

U Visa Certifications: Range of Potential Certifiers at the Local, State, and Federal Government Levels

By: Benish Anver and Leslye E. Orloff¹

Congress created the U visa to achieve two goals:

- Strengthen the ability of law enforcement to effectively detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, child and elder abuse, and other serious crimes; and
- To achieve this through cooperation and participation of immigrant victims they seek to protect.²

In order for a victim to file a U visa application, the victim of a criminal activity must obtain a U visa certification from a government official eligible under the U visa regulations to sign certifications. Government agency officials complete the U visa certification form (I-918B), which certifies that the criminal activity took place and the applicant immigrant victim was helpful, is being helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the perpetrator.³ Congress “explicitly included federal, state, and local law enforcement officials, prosecutors, and judges in the list of U visa certifiers” so that victims would have a range of potential certifiers to turn to and would have increased access to certifications.⁴ Despite the range of certifiers that Congress envisioned, attorneys and advocates frequently limit themselves to obtaining certifications from the local police department investigating the criminal activity or the prosecutor on the case.

Certifying agencies are defined to include “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 [U visa statute].”⁵ The phrase “investigating or prosecuting” is defined in the U visa regulations to include the full timeline of helpfulness victims can provide to government officials in criminal cases from assisting in the detection of the crime, through investigation, to prosecution, and ultimately to conviction, and/or sentencing for the purposes of assessing helpfulness.⁶ This expands the range of possible certifiers that attorneys and advocates can turn to obtain the U visa certifications required for immigrant crime victim clients to be able to file U visa applications.

This handout will explore the range of potential certifiers that attorneys and advocates can work with to secure certifications that are a necessary prerequisite to filing their clients’ U visa applications.

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² LESLYE E. ORLOFF, PRADINE SAINT-FORT, ROCIO MOLINA, & BENISH ANVER, U VISA TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS 1 (Nov. 2012), available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/february-15-2013-collaborating-with-le/u-visa_toolkit_Jan2013.pdf

³ *Id.* at 2.

⁴ *Id.* at 2 (citing 8 U.S.C. § 1101(a)(15)(U)(2006)).

⁵ U.S. Department of Homeland Security, New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule (hereinafter “U Visa Interim Rule”), 72 Fed. Reg. 53014, 53019 (Sept. 17, 2009) (citing INA § 101(a)(15)(U)(i)(III), 8U.S.C. § 1101(a)(15)(U)(i)(III)), available at: http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf

⁶ *Id.* at 53019-20; For an illustrative list of the variety of ways immigrant victims of criminal activity can be helpful *see*, Benish Anver, Rocio Molina, Andrea Carcamo-Cavazos, Peter Helein, and Devon E. Turner, *U Visa Checklist for Assessing Helpfulness* (Sept. 25, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/training-materials/U-visa-helpfulness.pdf/view>

I. Law Enforcement Agencies at the Local, State, and Federal Levels

Attorneys and advocates should be aware of the range of law enforcement agencies that can sign certifications, as they have overlapping jurisdiction in your state or community in addition to the local police department that is investigating the criminal activity perpetrated against the immigrant victim client. Often, local police departments are the first responders to crime, but they are not the only law enforcement agency that can provide your client with a certification.

A. State and Local Law Enforcement Agencies

If you or your clients encounter barriers to obtaining certifications from the local police department that is investigating the underlying criminal activity, consider turning to the local sheriff's office or the State Police for a certification. These agencies can sign certifications because they are able to detect the underlying criminal activity and the presence of the perpetrator in an ongoing criminal investigation in their jurisdiction when the immigrant victim goes to them for help. Conversely, if the local sheriff's department has taken a police report, is investigating the crime, or refuses to investigate the crime and will not sign a certification, consider approaching local police or State Police for certification.

B. Federal Law Enforcement Agencies

Federal law enforcement agencies are another option for obtaining certifications. There are many victims of U visa criminal activities who may have relationships with or may be helping law enforcement officers working for any of the following federal agencies. The U visa regulations, for example, explicitly recognize that victims of U visa criminal activities may also be victims of other criminal activities. When the perpetrator is charged with a non-qualifying criminal activity, the government agency investigating or prosecuting the non-qualifying criminal activity can sign a U visa certification for the qualifying criminal activity that is not being prosecuted.⁷ The following federal law enforcement agencies may certify:

- FBI
- Department of Homeland Security (DHS)
 - Immigration and Customs Enforcement (ICE)
 - U.S. Customs and Border Patrol (CBP)
 - Homeland Security Investigations (HSI)
- Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

You and your client should try to obtain the following pieces of evidence to assist other law enforcement agencies in signing certification when that agency may not be the primary agency involved in the investigation of criminal activity:

- Police report(s)
- Copies of 911 calls reporting the crime
- Photos of physical injuries
- Any additional statements the immigrant victim made regarding the crime that may show past or current helpfulness to law enforcement.

