim of human trafficking to continue to remain present in the United States because they are a victim and they are a potential witness in a human trafficking investigation. Continued presence is designed to be a tool for law enforcement to keep someone who is a victim and a potential witness in the United States who may not otherwise be able to stay in the United States legally. Continued presence also connects victims to services that provide support and stabilized the victim.

III. Criteria for U Visa Certifications

A. Before completing a Certification Form I-918B, the certifying official shall verify the following:

1. Eligibility- The applicant is:³⁶⁷

- a. A victim of a qualified criminal activity (listed in II 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
- b. The parent or unmarried sibling under 18 years old of a citizen or immigrant crime victim who is a child under the age of 21; or
- c. The spouse or child under-21-year-old of a victim who is incompetent or incapacitated or who is deceased because of murder or manslaughter; or
- d. The parents or unmarried siblings under 18-years old of an under-21-year-old citizen or immigrant victim who is incompetent or incapacitated or who is deceased because of murder or manslaughter.

B. Assessing the Helpfulness of the Immigrant Victim

1. Law enforcement officials may complete U Visa Certifications once they are able to assess a victim’s helpfulness. The entire investigation need not be completed prior to

³⁶⁶ For instructions on how to withdraw a previously signed Declaration, please see Section VII, “Procedure: Encountering Immigrant Victims of Human Trafficking (T Visa).”

³⁶⁷ See U Visa Toolkit (Appendix E) at 8.

signing a Certification. The Certification signed by the Chief or a designated supervisor confirms that the applicant has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity.

2. If a U visa petitioner filed a police report and is willing to assist – or has assisted or was helpful – with detection, investigation, prosecution, conviction, or sentencing 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.
3. The Chief or a designated supervisor may issue a Certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and is able to identify the victim of the criminal activity. The investigation need not be complete prior to issuing a certification.
4. Congress intended to allow victims to obtain U Visa Certifications at the very early stages of crime detection.
5. To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance, if requested.
6. Victims threatened by further acts of violence, may be able to prove to the DHS that their decision to not continue to provide assistance was not unreasonable and, therefore, remain eligible for a U visa.

C. Statute of Limitations

1. A certification can be issued any time after the criminal activity occurred. There are no time limits. Statutes of limitations are not a consideration when determining eligibility for Certification.

IV. Procedure- Introduction

This model policy recognizes that law enforcement agencies vary on policies and procedures regarding inquiring about the immigration status of victims, witnesses, and the general public. The following sample protocol has been created by combining policies from various jurisdictions that have U Visa Certification Procedures in place. The following procedure provides a guide that can be adapted to be consistent with any other policies your department may have that facilitates your department's relationship with immigrant communities and your work with immigrant crime victims. If, during the normal course of investigative efforts, information is revealed that suggests that a person is an immigrant victim, officers should follow the investigative steps listed below.

V. Procedure- Encountering Immigrant Victims of Crime (U Visa)

A. Officer Responsibilities

1. At the scene of the crime

- a. Conduct the preliminary investigation in accordance with the department policy and provide the victim with a DHS brochure that contains information about the U visa³⁶⁸ and a list of local victim services/resources.³⁶⁹
- b. Collect any relevant evidence, such as photographs of the location and of injuries, statements from the victim and witnesses, etc.
- c. Officers who encounter persons who are limited English proficient (LEP) should attempt to identify the LEP individual's primary language through use of a language identification care and obtain the help of an interpreter to understand and communicate with the LEP person.³⁷⁰ In exigent circumstances, personnel should use the most reliable temporary person available to interpret only until the exigency (e.g. securing the crime scene, locating weapons, fleeing suspect, and identifying injuries) has passed.
- d. Officers should explain the possibility of obtaining a U visa to the victim and provide the victim a copy of the DHS crime victim brochure. This can be done either at the scene or at a later interview.
 1. Do NOT promise the issuance of a U visa.
 2. Do NOT attempt to determine the victim's eligibility for a U visa.
- e. Conduct a more thorough interview away from the scene of the exploitation at a neutral location, such as the police station.

2. Interview

- a. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.³⁷¹

³⁶⁸ For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C.

³⁶⁹ To identify local programs with experience serving immigrant crime victims, please refer to the directory available at <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

³⁷⁰ Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines* 1,3, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf (Recognizing the importance of effective and accurate communication between law enforcement officials and the community that they serve).

Language barriers can impede effective and accurate communication in a variety of ways. Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from accessing and/or understanding important rights, obligations, and services, or from communicating accurately and effectively in difficult situations. Hampered communication with LEP victims, witnesses, alleged perpetrators, and community members can present the Department with safety, evidentiary, and ethical challenges. Ensuring maximum communication ability between law enforcement and all segments of the community serves the interests of both...Using family, friends, or bystanders to interpret could result in breach of confidentiality, a conflict of interest, or an inadequate interpretation...personnel should not use minor children to provide interpreter services.

³⁷¹ Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines*, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf ("Crime witness interviews: These scenarios potentially involve statements with evidentiary value upon which a witness may be impeached in court.

- b. Ask questions that will help determine whether the individual was a victim of a qualifying criminal activity.
- c. Explain the role of law enforcement in the victim's U visa application process.
 - 1. The victim requires a Certification from law enforcement that he/she was helpful, is helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, or sentencing. This Certification does **NOT** guarantee that the victim will receive a U visa.
 - 2. The Certification is a required piece of evidence that confirms to DHS that the applicant is a victim of a qualifying crime and verifies helpfulness.
 - 3. The victim must file his/her application with DHS and DHS alone will make the final determination regarding the victim's eligibility to receive a U visa. The department will provide the victim with a signed certification. The department cannot file the Certification with DHS for the victim.
 - 4. The victim has a duty to remain helpful to law enforcement and those who unreasonably refuse to provide reasonably requested assistance after receiving a U visa may have their U visa revoked by DHS. Law enforcement may report to DHS any unreasonable refusals for assistance by the victim.

3. Post-Interview

- a. The interviewing officer(s) will provide the certifying/supervising officer delegated with the authority to sign certifications with information obtained during the interview as well as other evidence collected.

B. Supervisor/Certifying Officer Responsibility

- 1. Prior to completing a Certification for a U visa application, the certifying officer shall have verified the following:
 - a. The non-citizen was or is a victim of a qualifying criminal activity, as noted in the definitions section above, that took place in the United States or its territories or occurred outside the United States, but violates U.S. extraterritorial law; or
 - b. The non-citizen is the parent or under 18 year old unmarried sibling of a citizen or immigrant crime victim who is a child under the age of 21; or

As such accuracy is a priority...miscommunication during ...crime witness interviews may have a substantial impact on the evidence presented in any related criminal prosecution.”)

- c. The non-citizen is the spouse or under 21-year old child of a victim who is incompetent or incapacitated, or who is deceased because of murder or manslaughter; or
 - d. The non-citizen is a parent or an unmarried under 18-year old sibling of an under 21-year old citizen or immigrant victim who is incompetent or incapacitated, or who is deceased because of murder or manslaughter.
2. The certifying officer shall establish if the victim has been, is being, or is likely to be helpful to detection, investigation, prosecution, conviction, or sentencing.
 3. 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 when the criteria described in B1 and B2 are met.
 4. No request for Certification will be accepted unless it is made on the proper Form I-918, Supplement B.
 5. Certification requests will be signed by the Chief or each supervisor designated to sign certifications.
 6. Once the Certification is completed, the certifying officer will return it to the victim or the victim's representative so that it can be included with the victim's U visa application. The law enforcement agency **cannot** send the signed certification to DHS; this is the victim's or his/her representative's responsibility.
 7. If the victim unreasonably refuses to provide assistance reasonably requested by law enforcement after receiving his/her U visa, the department may withdraw its Certification by notifying DHS in writing.
 - a. Send the agency name, certification date, name of certifier, petitioner's name, date of birth, and the reason for the Certification's withdrawal to:

U.S. Citizenship and Immigration
 Services/Vermont Service Center
 Attn: T/U visa Unit
 75 Lower Welden Street
 St. Albans, VT 05479-0001

VI. Criteria for T Visa Declarations

A. Before completing a T Visa Declaration (Form I-914B), the certifying official shall verify the following:

1. Eligibility- the applicant is:

- a. A victim of a severe form of trafficking and
- b. The victim is under the age of 18; or

- c. The victim complied with any reasonable requests from Federal, State, or local law enforcement in the investigation or prosecution of the trafficking crime of which he/she was a victim of.

B. Assessing the Cooperation of the Immigrant Victim of Human Trafficking

1. Law enforcement officials may complete T Visa Declarations for a trafficking victim under the age of 18 once they assess that the child has been a victim of a severe form of trafficking.
2. Law enforcement officials may complete T Visa Declarations once they are able to assess whether the victim has responded to a reasonable request for assistance. The entire investigation need not be completed prior to signing a Declaration. The signed Declaration confirms that the immigrant was a victim of a severe form of trafficking and cooperated with reasonable requests from law enforcement in the investigation or prosecution of a trafficking offender.
3. If a T visa applicant filed a police report and is willing to cooperate with law enforcement, a Declaration may be signed even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction.
4. After obtaining a signed Declaration, the victim has an ongoing responsibility to cooperate with reasonable requests of assistance by law enforcement.
5. Reasonableness of the request depends on:
 - a. Totality of the circumstances, taking into account general law enforcement and prosecutorial practices,
 - b. The nature of the victimization,
 - c. Specific circumstances of the victim (consider fear, severe physical and mental trauma, and age/maturity of the victim).

VII. Procedure- Encountering Immigrant Victims of Human Trafficking (T Visa)

A. Officer Responsibilities

- a. **At the scene of the crime**

- i. Conduct a preliminary investigation in accordance with department policy and provide the victim with information about the T visa³⁷² and other local victim services/resources.³⁷³
- ii. Collect any relevant evidence, such as witness statements, photographs of the location or any injuries, etc.
- iii. Officers who encounter persons who are limited English proficient (LEP) should attempt to identify the LEP individual's primary language through use of a language identification card and obtain the help of an interpreter to understand and communicate with the LEP person.³⁷⁴ In exigent circumstances, personnel should use the most reliable temporary person available to interpret only until the exigency (e.g. securing the crime scene, locating weapons, fleeing suspect, identifying injuries) has passed.
- iv. Officers should explain the possibility of obtaining a T visa to the victim, and provide the victim a copy of the DHS crime victim brochure. This can either be done at the scene or at a later interview.
 1. Do NOT promise the issuance of a T visa.
 2. Do NOT attempt to determine the victim's eligibility for a T visa.
- v. Conduct a more thorough interview away from the scene of the crime at a neutral location such as the police station.

b. Interview

³⁷² For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C. Please note that this brochure is available in several languages. These are available at: <http://niwaplibrary.wcl.american.edu/cultural-competency/multilingual-materials-for-victims/dhs-immigration-options-for-crime-victims>

³⁷³ To locate programs with experience serving trafficking victims are listed in the following resources: <http://freedomnetworkusa.org/membership/current-members/> and

<http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

³⁷⁴ Office of Justice Programs, *U.S. Department of Justice, Model Directive: Limited English Proficiency Guidelines* 1,3, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf (Recognizing the importance of effective and accurate communication between law enforcement officials and the community that they serve).

Language barriers can impede effective and accurate communication in a variety of ways. Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from accessing and/or understanding important rights, obligations, and services, or from communicating accurately and effectively in difficult situations. Hampered communication with LEP victims, witnesses, alleged perpetrators, and community members can present the Department with safety, evidentiary, and ethical challenges. Ensuring maximum communication ability between law enforcement and all segments of the community serves the interests of both... Using family, friends, or bystanders to interpret could result in breach of confidentiality, a conflict of interest, or an inadequate interpretation... personnel should not use minor children to provide interpreter services.

- i. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.³⁷⁵
- ii. If the officer suspects that the individual is a victim of trafficking, questions should be focused on obtaining information about the following: possible recruitment, circumstances of migration and arrival in the United States, working conditions, and whether there was any force, fraud, and/or coercion involved.³⁷⁶
- iii. Requesting Continued Presence: When state or local law enforcement officials identify a victim of human trafficking, they should coordinate with their federal law enforcement partners to submit an application for continued presence. Contact the local ICE office in your jurisdiction or an office of the Special Agents in Charge (SAC) <http://www.ice.gov/contact/inv/> to obtain a “Request for Continued Presence” ICE Form 73-031.
- iv. Explain the following to the victim regarding the Declaration that the agency can complete to assist the victim:
 1. The law enforcement Declaration is an optional piece of evidence that the victim may file with her T visa application to DHS.
 2. Once the Declaration has been completed, it will be returned to the victim or his/her representative to be filed with the T visa application. The department cannot file the Declaration with DHS for the victim.

c. Post-Interview

- i. The interviewing officer(s) will provide the certifying/supervising officer delegated with the authority to sign Declarations with information obtained during the interview as well as other evidence collected.

B. Supervisor/Endorsing Officer Responsibilities

- a. The supervising/endorsing officer must verify:
 - i. The victim was or is a victim of a severe form of trafficking, and
 - ii. The victim is under the age of 18; or
 - iii. The victim has complied with any reasonable requests for assistance in a trafficking investigation or prosecution.

³⁷⁵ Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines*, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf (“Crime witness interviews: These scenarios potentially involve statements with evidentiary value upon which a witness may be impeached in court. As such accuracy is a priority...miscommunication during ...crime witness interviews may have a substantial impact on the evidence presented in any related criminal prosecution.”)

³⁷⁶ For examples of questions for each category, please refer to Appendix D “Sample Questions for Identifying a Trafficked/Enslaved Person.”

- b. Once the Declaration is complete, return it to the victim or his/her representative for filing with the T visa application.
- c. If the victim unreasonably refuses to cooperate with reasonable requests to assist law enforcement after receiving his/her T visa, the department may withdraw its declaration by notifying DHS in writing.
 - i. Send the agency name, declaration date, name of officer who signed the declaration, the petitioner's name, date of birth, and the reason for the certification's withdrawal to:

U.S. Citizenship and Immigration
Services/Vermont Service Center
Attn: T/U visa Unit
75 Lower Welden Street
St. Albans, VT 05479-0001

**Discussion Paper for Model Policy for Interactions with Immigrant Victims of
Crime and Human Trafficking**
&
Signing of U Visa Certifications and T Visa Declarations¹²³

October 31, 2017

I. INTRODUCTION

This discussion paper is a supplement to the “Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking and Signing of U Visa Certifications & T Visa Declarations.” The purpose of this paper is to provide a more detailed explanation of the purpose of U and T visas and Continued Presence, the importance of signing Certifications and Declarations for victim/officer/community safety, and supporting the U.S. Department of Homeland Security’s (DHS) efforts to offer protection to immigrant crime victims. The discussion paper also includes helpful appendices, which define U and T visa terminology and provide screening, outreach, and investigatory tools for officers that encounter immigrant victims of crime.

II. PURPOSE

In 2000, Congress created the U visa under the Violence Against Women Act (VAWA), which allowed immigrant victims of certain qualifying criminal activities access to immigration relief by giving discretionary authority to state, local, and federal law enforcement officers to sign certifications for U visa applications. Under the 2000 Victims of Trafficking and Violence Protection Act (TVPA), a T visa and continued presence is available to help immigrant victims of severe forms of human trafficking. In addition to providing immigration relief, Congress intended that the certification/declaration process for both visas would be a tool that builds relationships between law enforcement officials and crime victims in immigrant communities.

The T and U visa and continued presence offer help to vulnerable immigrant victims who come forward, report criminal activities and are helpful in the detection, investigation, prosecution,

¹ Copyright © The National Immigrant Women’s Advocacy Project, American University, Washington College of Law 2017. This project was supported by Grant No. 2014-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women. This project was also supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

² Agencies participating in the development of this model policy included: Alexandria Police Department (VA), Amherst Police Department (MA), Appleton Police Department (WI), Boise Police Department (ID), New Orleans Police Department (LA), Riverside Police Department (CA), Salem Police Department (MA), San Francisco Police Department (CA), and San Antonio Police Department (TX).

³ See also Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations <http://niwaplibrary.wcl.american.edu/pubs/proposed-model-u-visa-policy/> and U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018) <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>

conviction, and/or sentencing of a violent offender. Domestic violence, sexual assault and human trafficking constitute at least 75% of the U visa cases filed nationally.⁴ Congress sought to remove threats of deportation as a tool perpetrators use to keep victims from reporting crime and assisting law enforcement while at the same time encouraging the development of a mutually beneficial relationship between law enforcement and the communities they protect. This relationship benefits the immigrant victim, improves law enforcement officer safety, and promotes safety in the community at large.

As such, the purpose of this policy is to:

- Establish guidelines for law enforcement officers and supervisors who receive and review requests for U Visa Certifications and T Visa Declarations;
- Clarify victims' eligibility requirements for Certification/Declaration;
- Inform state and local law enforcement officials involved in investigation and/or prosecution of human trafficking cases how to gain the assistance of federal DHS officials in obtaining continued presence allowing trafficking victims to remain in the United States and assist in criminal investigations and prosecutions of human traffickers;
- Discuss benefits to law enforcement and vulnerable communities, such as preventing crime in the interest of protecting victims and promoting officer safety; and
- Promote a trusting relationship between immigrant communities and law enforcement.

III. POLICY

- It is the policy of this agency to assist immigrant crime victims by signing U Visa Certifications, if they have been helpful, are being helpful, or are likely to be helpful in the detection, investigation, prosecution, conviction and/or sentencing of a perpetrator of a qualifying criminal activity.
- It is the policy of this agency to assist immigrant victims of human trafficking by signing T Visa Declarations if they are victims of severe forms of trafficking and cooperate with law enforcement in the investigation or prosecution of human traffickers to “facilitate reporting of crimes...to regularize the status of cooperating individuals during investigations and prosecutions...this...will...strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases.”⁵

⁴ LESLYE E. ORLOFF & PAIGE E. FELDMAN, NATIONAL SURVEY ON TYPES OF CRIMINAL ACTIVITIES EXPERIENCED BY U-VISA RECIPIENTS (November 29, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/National-Survey-on-Types-of-Criminal-Activities-Updated2011.pdf>

⁵ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 §§ 1513(a)(1) & (2) (2000) (codified at 8 U.S.C. 1184) (hereinafter “VAWA 2000”)

(a) FINDINGS.—Congress finds that—

(1) The goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

- It is the policy of this agency to encourage state and local law enforcement officials to collaborate with DHS in its efforts to offer access to legal immigration status and protection from deportation of immigrant crime victims and witnesses by implementing U visa certification and T visa declaration practices, policies and protocols.
- It is the policy of this agency to encourage the development of relationships with DHS and federal law enforcement officials that help state and local law enforcement enlist the assistance of DHS and federal law enforcement officials in obtaining grants of continued presence for immigrant trafficking victims assisting in state and local investigations and prosecutions of human traffickers.

This policy has been adopted in the interest of promoting officer safety, improving community safety, and protecting immigrant crime victims. Domestic violence offenders not only pose a threat within the home, they also pose a threat to the community and to law enforcement officers involved in holding and bringing domestic violence offenders to justice. For example, research currently being conducted is finding that 75% of offenders responsible for deaths of law enforcement officers have histories of being domestic violence offenders.⁶ Additionally, perpetrators of mass shootings are often also domestic violence perpetrators. Therefore, the signing of Certifications and Declarations not only provides an opportunity for the victim to feel comfortable enough to report criminal activities, but also creates a relationship between the community and law enforcement that allows officers to respond accordingly to dangerous offenders that pose a potential threat to officers and the community. Although participation in the certification/endorsement and the continued presence process is at the discretion of the departments, it is also the policy of this agency to participate in order to facilitate much needed collaboration between local law enforcement agencies and their federal counterparts in the identification and screening of immigrant victims of violent criminal activities and human trafficking.⁷

(2) Providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control; and

(3) There are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES.—The purposes of this title are—

(1) To remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and

(2) To offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes.

⁶ Research conducted by Officer Michael LaRiviere, U-Visa Law Enforcement Expert; *see generally* Department of Homeland Security, “Blue Campaign: Law Enforcement Discussion of Immigration Relief” Roll Call Videos for Law Enforcement on U Visa Certification and T Visa Endorsement, April 2013, available at: <http://niwap.org/training/DHS-roll-call/>

⁷ Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief*: Roll Call Videos for Law Enforcement on U Visa Certification and T Visa Endorsement (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

Finally, it is the policy of this agency that investigating officers distribute to immigrant victims outreach materials developed by DHS describing immigration relief for crime victims⁸ and provide immigrant victims with information about local or national immigrant victim services or resources that support immigrant victims⁹ in a manner that maintains the safety of the victim.

IV. BACKGROUND/DISCUSSION

The relationship between law enforcement and immigrant communities is often a strained one. Immigrant communities may mistrust or fear law enforcement based on their experience with the police in their native country, due to cultural differences or because immigrants have not historically been provided language access to police assistance. This mistrust leads to a lack of reporting of crimes and makes many undocumented immigrants vulnerable to criminal activities. With this background in mind, Congress' intent in creating the U and T visas was to strengthen local law enforcement's ability to detect, investigate, prosecute, convict and sentence criminal offenders that pose significant threats to both the community and to the officers themselves and to develop a relationship between law enforcement and the local immigrant population. As first responders, it is important for law enforcement to develop a trusting relationship with the local immigrant population so that they increase their ability to detect/prevent and investigate violent crimes in their community.¹⁰ This trusting relationship is "central to overall public safety."¹¹ In addition to a lack of trust, it is important to recognize and understand that a significant number of immigrants who are victims of crime do not report those criminal activities to law enforcement officials due to:

- Threat of physical harm to self and/or children;
- Threat of deportation;
- Threat of losing custody of children;
- Threat of losing employment; and/or
- Fear of being ostracized by family and/or community (particularly when the crimes are domestic violence, incest, child abuse, elder abuse, rape or sexual assault).

Perpetrators often threaten their victims with the reporting them to immigration authorities in order to secure the victim's deportation. Violent offenders trump the criminal justice system by

⁸ For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C. Please note that this brochure is available in several languages. These are available at: <http://library.niwap.org/wp-content/uploads/2015/CULT-Bro-DHSEnglishImmOptionsVictimsofCrime.pdf>

⁹ To identify local programs with experience serving immigrant crime victims, please refer to NIWAP's directory of local service providers, available at <http://www.niwap.org/directory/>

¹⁰ For a more detailed discussion of the role of law enforcement in the U Visa Certification process, please refer to "U Visa Toolkit for Law Enforcement and Prosecutors" (hereinafter "U Visa Toolkit"). The toolkit was developed with funding from the U.S. Department of Justice Bureau of Justice Assistance and Office on Violence Against Women and includes sample forms, sample outreach flyers, a frequently asked questions section, a flowchart that shows the certification process as it pertains to law enforcement and other resources. The toolkit is also available at: <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>

¹¹ See FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (May 2015), available at: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (Recommendation 1.9: Law enforcement agencies should build relationships based on trust with immigrant communities).

using the threat of deportation to stop victims from reporting crimes that were perpetrated against them to law enforcement. When the fear of deportation, witness tampering, and exploitation is reduced, it is more likely that immigrants will come forward to report crimes. The prospect of attaining legal immigration status and access to work authorization are powerful tools that counteract perpetrator threats, reduce victim fears, and, in turn, increase the probability that immigrant crime victims will come forward and report crimes perpetrated against them, many of which pose a threat to the community. By providing U Visa Certifications or T Visa Declarations and by seeking continued presence, law enforcement officials are able to enhance their ability to fight crimes by fostering trust and the development of relationships that encourage immigrant victims to feel comfortable in coming forward to report crimes.

U.S. immigration laws contain special VAWA Confidentiality and Victim Safety Provisions. They provide three types of protection to immigrant victims of violence, including battered immigrants and immigrant victims of sexual assault, trafficking and other U-visa-listed criminal activities.

Specifically, VAWA Confidentiality consists of:

- Non-Disclosure Provisions: Protects the confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim in order to prevent abusers, traffickers, and crime perpetrators from using the information to harm the victim, undermine her immigration case or locate her.
- Prohibited Source Limitations: Stops immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family, to take an adverse action regarding initiation of an immigration enforcement action, or making an adverse ruling in the victim's immigration case or as to the victim's admissibility or deportability. These protections apply without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief.
- Immigration Enforcement Limitations: Prohibits enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse if the victim is appearing in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking. If any part of an enforcement action took place at any of these locations, DHS must disclose this fact to the immigration judge and the judge can dismiss the removal action against the victim when VAWA confidentiality provisions have been violated.
- Prohibited Enforcement at Sensitive Locations: In addition to VAWA Confidentiality, DHS prohibits its enforcement officials from conducting immigration enforcement actions at the following locations: schools, places of worship, funerals and religious activities.

Signing Certifications or Declarations creates a means to reduce crimes and presents the opportunity to build trust and work closely with members of the local immigrant community to:

- Detect and prevent crimes and/or trafficking;
- Promote community and officer safety; and
- Hold offenders accountable.

It should be noted that signing a Certification or Declaration does not automatically confer immigration status nor does it guarantee it.¹² The application for a U or T visa must be reviewed by DHS and DHS will either grant or deny the application. Law enforcement does not determine eligibility for receiving a U or T visa; it only determines eligibility for Certifications or Declarations, which serve as evidence in a U or T visa application.

The certifying official and the department are not liable for the future acts of a victim should they choose sign a Certification or Declaration.¹³ If an individual is later determined to not be a victim or subsequently unreasonably refuses to provide assistance that has been reasonably requested by law enforcement, the department may withdraw its previously signed Certifications/Declarations in writing at any time.¹⁴

Congress and DHS regulations have structured the U Visa Certification and T Visa Declaration so that they fit within the routine activities of law enforcement. They can be completed simultaneously with police reports. Since Certifications and Declarations are based upon police reports and the information that law enforcement agencies routinely collect as they proceed with a criminal investigation, signing Certifications or Declarations does not add additional burden on police departments.

¹² Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (October 22, 2011), available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

¹³ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (October 22, 2011), available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

¹⁴ Send the petitioner's name, date of birth, A-file number (if available), and the reason for the Certification or Declaration's withdrawal to:

U.S. Citizenship and Immigration Services/Vermont Service Center
Attn: T/U visa Unit
75 Lower Welden Street
St. Albans, VT 05479-0001

See also Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4-5*, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification_guide.pdf; see also Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX A: DEFINITIONS OF U VISA TERMINOLOGY

U Visa Status¹⁵: The U visa is an immigration benefit that is available to immigrant victims of certain qualifying criminal activities that have helped, are helping, or are likely to help law enforcement and other government officials in the detection, investigation, prosecution, conviction and/or sentencing of the offender. If granted, the U visa provides the victim with temporary immigration status so that they can remain in the United States. The U visa is valid for 4 years and requires the victim to continue to help law enforcement, if requested. After 4 years, immigrant victims who have been helpful can apply to for lawful permanent residency if they can demonstrate need due for humanitarian, public interest, or family unity reasons.

U Visa Certification refers to Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner was a victim of a qualifying criminal activity, has knowledge of that criminal activity, and has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction and/or sentencing of the qualifying criminal activity of which he or she is a victim.¹⁶ The certification does not guarantee that the victim will receive a U visa and it does not grant immigration status. It is, however, a required piece of evidence that must be included in the victim’s application.¹⁷

Certifying Official: Certifications can be issued by the head of the certifying agency, or any person(s) in supervisory role(s) that has been specifically designated by the head of the certifying agency to issue U visa certifications on behalf of that agency, or a Federal, State, or local judge.¹⁸

Certifying Agency: government officials and entities, including Federal, State, or local law enforcement agencies, prosecutor, judge, or other state or federal government agency that have responsibility for the detection, investigation or prosecution, conviction and sentencing of the perpetrator(s) of the qualifying criminal activities.¹⁹ This can include, but is not limited to, child and adult protective services agency staff, state labor agencies, the Equal Employment Opportunity Commission, the U.S. Department of Labor, the FBI, and ATF officers.

Criteria for U Visa Certifications: Certification Forms (Form I-918B for U visas), can be completed when the law enforcement agency has determined that the applicant was a victim of a qualifying criminal activity and that the applicant was helpful, is helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the

¹⁵ 8 C.F.R. § 214.14

¹⁶ 8 C.F.R. 214.14(a)(5) & (12) (definition of U Visa Certification and helpfulness requirement), 8 C.F.R. 214.14(b)(2) (victim must establish that he or she has knowledge of details about the qualifying criminal activity that will aid law enforcement in the detection, investigation, prosecution, and/or sentencing of the criminal offender); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4*, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf

¹⁷ 8 C.F.R. § 214.14(c)(2)(i); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 6*, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf; Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and Other Criminal Activities* 1 (October 22, 2011), available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcemen t.pdf

¹⁸ 8 C.F.R. § 214.14(a)(3)(i) & (ii).

¹⁹ 8 C.F.R. § 214.14(a)(2).

offender. The certifying official determines whether the victim meets the criteria required for the certification only. Whether a victim will be awarded a U visa is determined only by DHS and requires that the victim meet additional elements of proof in addition to submitting a Certification. The criteria for U Visa Certifications are discussed in detail in Section III “Criteria: U visa Certifications” in the Model Policy.

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.”²⁰ The statute also includes the attempt, conspiracy, or solicitation to commit any of the criminal activities listed below:

| | | |
|------------------------------------|------------------------|---------------------------------|
| Abduction | Incest | Sexual assault |
| Abusive sexual contact | Involuntary servitude | Sexual exploitation |
| Being held hostage | Kidnapping | Slave trade |
| Blackmail | Manslaughter | Stalking |
| Domestic violence | Murder | Trafficking |
| Extortion | Obstruction of justice | Torture |
| False imprisonment | Peonage | Unlawful criminal restraint |
| Female genital mutilation | Perjury | Witness tampering |
| Felonious assault | Prostitution | Other similar criminal activity |
| Fraud in foreign labor contracting | Rape | |

Similar Activity: since the qualifying criminal activities list consists of general categories of criminal activity, any similar activity to the activities listed may be a qualifying criminal activity. The nature and elements of both criminal activities should be comparable.²¹

Helpfulness means assisting law enforcement or other state or federal authorities in the detection, investigation, prosecution, conviction or sentencing related to the qualifying criminal activity of which he or she is a victim. DHS is excluding from eligibility those victims who, after initial cooperation, refuse to provide continuing assistance when reasonably requested.²² An immigrant victim has an ongoing responsibility to provide assistance reasonably requested by law enforcement while in U visa status and in order to qualify for permanent resident status.²³ An exception to the helpfulness requirement applies to victims

²⁰ 8 C.F.R. § 214.14(a)(9). See also Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4*, available at:

http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf

²¹ 8 C.F.R. § 214.14(a)(9). See also Toolkit, *supra* note 5, at 7 for more discussion on this non-exclusive list of qualifying crimes and more information on “similar activity”:

[The U visa] statute lists domestic violence as a U-visa-qualifying crime. However, most state statutes do not specific domestic violence as a crime, but instead list crimes that constitute domestic violence [or arise out of domestic violence incidents], such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, stalking, child abuse, elder abuse, or malicious property damage. Even though these crimes are not specifically enumerated in the U-visa [statute], they are incorporated within the qualifying crime of domestic violence for U-visa purposes.

²² 8 C.F.R. § 214.14(b)(3).

²³ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal Activities 2* (October 22, 2011), available at:

http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcemen t.pdf

under 16 years of age.²⁴ There is also an exception for immigrant crime victims who can demonstrate to DHS that their failure to provide ongoing cooperation with reasonable requests for assistance was not unreasonable. The following are a few common examples of when a victim's lack of helpfulness is **not** unreasonable:

- When perpetrators, through coercion and/or threats, make the victim unavailable for trial;
- When a victim reasonably fears for her safety or her children's safety;
- When perpetrators actively limit the victim's ability to leave the house, travel or movement, precluding her participation in investigative interviews or appearing to testify at trial;
- When perpetrators use threats of deportation and calls report victims to DHS for immigration enforcement to convince victims not to continue cooperation with law enforcement or prosecutors;
- When perpetrators threaten victims that their continued cooperation with law enforcement and/or prosecutors will result in the perpetrator ensuring that the victim will lose contact with, access to or custody of her children; or
- When a victim fears retaliation from the perpetrator if he/she testifies at trial.

Direct Victim is a victim who is directly and proximately harmed by qualifying criminal activity.²⁵

Indirect Victim may file for U visa status (and request a U Visa Certification) if he or she is:

- A victim of a qualified criminal activity that took place in the United States or its territories or occurred outside the United States but violates U.S. extraterritorial law; or
- The parent or under 18 year old unmarried sibling of a citizen or immigrant crime victim who is a child under the age of 21; or
- The spouse or under-21-year-old child of a victim who incompetent or incapacitated or who is deceased because of murder or manslaughter; or

²⁴ 8 C.F.R. § 214.14(b)(3) (if the victim is under the age of 16 or was under the age of 16 when "an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the [victim] may provide the required assistance.")

²⁵ 8 C.F.R. § 214.14(a)(14).

- The parents or unmarried under-18-year-old siblings of an under-21-year-old citizen or immigrant victim who is incompetent or incapacitated or who is deceased because of murder or manslaughter.²⁶

Liability: The department will sign Certifications at its own discretion. There is no penalty or liability for certifying or not certifying a victim on an I-918B Certification Form. The certifying official and the department are not liable for the future acts of a victim should they choose to sign a Certification for that victim.²⁷ If an individual is later determined to not be a victim or subsequently unreasonably refuses to help the department, law enforcement may withdraw previously signed Certifications at any time.²⁸

²⁶ 8 C.F.R. § 214.14(a)(14)(i); *see also* Department of Homeland Security, U.S. Citizenship and Immigration Services, New Classifications for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status [72 FR 53014][FR 48-07] (citing 2005 Department of Justice Attorney General Guidelines definition of “indirect victim” to include certain family members of deceased or incompetent or incapacitated victims because the victim may not be able to sufficiently help law enforcement in investigation or prosecution, but family members may be able to- at pg. 9), available at: <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-123038/0-0-0-133528/0-0-0-137708.html>

²⁷ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal activities* 1 (October 22, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISQAforLawEnforcements.pdf>

²⁸ 8 C.F.R. § 214.14(h)(2)(i)(A) & (ii) (DHS may revoke U visa status if a certifying official revokes a signed Certification in writing); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement* 4-5, available at: <http://library.niwap.org/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf>; *see also* Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX B: DEFINITIONS OF T VISA/CONTINUED PRESENCE TERMINOLOGY

T Visa Status²⁹: The T visa is an immigration benefit available to immigrant victims of severe forms of human trafficking who comply with reasonable requests for cooperation from law enforcement in the detection, investigation, prosecution and/or sentencing of human trafficking offenders. If granted T visa status, an immigrant victim is required to continually comply with reasonable requests for cooperation, if requested. After 3 years, the immigrant victim can apply for adjustment to lawful permanent residency.

Continued Presence: temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. It allows a victim of human trafficking to continue to remain present in the United States because they are a victim and they are a potential witness in a human trafficking investigation. Continued presence is designed to be a tool for law enforcement to keep someone who is a victim and a potential witness in the United States who may not otherwise be able to stay in the United States legally. Continued presence also connects victims to services that provide support and stabilized the victim.

T Visa Law Enforcement Declaration³⁰: A certifying officer, usually the head of the department or a supervising officer designated by the head of the department, will confirm that the immigrant was a victim of a severe form of trafficking and complied with reasonable requests for cooperation by law enforcement in a T Visa Declaration (Form I-914B “Declaration of Law Enforcement Officer for Victim of Trafficking of Persons”).

Endorsing/Certifying Official - The head of the certifying agency/department, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue T visa Declarations on behalf of that agency or a Federal, State, or local judge.

Endorsing/Certifying Agency - government officials and entities, including Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that have responsibility for the detection, investigation or prosecution, conviction and sentencing of the perpetrator(s) of the trafficking activity.

Criteria for a Declaration: based on whether the victim meets the statutory requirements listed in Declaration Form I-914B for T visas, which includes determining whether the applicant was a victim of a severe form of trafficking and has cooperated with any reasonable requests from Federal, state, or local law enforcement in the detection, investigation, prosecution, and/or sentencing of the trafficking offender. The endorsing official determines whether these factors have been met and must be verified by that official on Form I-914B. The endorsing official determines eligibility for the declaration only; eligibility for the T visa itself

²⁹ 8.C.F.R. § 214.11

³⁰ Form I-914B is titled “Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.” However, the terminology used by DHS refers to this process as endorsements, certifications and/or declaration interchangeably. For the purposes of clarity, this model policy will use “certifications” and “certifying” in the context of explaining the U visa process only. This model policy will use “endorsement” and “endorses” to refer to the T visa process and to any actions required to complete an I-914B Declaration form.

is determined only by DHS because it confers legal status to the victim. The eligibility process for a T visa Declaration is discussed in detail in Section VI “Eligibility: T visa” below.

Severe form of human trafficking means:

- “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has attained 18 years of age; or
- (B) recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”³¹
- **Federal Penal Code Definition**
 - **§ 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor**³²
 - (a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.
 - (b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).
 - **§ 1591. Sex trafficking of children or by force, fraud, or coercion**³³
 - (a) Whoever knowingly—
 - (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
 - (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such

³¹ Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013); *see also* “Abuse or threatened abuse of law or legal process,” at §7102(1); “Coercion” at §7102(3); “Commercial sex act” at §7102(4); “Debt bondage” at §7102(5); “Involuntary servitude” at §7102(6); “Sex trafficking” at §7102(10).

³² 18 U.S.C.A. §1590.

³³ 18 U.S.C.A. § 1591.

means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

Cooperation is determined by whether the applicant complied with reasonable requests for assistance from law enforcement in the investigation or prosecution of the acts of trafficking. Reasonableness of the request depends upon the “totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, traumatization (both mental and physical), and the age and maturity of young victims.”³⁴

Liability: The department will decide to sign a Declaration at its own discretion. There is no penalty or liability for endorsing or not endorsing a victim on an I-914B Declaration Form. The certifying official and the department are not liable for the future acts of a victim should they choose to partake in the endorsement process.³⁵ If an individual is later determined to not be a victim or subsequently refuses to cooperate, law enforcement may withdraw previously signed declarations at any time.³⁶

³⁴ 8 C.F.R. § 214.11(a).

³⁵ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal Activities* 1 (October 22, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISQAforLawEnforcements.pdf>

³⁶ Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement* 4-5, available at: <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>; see also Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX C: SAMPLE QUESTIONS FOR IDENTIFYING A TRAFFICKED/ENSLAVED PERSON

Developed by VIDA Legal Assistance (June, 2011)

Recruitment

- Was the victim recruited by someone?
- What kind of job abroad was offered to the victim?
- How much money was promised to the victim and by whom?
- Did the victim sign a contract? What were the terms of the contract?
- Was the victim sold? By whom?

