

# U Visa Quick Reference for Law Enforcement and Prosecutors<sup>114</sup>

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<p><b>Purpose of the U visa<sup>115</sup></b></p>	<ul style="list-style-type: none"> <li>● The U visa facilitates the reporting of criminal activities to government officials including but not limited to law enforcement, prosecutors, courts, adult and child protective services and state and federal administrative agency officials by immigrant victims of domestic violence, child abuse, sexual assault, dating violence, stalking and human trafficking, and other U visa listed criminal activities and ensures immigrant victims receive access to justice in civil, family, criminal and administrative law cases.</li> </ul>
<p><b>Benefits of the U visa<sup>116</sup></b></p>	<ul style="list-style-type: none"> <li>● Strengthens the ability of the law enforcement officers, prosecutors, courts, as well as state and federal government agencies to detect, investigate, prosecute, convict and/or sentence perpetrators of criminal activity while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.</li> <li>● Immigrant victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the criminal, family, and civil justice systems. The U visa certification promotes access to justice by enhancing accessibility and ensuring fairness.</li> </ul>
<p><b>Who is eligible for a U visa?</b></p>	<ul style="list-style-type: none"> <li>● To be eligible for a U visa an individual:             <ul style="list-style-type: none"> <li>○ Must be a victim of a criminal activity listed in the U visa statute or a similar criminal activity;</li> <li>○ Must possess information concerning the criminal activity;</li> <li>○ Must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local government agency or family, civil, or criminal court in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity;<sup>117</sup></li> <li>○ Must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities; and</li> <li>○ The criminal activity must have violated the federal or state laws of the U.S. or been perpetrated in the U.S. or its territories and possessions.<sup>118</sup></li> </ul> </li> <li>● To prove helpfulness, the applicant must obtain a certification from a <b>law enforcement official, prosecutor</b>, judge, Department of Homeland Security (DHS) official, or other federal or state authority involved in detecting, investigating, prosecuting, convicting or sentencing any of the qualifying criminal activities.<sup>119</sup></li> </ul>

<sup>114</sup> U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018)

<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors>

<sup>115</sup> See VAWA 2000, § 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>116</sup> *Id.*

<sup>117</sup> An exception to the helpfulness requirement applies to alien victims who are under 16 years of age, incapacitated, or incompetent. Such alien victims can satisfy the helpfulness requirement if their parent, guardian, or next friend provides the required assistance. I.N.A. § 101(a)(15)(U)(i)(II), 8 U.S.C. 1101(a)(15)(U)(i)(II).

<sup>118</sup> 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)) (2007).

<sup>119</sup> 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(2)) (2007).

<b>Eligible Family Members</b>	<ul style="list-style-type: none"> <li>● The victim may apply for their eligible family members to receive U visas.</li> <li>● For victims under 21 years of age, qualifying family members include the principal crime victim’s spouse, children, parents, and unmarried siblings who are under 18 years of age (on the filing date of the principal crime victim’s petition).<sup>120</sup></li> <li>● For victims who are 21 years of age or older, qualifying family members include their spouse and children.<sup>121</sup></li> </ul>
<b>U visa Qualifying Criminal Activities</b>	<ul style="list-style-type: none"> <li>● U visa qualifying criminal activities include, but are not limited to the following non-exclusive list: <ul style="list-style-type: none"> <li>Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting, solicitation to commit any of the above-mentioned criminal activity, or <i>any similar activity</i> in violation of federal, state, or local criminal law and solicitation, attempts or conspiracy to commit any such criminal activity.</li> </ul> </li> <li>● The term “<i>criminal activity</i>” in the statutory language was intentionally chosen by Congress to accomplish two goals – to be broadly inclusive of “<i>any similar activity</i>” and to focus on the actions of the victim in coming to state or federal government officials and courts with information about criminal activity. This language is meant to take into account “the wide variety of state criminal statutes in which the terminology used to describe the criminal activity may not be identical to that found on the statutory list, although the nature and elements of both criminal activities are comparable.”<sup>122</sup></li> <li>● For example, the statute lists domestic violence as a U visa qualifying crime. However, many states do not specify domestic violence as a crime, but instead list crimes that constitute domestic violence, such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, child abuse, elder abuse, or malicious property damage. Even though these criminal activities are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence.</li> </ul>
<b>Status of Crime Perpetrator</b>	<ul style="list-style-type: none"> <li>● The U visa applicant does not have to be married to the crime perpetrator and there may or may not be any family relationship between the victim and the perpetrator. The crime perpetrator may have any immigration or citizenship status including but not limited to U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.</li> </ul>

