

**U Visa Certification, T Visa Declaration, Special  
Immigrant Juvenile Status and Violence Against  
Women Act Immigration Relief for Abused  
Immigrant Children  
A Toolkit  
*for*  
Child Protective Services**

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# NIWAP



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## Introduction

This toolkit provides an overview of humanitarian immigration relief that Congress has provided for the protection of abused noncitizen children, and/or their noncitizen parent. The toolkit focuses on four visa types: (1) the Violence Against Women Act (VAWA) self-petition, (2) the U visa for crime victims, (3) the T visa for human trafficking victims, and Special Immigrant Juvenile Status (SIJS). It provides CPS professionals with a working understanding of the tools available to abused noncitizen children and their parents, as well as best practices for working with children in immigrant and mixed status families.<sup>2</sup> These practices include early intervention, supportive services for abused children and protective parents, applications for eligible public benefits, trauma informed and culturally sensitive approaches, and access to resources in a language the child and/or parent understands.<sup>3</sup>

As the number of children in immigrant and mixed status families increases, CPS’s role in identifying and responding to abuse, neglect, and victimization is increasingly important. In 2021, approximately 14% of the United States population were foreign-born. 29.5% of children living in the United States had one or more foreign-born parents. 87.9% of the children living in mixed status families are United States citizens. Additionally, the number of unaccompanied minors entering the country has increased substantially since 2014, although there have been significant fluctuations between individual years; in 2022, the number of unaccompanied minors released to sponsors peaked at 127,447 persons.

Immigrant children and parents are vulnerable to abuse at many stages. Upon arrival to the United States, children fall victim to abuse, neglect, and crime victimization.<sup>4</sup> Those placed with distant relatives or new family units can be subject to abuse, battering, extreme cruelty,<sup>5</sup>

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<sup>2</sup> U.S. Dep’t of Health and Human Servs., Child Welfare Information Gateway, *Understanding Immigration and Child Welfare* (last visited May 28, 2023), available at <https://www.childwelfare.gov/topics/systemwide/diverse-populations/immigration/understandingimm/>.

<sup>3</sup> December 2021 – NCJFCJ Two Part Webinar Series: *Immigrant Children Who Are Survivors of Trafficking* (Dec. 2021), available at <https://niwaplibrary.wcl.american.edu/two-part-webinar-series-immigrant-children-child-trafficking>; April 18, 2023 “*Tips and Guidance for Helping Unaccompanied Immigrant Youth Access Publicly Funded Benefits and Services*,” (Apr. 18, 2023), available at <https://niwaplibrary.wcl.american.edu/publicbenefits-cila>.

<sup>4</sup> Meaghan Fitzpatrick & Leslye E. Orloff, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls* at p. 616-17 (Aug. 2016), available at <https://niwaplibrary.wcl.american.edu/pubs/legal-options-recent-imm-women-and-girls>.

<sup>5</sup> Mark Greenberg, Randy Capps, Andrew Kalweit, Jennifer Grishkin, and Ann Flagg, *Immigrant Families and Child Welfare Systems: Emerging Needs and Promising Policies* (Apr. 2019), available at <https://www.migrationpolicy.org/research/immigrant-families-child-welfare-systems>.

human trafficking,<sup>6</sup> or are forced to work to contribute financially to the family.<sup>7</sup> Isolated unaccompanied minors are even more vulnerable to abuse<sup>8</sup> and human trafficking.<sup>9</sup> Fear of separation from their family, threats of deportation, and fear of the unknown can trap child victims in abusive homes. Additionally, undocumented non-abusive parents who come forward to assist in child abuse and neglect investigations involving their citizen or immigrant children or stepchildren can be threatened or subjected to immigration enforcement actions triggered by the abusive parent who harmed the children.

Congress created humanitarian immigration protections to strengthen the ability of state, local, and federal government agencies to hold perpetrators accountable and to help victimized immigrant children heal and thrive. Humanitarian visa protections enable noncitizen victims of crime and abuse to cooperate with law enforcement without fear of immigration consequences, and provide abused noncitizens with necessary public benefits that allow them to rebuild their lives. Humanitarian protections like the VAWA self-petition are also critical to allowing abused children and parents leave abusive situations by providing them an independent pathway to lawful status.