Approaching other law enforcement agencies in your area puts them on alert about crimes that are taking place in their jurisdictions. This is particularly helpful when a victim of criminal activity has fled the jurisdiction where the criminal activities occurred and is living in a new location. Notifying local and/or federal law enforcement in that area about prior criminal activities suffered helps these law enforcement agencies by alerting them as to the criminal history of the perpetrator who may follow the victim to the

⁷ U Visa Interim Rule at 53018 (E.g. perpetrator charged with federal embezzlement charges and the investigator discovers that the perpetrator's wife has been a victim of domestic violence. The U visa certification would be signed by the federal prosecutor based on the domestic violence offense).

new location and perpetrate new crimes there. This is particularly important in domestic violence cases and in cases where the criminal perpetrator is actively trying to retaliate against the victim. The victim's helpfulness in detection of these cases can be very important to local law enforcement agencies that are often able to sign certifications upon review of police reports from the prior jurisdiction. These cases provide an opportunity to expand the network of law enforcement agencies that you can work with to obtain certifications.

II. Prosecutors at the Local, State, and Federal Levels

Similar to law enforcement agencies, prosecutors' offices exist at several levels in your jurisdiction. Depending on your jurisdiction, they may have the following titles:

A. State, County, and Municipal Level

- District Attorneys
- State's Attorneys
- Commonwealth's Attorney
- County Attorney
- County Prosecutor
- Solicitor
- State Attorney General

B. Federal Prosecutors

- U.S. Attorney's Offices

Prosecutor's offices in most jurisdictions receive cases for prosecution in two ways:

- Case sent for prosecution from the police department
- Victim files a private criminal complaint with the prosecutor's office. This option is used most often in misdemeanor cases when local police would need to obtain a warrant to initiate a criminal case against the perpetrator because the police did not observe the violence. When, because of language access issues or other reasons local police would not take a police report,⁸ a private criminal complaint is a viable option for immigrant crime victims. Filing a private criminal complaint is a form of helpfulness that can be the basis for prosecutors signing certifications.

Additionally, advocates and attorneys working with immigrant survivors should develop relationships with prosecutor's offices that could initiate prosecutions in your jurisdictions. In most jurisdictions, there can be multiple prosecutors' offices that could provide certification. For example, both the local district attorney's office and the state Attorney General's office may have jurisdiction to prosecute similar crimes in your state. The U visa covers a broad range of criminal activities, many of which could be prosecuted by either local or state level prosecutors, any of which would be able to sign certifications in a U visa victim's case.

Similarly, federal prosecutors could be in a position to sign certifications for immigrant crime victims. In domestic violence cases, this can occur when there has been interstate domestic violence that both state prosecutors and Assistant U.S. Attorneys could prosecute. Sexual assault that occurs on federal land would be prosecuted by the U.S. Attorney's Office. Additionally, federal prosecutors prosecuting drug or

⁸ NATALIA LEE, DANIEL J. QUINONES, NAWAL AMMAR & LESLYE E. ORLOFF, NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION, AND LANGUAGE ACCESS (Apr. 16, 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/Police%20Response%20U%20Visas%20Language%20Access%20Report%20NIWAP%20%204%2016%2013%20FINAL.pdf/view>

firearms cases may be working with witnesses who have also suffered U visa criminal activities perpetrated by the offender being prosecuted (e.g. domestic violence or sexual assault). When this occurs, federal prosecutors can sign U visa certifications.

III. Federal and State Agencies

The U.S. Citizenship and Immigration Services (USCIS) have determined that certain federal agencies, and their state counterparts, also have “criminal investigative jurisdiction in their respective areas of expertise.”⁹ Attorneys and advocates should be mindful that many of these agencies may gain information about U visa listed criminal activities that your client suffered in the course of their investigations in their areas of expertise. These agencies can sign U visa certifications for U visa criminal activities the victim suffered that were in addition to or part of the factual background of the case the federal or state agency is investigating.