<sup>120</sup> I.N.A. § 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I).

<sup>121</sup> I.N.A. § 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

<sup>122</sup> 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

## Certification Requirements

- U.S. Citizenship and Immigration Services (USCIS) Form I-918 Supplement B, must be completed by a qualifying certifier, such as a law enforcement official or prosecutor. On the I-918B certification form that certifying official verifies that the victim applying for a U visa meets the following four criteria:
  - The victim has been the victim of qualifying criminal activity;
  - The victim possesses information about the qualifying criminal activity;
  - The qualifying criminal activity was perpetrated in the U.S. or violated U.S. federal or state law.
  - The victim has been, is being or is likely to be helpful in the detection or investigation, or prosecution, or conviction, or sentencing of one or more qualifying criminal activities;
    - ***For law enforcement:*** Helpfulness includes but is not limited to reporting a criminal activity, making or attempting to make a police report, providing information at the crime scene, participating in interviews with police, allowing police to photograph injuries, or attempting to provide information to police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter;<sup>123</sup>
    - ***For prosecutors:*** Helpfulness includes but is not limited to providing evidence used in charging document, attending a hearing, participating in interviews with prosecution office staff, providing information needed for restitution, attending and/or testifying at the initial appearance, bond hearing, preliminary hearing, arraignment, pre-trial motions, sentencing, or trial;
- The criminal activity may have occurred at **any time** in the past. There is no statute of limitation and certification can be made even when the state statute of limitation for the criminal activity has passed. Once the certification is completed, the victim is required file the U visa application within six (6) months of the date the certification was signed.
- The certification should provide specific details about the nature of the criminal activity being detected, investigated, prosecuted, convicted and/or sentenced and describe the victim's helpfulness in the case.
- U visa certification does not require the criminal prosecution to be initiated, completed, or successful, nor does it require law enforcement to investigate the criminal activity. U visa certification can be based solely on the victim having taken any number of actions including but not limited to: calling police for help, making a police report, seeking a civil protection order, providing a history of violence to law enforcement or the court, providing statements in a line-up, or providing a victim impact statement. The certification only attests to the U visa petitioner's helpfulness in one or more of the following: detection, investigation, prosecution, conviction or sentencing.

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<sup>123</sup> See Benish Anver, Rocio Molina, Andrea Carcamo-Cavazos, Chief Peter Helein, Devon E. Turner, and Spencer Cantrell, *U-Visa: "Helpfulness"* (Oct. 21, 2019), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