Child Protective Services (CPS) has a significant role to play in helping immigrant child victims, abused children living in mixed immigration status families, and their non-abusive immigrant parents obtain the immigration relief for which they are legally eligible. This is especially true because early identification and application helps children and their non-abusive parents stabilize their living situation, end reliance on an abusive parent, and expand the range of publicly funded benefits and services they are eligible to receive.<sup>10</sup> When CPS staff learns about and responds to assist a child who is being harmed, CPS may be the first to respond. This means CPS could be the first agency in a position to identify noncitizen abused, neglected, and victimized children and/or a child's protective immigrant parent who may qualify for humanitarian immigration protection. CPS staff will also have firsthand knowledge of a child victim's or parent's helpfulness in reporting the child's victimization and their participation in

<sup>6</sup> Jennifer Cole & Ginny Sprang, *Sex trafficking of minors in metropolitan, micropolitan, and rural communities*, 40 *Child Abuse & Neglect* 113 (Feb. 2014), available at <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>.

<sup>7</sup> Katherine Kaufka Walts, *Child Labor Trafficking in the United States: A Hidden Crime* (2017), available at [https://niwaplibrary.wcl.american.edu/pubs/child-labor-trafficking-in-the-united-states\\_-a-hidden-crime](https://niwaplibrary.wcl.american.edu/pubs/child-labor-trafficking-in-the-united-states_-a-hidden-crime); Karoun Demirjian & Hanna Dreier, *Migrant Child Labor Debate in Congress Becomes Mired in Immigration Fight* *New York Times* (May 7, 2023), available at <https://www.nytimes.com/2023/05/07/us/politics/child-labor-immigration-democrats-republicans-biden.html>.

<sup>8</sup> Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.* (Feb. 28, 2023), available at <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

<sup>9</sup> *Adequacy of the Department of Health and Human Services' Efforts to Protect Unaccompanied Alien Children from Human Trafficking: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (Jan. 28, 2016), available at <https://niwaplibrary.wcl.american.edu/pubs/senate-hhs-placing-children-with-traffickers-2016>.

<sup>10</sup> *December 2021 – NCJFCJ Two Part Webinar Series: Immigrant Children Who Are Survivors of Trafficking* (Dec. 2021), available at <https://niwaplibrary.wcl.american.edu/two-part-webinar-series-immigrant-children-child-trafficking>; April 18, 2023 “*Tips and Guidance for Helping Unaccompanied Immigrant Youth Access Publicly Funded Benefits and Services*,” (Apr. 18, 2023), available at <https://niwaplibrary.wcl.american.edu/publicbenefits-cila>.

CPS investigations and any related court cases and is therefore in an important position to provide U and T visa certifications and help secure court findings that abused children and/or their non-abusive parents need to apply for victim-based forms of immigration relief.

That being said, already overworked CPS workers are *not* expected to become experts on immigration remedies for child victims of crime, abuse, abandonment, and/or neglect. Instead, when CPS workers have a good understanding of the immigration relief, public benefits, and services available to immigrant child victims and their non-abusive parents, CPS staff can help identify an immigrant child’s options, provide assistance with certification and obtaining the needed court orders, and connect abused immigrant children and their families with state programs that have expertise in legal protections for immigrant children who have suffered child abuse, neglect, abandonment, sexual assault, child sexual exploitation, human trafficking, stalking, dating violence, or other similar crimes.<sup>11</sup>

This toolkit provides CPS workers and agency heads with a variety of tools to aid CPS workers in identifying and supporting abused noncitizen children and parents. The sections below provide an in-depth analysis of each visa type, the role CPS workers can and should play at various stages of the application process, and a discussion of best practices to approaching work with traumatized noncitizens. Each section also contains a “Quick Reference” guide, including Screeners, that can be incorporated easily into a field manual. A standalone Field Guide, containing the Quick Reference guides and Screeners, can be found in Appendix A. NIWAP also provides free, case-specific technical assistance and access to training and resource materials for CPS staff, child advocates, government attorneys, children’s attorneys, judges, and other professionals.<sup>12</sup>

