



# Acknowledgments<sup>2</sup>

# U VISA CERTIFICATION TOOL KIT FOR JUDGES AND MAGISTRATES

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## What is the Role of Judges in U Visa Certifications?

Congress recognized in the Violence Against Women Act of 2000 (VAWA 2000) that without some form of immigration status that protects immigrant crime victims from retaliation, few undocumented victims are willing to pursue civil or criminal claims against crime perpetrators. The integrity of the justice system is compromised when perpetrators take advantage of immigration related fears to escape accountability. Judges have a role in protecting the integrity of the justice system. In the U visa context, Congress in the VAWA 2000 specifically listed judges as government officials authorized to sign U visa certifications. U visa certifications verify that the immigrant has been a victim and that victim has been, is being, or is

<sup>1</sup> Courts: Judges and magistrates in any forum that decides legal matters sign certifications. Domestic violence, sexual assault, and trafficking issues can be raised in a wide variety of courts, including but not limited to state and federal criminal and civil courts, immigration courts, family courts, small claims courts, probate courts, and departments of labor.

<sup>2</sup> Qualifying Criminal Activity : Congress used the term “qualifying criminal activit





	<p>effect to Congress' intent to include judges as certifiers. Detection of criminal activities is a part of the initial proceedings that take place in 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. .</p> <ul style="list-style-type: none"> <li>x 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.</li> <li>x 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 law; in many jurisdictions, certifiers such as police and prosecutors have not been adequately trained on how the U visa supports criminal investigations and prosecutions.</li> <li>x 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.</li> </ul>
<p>Assessing the Helpfulness of the U visa Applicant</p>	<ul style="list-style-type: none"> <li>x Judges need only assess the helpfulness using the standard the judge uses in making probable cause determinations. DHS advises certification be granted on "any credible evidence," which is parallel to probable cause.</li> <li>x 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.</li> </ul> <p>mt 004 Tc .001 eves wh -18.8855792ften have ping oast helpfulnes and willingnes eff( and .000</p>





# U visa Certification: Introduction

(Last Updated February 2011)

As part of the Violence Against Women Act of 2005, Congress created the U visa, designed to provide access to legal immigration status for immigrant crime victims who are, have been, are being or are willing to be helpful in crime detection, investigation or prosecution. Congress specifically listed state and federal judges and magistrates sitting criminal, family, civil or administrative law courts among the government officials authorized and encouraged to sign U visa certifications. This document provides the following background information on the U visa: an

- (2) possess information concerning such criminal activity;
- (3) have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
- (4) have been the victim of a criminal activity perpetrated in the United States or that violated the laws, state or federal, of the United States.<sup>11</sup>

The U visa certification requirement

The U visa statute states that federal, state, or local judges are listed as qualified to provide certifications for victims filing U visa applications.<sup>12</sup> Judges sitting in criminal, family law, domestic violence, and child support courts are likely to encounter immigrant crime victims who qualify to file U visas. Just as judges make probable cause determinations, judges are well positioned to detect criminal activity in the early stages of trials or proceedings and can sign certifications based on findings made in those early states. At the conclusion of the case, a judge hearing a criminal case or a temporary protection order case will often have information that the court credits regarding the fact that a person before the court has been a victim of criminal activity. The court will have knowledge about the victim's helpfulness, efforts to be helpful, or can assess the victim's willingness to be helpful detecting and reporting the crime, seeking a protection, being willing to have a temporary protection order served on the perpetrator, as well as the victim's participation in any subsequent investigations, prosecutions, or sentencing of the perpetrator. Judges are well positioned to provide U visa certifications and verify a victim's helpfulness or willingness to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the perpetrator of qualifying criminal activity.