Migration

- Was the victim kidnapped or coerced into migration? How?
- How did the victim obtain documents?
- Which documents were obtained?
- How did the victim travel to the U.S.?
- Was a fee paid for organizing the victim's migration? By whom and to whom?

Arrival

- Did the victim have control over his/her identity documents?
- What happened to the victim's identification documents after arrival?
- Did the employer/trafficker use the victim's identity for another purpose?

Working conditions

- Was the victim placed into debt bondage? By whom?
- Were working conditions different than what the victims expected? How?
- Was the victim's movement restricted? How?
- Was the victim living and working at the same place?
- Was the victim chaperoned, guarded, incarcerated?
- Was the victim paid and at what rate?
- How many hours a day did the victim work? Time off? Allowed to rest if sick?
- Was the victim allowed to communicate with family members? Other workers? Make friends?
- Was the victim able to quit working for the employer and get a job somewhere else?

What strategies were used to coerce the victim? (One or all may apply.)

Physical Coercion

- Was the victim subjected to pinching, hitting, slapping, punching, kicking, shaking, etc?
- Was the victim subjected to sexual assault, rape, sexual harassment/abuse?
- Was the victim subjected to torture, beatings or other physical violence?
- Was the victim subjected to incarceration, imprisoned or physically isolated? How?
- Was the victim denied medical care, food, clothes and other basic necessities?
- Did the victim attempt to escape from her traffickers? Why?

Coercion, Force, and/or Fraud

- Was the victim placed into debt bondage?
- Was the victim subjected to threats of physical abuse, harm or retaliation?
- Were others abused in front of victim?
- Were the victim's family members threatened? How?
- Threats to report victim to authorities for deportation/jail?
- Was the victim verbally abused, humiliated or degraded?
- Did the victim ask their employer if they could leave? Why? Why not? What happened?

SCREENING TOOLS

Department of Homeland Security Infographic³⁷⁷

The Department of Homeland Security (“DHS”) released an infographic detailing the protections afforded to immigrant victims. This interactive infographic describes qualifications and benefits for each form of immigration relief designed to help immigrant victims. When you click on each form of relief, a link takes you to a DHS webpage with further information, brochures, and application forms.

This tool should be available to law enforcement officials to assist officers in identifying victims eligible for immigration protections and informing victims about legal protections available to them. The following pages contain the infographic in both English and Spanish.

NIWAP’s Blue Card

Screening for Victims Who Qualify for Immigration Protective Relief³⁷⁸

Immigration protective relief is an important tool for community policing that strengthens the ability of law enforcement agencies to detect, investigate, prosecute, and solve cases of domestic violence, sexual assault, trafficking, and other types of criminal activity. Without adequate language assistance, many immigrant victims cannot obtain police protection, obtain emergency medical assistance, or give law enforcement officers crucial information. The following pages include a blue card that can be used as a checklist to screen for potential immigration relief and language issues.

³⁷⁷ Department of Homeland Security, “Protections for Immigrant Victims,” *available at* <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>. Available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

³⁷⁸ National Immigrant Women’s Advocacy Project, “Screening for Victims Who Qualify for Immigration Protective Relief,” *available at* <http://niwaplibrary.wcl.american.edu/pubs/squadcarscreeningbluecard/>.

PROTECTIONS FOR IMMIGRANT VICTIMS

CONSIDERATIONS

- ▶ Must be in the US on account of the trafficking
- ▶ Law enforcement certification is encouraged but not required



If approved, benefit provides:

1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status

To apply:
USCIS
Form I-914

T VISA

For victims of trafficking

CONSIDERATIONS

- ▶ Perpetrator must be US citizen or Lawful Permanent Resident spouse or parent or US citizen adult son or daughter



If approved, benefit provides:

1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

To apply:
USCIS
Form I-360

VAWA

For victims of Domestic Violence married to US citizens or permanent residents

CONSIDERATIONS

- ▶ Qualifying crime must be in the US or have violated US law
- ▶ Must have law enforcement certification

To apply:
USCIS
Form I-918

U VISA

For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, Other Serious Crimes



If approved, benefit provides:

1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Ability to apply for permanent status

CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in particular social group



If approved, benefit provides:

1. Asylee status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status

To apply:
USCIS or
Immigration
Judge
Form I-589

ASYLUM

For victims of persecution

SIJS

Special Immigrant Juvenile Status for child victims

To apply:
USCIS
Form I-360



If approved, benefit provides:

1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

CONSIDERATIONS

- ▶ Must have juvenile court order
- ▶ For victims of abuse, abandonment, or neglect by one or both parents

CONTINUED PRESENCE

For victims of trafficking

To apply:
ICE - Federal law enforcement must seek this protection for you



If approved, benefit provides:

1. Protection from removal designation may be granted initially for a period of 2 years and renewed in increments of up to 2 years
2. Work authorization
3. Access to federal social services benefits

CONSIDERATIONS

- ▶ Victims of a severe form of human trafficking and who may be potential witnesses, or filed a civil action
- ▶ Law enforcement support is required

Screening for Victims Who Qualify for Immigration Protective Relief Eligibility Questions for Protective Relief (March 2, 2018)

By: Rocio Molina, Lauren Dudley, Emily McCabe, Jennifer Johnson, and Leslye Orloff

Immigration protective relief is an important tool for community policing that strengthens the ability of law enforcement agencies to detect, investigate, prosecute, and solve cases of domestic violence, sexual assault, trafficking, and other types of criminal activity. Without adequate language assistance, many immigrant victims cannot obtain police protection, obtain emergency medical assistance, or give police crucial information. Use this card as a checklist to screen for potential immigration relief and language issues.

VAWA Self-Petitions (domestic violence victim)

- What is the victim's relationship to the abuser?
 - Is the victim married to a U.S. citizen or lawful permanent resident and living with his/her spouse, *or*
 - Is the victim divorced from a U.S. citizen or lawful permanent resident spouse within the last two years, *or*
 - Is the victim the child of a U.S. citizen or lawful permanent resident, *or*
 - Is the victim the parent of an adult U.S. citizen son or daughter?
- Has the victim been a victim of battery or extreme cruelty?
- Has the victim resided with the abuser?
- Does the victim have good moral character?

VAWA Cancellation of Removal (domestic violence victim)

- What is the victim's relationship to the abuser?
 - Is the abuser a current or former spouse who is a U.S. citizen or lawful permanent resident, *or*
 - Is the abuser a citizen or lawful permanent resident parent or step parent if they are under the age of 21, *or*
 - Is the abuser a citizen or lawful permanent resident the other biological or step-parent of the victim's abused child?
- Is the victim currently in deportation or removal proceedings?
- Has the victim lived continuously in the U.S. for at least five years?
- Has the victim been physically hurt or suffered extreme cruelty? Where did the abuse occur?
- What would happen to the victim and his/her child if the victim were deported?

Battered Spouse Waiver (domestic violence victim)

- What is the victim's relationship to the abuser?
 - Is the victim a battered immigrant married to a U.S. citizen spouse?
 - Is the victim a battered immigrant victim divorced from a U.S. citizen spouse?
- Was the victim battered or subjected to extreme cruelty by the citizen spouse?
- Does the victim have a lawful permanent residency card "green card" that ends 2 years after it was issued?

Law Enforcement's Role

Inform the victim that he/she can file for full lawful permanent residency without the abuser's knowledge or help

T Visa (trafficking victim)

- Is the individual a victim of a severe form of trafficking in persons?
- Is the victim physically present in the United States on account of the trafficking?
- Has the victim complied with any reasonable requests for assistance in the investigation or prosecution?, *or*
 - Is the victim under the age of 18?
- Victim would suffer extreme hardship involving unusual or severe harm if removed from the United States

Law Enforcement's Role

- *Identify the victim*
- *Describe the severe form(s) of human trafficking the victim was subject to:*
 - *Sex trafficking by force fraud or coercion, sex trafficking of a minor, or*
 - *Labor trafficking by force fraud or coercion*
- *Describe victim cooperation*
- *Determine if any family members were implicated in the crime*

U Visa (crime victim)

- Has the victim been a victim of a qualifying criminal activity (listed below)? Did the criminal activity violate a U.S. law?
- Has the victim suffered substantial physical or mental abuse as a result of the criminal activity?
- Does the victim possess information about the qualifying criminal activity?

Helpfulness of the victim...

- Is the victim being helpful? , *or*
- Has the victim been helpful? *or*
- Is the victim likely to be helpful?

Helpfulness in regards to the...

- Detection, *or*
- Investigation, *or*
- Prosecution of the qualifying criminal activity

Qualifying Criminal Activities of the U Visa

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

And Attempt, threats, conspiracy or solicitation to commit any of these crimes

Law Enforcement's Role

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

Language Access

- Does the individual speak English?
- Does the individual have a limited ability to read, write, speak or understand English?

Law Enforcement's Role

- *Identify whether the victim is in need of language assistance by asking open-ended questions and questions that require an opinion*
- *Determine what language is needed using the "I Speak" cards*
- *Find an interpreter, or provide the victim with the phone number for the language lines*
- *If you choose to use an interpreter at the scene, make sure the interpreter is not:*
 - *A child or family friend*
 - *A family member of the victim or the perpetrator/primary aggressor*
 - *The perpetrator or primary aggressor*
 - *The interpreter used by the perpetrator/primary aggressor*

Special Immigrant Juvenile Status (abused, abandoned or neglected child)

- Is the individual under the age of 18 or 21 (depending on state's legal definition of "child")?
- Is the individual unmarried?
- Is he or she the victim of abuse, abandonment or neglect by one or both parents?
- Would it be against the best interest of the child to be reunited with the abusive or neglectful parent?

For Additional Resources or Technical Assistance contact the National Immigrant Women's Advocacy Project at 202-274-4457 or info@niwap.org. DHS Blue Campaign information on human trafficking is available at www.uscis.gov/humantrafficking. DHS Infographic - <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/> and DHS U and T Visa Resource Guide <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

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Department of Homeland Security Brochures and Pamphlets

The Department of Homeland Security has developed a series of documents and brochures that will assist immigrant victims and law enforcement officers to understand the rights to which victims are entitled. Victims of trafficking can find information about their rights at <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>.

The following pages include the DHS brochure on “Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers, and Others,”³⁷⁹ and a document entitled “Domestic Violence and the International Marriage Broker Regulation Act: What Every Law Enforcement Officer and Domestic Violence Advocate Should Know.”³⁸⁰ The first two documents are available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

³⁷⁹ DEP’T OF HOMELAND SECURITY, *Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers, and Others*, available at <http://library.niwap.org/wp-content/uploads/2015/CULT-Bro-DHSEnglishImmOptionsVictimsofCrime.pdf>. Available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

³⁸⁰ DEP’T OF HOMELAND SECURITY, *Domestic Violence and the International Marriage Broker Regulation Act: What Every Law Enforcement Officer and Domestic Violence Advocate Should Know*, available at <http://niwaplibrary.wcl.american.edu/pubs/domestic-violence-international-marriage-broker-regulation-act-dhs-brochure-law-enforcement-victim-advocates/>.



Victims are not required to be in legal immigration status, but they must:

- Be a victim of a severe form of trafficking in persons.
- Be physically present in the United States on account of the trafficking.
- Comply with any reasonable requests for assistance in the investigation or prosecution (or be under the age of 18), and
- Suffer extreme hardship involving unusual and severe harm if removed from the United States.

To apply for a T Nonimmigrant status, applicants must file form I-914, Application for T Nonimmigrant Status. Qualifying family members may also be eligible to apply for benefits.

Many immigrants are fearful of admitting that they have been a victim of a crime in part because they believe they will be removed (deported) from the United States if they report the crime. Officials such as police officers, healthcare providers, judges, and prosecutors are often the first



to see the signs of violence and are therefore in a unique position to provide information and assistance to those who have been victims. This brochure is designed to assist front-line workers in this endeavor.



U.S. law provides several protections for legal and undocumented immigrants who have been victims of a crime. Often victims are unaware of such protections, thus frontline workers serve as a critical link for immigrant victims of certain crimes, and grant victims. There are specific protections for victims of domestic violence, victims of certain crimes, and victims of human trafficking.

All agencies within the Department of Homeland Security (DHS), including USCIS, are legally prohibited from disclosing that a victim has applied for VAWA, T, or U immigration benefits.

Visit the "Humanitarian" section of the USCIS website
www.uscis.gov

Law Enforcement Officials and Representatives of Record
 contact USCIS at **1 802 527 4888**
 All others should call **1 800 375 5283**



Immigration Options for Victims of Crimes
 Information for Law Enforcement, Healthcare Providers, and Others

Violence Against Women Act
 U Nonimmigrant Status
 T Nonimmigrant Status



#-779 (02/10)

Violence Against Women Act (VAWA) Self-Petitioners



Some immigrants may be afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

Victims of domestic violence who are the child, parent, or current/former spouse of a United States citizen or a permanent resident (green card holder) and are abused by the citizen or permanent resident may be eligible to apply for a green card themselves without needing the abuser to file for immigration benefits on their behalf. This provision of the law was created under the Violence Against Women Act (VAWA).

Victims must establish that they:

- Have or had a qualifying relationship with the abuser/spouse, or, are the parent or child of the abuser.
- Reside or resided with the abuser.
- Have good moral character, and
- Have been victims of battery or extreme cruelty.

VAWA provisions apply equally to men and women. Victims of domestic violence, whether a spouse, child, or parent of the abuser, may self-petition by filing Form I-360, Petition for Widow(er)s, Amerasians, and Special Immigrants. This form is available on USCIS' website, www.uscis.gov.

U Nonimmigrant Status

U nonimmigrant status (or U visa) offers immigration protection for victims and is also a tool for law enforcement. To obtain U status, the victim must obtain a certification from law enforcement, however, law enforcement officials should note that providing a certification does not grant a benefit—only USCIS has the authority to grant or deny this benefit.

Victims are not required to be in legal immigration status, but they must:

- Be a victim of qualifying criminal activity and have suffered substantial physical or mental abuse as a result of the crime.
- Possess credible and reliable information about the qualifying criminal activity.
- Be, have been, or are likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity, and
- Be a victim of criminal activity that violated a U.S. law.



Victims of the following crimes may be eligible for a U nonimmigrant visa:

| | |
|---------------------------|-----------------------------|
| Abduction | Manlaughter |
| Abusive Sexual Contact | Rape |
| Blackmail | Murder |
| Domestic Violence | Obstruction of Justice |
| Extortion | Witness Tampering |
| False Imprisonment | Prostitution |
| Female Genital Mutilation | Sexual Assault |
| Perjury | Slave Trade |
| Religious Assault | Torture |
| Hostage Taken | Trafficking |
| Incest | Sexual Exploitation |
| Peonage | Unlawful Criminal Restraint |
| Involuntary Servitude | Other Related Crimes |
| Kidnapping | |

To apply for U nonimmigrant status, the victim must file Form I-918, Petition for U Nonimmigrant Status. Law enforcement official must certify Form I-918. Supplement B, Qualifying family members may also be eligible to apply for benefits.

Visit the "Humanitarian" section of the USCIS website www.uscis.gov

Law Enforcement Officials and Representatives of Record contact USCIS at **1 802 527 4898**
All others should call **1 800 375 5283**



T Nonimmigrant Status

Trafficking in persons—also known as "human trafficking"—is a form of modern-day slavery. Traffickers prey on many types of people, often including individuals who are poor, unemployed, underemployed, or who lack the safety and protection of strong social networks. Victims are often lured under the false pretenses of good jobs and better lives, and then forced to work under brutal and inhumane conditions. Many believe that human trafficking is a problem that only occurs in other countries—but human trafficking also happens in the United States.

The T nonimmigrant status (or T visa) provides immigration protection to victims of severe forms of trafficking in persons who assist law enforcement in the investigation and prosecution of human trafficking cases.

Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa

Purpose:
Immigrants are particularly vulnerable because many do not speak English, are often separated from family and friends, and may not understand the laws of the United States. For these reasons, immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

This pamphlet will explain domestic violence and inform you of your legal rights in the United States. The International Marriage Broker Regulation Act (IMBRA) requires that the U.S. Government provide foreign fiancé(e)s and spouses immigrating to the United States information about their legal rights as well as criminal or domestic violence histories of their U.S. citizen fiancé(e)s and spouses. One of IMBRA's goals is to provide accurate information to immigrating fiancé(e)s and spouses about the immigration process and how to access help if their relationship becomes abusive.

What is domestic violence?
Domestic violence is a pattern of behavior when one intimate partner or spouse threatens or abuses the other partner. Abuse may include physical harm, forced sexual relations, emotional manipulation (including isolation or intimidation), economic and/or immigration related threats. While most recorded

incidents of domestic violence involve men abusing women or children, men can also be victims of domestic violence.

Domestic violence may include sexual assault, child abuse, and other violent crimes. Sexual assault is any type of sexual activity that you do not agree to, even with your spouse, and can be committed by anyone. Child abuse includes: physical abuse (any injury that does not happen by accident, including excessive punishment), physical neglect (failure to provide food, shelter, medical care or supervision), sexual abuse, and emotional abuse (threats, withholding love, support or guidance).

Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States (regardless of race, color, religion, sex, age, ethnicity, or immigration status) are guaranteed protection from abuse under the law. Any victim of domestic violence – regardless of immigration or citizenship status – can seek help. An immigrant victim of domestic violence may be eligible for immigration protections.

If you are experiencing domestic violence in your home, you are not alone. This pamphlet is intended to help you understand U.S. laws and know how to get help if you need it.

What are the legal rights for victims of domestic violence in the United States?

- All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide you with:
- The right to obtain a protection order for you and your child(ren).
 - The right to legal separation or divorce without the consent of your spouse.
 - The right to share certain marital property.
- In cases of divorce, the court will divide any property or financial assets you and your spouse have together.
- The right to ask for custody of your child(ren) and financial support. Parents of

children under the age of 21 often are required to pay child support for any child not living with them.

Consult a family lawyer who works with immigrants to discuss how any of these family law options may affect or assist you.

Under U.S. law any crime victim, regardless of immigration or citizenship status, can call the police for help or obtain a protection order.

Call police at 911 if you or your child(ren) are in danger. The police may arrest your fiancé(e), spouse, partner, or another person if they believe that person has committed a crime. You should tell the police about any abuse that has happened, even in the past, and show any injuries. Anyone, regardless of immigration or citizenship status, may report a crime.

Likewise, if you are a victim of domestic violence you can apply to a court for a protection order. A court-issued protection order or restraining order may prohibit your abuser from calling, contacting, approaching, or harming you, your child(ren), or other family members. If your abuser violates the protection order, you can contact the police, who may arrest the abuser. Applications for protection orders are available at most courthouses, police stations, women's shelters, and legal service offices.

If your abuser accuses you of a crime, you have basic rights, regardless of your immigration or citizenship status, including: the right to talk to a lawyer; the right to not answer questions without a lawyer present; the right to speak in your defense. It is important to talk with both an immigration lawyer and a criminal lawyer.

What services are available to victims of domestic violence and sexual assault in the United States?
In the United States, victims of crime, regardless of immigration or citizenship status, can access help provided by government or nongovernmental agencies, which may include counseling, interpreters, emergency housing, and even monetary assistance.

The national telephone numbers or "hotlines" listed below have operators trained to help victims 24 hours a day free of charge. Interpreters are available and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal advice. If you cannot afford to pay a lawyer you may qualify for a free or low-cost legal aid program for immigrant crime or domestic violence victims.

National Domestic Violence Hotline
1-800-799-SAFE (1-800-799-7233)
1-800-787-3224 (TTY)
www.adph.org

National Sexual Assault Hotline of the Rape, Abuse and Incest National Network (RAINN)
1-800-656-HOPE (1-800-656-4673)
www.rainn.org

National Center for Missing and Exploited Children
1-800-THE-LOST (1-800-843-5678)
www.missingkids.com
The National Center for Victims of Crime
1-800-FYI-CALL (1-800-394-2255)
1-800-211-7996 (TTY)
www.nccvc.org

NOTE: These are organizations whose primary mission is safety and protection.

If I am a victim of domestic violence, sexual assault, or other crime, what immigration options are available to me?

There are three ways immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their child(ren). A victim's application is confidential and no one, including an abuser, crime perpetrator or family member, will be told that you applied.

- Self-petitions for legal status under the Violence Against Women Act (VAWA)
- Cancellation of removal under VAWA
- U-nonimmigrant status (crime victims)

These immigration benefits each have specific requirements that must be established. Consult an immigration lawyer who works with victims of domestic violence to discuss how any of these immigration benefits may affect or assist you.

How does the marriage-based immigration process work?

The marriage-based immigration process involves several steps to obtain legal immigration status in the United States, and over time, to be eligible for citizenship. These steps depend on the type of marriage-based visa you travel on to the United States, as well as other factors. The following information is an overview of some of these types of visas, as well as information on your legal rights.

K-1 nonimmigrant status (as the fiancé(e) of a United States citizen): You are required to either marry the United States citizen within 90 days of entry or to depart the United States. Following your marriage to the U.S. citizen fiancé(e) who petitioned for you, you must file an Application to Register Permanent Residence or Adjust Status (Form I-485). If your Form I-485 is approved, your status will be adjusted from a K nonimmigrant to that of a conditional permanent resident. You will have that conditional status for two years.

If you remain in the U.S. without marrying the U.S. citizen who sponsored your K-1 visa, or marry someone else, you will violate the terms of your visa, have no legal status, and may be subject to removal proceedings or other penalties.

K-3 nonimmigrant status (as the spouse of a United States citizen): You are allowed to enter the United States temporarily while waiting for approval of a family-based visa petition (I-130). Once the I-130 is approved, you are entitled to lawful permanent

residence (green card) and will need to file an Application to Register Permanent Residence or Adjust Status (Form I-485).

All other marriage-based immigration status holders should refer to the information given to them from the U.S. consulate. Additional information may be found online at <http://www.uscis.gov>.

What are the penalties for marriage fraud?

Immigrants who commit marriage fraud may be subject to removal proceedings and may be barred from receiving future immigration benefits in the United States. Conviction for marriage fraud can involve imprisonment for up to five (5) years and fines up to \$250,000 (U.S. currency).

If I am married to a U.S. citizen who filed immigration papers on my behalf, what is my immigration status?

If you have been married less than 2 years when your Form I-485 is approved, you will receive conditional residence status from USCIS. Ninety (90) days before the second anniversary of your conditional residence, you and your spouse generally must apply together to remove the conditions on your lawful residence. To do so, you must prove the marriage is in "good faith" and valid. Once the conditions are removed, you have permanent residency that is not dependent on your U.S. spouse.

If you have been married more than 2 years when your Form I-485 is approved, you will receive permanent residence status from USCIS. On that date you will no longer be dependent on your U.S. citizen spouse for immigration status.

There are three situations when the law allows conditional residents the option to request a waiver of the requirement that you and your spouse file jointly to request removal of the conditions. 1) The removal of the conditional resident from the U.S. would result in extreme hardship; OR 2) The marriage was legally terminated, other than by death, and the applicant was not at fault for failing to file a timely application to remove the conditional basis of his or her status.

OR 3) During the marriage the U.S. citizen or lawful permanent resident spouse subjected the conditional resident to battery or extreme cruelty. All three waivers are filed on Form I-751 and require you to prove your marriage was in "good faith" and not fraudulent.

What other ways does the U.S. government try to inform foreign fiancés and spouses about their rights and protect them and their children from abuse?

The International Marriage Broker Regulation Act of 2005 (IMBRA) is a law in the United States that changed the marriage-based immigration process to help foreign fiancé(e)s and spouses. IMBRA mandates that the U.S. Government give immigrating foreign fiancé(e)s and spouses information and self-help tools to help protect them against violence from the partners who sponsor their visas. Immigrating fiancé(e)s and spouses are often unfamiliar with the U.S. laws and unsupported by family or friends to escape violence at home.

IMBRA required this pamphlet be written and distributed to tell you about laws and services that can help you in the United States if you are abused. IMBRA prevents U.S. citizens from sponsoring multiple visas for foreign fiancé(e)s if they have a history of violent crimes. IMBRA requires the U.S. government to give foreign fiancé(e)s and spouses of U.S. citizens a copy of the criminal background check that USCIS does on U.S. citizen-sponsors, as well as a copy of the visa sponsorship application.

How does the U.S. government regulate "International Marriage Brokers"?

If an agency qualifies as an "international marriage broker," it is required to give you background information on the U.S. client who wants to contact you, including information contained in Federal and State sex offender public registries, and get your written permission before giving the U.S. client your contact information. The agency is required to give you a copy of this pamphlet. It is prohibited from doing business with you if you are under 18 years of age.

Visit our internet website at:
<http://www.uscis.gov>



Can I rely on the criminal background information on my U.S. citizen fiancée or spouse?
The criminal background information compiled by the agency comes from various public sources, as well as information provided by the U.S. citizen clients on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application. It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information you receive may not be complete. The intent of IMBRA is to provide available information and resources to immigrating fiancé(s) and spouses. Ultimately you are responsible for deciding whether you feel safe in the relationship.

Can foreign fiancées or spouses who are victims of domestic violence also be victims of human trafficking?

Other forms of exploitation including human trafficking can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts.

Help regarding human trafficking may be found at:

National Human Trafficking Resource Center
1-888-373-7888
(24 hours a day, 7 days a week)
www.acf.hhs.gov/trafficking

Human Trafficking and Worker Exploitation Task Force Hotline, U.S. Department of Justice
1-888-428-7581
(Monday - Friday, 9am to 5pm)
www.usdoj.gov/crt/impwrt/jobp

More information can be found at our website or by calling the toll free number listed below.

USCIS General Information
In the United States, telephone toll free to:
1-800-870-3676 or



The United States
Department of Justice

Questions to Ask Domestic Violence Victims Who Emigrated to the United States to Join Their Fiancé(e) or Spouse

How did you first meet or speak with your fiancé(e)/spouse (for ease of reference, “fiancé”)? Did anyone arrange your introduction? If so, who?

Did this person or entity require you or your fiancé to pay a fee for the introduction/matchmaking service?

Could you tell me more about this person or entity (for ease of reference, “matchmaking service”)? Was the matchmaking service affiliated with a religious or cultural organization?

How old were you when the matchmaking service introduced you to your fiancé?

Did the matchmaking service attempt to verify your age? Did it ask for any documentation concerning your age?

How did you learn about the matchmaking service? How did you communicate with it?

What is the contact information for the matchmaking service?

Did it ask for permission to share your contact information with your fiancé before you met or spoke with your fiancé for the first time? Did you provide your permission in writing?

Did you receive any background information about your fiancé before you met or spoke for the first time?

Did the matchmaking service inform you of its obligation to search the National Sex Offender Public Website and determine whether that website contains any information regarding your fiancé?

Did this person or entity provide you any documents or other information concerning its search of the sex offender website?

Did the matchmaking service provide you with any information about or copies of police or court records concerning:

- Temporary restraining or civil protection orders?
- Arrests or convictions for assault, battery, homicide, manslaughter, or murder?
- Domestic violence, rape, sexual assault, abusive sexual contact, sexual exploitation, incest, child abuse or neglect?
- Torture, human trafficking, holding hostage, involuntary servitude or slavery?
- Kidnapping, abduction, unlawful criminal restraint, false imprisonment or stalking?
- Prostitution?
- Alcohol or drug abuse?

Did you receive any information about your U.S. fiancé(e) or spouse’s:

- Prior marriages?
- Prior efforts to obtain visas for other fiancé(e)s or spouses?
- Children under the age of 18?
- Prior states or countries of residence?

Did you receive this pamphlet from the matchmaking service? <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse,%20Children%20%26%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011>

Suspicion? Concern? Question? Notify us immediately!

If the answers to any of these questions suggest that an IMB made an introduction and failed to satisfy the requirements identified in this pamphlet, notify us immediately.



United States
Department of Justice

Office of the Associate Attorney General

950 Pennsylvania Avenue NW

Washington, DC 20530

Phone: 202-514-9500

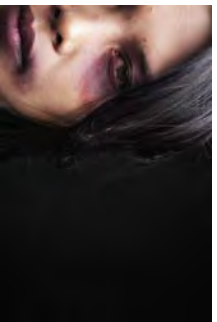
E-mail: IMBRA.Questions@usdoj.gov

Domestic Violence and the International Marriage Broker Regulation Act:

What Every Law Enforcement Officer and Domestic Violence Advocate Should Know



This is Lana.



Lana is a 28 year old domestic violence victim.* In the course of interviewing Lana you learn that she is originally from South Asia. You also learn that Lana met her fiancé through an international matchmaking agency that recruits South Asian women interested in meeting men in the United States and markets its matchmaking services over the internet. Lana tells you that she emigrated to the United States to join her fiancé — now her batterer and spouse — here. Interesting background information, you think, but does it bear on your investigation or analysis of her domestic violence case? *It should.*

The International Marriage Broker Regulation Act (IMBRA)

IMBRA, 8 U.S.C. §1375a, regulates individuals and companies who charge fees for facilitating introductions between U.S. citizens, nationals, or green card holders (together, “U.S. clients”) and foreign nationals. IMBRA created certain disclosure requirements for international marriage brokers (“IMBs”) and their U.S. clients, and the failure of either to abide by those requirements may give rise to federal civil and/or criminal liability in addition to any other federal or state law charges relating to Lana’s case.

What is an IMB?

IMBs include individuals, businesses, companies, or other legal entities that charge fees for providing dating, matrimonial or matchmaking services, or social referrals (collectively, “matchmaking services”) by sharing personal contact information or otherwise introducing or facilitating communication between U.S. clients and foreign nationals. (IMBs do not include: (1) non-profit cultural or religious organizations providing matchmaking services; or (2) persons or entities who do not provide these services as their principal business and whose rates and services are the same regardless of the client’s gender or country of citizenship.)

How does IMBRA regulate IMBs?

IMBRA regulates IMBs and U.S. clients in several different ways. Among other things, the law:

- Prohibits IMBs from conducting business with any individual under the age of 18;
- Requires IMBs to search the National Sex Offender Public Website for the names of U.S. clients;
- Obligates IMBs to collect certain background information from their U.S. clients (including, among other things, information about arrests or convictions for assault, battery, domestic violence, murder, prostitution, rape, and sexual assault, as well as civil protection orders);
- Requires IMBs to provide foreign nationals with the results of the sex offender website search, the background information, and a pamphlet including information about domestic violence, sexual assault, and child abuse; the legal rights of immi-

grant victims of these crimes; and a warning about the use of fiancé(e) and spouse visas by U.S. citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes;

- Demands that IMBs obtain the foreign national’s written consent to release his or her contact information to the U.S. client *before* the IMB shares that information with the U.S. client; and
- Creates civil and/or criminal penalties for IMBs and U.S. clients who fail to abide by their disclosure obligations.

How will I know if an IMB was involved in a particular case?

Discerning an IMB’s involvement in a domestic violence case involving a foreign national may be challenging. Some domestic violence victims may be reluctant to acknowledge that they relied on an intermediary for an introduction; others may have been coached by an IMB to avoid disclosing that fact; still others may not know what an IMB is or understand the legal requirements attaching to IMBs. On the back of this pamphlet you will find a list of questions to ask domestic violence victims who are foreign nationals. If the answers to any of these questions suggest that an IMB was involved and failed to satisfy the requirements identified in this pamphlet, contact us today.



*United States
Department of Justice*

Office of the Associate Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530
Phone: 202-514-9500
Email: IMBRA.Questions@usdoj.gov

TRAINING MATERIALS FOR PROSECUTORS AND LAW ENFORCEMENT³⁸¹

Last updated: October 2, 2020

If you are a law enforcement officer, prosecutor, or a victim advocate or other staff working for a law enforcement or prosecution agency and are working with immigrant victims and you would like to receive case specific technical assistance on immigration protections for immigrant survivors of domestic and sexual violence victims and their children, please call NIWAP for [technical assistance](#). (202) 274-4457 or email us at info@niwap.org.

NIWAP offers roundtables exclusively for officials and staff working for law enforcement and prosecution agencies to sign up go to

<https://secure.campaigner.com/CSB/Public/Form.aspx?fid=1682905&ac=fohe>

NIWAP's roundtables are led by law enforcement and prosecutor faculty, offer an opportunity for peer to peer learning, can be joined on-line or by conference call, and provide ongoing training and technical assistance to officers and staff at law enforcement and prosecution agencies. When you sign up you choose the list exclusively open to staff working at law enforcement and prosecution agencies. You can also elect to sign up for NIWAP's general outreach list to receive notices of trainings, webinars, new materials, resources and policies. More tools for law enforcement and prosecution agencies are available in NIWAP's web library <http://niwaplibrary.wcl.american.edu/training-materials-prosecutors>

Webinars

- In Accordance with the Law: When Your Victim Witness Speaks Limited English <http://niwap.wpengine.com/in-accordance-lep-nov19>
- U Visa: Overview of Certification Presented by Investigator Michael LaRiviere, Salem Police Department
 - *In order to reach this module you will need to sign-in for free access to course* <https://pbtraining.org/course/u-visa-overview-of-certification/>
- The U Visa as a Crime-Fighting Tool: How Certification Improves Domestic and Sexual Violence Investigations and Prosecutions <http://niwap.wpengine.com/u-visa-2020>
- Battered Women's Justice Program (BWJP) Assessing Helpfulness for Immigrant Crime Victims <http://niwap.wpengine.com/april-10-2015-assessing-helpfulness-bwjp/>
- DHS U and T Visa Training Videos <http://niwap.wpengine.com/dhs-roll-call-videos/>

³⁸¹ This materials list includes publications issued by government agencies and materials produced by NIWAP in collaboration with national experts. Each of the materials included in this list developed with support from government funders contains government agency disclaimers.