A. Federal Agencies (other than law enforcement)

The following federal agencies may sign certifications:

- Department of Labor (DOL)¹⁰
 - DOL Inspector General investigates labor violations and can sign certifications for immigrants that were victims of qualifying criminal activity in the workplace, including crimes such as sexual assault/rape, human trafficking, peonage, fraud in foreign labor contracting, felonious assault, extortion, kidnapping, stalking or other U visa criminal activities. The DOL can also sign certifications for criminal activity, such as witness tampering, perjury, obstruction of justice, that is the focus of their investigation involving your client.
- Equal Employment Opportunity Commission (EEOC)¹¹
 - The EEOC investigates claims of discrimination in the workplace. Certifications can be obtained for criminal activity discovered in the course of their investigation, which may include, sexual assault/rape, human trafficking, peonage, fraud in foreign labor contracting, felonious assault, extortion, kidnapping, stalking, domestic violence or other U visa criminal activities, such as witness tampering, perjury, obstruction of justice, that is the focus of their investigation involving your client.
- Environmental Protection Agency (EPA)¹²
 - The EPA conducts civil investigations into violations of environmental laws and may encounter your client in the course of their investigation (i.e., your client is employed by a company that is being investigated, your client was the victim of a criminal activity on the premises, etc.) and can sign certifications for criminal activity they discover, such as sexual assault/rape, human trafficking, felonious assault, kidnapping, stalking, and other U visa criminal activity.
 - In addition to civil investigations, the EPA Office of Investigations may also encounter U visa eligible immigrant victims in the course of their criminal investigations of allegations, including “threats against EPA employees, contractors, facilities and assets” and “assaults on EPA employees or contractors and other acts of violence committed in EPA facilities.” This can include sexual assault/rape, felonious assault, stalking, etc.
 - If your client was the victim of a crime at an EPA facility where he or she was an employee or a contractor, you can obtain a certification from the EPA.

⁹ U Visa Interim Rule at 53019-20.

¹⁰ For more information about the types of investigations DOL conducts, please visit <http://www.oig.dol.gov/>

¹¹ For more information about the types of investigations the EEOC conducts, please visit <http://www.eeoc.gov/eeoc/index.cfm>

¹² For more information about the types of investigations the EPA conducts, please visit: <http://www.epa.gov/oig/about.html#4> and <http://www2.epa.gov/enforcement/enforcement-basic-information>

B. State and Local Agencies

Attorneys and advocates should be aware of state agency counterparts to the federal agencies listed above. So long as they are responsible for investigating and prosecuting criminal activity. This can include:

- State Departments of Labor
- State Equal Opportunity Employment Agencies or Boards

There are state and local agencies that are closely allied with state and local law enforcement agencies with whom they often work closely on criminal cases. The two primary agencies that will potentially have significant contacts with immigrant crime victims are:

- Adult Protective Services (APS)
- Child Protective Services (CPS)

Adult and child protective services agencies can be the first responding government agency to encounter immigrant children, immigrant elder abuse victims and immigrant victims who are disabled adults. Attorneys and advocates should develop relationships with local APS and CPS workers to learn how your agencies can collaborate with APS and CPS staff in your communities on cases involving immigrant victims.

Offer to train APS and CPS agency staff in your community on the range of immigration relief available to immigrant crime victims and U visa certification.¹³ APS and CPS workers will also find information very useful to their work about the public benefits and services immigrant crime victims qualify to receive and that fact that victims gain greater access to benefits after they file a U visa case, a human trafficking case or a VAWA self-petition. The fact that immigrant crime victims attain more access to benefits and services as their immigration case is approved. As APS and CPS agencies learn about the U visa, they become very helpful agencies for U visa certification and for identifying new victims that can benefit from your agency's services.

APS and CPS agencies are organized differently from state to state.¹⁴ In some states, each county has their own APS or CPS agency with an agency head that can sign or designate certifiers similar to how certification works for local police departments and prosecutors' offices. Other states have a state wide system for APS and CPS administration. For U visa certification purposes, advocates and attorneys working with immigrant U visa victims will need to determine who the head of the agency is for their local APS and CPS. Depending on the jurisdiction, if the local APS or CPS agency is run by the county, attorneys and advocates can obtain certification locally. If the local APS or CPS office is run by the state, attorneys and advocates will have to go to the State APS or CPS office to obtain a certification.

¹³ See generally LESLYE ORLOFF, ROCIO MOLINA, MARIA JOSE FLETCHER, LINDA DAWSON, CAROLYN S. RONIS, & ADITI KUMAR, TOOLKIT FOR ADULT PROTECTIVE SERVICES' USE OF THE U VISA (Feb. 2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/adult-protective-services/APSTOOLKIT.pdf/view>

¹⁴ See e.g., *Adult Protective Services Administration by State* (March 2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/adult-protective-services/State%20breakdown%20of%20APS%20Administration.pdf/view>