The U visa certification must affirm the immigrant vi

## U Visa Application Flow Chart

IF:

- x The victim has been helpful, is being helpful, or is likely to be helpful to law enforcement, OR
- x 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

# Judges and the U Visa Certification Requirement

Last Updated June 2011

## I. INTRODUCTION

The U visa is a temporary visa for noncitizen victims of crime who have suffered substantial mental and physical abuse resulting from the criminal activity and are willing to cooperate with law enforcement in the detection, investigation or prosecution of that criminal activity.<sup>15</sup> Congress recognized in creating the U visa that it is usually impossible for local, state and federal law enforcement, justice system and government enforcement agency officials to punish and hold perpetrators of crimes against noncitizens accountable if the abusers and other criminals have their victims deported. Congress also recognized that victims would not come forward to seek law enforcement assistance because they feared detention or deportation. The U visa encourages immigrant victims to report criminal activity by protecting them from deportation and provides safety to the community at large by holding perpetrators accountable for criminal activity that might otherwise go undetected.

The U visa application process requires an immigrant crime victim to obtain a certification by a judge or other approved certifying official that verifies the type of criminal activity perpetrated against the U visa applicant and attests to the fact that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of that criminal activity.<sup>16</sup> Congress explicitly included federal, state and local judges in the list of certifiers to increase victim access to certifications.<sup>17</sup> This document outlines the significance of the role of judges as U visa certifiers.

## II.

At the end of the third year, the visa recipient may be eligible to apply to adjust his or her status to lawful permanent residence (commonly known as a "green card"). Receiving a U visa does not directly or necessarily grant lawful permanent residency. Lawful permanent residency will be granted only to U visa recipients who can provide evidence that they have not unreasonably refused to provide assistance to the criminal investigation or prosecution and that their continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. The authority to issue U visas rests solely with the Department of Homeland Security's Victims and Trafficking Unit at the Vermont Service Center.<sup>20</sup>

### III. WHO QUALIFIES FOR A U VISA?

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 local government officials with information about criminal activity. This language is meant to take 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.”<sup>26</sup> For example, the statute lists domestic violence as a U visa qualifying crime. However, most states do not speci

establishing eligibility. Form I-918 Supplement B must be signed by a qualifying certifier, such as a federal, state, or local judge. A copy of Form I-918, Supplement B, with instructions is included in this tool kit on page 25. The applicant sets the petition and supporting materials to the Victims and Trafficking Unit of USCIS located in Vermont. This specialized unit is trained to adjudicate cases involving crime victims and is the only adjudication unit within DHS that can grant U visa status.<sup>31</sup>

By preparing and signing Form I-918 Supplement B, a certifier is not conferring legal immigration status upon a noncitizen applicant nor making a determination of the applicant's eligibility for a U visa. The certification is a mandatory part of the evidence the victim must submit to USCIS to prove eligibility to receive a U visa. The certification is limited to verification that the individual is a victim of a qualifying criminal activity and that s/he has been helpful in the investigation or prosecution.<sup>32</sup> In addition to the certification, the applicant must meet several other eligibility criteria, including demonstrating that s/he suffered substantial mental or physical abuse as a result of having been a victim of qualifying criminal activity and providing a statement describing the facts of the victimization in his or her own words.<sup>33</sup>

## V. JUDGES AS U VISA CERTIFIERS

Judges are specifically enumerated by statute as U visa certifiers in criminal court cases, including when protection orders have been entered. In addition, judges are certainly well positioned to be U visa certifying officials because they make findings based on probable cause. However, Congress included all judges (state, federal, civil, family, criminal, magistrate, and administrative) as approved certifying officials. Thus, civil court judges may also certify U visa applications. Civil court judges are routinely exposed to cases involving U visa qualifying criminal activities.

In civil court cases, judges are in a unique position to detect criminal activity due to their exposure to cases that involve issuance of civil protection orders, divorce, custody, child or spousal support and child abuse and neglect cases. For example, where domestic violence is involved, victims might seek a protection order as a civil remedy in family court. In most states, the underlying activity that permits the issuance of the civil protection order is a criminal activity. The detection of this criminal activity by the family court judge issuing the civil protection order would

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<sup>31</sup> Even where a case is before an immigration judge, adjudication for U visas may still only be conducted by the USCIS Vermont Service Center.

<sup>32</sup> See Ross, Janell, Metro Nashville Police Block Visas for Crime Victims, Witnesses, The Tennessean, Apr. 18, 2010, <http://www.tennessean.com/article/20100418/NEWS01/25301001/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)

<sup>33</sup> U.S. Department of Homeland Security, Visa Law Enforcement Certification Source Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, 11, January 2012, available at <http://www.dhs.gov/xlibrary/assets/u Visa 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).