- Lessons Learned from Law Enforcement: How Collaborations That Result in U Visa Certifications Support Safer Communities <http://niwap.wpengine.com/lessons-learned-from-le-webinar/>
- Law Enforcement and Advocates Partnering to Better Serve Immigrant Crime Victims <http://niwap.wpengine.com/webinar-law-enforcement-collaboration/>
- Law Enforcement Use of the U Visa (Podcast) <http://niwap.wpengine.com/uvisa-podcast-bja/>
- An Introduction to Law Enforcement Use of the U-Visa <http://niwap.wpengine.com/uvisa-intro-webinar-bja/>

Know Your Rights Information

- DHS Interactive Infographic on Protections for Immigrant Victims <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516>
- DHS Brochure: Immigration Options for Victims of Crime <http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes>
- Multilingual Materials for Victims and Advocates <http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>
- Pathways to Immigration Relief for Students <http://niwaplibrary.wcl.american.edu/pubs/screening-students-for-immigration-protections/>
- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa <http://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>
- Immigration Relief for Abused Children http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure

Prosecutor's Tools Enhancing Work With Immigrant Crime Victims

- What's Immigration Status Got to Do with It? Prosecution Strategies for Cases Involving Undocumented Victims <http://niwaplibrary.wcl.american.edu/pubs/pretrial-strategies-7-24-17-final-with-logos/>
- VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information <http://niwaplibrary.wcl.american.edu/pubs/discovery-and-vawa-confidentiality-tool-final-7-24-17/>
- Certifying Early: When Should You Sign a U or T Visa Certification for a Victim? <http://niwaplibrary.wcl.american.edu/pubs/certifying-early-7-24-17-final-w-logo/>
- Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law <http://niwaplibrary.wcl.american.edu/pubs/quick-reference-guide-for-prosecutors-u-visa-and-vawa-confidentiality/>

- Family Court Bench Card on VAWA Confidentiality
<http://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-vawa-confidentiality>

VAWA Confidentiality

- VAWA Confidentiality Statutes, Legislative History and Implementing Policy (2.23.17)
<http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>
- Three Prongs of VAWA Confidentiality <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-bro-3prongsofconfidentiality/>
- Chapter 3 of Empowering Survivors: VAWA Confidentiality, History, Purpose, DHS Implementation, and Violations of VAWA Confidentiality Protections
<http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/>
- Utilizing VAWA Confidentiality Protections in Family Court Proceedings**
<https://www.civicrosearchinstitute.com/online/article.php?pid=6&iid=1270>
- VAWA Self-Petitioning Timeline with Background Checks
<http://niwaplibrary.wcl.american.edu/pubs/3f-vawa-timeline-3-29-19/>
- Quick Reference Guide for Judges: VAWA Confidentiality & Discovery Related Case Law
<http://niwaplibrary.wcl.american.edu/pubs/judges-vawa-confidentiality-cases-and-discovery/>
- VAWA Confidentiality Protections, Courthouse Enforcement, and Sensitive Locations Policies at a Glance <http://niwaplibrary.wcl.american.edu/pubs/vawa-protections-in-state-courts-and-cases/>
- Quick reference: VAWA Confidentiality Protections - Quoting Statutes Regulations and Department of Homeland Security Policies
<http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-vawa-confidentiality-protections-3-29-19/>

U and T Visas

- DHS: U and T Visa Law Enforcement Resource Guide
<http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>
- U-Visa Toolkit for Law Enforcement Agencies and Prosecutors
<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors>
- International Association of Chiefs of Police (IACP) 2018 Resolution on Education and Awareness of U and T Visa Certifications <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations/>
- Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations
<http://niwaplibrary.wcl.american.edu/pubs/proposed-model-u-visa-policy/>
- Discussion Paper for Model Policy for Working with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations
<http://niwaplibrary.wcl.american.edu/pubs/discussion-paper-model-policy-u-visa-certification-may-2016/>

- USCIS U Visa Certification Factsheet Q&A
<http://niwaplibrary.wcl.american.edu/pubs/imm-relief-victims-trafficking-and-other>
- Blue Campaign: What You Can Do- Recognizing and Supporting Trafficking Victims in the Courtroom <http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-judicial-english>
- U-Visa Flow Chart <http://niwaplibrary.wcl.american.edu/pubs/uvisaflowchart/>
- T-Visa Flow Chart <http://niwaplibrary.wcl.american.edu/pubs/t-visa-application-flowchart>
- U-Visa Family Member Sponsors <http://niwaplibrary.wcl.american.edu/pubs/u-visa-family-member>
- T-Visa Family Member Sponsors <http://niwaplibrary.wcl.american.edu/pubs/t-visa-family-member>
- DHS Policy Answers to Law Enforcement Reasons for Not Certifying
<http://niwaplibrary.wcl.american.edu/pubs/dhs-answers-to-reasons-for-not-certifying>
- U Visa News Articles <http://niwaplibrary.wcl.american.edu/pubs/uvisa-news-articles/>
- U-Visa Checklist: "Helpfulness" <http://niwaplibrary.wcl.american.edu/pubs/uvisa-helpfulness-chcklist>
- Glossary of Terms <http://niwaplibrary.wcl.american.edu/pubs/imm-tools-bjaglossaryofterms>
- U Visa Certifications: Range of Potential Certifiers
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-range-of-potential-fcertifiers>
- U-Visa Legal Advocacy: Overview of Effective Policies and Practices
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief/>
- Press Release on the U Visa – Template
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-policedeptstraining>
- U Visa Resource List <http://niwaplibrary.wcl.american.edu/pubs/resource-list-with-logo>
- U Visa Certification Tool Kit for Federal, State, and Local Judges, Commissioners, Magistrates, and Other Judicial Officers (2017)
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates>
- Sample Questions for Identifying a Trafficked/Enslaved Person
<http://niwaplibrary.wcl.american.edu/pubs/questions-for-identifying-trafficked-or-enslaved-persons/>
- Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Recommendations
<http://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>
- 2017 New U and T Visa Application and Certification Forms (January and February 2017)
<http://niwaplibrary.wcl.american.edu/2017-u-cert-forms/>
- U Visa Timeline with Background Checks <http://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline/>
- Tip Sheet for Courts Developing U Visa Certification Protocols
<http://niwaplibrary.wcl.american.edu/wp-content/uploads/Tips-for-Courts-U-Visa-Cert-Protocols-Policies.pdf>

- T Visa Timeline with Background Checks <http://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline/>

Forms

- DHS: Instructions for Form I-914, Supplement B
<http://niwaplibrary.wcl.american.edu/pubs/i-916-supplement-b-instructions>
- DHS: Form I-914, Supplement B for T visa Endorsement
<http://niwaplibrary.wcl.american.edu/pubs/i-914-supplement-b-instructions>
- DHS: Form I-918, Supplement B, for U visa Certification
<http://niwaplibrary.wcl.american.edu/pubs/i918-supb-certification>
- DHS: Instructions for Form I-918, Supplement B, for U visa Certification
<http://niwaplibrary.wcl.american.edu/pubs/instructions-i1918-unonimm-status>

U Visa as a Crime-fighting Tool

- Stories From the Field: The Crime Fighting Effectiveness of the U Visa (August 27, 2020)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-crime-fighting-stories>
- The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials - Views from Around the Country <http://niwaplibrary.wcl.american.edu/pubs/uvisa-crime-fighting-tool>
- Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims (Police Chief Magazine April 2018)
<http://niwaplibrary.wcl.american.edu/pubs/policechief april-2018 building-trust-immigrant-victims/>
- Protecting Our Communities and Officer Safety
<http://niwaplibrary.wcl.american.edu/pubs/may june sheriff>
- COPS Dispatch Article: The U visa: An important tool for Community Policing
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-community-policing-tool/>
- How Law Enforcement Is Using the U-Visa Practice Brief
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-uvisapracticebrief-10-11>
- State U Visa Certification Laws <http://niwaplibrary.wcl.american.edu/state-u-visa-certification-laws/>
- U and T Visa Certifications and Certification Reporting Requirements in California:
<https://niwaplibrary.wcl.american.edu/pubs/ca-t-u-reporting-requirements>
- Bench Card: U and T Visa Certification Reporting Requirements in California:
<https://niwaplibrary.wcl.american.edu/pubs/ca-bench-card-u-t-reporting>

Forms of Immigration Relief

- Bench Card: Overview of Types of Immigration Status
<http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstatustypes>

- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Immigrant Crime Victims <http://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimsimmrights10-11-13>
- Blue Card: Screening for Victims Who Qualify for Immigration Protective Relief (Squad Car Screening Tool) <http://niwaplibrary.wcl.american.edu/pubs/screening-tool-victims-qualify>
- Prosecutorial Discretion: Certain Victim, Witnesses and Plaintiffs <http://niwaplibrary.wcl.american.edu/pubs/discretion-victims-witnesses-plaintiffs/>

Screening Tools and Collaboration

- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the US and Facts about Immigrating on a Marriage-based Vis <http://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>
- **Brochure: Continued Presence & Temporary Immigration Status for Victims of Human Trafficking** <http://niwaplibrary.wcl.american.edu/pubs/continued-presence-temp-imm-status>
- Immigrant and LEP Victims' Access to the Criminal Justice System <http://niwaplibrary.wcl.american.edu/pubs/importance-of-collaboration-victims>
- U Visa Legal Advocacy: Overview of Effective Policies and Practices <http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief>
- Building Trusting Relationships: A Guide for Advocates/Attorneys Working with Law Enforcement (LE) on U-Visa Certification Issues (Flow Chart) <http://niwaplibrary.wcl.american.edu/pubs/advocate-law-enforcement-guide>
- Comparison Chart of U visa, T Visa, Violence Against Women Act (VAWA) Self-Petition, Special Immigrant Juvenile Status (SIJS), and Deferred Action for Childhood Arrivals (DACA) <http://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca/>

Language Access

- Code of Conduct for Court Interpreters- Washington State Interpreters Program <http://niwaplibrary.wcl.american.edu/pubs/lang-lawpol-interconductcode1986/>
- Questions to Use for Crime Scene Identification of LEP <http://niwaplibrary.wcl.american.edu/pubs/crime-scene-identification-of-lep-persons>
- Dos and Don'ts to Help Identify LEP Persons <http://niwaplibrary.wcl.american.edu/pubs/dos-and-donts-to-identify-lep-persons>
- Language Identification Card - DeKalb County Magistrate Court's Compliance Project, Caminar Latino, Men Stopping Violence, Raksha, Inc, Tapestri, Inc, and Women's Resource Center to End Domestic Violence <http://niwaplibrary.wcl.american.edu/pubs/language-id-card-19010116-raksha-pdf/>
- Laws Governing Law Enforcement Agency Provision of Language Assistance to LEP Persons <http://niwaplibrary.wcl.american.edu/pubs/laws-governing-langauge-access>
- Important Tips to Remember When Using an Interpreter <http://niwaplibrary.wcl.american.edu/pubs/interpretation-tips>

- NAJIT Code of Ethics and Professional Responsibilities
<http://niwaplibrary.wcl.american.edu/pubs/najitcodeofethicsfinal>
- U.S. Department of Justice Sample Limited English Proficiency Guidelines from Office of Justice Programs “Center City Police Department”
<http://niwaplibrary.wcl.american.edu/pubs/sample-limited-english-proficiency-guidelines-from-the-office-of-justice-programs>
- Steps for Obtaining Interpreter <http://niwaplibrary.wcl.american.edu/pubs/step-for-obtaining-interpreters>
- Tips for Working Effectively with Telephone Interpreters
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-workingwithtelephoneinterp>
- Are you Compliant with Title VI Self-Assessment Tool
<http://niwaplibrary.wcl.american.edu/pubs/self-assessment-tool-title-vi>
- Why Using an Interpreter is Beneficial to Law Enforcement
<http://niwaplibrary.wcl.american.edu/pubs/law-enforcement-benefits-of-qualified-interpreters>
- DOJ Letter to State Chief Justices and State Court Administrators on Access for Limited English Proficient Persons to State Court Proceedings
<http://niwaplibrary.wcl.american.edu/pubs/lang-access-doj-courts-letter>
- Judicial Bench Card for Court Interpretation
<http://niwaplibrary.wcl.american.edu/pubs/ncsc-bench-card-language-access>
- Serving Limited English Proficient Immigrant Victims**
<https://www.civicrosearchinstitute.com/online/article.php?pid=6&iid=12699>

VAWA Self-Petition [keep]

- VAWA Self-Petitioning Flow Chart for Child Applicants
<http://niwaplibrary.wcl.american.edu/pubs/vawa-flow-chart-child/>
- Flowchart: VAWA Self-Petitioning Eligibility for Elder Abuse Survivors
<http://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-elder-abuse-flow-chart-6-17-19-pdf/>
- Flowchart: VAWA Self-Petitioning Eligibility for Adults
<http://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-flow-chart-for-adults-6-17-19-pdf/>
- Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2/>
- VAWA Self-Petitioning Introduction and Flow Charts
<http://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioning-intro-and-flow-charts-pdf/>

Public Benefits

- State by State Demographics
<http://niwaplibrary.wcl.american.edu/demographics/>

- State by State Public Benefits Charts <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>
- Interactive State Benefits Map <http://map.niwap.org/>
- Guide to the Public Benefits Map <http://niwaplibrary.wcl.american.edu/guide-to-public-benefits-map/>
- Privacy Protections for Immigrants Applying for Public Benefits <http://niwaplibrary.wcl.american.edu/pubs/privacy-protections-reporting-and-public-benefits/>
- Anti-Discrimination Provisions That Apply to Programs Receiving Federal Funding Services Victims of Violence Against Women Crimes <http://niwaplibrary.wcl.american.edu/pubs/pb-tool-antidiscrimlaws/>
- Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status <http://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants/>

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Collection of News Articles³⁸²

Last updated: August 28, 2020

The following news articles are provided as references that may assist law enforcement, prosecutors, and judges to better understand the importance of the U visa program and 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: <https://leb.fbi.gov/2009-pdfs/leb-october-2009/view>

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. Ivie, Stacey; LaRiviere, Michael; Flores, Antonio, Orloff, Leslye E., and Ammar Nawal H. “Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims” (2018). Available at:

https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims

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

In this article, the City of Cleveland’s efforts to expand the use of the U-visa are

³⁸² This project was supported by Grant Nos. 2015-TA-AX-K043 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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chronicled, including working with the Cleveland Police Department to issue a U-visa protocol.

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

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

5. 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.

6. 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.'").

7. Berestein Rojas, Leslie. *When Immigrants Are Crime Victims, How Much Does Legal Status Matter?*, MULTI-AMERICAN (Feb. 7, 2012),

<http://www.scpr.org/blogs/multiamerican/2012/02/07/8051/when-immigrants-are-crime-victims-how-much-does-le/>.

8. Wallace, Ava. *As Demand for U Visa Grows, Visa's Future for Abused Women Uncertain*, IMMIGRANT CONNECT: CHICAGO (Dec. 9, 2012),

<http://www.immigrantconnect.org/2012/12/09/as-demand-for-u-visa-grows-visas-future-uncertain/>.

9. Castellanos, Sara. *Cops Without Borders: Keeping the Peace With Illegal Immigrants*, AURORA SENTINEL (July 3, 2013), <http://www.aurorasentinel.com/news/cops-without-borders-keeping-the-peace-with-illegal-immigrants/>.
10. Kelley, Jeremy P. *Dayton Aims to Help Illegal Immigrant Crime Victims*, DAYTON DAILY NEWS (Feb. 14, 2013), <http://www.daytondailynews.com/news/news/dayton-aims-to-help-illegal-immigrant-crime-victim/nWPPx/>.
11. Anderson, Lindsey. *Special Report: DC Stalemate Leaves Too Few Visas for Crime Victims*, LAS CRUCES SUN-NEWS (June 8, 2013), <http://nmindepth.com/2013/06/08/dc-stalemate-leaves-too-few-visas-for-crime-victims/>
12. Walter, Shoshana. *U Visa Aids Immigrant Crime Victims*, SAN FRANCISCO CHRONICLE (Oct. 30, 2012), <http://www.sfgate.com/bayarea/article/U-visa-aids-immigrant-crime-victims-3994601.php>.
13. Casey, Chris. *Shut Out: An In-Depth Look at U-Visas*, GREELEY TRIBUNE <https://immigrationintheheartland.wordpress.com/2010-conference/projects/chris-casey/>
14. Collins, Erin. *Refuge from Violence: Minnesota Lawyers Help Immigrant Crime Victims Find Safe Harbor*, TWIN CITIES DAILY PLANET (July 8, 2013), <https://www.tcdailyplanet.net/refuge-violence-minnesota-lawyers-help-immigrant-crime-victims-find-safe-harbor/>
15. Macchi, Victoria. *Undocumented Immigrants Allowed to Stay in Collier as Crime Victims, Witnesses*, NAPLES NEWS (Nov. 25, 2012), <http://archive.naplesnews.com/community/undocumented-immigrants-allowed-to-stay-in-collier-as-crime-victims-witnesses-ep-385768381-331579421.html/>
16. McEnroe, Paul. *Protecting Illegal Immigrants to Catch Criminals*, STAR TRIBUNE (Oct. 27, 2011), <http://mexicanexpulsions.blogspot.com.ar/2011/10/protecting-illegal-immigrants-to-catch.html>
17. Meltzer, Erica, Boulder DA Stan Garnett Takes a Stand on Crimes Against Immigrants, DAILY CAMERA (Oct. 16, 2011), <http://www.dailycamera.com/boulder->

[county-news/ci_19121370](#) (“Garnett said he believes more cases are being reported since his office actively reached out to groups that work with immigrant communities.”).

18. Howard, Willie, Lake Worth Liaison Builds Trust Between City’s Immigrants, Law Officers, PALM BEACH POST(March 11, 2012), <http://www.palmbeachpost.com/news/lake-worth-liaison-builds-trust-between-city-immigrants-law-officers/X11TOPX0MrZ7HP4xP11UPI/> (“Benito Gaspar [Community Outreach Liaison] has been working for nearly two years to build trust between the city's immigrants and the Palm Beach County Sheriff's Office. . . . Calls to Crime Stoppers from Lake Worth increased 25 percent last year compared with 2010, which the sheriff's office attributes in part to Gaspar's efforts.”).

19. Abernathy, Michael, U visas Gaining Prominence, TIMES-NEWS (December 30, 2011), <http://www.alipac.us/f12/u-visas-gaining-prominence-246800/>

20. “The ‘U’ Visa for Victims of a Crime in the United States”

<http://sethilawgroup.com/u-visa-victims-crime-united-states/>

This article discusses how the U visa is an effective tool for law enforcement and, despite the unsettling number of applicants awaiting the visa, it is an opportunity that immigrant victims should take advantage of.

21. How Law Enforcement is Using the U-Visa (October 2011).

https://storage.googleapis.com/vera-web-assets/downloads/Publications/how-law-enforcement-is-using-the-u-visa/legacy_downloads/U-visa-practice-brief.pdf

This article describes what a U-visa is; how it is used, including barriers within it; and how it has been successful in the past.

22. Solis, Gustavo, U Visa Data Give Glimpse into Local Law Enforcement-Immigrant Relationship, USA TODAY (Feb 8, 2017)

<https://www.usatoday.com/story/news/nation-now/2017/02/08/u-visa-immigrant-police-relationship/97666590/>

This article goes over the use of the U-visa in California, including its demand and signs of success.

23. Myers, Randy, U Visa Allows Undocumented Domestic-Violence Victims Work Permits

<https://search.proquest.com/docview/456945587/51387E1A93074A58PQ/1?accountid=8285>

This article tells the story of an immigrant woman who experienced domestic abuse, but now lives in a calmer environment and is seeking to spread the word about the U Visa so that other undocumented immigrant victims can reap its benefits.

24. Morrissey, Kate, Immigration Status Can Make Matters Worse for Domestic Violence Victims (January 27, 2017).

<http://www.sandiegouniontribune.com/news/immigration/sd-me-domestic-violence-20170107-story.html>

This article details the story of a woman who experienced domestic violence for many years and was eventually picked up by ICE officers for her immigration status, but avoided deportation by applying for the U-Visa

25. LaRiviere, Michael P; Guthman, Nick; Anver, Benich, PROTECTING OUR COMMUNITIES AND OFFICER SAFETY (May/June 2016)

<https://search.proquest.com/docview/1924840182/D6323CBD77DF4AB2PQ/4?accountid=8285>

This article discusses how the U visa can help law enforcement learn about and prosecute criminals, bringing about more safety for all members of the community.

26. Madrid-Crost, Mary Carmen, U Visas Available for Out-of-Status Immigrants in US Who Are Victims of Certain Crimes (April 9, 2014).

<http://globalnation.inquirer.net/101829/u-visas-available-for-out-of-status-immigrants-in-us-who-are-victims-of-certain-crimes>

Upon describing what a U visa is and how one can qualify for it, this article describes successful U Visa cases, including a woman who was robbed by three armed men. It also describes how the U visa can help foreign workers in a scenario that is far too common—where they are forced into debt, are stuck with a job with sporadic hours, low wages, and cramped housing conditions.

27. U Visas and the Role of Local Police in Preventing and Investigating Crimes Against Immigrants.

http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2017/debate_2017_jun_ug.pdf (“A number of police departments have found that their role in making such certifications helps them to build trust in immigrant communities”)

28. Newton, Noelle, Travis County Sheriff Educates Immigrant Community on U Visa Program <http://www.fox7austin.com/news/local-news/travis-county-sheriff-educates-immigrant-community-on-u-visa-program> (“If a victim or witness doesn't come forth, that means a suspect or a defendant runs free and so that has an impact on all of us because if they've harmed one person, and they're not held accountable then all of us...you, me, everyone could be the next victim.”)

29. Guidos, Rhina, Visa Helps Noncitizens Who Are Victims of Crime Stay in the U.S., The Salt Lake Tribune (July 11, 2004).
<https://search.proquest.com/docview/281951854/53520B877A214B6FPQ/19?accountid=8285> This article describes the story of a woman who has received a work permit while waiting for her U-visa to be processed, which has helped her to support her two young daughter.

30. Rodrigues, Rafaela; Husain, Alina, Couture-Carron, Amanda et. al., *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 2018) <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>

6. VAWA_Leg-History.pdf

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Position: FAV

Legislative History of VAWA (94, 00, 05), T and U-Visas, Battered Spouse Waiver, and VAWA Confidentiality

By: Katrina Castillo, Alexandra Spratt, Catherine Longville, Courtney Veneri, Abigail Whitmore, Meera Patel and Leslye E. Orloff

June 17, 2015 (updated January 5, 2023)¹

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¹ This project was developed under grant numbers SJI- SJI-14-E-234 and SJI-20-E-005 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

Background²

In the late eighties and early nineties, the United States Congress began discussing legislation designed to protect and provide support for adults and children who were victims of domestic violence, sexual assault and child abuse, while at the same time removing barriers to immigrant victims' ability and willingness to turn to the justice system and other government agencies for assistance. As a result of these deliberations Congress with bipartisan support passed the Violence Against Women Act (VAWA) and the Trafficking Victim's Protection Act (TVPA) which were improved with each of their reauthorizations over the years. Improvements to protections for immigrant victims and human trafficking victims building upon VAWA and the TVPA have also been included in other pieces of legislation.

This document recounts the legislative history of laws offering protection for victims of domestic violence, child abuse, sexual assault, and human trafficking with a particular focus on the immigration relief developed by Congress to protect immigrant survivors. Each section includes quotations from the statute, the Congressional Record, legislative committee reports, and other Congressional Reports. The goal of this publication is to provide readers access to the content of this important legislative history of VAWA and the TVPA's protections for immigrant survivors.³

Violence Against Women Act 1994

SENATE – INTRODUCTION OF VAWA

In 1993, Senator Biden introduced the Violence Against Women Act of 1993. Following introduction, the Bill was sent to the Senate Judiciary Committee, amended, and placed on the Senate calendar in November.⁴

SEN. BIDEN, DE

- *“The women who suffer the consequence of domestic violence are women who are shot, murdered, killed, beaten, deformed. This violence is of a most coarse nature. It is perpetrated and committed by someone who a person in that household trusts; had at one time, at least, loved; in fact lives with. It is the worst of all violence.... The bill I introduce today attacks violent crime against women at all levels--from our streets to our homes, from squad cars to courtrooms, from schoolrooms to hospitals.”⁵*

HOUSE – INTRODUCTION OF VAWA

Representative Patricia Schroeder introduced the Violence Against Women Act of 1993 in February, following Senator Biden's introduction of a similar bill in the Senate. After being

² The fonts used in this document are *italics for statements of members of Congress* and plain text for other parts of the Congressional Record and Congressional Reports.

³ The documents cited in this publication can be accessed at <https://niwaplibrary.wcl.american.edu/legislative-history>.

⁴ 47 Cong. Rec. S739 (1993).

⁵ 47 Cong. Rec. S739 (1993).

referred to the House Judiciary Committee and amended, the Bill returned to the House floor for debate. The House passed the bill on November 20, 1993 and was then referred to the Senate.⁶
REP. SCHROEDER, CO

- *“This country has taken the violence against women and shuddered every single year as the numbers got higher and higher, but we have done nothing and tended to treat it as a lesser crime. When we are told that three out of four women will probably be the victim of a violent crime before they die, by the Justice Department, it is time we act. And so I encourage all sorts of Members to join us in cosponsoring this. We have seen the rape rate among women double in the 1980's. We have seen domestic violence becoming the leading cause of injury to American women. It is time we stop it.”*⁷
- The 1993 House Judiciary Committee Report explains the legislative history of the Original Violence Against Women Act (VAWA) 1994:
 - “[The Violence Against Women Act] was introduced on February 24, 1993, by Rep. Pat Schroeder, Rep. Louise Slaughter, Rep. Charles Schumer, and Rep. Connie Morella. [The Violence Against Women Act] was substantially similar to the earlier versions...which had been the subject of numerous hearings in both the House of Representatives and the Senate.
 - On November 16, 1993, the Subcommittee on Crime and Criminal Justice met to consider [The Violence Against Women Act]. The Subcommittee adopted an amendment in the nature of a substitute which omitted Titles III and IV of the bill as introduced. These provisions were not within the jurisdiction of the Subcommittee on Crime and Criminal Justice. The amendment in the nature of a substitute also narrowed substantially the provisions of [The Violence Against Women Act] dealing with the treatment of battered women under immigration laws. The amendment in the nature of a substitute also deleted the provision of [The Violence Against Women Act] relating to a National Board on Violent Crime Against Women, instead creating a National Task Force on Violence Against Women. The amendment in the nature of a substitute also deleted the provision of [The Violence Against Women Act] relating to Post Office regulations maintaining the confidentiality of addresses of abused persons, replacing it with a provision providing for a study of the confidentiality issue.”⁸
- The 1993 House Judiciary Committee Report further details the added provisions of VAWA, before it was considered by the Judiciary Committee in November 1993:
 - The amendment in the nature of a substitute also added provisions: prohibiting persons who have been convicted of domestic violence offenses or who are subject to protection orders related to domestic violence from receiving firearms,

⁶ *Actions: HR 3355: Violent Crime Control and Law Enforcement Act of 1994*, United States Congress (last updated 1994), <http://beta.congress.gov/bill/103rd-congress/house-bill/3355/actions>.

⁷ 47 Cong Rec. H3619 (1993).

⁸ H.R. REP. NO. 103-395, p. 28-29 (1993).

and prohibiting the transfer of firearms to such persons; directing the Attorney General to report to the Congress on domestic violence statistics; authorizing the Office for Victims of Crime to provide payments to the victims of sexual assaults of the costs of two tests for sexually transmitted diseases; authorizing the Bureau of Justice Assistance to make grants to establish projects in local communities to coordinate intervention and prevention of domestic violence; and authorizing the Bureau of Justice Assistance to make a grant to a nonprofit organization for the purpose of establishing a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.

- A reporting quorum being present, the Subcommittee then reported [The Violence Against Women Act], as amended, favorably reported by voice vote.
- On November 17, 1993, the Committee on the Judiciary met to consider [The Violence Against Women Act]. The Committee adopted by voice vote an amendment providing for the education and training of, and study by, Federal and State judges on issues relating to violence against women and women in the courts, and expressing the sense of the Congress relating to the admissibility of expert testimony on domestic violence; an amendment limiting the scope of the provisions prohibiting persons with histories of domestic violence from receiving firearms; and an amendment clarifying the extent to which aliens may obtain relief from deportation when abuse has occurred. A reporting quorum being present, the Committee then ordered the bill, as amended, favorably reported by a roll call vote of 34-1.”⁹
- VAWA 1994 was passed and enacted into law as Section IV of the Violence Crime Control and Law Enforcement Act of 1994.¹⁰

The House Judiciary Committee Report of 1994 explains that VAWA was created in response to a:

- “[R]ising tide of violence as targeted American women both in the streets and in their own homes. Police, hospital emergency rooms, rape crisis centers, and battered women's shelters have recorded an increasing incidence of rape, sexual assault and domestic violence against women in the United States. Violence is the leading cause of injury to women ages 15 to 44, more common than automobile accidents, muggings, and cancer deaths combined.’ Three out of four American women will be victims of violent crimes sometime during their life. This violence cuts across race, class, age, and ethnic boundaries. The only similarity that all of these victims share is their gender.
- Since 1988, the rate of incidence of rape has risen four and a half times as fast as the total crime rate. There were 109,062 reported rapes in the United States in 1992--one

⁹ H.R. REP. NO. 103-395, p. 29 (1993); *see generally* WILLIAM A. KANDEL, CONGRESSIONAL RESEARCH SERVICE, IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) (2012) (useful summary of VAWA provisions and critiques).

¹⁰ *Violence Against Women Act*, American Bar Association (last updated April 8, 2013),

http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/access_to_legal_services/vawa_home.html.

- every five minutes. The actual number of rapes committed is approximately double that figure, according to studies showing the reporting rate for rape victims to be about 50%.⁵ Even when the rape is reported, barely half of all reports result in an arrest.
- In addition to the often serious physical injuries, the experience of rape carries with it long-term psychological wounds. One study found that victims of rape were 8.7 times as likely as non-victims to have attempted suicide and twice as likely to experience major depression.
 - Sexual assault is also prevalent on college campuses. At least 119 campus gang rapes have been documented in the past decade. An estimated 4 million American women are battered each year by their husbands or partners.⁹ Approximately 95% of all domestic violence victims are women. About 35% of women visiting hospital emergency rooms are there due to injuries sustained as a result of domestic violence." One study of battered women found that 63 percent of the victims had been beaten while they were pregnant.
 - Domestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizens legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or lawful permanent resident spouse. Under the Immigration and Nationality Act, a U.S. citizen or lawful permanent resident can, but is not required to, file a relative visa petition requesting that his or her spouse be granted legal status based on a valid marriage. Also, the citizen or lawful permanent resident can revoke such a petition at any time prior to the issuance of permanent or conditional residency to the spouse. Consequently, a battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation.
 - Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave. A survey conducted in the District of Columbia by AYUDA found the rate of domestic violence among alien Latina women married to U.S. citizens or lawful permanent residents to be 77%; in 69% of these cases, the spouse had not filed a visa petition on the behalf of the abused alien.
 - The law enforcement response to the epidemic of violence against women has been inadequate. The legal system has historically failed to address violence against women with appropriate seriousness, and has even accepted it as legitimate. Under English common law, the 'rule of thumb' stipulated that a man could only beat his wife with a 'rod not thicker than his thumb.'" The attitude exemplified by this rule is found throughout the criminal justice system.

- A study of the response of District of Columbia police officers to domestic violence incidents found that in 1986, 19,000 calls from victims complaining of domestic violence resulted in fewer than 40 arrests.
- Some jurisdictions have adopted mandatory arrest policies to combat the tendency to dismiss domestic violence incidents as unworthy of law enforcement response. These policies have been highly effective. A joint study conducted by the Minneapolis Police Department and the National Police Foundation found that the rate of recurrence of domestic violence within six months of a police visit was 19% when the batterer was arrested, and 37% when the police simply "advised " the batterer.
- The underenforcement problem continues at the prosecutorial and judicial levels. A judicial commission in Maryland found that prosecutors often refuse to pursue rape and domestic violence complaints, and the 'cases involving domestic violence are regarded [by judges] as trivial or unimportant.' A panel of California judges found that 'victims of domestic violence are often denied access to the protection of the justice system.' In Connecticut, a review commission found that 'victim of sexual assault suffer not only because of the crime, but frequently suffer psychological trauma from what they experience within the justice system.' A committee of judges in Georgia found that 'police, prosecutors and judges often have gender-biased attitudes about domestic violence' and that rape 'victims receive treatment from police, prosecutors and judges which is adversely affected by gender bias.'"¹¹
- The House Judiciary Committee Report of 1994 also explains the purpose of VAWA as to:
 - "[D]eter and punish violent crimes against women. The bill is based on a recognition that law enforcement efforts against domestic violence and rape have been insufficient. The bill seeks to supplement these efforts by providing assistance to State and local law enforcement agencies, by making interstate domestic violence and violations of certain protection orders crimes punishable by Federal prosecution, by encouraging arrest of domestic violence offenders, by funding rape education and prevention programs, by training judges to better handle cases involving violence against women, by providing that victims of sexual assault receive compensation from the offender, by preventing violators of certain restraining orders from obtaining firearms, and by permitting battered immigrant women to leave their batterers without fearing deportation.
 - The bill also provides for reports on issues related to domestic violence and sexual assault, and for a national task force on violence against women."¹²
- In 1994 the Violence Against Women Act became law as Title IV of the Violent Crime Control and Law Enforcement Act of 1994 (H.R. 3355), the largest bipartisan crime bill at the time of its passage.

¹¹ H.R. REP. NO. 103-395, p. 1, at 25-28 (1993).

¹² H.R. REP. NO. 103-395, p. 25 (1993).

- REP. FOWLER

“Mr. Speaker, each year some 4 million women are battered by their partners. The pain and suffering imposed on these women merits the strongest response from Congress.” [Extension of Remarks by Representative Fowler].¹³

- A Conference Report on the Violent Crime Control and Law Enforcement Act of 1994 was filed on August 21, 1994. The House passed the bill on August 21, 1994, while the Senate passed the bill on August 25, 1994. On September 13, 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994 and it became law.¹⁴
- Conference Report on the Violent Crime Control and Law Enforcement Act (Aug. 21, 1994)

- SEN. D’AMATO, NY

*“When you batter women, we are going to go after you.”*¹⁵

- House Congressional Record: Violent Crime Control and Law Enforcement Act (Aug. 21, 1994)
 - Subtitle G: Protections for Battered Immigrant Women and Children Legislative History:

- REP. MORELLA, MD

“[The Violence Against Women Act] provide[s] protections for battered immigrant women who are the spouses of U.S. citizens, or legal residents, and their children....This legislation will have a very real impact on the lives of women everywhere in this country. Every 5 minutes, a woman is raped; every 15 seconds, a woman is beaten by her husband or intimate partner. Violence is a sad fact for women and girls, no matter where we live, work, or go to school.” [Floor statement of Representative Morella, during final debate prior to vote of the Violent Crime Control and Law Enforcement Act of 1994].¹⁶

- REP. MFUME, MD

“This bill also enacts the Violence Against Women Act. This is an important and long overdue effort to combat crimes against women.”

¹³ 140 Cong. Rec. H8415 (1994).

¹⁴ *Actions: HR 3355: Violent Crime Control and Law Enforcement Act of 1994*, United States Congress (last updated 1994), <http://beta.congress.gov/bill/103rd-congress/house-bill/3355/actions>.

¹⁵ *Conference Report on the Violent Crime Control and Law Enforcement Act of 1994*, 103d Cong. 22 (Aug. 25, 1994) (Statement of Senator D’Amato).

¹⁶ 140 Cong. Rec. H8981 (1994).

Women have, too often, been victims of crime because of their gender.”
[Floor statement of Representative Mfume, during final debate prior to
vote of the Violent Crime Control and Law Enforcement Act of 1994].¹⁷

- The House Judiciary Committee legislative history on VAWA 1994 included the following statements:
 - “An estimated 4 million American women are battered each year by their husbands or partners. Approximately 95% of all domestic violence victims are women. About 35% of women visiting hospital emergency rooms are there due to injuries sustained as a result of domestic violence. One study of battered women found that 63 percent of the victims had been beaten while they were pregnant.” H.R. Rep. No. 103-395 at 26.
 - A joint study conducted by the Minneapolis Police Department and the National Police Foundation found that the rate of recurrence of domestic violence within six months of a police visit was 19% when the batterer was arrested, and 37% when the police simply “advised” the batterer. H.R. Rep. No. 103-395 at 27.
- The House passed version of the Violence Against Women Act contained immigration protections. The Senate accepted these protections in Conference and the House Immigration Protections became part of the final VAWA 1994 bill that was signed into law. The House passed H.R. 1133: The Violence Against Women Act (as amended by the House Judiciary Committee) on November 20, 1993 contained specific immigration-related provisions.
- House Judiciary Committee Report for the Violence Against Women Act 1993:
 - Subtitle D: Protection for Immigrant Women (Amends Section 204(a)(1) and (b) of the Immigration and Nationality Act)
 - Section 241: Provides new standards to allow immigrant crime victims the ability to self-petition for status.¹⁸
 - Section 242: Sets forth the evidence standards for determining if an alien or alien’s child had been “battered or subject to extreme cruelty.”¹⁹
 - Section 243: Creates new grounds for suspension of deportation for abused spouses, abused children, and an alien spouse whose child is being abused. The provision waives the pre-1994 seven-year residency requirement to apply for suspension of deportation for those who have been “battered or subject to extreme cruelty” (by a spouse or parent); alien or alien’s child asking for

¹⁷ 140 Cong. Rec. H9000 (1994).

¹⁸ Staff of H. Comm. on the Judiciary Rep. No 38, at § 241, 38 (1994).

¹⁹ Staff of H. Comm. on the Judiciary Rep. No 38, at § 242, 38 (1994).

suspension must prove that he or she is of “good moral character and that deportation would result in extreme hardship.”²⁰

- In the formal legislative history of the VAWA 1994 immigration protections the House Judiciary Committee found:
 - “Domestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizens legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or lawful permanent resident spouse. Under the Immigration and Nationality Act, a U.S. Citizen or lawful permanent resident can, but is not required to file a relative visa petition requesting that his or her spouse be granted legal status based on a valid marriage. Also, the citizen or lawful permanent resident can revoke such a petition at any time prior to the issuance of permanent or conditional residency to the "spouse. Consequently, a battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges or calling the police, because of the threat or fear of deportation.

Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave. A survey conducted in the District of Columbia by AYUDA found the rate of domestic violence among alien Latina women married to U.S. citizens or lawful permanent residents to be 77%; in 69% of these cases, the spouse had not filed a visa petition on behalf of the abused alien.[Footnoted included in the House Judiciary Committee Report: San Francisco Neighborhood Legal Assistance Foundation, Family Violence Prevention Fund, Asian Law Caucus, and AYUDA, “Untold Stories: Cases Documenting Abuse by U.S. Citizens and Lawful Permanent Residents on Immigrant Spouses (1993)” H.R. Rep. No. 103-395 at 26-27.²¹

- “The purpose of H.R. 1133 is to deter and punish violent crimes against women. The bill is based on a recognition that law enforcement efforts against domestic violence and rape have been insufficient. The bill seeks to supplement these efforts by providing assistance to State and local law enforcement agencies, by making

²⁰ Staff of H. Comm. on the Judiciary Rep. No 38, at § 241, 38-39 (1994).

²¹ This report contained an analysis of preliminary data from the first 57.2% of the interviews conducted in the AYUDA survey that was later completed and published. The published findings from the AYUDA survey analyzing data from the full 289 interviews ultimately conducted found a 50.8% abuse rate among immigrant spouses married to U.S. citizens and lawful permanent residents, with 72.3% never filing immigration papers for their abused spouses. In the 27.7% of the cases in which the abusive U.S. citizen or lawful permanent resident spouses did file immigration papers for their immigrant spouses there was a mean delay of 3.97 years between the marriage and filing of immigration papers on the immigrant spouse's behalf. Further, when the data from this same survey was analyzed to understand the domestic abuse rate when an immigrant's spouse was a U.S. citizen the survey found that abuse rate rose to 59.5%. See, Mary Ann Dutton, Leslye E. Orloff and Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, Georgetown Journal on Poverty Law & Policy, Volume VII, Number 2, Summer 2000 available at <https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors>; Giselle Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses* (April 24, 2006) available at <https://niwaplibrary.wcl.american.edu/pubs/battered-immigrants-u-s-citizen-spouses>; Giselle Aguilar Hass, Mary Ann Dutton, and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications (2000) in Domestic Violence: Global Responses*, pp. 93-113 A B Academic Publishers Printed in Great Britain available at <https://niwaplibrary.wcl.american.edu/pubs/lifetime-prevalence-dv-latinas>.

- interstate domestic violence and violations of certain protection orders crimes punishable by Federal prosecution, by encouraging arrest of domestic violence offenders, by funding rape education and prevention programs, by training judges to better handle cases involving violence against women, by providing that victims of sexual assault receive compensation from the offender, by preventing violators of certain restraining orders from obtaining firearms, and by permitting battered immigrant women to leave their batterers without fearing deportation. The bill also provides for reports on issues related to domestic violence and sexual assault, and for a national task force on violence against women.” H.R. Rep. No. 103-395 at 26.
- A study of the response of District of Columbia police officers to domestic violence incidents found that in 1986, 19,000 calls from victims complaining of domestic violence resulted in fewer than 40 arrests. H.R. Rep. No. 103-395 at 27.
 - Senate Congressional Record: Violent Crime Control and Law Enforcement Act (Aug. 25, 1994)

SEN. LAUTENBERG, NJ

- *“Mr. President, last week I visited a coalition center for who have been battered and sexually abused. Rape is among the least reported crimes. There is a reason for it-- because if they report it, they are liable to pay for it with their lives because they cannot escape their environment. There are children often involved and there is no other place to go. We have to be able to help, Mr. President, by having that \$1.6 billion available for the Violence Against Women Act.”*²²

Violence Against Women Act 2000

In 2000 Congress reauthorized the Violence Against Women Act which included the creation of new forms of immigration relief for immigrant victims of domestic violence, sexual assault, human trafficking and other criminal activities. VAWA 2000 created the U visa for crime victims, the T visa and continued presence to help immigrant victims of human trafficking, and expanded VAWA self-petitioning, battered spouse waiver and protections against deportation for immigrant survivors. The Congressional record contains the following statements that form key parts of the legislative history of VAWA 2000’s immigration protections.

SENATE – CONGRESSIONAL RECORD - JANUARY 19, 1999

SEN. BIDEN, DE

“Of course, a comprehensive effort to reduce violence against women and lessen the harm it causes must do more than just arrest, convict and imprison abusers—we must also help the victims of violence. This legislation proposes to assist these crime victims in three fundamental ways: Providing a means for immediate protections from their abusers, such as through access to shelters; easier access to the courts and to the legal assistance necessary to

²² 140 Cong. Rec. 24,005 (1994).

keep their abusers away from them: and removing the “catch-22s” that sometimes literally compel women to stay with their abusers—such as discriminatory insurance policies that could force a mother to choose between turning in the man who is beating her or keeping health insurance for her children., Another “catch-22” affects immigrant women who are sometimes faced with a similar insidious “choice.” In 1994, we worked out provisions so battered immigrant women—whose ability to stay in the country was dependent on their husbands—would not have to choose between staying in this country and continuing to be beaten, or leaving their abusers, but in doing so have to also leave our country (perhaps even without their children). This bill fixes aspects of this problem that leave an abused woman with such a horrible, unfair and immoral choice”²³

SENATE – CONGRESSIONAL RECORD - OCTOBER 11, 2000

SEN. KENNEDY, MA

“One of the most important provisions in the bill is the Battered Immigrant Protection Act. This provision helps battered immigrants by restoring access to a variety of legal protections undermined by the 1996 immigration laws. The Violence Against Women Act passed in 1994 included provisions that allowed battered immigrants to apply for legal status without the cooperation of their abusers, and enabled victims to seek protective orders and cooperate with law enforcement officials to prosecute crimes of domestic violence.