<p><b>Law Enforcement and Prosecutors as U visa Certifiers</b></p>	<ul style="list-style-type: none"> <li>● Law enforcement officials and prosecutors are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B.<sup>124</sup> A certifying official is the head of a law enforcement or prosecution agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.<sup>125</sup></li> <li>● The certification is necessary to establish eligibility for the U visa, but by itself does not grant immigration status to the victim. To obtain a U visa, a victim must meet eligibility requirements, in addition to obtaining a U visa certification. The Department of Homeland Security (DHS) has sole authority to grant or deny a U visa and completes full background checks on all applicants.</li> </ul>
<p><b>Assessing the Helpfulness of the U visa Applicant</b></p>	<ul style="list-style-type: none"> <li>● “Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which they are a victim.<sup>126</sup></li> <li>● There is no degree of helpfulness required. Instead, once the victim receives a U visa certification and files their U visa application, the victim must not unreasonably refuse to provide help, information, or assistance to law enforcement and prosecutors that is reasonably requested. <ul style="list-style-type: none"> <li>○ Note -- if the victim’s ongoing cooperation in the criminal investigation or case may jeopardize the victim’s safety or the safety of family members in the U.S. or abroad, then the victim’s failure to cooperate is <b>not</b> unreasonable. The victim’s helpfulness must be examined in the totality of the circumstances including the nature of the victimization, victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse.</li> </ul> </li> <li>● Being helpful is not related to whether the perpetrator of the criminal activity has been issued a warrant, is prosecuted, is arrested, is convicted, or the case is ongoing or is closed. Being helpful is independent from the results of the case.<sup>127</sup> For example, if the victim has reported a criminal activity, and the perpetrator cannot be found or identified, the victim can still be deemed helpful.</li> <li>● The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of a criminal case including providing information that helps government officials detect, investigate, or prosecute the criminal activity. <b>This includes past helpfulness or willingness to be helpful in the future.</b> Congress intended for individuals to be eligible for U visa at the very early stages of a case.<sup>128</sup></li> </ul>

<sup>124</sup> 20 INA. § 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III); I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

<sup>125</sup> 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(3)) (2007).

<sup>126</sup> Helpfulness is defined in the U visa statute 8 U.S.C. 1101(a)(15)(U)(i)(III); The U visa regulations 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows: “Investigation or prosecution refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

<sup>127</sup> *DHS U and T Visa Resource Guide* at 7; 72 Fed. Reg. 53013, 53020 (2007).

<sup>128</sup> *See Id.*

<p><b>Assessing the Helpfulness of the U visa Applicant</b></p>	<ul style="list-style-type: none"> <li>● In order to apply for lawful permanent residency after being granted a U visa, the victim must prove that they fulfilled an ongoing responsibility to provide assistance or they must prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance from government officials investigating or prosecuting the criminal activity.</li> <li>● DHS confirms that officials may sign a certification if they are unsure whether the victim meets the helpfulness requirement. USCIS will ultimately determine whether the victim meets these requirements.<sup>129</sup></li> </ul>
<p><b>Attesting to Helpfulness on the Certification Form</b></p>	<ul style="list-style-type: none"> <li>● Law enforcement and prosecutors should provide on the certification form a general description of victim helpfulness which may include (for example): <ul style="list-style-type: none"> <li>○ Victim called police to report the criminal activity</li> <li>○ Victim spoke freely with responding officers</li> <li>○ Victim participated in pre-arrest identification</li> <li>○ Victim sought a protection order that law enforcement would serve on the perpetrator and that the victim can enforce if violated in the future</li> <li>○ Victim provided photographs of injuries</li> <li>○ Victim attended prep sessions with prosecutor</li> <li>○ Victim testified before the grand jury or at other stages of a criminal case.</li> </ul> </li> </ul>
<p><b>Applicant’s Responsibility After Helpfulness Is Established</b></p>	<ul style="list-style-type: none"> <li>● In order to obtain a U visa, the victim must provide continuing assistance when reasonably requested by law enforcement or prosecutors,<sup>130</sup> or the certifier may revoke the certification.<sup>131</sup> Similarly, in order to apply for lawful permanent residency after being granted a U visa, the victim must prove that they fulfilled an ongoing responsibility to provide assistance or they must prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance from government officials.<sup>132</sup> However, “continuing assistance” is a standard used <i>after</i> the victim files for and after the victim obtains their U visa. For the purpose of obtaining an initial certification, only the victim’s helpfulness or likelihood of future helpfulness should be considered.</li> <li>● Note: If the victim’s ongoing cooperation in the criminal investigation or case may jeopardize the victim’s safety or the safety of family members in the U.S. or abroad, then the victim’s failure to cooperate is not unreasonable. The victim’s helpfulness must be examined in the totality of the circumstances including the nature of the victimization, victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse.<sup>133</sup></li> </ul>

<sup>129</sup> *DHS U and T Visa Resource Guide* at 18.