<sup>34</sup> I.N.A. § 101(a)(15)(U)(i)(III), 8 U.S.C. 1101 (a)(15)(U)(III); I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).





## A. TIMING OF JUDICIAL CERTIFICATION

Judges may complete U visa certifications as soon as they are able to assess a victim's helpfulness or willingness to be helpful. Judges have victims before them for temporary civil protection order proceedings should note that this limited interaction with victims is enough for judges to act as certifiers. Many judges in civil protection order cases see victims who have filed police reports or tried to report domestic violence, sexual assault, or other U visa crimes in other ways. Under the statute and U visa regulations, judges would be appropriate certifiers in these cases.

The protection order system was developed to assure that victims can receive protection based on findings, uncontested pleadings, or the admission of abusers, after courts hold evidentiary hearings. Protection orders are issued without regard to whether criminal cases have been initiated.<sup>36</sup> U visa certification alone does not give a victim a U visa. S/he must get certification and additionally prove that s/he suffered substantial physical or emotional injury as a result of the criminal activity, as well as meeting the other eligibility requirements previously discussed.<sup>37</sup>

## B. EVALUATING HELPFULNESS

The certification signed by the judge or other certifying official demonstrates that the applicant "has been helpful, is being helpful, or likely to be helpful in the investigation or prosecution of the qualifying criminal activity."<sup>38</sup> The helpfulness requirement was written using several verb tenses, recognizing that an applicant may apply for status at different stages of an investigation or prosecution.<sup>39</sup> Congress intended to allow an individual to petition for status at very early stages of an investigation and at each successive step.<sup>40</sup> The definition of "investigation or prosecution" in the statute is interpreted broadly to include victim assistance in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.<sup>41</sup> Some examples of helpful actions include, but are not limited to, the victim calling 911 to report the crime, the victim providing a statement to the police, filing a police report, or seeking a protection order.

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<sup>36</sup> See Leslye Orloff et al., *Battered Immigrants and Civil Protection Orders*, BREAKING BARRIERS A

It is important to note that a victim who received certification and was granted a U visa has an ongoing obligation to provide assistance.<sup>42</sup> Certifiers can also inform DHS 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. Whether the victim's lack of cooperation is unreasonable<sup>43</sup> is to be assessed in light of the totality of the circumstances.

The full system of checks and balances in the U visa certification process ensures that the recipient of the certification will provide ongoing assistance with the criminal case. Once a U visa has been granted the U visa regulations impose an ongoing requirement of cooperation. 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 cooperate with reasonable requests for assistance. It can take 12 – 18 months to adjudicate the U visa application. If a judge or other 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 judge can contact DHS.<sup>44</sup> DHS will use the 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 cooperate.

C.

lawful permanent residency. To qualify a U visa holder applying for adjustment of status must also provide evidence that s/he has not unreasonably refused to provide assistance in the criminal investigation or prosecution and that his or her continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or otherwise in the public interest. One acceptable form of evidence is a newly executed Form I-918 Supplement B signed by an official (such as a judge) or law enforcement agency that had the responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity. The newly executed Form I-918 does not have to be signed by the original certifying official. However, the U visa holder applying for adjustment may submit other forms of evidence to prove s/he did not unreasonably refuse to cooperate with law enforcement investigation or prosecution.

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, s/he must obtain certification – from foAdvo.

## 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

"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."<sup>49</sup>

### Regulatory Authority: Judge Certification

"To qualify for the U nonimmigrant classification...the alien must be assistance to a Federal, State, or local law enforcement official or prosecutor, Federal or State judge, the Department of Homeland Security (DHS), or other Federal, State, local authority investigating or prosecuting criminal activity."<sup>50</sup>

"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 [Violence Against Women Act of 2000]."<sup>51</sup>

"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, a Federal, State, or local judge."<sup>52</sup>

### 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

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because these extend from the prosecution... More 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.<sup>53</sup>

#### 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 helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, Federal or State judge of the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity..."<sup>54</sup>

#### 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."<sup>55</sup>

"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 come to provide assistance to an investigation, the purpose of BIWPA [Battered Immigrant Women Protection Act] is not furthered."<sup>56</sup>

"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."<sup>57</sup>

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<sup>53</sup> New Classification for Victims of Criminal Activity, 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007) (emphasis added).