Unfortunately, the subsequent changes in immigration laws have reduced access to those protections. Thousands of battered immigrants are again being forced to remain in abusive relationships, out of fear of being deported or losing their children. The pending bill removes obstacles currently hindering the ability of battered immigrants to escape domestic violence safely and prosecute their abusers.

It restores and expands vital legal protections like 245(i) relief. This provision will assist battered immigrants, like Donna, who have been in legal limbo since the passage of the 1996 immigration laws. Donna, a national of Ethiopia, fled to the U.S. in 1992 after her father, a member of a prominent political party, was murdered. In 1994, Donna met Saul, a lawful permanent resident and native of Ethiopia. They married and moved to Saul’s home in Massachusetts. Two years later, Saul began drinking heavily and gradually became physically and verbally abusive. The abuse escalated and Donna was forced to flee from their home. She moved in with close family friends who helped her seek counseling. She also filed a petition for permanent residence under provisions of the Violence Against Women Act.

Unfortunately, with the elimination of 245(i), the only way for Donna to obtain her green card is to return to Ethiopia, the country where her father was murdered. The possibility of returning there terrifies her. This legislation will enable her to obtain her green card here, where she has the support and protection of family and access to the domestic violence counseling she needs.²⁴

²³ 145 Cong. Rec. S444 (1999).

²⁴ 146 Cong. Rec. S10170-71. (2000)

Under this act, battered immigrants will also have up to one year from the entry of an order of removal to file motions to reopen prior deportation orders. The Attorney General may waive the one-year deadline on the basis of extraordinary circumstances or hardship to the battered immigrant's child.

This Act will also expand remedies for battered immigrants living abroad with spouses and parents serving in the United States military or other federal positions. Current law only allows battered immigrants residing in the United States to request this relief. This bill will make it easier for these immigrants and their children to escape abusive relationships and obtain the help they deserve.

The legislation also grants the Attorney General the discretion to waive certain bars to immigration relief for qualified applicants. For example, battered immigrant women acting in self-defense are often convicted of domestic violence crimes. Under the 1996 immigration law, they became deportable and are denied relief under the Violence Against Women Act. The Attorney General will be able to use the waiver authority to help battered immigrants who otherwise qualify for relief.

Also, recently divorced battered immigrants will be able to file self-petitions. Current law allows only battered immigrant women currently married to their abusive spouses to qualify for relief. As a result, many abusers have successfully rushed to the courthouse to obtain divorces, in order to deny relief to their immigrant spouse. This provision will prevent this unfair result and ensure that victims are not wrongly deprived of the legal protection they need.

These and other important measures will do a great deal to protect battered immigrants and their children from domestic violence and free them from the fear that often prevents them from prosecuting these crimes. Congress enacted the Violence Against Women Act in 1994 to help all victims of domestic violence, regardless of their citizenship. It is long past time to restore and expand these protections.

I am also pleased that the legislation includes authorization for increased funds for the National Domestic Violence Hotline. Consistent with last year's funding, the bill authorizes \$2 million a year for the hotline and ensures that the Hotline will be an effective source of assistance, providing vital services to women, children, and their families.

A second, equally important part of the bill we are considering today is the Trafficking Victims Protection Act, which condemns and combats the trafficking of persons into forced prostitution or forced labor, a practice that is tantamount to modern day slavery.

Enactment of this legislation will strengthen laws that punish traffickers and ensure protection for their victims—most of whom are women and children.²⁵

One of the most important of these provisions expands assistance and protection to victims of severe forms of trafficking, ensuring that they receive appropriate shelter and care, and are able to remain in the United States to assist in the prosecution of traffickers. Relief from

²⁵ 146 Cong. Rec. S10170-71. (2000)

*deportation is also critical for victims who could face retribution or other hardship if removed from the United States.*²⁶

Sara, a native of Sri Lanka, was promised a lucrative job as a housekeeper. Upon arrival in the U.S., Sara was virtually imprisoned in her employer's Massachusetts home, and subjected to physical and sexual assault. She bore three children as a result of rape. After 5 years of living in captivity and isolation, she was finally able to escape. This legislation will provide persons like Sara with the protection and rights they need to assist in the prosecution of these despicable crimes."²⁷

SEN. BOXER, CA

*"We also, for the first time, look at battered immigrants, which is a very important issue, because we sometimes have people coming here who don't understand their rights. They need to understand their rights, that their bodies don't belong to anyone else, and they have a right to cry out if they are abused"*²⁸

SEN. LAUTENBERG, NJ

"The underlying Trafficking Victims Protection Act addresses a very serious human rights issue in Europe and elsewhere, where people are trafficking particularly for sexual exploitation. Finally, we are taking action to combat trafficking and to help these victims. I am pleased that this conference report will also reauthorize the Violence Against Women Act and expand coverage to include new programs for immigrant women, elderly women, and women in the military service.

Throughout my career, I have worked to help prevent domestic violence. I strongly supported the original Violence Against Women Act, which Congress passed in 1994. I am so pleased that we are going to take care of those aberrations of behavior that leave women and families devastated. But we are getting onto another subject, as well, which I think is critical, and that is to provide justice for victims of terrorism as part of the trafficking victims protection conference report."²⁹

SEN. LEAHY, VT.

"In 1994, we designed VAWA to prevent abusive husbands from using control over their wives' immigration status to control them. Over the ensuing six years we have discovered additional areas that need to be addressed to protect immigrant women from abuse, and have attempted to do so in this legislation. VAWA II will ensure that the immigration status of battered women will not be affected by changes in the status of their abusers. It will also make it easier for abused women and their children to become lawful permanent residents and obtain cancellation of removal. With this legislation, battered immigrant women should not have to choose to stay with their abusers in order to stay in the United States.

²⁶ 146 Cong. Rec. S10170-71 (2000).

²⁷ 146 Cong. Rec. S10170 (2000).

²⁸ 146 Cong. Rec. S10173 (2000).

²⁹ 146 Cong. Rec. S10178 (2000).

I am pleased that we have taken these additional steps to protect immigrant women facing domestic abuse in the United States. I would also like to point out the difficult situation of immigrant women who face domestic violence if they are returned to their home country.”³⁰

SEN. SANTORUM, PA

“I commend Senator SAM BROWNBACK and Senator PAUL WELLSTONE for their bipartisan leadership on the International Trafficking of Women and Children Victim Protection Act. The bill specifically defines “trafficking” as the use of deception, coercion, debt bondage, the threat of force, or the abuse of authority to recruit, transport, purchase, sell, or harbor a person for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude or slavery-like conditions. Using this definition, the legislation establishes within the Department of State an Interagency Task Force to Monitor and Combat Trafficking. The Task Force would assist the Secretary of State in reporting to Congress the efforts of the United States government to fight trafficking and assist victims of this human rights abuse. In addition, the bill would amend the Immigration and Nationality Act to provide for a non-immigrant classification for trafficking victims in order to better assist the victims of this crime.”³¹

SEN. BIDEN, DE

“Also, maybe the single most important provisions we add to the Violence Against Women Act is the battered immigrant women provision. This strengthens and refines the protections for battered immigrant women in the original act and eliminates the unintended consequence of subsequent charges in immigration law to ensure that abused women living in the United States with immigrant victims are brought to justice and battered immigrants also escape abuse without being subject to other penalties.”³²

“And let’s not forget the plight of battered immigrant women, caught between their desperate desire to flee their abusers and their desperate desire to remain in the United States. A young Mexican woman who married her husband at the age of 16 and moved to the United States suffered years of physical abuse and rape—she was literally locked in her own home like a prisoner. Her husband threatened deportation if she ever told police or left the house. When she finally escaped to the Houston Area Women’s Center in Texas, she was near death.”³³

That shelter gave her a safe place to live and provided her the legal services she needed to become a citizen and get a divorce.”³⁴

Our bipartisan bill expands upon the protections for battered immigrant women.”³⁵

³⁰ 146 Cong. Rec. S10185 (2000).

³¹ 146 Cong. Rec. S10199 (2000).

³² 146 Cong. Rec. S10204.

³³ 146 Cong. Rec. S10205 (2000).

³⁴ 146 Cong. Rec. S10205 (2000).

³⁵ 146 Cong. Rec. S10205 (2000).

SEN. ABRAHAM, MI

“Finally, I am very pleased that the conference report includes the core provisions from the Senate bill that I developed along with Senator KENNEDY, Senator HATCH, and Senator BIDEN to address ways in which our immigration laws remain susceptible of misuse by abusive spouses as a tool to blackmail and control the abuse victim.

This potential arises out of the derivative nature of the immigration status of a noncitizen or lawful permanent resident spouse’s immigration status. Generally speaking, that spouse’s right to be in the U.S. derives from the citizen or lawful permanent resident spouse’s right to file immigration papers seeking to have the immigration member of the couple be granted lawful permanent residency.

In the vast majority of cases, granting that right to the citizen or lawful permanent resident spouse makes sense. After all, the purpose of family immigration is to allow U.S. citizens or lawful permanent residents to live here with their spouses and children. But in the unusual case of the abusive relationship, an abusive citizen or lawful permanent resident can use control over his or her spouse’s visa as a means to blackmail and control the spouse. The abusive spouse can do this by withholding a promised visa petition and then threatening to turn the abused spouse in to the immigration authorities if the abused spouse sought to leave the abuser or report the abuse.

VAWA 1994 changed this by allowing immigrants who demonstrate that they have been battered or subject to extreme cruelty by their U.S. citizen or lawful permanent resident spouses to file their own petitions for visas without the cooperation of their abusive spouse.

VAWA 1994 also allowed abused spouses placed in removal proceedings to seek “cancellation of removal,” a form of discretionary relief from removal available to individuals in unlawful immigration status with strong equities, after three years rather than the seven ordinarily required. Finally, VAWA 1994 granted similar rights to minor children abused by their citizen or lawful permanent resident parent, whose immigration status, like that of the abused spouse, would otherwise be dependent on the abusive parent.

The conference report follows the Senate VAWA reauthorization bill in building on the important work of VAWA 1994 in these areas. I will not describe all of the provisions of title V of division B of this bill, but I will discuss one of them, which I believe is the most important one.

In this bill, we establish procedures under which a battered immigrant can take all the steps he or she needs to take to become a lawful permanent resident without leaving this country. Right now, no such mechanism is available to a battered immigrant, who can begin the process here but must re- turn to his or her home country to complete it.

VAWA 1994 created a mechanism for the immigrant to take the first step, the filing of an application to be classified as a battered immigrant spouse or child. But it did not create a mechanism for him or her to obtain the necessary papers to get lawful permanent residency while staying in the U.S. That is because at the time it was enacted, there was a general

mechanism available to many to adjust here, which has since been eliminated. As a result, under current law, the battered immigrant has to go back to his or her home country, get a visa, and return here in order to adjust status.

That is not true of spouses whose citizens or lawful permanent resident husband or wife is filing immigration papers for them. They do have a mechanism for completing the whole process here. Section 1503 of this bill gives the abused spouse that same right.

The importance of such a provision is demonstrated, for example, by the case of a battered immigrant whose real name I will not use, but whom I will instead call Yaa. I use her as an example because her case arose in my own State of Michigan.

Yaa is a 38-year-old mother of two from Nigeria. She met her husband, whom I will call Martin, while he was visiting family members in Nigeria. After a long courtship, Martin persuaded Yaa to marry him and join him in the United States. He told her he would help her further her education and file the necessary papers to enable her to become a lawful permanent resident.

Following their marriage, Martin assisted Yaa in obtaining a visitor's visa. When she arrived in the United States, however, he did not follow through on any of his promises. He refused to support her going to school, and indeed would not let her leave the house for fear that other men might find her attractive and steal her away. He also refused to file immigration papers for her and threatened her with deportation if she ever disobeyed his orders.

After the birth of their first child, Martin began physically abusing Yaa. He slapped her if she questioned his authority or asked about her immigration status. He spat on her if she refused to have sex with him. He used a hidden recording device to tape all of her phone conversations. As a result, she came to feel that she was a prisoner in her own home.

On one occasion, Martin beat Yaa with his fists and a bottle of alcohol. Yaa suffered severe facial injuries and had to be rushed to a hospital by ambulance for treatment. This incident resulted in Martin's arrest and prosecution for domestic violence. Martin retaliated by refusing to pay the mortgage, buy food, or other necessities. At that point, with the help of her best friend, Yaa moved out, found a job, and filed a self-petition under VAWA. INS approved her self-petition, and Yaa has obtained a restraining order against Martin.

Unfortunately, she still has to go to Nigeria to obtain a visa in order to complete the process of becoming a lawful permanent resident. And this is a major problem. Martin's family in Nigeria blames her for Martin's conviction. They have called her from there and threatened to have her deported because she "brought shame" to the family. They also know where she lives in Nigeria and they have threatened to hurt her and kidnap the children if she comes back. She has no one in the U.S. to leave the children with if she were to return alone. She is also frightened of what Martin's family will do to her if she sets foot in Nigeria.

Yaa should be allowed to complete the process of becoming a lawful permanent resident here in the United States, without facing these risks. Our legislation will give her the means to do so.

Of all the victims of domestic abuse, the immigrant dependent on an abusive spouse for her right to be in this country faces some of the most severe problems. In addition to the ordinary difficulties that confront anyone trying to deal with an abusive relationship, the battered immigrant also is afraid that if she goes to the authorities, she risks deportation at the instance of her abusive spouse, and either having her children deported too or being separated from them and unable to protect them.

We in Congress who write the immigration laws have a responsibility to do what we can to make sure they are not misused in this fashion. That is why I am so pleased that the final version of this legislation includes this and other important provisions.

I would like to extend special thanks to Senator KENNEDY and his staff, especially Esther Olavarria, who has worked tirelessly on this portion of the bill; to Senator HATCH and his staff, especially Sharon Prost, whose assistance in crafting these provisions and willingness to invest time, effort and capital in making the case for them has been indispensable; to Senator BIDEN and his staff, especially Bonnie Robin-Vergeer, whose commitment to these provisions has likewise been vital; to House Judiciary Committee Chairman HYDE and House Crime Sub-committee Chairman BILL MCCOLLUM, for their support at key moments; to the indefatigable Leslye Orloff of the NOW Legal Defense Fund, whose ability to come up with the “one more thing” desperately needed by battered immigrants is matched only by her good humor and professionalism in recognizing that the time for compromise has come; and to the sponsors of H.R.3244 and S. 2449, for allowing their bill to become the vehicle for this important legislation.”³⁶

SEN. BINGAMAN, NM

“The battered immigrant women provision is also important to many New Mexico residents. No longer will battered immigrant women and children be faced with deportation for reporting an abuser on whom they may be dependent on for an immigration benefit. No person residing in the United States should be immune from prosecution for committing a violent crime because of a loophole in an immigration law.”³⁷

SEN. HATCH, UT

“Finally, it makes important revisions to the immigration laws to protect battered immigrant women.”³⁸

I am proud to have worked with the women’s groups in Utah and elsewhere in seeing that VAWA is reauthorized. With their help, we have been able to make targeted improvements to the original legislation that will make crucial services better and more available to women and children who are trapped in relationships of terror. I am proud of this achievement and what it will do to save the lives of victims of domestic violence.”³⁹

³⁶ 146 Cong. Rec. S10219-20 (2000).

³⁷ 146 Cong. Rec. S10223-24 (2000).

³⁸ 146 Cong. Rec. S10191 (2000).

³⁹ 146 Cong. Rec. S10191 (2000).

“Several points regarding the provisions of Title V, the Battered Immigrant Women Protection Act of 2000, bear special mention. Title V continues the work of the Violence against Women Act of 1994 (“VAWA”) in removing obstacles inadvertently interposed by our immigration laws that many hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident to blackmail the abused spouse through threats related to the abused spouse’s immigration status. We would like to elaborate on the rationale for several of these new provisions and how that rationale should inform their proper interpretation and administration.”⁴⁰

First, section 1503 of this legislation allows battered immigrants who unknowingly marry bigamists to avail themselves of VAWA’s self-petition procedure. This provision is also intended to facilitate the filing of a self-petition by a battered immigrant married to a citizen or lawful permanent resident with whom the battered immigrant believes he or she had contracted a valid marriage and who represented himself or herself to be divorced. To qualify a, a marriage ceremony, either in the United States or abroad, must actually have been performed. We would anticipate that evidence of such a battered immigrant’s legal marriage certificate or marriage license would ordinarily suffice as proof that the immigrant is eligible to petition for classification as a spouse without the submission of divorce decrees from each of the abusive citizen’s or lawful permanent resident’s former marriages. For an abused spouse to obtain sufficient detailed information about the date and the lace of each of the abuser’s former marriages and the date and place of each divorce, as INS currently requires, can be daunting, difficult and dangerous task, as this information is under the control of the abuser and the abuser’s family members. Section 1503 should relieve the battered immigrant of that burden in the ordinary case.

Second, section 1503 also makes VAWA relief available to abused spouses and children living abroad of citizens and lawful permanent residents who are members of the uniformed services or government employees living abroad, as well as to abused spouses and children living abroad who were abused by a citizen or lawful permanent resident spouse or parent in the United States. We would expect that INS will take advantage of the expertise the Vermont Service Center has developing in deciding self-petitions and assign it responsibility for adjudicating these petitions even though they may be filed at U.S. embassies abroad.

Third, while VAWA self-petitioners can include their children in their applications, VAWA cancellation of removal applicants cannot. Because there is a backlog for applications for minor children of lawful permanent residents, the grant of permanent residency to the applicant parent and the theoretical available of derivative status to the child at that time does not solve this problem. Although in the ordinary cancellation case the INS would not seek to deport such a child, an abusive spouse may try to bring about that result in order to exert power and control over the abused spouse. Section 1504 directs the Attorney General to parole such children, thereby enabling them to remain with the victim and out of the abuser’s control. This directive should be understood to include a battered immigrant’s children wither or not they currently reside in the United States, and therefore to include the use of his or her parole power to admit them if necessary. The protection offered by section 1504 to children abused by their

⁴⁰ 146 Cong. Rec. S10192 (2000).

U.S. citizen or lawful permanent resident parents is available to the abused child even though the courts may have terminated the parental rights of the abuser.

Fourth, in an effort to strengthen the hand of victims of domestic abuse, in 1996 Congress added crimes of domestic violence and stalking to the list of crimes that render an individual deportable. This change in law has had unintended negative consequences for abuse victims because despite recommended procedure to the contrary, in domestic violence cases many officers still makes dual arrests instead of determining the primary perpetrator of abuse. A battered immigrant may well not be in sufficient control of his or her life to seek sufficient counsel before accepting a plea agreement that carries little or no jail time without understanding its immigration consequences. The abusive spouse, on the other hand, may understand those consequences well and may proceed to turn the abuse victim into the INS.

To resolve this problem, section 1505(b) of this legislation provides the Attorney General with discretion to grant a waiver of deportability to a person with a conviction for a crime of domestic violence or stalking that did not result in serious bodily injury and that was connected to abuse suffered by a battered immigrant who was not the primary perpetrator of abuse in a relationship. In determining whether such a waiver is warranted, the Attorney General is to consider the full history of domestic violence in the case, the effect of the domestic violence on any children, and the crimes that are being committed against the battered immigrant.

Similarly, the Attorney General is to take the same types of evidence into account in determining under sections 1503(d) and 1504(a) whether a battered immigrant has proven that he or she is a person of good moral character and whether otherwise disqualifying conduct should not operate as a bar to that finding because it is connected to the domestic violence, including the need to escape an abusive relationship. This legislation also clarifies that the VAWA evidentiary standard under which battered immigrants in self-petition and cancellation proceedings may use any credible evidence to prove abuse continues to apply to all aspects of self-petitions and VAWA cancellation as well as to the various domestic violence discretionary waivers in this legislation and to determinations concerning U visas.

Fifth, section 1505 makes section 212(i) waivers available to battered immigrants on a showing of extreme hardship to, among others, a “qualified alien” parent or child. The reference intended here is to the current definition of a qualified alien from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, found at 8 U.S.C. 1641.

Sixth, section 1506 of this legislation extends the deadline for a battered immigrant to file a motion to reopen removal proceedings, now set at 90 days after the entry of an order of removal, to one year after final adjudication of such an order. It also allows the Attorney General to waive the one-year deadline on the basis of extraordinary circumstances or hardship to the alien’s child. Such extraordinary circumstances may include but would not be limited to an atmosphere of deception, violence, and fear that make it difficult for a victim of domestic violence to learn of or take steps to defend against or reopen within the deadline on account of a child’s lack of capacity due to age. Extraordinary circumstances may also include violence or cruelty of such a nature that, when the circumstances surrounding the domestic violence and the consequences of the abuse are considered, not allowing the battered immigrant to reopen the deportation or removal proceeding would thwart justice or be contrary to the humanitarian

purpose of this legislation. Finally, they include the battered immigrant's being made eligible by this legislation for relief from removal not available to the immigrant before that time.

Seventh, section 1507 helps battered immigrants more successfully protect themselves from ongoing domestic violence by allowing battered immigrants with approved self-petitions to remarry. Such remarriage cannot serve as the basis for revocation of an approved self-petition or rescission of adjustment of status.”⁴¹

HOUSE – CONGRESSIONAL RECORD

October 6, 2000

REP. SLAUGHTER, OH

“Mr. Speaker, the conference report also reauthorizes the Violence Against Women Act. I am proud to have a long history of activism on domestic violence issues. Fifteen years ago our greatest challenge was convincing Americans that domestic violence was a real problem. Many women knew only too well that we were in the midst of a deadly epidemic, but the culture of silence that surrounded the issue made it difficult for them to speak out or to get help. Being a victim of domestic violence was a source of fear and shame. Many women were trapped in these situations without any means of escape. Furthermore, domestic violence tended to be trivialized by law enforcement, by the judicial system, by health care providers and sometimes even by friends, family or neighbors.

We have come a long way in the 15 years since I began working on these issues. The single most important thing that Congress did to effect a change was pass the Violence Against Women Act. The Violence Against Women Act catapulted domestic violence onto the national agenda, providing Federal support for programs like shelters for battered women and their children, education for law enforcement officers and judges, and resources mostly for prevention and education. I am proud to have been the author of provisions of VAWA that protected battered immigrant women who were often trapped in abusive relationships by the threat of deportation. VAWA transformed the national landscape for victims of domestic violence. Today, a woman in an abusive relationship has options, a place to live, help with court proceedings, assistance for herself and her children, and protection from her batterer.

Nevertheless, we still have a long way to go. Too many women still die at the hands of an abusive spouse or boy- friend. Protective orders can be ineffective. Going on welfare is far from an ideal choice even as a temporary step. Convictions against batterers remain infrequent and penalties can be extremely light. It is imperative that Congress reauthorize these vital programs.”⁴²

REP. JACKSON-LEE, OH

“Particularly, let me appreciate the battered immigrant provisions that have come from the legislation that the gentlewoman from Illinois (Ms. SCHAKOWSKY) and the gentlewoman

⁴¹ 146 Cong. Rec. S10192 (2000).

⁴² 146 Cong. Rec. H9030-31 (2000).

from Maryland (Mrs. MORELLA) and myself have sponsored, H.R. 3083. We had a hearing on the bill in the committee that I serve on, the Subcommittee on Immigration and Claims. And I thank the gentleman from New Jersey (Mr. SMITH), my chairman.

I say to the gentleman from Michigan (Mr. CONYERS), I had the unfortunate privilege of visiting in Bangladesh, women who were battered, as well as women who were sold into slavery, sold for sexual activities, and see the children, see the abuse, the depression, the mutilation, the injuries that they suffered. So this bill is extremely important.

Mr. Speaker, I thank the Committee on International Relations and all of those who worked on the human rights aspect to stop that. It is also important to recognize that VAWA that gives rights to American women finally will reach a point where we can see it reauthorized and have the centers open, protect the children who have seen abuse in their homes.

Mr. Speaker, I do want to thank the conference committee for putting in the elements dealing with battered immigrant women, because without those elements, VAWA did not cover immigrant women; in particular, we would find situations where the abuser would hold it over the head of the immigrant woman that you can stay here all the time and I can abuse you, but you will not have the rights to access relief under VAWA.

Take, for example, the idea of an abuser saying to the abused that I will keep you from being a citizen or legal resident, because all you came to do was to come here to this country with your children and seek to be a legal resident, and, therefore, I will punish you and I will continue to abuse you.

Mr. Speaker, I am gratified that elements that will allow for self-petition are included in this legislation and that an abused woman can as well seek that.

Finally, let me say that I hope we can improve some elements of this bill. Mr. Speaker, I thank the gentlewoman from New York (Ms. SLAUGHTER) for yielding me the time.

Mr. Speaker, I come to the floor today in my capacity as Ranking Member of the Subcommittee on Immigration and Claims. Inside this report is the agreement authorizing VAWA, and some very important provisions that deal with Battered Immigrant Women. I joined with Congresswoman JAN SCHAKOWSKY and Congresswoman CONNIE MORELLA to sponsor H.R. 3083, The Battered Immigrant Women Protection Act of 1999, would provide much needed access to battered immigrant victims of domestic violence. Fortunately, many of the provisions of this bill were included in this conference report.

These provisions are important because but for the failure of citizens or permanent resident abusers to submit immigration petitions for their immigrant spouses and children, the beneficiaries of the Battered Immigrant provisions would already have lawful immigration status through a family-based visa petition.

A citizen or permanent resident batterer often manipulates such misconceptions by convincing his victim that he will prevail in court because he is a male and he has more money. Moreover, a batterer often uses his immigration status against his victim as a tool of control,

threatening to report her to INS or refusing or withdrawing immigration petitions that would grant her status.

I am relieved to stand before the House in order that we might be able to consider legislation that will reauthorize the Violence Against Women Act (VAWA) before the close of the 106th Congress. This act was first passed in 1994, and it marked a turning point in our nation's response to family violence, offering states a comprehensive means of addressing domestic violence and sexual assault. Although VAWA has contributed to a decline in the rates of domestic violence, there is still much work to be done."

"Let me pay tribute to a lady who will benefit from this legislation, Calla, a Guatemalan woman who lived with her fiancé, a legal permanent resident, for 5 years; and when she asked about getting married so she could apply for her own legal residency, he beats her and accuses her of only wanting to be with him so she can get her immigration status recognized.

This bill is long overdue. The battered immigrant women provisions are necessary. Though I would have wanted to see access to food stamps, access to housing, access to other benefits, we must move this bill forward, and we must move the programs that provide sexual assault prevention programs and education and training of judges. That is a key element for providing relief to those abused individuals.

I would like to thank the Committee on International Relations for protecting the victims of terrorism and those subjected to slavery. This is a good conference report and I ask for my colleagues to vote for it.

Mr. Speaker, first, I would like to thank the leaders like Congressman JOHN CONYERS who has been a leader on VAWA issues for years, Congressman SAM GEJDENSON, the Ranking Member of the International Relations Committee for his leadership in being instrumental in reaching a compromise on this bill, Congressman TOM LANTOS, who is a champion on Human Rights around the globe, and his true counterpart on the other side, Congressman

CHRIS SMITH, who also has been a champion of Human Rights, and Congressman LAMAR SMITH the Chairman of the Subcommittee on Immigration and Claims, who I have been able to work very well with throughout the 106th Congress.

I come to the floor today in my capacity as Ranking Member of the Subcommittee on Immigration and Claims. Inside this report is the agreement authorizing VAWA, and some very important provisions that deal with Battered Immigrant Women. I joined with Congresswoman JAN SCHAKOWSKY and Congresswoman CONNIE MORELLA to sponsor H.R.3083. The Battered Immigrant Women Protection Act of 1999 would provide much needed access to battered immigrant victims of domestic violence. Fortunately, many of the provisions of this bill were included in this conference report.

The 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser. There is a provision in this report that eliminates the requirement that an immigrant victim has to prove extreme hardship. The spirit and intent of

the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice, now this can be done with the adoption of this report.

This Conference Report has language that would provide VAWA relief to abused children who subsequently turn 21 as long as they can demonstrate that one or more incidents of battery or extreme cruelty occurred before they turned 21.

This conference report gives battered immigrants living abroad new access to VAWA immigration relief. Abused children of spouses married to members of the U.S. Armed Forces and U.S. government employees living abroad are trapped overseas unable to escape and seek assistance. Filing a family-based visa petition at an American consulate is permissible, while filing VAWA self-petitions are not. This Conference Report makes it possible for battered immigrant women to file their own petitions. This is a major change.

This Conference Report now allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce. Divorced battered immigrants do not have access to VAWA immigration relief. There are many “savvy” abusers who know that if they divorce their abused spouse they will cut off their victim’s access to VAWA relief. Provisions in this report change that.

I am very disappointed that some missing provisions that were in the House bill, H.R. 3083 are not in the Conference Report. They are provisions that: exempted fiancés from conditional residency requirements, a provision that extended VAWA to sons and daughters of legal permanent residents who are 21 and would allow them to include children in the self-petition; a provision that would have given battered immigrants the option of having children follow to join them rather than placing them in deportation proceedings; and deeply regret that there are no provisions in the re- port that provide access to food stamps to battered aliens; and access to housing, and access to benefits that would enable the alien to avoid battery or extreme cruelty in the future. We need this language because far too often, the pleas for help by these immigrant victims are not heard because of language or cultural barriers. Moreover, many victims remain silent because the threat of deportation looms over them and their children. As a result, immigrant women are caught in an intersection of immigration, family, and welfare laws that do not reflect their needs and life experiences, leaving them vulnerable to exploitation with few options for redress. There are real human illustrations as to why we need this bill.

Carla, a Guatemalan woman, has lived with her boyfriend, a legal permanent resident for five years. When she asks him about getting married so she can apply for her own legal residency, he beats her and accuses her of only wanting to be with him so she can get her immigration status recognized.

Such compelling real-life stories illustrate the unique array of legal, economic, and social problems battered immigrant women face today. Most importantly, when these women are facing desperate times and struggles, they have children who are directly impacted. Often times when the mothers are in shelters or de- ported, the children become the custody of local child welfare agencies.

A battered woman, who is not a legal resident, or whose immigration status depends completely on her partner, is often isolated by unique cultural dynamics which may prevent her

from leaving her husband or seeking assistance from the American legal system. With the adoption of this report, a woman in this position is now provided relief. The language in this report will improve the lives of battered immigrants and send them on a path to re- building their lives and the lives of their children. I urge the adoption of this report.

*While the sweeping provisions of Battered Immigrant Women are included in this report, there is also the reauthorization of the Violence Against Women Act for five years. The money for these programs will combat violence against women, including battered women's shelters and services, sexual assault prevention programs and education and training judges. While I favored the Conyers version in committee, it does seem that compromise was reached to include some much needed provisions from his bill."*⁴³

REP. SCHAKOWSKY, IL

"When I had the privilege of traveling with the President to India, I saw little girls who had been sold into the sex industry. No child should be subjected to such horrors. We know that the Violence Against Women Act has saved lives and helped to rebuild even more. And I am grateful that my provisions to expand legal protections for battered immigrant women and children and to fund transitional housing for domestic abuse victims were included in the report.

*The 1996 immigration laws made some changes that forced many immigrant women to remain in dangerous situations, putting themselves and their children at great risk. Today we have the opportunity to end this injustice. With the passage of this conference report, immigrant women will be empowered to move away from their abusers. They will have the additional legal protections along with access to critical transitional housing services that will enable them to alleviate the abuse and break the cycle of violence. Mr. Speaker, I urge my colleagues to vote yes on this conference report."*⁴⁴

REP. GEJDENSON, CT

*"The bill also includes additional legislation that the conferees felt must be moved quickly. In particular, the legislation now includes the Violence Against Women Act of 2000. The original Violence Against Women Act expired last Thursday, leaving millions of American women without protection from the violence that they suffer in their lives. This Act reauthorizes through Fiscal Year 2005 the key programs included in the original Violence Against Women Act, such as the STOP, Pro- Arrest, Rural Domestic Violence and Child Abuse Enforcement, and campus grants; battered women's shelters; the National Domestic Violence Hotline; rape prevention and education grant programs; and three victims of child abuse programs, including the court-appointed special advocate program (CASA). It also makes some improvements responding to the experience with the original act, including authorizing grants for legal assistance for victims of domestic violence, stalking, and sexual assault and strengthening and refining the protections for battered immigrant women, including a new visa for battered immigrant women. It is fitting that this bill addresses the severe problems of both trafficking and of violence against women in the United States."*⁴⁵

⁴³ 146 Cong. Rec. H9041-42 (2000).

⁴⁴ 146 Cong. Rec. H9035 (2000).

⁴⁵ 146 Cong. Rec. H9040 (2000).

. . . [T]he conference agreement on H.R. 3244 represents landmark legislation that not only seeks to put a stop to the heinous practices of modern-day slavery, but also addresses the millions of American women who face violence in their lives each year.⁴⁶

REP. PELOSI, CA

“We must work to support America’s young women, our future leaders, and this bill reaches out to them through efforts to prevent campus sex crimes and efforts to prevent teen suicide. In light of the recent attention to many immigration issues, I am pleased this bill addresses the needs of battered immigrant women and takes protective steps to address their plight.”⁴⁷

REP. SMITH, NJ

“Mr. Speaker, I am also very proud that Division B is the Violence Against Women Act of 2000, of which I was also a co-sponsor along with HENRY HYDE, BILL MCCOLLUM, CONNIE MORELLA and other colleagues from both parties. This Act includes provisions to reauthorize federal programs that combat violence against women, to strengthen law enforcement to reduce violence against women, to strengthen services to victims of violence, to limit the effects of violence on children, to strengthen education and training to combat violence against women, to enact new procedures for the protection of battered immigrant women, and to extend the Violent Crime Reduction Trust Fund.

Mr. Speaker, we cannot wait one more day to begin saving the millions of women and children who are forced every day to submit to the most atrocious offenses against their persons and against their dignity as human beings. I urge unanimous support for the Victims of Trafficking and Violence Protection Act of 2000.”⁴⁸

REP. MINK, HI

“Mr. Speaker, I rise today to urge all of my colleagues to vote for H.R. 3244, the Trafficking Victims Protection Act, which includes reauthorization of the Violence Against Women Act.

The Strengthened Violence Against Women Act (VAWA) we will vote on today reauthorizes current VAWA grant programs for five years, makes targeted improvements, and adds important new programs.

The bill strengthens law enforcement efforts to reduce violence against women, increases services to victims of violence, seeks to limit the effects of violence on children, enhances education and training to combat violence against women, and provides important new protections for battered immigrant women.

⁴⁶ 146 Cong. Rec. H9039 (2000).

⁴⁷ 146 Cong. Rec. H9041 (2000).

⁴⁸ 146 Cong. Rec. H9045 (2000).

The original VAWA bill authorized \$1.5 billion for programs to protect women and children from domestic abuse. The bill we will vote on today provides \$3.4 billion for the 2001–2005 reauthorization period.

The passage of the Violence Against Women Act in 1994 was one of the greatest accomplishments of the 103rd Congress and the Clinton Administration. Since 1995, VAWA grants have provided a major source of funding for national and local programs to reduce rape, stalking, and domestic violence. The 1994 Act bolstered the prosecution of child abuse, sexual assault, and domestic violence cases; provided services for victims by funding shelters and sexual assault crisis centers; increased resources for law enforcement and persecutors; and created a National Domestic Violence Hotline.”⁴⁹

REP. MORELLA, MD

These two bills form a natural alliance by protecting women around the globe from being abused, raped, bought, sold or forced against their will. We can all celebrate the message being sent to women everywhere when we pass this legislation that women’s minds and bodies are their own. By passing this conference report, we empower millions of women around the world to escape from pain and fear.⁵⁰

REP. NADLER, NY

The Violence Against Women Act] is grouped with part of the sex trafficking act. We all want to put an end to sex trafficking. That is a good provision.⁵¹

SECTION-BY-SECTION SUMMARY – DIVISION B. THE VIOLENCE AGAINST WOMEN ACT OF 2000

(CONGRESSIONAL RECORD –SENATE – OCTOBER 11, 2000 S10195-S10196)
Title V – Battered Immigrant Women

Strengthens and refines the protections for battered immigrant women in the original Violence Against Women Act. Eliminates a number of “catch 22” policies and unintended consequences of subsequent changes in immigration law to ensure that domestic abusers with immigrant victims are brought to justice and that the battered immigrants Congress sought to help in the original Act are able to escape the abuse.⁵²

TITLE V – The Battered Immigrant Women Protection Act of 2000—Section-by-Section Summary

Title V is designed to improve on efforts made in VAWA 1994 to prevent immigration law from being used by an abusive citizen or lawful permanent resident spouse as a tool to prevent an abused immigrant spouse from reporting abuse or leaving the abusive relationship.

⁴⁹ 146 Cong. Rec. H9046 (2000).

⁵⁰ 146 Cong. Rec. H9040 (2000).

⁵¹ 146 Cong. Rec. H9032 (2000).

⁵² 146 Cong. Rec. S10195 (2000).

This could happen because generally speaking, U.S. immigration law gives citizens and lawful permanent residents the right to petition for their spouses to be granted a permanent resident visa, which is the necessary prerequisite for immigration to the United States. In the vast majority of cases, granting the right to seek the visa to the citizen or lawful permanent resident spouse makes sense, since the purpose of family immigration visas is to allow U.S. citizens or lawful permanent residents to live here with their spouses and children. But in the unusual case of the abusive relationship, an abusive citizen or lawful permanent resident can use control over his or her spouse's visa as a means to blackmail and control the spouse. The abusive spouse would do this by withholding a promised visa petition and then threatening to turn the abused spouse in to the immigration authorities if the abused spouse sought to leave the abuser or report the abuse.⁵³

VAWA 1994 changed this by allowing immigrants who demonstrate that they have been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouses to file their own petitions for visas without the cooperation of their abusive spouse. VAWA 1994 also allowed abused spouses placed in removal proceedings to seek "cancellation of removal," a form of discretionary relief from removal available to individuals in unlawful immigration status with strong equities, after three years rather than the seven ordinarily required. Finally, VAWA 1994 granted similar rights to minor children abused by their citizen or lawful permanent resident parent, whose immigration status, like that of the abused spouse, would otherwise be dependent on the abusive parent. VAWA 2000 addresses residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes to immigration law.⁵⁴

Sec 1501. Short Title

Names this title the Battered Immigrant Women Protection Act of 2000.⁵⁵

Sec 1502. Findings and Purpose

Lays out as the purpose of the title building on VAWA 1994's efforts to enable battered immigrant spouses and children to free themselves of abusive relationships and report abuse without fear of immigration law consequences controlled by their abusive citizen or lawful permanent resident spouse or parent.⁵⁶

Sec. 1503. Improved Access to Immigration Protections of the Violence Against Women Act of 1994 for Battered Immigrant Women.