## Brief Overview of the Forms of Immigration Relief Covered in this Toolkit

The Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) created a variety of forms of immigration relief that provide a path to legal status, protection from deportation, employment authorization, and improved access to state and federal public benefits for immigrant children and unaccompanied minors who are victims of child abuse, neglect, abandonment, battering, extreme cruelty, sexual assault, sexual exploitation, stalking, dating violence, domestic violence, human trafficking, and/or other crimes.<sup>13</sup> In

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<sup>11</sup> To locate programs in each state with expertise serving immigrant victims of crime and abuse including children and their immigrant parents, see *Directory of Programs With Experience Serving Immigrant Victims* (2023), available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

<sup>12</sup> NIWAP technical assistance is available by contacting at [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu); 202-274-4457. Additional information is available on our website at [www.wcl.american.edu/niwap](http://www.wcl.american.edu/niwap) and on our web library at <https://niwaplibrary.wcl.american.edu/>.

<sup>13</sup> The Department of Homeland Security has developed a brochure that is available in multiple languages that provides an overview of immigration options for crime victims through the VAWA self-petition, U and T visa programs. See *Immigration Options for Victims of Crimes*, U.S. Dep’t of Homeland Sec. (June 2011), available at <https://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes>. United States Citizenship and Immigration Services also developed a brochure describing the Special Immigrant Juvenile Status program. See



subsequent reauthorizations, Congress has expanded those protections. In order to strengthen the ability of immigrant parents to protect their citizen and noncitizen children from abuse and crime victimization, Congress also extended several of these forms of immigration relief to non-abusive immigrant parents.<sup>14</sup>

This toolkit will focus on four significant forms of humanitarian immigration relief designed to provide protection for noncitizen child victims and/or the abused child’s protective, non-abusive immigrant parent:

- The Violence Against Women Act (VAWA) self-petition
- The U visa for crime victims
- The T visa for human trafficking victims
- Special Immigrant Juvenile Status (SIJS)

### VAWA Self-Petition and Other Similar VAWA Protections for Victims of Child and Spouse Abuse<sup>15</sup>

The VAWA self-petition provides immigration relief and a path to lawful permanent residence for immigrant children, stepchildren, spouses, and former spouses who are battered or subjected to extreme cruelty<sup>16</sup> by their U.S. citizen or lawful permanent resident parent, stepparent, spouse, or former spouse.<sup>17</sup> VAWA self-petitioning abused immigrant children and immigrant parents of child abuse victims are authorized to file their own petitions to obtain lawful permanent resident status *confidentially* and *without the cooperation of the abusive citizen or lawful permanent resident parent, stepparent, or spouse*.<sup>18</sup> VAWA provides protections that

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*USCIS Brochure for Victims: Immigration Relief for Abused Children*, U.S. Citizenship & Imm. Servs. (May 2016), available at [https://niwaplibrary.wcl.american.edu/pubs/uscis\\_sijs\\_brochure](https://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure).

<sup>14</sup> One important exception is for children granted Special Immigrant Juvenile Status, who can never file an immigration application to sponsor any parent, including their protective parent, even after they become citizens. The SIJS child’s protective parent will need to pursue their own immigration case, such as a U visa application based on their helpfulness to CPS or other government agencies in the detection, investigation, prosecution, conviction, and/or sentencing of their child’s perpetrator.

<sup>15</sup> For a detailed discussion of VAWA self-petitions, see Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, Alicia (Lacy) Carra, Matison Miller, and Leslye E. Orloff, *Chapter 03.3: Preparing the VAWA Self-Petition and Applying for Residence* (Aug. 15, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

<sup>16</sup> At least some of the battering or extreme cruelty must have been perpetrated in the United States. However, if the abusive citizen or lawful permanent resident spouse, parent, or stepparent is a U.S. government employee or a member of the U.S. uniformed services living abroad, all of the battering or extreme cruelty could have occurred outside of the United States.