<sup>54</sup> 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).

<sup>55</sup> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006- 0069, page 21 (Sept. 17, 2007).

<sup>56</sup> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

<sup>57</sup> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

“The rule provides that the determination of whether an alien’s refusal to provide assistance was unreasonable will be based on 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





Although not all-inclusive, the list of qualifying criminal activity represents the many types of behavior that can constitute domestic violence, sexual abuse, trafficking, or are crimes that often target vulnerable immigrants as victims.<sup>67</sup>

What constitutes helpfulness?

Helpfulness refers to the victim's willingness to assist during the detection, investigation, or prosecution of criminal activity. Helpfulness can be as simple as a victim reporting a crime to the police or the victim's willingness to seek a protection order or a temporary protection order. When

Any federal, state or local judge may sign a U visa certification. The term “judge” has been defined as a “public official appointed or elected to hear and decide legal matters in court.”<sup>71</sup> The Supreme Court has defined the term as “a public officer, who by virtue of his office, is clothed with judicial authority.”<sup>72</sup> Such a term can include public officers such as judges, associate judges, justices, magistrates, administrative law judges, adjudicators, referees, clerks, commissioners and hearing officers in federal, state, or local courts in all places where “justice is judicially administered.”<sup>73</sup> Arbitrators, mediators, and conciliators may also be considered judges if appointed or elected by law to administer justice.

Why is certification by a judge or magistrate so important to immigrant victims?

The U visa affords undocumented victims temporary legal immigration status. Without this, victims may be afraid to seek assistance from law enforcement, prosecutors, and courts when they are victimized by a spouse, family member, employer even a stranger. Undocumented victims fearing deportation may risk exploitation and ongoing victimization rather than coming forward to report crimes, seek protection, or cooperate in the detection, investigation, prosecution, conviction, or sentencing in criminal cases. The U visa also provides a victim with employment authorization and protection against deportation, critical tools in establishing economic independence and long-term safety.

Who can sign a U visa certification?

In order to approve a U visa, DHS requires a certification. Any agency that detects, investigates, prosecutes, convicts, or sentences perpetrators of criminal activity may sign a certification.<sup>74</sup> The U visa statute and DHS regulations explicitly list judges as U visa certifiers: federal, state and local law enforcement agencies, 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 meet these guidelines.<sup>75</sup> Individual Federal, state and local judges adjudicating any type of proceeding (family, civil, criminal, administrative) are authorized by federal statute and federal regulations to act as certifying officials.<sup>76</sup>

Why did Congress authorize multiple certifiers?

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<sup>71</sup> Leber v. Stretton, 928 A.2d 262, 267 (Pa. Super. Ct. 2007) (quoting a dictionary definition of the term “judge” to support the argument that the term includes district justices). The Court includes magisterial district judges in the exercise of criminal or quasi-criminal jurisdiction as judges.

<sup>72</sup> Todd v. United States, 158 U.S. 278 (1895). The original quote is “authorities.”

<sup>73</sup> Id. at 284.

<sup>74</sup> INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000).

<sup>75</sup> INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000); New Solicitation for Victims of Criminal Activity; Eligibility for

“U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 23 (2007).

<sup>76</sup>

In designing the U visa Congress sought to provide visas to protect immigrant crime victims and encourage their cooperation in criminal investigations and prosecutions as early as possible after the victim was identified as a crime victim. Congress understood that immigrant victims first come in contact with the justice system in a variety of ways. Some victims find their way to advocates who

criteria required for a law enforcement officer to sign a certification. Evidence that may be useful for granting U visa certification includes the case number of prior cases dealing with the qualifying activity. Applicants may also provide a declaration describing the activity and helpfulness or willingness to be helpful, proposed orders, police reports, protection orders, and other supporting documentation.

Can a judge sign a certification when the crime being investigated or prosecuted is not listed as a qualifying crime under the U visa statute?