Allows abused spouses and children who have already demonstrated to the INS that they have been the victims of battery or extreme cruelty by their spouse or parent to file their own petition for a lawful permanent resident visa without also having to show they will suffer "extreme hardship" if forced to leave the U.S, a showing that is not required if their citizen or

⁵³ 146 Cong. Rec. S10195 (2000).

⁵⁴ 146 Cong. Rec. S10195 (2000).

⁵⁵ 146 Cong. Rec. S10195 (2000).

⁵⁶ 146 Cong. Rec. S10195 (2000).

lawful permanent resident spouse or parent files the visa petition on their behalf. Eliminates U.S. residency as a prerequisite for a spouse or child of a citizen or lawful permanent resident who has been battered in the U.S. or whose spouse is a member of the uniformed services or a U.S. government employee to file for his or her own visa, since there is no U.S. residency prerequisite for non-battered spouses' or children's visas. Retains current law's special requirement that abused spouses and children filing their own petitions (unlike spouses and children for whom their citizen or lawful permanent resident spouse or parent petitions) demonstrate good moral character, but modifies it to give the Attorney General authority to find good moral character despite certain otherwise disqualifying acts if those acts were connected to the abuse.

Allows a victim of battery or extreme cruelty who believed himself or herself to be a citizen's or lawful permanent resident's spouse and went through a marriage ceremony to file a visa petition as a battered spouse if the marriage was not valid solely on account of the citizen's or lawful permanent resident's bigamy. Allows a battered spouse whose citizen spouse died, whose spouse lost citizenship, whose spouse lost lawful permanent residency, or from whom the battered spouse was divorced to file a visa petition as an abused spouse within two years of the death, loss of citizenship or lawful permanent residency, or divorce, provided that the loss of citizenship, status or divorce was connected to the abuse suffered by the spouse. Allows a battered spouse to naturalize after three years residency as other spouses may do, but without requiring the battered spouse to live in marital union with the abusive spouse during that period.

Allows abused children or children of abused spouses whose petitions were filed when they were minors to maintain their petitions after they attain age 21, as their citizen or lawful permanent resident parent would be entitled to do on their behalf had the original petition been filed during the child's minority, treating the petition as filed on the date of the filing of the original petition for purposes of determining its priority date.⁵⁷

Sec. 1504. Improved Access to Cancellation of Removal and Suspension of Deportation under the Violence Against Women Act of 1994.

Clarifies that with respect to battered immigrants, IIRIRA's rule, enacted in 1996, that provides that with respect to any applicant for cancellation of removal, any absence that exceeds 90 days, or any series of absences that exceed 180 days, interrupts continuous physical presence, does not apply to any absence or portion of an absence connected to the abuse. Makes this change retroactive to date of enactment of IIRIRA. Directs Attorney General to parole children of battered immigrants granted cancellation until their adjustment of status application has been acted on, provided the battered immigrant exercises due diligence in filing such an application.⁵⁸

Sec 1505. Offering Equal Access to Immigration Protections of the Violence Against Women Act of 1994 for All Qualified Battered Immigrant Self-Petitioners.

Grants the Attorney General the authority to waive certain bars to admissibility or grounds of deportability with respect to battered spouses and children. New Attorney General

⁵⁷ 146 Cong. Rec. S10195 (2000).

⁵⁸ 146 Cong. Rec. S10195 (2000).

waiver authority granted (1) for crimes of domestic violence or stalking where the spouse or child was not the primary perpetrator of violence in the relationship, the crime did not result in serious bodily injury, and there was a connection between the crime and the abuse suffered by the spouse or child; (2) for misrepresentations connected with seeking an immigration benefit in cases of extreme hardship to the alien (paralleling the AG's waiver authority for spouses and children petitioned for by their citizens or lawful permanent resident spouse or parent in cases of extreme hardship to the spouse or parent); (3) for crimes of moral turpitude not constituting aggravated felonies where the crime was connected to the abuse (similarly paralleling the AG's waiver authority for spouses and children petitioned for by their spouse or parents); (4) for health related grounds of inadmissibility (also paralleling the AG's waiver authority for spouses and children petitions for by their spouse or parent); and (5) for unlawful presence after a prior immigration violation, if there is a connection between the abuse and the alien's removal, departure, reentry, or attempted reentry. Clarifies that a battered immigrant's use of public benefits specifically made available to battered immigrants in PRWORA does not make the immigrant inadmissible on public charge ground.⁵⁹

Sec. 1506. Restoring Immigration Protections under the Violence Against Women Act of 1994.

Establishes mechanisms paralleling mechanism available to spouses and children petitioned for by their spouse or parent to enable VAWA-qualified battered spouse or child to obtain status as lawful permanent resident in the United States rather than having to go abroad to get a visa.

Addresses problem created in 1996 for battered immigrants' access to cancellation of removal by IIRIRA's new stop-time rule. That rule was aimed at individuals gaming the system to gain access to cancellation of removal. To prevent this, IIRIRA stopped the clock on accruing any time towards continuous physical presence at the time INS initiates removal proceedings against an individual. This section eliminates application of this rule to battered immigrant spouses and children, who if they are sophisticated enough about immigration law and has sufficient freedom of movement to "game the system," presumably would have filed self-petitions, and more likely do not even know that INS has initiated proceedings against them because their abusive spouse or parent has withheld their mail. To implement this change, allows a battered immigrant spouse or child to file a motion to reopen removal proceedings within 1 year of the entry of an order of removal (which deadline may be waived in the Attorney General's discretion if the Attorney General finds extraordinary circumstances or extreme hardship to the alien's child) provided the alien files a complete application to be classified as VAWA-eligible at the time the alien files the re-opening motion.⁶⁰

Sec. 1507. Remediating Problems with Implementation of the Immigration Provisions of the Violence Against Women Act of 1994

Clarifies that Negative changes of immigration status of abuser or divorce after abused spouse and child file petition under VAWA have no effect on status of abused spouse or child. Reclassifies abused spouse or child as spouse or child of citizen if abuser becomes citizen

⁵⁹ 146 Cong. Rec. S10195-96 (2000).

⁶⁰ 146 Cong. Rec. S10196 (2000).

notwithstanding divorce or termination of parental rights (so as not to create incentive for abuse victim to delay leaving abusive situation on account of potential future improved immigration status of abuser). Clarifies that remarriage has no effect on pending VAWA immigration petition.⁶¹

Sec. 1508. Technical Correction to Qualified Alien Definition for Battered Immigrants

Makes technical change of description of battered aliens allowed to access certain public benefits so as to use correct pre-IIRIRA name for equitable relief from deportation/removal (“suspension of deportation” rather than “cancellation of removal”) for pre-IIRIRA cases.⁶²

Sec. 1509. Access to Cuban Adjustment Act for Battered Immigrant Spouses and Children

Allows battered spouses and children to access special immigration benefits available under Cuban Adjustment Act to other spouses and children of Cubans on the basis of the same showing of battery or extreme cruelty they would have to make as VAWA self-petitioners; relates them of Cuban Adjustment Act with showing that they are residing with their spouse/parent.⁶³

Sec. 1510. Access to the Nicaraguan Adjustment and Central American Relief Act for Battered Spouses and Children

Provides access to special immigration benefits under NACARA to battered spouses and children similarly to the way section 509 does with respect to Cuban Adjustment Act.⁶⁴

Sec. 1511. Access to the Haitian Refugee Fairness Act of 1998 for Battered Spouses and Children

Provides access to special immigration benefits under HRIFA to battered spouses and children similarly to the way section 509 does with respect to Cuban Adjustment Act.⁶⁵

Sec. 1512. Access to Services and Legal Representation for Battered Immigrants

Clarifies that Stop grants, Grants to Encourage Arrest, Rural VAWA grants, Civil Legal Assistance grants, and Campus grants can be used to provide assistance to battered immigrants. Allows local battered women’s advocacy organizations, law enforcement or other eligible Stop grants applicants to apply for Stop funding to train INS officers and immigration judges as well as other law enforcement officers on the special needs of battered immigrants.⁶⁶

Sec. 1513. Protection for Certain Crime Victims Including Victims of Crimes Against Women

⁶¹ 146 Cong. Rec. S10196 (2000).

⁶² 146 Cong. Rec. S10196 (2000).

⁶³ 146 Cong. Rec. S10196 (2000).

⁶⁴ 146 Cong. Rec. S10196 (2000).

⁶⁵ 146 Cong. Rec. S10196 (2000).

⁶⁶ 146 Cong. Rec. S10196 (2000).

Creates new nonimmigrant visa for victims of certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime. The crime must involve rape, torture, trafficking, incest, sexual assault, domestic violence, 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, man- slaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, attempt or conspiracy to commit any of the above, or other similar conduct in violation of Federal, State, or local criminal law. Caps visas at 10,000 per fiscal year. Allows Attorney General to adjust these individuals to lawful permanent resident status if the alien has been present for 3 years and the Attorney General determines this is justified on humanitarian grounds, to promote family unity, or is otherwise in the public interest.⁶⁷

VAWA 2000 LEGISLATIVE HISTORY WRITTEN INTO THE STATUTE QUOTES FROM THE STATUE PUBLIC LAW 106-386 OCT. 28, 2000

In VAWA 2000, the statute was drafted to include legislative history in the statute in findings and purpose sections that were an important part of the legislation itself. These sections of VAWA however, do not become part of the U.S. Code. The following include the sections of VAWA and the TVPA discussing the purpose and making findings regarding the Battered Immigrant Protections in VAWA 2000, the creation of the U Visa to protect immigrant crime victims, and the Trafficking Victim’s Protection Act’s findings on human trafficking and the need for the TVPA.

Statutes Legislative History of VAWA 2000’s Battered Immigrant Women Protections

TITLE V—BATTERED IMMIGRANT WOMEN SEC. 1502. FINDINGS AND PURPOSES.

(a) FINDINGS. —Congress finds that—

- (1) The goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;
- (2) Providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser’s control; and

⁶⁷ 146 Cong. Rec. S10196 (2000).

(3) There are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES. —The purposes of this title are.—

(1) To remove barriers to criminal prosecutions of persons who commit act of battery or extreme cruelty against immigrant women and children; and

(2) To offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes.

SEC. 1512. PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING VICTIMS OF CRIMES AGAINST WOMEN.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.

(2) PURPOSE.—

(A) The purpose of this section 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 described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed 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.

(B) 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. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary

legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

Statute’s Legislative History of U Visas

FINDINGS AND PURPOSE

STATUTORY LANGUAGE ON U VISA FINDINGS AND PURPOSE

“SEC. 1502. Findings and Purposes

(a) FINDINGS

Congress finds that (1) the goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships; (2) providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser’s control; and (3) there are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES.—The purposes of this title are—

- (1) to remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and
- (2) to offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes.”⁶⁸

⁶⁸ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a) (OCT. 28, 2000).

Legislative History of T visas and the Trafficking Victims Protection Act

The following section discusses the legislative history of the Trafficking Victim's Protection Act (TVPA). It begins with quoting the Congressional Findings that discuss the purpose, goals, and congressional findings supporting passage of the TVPA. The findings contained in the TVPA statute are followed by quotes from statements by members of Congress these statements start off with statements discussing these findings in more detail. Topics addressed include Modern day slavery, international cooperation on curbing human trafficking and helping victims, trafficking case examples and the role of organized crime in human trafficking.

This section also contains the statutory text of the purpose of the TVPA followed by statements by members of Congress regarding the TVPA's purpose. Topics covered include the bipartisan development of the TVPA, the importance of services and support for victims as well as and in addition to holding traffickers accountable for their crimes.

FINDINGS:⁶⁹

Congress finds that:

- (1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.
- (2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.
- (3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.
- (4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, salesclerks, or models. Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

⁶⁹ Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

- (5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.
- (6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.
- (7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.
- (8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.
- (9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.
- (10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.
- (11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.
- (12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations.
- (13) Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion. In *United States v. Kozminski*, 487 U.S. 931 (1988), the Supreme Court found that section 1584 of title 18, should be narrowly interpreted, absent a definition of involuntary servitude by Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.

- (14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.
- (15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.
- (16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.
- (17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.
- (18) Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.
- (19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.
- (20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.
- (21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.
- (22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.
- (23) The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international

concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe.

- (24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.

Trafficking Victim's Protection Act Legislative History – Statements by Members of Congress

History and Purpose

SEN. SANTORUM, PA

- *One of the most disturbing human rights violations of our time is trafficking of human beings, particularly that of women and children, for purposes of sexual exploitation and forced labor. Every year, the trafficking of human beings for the sex trade affects hundreds of thousands of women throughout the world. Women and children whose lives have been disrupted by economic collapse, civil wars, or fundamental changes in political geography have fallen prey to traffickers. According to the Department of State, approximately 1-2 million women and girls are trafficked annually around the world.⁷⁰*

REP. SMITH, NJ

- *Each year as many as two million innocent victims—of whom the overwhelming majority are women and children—are brought by force and/or fraud into the international commercial sex industry. Efforts by the United States government, international organizations, and others to stop this brutal practice have thus far proved unsuccessful.*

⁷⁰ 146 Cong. Rec. S10199 (2000).

*Part of the problem is that current laws and law enforcement strategies—in the United States as in other nations—often punish victims more than they punish the perpetrators.*⁷¹

REP. PITTS, PA

- *‘Sexual trafficking is a huge problem that urgently needs to be addressed. To conceptualize how immense the problem is, imagine a city the size of Minneapolis or St. Louis, made up entirely of women and children. Imagine that those women and children are kidnapped, raped, and forced into prostitution. Imagine it happening every year. Then stop imagining, because it is happening now and in those numbers.’ (quoting Dr. Laura Lederer)*⁷²

REP. PRYCE, OH

- *Victims of trafficking are first acquired in a number of different ways. Some are forcibly kidnapped and taken out of their countries. Others are deceived with offers of good work or a better life. But no matter how they are taken, trafficking victims are universally subject to cruel mental and physical abuse, including beatings, rape, starvation, forced drug use, confinement and seclusion. Many victims suffer mental breakdowns and are exposed to sexually transmitted diseases. Ultimately, many cannot survive these harsh conditions.*⁷³

REP. SLAUGHTER, NY

- *This bill recognizes the fact that trafficking is not exclusively a crime of sexual exploitation. Taken independently, this action is an egregious practice in and of itself. It is also important, however, to be aware that people are being illegally smuggled across borders to work in sweatshops, domestic servitude or other slavery-like conditions.*⁷⁴

REP. GEJDENSON, CT

- *One of the most shocking aspects of this problem is that our laws often punish the victims, not the international criminal syndicates perpetrating these abuses. We need to reverse this situation.*⁷⁵

REP. MILLENDER-MCDONALD, CA

- *Trafficking is a grave human rights, economic, migration, and transnational crimes issue.*⁷⁶

⁷¹ 146 Cong. Rec. H9045 (2000).

⁷² 146 Cong. Rec. H9043 (2000).

⁷³ 146 Cong. Rec. H9030 (2000).

⁷⁴ 146 Cong. Rec. H9030 (2000).

⁷⁵ 146 Cong. Rec. H9039 (2000).

⁷⁶ 146 Cong. Rec. H9044 (2000).

SEN. WELLSTONE, MN

- *“Our Government estimates that 2 million people are trafficked each year. Of those, 700,000 women and children, primarily young girls, are trafficked from poor countries to rich countries and sold into slavery, raped, locked up, physically and psychologically abused with food and health care withheld. Of those, as many as 50,000 immigrants are brought into the United States each year, and they wind up trapped in brothels, sweatshops, and other types of forced labor, abused and too fearful to seek help.”*⁷⁷
- *“Seeking financial security, many innocent persons are lured by traffickers’ false promises of a better life and lucrative jobs abroad. Seeking this better life, they are lured by local advertisements for good jobs in foreign countries at wages they could never imagine at home. However, when they arrive, these victims are often stripped their passports, held against their will, some in slave-like conditions, in the year 2000.”*⁷⁸
- *“This legislation aims to prevent trafficking in persons, provide protection and assistance to those who have been trafficked, and strengthen prosecution and punishment for those who are responsible for the trafficking. It is designed to help Federal law enforcement officials expand anti-trafficking efforts here and abroad, to expand domestic anti-trafficking and victim assistance efforts, and to assist nongovernment organizations, governments and others worldwide, who are providing critical assistance to victims of trafficking. It addresses the underlying problems which fuel the trafficking industry by promoting public anti-trafficking awareness campaigns and initiatives in other countries to enhance economic opportunity, such as microcredit lending programs and skills training, for those who are most susceptible to trafficking, and have an outreach so women and girls as young as 10 and 11 know what they might be getting into.”*⁷⁹
- *“It also increases protections and services for trafficking victims by establishing programs designed to assist in the safe reintegration of victims into their communities and ensure that such programs address both the physical and mental health needs of trafficking victims.”*⁸⁰

Modern Slavery

REP. SMITH, NJ

- *Most of our nation’s citizens may still believe that the trafficking of human beings ended with the Fourteenth Amendment to our Nation’s Constitution, which outlawed the practice of slavery.*⁸¹

⁷⁷ 146 Cong. Rec. S10167 (2000).

⁷⁸ 16 Cong. Rec. S10167 (2000).

⁷⁹ 146 Cong. Rec. S10167 (2000).

⁸⁰ 146 Cong. Rec. S10168 (2000).

⁸¹ 146 Cong. Rec. H9034 (2000).

REP. HYDE, IL

- *The . . . bill . . . addresses one of the enduring and pernicious forms of slavery that still blights our time. While Lincoln may have freed the slaves in America, there are those today who engage in other forms of slavery on persons of many colors. Throughout the world there are criminals who smuggle persons into this country, principally women and children, in order to force them into sexual slavery, or to work in sweatshops for years in order to pay off the exorbitant fees charged by their traffickers for their illegal entry.*⁸²

SEN. BROWNBACK,

- *“Irina always assumed that her beauty would somehow rescue her from the poverty and hopelessness of village life. A few months ago, after answering a vague ad in a small Ukrainian newspaper, she slipped off a small tour boat, when it out in at Haifa, hoping to make a bundle dancing naked on tops of tables. She was 21, self-assured, and glad to be out of Ukraine. Israel offered a new world, and for a week or two everything seemed possible. Then, one morning, she was driven to a brothel, where her boss burned her passport before her eyes. “I own you,” she recalled his saying. “You are my property and you will work until you earn your way out. Don’t try to leave. You have no papers and you don’t speak Hebrew. You will be arrested and deported. Then we will get you and bring you back.”*⁸³

International Cooperation

SEN. HUTCHINSON, AR

- *It is a sad consequence of globalization that crime has become more international in its scope and reach. These seedy sex industries know no boundaries. Traffickers use international borders to trap their victims in a foreign land without passports, without the ability to communicate in the local language, and without hope. But, just as trafficking as become global, so must our efforts to fight trafficking.*⁸⁴

SEN. ASHCROFT, MO

- *Unfortunately, existing laws in the United States and other countries are inadequate to deter trafficking, primarily because they do not reflect the gravity of the offenses involved. Where countries do have laws against sexual trafficking, there is too often no enforcement.*⁸⁵

REP. MILLENDER-MCDONALD, CA

- *H.R. 3244 engages the U.S. government with foreign countries to meet minimum standards for the elimination of trafficking and establishes a policy not to provide non-*

⁸² 146 Cong. Rec. H9038 (2000).

⁸³ 146 Cong. Rec. S10164 (2000).

⁸⁴ 146 Cong. Rec. S10217 (2000).

⁸⁵ 146 Cong. Rec. S10221 (2000).

*humanitarian foreign assistance to countries which do not meet these minimum standards.*⁸⁶

SEN. UDALL, CO

- *Worldwide, the conference report takes important steps to make the United States a full partner in the international effort to curb exploitation of women who are the victims of the international sex trade. This is very important because recent favorable international developments—including the breakup of the Soviet Union and greater freedom of travel—have also had the effect of making it easier for this exploitation to occur.*⁸⁷

REP. FOLEY, FL

- *. . . [R]egrettably, there is not enough internationally being done in other countries to make certain that they are enforcing the laws as well. So this goes to the heart of both domestic combatting of these issues, as well as working with our foreign colleagues, foreign governments, in order to meet a higher standard, an international standard for elimination of the trafficking of individuals. So I commend my colleagues to vote for this entirety of this report. I think it is a solid bill.*⁸⁸

SEN. HELMS, NC

- *Significantly, the legislation calls on the executive branch to identify clearly the nations where trafficking is the most prevalent. For regimes that know there is a problem within their borders, but refuse to do anything about it, there will be consequences. No country has a right to foreign aid. The worst trafficking nations must have such U.S. aid cut off. And if they don't receive U.S. bilateral aid, then their officials will be barred from coming onto American soil. Our principles demand these significant and important symbolic steps. Some may complain that this is another "sanction" in the alleged proliferation of sanctions Congress passes. But denying taxpayer-supported foreign aid is not a "sanction." Foreign aid is not an entitlement.*⁸⁹

REP. MCCARTHY, MO

- *This lifesaving legislation for women and girls in the United States is a strong, positive example to all nations around the world that violence against women and girls is intolerable and must end.*⁹⁰

⁸⁶ 146 Cong. Rec. H9044 (2000).

⁸⁷ 146 Cong. Rec. H9046 (2000).

⁸⁸ 146 Cong. Rec. H9032-33 (2000).

⁸⁹ 146 Cong. Rec. S10212 (2000).

⁹⁰ 146 Cong. Rec. H9046 (2000).

REP. GEJDENSON, CT

- *By our action, we can encourage other countries to do more, and several countries have already indicated that they are looking at U.S. legislation as a model for their own response.*⁹¹

REP. LOWEY, NY

- *This legislation devotes critical funds to helping foreign governments fight trafficking and assist their victims, and pledges the full force of U.S. law to stopping this practice here at home.*⁹²

Cases of Trafficking

REP. GEJDENSON, CT

- *According to human rights organizations, in a typical case, a woman is recruited with promises of a good job in another country or province, and lacking better options at home, she agrees to migrate. There are also cases in which women are lured with false marriage offers or vacation invitations, in which children are bartered by their parents for a cash advance and/or promises of future earnings, or in which victims are abducted outright. Next an agent makes arrangements for the woman's travel and job placement, obtaining the necessary travel documentation, contacting employers or job brokers, and hiring an escort to accompany the woman on her trip. Once the arrangements have been made, the woman is escorted to her destination and delivered to an employer or to another intermediary who brokers conditions of her employment. Many women learn they have been deceived about the nature of the work they will do, most have been lied to about the financial arrangements and conditions of their employment, and all find themselves in coercive and abusive situations from which escape is both difficult and dangerous.*⁹³
- *In New York, hearing impaired men and women were recruited from Mexico and brutalized into selling trinkets on the street. In the Carolinas, teenage girls were held in slavery and forced to work as prostitutes. In Chicago, traffickers met Russian and Latvian women at the airport, seized their passports and return tickets, beat them and threatened to kill their families if they refused to dance nude in a nightclub. In Florida, traffickers used alcohol and drugs to lure field workers to isolated locations and hold them under cruel conditions of debt bondage. In New Jersey, a Bangladeshi woman was forced to work 18 to 20 hours a day, seven days a week, and after receiving no pay for 3 months, was forced to leave upon asking for her back pay and given only for her entire work \$370, amounting to 25 cents an hour. She was also forced to shovel snow in the sandals she arrived in, and when she got sick, they refused to take her to a doctor. They told her not to go out on her own, that the police were surely waiting to arrest her. In*

⁹¹ 146 Cong. Rec. H9039 (2000).

⁹² 146 Cong. Rec. H9043 (2000).

⁹³ 146 Cong. Rec. H9039 (2000).

California, a Thai boy who had contracted AIDS through his prostitute mother was used as a decoy to try to traffic a woman into the United States, trying to make immigration officials believe that the two adults accompanying him were his parents. Right here in Washington, D.C., we heard cases of a woman who was paid virtually nothing and then sexually abused and refused any medical treatment.⁹⁴

REP. MILLENDER-MCDONALD, CA

- *While many of us are prospering in the global economy, still others are exploited by traffickers seeking to capitalize on foreign labor markets, the disintegrating social networks, and lower status of women. Victims are lured into trafficking networks through false promises of jobs, good working conditions, high pay and foreign adventure. Yet, slave-like conditions in jobs as domestic workers, factory workers, sex workers, nannies, waitresses, and service workers mire trafficked women and children at the bottom, lock them into the most insecure occupations, and leave victims open to ongoing exploitation and isolation.⁹⁵*

REP. SMITH, NJ

- *When a sex-for-hire establishment is raided, the women (and sometimes children) in the brothel are typically deported if they are not citizens of the country in which the establishment is located—without reference to whether their participation was voluntary or involuntary, and without reference to whether they will face retribution or other serious harm upon return. This not only inflicts further cruelty on the victims, it also leave nobody to testify against the real criminals, and frightens other victims from coming forward.⁹⁶*

SEN. HUTCHINSON, AR

- *Inge had hoped for a better life when she left her home in Veracruz, Mexico—for legitimate work that would pay her well. She was hoping to earn money in a restaurant or a store and earn money to bring back to her family. She never expected a smuggling debt of \$2,200. She never expected to be beaten and raped until she agreed to have sex with 30 men a day. She never expected to be a slave—especially not in the United States—not in Florida. So she got drunk before the men arrived. And when her shift was done, she drank some more. Inge would soak herself in a bathtub filled with hot water—drinking, crying, smoking one cigarette after another—trying any way she could to dull the pain. And she would go to sleep drunk or pass out—until the next day when she had to do it all again. Unfortunately, Inge’s case is not unique. It is a horrific story played out every day in countries all over the world.⁹⁷*

SEN. BROWNBACK, KS

⁹⁴ 146 Cong. Rec. H9039 (2000).

⁹⁵ 146 Cong. Rec. H9044 (2000).

⁹⁶ 146 Cong. Rec. H9045 (2000).

⁹⁷ 146 Cong. Rec. S10217 (2000).

- *I can still see the girls I met in Nepal who were trafficked at 11 and 12 years of age, coming back to their home country and to their villages, 16, 17 years of age, in terrible condition, having been subjected to sex trafficking, beaten by brothel owners, in some cases locked up at night, raped repeatedly, and told, “You have to work this off; I own you,” and then released to go home when they contract horrible diseases. In not all cases that works that way, but in too many cases it does work that way.*⁹⁸

SEN. WELLSTONE,

- *“‘I answered an ad to be a waitress,’ said Tamara, 19, a Ukrainian prostitute in a massage parlor near Tel Aviv’s old Central Bus Station, a Russian-language ghetto for the cheapest brothels. ‘I’m not sure I would go back now if I could. What would I do there, stand on a bread line or work in a factory for no wages?’ Tamara, like all other such women interviewed for this article, asked that her full name not be published. She has classic Slavic features, with long blond hair and deep green eyes. She turned several potential customers away so she could speak at length with a reporter. She was willing to talk as long as her boss was out. She said she was not watched closely while she remained within the garish confines of the ‘health club.’ ‘I didn’t plan to do this,’ she said, looking sourly at the rich red walls and leopard prints around her. ‘They took my passport, so I don’t have much choice. But they do give me money. And believe me, it’s better than anything I could ever get at home.’”*⁹⁹

REP. LOWEY, NY

- *[L]ast March I was honored to be in Southeast Asia. We heard the terrifying stories of trafficking victims and spoke with dedicated individuals who have devoted their lives to helping those women. Today, we have the opportunity to assure these women and children that they are not alone; that the international community recognizes their struggle and is committed to putting an end to this barbaric practice.*¹⁰⁰

REP. MILLENDER-MCDONALD, CA

- *Approximately 50,000—100,000 women and children are trafficked into the United States each year primarily from Southeast Asia and the former Soviet Union.*¹⁰¹

Organized Crime

REP. MCCARTHY, MO

- *Currently, trafficking is the third largest source of profits for organized crime. America has a responsibility to address this problem because over 50,000 women are illegally trafficked into our country each year. Through prevention and immigration services, this*

⁹⁸ 146 Cong. Rec. S10211 (2000).

⁹⁹ 146 Cong. Rec. S10169 (2000).

¹⁰⁰ 146 Cong. Rec. H9043 (2000).

¹⁰¹ 146 Cong. Rec. H9044 (2000).

*measure will aid these women who have been forcibly removed from their homes and shipped overseas.*¹⁰²

REP. PRYCE, OH

- *This is a major criminal enterprise generating billions of dollars annually. Trafficking is now considered the third largest source of profits for organized crime, behind only drugs and guns.*¹⁰³

REP. SMITH, NJ

- *. . . [W]e all know now that especially with the breakup of the Soviet Union and the ascendancy of the Mob, organized crime in Moscow, in the Ukraine, and all around the world, is trafficking in women and children as never before. The estimates are as high as 2 million individuals, mostly women, who are being trafficked every year. About 50,000 are coming into the United States, and many of those are forced into prostitution.*¹⁰⁴
- *We have had three hearings in my subcommittee on this issue, and we heard from the victims themselves, who talked about how even the NGOs . . . are under tremendous duress by the Mafia, as well as very much underfunded.*¹⁰⁵

SEN. HUTCHINSON, AR

- *These women and children are forced into the sex industry or forced into harsh labor, often by well-organized criminal networks. Traffickers disproportionately target women and girls—all this for money.*¹⁰⁶

LEGISLATIVE PURPOSE OF THE TRAFFICKING VICTIM'S PROTECTION ACT AND STATEMENTS BY MEMBERS:¹⁰⁷

The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

SEN. HUTCHINSON, AR

- *Trafficking of women and children is more than a crime—it is an assault on freedom. It is an assault on that founding principle of our nation, “. . . that all men are created equal, that they are endowed by their Creator with certain unalienable rights. . . .” It is an assault on the very dignity of humanity. Yet the protections we have against trafficking are inadequate. That is why the Trafficking Victims Protection Act is so vital.*¹⁰⁸

¹⁰² 146 Cong. Rec. H9046 (2000).

¹⁰³ 146 Cong. Rec. H9030 (2000).

¹⁰⁴ 146 Cong. Rec. H9033 (2000).

¹⁰⁵ 146 Cong. Rec. H9033 (2000).

¹⁰⁶ 146 Cong. Rec. S10217 (2000).

¹⁰⁷ Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

¹⁰⁸ 146 Cong. Rec. S10217 (2000).

SEN. BROWNBAC, KS

- *This is an important day for women and children subject to violence, both domestically and abroad. It is an important day that this body is going to follow the House and put in place needed protections for people, women and children, subject to this violence, both domestically and abroad. It is an important day for those who have worked as advocacy groups and defenders of the defenseless, including people trafficked across international borders, with their papers burned and told: You owe.*¹⁰⁹
- *If I can encourage you anymore, I say pull out a picture from your billfold, pull out a picture of a child or grandchild. Those are the ages, somewhere between 9 and 15, who are the most frequently trafficked victims. Young ages.*¹¹⁰

REP. SMITH, NJ

- *The central principle behind the Trafficking Victims Protection Act is that criminals who knowingly operate enterprises that profit from sex acts involving persons who have been brought across international boundaries for such purposes by force or fraud, or who force human beings into slavery, should receive punishment commensurate with the penalties for kidnapping and forcible rape. This would be not only a just punishment, but also a powerful deterrent.*¹¹¹
- *We want all of the world's governments, especially those that are countries of origination, to do all that they can to mitigate and hopefully end this egregious practice.*¹¹²

REP. PAYNE, NJ

- *This act will work to combat trafficking in persons, especially into the sex trade, slavery and involuntary servitude in the United States and in other countries; it also enacts tough criminal laws against buying, selling, either by force, fraud or coercion, or where the victim is a minor. It authorizes the rehabilitation and shelter programs; it authorizes law enforcement assistance to help foreign governments fight trafficking; and encourages the Secretary of State to produce an annual list of foreign countries who do not meet minimum international standards to eliminate trafficking. This has grown tremendously. Some report it at least \$7 billion per year, second only to drug and international arms trade. The victims are young people who have no hope.*¹¹³

SEN. ASHCROFT, MO

- *It is tragic that as we stand on the brink of the 21st Century the world is still haunted by the practice of international trafficking of women and children for sex, forced labor and*

¹⁰⁹ 146 Cong. Rec. S10211 (2000).

¹¹⁰ 146 Cong. Rec. S10212 (2000).

¹¹¹ 146 Cong. Rec. H9045 (2000).

¹¹² 146 Cong. Rec. H9033 (2000).

¹¹³ 146 Cong. Rec. H9043 (2000).

*for other purposes that violate basic human rights. The frequency of these practices is frightening.*¹¹⁴

REP. PELOSI, CA

- *The Sex Trafficking Victims Protection Act will help end trafficking—a terrible modern version of slavery—that rapes, starves, physically brutalizes its victims, ultimately victimizing all women. Since many victims residing in the U.S. lack U.S. citizenship or appropriate documentation, existing U.S. laws are inadequate to protect these victims. This bill seeks to end trafficking and ensure traffickers are held accountable for their crimes. (Pelosi, CA)*¹¹⁵

REP. HYDE, IL

- *Twelve years ago, the Supreme Court held that our existing anti-slavery statutes only prohibited the use of force or the abuse of the legal process to force a person into involuntary servitude. But the sad fact is that those who traffic in human beings today also use deceptive schemes and other lies, together with threats of force to family members in a home country, to coerce the victim into labor . . . it will fill another gap in the law by punishing, for the first time, those who traffic in human beings in order to provide the supply of labor to those who will enslave them once they arrive on our shores. The legislation will also substantially increase the penalties for the existing involuntary servitude laws already on the books.*¹¹⁶
- *This conference report will prevent and punish sex trafficking and other forms of trafficking in human beings. As such, it is another step toward the full and complete enforcement of the anti-slavery amendments to our Constitution.*¹¹⁷

REP. PRYCE, OH

- *This legislation combats the trafficking of persons into the sex trade, slavery, and slavery-like conditions in the United States and many other countries around the world. Through prevent, prosecution and enforcement against traffickers, as well as protection and assistance for victims of trafficking, this important legislation fairly allocates resources, modifies existing law, and increases international cooperation to decrease the global trade of men, women, and children.*¹¹⁸
- *H.R. 3244 works to prevent trafficking through measures to increase awareness and enhance economic opportunity for potential victims of trafficking as a method to deter them from becoming victims in the first place. Further, this legislation urges countries to prohibit and punish severe forms of trafficking and establishes minimum standards*

¹¹⁴ 146 Cong. Rec. S10221 (2000).

¹¹⁵ 146 Cong. Rec. H9041 (2000).

¹¹⁶ 146 Cong. Rec. H9038 (2000).

¹¹⁷ 146 Cong. Rec. H9038 (2000).

¹¹⁸ 146 Cong. Rec. H9030 (2000).

*applicable to countries that have a significant trafficking problem and assistance for programs and activities designed to meet these standards.*¹¹⁹

- *For those who are unfortunate enough to have been trafficking victims, the legislation establishes programs and initiatives to assist in their safe integration, reintegration, or resettlement. For victims in the United States, the bill provides protection while in Federal custody and amends current law to grant non-immigrant visas to victims who would face a significant possibility of retribution or other harm if they were forced to leave. In addition, we make those funds seized from traffickers available for victims' restitution and victims' assistance programs.*¹²⁰

SEN. HELMS, NC

- *This conference report is a solid and effective measure to help the victims of violence and abuse, the kind of abuse which is nothing short of evil. Those victims are most often women and children, and this legislation goes a long way to protect them.*¹²¹
- *[T]his conference report is a splendid example of Congress reasserting its moral underpinning in U.S. foreign policy. It will effectively combat the disgrace of women and children being smuggled, bought and sold as pathetic commodities—most often for the human beasts who thrive on prostitution.*¹²²

REP. MILLENDER-MCDONALD, CA

- *In our county, where we have fought to secure women rights for nearly a century, we too are plagued by these terrible practices. Women and girls suffer extreme physical and mental abuse including rape, torture, starvation, imprisonment and sometimes death. Women and children trafficked in the sex industry are exposed to deadly disease including HIV and AIDS.*¹²³
- *H.R. 3244 will permit the U.S. government to extend our efforts to combat trafficking in women and children and ensure a just and effective punishment of traffickers and protect their victims.*¹²⁴

REP. LEE, CA

- *Women and children are depending on passage of this important provision within this bill to help stop violent crimes too often committed against them. H.R. 3244 addresses the devastating problems of international sex trafficking, sexual predators, violence against women and much more.*¹²⁵

¹¹⁹ 146 Cong. Rec. H9030 (2000).

¹²⁰ 146 Cong. Rec. H9030 (2000).

¹²¹ 146 Cong. Rec. S10212 (2000).

¹²² 146 Cong. Rec. S10212 (2000).

¹²³ 146 Cong. Rec. H9044 (2000).

¹²⁴ 146 Cong. Rec. H9044 (2000).

¹²⁵ 146 Cong. Rec. H9040 (2000).

REP. SLAUGHTER, NY

- *H.R. 3244 sets forth policies not only to monitor but to eliminate trafficking here in the United States and abroad. More importantly, it does so in a way that punishes the true perpetrators, the traffickers themselves, while at the same time taking the necessary steps to protect the victims of this heinous crime. Finally, it uses our Nation's considerable influence throughout the world to put pressure on other nations to adopt policies that will hopefully lead to an end [to] this abhorrent practice.*¹²⁶

REP. GEJDENSON, CT

- *It is simply intolerable that as we begin the 21st century, human beings are being trafficked into modern day slavery, including thousands of women and children trafficked into the United States each year.*¹²⁷

REP. MALONEY, NY

- *Attacking the sex trafficking industry is an important step in the continued fight for women's rights and freedom around the world.*¹²⁸

REP. SLOUGHTER, NY

- *[D]eveloping this initiative has been a long and arduous process. At the beginning of this endeavor many of the groups involved had different approaches to defining and dealing with this issue. In addition, we also had to deal with a State Department that was less than cooperative when dealing with the Congress. Nevertheless, we are here today because this is an issue that is important enough to cross both partisan and personality divides.*¹²⁹

REP. FOLEY, FL

- *. . . [T]he Trafficking Victims Protection Act, it is again a very important provision of the bill. I think if people read through the bill, they would not use words like "foolish" or "political sound bites," but recognize these are indeed very, very important issues.*¹³⁰

Bipartisan Development

REP. GEJDENSON, CT

- *At so many junctures over the past months, the bill appeared headed towards the very full dustbin on the 106th Congress, but with tremendous bipartisan work both in this House*

¹²⁶ 146 Cong. Rec. H9030 (2000).

¹²⁷ 146 Cong. Rec. H9039 (2000).

¹²⁸ 146 Cong. Rec. H9044 (2000).

¹²⁹ 146 Cong. Rec. H9030 (2000).

¹³⁰ 146 Cong. Rec. H9032 (2000).