<sup>130</sup> 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)(3)) (2007); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 4 (expires 04/30/2021).

<sup>131</sup> 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)(A)) (2007).

<sup>132</sup> 73 Fed. Reg. 75540, 75561 (codified at 8 C.F.R. § 245.24(e)) (2008).

<sup>133</sup> 73 Fed. Reg. 75540, 75560 (codified at 8 C.F.R. § 245.24(a)(5)) (2008).

<p><b>Timing of U Visa Certification</b></p>	<ul style="list-style-type: none"> <li>● Law enforcement and prosecution officials may complete U visa certifications once they are able to assess a victim’s helpfulness. Congress intended that U visa certifications be signed early after detection of the criminal activity. An investigation need not be complete prior to signing a certification.<sup>134</sup></li> <li>● The certification signed by a certifying official demonstrates that the victim has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity. The DHS regulations envision that the U visa certification process fits within routine activities of law enforcement. The U visa certification can be completed at the same time officers are completing police reports or when prosecutors begin working with the victim. Law enforcement and prosecutors can provide certifications at any time after they assess the helpfulness. Waiting to sign certifications until after the criminal case has been concluded increases the ability of perpetrators to intimidate immigrant victim witnesses using threats and calls to DHS to have the victim deported and is not consistent with best practices.<sup>135</sup></li> <li>● A completed certification will be valid for six months from the date of signature.<sup>136</sup></li> </ul>
<p><b>When Law Enforcement &amp; Prosecutors are Able to Provide U visa Certification</b></p>	<ul style="list-style-type: none"> <li>● If a law enforcement official or prosecutor has reasonable suspicion that criminal activity occurred, that the person seeking certification was a victim, and that the victim was helpful, is being helpful or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing, a certification can be signed at any stages of the criminal investigation, prosecution, or court case.</li> <li>● Examples include when victims have been helpful to prosecutors making charging decisions, when they cooperated in a criminal investigation or filed a police report. This authority to certify exists whether or not law enforcement opens an investigation or the prosecutor ultimately pursues prosecution of the perpetrator for the criminal activity listed in the U visa statute.</li> </ul>
<p><b>U visa, Time Line &amp; Attaining Lawful Permanent Residency</b></p>	<ul style="list-style-type: none"> <li>● Within a few weeks after filing the U visa, the victim’s case is logged in a specialized computer VAWA confidentiality system at the DHS that provides victims some protection from deportation. DHS will run a background check based on the applicant’s fingerprints.</li> <li>● Approximately 4-6 years<sup>137</sup> after filing DHS will adjudicate the case and conduct another fingerprint check. Approvable cases receive wait-list approval, “deferred action status” which provides formal protection from deportation, and legal work authorization.</li> <li>● The victim is placed on a waitlist for a U visa. Only 10,000 visas can be issued each year and the current waiting time is 11-14 years. Once the victim’s case reaches the top of the waitlist, fingerprint checks are run again prior to issuing the victim a U visa.</li> <li>● The U visa lasts for 4 years. It is at this point that U visa holders may be able to travel abroad.</li> </ul>

<sup>134</sup> See *DHS U and T Visa Resource Guide* at 19.

<sup>135</sup> See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>.

<sup>136</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 2 (expires 04/30/2021).