Yes. There are many instances in which the crime being prosecuted (e.g., Drug Distribution) is not a crime listed in the U visa, but where a witness in that prosecution has also been a victim of a U visa listed crime (e.g., domestic violence perpetrated by a drug dealer). When the victim has come forward and is willing to assist with the investigation or prosecution of the domestic violence, the certification can be based on the domestic violence case. The certifying judge need only state that the individual is a victim of a qualifying crime.<sup>84</sup> It is not necessary that the qualifying criminal activity be the crime that law enforcement and prosecutors have chosen to investigate or prosecute.<sup>85</sup>

Can a judge sign a certification if the victim is not needed in the course of the investigation or prosecution?

Yes. Per Congress, the certification process does not hinge on or require a victim's testimony or completion of a prosecution.

Can a judge sign a certification if the prosecutors decide(d) not to prosecute the perpetrator?

Yes. A victim willing to help in the investigation or





Yes. Indirect victims are able to seek U visas ~~is a~~ when the direct victim is deceased as a result of the crime (e.g., murder or manslaughter), ~~impotent, incapacitated, or under the age of~~<sup>90</sup> 18. The indirect victims can include spouses, children ~~under 21 years of age, and parents of the direct victim.~~ If the direct victim is or was under 21 ~~are~~ of age, parents ~~and~~ married siblings under 18 years of age can also apply as indirect victims<sup>91</sup>. Parents of U.S. citizen crime victims can be considered indirect victims. 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.<sup>92</sup>

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

Judges may sign certifications for victims who have not yet secured legal representation or victim advocate assistance<sup>93</sup>. U visa certifiers should recommend that victims have representation and/or victim advocate assistance before applying. Judges should also refer crime victims to agencies in the community with experience assisting immigrant victims<sup>94</sup>. These agencies will provide social services and assist victims in securing representation before the victim applies for a U visa. Judges are encouraged to sign certifications, provide the victim a copy, and refer victims to community groups or organizations that can provide legal advice or representation or to advocates who can access technical assistance and support.

Can the judge maintain relationships with community organizations that work with immigrant victims of violence?

A report funded by the National Institute of Justice recommends that courts work with community-based organizations as part of an effective response to the needs of domestic violence victims with limited-English proficiency. The report suggests coordination with justice system partners, domestic violence service providers, and organizations working with immigrant communities. It further

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<sup>90</sup> 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).

<sup>91</sup> 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).

<sup>92</sup> 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).

<sup>93</sup> 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 if the certification expired due to delays in the victim attaining legal representation. Note, victims are not required to because the attorney has to apply for the U visa.

<sup>94</sup> For a list of victims services, victim advocates, and legal representation programs with experience working with immigrant victims in your state or local jurisdiction see the National Directory of Programs With Experience Serving Immigrant Victims at <http://iwp.legalmomentum.org/reference/service-providers-directory>

encourages courts to reach out proactively to community-based organizations in order to discover barriers to access for immigrant domestic violence victims.<sup>95</sup>

If a judge signs the certification, does the victim automatically obtain lawful immigration status?

No. DHS requires U visa applicants provide significant further documentation to meet all other U visa requirements.<sup>96</sup> This documentation includes evidence of helpfulness, substantial harm, criminal history, or lack thereof, and history of immigration violations.

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

This may be a concern for prosecutors. Please refer any prosecutors to The Vera Institute, Legal Momentum or the National Immigrant Women Advocacy Project staff and we will provide technical assistance specific to that situation by sending an e-mail to [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu) or calling (202) 274-4457.

#### CONCERNS

Once a certification is signed, what a



DHS will investigate the arrest of every person with a pending application. Certifying officials have

Redacted I-918 Supplement B, U Nonimmigrant Status Certification

Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy)