*and in the other body, I am happy to report that we are reporting a good bill to the house of Representatives.*¹³¹

- *Now, the Clinton Administration is negotiating an international protocol to end trafficking in human beings, and the Congress is doing its part by passing comprehensive legislation. A broad coalition from across the political and ideological spectrum helped move this issue to the top of the national agenda.*¹³²

REP. SMITH, NJ

- *H.R. 3244 has attracted such broad support not only because it is pro-woman, pro-child, pro-human rights, pro-family values, and anti-crime, but that also addresses a problem that cries out for a solution.*¹³³
- *. . . [T]his is the result of an enormous amount of bipartisanship.*¹³⁴
- *Our legislation . . . has been very bipartisan. It throws the book at those who would commit these heinous crimes and make money off the exploitation of women and children.*¹³⁵

REP. GILMAN, NY

- *Although the administration initially opposed the legislation, I am pleased they have now considered their position and ultimately came to recognize the necessity for this measure.*¹³⁶

TRAFFICKING BILL VICTIM PROTECTIONS INCLUDING T VISAS

REP. PITTS, PA

- *As Americans, we have always worked for justice and freedom in our borders and worldwide, and that is what this bill is all about; justice through criminal penalties and victim restitution for those who would traffic women and children, and freedom for the victims as the United States takes the lead in fighting to end this criminal business around the world.*¹³⁷

SEN. SANTORUM, PA

- *The bill specifically defines “trafficking” as the use of deception, coercion, debt bondage, the threat of force, or the abuse of authority to recruit, transport, purchase,*

¹³¹ 146 Cong. Rec. H9039 (2000).

¹³² 146 Cong. Rec. H9039 (2000).

¹³³ 146 Cong. Rec. H9045 (2000).

¹³⁴ 146 Cong. Rec. H9033 (2000).

¹³⁵ 146 Cong. Rec. H9033 (2000).

¹³⁶ 146 Cong. Rec. H9037 (2000).

¹³⁷ 146 Cong. Rec. H9043 (2000).

*sell, or harbor a person for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude or slavery-like conditions.*¹³⁸

SEN. HUTCHINSON, AR

- *This legislation takes several approaches to address this human rights abuse. It requires expanded reporting by the State Department in its annual human rights report on trafficking, including an assessment and analysis of international trafficking patterns and the steps foreign governments have taken to combat trafficking. It also requires the President to establish an interagency task force to monitor and combat trafficking.*¹³⁹
- *The bill also creates protections and assistance for victims of. Trafficking, including a new nonimmigrant “T” visa. At the same time, punishments for traffickers are increased through asset seizure and greater criminal penalties. All of these provisions are important for strengthening U.S. and foreign law and for combating trafficking. I strongly support them*¹⁴⁰
- *As a means of deterring trafficking, the President, through the Agency for International Development (AID) must establish initiatives, such as microlending programs to enhance economic opportunities for people who might be deceived by traffickers’ promises of lucrative jobs. In addition, this legislation establishes certain minimum standards for combating trafficking and authorizes funding through AID and other sources to assist countries to meet these standards. The President can take other punitive measures against countries that fail to meet these standards.*¹⁴¹

REP. MALONEY, NY

- *[B]y establishing criminal and civil penalties for traffickers this bill punishes traffickers for profiting from the victimization of women. In addition, it authorizes assistance, through non-governmental organizations to the native countries of sex trafficked victims to help the victims and to take steps to stop the industry.*¹⁴²
- *The International Sexual Trafficking Bill is important because not only does it take steps to eliminate the sex trafficking industry by punishing the predators that exploit women around the world, but it also takes steps to protect the victims of trafficking. The bill sets forth the minimum international standards for the elimination of sex trafficking. It establishes criminal and civil penalties. And it does many other things.*¹⁴³

¹³⁸ 146 Cong. Rec. S10199 (2000).

¹³⁹ 146 Cong. Rec. S10217 (2000).

¹⁴⁰ 146 Cong. Rec. S10217 (2000).

¹⁴¹ 146 Cong. Rec. S10217 (2000).

¹⁴² 146 Cong. Rec. H9044 (2000).

¹⁴³ 146 Cong. Rec. H9044 (2000).

REP. MILLENDER-MCDONALD, CA

- *[T]his bill targets individuals who are known to traffic in persons. The Secretary of State is instructed to establish a list of such persons to identify and sanction such persons who are significant traffickers in persons. The Attorney General is empowered to strengthen the prosecution and punishment of traffickers.*¹⁴⁴
- *H.R. 3244 will help create economic alternatives to deter women from traffickers by providing them clear choices to improve their economic conditions.*¹⁴⁵

REP. SMITH, NJ

- *. . . [T]he logical corollary of this principle is that we need to treat victims of these terrible crimes as victims, who desperately need our help and protection. The bill implements these principles by toughening up enforcement and by providing protection and assistance for victims.*¹⁴⁶
- *[T]he life imprisonment aspect to it, the protection for the women themselves so they are not put on the next plane and sent back to Kiev or St. Petersburg or anywhere else where they might be in danger is very important. We try to put sandbags of protection around them and to say we will help you, we will give you a hand and assistance, and that is what this legislation does.*¹⁴⁷

REP. HYDE, IL

- *[I]t includes a number of important, bi-partisan pieces of legislation that, together, advance the cause of justice for crime victims and truly offer the prospect of improving public safety.*¹⁴⁸

REP. GILMAN, NY

- *The conference report on this measure contains a number of provisions designed to make certain that our government uses its influence around the world to stop this trafficking of human beings. In addition, it enhances some protections on the U.S. law for victims of trafficking in our country.*¹⁴⁹

REP. LOFGREN, CA

- *I think the provision of visas for those who are fleeing from their oppressors, whether it be sweatshop or sexual abuse, is extremely important.*¹⁵⁰

¹⁴⁴ 146 Cong. Rec. H9044 (2000).

¹⁴⁵ 146 Cong. Rec. H9044 (2000).

¹⁴⁶ 106 Cong. Rec. H9045 (2000).

¹⁴⁷ 146 Cong. Rec. H9033 (2000).

¹⁴⁸ 146 Cong. Rec. H9038 (2000).

¹⁴⁹ 146 Cong. Rec. H9037 (2000).

¹⁵⁰ 146 Cong. Rec. H9033 (2000).

Violence Against Women Act 2005

This next section contains the legislative history of VAWA 2005 including amendments and improvements to VAWA self-petitioning, battered spouse waivers, U Visas and T Visas.

HOUSE – CONGRESSIONAL RECORD

EXTENSIONS OF REMARKS – DECEMBER 18, 2005

- VAWA 2005 created the U and T Visas, and extended other protections for battered immigrant victims.

REP. CONYERS, MI

- *“I wanted to clarify for the record that VAWA 2005 contains language in Sections 801, 803, 804, 813 and 832 that are designed to amend sections of the Immigration and Nationality Act (INA) to reflect the current delegation of authority and reassignment of immigration functions from the Department of Justice (DOJ) to the Department of Homeland Security (DHS). When DOJ and DHS are cited as having shared authority under this Act, that shared authority should be limited to instances in which DHS is making an immigration determination in a case in which DOJ has an active federal investigation or prosecution.”¹⁵¹*
- *“I want to emphasize the importance of the fact that the law assures that adjudication of all forms of immigration relief related to domestic violence, sexual assault, trafficking or victims of violent crime continue to be adjudicated by the specially trained VAWA unit.”¹⁵²*
- *“I feel it is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”¹⁵³*

LEGISLATIVE HISTORY HOUSE JUDICIARY COMMITTEE REPORT¹⁵⁴

The legislative history of the protections for immigrant victims that were contained in VAWA 2005 are reported in two separate places. The House Judiciary Committee Report that accompanied the passage of VAWA 2005 in the house contains a detailed description of the history and purpose of the immigration protections contained in VAWA 2005. Some of the provisions included in the House bill, however, were not included in the final bill and the bill that emerged from conference and was signed into law contained some provisions that were not

¹⁵¹ 151 Cong. Rec. E2605 (2005); H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 114-118, 123, 125, 126.

¹⁵² 151 Cong. Rec. E2606 (2005); H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁵³ 151 Cong. Rec. E2607 (2005).

¹⁵⁴ 146 CONG. REC. H9045 (2000) at 114-126

included in the House bill.

Thus, the legislative history of VAWA 2005's immigration protections are made of two separate reports that are both included here.¹⁵⁵ The first section below contains the text of the House Judiciary Committee Report. This is followed by John Conyers' Extension of Remarks that were reported in the Congressional Record accompanying the conference report and passage of VAWA 2005. The Conyers Extension of Remarks includes much of the original language from the House Judiciary Report amended to reflect the section numbers and modification that were part of the final bill. At the end of the Conyers' Extension or Remarks, Mr. Conyers included a chart that tracks which section numbers in the final bill incorporated which section numbers of the House passed bill.

- *Section 900. Short Title of Title; References to VAWA-2000; Regulations:*¹⁵⁶
 - This section requires that regulations implementing both this Act (including materials and dissemination under section 922) and the Act reauthorizing the Violence Against Women Act in 2000 ("VAWA 2000"), be issued within 180 days of this Act's enactment. In applying such regulations, in the case of petitions or applications affected by the changes made by the Acts, there shall be no requirement to submit an additional petition, application, or certification from a law enforcement agency with the date of the application for interim relief establishing the priority date of counting time towards adjustment of status. However, the Department of Homeland Security may request additional evidence be submitted when the documentation supporting an outstanding VAWA self-petition or justifying interim relief is now insufficient.
- *Section 901. Conditions Applicable to U and T Visas.*
 - "U visas are available to victims of certain crimes who cooperate with law enforcement in investigations and/or prosecutions. T visas are available to the victims of trafficking who cooperate with law enforcement in investigations and/or prosecutions. Certain family members of T visa recipients can also receive T visas. Section 901(a) provides that certain family members and trafficking victims can receive T visas without having to first show that the visas are necessary to avoid 'extreme hardship.' Section 901(b) provides that T and U visas shall be issued for 4 years and may be extended under certain conditions. This provides victims who qualify for permanent residence sufficient time to file before their visas expire. An extension shall be granted upon certification from a government official that the victim's presence is required to assist a criminal

¹⁵⁵ The following sections are numbered in the 900's because they are taken from a Report from the House, and the House version of VAWA 2005 put its immigration related provisions in Title IX. The Senate version's immigration related provisions were in Title VIII, and the Senate version of the bill became the final law. Thus, while many of the provisions discussed in the House Report still exist in the final version of VAWA 2005, the provisions in the final version will be numbered in the 800's. To determine whether or not a particular section from the House Report is in the final version of VAWA 2005, and to determine the number of that provision in the final bill, please see the cross-referenced list provided in the Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/March 14 2006 Conyers extension of remarks VAWA 2005 CREC-2006-03-14-pt1-PgE353.pdf/view>.

¹⁵⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP'T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 114.

investigation or prosecution, or to give the Bureau of Citizenship and Immigration Services (“CIS”) time to adjudicate the petitions for permanent residence and for adjustment of status to permanent residence. Section 901(c) provides that aliens in the U.S. on K (fiancé or spouse) and S (informant) visas, or pursuant to the visa waiver program, are not prohibited from qualifying for T and U visa status. Aliens who came to the U.S. on J visas to receive graduate medical training, and aliens who are subject to the 2-year foreign residence requirement, may also qualify for T and U status.”¹⁵⁷

- “Section 901(d) provides that aliens can qualify for T status if they respond to and cooperate with requests for evidence and information from law enforcement officials. It also permits State and local law enforcement officials investigating or prosecuting trafficking-related crimes to file a request (and certification) asking DHS to grant continued presence to trafficking victims.”¹⁵⁸
- *Section 902. Clarification of Basis for Relief Under Hardship Waivers for Conditional Permanent Residence*
 - “The Secretary of Homeland Security can remove the conditional status of an alien who became a permanent resident, as the spouse of a U.S. citizen or permanent resident without the joint filing of a petition with the U.S. citizen or permanent resident spouse, upon the showing of hardship, battery, or certain other factors. This section provides that an application for such relief may be amended to change the ground or grounds for such relief without having to be resubmitted. The ability in current law to file hardship waivers while outside of the United States will not be available to applicants who have a final removal order in effect that was issued after the alien was granted conditional residency.”¹⁵⁹
- *Section 903. Adjustment of Status for Victims of Trafficking*
 - “The Secretary of Homeland Security can adjust the status of a T visa recipient to that of a permanent resident after 3 years of physical presence in the U.S. under a T visa or after being granted “continued presence” by Federal law enforcement officials. Section 903(a) provides that for aliens who have been granted both a T visa and continued presence, the required 3-year period may be counted by starting from the earlier of either the date on which an alien was granted continued presence by DHS, or the date on which the T visa was granted. In addition, the Secretary may waive or reduce the required 3-year period if the Federal, State, or local law enforcement official investigating or prosecuting the relevant trafficking has no objection. An alien seeking to adjust status must be of good moral character through the 3-year period. Section 903(b) provides that the Secretary may waive a factor that would otherwise disqualify the alien from being

¹⁵⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 114.

¹⁵⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 115.

¹⁵⁹ H. H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 115.

considered to have good moral character if there is a connection between the disqualifying factor and the trafficking of the alien. The Committee recognizes that DHS has issued policy memoranda defining “connection” in two other VAWA related contexts. The Committee encourages the Department of Homeland Security to use standards and analysis similar to those described in these memos when defining the term “connection” for the purposes of this section, sections 917, 919, 932, and 935 of this Act, and other VAWA-related provisions of the Immigration and Nationality Act (“INA”).¹⁶⁰

- Section 903(c) provides that the Secretary must, as part of an already required annual report, include statistics regarding the number of law enforcement officials who have been trained in the identification and protection of trafficking victims and their eligibility for T visas.¹⁶¹
- *Section 911. Definition of VAWA Petitioner*
 - “This section defines a ‘VAWA petitioner’ as an alien who has applied for classification or relief under a number of provisions of the INA, including those who have filed self-petitions for permanent residence as the battered spouses and children of U.S. citizens and permanent residents and, pursuant to this bill, as the battered parents of U.S. citizens. Also included in this definition are applicants for certain benefits under the Cuban Adjustment Act, the Haitian Refugee Immigrant Fairness Act (‘HRIFA’), and the Nicaraguan Adjustment and Central American Relief Act (‘NACARA’).”¹⁶²
 - In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created “to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . .” to “[engender] uniformity in the adjudication of all applications of this type” and to “[enhance] the Service’s ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies.”¹⁶³
 - “Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§202 or 203), and VAWA HRIFA petitions,

¹⁶⁰ See USCIS Inter-office Memorandum HQOPRD 70/8.1/8.2, January 19, 2005, from Paul E. Novak to William R. Yates and INS Memorandum HQADN/ 70/8, January 2, 2002, from Michael A. Pearson to Stuart Anderson.

¹⁶¹ *Id.* at 116.

¹⁶² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁶³ *Id.*; See 62 Fed. Reg. 16607–16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002).

214(c)(15)(work authorization under section 933 of this Act), battered spouse waiver adjudications under 216(c)(4)(C) and (D), applications for parole of VAWA petitioners and their children, and applications for children of victims who have received VAWA cancellation.”¹⁶⁴

- *Section 912. Self-Petitioning for Children*

- “This section ensures that immigrant children who are victims of incest and child abuse get full access to VAWA protections. Additionally, this section extends Child Status Protection Act relief to children who qualify for VAWA immigration relief.”¹⁶⁵
- “Section 912(a) provides that the minor child of a U.S. citizen or permanent resident may self-petition for permanent residence if the abusive parent has died or otherwise terminated the parent-child relationship within the past 2 years (or, if later, 2 years after the date the child attains the age of 18). Also, the alien spouse of a permanent resident may self-petition for permanent residence if the abusive permanent resident spouse died within the past 2 years.”¹⁶⁶
- “Section 912(b) provides protections that prevent children from ‘aging out’ of access to VAWA relief. The section guarantees that child self-petitioners, who are abused by citizen parents, will continue to be treated as immediate relatives (or as petitioners for preference status if subsequently married) if they turn 21 during the processing of their petitions. Child self-petitioners who are abused by permanent resident parents will be treated as applicants for ‘2A’ preference status as the minor children of a permanent resident, if they turn 21 during the processing of their petitions.”¹⁶⁷
- “Section 912(c) provides that the application for adjustment of status to permanent residence of an alien who self-petitioned for permanent residence shall also serve as an adjustment application for any derivative children. Derivative children of self-petitioners will receive lawful permanent residency along with their self-petitioning parents.”¹⁶⁸
- “Section 912(d) provides that alien child abuse and incest victims who would have qualified to self-petition as the minor children of U.S. citizens or permanent residents can file the petition until the aliens attain the age of 25. This allows child abuse victims time to escape their abusive homes, secure their safety, access services and support that they may need, and address the trauma of their

¹⁶⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 116.

¹⁶⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁶⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁶⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

¹⁶⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

abuse.”¹⁶⁹

- *Section 913. Self-Petitioning Parents*
 - “This section extends the ability to self-petition to the parent of an adult U.S. citizen who resides or has resided with the U.S. citizen son or daughter, if the alien demonstrates that he or she has been battered by, or has been the subject of extreme cruelty perpetrated by, their U.S. citizen son or daughter.”¹⁷⁰
- *Section 914. Promoting Consistency in VAWA Adjudications*
 - “This section promotes consistency in VAWA adjudications by making technical corrections that replace references to ‘domestic violence’ with references to ‘battery or extreme cruelty,’ the domestic abuse definition codified in the Violence Against Women Act of 1994 (‘VAWA 1994’), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (‘IIRIRA’) and regulations implementing the battered spouse waiver.”¹⁷¹
- *Section 915. Relief for Certain Victims Pending Actions on Petitions and Applications for Relief*
 - “Section 915(a)(1) provides that the Secretary of Homeland Security may grant deferred action to an alien who has filed a prima facie valid petition as a VAWA petitioner, or for T or U visa status, during the pendency of the application. The current practice of granting deferred action to approved VAWA self-petitioners shall continue. Aliens with deferred action status shall not be removed or deported. Prima facie determinations and deferred action grants called for in this section shall be made by the specially trained unit of immigration benefits adjudicators (currently at CIS) responsible for adjudicating VAWA petitions. These immigration benefits adjudicators (CIS) have authority to grant deferred action status in VAWA cases for the Department of Homeland Security. Immigration enforcement officials (currently at the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Immigration Enforcement) are not authorized to revoke deferred action, but may ask the specially trained CIS unit to review a case and determine whether or not to revoke a deferred action grant. Only the Secretary of Homeland Security (or a delegated official but only if that official has management authority over both the immigration services and immigration enforcement functions) may overrule a CIS grant of deferred action to an alien victim. Immigration enforcement officers should refer aliens they encounter who may qualify for relief under this Act to immigration benefits

¹⁶⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

¹⁷⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

¹⁷¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

adjudicators handling VAWA cases at CIS.”¹⁷²

- “This Committee encourages the Secretary of DHS to (a) develop a training program for trial attorneys and other DHS staff who regularly encounter alien victims of crimes, and (b) craft and implement policies and protocols on appropriate handling by DHS officers of cases under VAWA 1994, the Acts subsequently reauthorizing VAWA, and IIRIRA.”¹⁷³
- “Section 915(a)(2) aims to discourage detention of aliens whom VAWA offers immigration relief. This section requires that an alien whose application as a VAWA petitioner or for T or U visa status has been approved may not be detained unless detention is required for terrorist activity or certain criminal activity.”¹⁷⁴
- “Section 915(a)(3) provides that an alien whose petition as a VAWA petitioner or for T status has been approved shall be granted work authorization. U visa applicants are provided work authorization under existing law.”¹⁷⁵
- “Section 915(b) provides that an alien who has filed a prima facie application for cancellation of removal as a battered alien shall not be removed or deported during the pendency of the application.”¹⁷⁶
- “Under current law DHS has the discretionary authority to consent to the readmission of a previously removed alien (using the existing I-212 process). The protection VAWA offers immigrant victims of domestic violence, sexual assault and trafficking is undermined when otherwise qualified victims are cut off from VAWA benefits because of a prior removal from the United States. The victims, should they return to the U.S. without authorization, become subject to reinstatement of removal. This Committee encourages DHS to make use of its discretion in granting readmission to appropriately assist aliens with humanitarian cases including but not limited to, victims of domestic violence, sexual assault, victims of trafficking and crime victims who are cooperating in criminal investigations.”¹⁷⁷
- *Section 916. Access to VAWA Protection Regardless of Manner of Entry*
 - “Section 916 has been designed to address Congress’ concerns about U.S. citizen abusers who use the K visa process to petition for aliens outside the United States

¹⁷² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

and abuse them. This section protects these abused aliens by allowing them to self-petition for permanent residence as well as making them eligible for VAWA cancellation of removal and VAWA suspension of deportation. The section also works in conjunction with section 922 to prevent further abuse by instituting measures to distribute information that can help the K visa recipients learn about domestic violence protections available to them in the United States. It also provides them specific information about their U.S. citizen petitioners' criminal conviction history. Additionally, this section limits the ability of abusive U.S. citizens to repeatedly petition for K visas for aliens outside the U.S.”¹⁷⁸

- “Section 916(a) provides that an alien may self-petition as, or in the same manner as, the spouse of a U.S. citizen if the alien entered the U.S. under a K visa with the intent to enter into a valid marriage and the alien (or the alien’s child) was battered or subject to extreme cruelty in the U.S. by the U.S. citizen who filed the K visa petition. Also, such an alien does not have to depart within 3 months if the marriage does not occur.”¹⁷⁹
- “Section 916(b) provides that a VAWA petitioner and a K visa recipient who seeks adjustment of status to that of permanent residence on the basis of an approved petition as a VAWA petitioner does not have to first go through 2 years of conditional permanent residence. Also, an alien who entered under a K visa with the intent to enter into a valid marriage and the alien (or child) was battered or subject to extreme cruelty in the U.S. by the U.S. citizen who filed the K visa petition is eligible for cancellation of removal as a battered alien if the alien meets the other requirements for cancellation.”¹⁸⁰
- “The Committee seeks to deter filing of K visa applications by U.S. citizens with histories of domestic violence, sexual assaults, and child abuse, by requiring full disclosure to K visa recipients of information on any criminal convictions for these offenses by their petitioners. Section 916(c) provides that a U.S. citizen filing a petition for an alien for a K visa must include information on any criminal convictions for domestic violence, sexual assault, or child abuse. Following current practice, this information will be provided under penalty of perjury.”¹⁸¹
- “A consular officer may not approve a petition without verifying that the petitioner has not previously petitioned for more than two aliens applying for K visas. If the petitioner has had such a petition previously approved, the consular officer must verify that 2 years have elapsed since the filing of the previous petition. The Secretary of Homeland Security may grant waivers of the 2-year waiting period or the limit on filing more than two petitions. The waivers included

¹⁷⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 119.

¹⁸⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 119.

¹⁸¹ See e.g., Form I-130 (Rev. 06/05/02) (requiring petitioner to “certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct”).

here were designed to give DHS the discretion to waive both the time and number limitations when K visa applications are filed by non-abusive U.S. citizens. Such waivers may be appropriate, for example, for non-abusive U.S. citizens who live abroad and may be more likely to marry foreign spouses, or in cases of unusual circumstances, such as the sudden death of an alien approved for a prior K visa.”¹⁸²

- “Section 916(d) provides that an alien who was the spouse or minor child of an alien granted asylum at the time of the granting of asylum, and who (or whose child) was battered or the subject of extreme cruelty by the asylee, is eligible for adjustment of status although they may have divorced or separated from the asylee.”¹⁸³
- “Under current law, visa waiver entrants who are placed in removal proceedings are precluded from obtaining relief from removal, other than asylum. Section 916(e) guarantees access to VAWA relief for entrants under the visa waiver program by allowing those placed in removal proceedings to seek VAWA adjustment of status, VAWA cancellation of removal, VAWA self-petition, VAWA suspension of deportation and T and U visas.”¹⁸⁴
- “Section 916(f) provides that an alien who has failed to meet the 2-year return requirement of a J visa may still file a petition as a VAWA petitioner, or for a T or U visa.”¹⁸⁵
- *Section 917. Eliminating Abusers’ Control Over Applications for Adjustments of Status*
 - “VAWA 2000 created routes to lawful permanent residence for abused spouses and children of primary applicants under various nationality-based immigration laws. Section 917 assures that a family members’ eligibility for status will hinge neither on an abuser’s filing status, nor on an ongoing relationship with or marriage to the abuser in order to eliminate an abuser’s control over the abused family member. See section 936 for further amendments regarding the motions to reopen removal proceedings for battered aliens under VAWA.”¹⁸⁶
 - “Section 917(a) and (b) provide that the motions to reopen for abused aliens apply to all VAWA petitioners, VAWA cancellation of removal applicants and to those seeking adjustment of status in proceedings.”¹⁸⁷

¹⁸² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 119.

¹⁸³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

- “Section 917(c) allows abused spouses and children eligible for legal immigration status as Nicaraguans or Cubans under NACARA to apply for such status, even if the abuser did not apply for status and even through the deadline for filing has past.”¹⁸⁸
- “Section 917(d) provides that an alien who was the spouse of a Cuban eligible for adjustment under the Cuban Adjustment Act shall continue to be treated as such a spouse for 2 years after the date on which the Cuban dies, or for 2 years after the date of termination of the marriage, if the alien demonstrates a connection between the termination of the marriage and being battered or subject to extreme cruelty by the Cuban.”¹⁸⁹
- “Section 917(e) provides that if an alien abuser was eligible for status under HRIFA, but did not apply for status, the alien’s abused spouse or children at the time may now apply for legal immigration status on their own.”¹⁹⁰
- “Section 917(f) allows abused spouses and children to file their own suspension of deportation applications under NACARA if they were abused by a Guatemalan, Salvadoran or Eastern European abuser who was eligible for suspension of deportation under pre-1996 rules pursuant to NACARA. Abused spouses and children are also allowed to file motions to reopen their prior removal or deportation case using VAWA.”¹⁹¹
- “Section 917(g) provides that an individual who was a VAWA petitioner, or had a T or U visa, may not file an immigrant or non-immigrant petition for the person who committed the battery or extreme cruelty or trafficking against the individual which established the individual’s eligibility as a VAWA petitioner, or for T or U status.”¹⁹²
- *Section 918. Parole for VAWA Petitioners and for Derivatives of Trafficking Victims*
 - “VAWA 2000 allowed victims of domestic violence abused by U.S. citizen and lawful permanent resident spouses to file VAWA self-petitions from outside of the U.S. if they had been abused in the U.S. or if their abuser was a member of the uniformed services or a government employee. Modeled after the VAWA 2000 protection offered to children on VAWA cancellation of removal grantees, section 918 assures that VAWA petitioners, their derivative children and children of trafficking victims, can enter the U.S. by requiring the Secretary of Homeland

¹⁸⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁹⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁹¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁹² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

Security to grant parole to:”¹⁹³

- “a VAWA petitioner whose petition was approved based on having been battered or subject to extreme cruelty by a U.S. citizen spouse, parent, or child and who is admissible and eligible for an immigrant visa;
 - a VAWA petitioner whose petition was approved based on having been battered or subject to extreme cruelty by a permanent resident spouse or parent, who is admissible and who would be eligible for an immigrant visa but for the fact that an immigrant visa is not immediately available, if at least 3 years have elapsed since the alien’s priority date; and
 - an alien who the Secretary of State determines would, but for an application or approval, meet the conditions for approval for a T visa as a family member of the trafficking victim.”¹⁹⁴
- *Section 919. Exemption of Victims of Domestic Violence, Sexual Assault and Trafficking from Sanctions for Failure to Depart Voluntarily*
 - “Section 919 provides that an alien who is a VAWA petitioner, or is seeking a T or U visa, or is seeking cancellation of removal or VAWA suspension as a battered alien is not subject to the penalties for failing to depart after agreeing to a voluntary departure order, if there is a connection between the failure to depart and the battery or extreme cruelty, trafficking, or criminal activity making them eligible to seek such status. As discussed in section 903, the Committee encourages the DHS to define ‘connection’ for purposes of this section using similar standards and analysis to those described in the two policy memoranda cited in section 903.”¹⁹⁵
 - *Section 920. Clarification of Access to Naturalization for Victims of Domestic Violence*
 -
 - “Section 920 provides that any alien who was subject to battery or extreme cruelty by a U.S. citizen spouse or parent may naturalize after 3 years as a permanent resident, regardless of whether the lawful permanent resident status was obtained on the basis of such battery or cruelty. This section prevents alien domestic violence victims from being forced by naturalization laws to remain in abusive marriages or to wait two additional years to file for naturalization. It allows victims the same access to 3-year naturalization they would have if their U.S. citizen spouse did not abuse them.”¹⁹⁶

¹⁹³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

¹⁹⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

¹⁹⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

¹⁹⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

- *Section 921. Prohibition of Adverse Determinations of Admissibility or Deportability Based on Protected Information*
 - “In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims’ immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims.”¹⁹⁷
 - “This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA. In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special ‘any credible evidence’ standard.”¹⁹⁸
 - “Section 921(a) and (b) provide that the Secretary of Homeland Security and the Attorney General and other Federal officials may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government databases can be relied upon, even if government officials first became aware of it through an abuser.”¹⁹⁹
 - “Section 921(c) provides that this provision shall not apply to prevent information from being disclosed, in a manner that protects victim confidentiality and safety, to the chairs and Ranking Members of the House and Senate Judiciary Committees, including the Immigration Subcommittees, in the exercise of their

¹⁹⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

¹⁹⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

¹⁹⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

oversight authority.”²⁰⁰

- “Section 921(d) provides that in the case of an alien applying for relief as a special immigrant juvenile who has been abused, neglected, or abandoned, the government may not contact the alleged abuser.”²⁰¹
- “Section 921(e) provides that investigation and enforcement of these provisions shall be by the Office of Professional Responsibility of the Justice Department.”²⁰²
- “Removal proceedings filed in violation of section 384 of IIRIRA shall be dismissed. However, further proceedings can be brought if not in violation of section 384.”²⁰³
- “Section 921(f) establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. DHS must certify that:”²⁰⁴
 - “(1) no enforcement action was taken leading to such proceedings against an alien at certain places including a domestic violence shelter, a rape crisis center, and a court- house if the alien is appearing in connection with a protection order or child custody case, or that
 - (2) such an enforcement action was taken, but that there was no violation of the aforementioned provisions. Persons who knowingly make a false certification shall be subject to penalties.”²⁰⁵
- *Section 922. Information for K Nonimmigrants About Legal Rights and Resources for Immigrant Victims of Domestic Violence*
 - “Section 922 contains provisions designed to allow K visa applicants to make informed decisions about their marriage to a U.S. citizen and have information about how to gain help if they experience battering or extreme cruelty at the hands of their U.S. citizen spouse or fiancé. This section provides that the Secretary of Home- land Security shall consult with non-governmental organizations with expertise on the legal rights of immigrant victims and the Departments of Justice and State to develop consistent and accurate materials, including an information pamphlet, on legal rights and resources for immigrant victims of domestic

²⁰⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

²⁰¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

violence for dissemination to applicants for K visas. The following materials will be mailed to K visa applicants with an instruction packet regarding the visa process: the information pamphlet; a copy of the K visa application (including information about criminal convictions of the U.S. citizen sponsor for domestic violence, sexual assault and child abuse as provided for in section 916); and any information that DHS possesses about the petitioner who filed the K visa (e.g. from IBIS (the Interagency Border Inspection System), National Crime Information Center, or Federal and State domestic violence data-bases) regarding convictions for crime(s) of violence as defined in 18 U.S.C. sec. 16, any similar State conviction, or any domestic violence adjudication. Information from the pamphlet and regarding convictions will be orally transmitted by consular officers at the applicant’s interview. It is the intent of Congress that this section does not create an actionable ground for lawsuits against DHS or other any government agency. In implementing this section, consistent with and under the requirements of Section 900(c) of this Act, the Secretary of Homeland Security shall develop and put in use the information, materials and distribution mechanism described in section 922(a) through (e) not later than 180 days from enactment.”²⁰⁶

- *Section 923. Authorization of Appropriations*
 - “This section authorizes appropriations of such sums as may be necessary for the Department of Homeland Security’s specially trained unit to adjudicate applications, adjustments, and employment authorizations related to VAWA cases (primary or derivative) filed with DHS.”²⁰⁷

- *Section 931. Removing 2 Year Custody and Residence Requirement for Battered Adopted Children*
 - “Section 931 provides that an adopted alien qualifies as a child for immigration purposes, despite not having been in the legal custody of, or having resided with, the adopting parent for at least 2 years, if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household. This section, consistent with VAWA’s protective purpose, ensures that child abuse victims are not required to suffer abuse or risk losing immigration benefits they would otherwise receive if they had not been subjected to child abuse.”²⁰⁸

- *Section 932. Waiver of Certain Grounds of Inadmissibility for VAWA Petitioners*
 - “Section 932(a) provides that the Secretary of Homeland Security may waive the ground of inadmissibility for falsely claiming to be a U.S. citizen in the case of a VAWA petitioner who demonstrates a connection between the false claim and the alien’s being subjected to battery or extreme cruelty. As discussed in section 903,

²⁰⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²⁰⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²⁰⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

the Committee encourages the Department of Homeland Security to define “connection” for purposes of this section using the standards and analysis described in the previously cited policy memoranda.”²⁰⁹

- “Section 932(b) provides that the public charge ground of inadmissibility shall not apply to a VAWA petitioner or a qualified alien described in the Personal Responsibility and Work Opportunity Reconciliation Act.”²¹⁰
- *Section 933. Employment Authorization for Battered Spouses of Certain Nonimmigrants*
 - “Section 933 provides that an alien spouse admitted under the A (foreign diplomats), E-3 (Australian professionals), G (international organizations), or H (temporary worker) visa programs accompanying or following to join a principal alien shall be granted work authorization if the spouse demonstrates that during the marriage he or she (or a child) has been battered or has been subjected to extreme cruelty perpetrated by the principal alien. This section is intended to reduce domestic violence by giving victims tools to protect themselves and hold abusers accountable. Research has found the financial dependence on an abuser is a primary reason that battered women are reluctant to cooperate in their abuser’s prosecution. With employment authorization, many abused spouses protected by this section will be able to attain work providing them the resources that will make them more able to safely act to stop the domestic violence. The specially trained CIS unit shall adjudicate these requests.”²¹¹
- *Section 934. Grounds for Hardship Waiver for Conditional Permanent Residence for Intended Spouses*
 - “Section 934 adds an additional ground for a hardship waiver of the 2-year conditional permanent resident joint petition requirement for an alien spouse of a citizen or permanent resident. Under this section such spouses may qualify for a waiver if, following the marriage ceremony, the alien has been battered or subject to extreme cruelty by their intended U.S. citizen spouse. This section allows battered immigrants who participated in a marriage ceremony and unknowingly married an abusive U.S. citizen or lawful permanent resident bigamist to avail themselves of an intended spouse hardship waiver and attain lawful permanent residency.”²¹²
- *Section 935. Cancellation of Removal*
 - “VAWA 2000 created several new waivers and exceptions to deportation and

²⁰⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²¹⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²¹¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²¹² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

grounds of inadmissibility that might otherwise bar domestic violence victims from gaining immigration status. Due to a drafting error, immigration judges could not utilize many of these waivers and exceptions. Section 935(a) clarifies that immigration judges can utilize these waivers and exceptions to provide relief for VAWA applicants. This subsection shall apply retroactively as if included in VAWA 2000. Judges are expected to continue to exercise discretion, where appropriate, in determining ultimate eligibility for the waivers and exceptions, taking into account the ameliorative intent of these laws. This section also provides that an alien remains eligible for cancellation of removal as a battered alien if removable for failure to register or document fraud or for marriage fraud (if there was a connection between the marriage fraud and the battery or extreme cruelty; this Committee encourages the Department of Homeland Security to define “connection” for purposes of this section using standards and analysis similar to that described in the previously cited policy memoranda).”²¹³

- “Section 935(b) provides that the 4,000 annual limit on cancellations of removal does not apply to cancellations of removal of battered aliens.”²¹⁴

- *Section 936. Motions to Reopen*

- “Section 936 contains amendments that clarify the VAWA 2000 motions to reopen for abused aliens, enabling otherwise eligible VAWA applicants to pursue VAWA relief from removal, deportation or exclusion. This section provides that the limitation of one motion to reopen a removal proceeding shall not prevent the filing of one special VAWA motion to reopen. In addition, a VAWA petitioner can file a motion to reopen removal proceedings after the normal 90-day cut-off period, measured from the time of the final administrative order of removal. However, such battered aliens must be physically present in the U.S. at the time of filing the special motion. The filing of a special VAWA motion to reopen shall stay the removal of the alien pending final disposition of the motion, including exhaustion of all appeals, if the motion establishes a prima facie case for the relief. One VAWA 2005 post-enactment motion to reopen may be filed by a VAWA applicant. Aliens who filed and were denied special VAWA motions under VAWA 2000 may file one new motion under this Act.”²¹⁵

- *Section 937. Removal Proceedings*

- “Some abusers have prevented their victims from attending their removal proceedings. As a result, these battered victims are ordered deported in absentia. Under current law, the in absentia orders may be rescinded if the applicant files a motion to reopen and demonstrates that there were exceptional circumstances for failure to appear at the removal hearing. Section 937 provides that battery or

²¹³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

²¹⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

²¹⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

extreme cruelty of the alien (or a child or parent of the alien) shall qualify as exceptional circumstances justifying failure to appear at a removal proceeding.”²¹⁶

- *Section 938. Conforming Relief in Suspension of Deportation Parallel to the Relief Available in VAWA-2000 Cancellation for Bigamy*
 - “Section 938 provides that suspension of deportation for battered aliens, as it existed before 1996, shall apply in cases of battery perpetrated by a U.S. citizen or permanent resident whom the alien intended to marry, but whose marriage was not legitimate because of the citizen’s or permanent resident’s bigamy. VAWA 2000 offered protection to intended immigrant spouses who unknowingly married bigamists for purposes of VAWA self-petitioning and VAWA cancellation of removal. This section adds protection under VAWA suspension of deportation.”²¹⁷

VAWA 2005 FINAL BILL- LEGISLATIVE HISTORY IMMIGRATION PROTECTIONS: CONYER’S EXTENSION OF REMARKS²¹⁸

REP. CONYERS, MI

*Mr. Speaker, as ranking member of the Committee on the Judiciary of the House of Representatives and a co-author of the Violence Against Women Act of 2005, I take this opportunity to reemphasize the importance of certain parts of the legislative history of the provisions involving protections for battered immigrants. Additionally, I want to highlight and provide guidance on the reasoning behind and expectations about some of the provisions that are part of the final bill, the engrossed amendment agreed to by the Senate, which passed the Senate on December 16, 2005 and passed the House on December 17, 2005.*²¹⁹

*Since the section numbers changed between the version of VAWA 2005's Protection of Battered and Trafficked Immigrants provisions that passed the House September 28, 2005, and the version that we are considering today, I will provide a list at the end of my statement that cross references the section numbers in the final bill.*²²⁰

Section 801 enhances protection for immigrant victims of trafficking and certain immigrant crime victims by reuniting them with their children and family members living

²¹⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 126.

