

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

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(Last updated February 3, 2014)

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U visa Quick Reference for Judges

Purpose of the U visa	<ul style="list-style-type: none"> • The U visa facilitates the reporting of crimes to law enforcement officials by trafficked, exploited, victimized or abused noncitizens and ensures immigrant victims receive access to justice.
Benefits of the U visa	<ul style="list-style-type: none"> • Strengthens law enforcement agencies’ abilities to detect, investigate, and prosecute criminal activity while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation. • Immigrant survivors and victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the criminal justice system. The U visa certification follows the DOJ Access to Justice Initiative by promoting accessibility, ensuring fairness, and increasing efficiency.
Who is eligible for a U visa?	<ul style="list-style-type: none"> • To be eligible for a U visa an individual: <ul style="list-style-type: none"> ○ Must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activity; ○ Must possess information concerning the criminal activities; ○ Must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local investigation or prosecution of the criminal activity; and ○ The criminal activity must have violated the federal or state laws of the U.S. (federal or state) or been perpetrated in the U.S. or its territories and possessions. • To prove his or her helpfulness, the applicant must obtain a certification from a law enforcement official, prosecutor, <i>judge</i>, USCIS official, or other federal or state authority detecting, investigating, prosecuting, convicting or sentencing any of the qualifying criminal activities.
U visa Qualifying Criminal Activities	<ul style="list-style-type: none"> • U visa qualifying criminal activities include, but are not limited to: <ul style="list-style-type: none"> ○ Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting¹, solicitation to commit any of the above-mentioned crimes, or <i>any similar activity</i> in violation of federal, state, or local criminal law. • The term <i>any similar activity</i> accounts for the wide variety of state and federal criminal laws, which may be named differently than the enumerated criminal activity in the statute but are comparable in nature and elements to the enumerated criminal activity. • The term “criminal activity” in the statutory language was intentionally chosen by Congress to accomplish two goals – to be broadly inclusive of “any similar activity” and to focus on the actions of the victim in coming to state or federal government officials with information about criminal activity. This language is meant to take into account “the wide variety of state

¹ § 8 U.S.C. 1351

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	<p>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.”² For example, the statute lists domestic violence as a U visa qualifying crime. However, most states do not specify domestic violence as a crime, but instead list crimes that constitute domestic violence, such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, stalking, child abuse, elder abuse, or malicious property damage.³ Even though these crimes are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence.</p>
<p>Status of Crime Perpetrator</p>	<ul style="list-style-type: none"> • The U visa applicant does not have to be married to the crime perpetrator and there may or may not be any family relationship between the victim and the perpetrator. The crime perpetrator may have any immigration or citizenship status including U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.
<p>Certification Requirements</p>	<ul style="list-style-type: none"> • U.S. Citizenship and Immigration Services (USCIS) Form I-918 Supplement B, must be completed by a qualifying certifier, such as a judge, and verify that the victim applying for a U visa meets the following four criteria: <ul style="list-style-type: none"> ○ has been the victim of qualifying criminal activity; ○ possesses information about the qualifying criminal activity; ○ has been, is being or is likely to be helpful in the investigation or prosecution of that qualifying criminal activity; and ○ the qualifying criminal activity was perpetrated in the U.S. or violated U.S. federal or state law. • The criminal activity may have occurred at any time in the past. However, once the victim receives a certification the victim must file the U visa application within six (6) months. • The certification should provide specific details about the nature of the criminal activity being detected, investigated, or prosecuted and describe the petitioner’s helpfulness in the case. • U visa certification does not require the criminal prosecution to be completed or successful, nor does it require law enforcement to investigate the criminal activity; the certification only attests to the U visa petitioner’s helpfulness in detection, prosecution, or investigation efforts.
<p>Judges as U visa Certifiers</p>	<ul style="list-style-type: none"> • Judges are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B. • The certification is necessary to establish eligibility for the U visa, but by itself does not grant immigration status to the victim. To obtain a U visa, a victim must meet eligibility requirements, in addition to obtaining a U visa certification. The Department of Homeland Security (DHS) has sole authority to grant or deny a U visa. • Judges may amend the language of the form to accurately reflect the findings upon which the judge is signing the certification. In Part 6 of the Certification form, “Based upon investigation of the facts, I certify,…” maybe amended with the following examples: <ul style="list-style-type: none"> ○ “Based upon my findings and issuance of a civil protection order ...I certify” ○ “Based upon my finding of probable cause in...I certify” ○ “Based on my having presided over the criminal case ... I certify” ○ “Based upon my findings in a [custody/divorce] case of [domestic violence/child

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

³ See Catherine F. Klein & Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 849-876 (1993).