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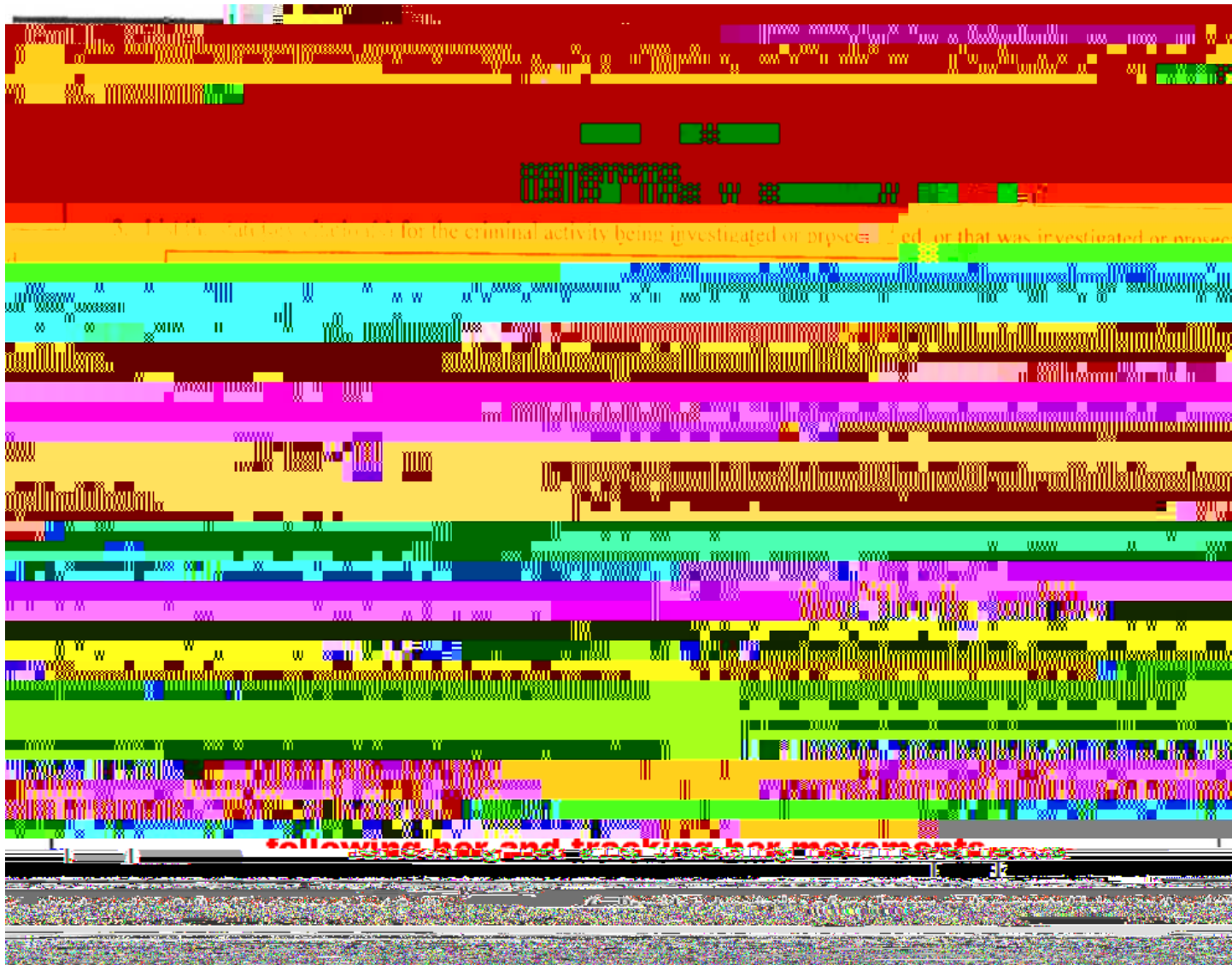
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## Sample Information Flyer for Victims

### WERE YOU THE VICTIM OF A CRIME?

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

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, 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 crimes, or any similar activity in violation of federal, state, or local criminal law<sup>101</sup>

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 and/or your family member may be able to apply for a U visa.

The U visa is a temporary visa for victims who report the crime to police or the courts. The U visa protects you from being deported for four years, provides temporary 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 investigate or prosecute a crime.

If you have an emergency, call 911 right away.

To learn more about the U visa program, contact an immigration attorney, a victim services or family justice center, or someone with expertise in immigration law.

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<sup>101</sup> § 8 U.S.C. 1351



## ¿FUE VICTIMA DE UN CRIMEN?

Si usted—o un familiar cercano—fue víctima de un crimen, puede calificar para obtener una visa-U temporal que le protege de la deportación, si ayuda en la investigación y procesamiento de un 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, incesto, violencia oortacitsex cu,tacosstom

## 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) 274-4577 or [orloff@wcl.american.edu](mailto:orloff@wcl.american.edu).

