

U and T Visa Certifications and Immigrant Victims In Civil Court Cases

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1

Introductions

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 - New Castle County, Delaware

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2

- This training was developed with grant funding from the W.K. Kellogg Foundation (Grant No. P3036442) awarded to the National Immigrant Women's Advocacy Project, American University Washington College of Law (NIWAP), Michigan State University (MSU) and the Michigan Judicial Institute (MJI).
- Pre/Post tests are part of this presentation for the grant evaluation

3

Learning Objectives

By the end of this training you will be better able to:

- Recognize the purpose of the U and T visa programs and the judicial role in U and T visa certification.
- Understand how to access legally correct information from the U.S. Department of Homeland Security on U and T visa certifications.
- Sign U visa and T visa certifications
- Implement procedures for signing U or T visa certifications in civil and criminal cases that are consistent with federal law.



U Visa and T Visa Certification by Judges

Purpose and Goals of the U Visa

VAWA 2000 Section 1513(a) & (b)

- Immigrant women and children are often targeted as victims of crimes committed against them in the U.S.
- They must be able to report these crimes & participate in criminal investigations and the prosecution of perpetrators
- Purpose of U visa is
 - To strengthen ability of the justice system to detect, investigate, prosecute, convict and sentence perpetrators of criminal activities
 - While offering protection to victims in keeping with the humanitarian interests of the U.S.

Purpose of the U Visa

- Improves access to justice for immigrant crime victims
- Is a tool that helps build immigrant community trust in the courts, police and prosecutors
- Increases prosecution of perpetrators of crimes against immigrant victims
- Allows victims to report crimes without fear of deportation
- Enhances safety for victims, law enforcement and communities

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Problems With Court Decisions on U Visas in Many Jurisdictions

- Published decisions by courts commonly contain legally incorrect information about the U visa program and U visa certification
 - These decisions do not reference or follow Chevron Deference requirements
- Chevron Deference required when courts interpret federal statutes to:
 - Legislative history
 - U visa regulations and regulatory history (Preamble)
 - DHS policies and training materials

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U Visa and T Visa Overview

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T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
- Victim is physically present in the U.D. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship

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10

What are Severe Forms of Human Trafficking?

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

(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

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11

U Visa for Immigrant Victims

- A victim of qualifying criminal activity is eligible for a U Visa when:
 - The criminal activity occurred in the U.S. or violated U.S. law;
 - The victims possesses information about the crime;
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense; and
 - The victim has suffered substantial physical or mental abuse as a result of the victimization

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12

U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - Helpfulness in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

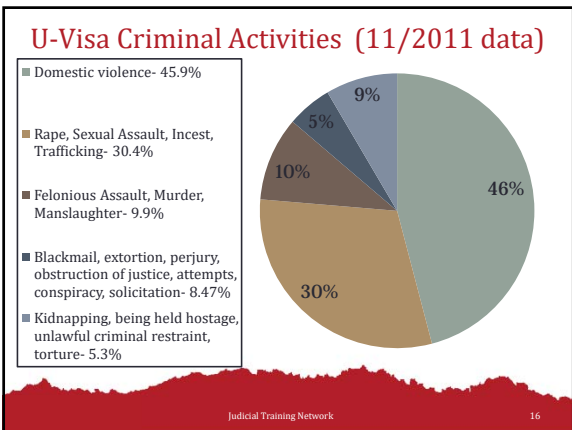
U Visa Certification Mandatory

- Department of Homeland Security U visa regulations require a certification
- Eligible immigrant victim cannot file a U visa case without a certification
- Certification provides required evidence
 - Is not dispositive
 - Certification does not contain all the evidence a victim must present to win approval from DHS of a U visa

U Visa Qualifying Criminal Activity

- | | | |
|---------------------|-----------------------------------|--------------------------|
| • Domestic violence | • Female genital mutilation | • Peonage |
| • Sexual assault | • Kidnapping | • False Imprisonment |
| • Rape | • Abduction | • Blackmail |
| • Incest | • Trafficking | • Extortion |
| • Prostitution | • Involuntary servitude | • Witness tampering |
| • Torture | • Slave trade | • Obstruction of justice |
| • Felonious assault | • Being held hostage | • Perjury |
| • Manslaughter | • Fraud Foreign Labor Contracting | • Stalking |
| • Murder | | |

Attempt, conspiracy or solicitation to commit any of these crimes any similar activity



What are the State Crimes and Qualifying Criminal Activity?