<sup>137</sup> The time frames in this section were current as of April 2020. See, USCIS, Visa Report: U Visa Filing Trends (April 2020). [https://www.uscis.gov/sites/default/files/USCIS/statistics/Mini\\_U\\_Report-Filing\\_Trends\\_508.pdf](https://www.uscis.gov/sites/default/files/USCIS/statistics/Mini_U_Report-Filing_Trends_508.pdf)



**U visa, Time  
Line &  
Attaining  
Lawful  
Permanent  
Residency**

- After three (3) years as a U visa holder, the victim may apply for lawful permanent residency. To obtain lawful permanent residency as a U visa holder the victim must prove:
  - Their helpfulness in the detection, investigation, prosecution, conviction or sentencing of criminal activity or that they did not unreasonably refuse to cooperate with reasonable requests for assistance. Some victims may return to the certifying agency for a new certification to provide evidence of their helpfulness to support the victim’s application for lawful permanent residency.
  - That they are eligible for lawful permanent residency as a U visa holder due to either:
    - Humanitarian need;
    - Family unity; or
    - Public interest
  - That they have continuous presence in the U.S., since receiving they U visa. Due to the “continuous presence” requirement, if a U visa holder departed the U.S. for any single period of time longer than 90 days, or for shorter periods in the aggregate exceeding 180 days, they must include a certification with their application for lawful permanent residency– from the original U visa certifying agency – that verifies that the absence was necessary for the investigation or prosecution or otherwise justified.
  - Fingerprint checks are run as part of this adjudication.

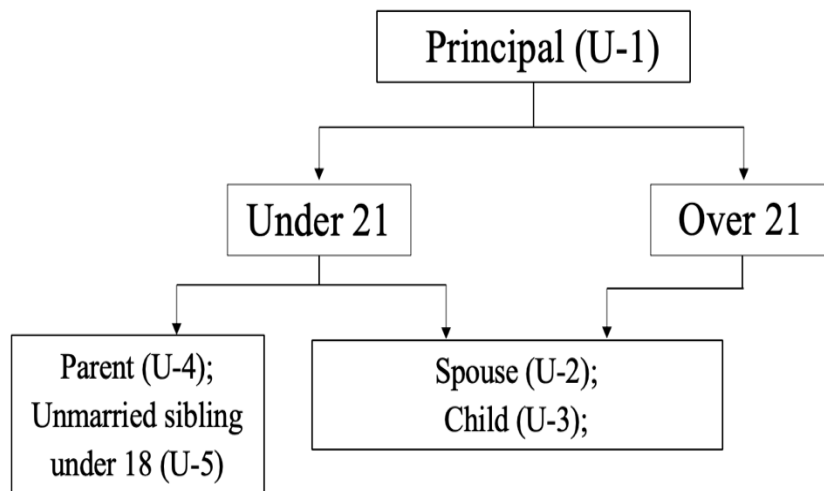
**More  
Information**

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## U Visa: Protections for Family Members (INA § 101(a)(15)(U)(ii); 8 CFR 214.14(a)(10) )

An immigrant crime victim filing a U visa application may file applications seeking that their eligible family members also be granted U visas. Under immigration laws, the applicant is called a principal, and the family members are called derivatives. The following chart outlines each of the types of U visas available to immigrant crime victims and their family members. Age-out protections are provided for U visa principal applicants and for the family members they included in their applications (derivatives) who are under 18 or 21 years of age.<sup>138</sup>

Code	Name
<b>U-1</b>	<b>Principal</b> (the victim)
<b>U-2</b>	<b>Principal's spouse</b> (always eligible)
<b>U-3</b>	<b>Principal's child</b> (always eligible)
<b>U-4</b>	<b>Principal's parent</b> (eligible only when principal is under 21 years of age)
<b>U-5</b>	<b>Principal's unmarried sibling under the age of 18</b> (eligible only when principal is under 21 years of age)