²¹⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 126.

²¹⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605-E2609 (2005); John Conyer’s also published an article on the history and purpose of VAWA 2005’s immigration protections. See, John Conyers Jr. United States House of Representatives, *The 2005 Reauthorization of the Violence Against Women Act: Why Congress Acted to Expand Protections for Immigrant Victims*, Violence Against Women, Volume 13, Number 5, May 2007, pp. 457-468 available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/violence-against-women-act-hearings-and-reports/vawa-related-hearings-2005/Conyers%20article.pdf/view>.

²¹⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605 (2005), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/March 14 2006 Conyers extension of remarks VAWA 2005 CREC-2006-03-14-pt1-PgE353.pdf/view>.

²²⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605 (2005), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/March 14 2006 Conyers extension of remarks VAWA 2005 CREC-2006-03-14-pt1-PgE353.pdf/view>.

abroad. In the context of trafficking cases and other immigration functions I wanted to clarify for the record that VAWA 2005 contains language in Sections 801, 803, 804, 813 and 832 that are designed to amend sections of the Immigration and Nationality Act (INA) to reflect the current delegation of authority and reassignment of immigration functions from the Department of Justice (DOJ) to the Department of Homeland Security (DHS). When DOJ and DHS are cited as having shared authority under this Act, that shared authority should be limited to instances in which DHS is making an immigration determination in a case in which DOJ has an active federal investigation or prosecution. In cases where the investigation or prosecution is being conducted by a state or local prosecutor, or by another federal government agency, DOJ involvement may not be appropriate or required.²²¹

Section 802 creates an exception to unlawful presence for victims of severe forms of trafficking who demonstrate that their trafficking experience was at least one central reason for their unlawful presence in the United States. For the purposes of this section (and similarly for sections 801, 805 and 812 of this Act), I understand that the term "at least one central reason" is intended to mean that the unlawful presence was caused by, or related to, the trafficking experience and its concurrent process of victimization. Just as this section provides a waiver of unlawful presence inadmissibility for T visa victims, I would hope that DHS will exercise its discretion determining good moral character so that T visa recipients are not barred from attaining adjustment of status from a T visa.²²²

Section 804 provides that aliens can qualify for T status if they respond to and cooperate with requests for evidence and information from law enforcement officials. I also want to emphasize that state and local law enforcement officials investigating or prosecuting trafficking-related crimes are permitted to file a request (and certification) asking DHS to grant continued presence to trafficking victims. This section changes references in the INA to conform to the transfer of immigration functions from the Department of Justice to the Department of Homeland Security by replacing references to the Attorney General with references to the Secretary of Homeland Security.²²³

I believe the expansions in protections for children contained in this Act are particularly important. Section 805 ensures that immigrant children who are victims of incest and child abuse get full access to VAWA protections. The application for adjustment of status to permanent residence of an alien who self-petitioned for permanent residence shall also serve as an adjustment application for any derivative children. Derivative children of self-petitioners will receive lawful permanent residency along with their self-petitioning parents. This section removes the requirement that abused adopted children must live with the abusive parent for two years and assures that child VAWA self-petitioners and derivative children have access to VAWA's aging out protections and can additionally access any Child Status Protection Act relief for which they qualify. It allows assures victims of child abuse and incest who were under 21 when abused have additional time until they turn 25 to file VAWA self-petitions. In this context, I understand that the term "at least one central reason" is intended to mean that the they delay in filing was caused by, or related to, the child abuse or incest and its concurrent process or

²²¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605 (2005).

²²² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605-06 (2005).

²²³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

victimization.²²⁴

Section 811 defines a "VAWA petitioner" as an alien who has applied for classification or relief under a number of provisions of the INA. I want to emphasize the importance of the fact that the law assures that adjudication of all forms of immigration relief related to domestic violence, sexual assault, trafficking or victims of violent crime continue to be adjudicated by the specially trained VAWA unit.²²⁵

In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created "to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants ...", to "[engender] uniformity in the adjudication of all applications of this type" and to "[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies." See 62 Fed. Reg. 16607-16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. (See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002)). This specially trained VAWA unit assures consistency of VAWA adjudications, and can effectively identify eligible cases and deny fraudulent cases. Maintaining a specially trained unit with consistent and stable staffing and management is critically important to the effective adjudication of these applications.²²⁶

Consistent with these procedures, I recommend that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§202 or 203), and VAWA HRIFA petitions, 106 work authorization under section 814(c) of this Act), battered spouse waiver adjudications under 216(c)(4)(C), applications for parole of VAWA petitioners and their children and applications for children of victims who have received VAWA cancellation. I also encourage DHS to promote consistency in VAWA adjudications by defining references to "domestic violence" in the INA as "battery or extreme cruelty," the domestic abuse definition codified in the Violence Against Women Act of 1994 ("VAWA 1994"), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and regulations implementing the battered spouse waiver.²²⁷

The Secretary of Homeland Security can remove the conditional status of an alien who became a permanent resident, as the spouse of a U.S. citizen or permanent resident without joint filing of a petition with the U.S. citizen or permanent resident spouse, upon the showing of hardship, battery, or certain other factors. Applications for such relief may be amended to change the ground or grounds for such relief without having to be resubmitted.²²⁸

VAWA 2000 allowed victims of domestic violence abused by U.S. citizen and lawful

²²⁴ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁵ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁶ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁷ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

*permanent resident spouses to file VAWA self-petitions from outside of the U.S. if they had been abused in the U.S. or if their abuser was a member of the uniformed services or a government employee. Modeled after the VAWA 2000 protection offered to children on VAWA cancellation of removal grantees, existing parole provisions should be used to ensure that approved VAWA petitioners, their derivative children and children of trafficking victims, can enter the U.S.*²²⁹

*Section 812 provides that an alien who is a VAWA petitioner or is seeking cancellation of removal or VAWA suspension as a battered alien is not subject to the penalties for failing to depart after agreeing to a voluntary departure order, if the battery or extreme cruelty, trafficking, or criminal activity provided at least one central reason related to the alien's failure to depart. In this context it is my understanding that the term "at least one central reason" is intended to mean that the failure to depart was caused by, or related to, the battering or extreme cruelty experience and its concurrent process of victimization.*²³⁰

*Section 813 is designed to address a number of problems for immigrant victims in removal proceedings. The definition of exceptional circumstances will now include battering or extreme cruelty. Important clarifications are made to assure that immigration judges can grant victims the domestic violence victim waivers we created in VAWA 2000. I particularly want to emphasize the importance of the protections from reinstatement of removal we create in this Act for immigrant victims. Under current law DHS has the discretionary authority to consent to the readmission of a previously removed alien (using the existing I-212 process). DHS should make use of its discretion in granting readmission to appropriately assist aliens with humanitarian cases including but not limited to, victims of domestic violence, sexual assault, victims of trafficking and crime victims who are cooperating in criminal investigations.*²³¹

*Under current law, victims of domestic abuse, sexual assault, stalking, or trafficking who have been ordered removed, including expedited removal, are subject to reinstatement of removal if they depart the U.S. and attempt to reenter the U.S. Once they are reinstated in removal proceedings, they cannot obtain VAWA, T, and U relief, even if they have a pending application for such relief. Recognizing these harsh consequences, Congress encourages DHS to make use of its discretionary authority to consent to the admission of such previously removed aliens (using the existing I-212 process).*²³²

Section 814 provides that an alien whose petition as a VAWA petitioner has been approved may be granted work authorization. U visa applicants are provided work authorization under existing law. I want to emphasize that this section gives DHS statutory authority to grant work authorization to approved VAWA self-petitioners without having to rely upon deferred action. I believe that one of the most important protections offered by this section toward prevention of domestic violence is that Section 814 of this bill provides that an alien spouse admitted under the A (foreign diplomats), E-3 (Australian investor), G (international organizations), or H (temporary worker) visa non-immigrant programs accompanying or following to join a principal alien shall be granted work authorization if the spouse demonstrates that during the marriage he or she (or a child) has been battered or has been subjected to

²²⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

*extreme cruelty perpetrated by the principal alien. This section is intended to reduce domestic violence by giving victims tools to protect themselves and hold abusers accountable. Research has found the financial dependence on an abuser is a primary reason that battered women are reluctant to cooperate in their abuser's prosecution. With employment authorization, many abused spouses protected by this section will be able to attain work providing them the resources that will make them more able to safely act to stop the domestic violence. The specially trained CIS unit shall adjudicate these requests.*²³³

*I believe that Section 817 of this Act contains some of the most important protections for immigrant victims. This section enhances VAWA's confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution. In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement offices to pursue removal actions against their victims.*²³⁴

*Immigration enforcement agents and government officials covered by this section must not initiate contact with abusers, call abusers as witnesses or rely on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA. In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special "any credible evidence" standard. I believe that all investigation and enforcement of these provisions should be done by the Office of Professional Responsibility of the Justice Department. For consistency, these cases need to be centralized in one division and I believe that this office is best equipped to address these cases.*²³⁵

The current practice of granting deferred action to approved VAWA self-petitioners should continue. Aliens with deferred action status should not be removed or deported. Prima facie determinations and deferred action grants should not be revoked by immigration enforcement agents. The specially trained Citizenship and Immigration Services (CIS) unit should review such cases to determine whether or not to revoke a deferred action grant. Immigration enforcement officials at the Bureau of Immigration and Customs Enforcement do

²³³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³⁴ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606-07 (2005).

²³⁵ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

*not have authority to overrule a CIS grant of deferred action to an alien victim. Immigration enforcement officers should refer aliens they encounter who may qualify for relief under this Act to immigration benefits adjudicators handling VAWA cases at CIS.*²³⁶

*VAWA confidentiality protections in IIRAIRA are amended to conform with current practice extending these protections to the Department of Homeland Security in addition to the Department of Justice and to expand confidentiality protections to the Department of State. These protective provisions were designed to assure that the Secretary of Homeland Security, the Attorney General and the Secretary of State may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government databases can be relied upon, even if government officials first became aware of it through an abuser.*²³⁷

*This section provides that this provision shall not apply to prevent information from being disclosed (in a manner that protects victim confidentiality and safety) to the chairs and ranking members of the House and Senate Judiciary Committees, including the Immigration Subcommittees, in the exercise of their oversight authority. This section also gives the specially trained VAWA unit the discretion to refer victims to non-profit, non-governmental organizations to obtain a range of needed assistance and victim services. Referrals should be made to programs with expertise in providing assistance to immigrant victims of violence and can only be made after obtaining written consent from the immigrant victim. Nothing in this section shall be construed as affecting the ability of an applicant to designate a safe organization through which governmental agencies may communicate with the applicant.*²³⁸

*This section requires that the Department of Homeland Security and the Department of Justice provide guidance to their officers and employees who have access to information protected by Section 384 of IIRAIRA, including protecting victims of domestic violence, sexual assault, trafficking and other crimes from the harm that could result from inappropriate disclosure of information. Congress encourages the DHS's specially trained VAWA unit and CIS VAWA policy personnel: (1) to develop a training program that can be used to train DHS staff, trial attorneys, immigration judges, and other DOJ and DOS staff who regularly encounter alien victims of crimes, and (2) to craft and implement policies and protocols on appropriate handling by DHS, DOJ and DOS officers of cases under VAWA 1994, the Acts subsequently reauthorizing VAWA, and IIRIRA.*²³⁹

Section 825 contains a number of amendments particularly important to me. Protecting victims of domestic violence from deportation and assuring that they can have their day in court before an immigration judge to file for VAWA related immigration relief is a central focus of all VAWA immigration protection I have been involved in developing since 1994. This section contains amendments that clarify the VAWA 2000 motions to reopen for abused aliens, enabling otherwise eligible VAWA applicants to pursue VAWA relief from removal, deportation or exclusion. This section provides that the limitation of one motion to reopen a removal

²³⁶ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²³⁷ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²³⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²³⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

*proceeding shall not prevent the filing of one special VAWA motion to reopen. In addition, a VAWA petitioner can file a motion to reopen removal proceedings after the normal 90-day cutoff period, measured from the time of the final administrative order of removal. The filing of a special VAWA motion to reopen shall stay the removal of the alien pending final disposition of the motion, including exhaustion of all appeals, if the motion establishes a prima facie case for the relief. One VAWA 2005 post-enactment motion to reopen may be filed by a VAWA applicant. Aliens who filed and were denied special VAWA motions under VAWA 2000 may file one new motion under this Act.*²⁴⁰

*Additionally, I feel it is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection. Section 825(c) establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. When any part of an enforcement action was taken leading to such proceedings against an alien at certain places, DHS must disclose these facts in the Notice to Appear issued against the alien. DHS must certify that such an enforcement action was taken but that DHS did not violate the requirements of Section 384 of IIRIRA. The list of locations includes: a domestic violence shelter, a rape crisis center, and a courthouse if the alien is appearing in connection with a protection order or child custody case. Persons who knowingly make a false certification shall be subject to penalties. Removal proceedings filed in violation of section 384 of IIRIRA shall be dismissed by immigration judges. However, further proceedings can be brought if not in violation of section 384.*²⁴¹

*I also want to highlight the important protections for all battered women and stalking victims contained in Section 827 of this bill. With respect to laws and regulations governing identification cards and drivers' licenses, DHS and the Social Security Administration shall give special consideration to victims of domestic abuse, sexual assault, stalking, or trafficking who are entitled to enroll in state address confidentiality programs, and whose addresses are entitled to be suppressed under State or Federal law (including VAWA confidentiality provisions), or suppressed by a court order.*²⁴²

*The REAL ID Act of 2005 imposed a new national requirement that all applicants for driver's licenses or state identification cards must furnish their physical residential address in order to obtain a federally valid license or identification card. This requirement jeopardizes those victims of domestic abuse, sexual assault, stalking, or trafficking who may be living in confidential battered women's shelters or fleeing their abuser, stalker, or trafficker. In recognition of the dangers of this requirement, this provision instructs DHS and the Social Security Administration to give special consideration to victims of domestic abuse, sexual assault, stalking, or trafficking by allowing certain victims to use an alternate safe address in lieu of their physical residential address.*²⁴³

I understand that a driver's license or identification card is necessary for victims to

²⁴⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

*board an airplane or train to flee danger. Many confidentiality programs are currently in place on both federal and state levels to ensure that the dual goals of economic security and victim safety are reached by allowing an individual to choose an alternate address on her driver's license. This will provide an exception for those victims who are entitled to enroll in state address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or suppressed by a court order, or who are protected from disclosure of information pursuant to 8 U.S.C. Section 1367, ensuring the continued protection and necessary mobility for these women and their families.*²⁴⁴

*As Ranking Member' of the House Judiciary Committee, I have been particularly concerned about the significant delays that have occurred between the effective dates of VAWA 1994 and VAWA 2000 laws and the issuance of implementing regulations that are needed so that immigrant victims can receive the protections Congress has created for them. Section 828 requires that regulations implementing both this Act (including materials and dissemination under section 834) and the Act reauthorizing the Violence Against Women Act in 2000, ("VAWA 2000"), be issued within 180 days of this Act's enactment. In applying such regulations, in the case of petitions or applications affected by the changes made by the Acts, there shall be no requirement to submit an additional petition, application, or certification from a law enforcement agency with the date of the application for interim relief establishing the priority date of counting time towards adjustment of status. However, the Department of Homeland Security may request additional evidence be submitted when the documentation supporting an outstanding VAWA self-petition or justifying interim reliefs now insufficient. The Department of Homeland Security shall also craft and implement policies and protocols implementing VAWA confidentiality protections under Section 384 of IIRAIRA as amended by this Act.*²⁴⁵

*Lastly, I want to provide important background information about the reasoning behind The International Marriage Broker Regulation Act of 2005 (IMBRA) that is included in this VAWA 2000 legislation. The final IMBRA legislation combines provisions that created a significant role for the government in information collection and distribution to foreign fiancées and spouses with regulation of the International Marriage Broker Industry. IMBRA has been designed to address concerns about U.S. citizen abusers who use the K visa process to petition for aliens outside the United States and abuse them. This Act, establishes the first meaningful federal regulations on international marriage broker agencies (IMBs), companies in the business of matching mostly American male clients to foreign women who will join them in the United States as fiancés or spouses. There have been numerous cases of foreign women who were matched with American men, came to the U.S. live with their new spouses and were subjected to domestic violence, sexual assault or other forms of extreme cruelty. In some cases, the perpetrators have successfully used IMBs and the immigration system to bring in a series of fiancés or spouses who have all suffered from domestic violence from the American sponsor and client. This bill is designed to inform foreign spouses and fiancées entering the United States of the laws relating to such abusive crimes, and the availability of help. In addition, it seeks to prevent abusers from using the immigration system to find new victims.*²⁴⁶

Sections 832, 833 and 834 are designed to prevent further abuse by instituting measures

²⁴⁴ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴⁵ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607-08 (2005).

²⁴⁶ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

*to distribute information that can help the K visa recipients learn about domestic violence protections available to them in the United States. These sections also provide them with specific information about their U.S. citizen petitioners' criminal conviction history. Additionally, this section limits the ability of abusive U.S. citizens to repeatedly petition for K visas for aliens outside the U.S.*²⁴⁷

*A consular officer may not approve a fiancée visa petition without verifying that the petitioner has not previously petitioned for two or more aliens applying for spousal or fiancée K visas. If the petitioner has had such a petition previously approved, the consular officer must verify that two years have elapsed since the filing of the previous petition. The Secretary of Homeland Security may grant waivers of the two-year waiting period or the limit on filing more than two petitions. The waivers included here were designed to give DHS the discretion to waive both the time and number limitations when K fiancé visa applications are filed by non-abusive U.S. citizens. Such waivers may be appropriate, for example, for non-abusive U.S. citizens who live abroad or were raised abroad and may be more likely to marry foreign spouses, or in cases of unusual circumstances, such as the sudden death of an alien approved for a prior K visa. Section 832(a) includes a domestic violence victim waiver modeled after the waiver created for immigrant victims of domestic violence by VAWA 2000 (INA Section 237(a)(7)). Waivers shall be granted when the U.S. citizen petitioner demonstrates that they have been' subjected to battering or extreme cruelty, that there was a connection between the criminal conviction and the abuse, including efforts to escape the abuse and that they were not the primary perpetrator of abuse in the relationship.*²⁴⁸

*Section 832(a)(2) of VAWA 2005 requires that U.S. citizen petitioners filing K visa applications for spouses they married abroad provide under oath the same criminal information required for K fiancé visa petitioners. This section also creates a database to track serial K applications. Upon approval of a second K visa for a spouse or fiancé the U.S. citizen petitioner will be entered into the multiple visa tracking database and will be notified that this petition and all future petitions will be entered into the database maintained by the Department of Homeland Security. Once two espousal or fiancé K visas have been approved, for each subsequent petition filed, DHS will notify both the citizen petitioner and foreign-born spouse about the number of previously filed petitions in the database for a 10-year period. All future K applications will trigger similar notice. The domestic violence pamphlet developed under Section 833 of this Act will be sent to the K beneficiary immigrant spouse along with the multiple filing data base information.*²⁴⁹

*Under this Act, IMBs are required to comply with mandatory collection of criminal background information on each U.S. client, including arrest and conviction information, information on any temporary or permanent protection order issued against the U.S. client, and information on where the person has lived, prior marriages and children they have under the age of 21. The IMB must also conduct a sex offender registry search on the U.S. client.*²⁵⁰

Conclusion

²⁴⁷ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁴⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁴⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁵⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

I am once again honored to have played a role in reauthorizing the Violence Against Women Act and the protections it affords to immigrant women who suffer from battery and extreme cruelty in our Nation. We have made important changes and adjustments to current law that will ensure that the broad range of domestic violence victims have access to the immigration relief they need to escape from abuse and begin to rebuild their lives, and those of their children. I am particularly pleased that Congress was able to agree upon passage of the first legislation to provide fiancées and spouses applying for K visas from abroad the ability arm themselves with what can be lifesaving information and to truly regulate the international marriage broker industry. I offer my sincere appreciation to the chairman of the Judiciary Committee, F. JAMES SENSENBRENNER, who worked with me for the better part of this year on this bill in shared commitment to protect victims of domestic violence. In addition, I must thank Congressman RICK LARSEN of Washington for his leadership on protecting unsuspecting foreign women who become victims of abuse by sponsoring IMBRA and working with Chairman SENSENBRENNER and me on bringing IMBRA into this bill. I also offer special thanks to my Senate colleagues, Senator ARLEN SPECTER, Senator PATRICK LEAHY, Senator JOSEPH BIDEN and Senator TED KENNEDY for their hard cooperative work to ensure that the Violence Against Women Act of 2005 could be passed into law this year.²⁵¹

I worked closely with Chairman SENSENBRENNER to develop legislative history for the protections offered to immigrant victims contained in Protection of Battered and Trafficked Immigrants Title of the Violence Against Women Act of 2005. The Committee on the Judiciary of the House of Representatives Report to accompany H.R. 3402 that was published on September 22, 2005, provides important legislative history on this Title. Since section numbers have changed in the final bill, I include here cross reference list that will facilitate relating the sections of the final VAWA 2005 provisions we are voting on today with the legislative history sections that describe and support these provisions.²⁵²

TRACKING CHART – FINAL VAWA 2005 SECTION NUMBERS AND HOUSE COMMITTEE REPORT SECTION NUMBERS²⁵³

- 801 (Treatment of Spouse and Children of Victims)--901(a).
- 802 (Presence of Trafficking Victims)--903(b).
- 803 (Adjustment of Status for Trafficking Victims--903 & 903(a).
- 804 (Protection and Assistance to Trafficking Victims)--901(d).
- 805 (Protecting Victims of Child Abuse)
- 805 (a) and (b)--912(b) and (c).
- 805 (c)--912(d).
- 805(d)--931.
- 811 (VAWA Petitioner Definition and VAWA Unit)--911, 902, 914, 918.
- 812 (Exception to Voluntary Departure)--919.
- 813(a) (Exceptional Circumstances)--937.
- 813(b) (Discretion to Readmission Instead of Reinstatement of Removal)--915.

²⁵¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁵² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁵³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608-09 (2005).

813(c) (*Domestic Violence Victim Waiver Clarification*)--935.
 814(a) (*VAWA HRIFA and VAWA Cuban Adjustment Improvements*)--936, 917.
 814(b) (*Work Authorization for VAWA Petitioners*)--915(a).
 814 (c) and (d) (*Work Authorization for Abused A, E-3, G, H Spouses*)--933.
 814(e) (*Limitation on Petitioning for Abuser*)--917(g).
 815, 823, 824 (*Clarification and Corrections Regarding VAWA NACARA VAWA HRIFA, VAWA Cuban Adjustment Applicants*)--917.
 816 (*VAWA Protection for Elder Abuse Victims*)--913.
 817 (*VAWA Confidentiality Protections*)--921, 915.
 821 (a) and (b) (*Duration of T and U Visa Status*)--901(b).
 821(c) (*Change of Status to T or U Visa Status*)--901(c).
 822 (*Technical Corrections*)--941.
 823 (*VAWA Cuban Adjustment Improvements*)--917(d).
 824 (*VAWA HRIFA Improvements*)--917(e).
 825 (*Deportation and Deportation Proceedings*)--936, 921(f).
 826 (*Protection of Abused Juveniles*)--921(d).
 827 (*Identification Documents for Domestic Violence and Crime Victims*)--None.
 828 (*Rulemaking*)--900.
 831, 832, 833, 834, *Subtitle D, International Marriage Broker Regulation*--916, 922

BATTERED SPOUSE WAIVER LEGISLATIVE HISTORY

Creation of the Battered Spouse Waiver²⁵⁴

- In 1986, Congress amended the Immigration and Nationality Act to “deter people from entering fraudulent marriages solely for the purpose of obtaining lawful permanent resident status” by adding the Immigration and Marriage Fraud Amendments (IMFA).²⁵⁵
 - The “Conditional Residence” provision proved problematic for battered immigrant women.²⁵⁶
- In 1990, as a result, Congress created the Battered Spouse Waiver (and two other waivers) to specifically address the dangers experienced by immigrant women, eliminating the “conditional residence” requirement.²⁵⁷

²⁵⁴ For a further details on the Battered Spouse Waiver’s legislative history, including hearing reports and testimony and implementation of the Battered Spouse Waiver see, Battered Spouse Waiver (BSW) Webinar and Training Materials (November 18, 2021) <https://niwaplibrary.wcl.american.edu/bsw-training-materials>.

²⁵⁵ Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended at 8 U.S.C. § 1186a).^[17]

²⁵⁶ Immigrant women who are married to citizens or lawful permanent residents for less than two years at the time of the permanent residence interview with U.S. Citizenship and Immigration Services (CIS, formerly INS) are not automatically granted permanent residence; rather, they receive “conditional” residence for two years. Within ninety days before the end of the two-year period, both husband and wife must file a joint petition to have the condition removed, and both may be required to appear before a USCIS official for a personal interview. To control their victims, abusers could refuse to jointly file the petition or cooperate in the mandated USCIS personal interview. Victims had no alternative but to remain in abusive relationships or try to meet the stringent requirements for waivers under the 1986 IMFA. Otherwise, their immigration status would be jeopardized. In certain situations, the 1986 IMFA allowed waivers of the joint petition requirement. These waivers, however, did not address the circumstances of battered immigrants. Cecilia Olavarria and Moira F. Preda, *Additional Remedies Under VAWA: Battered Spouse Waiver*, National Immigrant Women’s Advocacy Project (last updated July 2013), http://niwaplibrary.wcl.american.edu/immigration/battered-spouse-waiver/tools/3.5_Battered-Spouse-Waiver_2004-MANUAL-BB.pdf/view?searchterm=breaking%20barriers.

²⁵⁷ The three waivers include: the battered spouse waiver, the extreme hardship waiver, and the good faith/good cause waiver. The battered spouse waiver applies to victims who have been subjected to battery or extreme cruelty at the hands of his or her spouse, parent, or child; the extreme hardship waiver applies to victims who will face “extreme hardship” if forced to return to his or her home country; the good faith/good cause waiver “is used for immigrants who are unable to file the joint petition because they are no longer married to their spouses, even though the

- Approval of a battered spouse waiver eliminates the joint petition requirement for removal of conditional resident status and prevents the victim from being locked for two years in an abusive marriage.
 - The Battered Spouse Waiver, unlike the other two waivers, is available to women who have been ordered removed and deported from the United States, or who have failed to depart after their conditional resident status terminated.²⁵⁸
 - Requirements for a Battered Spouse Waiver Application include: proof that the marriage was entered into in good faith, the victim has been subjected to battery or extreme cruelty, and an affidavit discussing the waiver the victim hopes to pursue.²⁵⁹
- This provision would, in effect, create an avenue of relief for a spouse or child caught in a detrimental relationship. Under current law a damaging situation must be endured in order to maintain legal status in the United States. It would seem unconscionable that any human being should be required by our laws to remain in a situation in which they are abused in order to remain in legal status.²⁶⁰

Battered Spouse Waiver Legislative History

The 1990 House Judiciary Committee report explicitly states that:

- “The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status.”²⁶¹

House members who crafted the Battered Spouse Waiver described the need for the legislation and its purpose as follows:

REP. SLAUGHTER, NY

marriage was entered into in good faith.” *Id.* at 3.

²⁵⁸ § C.F.R. § 216.5(e)(3)(ii).

²⁵⁹ Evidence indicating a good faith marriage includes: birth certificates of children born to the marriage, financial records showing joint ownership of assets, photographs from family holidays and events, lease or mortgage contracts, and affidavits from people who have known both spouses since the conditional residence was granted. To prove battery or extreme cruelty, an applicant should submit as many of the following documents as possible: official records documenting the abuse or effects of abuse on the victim or the victim’s child by school officials or social services representatives, medical records documenting the frequency and extent of the injuries, police records of calls or complaints, court records documenting arrests or protection orders, copies of custody orders or divorce records, and evaluations from mental health professionals. Finally, an applicant must submit an affidavit addressing the waiver he or she pursues, including information regarding the history of the relationship, the history of the domestic violence, (including descriptions of each specific incident of violence), the relationships between the batterer and the victim’s family as well as the victim and the batterer’s family, the factors making it difficult to leave the relationship, and the victim’s own feelings of fear and fear for his or her children. *See General Filing Instructions to INS Form I-751*, US Customs and Immigration Services, <http://www.uscis.gov/sites/default/files/files/form/i-751instr.pdf>.

²⁶⁰ Family Unity and Employment Opportunity Immigration Act of 1990, October 2, 1990, 136 Cong. Rec. H. 8629 (Vol. 136, No. 126, Pg. H8629).

²⁶¹ H.R. REP. NO. 101-723, p. 78

“What should not go unsaid or unnoticed...is that the bill we have before us contains a small but significant provision, which will literally free thousands of immigrant women from a nightmare of brutal physical abuse and mental cruelty. Immigrant women are some of the most vulnerable to domestic violence, yet their plight is not well enough known to effect real change. Not long ago, I heard the heart-wrenching story of an immigrant woman living in Rochester with her abusive American spouse. She was regularly beaten by her husband and subjected to unspeakable cruelties. She lived with two paralyzing fears-that of her husband's rage and that of being forced back to her native Haiti. The 1986 Marriage Fraud Act leaves this woman trapped in the abusive relationship for at least 2 years or face deportation to a country, which is no longer her home.

Responding to this woman's circumstances and those of thousands of alien spouses nationwide, I introduced legislation to amend the Marriage Fraud Act and provide immigrant spouses in a bona fide marriage, an escape from the beatings, the insults and the fear... The Immigration Marriage Fraud Amendments Act of 1986 [IMFA] mandates a 2-year period of conditional permanent residency for foreigners who marry American citizens or permanent residents. At the end of this 2-year period, the American spouse with the foreign spouse must file a joint petition to gain full permanent residency for the foreign spouse. Due to a lack of clarity in the IMFA, a battered foreign spouse may be forced to choose between remaining in an abusive relationship or facing possible deportation to a country that is no longer his or her home...Under the IMFA, if the resident spouse refuses to sign the joint petition, deportation proceedings can be initiated by the Immigration and Naturalization Service...

Where a foreign spouse could demonstrate that he or she entered into a marriage with a resident spouse in good faith and could establish through credible evidence that he or she was battered by the American spouse, the foreign spouse would be allowed to waive the joint petition requirement and file independently to have the conditionality of his or her permanent residence removed. This waiver would not force the foreign spouse to seek a divorce and would thus avoid the question of good cause which must be considered in the good cause/good faith waiver and it would make it clear to abused spouses that there was an escape from their situations.... [T]his additional waiver would not alter the spirit of the IMFA and the conditional permanent residence system established in 1986, it would be beneficial to a large number of persons trapped in abusive relationships...

Those in this situation are often advised to remain with the abuser until the 2 years of conditional permanent residence have ended because of the lack of clarity in the law. Abused spouses should be sent a clearer signal that there is an escape from their dilemma and that the abusing spouse does not have complete control over their lives... the House intends that when the citizen or resident spouse engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status. It is the Committee's intent that the Attorney General will grant the waiver when battering of or cruelty to spouse or child is demonstrated. The House intends that the discretion given to the Attorney General to decide to deny waiver requests under this provision be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.... I am also concerned with

the situation in which the citizen or resident spouse abuses a child or alien child. It is the intent of the legislation, then, that the conditional resident spouse be able to protect the child without fearing that the citizen or resident spouse will refuse to cooperate in the joint petition, joint interview requirements for the alien spouse. In such a situation, the good faith or extreme hardship waiver will be granted to the alien spouse. The existence of a child of the marriage is evidence that the marriage was entered into in good faith. Both a child and the child's alien parent would suffer extreme hardship if the child were denied the protection and support of the alien spouse when the citizen or resident spouse abuses the child....The group that would be targeted by the clarifications I have proposed is one of the most vulnerable in American society today. The vast majority of abused foreign spouses are women. Most are new to American society and many do not speak English as a first language. This group is in particular need of statutory language that clearly protects them from abusive spouses taking advantage of the necessity of filing a joint petition at the end of the 2-year period."²⁶²

*"A "yes" vote on H.R. 4300 says "no" to the domestic violence which terrorizes thousands of immigrant spouses and their children. I urge all of my colleagues to support the bill, giving hope to battered spouses and children that they, too, might soon realize the American dream of living in freedom and safety."*²⁶³

REP. GILMAN, NY

*"In particular, the marriage fraud provisions required our review and modification. The battered spouse or child waiver of the conditional residence requirement portion would allow the Attorney General to bestow permanent resident status if an alien can demonstrate that, while the marriage was entered into in good faith, evidence has shown that the spouse was battered by, or was the subject of extreme mental cruelty perpetrated by, his or her spouse or parent. This provision would, in effect, create an avenue of relief for a spouse or child caught in a detrimental relationship. Under current law a damaging situation must be endured in order to maintain legal status in the United States. It would seem unconscionable that any human being should be required by our laws to remain in a situation in which they are abused in order to remain in legal status."*²⁶⁴

- The 1990 House Judiciary Committee adopted Representative Slaughter's view and clarified its intent by only denying legitimate requests for battered spouse waivers in "rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest."²⁶⁵
- The USCIS Adjudicator's Field Manual further explains that:
 - "Persons who have been subjected to such treatment may have difficulty in discussing their experiences. While it is almost always necessary to discuss

²⁶² Congressional Record for the 101st Congress House of Representatives UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (House of Representatives - October 02, 1990) p. H8642.

²⁶³ 1410 CONG. REC. 27,085 (1990).

²⁶⁴ Family Unity and Employment Opportunity Immigration Act of 1990, October 2, 1990, 136 Cong. Rec. H. 8629 (Vol. 136, No. 126, p. H8629).

²⁶⁵ H.R. REP. NO. 101-723, p. 79.

the abusive events with the applicant, such discussions should be carried on in a professional manner which does not further abuse the applicant by forcing him or her to unnecessarily re-live abusive episodes....Police reports and hospital records can be key documents in establishing that battering or extreme cruelty existed.”²⁶⁶

- When signing the Immigration Act of 1990, President George H. W. Bush declared that:
 - “It is the most comprehensive reform of our immigration laws in 66 years. It also credits the special role of immigrants to America, and it will promote a more competitive economy, respect for the family unit, and swift punishment for drugs and crime. This bill is good for families, good for business, good for crime fighting, and good for America. We welcome both it and the generations of future Americans who it will bring in to strengthen our great country. And now I am honored and pleased to sign into law the Immigration Act of 1990.”²⁶⁷

- To prevent marriage fraud, the Immigration Marriage Fraud Amendments of 1986 require:
 - “[A] two-year conditional residence status for certain alien spouses, sons, and daughters of United States citizens or permanent resident aliens. The conditional basis of the alien spouse's permanent resident status may be removed after two years upon the filing of a joint petition by the conditional resident and the petitioning spouse. In addition, there are two waivers available under the IMFA for not filing the joint petition to remove the conditional status from the alien spouse's permanent residence. One is by establishing that extreme hardship would result if the alien is deported, the other is by establishing that the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) by the alien spouse for good cause.
 - The independent waivers do not address the issue of battered spouses and children. The terms of the statute do not make it sufficiently clear that an abused spouse who has entered a marriage in good faith will be granted the waiver either on the basis of “extreme hardship” or termination of the marriage for “good cause”. In many cases there are obstacles that prevent a battered alien spouse from initiating a divorce, such as lack of resources to pay for a lawyer; ethnic or cultural prohibitions against divorce; fear of further physical violence; and the risk of deportation itself.

²⁶⁶ Adjudicator's Field Manual, Chapter 25 Petitions for Removal of Conditions on Conditional Residence, 25.1 Immigration Marriage Fraud Amendments of 1986, <https://niwaplibrary.wcl.american.edu/pubs/uscis-adjudicators-field-manual-ch-25>.

²⁶⁷ George Bush: Statement on Signing Immigration Act of 1990 (Nov. 29, 1990).

- In addition, many states have no-fault divorce laws which make it impossible for an alien spouse to establish that the marriage was terminated for good cause. INS allows a divorce obtained under a no-fault law to be used to support a waiver request. The alien, however, must establish that the no fault option was used either to expedite the divorce or for economic reasons. Often, aliens are denied the waiver because they cannot satisfy the “good cause” requirement under no-fault laws. Also, a U.S. citizen or permanent resident spouse need only file for a divorce first to obtain the advantage in situations where a waiver of the joint petition requirement is being sought, again preventing the alien spouse from applying for a good faith/good cause waiver.”²⁶⁸
- The Immigration Marriage Fraud Amendments of 1986 further state its enactment was necessary to protect battered immigrant spouses because:
 - “Present law does not ensure that a battered alien spouse or child will not be forced to remain in an abusive relationship for fear of deportation. Immigrant and family law attorneys, refugee service agencies, and battered women's advocates agree that current provisions of the IMFA do not go far enough in ensuring the safety and protecting the legal rights of immigrants in situations of domestic violence. The Committee believes that the creation of a battered spouse/child waiver and changes to the good faith/good cause waiver will clarify Congressional intent.
 - Section 302 of [Immigration and Nationality Act of 1990] amends section 5 of the Immigration Marriage Fraud Amendments of 1986, which prohibits the INS from approving any visa petition that is based on a marriage between an alien and a citizen if the marriage occurred while the alien was in deportation or exclusion proceedings, unless the alien spouse resides outside the U.S. for two years.
 - Deportation proceedings can often last many years, for reasons not under the alien's control. During the pendency of the process, it is not unusual for an alien defendant, who is frequently young and single, to meet someone, develop a relationship, get married, and even have children. Numerous examples of such marriages have been documented since the enactment of section 5. Yet, such a marriage, under the current statute, is presumptively regarded as non bona fide, with no opportunity for rebuttal.
 - Even if the marriage is indisputably bona fide, the current section 5 compels the alien spouse to reside outside the country for two years because there is no opportunity to establish the legitimacy of the marriage. Consequently, the American citizen spouse is either compelled to live apart from the alien spouse for two years, or the citizen spouse must abandon his/her own

²⁶⁸ H.R. REP. No. 101-723, p. 60 (1990); *see generally* ANDORRA BRUNO AND ALISON SISKIN, CONGRESSIONAL RESEARCH INSTITUTE: THE LIBRARY OF CONGRESS, IMMIGRATION: NONCITIZEN VICTIMS OF FAMILY VIOLENCE (2001) (useful summary of marriage fraud provisions and battered spouse or child waiver).

residence in the United States for the duration of the two year period. The American citizen spouse is forced, by the provisions of section 5 IMFA, to choose between abandoning his/her spouse or abandoning his/her country. Counsel for aliens subject to section 5 have contended that the provision contravenes the due process and equal protection guarantees of the Constitution.