John and Jane have been separated for 2 years. During a custody exchange, John threatens Jane that he will call ICE on her if she doesn't give him full custody of the children. When she tries to leave with their child, he blocks the door and pushes her to the ground. She fell into their 5-year-old child who also got knocked to the ground. Jane tries to call 911 with her phone, but John grabs her neck and tries to strangle her, while taking her phone and smashing it.

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Large Group Discussion

- What criminal activities did
 - Jane suffer?
 - The child suffer?
- In what types of state court cases might a judge detect these criminal activities?

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Criminal Activities: Types of Proceedings

- Family
 - ✓ Civil Protection Order
 - ✓ Custody Case
 - ✓ Child Abuse, Neglect, or Termination of Parental Rights
 - ✓ Divorce Case
 - ✓ Paternity Case
- Juvenile
- Criminal
- Probate
 - ✓ Elder / Dependent Adult Abuse
 - ✓ Guardianship
 - ✓ Conservatorship
- Civil
 - ✓ Employment
 - ✓ Tort damages against a perpetrator

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19

Who Can Sign a U visa Certification?



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20

U Visa Certification: Who Can Certify?

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

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21

Why might a victim come to a judge for certification?

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Why victims seek certification from courts

- Only justice system contact = victim sought
 - Protection order
 - Custody
 - Divorce
 - Filed a civil case (e.g. tort,
- No language access when victim called police for help
- Police did not investigate and case never sent to the prosecutor

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According to DHS, a U Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, or is likely to be helpful

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When Deciding About Signing a Certification

- Question is **NOT**:
 - Is/was there a prosecution?
 - Was there an arrest of the offender?
 - Do I have proof beyond a reasonable doubt?
 - Is this within the statute of limitations?
 - Was there a conviction?

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25

Things to Know About Certification

- Judges, law enforcement and other certifiers
 - May complete U visa certification if they observe or detect a victim's helpfulness
 - Can be a civil, family or criminal case
- The investigation, prosecution or family court case
 - Can still be ongoing
 - Can be closed
 - May have settled
 - May have occurred a long time ago
 - May never have been criminally prosecuted

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26

Detecting Helpfulness

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27

Large Group Exercise

Provide examples of helpfulness that court could detect in a

- Family/Civil court case
- Criminal case

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28

Evidence of Helpfulness: Some Examples in Family/ Civil Case

- Filed and/or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal investigation
- Serving the perpetrator with notice of case with pleadings discussing underlying abuse facts

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29

Evidence of Helpfulness: Some Examples in Criminal Case

- Evidence in case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grand jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim witness statement
 - Testimony at sentencing

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30

Hypotheticals Small Group Activity

- Is this person eligible for a U Visa certification?
- *Stories handout*



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Aditi

The evidence in the case before you includes the following:

One night Aditi who has a student visa was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the “filthy things” she has done if she told anyone. This fear kept Aditi from reporting the rape to the police. Four months later, Aditi realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss called the police. Aditi told the police everything she knew, but she was unable to assist police in making a composite. Two years later, police were able to identify the perpetrator and are building a case against him based on evidence from Aditi & several other victims. He is a wealthy businessman living in Aditi’s community. Aditi is before the court in a paternity case seeking child support for her son born of the rape. Defendant is denying that the child is his.

- Would you sign a U visa certification for Aditi?
- What helpfulness has Aditi provided or might she provide in the future?