Department of Homeland Security Policy Guidelines on U visa certifications:

- x 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](http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf).
- x 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](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:

- x Form I-918, Petition for U Nonimmigrant Status (U visa application form):  
<http://www.uscis.gov/files/form/i-918.pdf>
- x Form I-918, Supplement B, U Nonimmigrant Status Certification (U visa certification form):  
<http://www.uscis.gov/files/form/i-918.pdf> (scroll down to page 17).
- x Immigration Options for Victims of Crime (United States Citizenship and Immigration Services Brochure): [http://www.uscis.gov/USCIS/Humanitarian/Battered Spouse, Children & Parents/Immigration Options for Victims of Crimes.pdf](http://www.uscis.gov/USCIS/Humanitarian/Battered_Spouse,_Children_&_Parents/Immigration_Options_for_Victims_of_Crimes.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:  
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges>

For further information on U visa certification, please visit  
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors>

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>

Case Law:

- x *Garcia v. Audubon Communities Management*, 2008 WL 1774584 (E.D. La. 2008):  
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/Garcia-v-Audubon.pdf/view>  
(Holding that a federal judge is qualified to certify U visa applications).

# Sample Memorandum in Support of Motion for U Visa Certification

(begins on the next page<sup>103</sup>)

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<sup>102</sup> Developed by Jennie Pasquarella, ACLU of Southern California; Madhu Sharma, Stone & Grzegorek LLP (California); Brianna Fuller, Jeffrey Aaron & Kay Otani, Federal Public Defender for the Central District of California; and Legal Momentum.

[INSERT COURT NAME AND JURISDICTION]

[INSERT PARTY NAME]

v.

[INSERT PARTY NAME]

NO. [INSERT DOCKET NUMBER]

MEMORANDUM IN SUPPORT OF  
MOTION FOR U VISA  
CERTIFICATION

Judge: [INSERT JUDGE NAME]

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8 U.S.C. § 1101(a)(15)(U)(i) .....	X..
8 U.S.C. § 1101(a)(15)(U)(i)(III) .....	X..
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8 C.F.R. 214.14(a)(5) .....	X
8 C.F.R. § 214.14(a)(9) .....	X
8 C.F.R. § 214.14(a)(12) .....	X.
8 C.F.R. § 214.14(b)(1)-(4) .....	X.
8 C.F.R. § 214.14(b)(2) .....	X
8 C.F.R. § 214.14(c)(2)(i) .....	X
8 C.F.R. § 214.14(c)(4) .....	X
72 Fed. Reg. 53015 .....	X
72 Fed. Reg. 53019 .....	X
72 Fed. Reg. 53020 .....	X
72 Fed. Reg. 53023-24 .....	X.
"U Nonimmigrant Status Certification." 72 Fed. Reg. 53020.....	X

## INTRODUCTION

[Insert applicant name]

## ARGUMENT

- I. This Court Has Jurisdiction to Consider this Motion and Certify Applicants for the U visa.

This Court has jurisdiction to consider this motion. Congress has authorized the granting of U visas, and regulations implementing that provision make clear that judges can certify victims for the U visa. 8 C.F.R. § 214.14(c)(2) ("certifying official may be a Federal, State, or local judge"); 8 U.S.C. § 1101(a)(15)(U)(i)(III). See also *Garcia v. Audubon Communities Management, LLC*, 2008 WL 1774584 (E.D. La. 2008) ("It is undisputed that a federal judge is qualified to 'certify' U visa applications.").

- II. This Court Should Certify Applicants for U visa Relief.

Congress created the U visa in order to "strengthen the ability of law enforcement agencies to investigate and prosecute" certain crimes, while offering "protection to victims of such offenses in keeping with the humanitarian interests of the United States." 72 Fed. Reg. 53015; Battered Immigrant Women Protection Act of 2000, § 1513(a)(2), 114 Stat. at 1533-34 (codified at 8 U.S.C. § 1101 (2000)). "Congress also sought to encourage law enforcement officials to better serve immigrant crime victims." 72 Fed. Reg. 53015.