- Section 302 of [Immigration and Nationality Act of 1990] addresses the problem of irrebuttability by permitting couples to overcome the bar on filing and approval of a visa petition when the marriage is demonstrated to be bona fide.”²⁶⁹
- The marriage fraud provision of the Immigration and Nationality Act of 1990 also authorizes the Attorney General to protect battered immigrant spouses. It:
 - “[A]llows the Attorney General to remove the conditional basis of an alien's permanent residence status if (1) the alien spouse can demonstrate that the marriage was entered into in good faith and that after the marriage the alien spouse was battered by or was subjected to extreme mental cruelty by the U.S. citizen or permanent resident spouse; 2) or the alien child can demonstrate that the alien was battered by or subjected to extreme mental cruelty by the U.S. citizen or permanent resident parent.
 - The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status. It is the Committee's intent that the Attorney General will grant the waiver when battering or cruelty to the spouse or child is demonstrated. Evidence to support a battered spouse/child waiver can include, but is not limited to, reports and affidavits from police, medical personnel, psychologists, school officials, and social service agencies. The Committee notes that the discretion given to the Attorney General to decide to deny waiver requests under this provision is to be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.
 - In addition, the phrase “by the alien spouse for good cause” is removed from current INA Section 216(c)(4)(B), allowing aliens to file for removal of conditional basis even if they were not the moving party in terminating a marriage. The change will allow the alien to file independently for a waiver if the marriage was entered into in good faith and the marriage has been terminated or termination proceedings have commenced.”²⁷⁰

²⁶⁹ H.R. REP. No. 101-723, p. 60-61 (1990).

²⁷⁰ H.R. REP. No. 101-723, p. 81 (1990).

- During the 1992 Judiciary House Committee hearing, Rep. Slaughter, NY responded to Rep. Mazzoli, KY about concerns over the 1992 amendments to the Immigrations and Naturalization Act:
 - “Mr. Mazzoli:...[Immigration and Naturalization Service] will testify later this morning about having serious concerns about your bill on two grounds really. One is that they believe that the current system is working OK, citing as a statement of fact that they’ve received no complaints from persons who felt that the professional evaluation prevented their receiving a waiver–
 - Ms. Slaughter: From battered spouses?
 - Mr. Mazzoli: That’s the statement that’s made by [Immigration and Naturalization Service].
 - Ms. Slaughter: That wouldn’t surprise me at all, Mr. Chairman.
 - Mr. Mazzoli: OK
 - Ms. Slaughter: The battered spouse is very likely to go to complain to–
 - Mr. Mazzoli: Because you said in your statement the fact that these are maybe from countries where that’s not permitted so that you would not think it’s unusual that [Immigration and Naturalization Service] would have no complaints from these people?
 - Ms. Slaughter: Not at all.
 - Mr. Mazzoli: But you would also be pretty clear that there would be several thousands, as you sort of said in the last sentence of your statement, that there are that many battered immigrant spouses?
 - Ms. Slaughter: Well, the domestic violence in this country, as you know is increasing. Three out of our battered spouses who apply for help are turned away. Of those numbers, very few of them are the immigrant spouses. These are people who are usually brought to the attention of shelters by churches, social workers, or from these schools. As we pointed out in our testimony, in the past evidence from these types of sources that has usually been sufficient for the INS to believe that abuse has taken place.
 - Mr. Mazzoli: It’s interesting, the data that the staff at least has provided me here, coming from [Immigration and Naturalization Service]–these are [Immigration and Naturalization Service] data that gives, starting in 1988 through 1992, applications for spousal waivers. They really number in the several thousand For example, in 1989, 7,951; 1990, 7,004; 1991, 6,593 almost 6,600; and so far this year, almost 2,000. The data are certainly there.
 - The other reason [Immigration and Naturalization Service] would say that they have reservations about–
 - Ms. Slaughter: Those are under, I assume, the present regulations of having a mental professional certify?
 - Mr. Mazzoli: If these are the applications–
 - Ms. Slaughter [continuing]: If these are the numbers–

- Mr. Mazzoli [continuing]: Now whether they're going to be denied because they don't have that supporting data, I don't know; we'll find out.
- Ms. Slaughter: All right. I'd like to know that.
- Mr. Mazzoli: It would be very useful.
 - Another reason, Louise, that they have serious reservations about your bill and it is also brought up by the FAIR group later this morning, regarding the questions of fraud, and the standards of proof. If you move to the credible evidence from something like a verified statement of a licensed worker in this field, you open up potentially to fraud. So let me just ask that question, since it will be brought up today. How do you deal with that problem?
- Ms. Slaughter: Well, I think that the Marriage Fraud Act dealt with that problem. All we're trying to do is say that within that act, which obviously had the support of the Congress of the United States—none of us are trying to bring in citizens fraudulently—but under that act, we did not believe that Congress intended that that 2-year waiting period be a time of horror for persons who were living in unspeakable conditions and had absolutely no recourse. It was that person, male or female, that we are trying to speak up, believing that the law does not permit that kind of control and abuse.
 - Certainly I would imagine that the numbers of people who have applied—and I have not seen those, and I would like to have some supporting documentation—probably reflect, without too much stretch of imagination, the kind of domestic violence that's taking place in this country today. But American women don't have to go through the process of going to the U.S. Government and pleading for their lives."²⁷¹
- Rep. McCollum, FL then expressed his overall support for the 1992 amendments to the Immigrations and Naturalization Act brought by Rep. Slaughter, NY, while also questioning “credible evidence”:
 - Mr. McCollum: Louise, I certainly support the concept that you've go there, and I'm, as you know, the original author of the Marriage Fraud Act.
 - Ms. Slaughter: Yes, indeed.
 - Mr. McCollum: We have recognized for some time that the battered spouse situation is important to address. The read question involved in this is how far we can go in these terms and how loose they are. And I guess the issue is what is 'credible evidence?' And, I'm curious (a) what you think it is and (b) is there any way to better restrict or define it than just leaving it like it is and what you've proposed?

²⁷¹ *Immigration and Naturalization Housekeeping Amendments Act of 1992: Hearing Before the Subcomm. On Int'l L., Immigr., and Refugees of the H. Comm. on the Judiciary*, 102nd Cong. 44-45 (1992) (statements between Romano L. Mazzoli, Representative for Kentucky and Louise Slaughter, Representative for New York), <https://niwaplibrary.wcl.american.edu/pubs/nowldef-testimony-bsw-1992>,

- Ms. Slaughter: We certainly want to do that, but it seems to me that the [Immigration and Naturalization Service] itself, as we pointed out before the Marriage Fraud Act, often accepted as credible evidence uncorroborated statements. But we feel that adequate evidence has always been in this country evidence that has been given by people who are working in the field, by teachers at school. We take that for child abuse. We don't require that every child that claims that he has been abused go to a medical professional, a licensed medical professional, as the statement goes, to try to prove that case. The same kind of evidence that should apply for abuse for any other person in this country should certainly not be disallowed for someone because they are not an American citizen.
- Mr. McCollum: Well, at one time we are considering other language that would not be as broad as credible evidence. "Included but not limited to reports and affidavits from police, medical personnel, psychologists, school officials, or social service agencies," was the language being used; so I wanted to make that point to you.
 - Would language somewhat similar to this if not that language, to further refine 'credible fear' be acceptable to you, and if it isn't, what problems do you have or what can you do to give us some better guidance?
- Ms. Slaughter: Well, I think I'd like to work with you on that, if I may, because one of the important points that I wanted to make a while ago, and I maybe didn't make it strongly enough, is that we think that evidence from battered shelters or evidence of bruising, pictures of the spouse brought into the shelter, certainly ought to be also corroborating evidence. But battered women shelters are run by people who basically are volunteers; some of them are professionals, but they don't have on staff license mental professionals.
- Mr. McCollum: No, I understand why you want to get away from that
- Ms. Slaughter: Yes.
- Mr. McCollum: And I understand that completely. My concern, and I think probably some of my colleagues would share it, is simply in making the door too wide. Without any further refinement, a court should interpret 'credible evidence' to mean just about anything. The real concern is not what INS's discretion will be or the Attorney General's. It's that if a court goes in and reviews it, they could interpret the language you put into the statute such that, well, if the spouse herself comes in there and says, 'I was beaten up,' and maybe she has her neighbor friend say that, and that's it. Maybe that is sufficient, but it seems to me that at some point that's awfully easy to have fraud. The question is: How can we put it in there so that there can be some other credible evidence. They don't have to go to a mental health professional, but it seems to me you ought to at least have somebody—school officials, social workers, somebody—

Ms. Slaughter: There was an intent that this would not be verified by someone else other than complaining spouse. But I have to say this: It seems to me that because these are mostly women, there's the same sort of underlying attitude which is present in legislation of the United States that we often promulgate—that women don't know what they're talking about, and somebody else is going to have to verify it for them. We pass legislation like that; the gag rule is an example."²⁷²

VAWA CONFIDENTIALITY AND THE CREATION OF THE SPECIALIZED VAWA UNIT ADJUDICATING VAWA, U VISA, T VISA AND OTHER CRIME VICTIM'S CASES

VAWA Confidentiality²⁷³

LEGISLATIVE HISTORY OF VAWA CONFIDENTIALITY

Violence Against Women Act Confidentiality protections were developed to interrupt efforts of perpetrators of domestic violence, child abuse, sexual assault, stalking, human trafficking, and other crimes against immigrants from triggering immigration enforcement actions against victims,²⁷⁴ learning about or obtaining information from victims' VAWA confidentiality protected case files,²⁷⁵ and interfering in adjudication of crime victim and abuse based immigration cases filed by victims.²⁷⁶ VAWA Confidentiality was enacted in 1996 and improved in VAWA 2000, VAWA 2005 and VAWA 2013. The following explains the legislative history of the important provisions of VAWA confidentiality designed to enhance the safety of immigrant victims and their children.

- VAWA Confidentiality was passed and enacted into law in 1996 through Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act. Regarding VAWA Confidentiality, the 1996 House Judiciary Committee report addresses the limitations of the Attorney General's authority by explaining that the Senate's
 - “[A]mendment section 331 recedes to House section 364, with modifications. This section provides that the Attorney General shall not make an adverse determination of admissibility or deportability against an alien or an alien's child, using information furnished solely by, certain individuals who have battered or subjected to extreme cruelty that alien or that alien's child, unless the alien has been convicted of a crime identified in redesignated section 237(a)(2). Neither shall the Attorney General permit use by, or disclosure to any person (other than an officer of the Department of Justice for official and certain other designated purposes) of any information that relates to

²⁷² *Immigration and Naturalization Housekeeping Amendments Act of 1992: Hearing Before the Subcomm. On Int'l L., Immigr., and Refugees of the H. Comm. on the Judiciary*, 102nd Cong. 45-46 (1992) (statements between Ira William McCollum Jr., Representative for Florida and Louise Slaughter, Representative for New York), <https://niwaplibrary.wcl.american.edu/pubs/nowldef-testimony-bsw-1992>.

²⁷³ For more detailed information on VAWA confidentiality see, Alina Husain and Leslye Orloff, VAWA Confidentiality: Statutes, Legislative History and Implementing Policy (April 4, 2018) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

²⁷⁴ Alina Husain, Daliana Gomez Garcia, & Leslye Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy*, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (June 7, 2022), <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

²⁷⁵ Rafaela Rodrigues, Limayli Huguet, & Leslye E. Orloff, *Quick Reference Guide for Judges: VAWA Confidentiality and Discovery-Related Case Law*, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (Oct. 25, 2022), <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-discovery-cases-judicial>.

²⁷⁶ *Demaj v. Sakaj*, No. 3:09 CV 255 JGM, 2012 WL 476168 (D.Conn. Feb. 14, 2012).

an alien who is the beneficiary of an application for relief (which has not been denied) under section 204(a)(1) (A) and (B) (self-petition for immigrant visa by alien who has been battered or subject to extreme cruelty), section 216(c)(4)(C) (hardship waiver allowing removal of conditional permanent resident status based on qualifying marriage because alien spouse or child has been subject to battery or extreme cruelty), or section 244(a)(3) (suspension of deportation for alien spouse or child who has been subject to battery or extreme cruelty). Civil penalties are established for willful violations.”²⁷⁷

Creation of the Specialized VAWA Unit

In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created “to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants”, to “[engender] uniformity in the adjudication of all applications of this type” and to “[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies.” This specially trained VAWA unit assures consistency of VAWA adjudications, and can effectively identify eligible cases and deny fraudulent cases. Maintaining a specially trained unit with consistent and stable staffing and management is critically important to the effective adjudication of these applications.²⁷⁸

REP. CONYERS, MI

- *“Consistent with these procedures, I recommend that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§202 or 203), and VAWA HRIFA petitions, 106 work authorization under section 814(c) of this Act), battered spouse waiver adjudications under 216(c)(4)(C), applications for parole of VAWA petitioners and their children and applications for children of victims who have received VAWA cancellation.”*
- House Judiciary Report on the Department of Justice Appropriations Authorization Act, Fiscal Years 2006-2009 (H.R. 3402, § 921)

In creating VAWA’s confidentiality provisions Congress was explicit about its intent.

- “In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include

²⁷⁷ H.R. REP. NO. 104-828, p. 231, at § 384 (1996).

²⁷⁸ See 62 Fed. Reg. 16607-16608 (1997); USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002).

abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims.”²⁷⁹

- “This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA.”²⁸⁰
- In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special “any credible evidence” standard.”²⁸¹
- “[T]he Secretary of Homeland Security and the Attorney General and other Federal officials may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government data bases can be relied upon, even if government officials first became aware of it through an abuser.”²⁸²

REP. CONYERS, MI

- *“I believe that...this Act contains some of the most important protections for immigrant victims. This section enhances VAWA's confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution....Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special “any credible evidence” standard. I believe that all investigation and enforcement of these provisions should be done by the Office of Professional Responsibility of the Justice Department. For consistency, these cases need to be centralized in one division and I believe that this office is best equipped to address these cases. VAWA confidentiality protections in IIRIRA are amended to conform with*

²⁷⁹ DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

²⁸⁰ DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

²⁸¹ DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

²⁸² DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

current practice extending these protections to the Department of Homeland Security in addition to the Department of Justice and to expand confidentiality protections to the Department of State. These protective provisions were designed to assure that the Secretary of Homeland Security, the Attorney General and the Secretary of State may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government databases can be relied upon, even if government officials first became aware of it through an abuser.”²⁸³ To appropriately implement VAWA Confidentiality, the Department of Homeland states that it “developed and required...all of its officers receive training”²⁸⁴ and that the DHS 2013 All DHS Directive requires that:

- “All DHS employees who, through the course of their work may come into contact with victim applicants or have access to information covered by 8 U.S.C. 1367 complete the VAWA: Confidentiality and Immigration Relief training, which is currently on Component's Learning Management Systems (LMS). The VAWA Training was developed by FLETC in collaboration with subject-matter experts from several DHS Components, including USCIS, ICE and CBP. No later than 180 days after the enactment of this policy, and on an annual basis thereafter, the Component Heads, or his or her delegates, of CIS OMB, CRCL, USCIS, ICE and CBP report to the Review Committee the rate of compliance for this training.
- Since 2007, ICE has also VAWA confidentiality policies in place. “The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) which became effective on January 5, 2006, expanded various protections for aliens seeking immigration benefits as crime victims and amended various sections of the Immigration and Nationality Act (INA). As a result, operational units of U.S. Immigration and Customs Enforcement (ICE) will be required to follow new procedures when taking certain actions in cases involving aliens eligible to apply for VAWA benefits or T or U nonimmigrant status. This interim guidance explains how VAWA 2005 affects the current operating procedures of the Office of Investigations (DI) and the Office of Detention and Removal Operations (DRO).
- For purposes of this interim guidance, if an officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or I or U nonimmigrant status, the requirements of 8 U.S.C. § 1367...must be followed along with standard operating procedure.”²⁸⁵

²⁸³ H.R. Rep. No. 103-x at E2605-08 (2005).

²⁸⁴ DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, 3 (Nov. 7, 2013) <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

²⁸⁵ DEP'T OF HOMELAND SECURITY, MEMORANDUM FOR ALL OPLA CHIEF COUNSEL: VAWA 2005 AMENDMENTS TO THE IMMIGRATION LAWS, 24 (Feb. 1, 2007), <http://niwaplibrary.wcl.american.edu/pubs/iceopla-va-wa-confidentiality-2007-foia/>.

7. Chapters 1 - 2 Purpose -Background- Eligibility

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Chapter 1 - Purpose and Background

Guidance

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A. Purpose

In 2000, Congress created the U nonimmigrant classification (also known as the “U visa”) through the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women’s Protection Act (BIWPA)).^[1] The U visa serves two purposes:

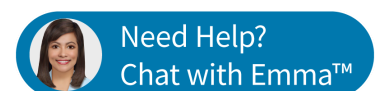
- Strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking, and other crimes; and
- Protect victims of crime who have suffered substantial mental or physical abuse due to the qualifying crime and are willing to help law enforcement authorities in the investigation or prosecution of the qualifying criminal activity or the qualifying crime (QCA).^[2]

B. Background

U nonimmigrant status is available to any [noncitizen](#) who is a victim of a QCA and is otherwise eligible for the status, regardless of gender or sex.^[3] Such victims may self-petition for U nonimmigrant status by filing a Petition for U Nonimmigrant Status ([Form I-918](#)).

Noncitizens petitioning for U nonimmigrant status must provide a certification from a federal, state, tribal, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting the QCA. The certification must state that the petitioner “has been helpful, is being helpful, or is likely to be helpful” in the “investigation or prosecution”^[4] of the QCA.^[5]

Noncitizens can file petitions for or pursue U nonimmigrant status while living inside or outside of the United States.



Principal petitioners can submit U nonimmigrant petitions on behalf of certain qualifying family members. Qualifying family members may include the petitioner’s spouse, unmarried children under the age of 21, and unmarried siblings under the age of 18. Qualifying family member eligibility depends on the age of the principal petitioner at the time the principal petitioner files the petition for U nonimmigrant status.^[6] USCIS must grant the principal petitioner U-1 nonimmigrant status before granting U nonimmigrant status to qualifying family members.

USCIS may grant U nonimmigrant status for an initial period of up to 4 years.^[7] Principal petitioners in the United States receive employment authorization incident to status.^[8] Qualifying family members in the United States are also authorized to work incident to status.^[9]

After at least 3 years of continuous physical presence in the United States in U nonimmigrant status, principal U nonimmigrants and their qualifying family members may apply for adjustment of status to that of a lawful permanent resident.^[10]

1. Acts and Amendments

Congress first established the U nonimmigrant status in 2000. Since then, Congress has enacted several amendments. The table below provides an overview of major legislation related to U nonimmigrant status.

U Nonimmigrant Status: Acts and Amendments

| Acts and Amendments | Key Changes |
|--|---|
| Violence Against Women Act of 2000 ^[11] | <ul style="list-style-type: none"> • Established U nonimmigrant status for noncitizen victims of certain serious crimes when: <ul style="list-style-type: none"> ◦ The victim has suffered substantial physical or mental abuse as a result of the crime; ◦ The victim has information about the crime; and ◦ A law enforcement official or a judge certifies that the victim "has been helpful, is being helpful, or is likely to be helpful" in the "investigation or prosecution" of that crime. ◦ Established a list of QCA categories. |

| Acts and Amendments | Key Changes |
|--|---|
| <p>Violence Against Women and Department of Justice Reauthorization Act of 2005 [12]</p> | <ul style="list-style-type: none"> • Clarified that the duration of status for an initial grant of U nonimmigrant status is 4 years. • Clarified that noncitizens in the United States on K visas (fiancé(e) or spouse) and S visas (informant), or persons admitted under the visa waiver program, are not prohibited from qualifying for U nonimmigrant status. • Clarified that noncitizens who came to the United States on J visas to receive graduate medical training, and noncitizens who are subject to the 2-year foreign residence requirement, may also qualify for U nonimmigrant status. • Established discretion for DHS to grant stays of removal to petitioners for U nonimmigrant status who have received prima facie determinations. • Established a prohibition on adverse determinations of admissibility or deportability based on information provided to DHS by abusers or perpetrators of QCA. |
| <p>William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 [13]</p> | <ul style="list-style-type: none"> • Clarified that the duration of status for an initial grant of U nonimmigrant status is up to 4 years. • Provided for extensions of status based on law enforcement need or exceptional circumstances, or while an application for adjustment of status is pending. • Provided discretion to grant employment authorization to a noncitizen who has a pending, bona fide petition for U nonimmigrant status. |

| Acts and Amendments | Key Changes |
|--|--|
| Violence Against Women Reauthorization Act of 2013 ^[14] | <ul style="list-style-type: none"> • Provided age-out protection by preserving the age of certain family members at the time the principal petitioner files his or her petition for U nonimmigrant status. • Provided that the exception for disclosure to law enforcement officials for a legitimate law enforcement purpose must be in a manner that protects confidentiality of the information. • Provided an additional exception for disclosure of protected information to national security officials for national security purposes. |

2. Program History

Congress created the U visa program in 2000 through the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women’s Protection Act (BIWPA)). On September 17, 2007, DHS published an interim rule implementing the U nonimmigrant status provisions of BIWPA at [8 CFR 214.14](#) and [8 CFR 212.17](#).^[15]

Between the time BIWPA was enacted and when the implementing regulations were published, legacy Immigration and Naturalization Service (INS) and DHS gave noncitizen crime victims who may have been eligible based on the statutory criteria the opportunity to seek interim relief until regulations were promulgated. The 2007 interim rule formally created [Form I-918](#), as well as the current administrative and adjudications processes for U nonimmigrant status.^[16]

The 2007 interim rule addresses eligibility criteria, the petition process, filing requirements, evidentiary standards, and benefits associated with the U nonimmigrant classification.^[17] The rule also provided that DHS would automatically issue an Employment Authorization Document (EAD) to principal petitioners upon the approval of the petition for U nonimmigrant status.^[18]

The statute provides for 10,000 U visas available every fiscal year.^[19] This statutory cap only applies to principal petitioners, not their qualifying family members. The statutory cap has been met each fiscal year, beginning in Fiscal Year (FY) 2010. Starting in FY 2011, DHS began to receive more petitions than visas available under the statutory cap.^[20]

DHS created the waiting list process through the 2007 interim rule as a mechanism to address the remaining eligible petitioners after the statutory cap had been reached in a given fiscal year. U nonimmigrant petitioners placed on the waiting list, whose petitions have been deemed approvable but for the statutory cap, are eligible for employment authorization and receive a grant of deferred action^[21] or, in limited circumstances, parole.

The William Wilberforce Trafficking Victims Reauthorization Act of 2008 (TVPRA 2008), signed into law on December 23, 2008, amended the Immigration and Nationality Act (INA) to provide DHS with discretion to

grant employment authorization to a noncitizen who has a pending, bona fide petition for U nonimmigrant status.^[22]

In June 2021, USCIS implemented the Bona Fide Determination (BFD) process for principal petitioners and qualifying family members with pending, bona fide petitions who USCIS determines merit a favorable exercise of discretion. Under this process, USCIS exercises its discretion on a case-by-case basis to grant BFD Employment Authorization Documents (BFD EADs) and deferred action. The BFD process is distinct from the waiting list process. Before June 2021, a principal petitioner and his or her qualifying family members received employment authorization and deferred action only when USCIS placed the principal petitioner on the waiting list.

C. Legal Authorities

- [INA 101\(a\)\(15\)\(U\)](#) - Definition of U nonimmigrant classification
- [INA 103\(a\)](#) - Powers and duties of the Secretary of Homeland Security
- [INA 214\(p\)](#) - Requirements applicable to U nonimmigrant status visas
- [8 CFR 214.14](#) - Alien victims of certain qualifying criminal activity
- [INA 212\(a\)](#) - Classes of “aliens” ineligible for visas or admission
- [INA 212\(d\)\(3\)](#) - Temporary admission of nonimmigrants
- [INA 212\(d\)\(14\)](#) - Discretion to waive ground of inadmissibility for U nonimmigrant status
- [INA 212\(a\)\(4\)\(E\)\(ii\)](#) - Exemption from public charge ground of inadmissibility
- [INA 237\(d\)](#) - Administrative stay of final order of removal
- [INA 248\(b\)](#) - Change of nonimmigrant classification
- [8 U.S.C. 1367](#) - Penalties for disclosure of information
- [8 CFR 212.17](#) - Applications for the exercise of discretion relating to U nonimmigrant status
- [8 CFR 274a.12](#) - Classes of “aliens” authorized to accept employment

Footnotes

^[^1] See Section 1513 of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA 2000), [Pub. L. 106-386 \(PDF\)](#), 114 Stat. 1464, 1533 (October 28, 2000), as amended by Section 801 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), [Pub. L. 109-162 \(PDF\)](#), 119 Stat. 2960, 3053 (January 5, 2006); Violence Against Women and Department of Justice Reauthorization Act of 2005 – Technical Corrections, [Pub. L. 109-271 \(PDF\)](#), 120 Stat. 750 (August 12, 2006); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044 (December 23, 2008); and Title VIII of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), [Pub. L. 113-4 \(PDF\)](#), 127 Stat. 54, 110 (March 7, 2013).

^[^2] See Section 1502 and 1513(a)(2) of the Violence Against Women Act of 2000, [Pub. L. 106-386 \(PDF\)](#), 114 Stat. 1518, 1533-1534 (October 28, 2000) (“[P]roviding battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection

orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children . . .”).

[^3] For specific requirements, see Chapter 2, Eligibility Requirements for U Nonimmigrant Status [[3 USCIS-PM C.2](#)].

[^4] In this context, the terms “investigation or prosecution” encompass detection, investigation, prosecution, conviction, and sentencing. See [8 CFR 214.14\(a\)\(5\)](#).

[^5] See [INA 214\(p\)\(1\)](#).

[^6] See [8 CFR 214.14\(f\)\(1\)](#).

[^7] See [INA 214\(p\)\(6\)](#) (subject to extension based on law enforcement need, while an application for adjustment of status under [INA 245\(m\)](#) is pending, or if warranted due to exceptional circumstances). See [8 CFR 214.14\(g\)\(2\)](#).

[^8] See [8 CFR 274a.12\(a\)\(19\)](#).

[^9] See [INA 101\(a\)\(15\)\(U\)\(ii\)](#). See [INA 214\(p\)\(3\)\(B\)](#). See [8 CFR 274a.12\(a\)\(20\)](#). Under [8 CFR 214.14\(f\)\(7\)](#), qualifying family members must file a separate Application for Employment Authorization ([Form I-765](#)) to obtain an employment authorization document.

[^10] See [INA 245\(m\)](#).

[^11] See Section 1513 of VTVPA 2000, [Pub. L. 106-386 \(PDF\)](#), 114 Stat. 1464, 1533 (October 28, 2000).

[^12] See Title VIII of VAWA 2005, [Pub. L. 109-162 \(PDF\)](#), 119 Stat. 2960, 3053 (January 5, 2006).

[^13] See TVPRA 2008, [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008).

[^14] See VAWA 2013, [Pub. L. 113-4 \(PDF\)](#) (March 7, 2013).

[^15] See [72 FR 53014 \(PDF\)](#) (Sept. 17, 2007) (interim rule).

[^16] See [72 FR 53014 \(PDF\)](#) (Sept. 17, 2007) (interim rule).

[^17] See [72 FR 53014 \(PDF\)](#) (Sept. 17, 2007) (interim rule).

[^18] See [8 CFR 214.14\(c\)\(7\)](#).

[^19] See [INA 214\(p\)\(2\)](#).

[^20] See [Number of Form I-918, Petition for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status \(Fiscal Years 2009-2020\)](#).

[^21] Deferred action is an exercise of prosecutorial discretion that makes the noncitizen a lower priority for removal. See [72 FR 53014 \(PDF\)](#), 53015 (Sept. 17, 2007), footnote 3. See [8 CFR 274a.12\(c\)\(14\)](#).

[^22] See Section 201(c) of [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5053 (December 23, 2008). See [INA 214\(p\)\(6\)](#).



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Chapter 2 - Eligibility Requirements for U Nonimmigrant Status

Guidance

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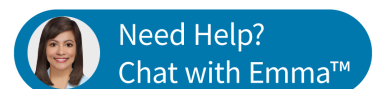
A. Principal Petitioners

To be eligible for U nonimmigrant status, principal petitioners must establish that they meet the following eligibility requirements by a preponderance of the evidence:

- They are or were the victim of a qualifying criminal activity or qualifying crime (QCA) that violated U.S. law or occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States;
- They possess information concerning the QCA;
- They have been, are being, or are likely to be helpful to a federal, state, tribal, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting the QCA;
- They have suffered substantial physical or mental abuse as a result of being a victim of a QCA;^[1] and
- They are admissible or merit a discretionary waiver of any applicable grounds of inadmissibility.^[2]

B. Qualifying Family Members

Certain family members of the principal petitioner may be eligible for derivative U nonimmigrant status, depending on the age of the principal petitioner at the time of filing the principal petition for U nonimmigrant status.^[3] The principal petitioner must be granted U-1 nonimmigrant status in order for any qualifying family member to be granted derivative U nonimmigrant status.



| Petitioner | Qualifying Family Member |
|---|---|
| A principal petitioner 21 years of age or older at the time of filing the petition may file for: | <ul style="list-style-type: none"> • Spouse (U-2) • Unmarried children under the age of 21 (U-3) |
| A principal petitioner under the age of 21 years old at the time of filing the petition may file for: | <ul style="list-style-type: none"> • Spouse (U-2) • Unmarried children under the age of 21 (U-3) • Parents (U-4) • Unmarried siblings under the age of 18 (U-5) |

Principal petitioners may choose to file for qualifying family members:

- At the time of submitting the principal petition;
- After the principal petition has been filed and remains pending; or
- After the principal petition has been approved for U nonimmigrant status.

When determining whether a family member is eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, officers must confirm that:

- The [noncitizen](#) for whom the Petition for Qualifying Family Member of U-1 Recipient ([Form I-918, Supplement A](#)) was filed has a qualifying family relationship with the principal petitioner; and
- The qualifying family member is admissible to the United States.

For the noncitizen to establish eligibility as a qualifying family member, the relationship between the principal petitioner and the family member must exist:

- When the principal petitioner's Petition for U Nonimmigrant Status ([Form I-918](#)) is favorably adjudicated;
- When the [Form I-918 Supplement A](#) is filed;
- When the [Form I-918 Supplement A](#) is adjudicated; and
- At the time of the family member's admission as a U nonimmigrant.^[4]

The eligibility requirements that apply to principal petitioners do not apply to qualifying family members. Qualifying family members do not need to demonstrate helpfulness in the investigation or prosecution of the

qualifying crime, or that they have suffered substantial physical or mental abuse as a result of a qualifying crime.

Footnotes

[^1] See [INA 101\(a\)\(15\)\(U\)](#).

[^2] See [INA 212\(d\)\(14\)](#).

[^3] See [8 CFR 214.14\(f\)\(1\)](#).

[^4] See [8 CFR 214.14\(f\)\(4\)](#) as limited by *Medina Tovar v. Zuchowski*, 982 F.3d 631 (9th Cir. 2020) (en banc) (holding invalid the regulatory requirement that a spousal relationship exist at the time the Form I-918 is filed in order for the spouse to be eligible for classification as a U-2 nonimmigrant). As a matter of policy, USCIS applies the *Medina Tovar* decision nationwide.

Current as of January 15, 2025

U visa - modifications - testimony - senate - 2025

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 608
Lisae C. Jordan, Executive Director & Counsel
February 7, 2025

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute which provides direct legal services for survivors across the State of Maryland. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 608.

Senate Bill 608 – Ensuring All Survivors Can Help Hold Offenders Accountable

Violent crime can affect anyone. Undocumented victims are often reluctant to report crimes due to fear of deportation. This fear allows perpetrators to remain free and continue harming others. The U Nonimmigrant Status Petition (U-Visa) serves as a critical tool to counteract this dynamic by allowing victims and their families to remain in the United States for up to four years to assist in the prosecution of crimes committed against them.

The U-Visa is available to those who are “helpful” in efforts to hold offenders accountable. Unfortunately, the U-Visa process currently lacks clarity regarding what qualifies as “helpful” assistance from victims and at what stage in the process that assistance must occur. As a result, law enforcement officers often find themselves making de facto immigration determinations rather than focusing solely on certification. This can lead to inconsistencies and unnecessary barriers for victims seeking justice. SB 608 provides essential clarification on the definition of “helpful,” ensuring a more straightforward process for both victims and law enforcement, ultimately leading to more effective investigations and prosecutions.

Additionally, Maryland's list of qualifying crimes for U-Visa eligibility does not currently align with federal guidelines. SB 608 addresses this discrepancy and will streamline the U-Visa process, particularly in cases where crimes span multiple states. SB 608 also expands the list of individuals authorized to certify that a crime occurred and that the victim has been helpful. By broadening certification authority, the bill ensures that victims have viable pathways to seek justice. Finally, SB 608 removes the statute of limitations for U-Visa petitions relative to the crime committed. This provision acknowledges the complex trauma that victims endure and grants them the necessary time to process their experiences and make the decision to report. This tracks more closely to Maryland's felony statute, which do not have a statute of limitations.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 608**

Maryland Catholic Conference_FAVSB608.pdf

Uploaded by: Michelle Zelaya

Position: FAV



MARYLAND
CATHOLIC
CONFERENCE

February 7, 2025

SB608

Criminal Procedure - U Nonimmigrant Status Petitions

Judicial Proceedings Committee

Position: Favorable

The Maryland Catholic Conference (MCC) offers this testimony in support of **Senate Bill 608**. The Maryland Catholic Conference (MCC) is the public policy representative of the three (arch)dioceses serving Maryland, which together encompass over one million Marylanders. Statewide, their parishes, schools, hospitals, and numerous charities combine to form our state's second largest social service provider network, behind only our state government.

Senate Bill 608 modifies the certification requirements for U Nonimmigrant Status Petitions, which are designed to protect immigrant victims of crimes who assist law enforcement in investigations or prosecutions. It expands the individuals eligible to request certification and outlines the conditions under which certain information related to these petitions may be disclosed. Violent crimes can affect anyone, regardless of race, gender, sexuality, income level, or citizenship status. However, undocumented victims are often reluctant to report crimes due to fear of deportation. The U Nonimmigrant Status Petition (U-Visa) serves as a critical tool to counteract this dynamic by allowing victims and their families to remain in the United States for up to four years to assist in the prosecution of crimes committed against them.

Catholic social teaching emphasizes the protection of the vulnerable and the promotion of justice and solidarity. Immigrants facing exploitation or violence are among the most marginalized, and this legislation provides them with a pathway to safety and justice. Supporting this bill upholds the dignity of all individuals, encourages compassion for those in need, and aligns with the moral call to protect and uplift the most vulnerable members of society.

The current U-Visa process lacks clarity regarding what qualifies as "helpful" assistance from victims and at what stage in the process that assistance must occur. As a result, law enforcement officers often find themselves making de facto immigration determinations rather than focusing solely on certification. This can lead to inconsistencies and unnecessary barriers for victims seeking justice. This bill provides essential clarification on the definition of "helpful," ensuring a more straightforward process for both victims and law enforcement, ultimately leading to more effective investigations and prosecutions. As well as a safer Maryland for all individuals who regardless of status have dignity.

The MCC appreciates your consideration and respectfully urges a favorable report for **Senate Bill 608**.

SB0608 U Nonimmigrant Status Petitions Testimony (

Uploaded by: Sophie Aron

Position: FAV

BILL NO: SB 608

TITLE: Criminal Procedure – U Nonimmigrant Status Petitions

COMMITTEE: Judicial Proceedings

HEARING DATE: February 7th, 2025

POSITION: FAVORABLE

The University of Maryland SAFE Center is the first university-based comprehensive direct services, research, and advocacy center on human trafficking. It is an initiative of the University of Maryland, College Park, and the University of Maryland, Baltimore through their strategic partnership, MPowering the State. At the SAFE Center, we provide direct bilingual services to survivors of sex and labor trafficking regardless of nationality, gender, or age.

Congress established U visa immigration relief in response to concerning statistics on the vulnerability of undocumented immigrants and the prevalence of crimes committed against them. Created in 2000, the U visa aims to encourage crime reporting among undocumented individuals who have been trafficked, exploited, victimized, or abused, while also providing them with immigration protections in line with the United States' humanitarian commitments.

SAFE Center attorneys have encountered numerous challenges when assisting trafficking survivors with obtaining U visa certifications. In one case, the attorney was redirected multiple times by the law enforcement agency before they identified the appropriate certifying official. While the certification was ultimately signed, the process took many months, during which the client remained without immigration status. This is particularly harmful in the case of trafficking survivors, whose unique vulnerabilities leave them susceptible to being trafficked again if they do not have access to lawful employment.

Violent crime can affect anyone, regardless of race, gender, sexuality, income level, or citizenship status. However, undocumented victims are often reluctant to report crimes due to fear of deportation. This fear allows perpetrators to remain free and continue harming others. In anti-trafficking work, the SAFE Center frequently witnesses traffickers exploiting this fear to silence and control victims. The U Nonimmigrant Status Petition (U-Visa) serves as a critical tool to counteract this dynamic by allowing victims and their families to remain in the United States for up to four years to assist in the prosecution of crimes committed against them.

Despite its importance, the U-Visa process currently lacks clarity regarding what qualifies as "helpful" assistance from victims and at what stage in the process that assistance must occur. As a result, law enforcement officers often find themselves making de facto immigration determinations rather than focusing solely on certification. This can lead to inconsistencies and unnecessary barriers for victims seeking justice. SB 608 provides essential clarification on the definition of "helpful," ensuring a more straightforward process for both victims and law enforcement, ultimately leading to more effective investigations and prosecutions.

Additionally, Maryland's list of qualifying crimes for U-Visa eligibility does not currently align with federal guidelines. SB 608 addresses this discrepancy, which the SAFE Center believes will streamline the U-Visa process—particularly in cases where crimes span multiple states.

SB 608 also expands the list of individuals authorized to certify that a crime occurred and that the victim has been helpful. Trafficking victims are often conditioned to distrust law enforcement, making it difficult for them to come forward. By broadening certification authority, the bill ensures

that victims have viable pathways to seek justice, even in cases where law enforcement involvement is a barrier.

Furthermore, SB 608 removes the statute of limitations for U-Visa petitions relative to the crime committed. This provision acknowledges the complex trauma that victims endure and grants them the necessary time to process their experiences and make the decision to report. Justice should never be time-barred.

For these reasons, **the University of Maryland SAFE Center Force urges a favorable report on SB 608.**

Sincerely,

Allison Norris, Esq.

Legal Immigration Services Director

University of Maryland SAFE Center for human Trafficking Survivors