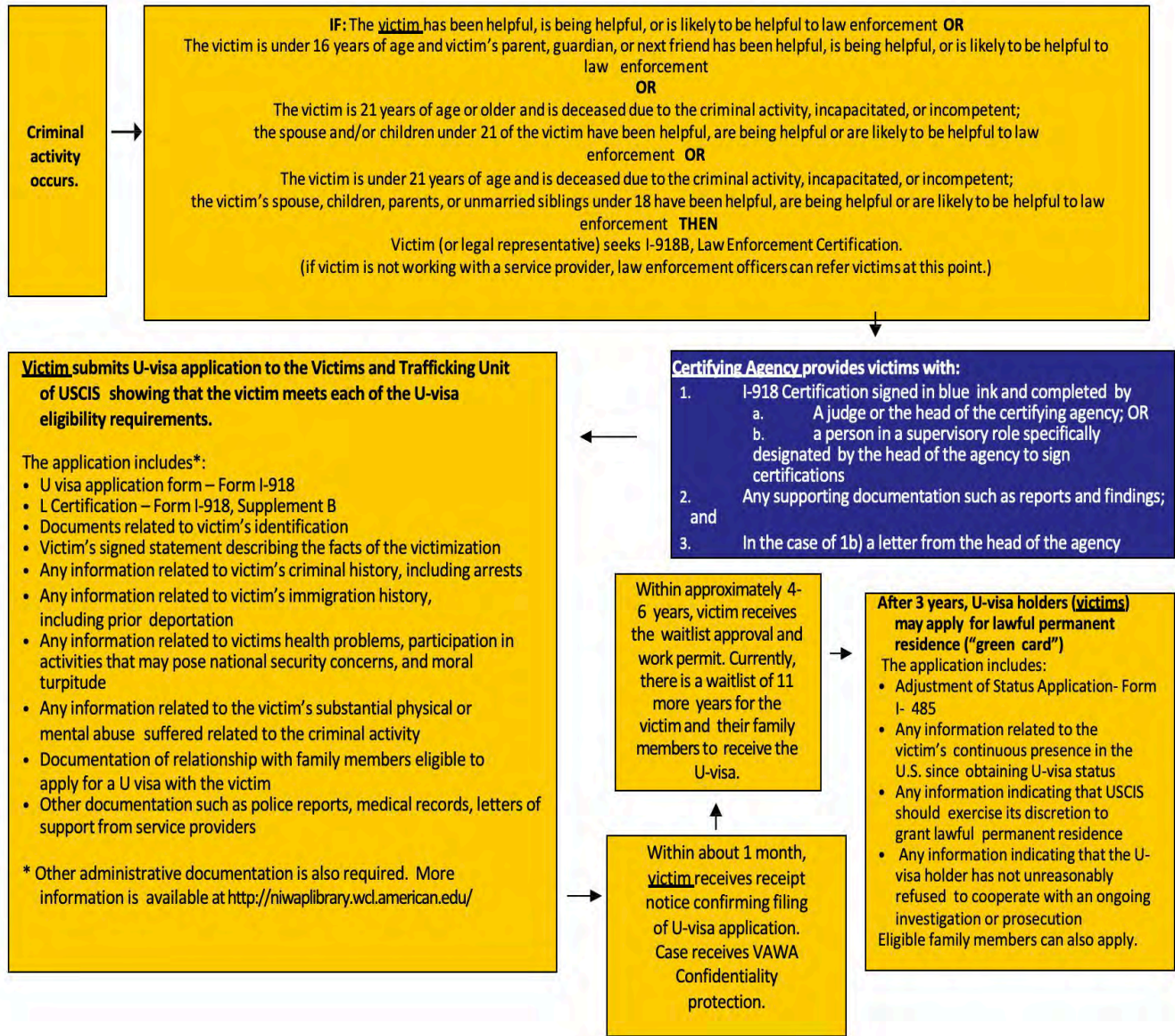



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<sup>138</sup> See INA § 214(p)(7), 8 U.S.C. 1184(p)(7).



# U-visa Application Victim Flow Chart<sup>139</sup>



<sup>139</sup> Prepared by the National Immigrant Victims Access to Justice Partnership (2010). This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice. This project was also supported by Grant Nos. 2011-TA-AX-K002 and 2013-TA-AX-K009 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women