In order to apply to USCIS for a U visa, an applicant must obtain a certification of "helpfulness" from a "certifying agency" on Supplement B to Form I-918, also known as "U Nonimmigrant Status Certification." 72 Fed. Reg. 53026; 8 C.F.R. § 214.14(c)(2)(i). The "U







qualifying criminal activity based on the facts before it in order to certify at the outset of a case. This Court has inserted court actions that represent the detection of qualifying criminal activity that is able to confirm that the criminal activity occurred and that the applicant is the victim of the criminal activity..

C. Applicants possess information concerning the qualifying criminal activity.

The fourth factor is satisfied because Applicants possess information concerning the qualifying criminal activity. The regulations explain that a U visa applicant must have "knowledge of the details" and "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." 8 C.F.R. § 214.14(b)(2) Explain how the victim has knowledge of the details of the criminal activity.]

D. Applicants are "helpful" to the investigation or prosecution.

Similarly, the fifth factor is satisfied Explain how the victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution of the qualifying criminal activity. Include instances where the victim provided information regarding the qualifying criminal activity to law enforcement authorities, investigative agencies, and courts.

E. Applicants are victims of qualifying criminal activity that violated U.S. law or occurred within the United States.

Finally, the sixth factor is clearly satisfied as the qualifying criminal activity was perpetrated in [insert location] and, as discussed above, violated numerous state and federal criminal laws.

### CONCLUSION

Applicants are detected to be victims of serious criminal activity and have [insert explanation of helpfulness or willingness to be helpful] Congress created the U visa precisely for this situation: to enable immigrants, victims of crimes, such as Applicants, to lawfully reside in the United States while they assist the government's law enforcement.



[INSERT COURT Ds.D - -24.59 56.645 TD 0 Twlr Tf .33cD J

conditions, length of conditions, actions of the perpetrators, injuries, subsequent effects on the victim, etc. Description of the actions of the perpetrators should include physical violence committed against the victim or th

## Glossary of Terms<sup>109</sup>

Adjustment of Status – An eligible individual, such as a non-citizen holding a U visa for at least three years may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion as to whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (only referred to as a “green card,” see definition below) and will become a lawful permanent resident.

Alien –The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term covers a broad group of people including but not limited to permanent residents, refugees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

Battery or Extreme Cruelty – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. Battery or extreme cruelty is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction

- x Biologically the child, whether legitimated or not;
- x A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- x A child adopted while under the age of 16, or when the child was an orphan.<sup>112</sup>

Customs and Border Patrol (CPB) – This is the division of the Department of Homeland Security that oversees borders and ports.

Department of Homeland Security – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service (“USCIS”), a division of DHS, oversees applications of immigration benefits, such as the U visa. Another division of DHS, called the United States Immigration and Customs Enforcement (“ICE”), handles immigration info





or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

Self-Petition – Under the Violence Against Women Act, certain abused spouses, children, parents, or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment

visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

Violence Against Women Act (VAWA) – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system's approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA's dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g., immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

VAWA Confidentiality – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners' information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.

Visa – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a "visa" holder.

protection as T-visa recipients.<sup>118</sup> At the end of three years in nonimmigrant status or if the Attorney General certifies that the investigation has concluded, T-visa recipients may apply for lawful permanent residency.

U visa— This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, judge, or other certifying agency establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution, as long as they are helpful in an investigation. For a non-citizen under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U visas based upon the immigrant crime victim's receipt of a U visa. For a non-citizen 21 years of age or older, the spouse and children of the non-citizen can receive U visas as derivatives.<sup>119</sup>

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<sup>118</sup> INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).

<sup>119</sup> INA § 101(a)(15) (U), 8 U.S.C. § 1101(a)(15)(U).

## Collection of U-visa News Articles<sup>120</sup>

The following news articles are provided as references that may assist law enforcement better  
pdfs/leb-october-3c ET 338.e(a620 (12194.58 .00hinD . f 12 4 Tm ( )Tj1 T-1.0

(“. . . 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.’”).

6. 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/>
7. 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/>
8. 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/>
9. Kelley, Jeremy P. .