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

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

U Visa Application Flow Chart



IF:

- The victim has been helpful, is being helpful, or is likely to be helpful to law enforcement, **OR**
- The victim is under 16 years of age and victim's parent, guardian, or next friend has been helpful, is being helpful, or is likely to be helpful to law enforcement, **OR**
- The victim is 21 years of age or older and is deceased due to the criminal activity or incapacitated or incompetent; the spouse and/or children under 21 of the victim have been helpful, are being helpful, or are likely to be helpful to law enforcement, **OR**
- The victim is under 21 years of age and is deceased due to the criminal activity or incapacitated or incompetent; the victim's spouse, children, parents, or unmarried siblings under 18 have been helpful, are being helpful, or are likely to be helpful to law enforcement,

THEN Victim (or legal representative) seeks I-918B, Law Enforcement Certification. (If victim is not working with a service provider, law enforcement officers can refer victims at this point.)

Law Enforcement provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by a. the head of the certifying agency; **OR**
b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b, a letter from the head of the agency designating another person to sign the certification (designee letter).

Victim submits U visa application to the Victims and Trafficking Unit of USCIS showing that the victim meets each of the U visa eligibility requirements.

The application includes*:

- U visa application form: Form I-918
- Law Enforcement Certification: Form I-918, Supplement B
- Documents related to victim's identification
- Victim's signed statement describing the facts of the victimization
- Any information related to victim's criminal history, including arrests
- Any information related to victim's immigration history, including prior deportation
- Any information related to victim's health problems, use of public benefits, participation in activities that may pose national security concerns, and moral turpitude
- Any information related to the victim's substantial physical or mental abuse suffered
- Other documentation such as police reports, medical records, letters of support from service providers.

Eligible family members can also apply.

* Other administrative documentation is also required. More information is available at niwaplrary.wcl.american.edu.

Within about 6 months, victim receives decision on U visa application. **If approved**, victim receives work permit. If applications for family members are approved and they are abroad, consular processing begins.

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

After three years, U visa holders (victims) apply for lawful permanent residence ("green card").

The application includes:

- Adjustment of Status Application: Form I-485
- Any information related to the victim's continuous presence in the U.S. since obtaining U visa status
- Any information indicating that USCIS should exercise its discretion to grant lawful permanent residence
- Any information indicating that the U visa holder has not unreasonably refused to cooperate with an ongoing investigation or prosecution

Eligible family members can also apply.

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 No. 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. This Toolkit was also developed under grant number SJI-12-E-169 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

Resource List

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

Department of Homeland Security Policy Guidelines on U visa certifications:

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

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

- Form I-918, Petition for U Nonimmigrant Status (U visa application form):
<http://www.uscis.gov/files/form/i-918.pdf>
- Form I-918, Supplement B, U Nonimmigrant Status Certification (U visa certification form):
<http://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>
- Immigration Options for Victims of Crime (United States Citizenship and Immigration Services Brochure):
<http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse%2C%20Children%20%26%20Parents/Immigration%20Options%20for%20Victims%20of%20Crimes.pdf>

For additional materials and information on the U visa and other forms of immigration relief available for immigrant victims, including multilingual materials, please visit www.niwap.org/go/sji

For further information on U visa certification, please visit www.niwap.org/go/bja

For DHS training videos on U visa certification, please visit <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration>

For webinars on the U visa and immigrant crime victims legal rights, please visit <http://niwaplibrary.wcl.american.edu/reference/webinars>

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Case Law:

Garcia v. Audubon Communities Management, LLC, 2008 WL 1774584 (E.D. La. 2008):

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/immigration-law/Garcia-v-Audubon.pdf/view>

(Holding that a federal judge is qualified to certify U visa applications).