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Maura

The evidence in the case before you includes the following:

Maura is 17 years old and from Mexico. When Maura was 12 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 4 years in the abusive household and sexual advances from her step-father, Maura left home and moved in with her boyfriend Juan, who is an MS-13 gang leader. Juan started battering Maura when she became pregnant with their child. During an incident of abuse after their child was born, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the domestic violence incidents to the police officer. She did this to protect her daughter, despite fears of gang retaliation and deportation. The police refused to charge Juan with domestic violence and instead want to prosecute Juan’s gang violence with Maura as a key witness. Maura and her daughter fled to a shelter and Maura has filed for a DV restraining order against Juan.

- What forms of immigration relief might Maura qualify for?
- Is Maura eligible for U visa certification?

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Alex

The evidence in the case before you includes the following:

Alex had been dating Sam for about 1 month when Alex decided to end the relationship by texting Sam, "I enjoyed the time we spent together, but I don't think this relationship can last. We should just be friends." Sam responds, "But, I am in love with you, and you told me you loved me too. Please don't do this." Sam repeatedly continued to send texts like: "Are you sleeping with someone else?" "You are a liar, you just used me." "Slut, whore. You should be castrated." "I'm going to tell everyone that you're illegal, maybe ICE will come for you." Alex asked Sam to stop the texts, but Sam continued. Two weeks later, Sam went on Facebook to rant and posted nude photos of Alex with captions like "Open for business 24/7" and "liars should die." Sam then posted a drawing of a dead person hanged by a noose and the word "liar" on the person's shirt. Alex filed a TPO against Sam, which was granted, as was the Civil Protection Order.

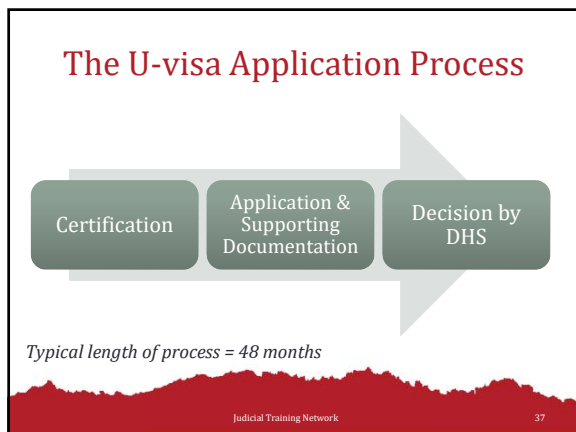
- Would you sign a U visa certification for Alex after the CPO? TPO?
- Based on what criminal activities?
- Would you be able to certify if Alex is served but does not appear at the CPO hearing?

Helpfulness in the Regulations

- Statute and DHS Regulations: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or Investigation, or
 - Prosecution, or Conviction or
 - Sentencing
- There is no degree of helpfulness required
- The certification may be completed once the certifier can access or has evidence of the victim's helpfulness
- The investigation or prosecution can still be ongoing

Helpfulness Requirement Met *Even When:*

- Victim reports a crime and there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order, but domestic violence is not being criminally prosecuted



- ### U-visa Facts and Benefits
- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 110,000 visas (11 years)
 - The U-visa grants a temporary 4 year stay
 - Work authorization (≈ 36-48 months)
 - Benefits for family members applicants
 - Under 21: spouse, children, parents, unmarried siblings under age 18
 - Over 21: spouse and children
 - Lawful permanent residency after 3 years if
 - Cooperation or not unreasonably refuse to cooperate
 - + humanitarian need, family unity or public interest
 - U.S. citizenship after 5 years of lawful permanent residency+ proof of good moral character
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Tools on the Web: To Use in Preparing Requests to Judges for Certification

- Legislative History of VAWA ('94, '00, '05), T and U Visas, Battered Spouse Waiver, and VAWA Confidentiality
- Judges U Visa Certification Toolkit
- DHS Resource Guide on U and T Visa Certification
- San Francisco U Visa Certification Policy

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49

Evaluation

50

Technical Assistance and Materials Judicial Training Network

- Training Materials, Webinars, Web Library - Manual at www.niwap.org/go/MI-2018
 - NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

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51