<sup>17</sup> It is important to note that VAWA self-petitions also offer protection for immigrant parents abused by their U.S. citizen sons or daughters who are age 21 or older. See Leslye E. Orloff et. al., *Toolkit for Adult Protective Services’ Use of the U Visa* (Feb. 2014), available at <https://niwaplibrary.wcl.american.edu/pubs/aps-u-visa-toolkit>.

<sup>18</sup> All VAWA self-petition eligible children and parents are immigrants who could have received their lawful permanent residency through a family based visa petition filed by their citizen or lawful permanent resident family member who could have sponsored them for lawful permanent residency. When domestic violence or child abuse is occurring in mixed immigration status families, the perpetrator uses power and control over the immigration status

can be applied for affirmatively, for adjudication by DHS, as well as asserted as a defense to deportation that can be granted by an immigration judge when the immigrant child or an immigrant protective parent has a case in immigration court.

There are several different forms of protection created by Congress under VAWA and the TVPA. These include:

- **The VAWA Self-Petition:** Protects abused immigrant spouses, children, and stepchildren of U.S. citizens and lawful permanent residents. Protective parents of abused children (including U.S. citizen children) can also file their own self petitions, regardless of whether they were also abused. Eligible noncitizen children may also file for relief under the VAWA Haitian Refugee Immigration Fairness Act (VAWA HRIFA), VAWA Cuban Adjustment Act (VAWA CAA), and the VAWA Nicaraguan and Central American Relief Act (VAWA NACARA).
- **The Battered Spouse Waiver:** Protects abused immigrant spouses of U.S. citizens and lawful permanent resident, as well as the immigrant spouses' children. The Battered Spouse Waiver applies to cases where an abusive citizen or lawful permanent resident spouse/stepparent has filed an immigrant application for the abused spouse/stepchild. The waiver allows eligible immigrants to obtain lawful status without having to continually reside with their abusive sponsor for two years, and without their abusive sponsor's knowledge, cooperation, or consent.
- **VAWA Cancellation of Removal and VAWA Suspension of Deportation:** Protects immigrants who are abused spouses, children, and stepchildren of U.S. citizens and lawful permanent residents. These are cases where the abused victim has an open deportation case and applies for VAWA cancellation of removal or VAWA suspension of deportation before an immigration judge.
- **U visa for Victims of Criminal Activity:** Provides immigration relief to noncitizens, including children who experience a U-visa qualifying crime, including domestic violence, child abuse, rape, sexual assault, stalking, and trafficking. Noncitizen parents whose child or stepchild have experienced a qualifying crime are also eligible. The U visa *does not* require the victim to have a relationship with the perpetrator, which makes it a useful alternative for victims who are abused by perpetrators who do not fall into one of required relationships for VAWA self petitioning. U visa eligibility requires the victim to demonstrate that they or their parent, guardian, or next friend has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the perpetrator.

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of their family member victims to lock the victims in the abusive home and keep them from seeking help or leaving. For this reason, Congress created VAWA self-petitions giving victims a path to lawful permanent residence that did not require that the abusers file a case on the victim's behalf, continue with a case that has been filed, or cooperate in any way in the victim family member's immigration case.

- **T visa for Victims of Human Trafficking:** Protects children and adult victims of severe forms of human trafficking in persons perpetrated in the United States. Human trafficking includes sex trafficking and labor trafficking. Any person under the age of 18 who is induced into commercial sex work is automatically considered a victim of human trafficking under the law. T visa applicant children can include their own children, their spouses, their parents, and their unmarried siblings under the age of 18 in their own applications.
- **Special Immigrant Juvenile Status (SIJS) for Victims of Parent Perpetrated Abuse, Abandonment, or Neglect:** Protects immigration status, protection from deportation, and lawful permanent residence to immigrant children who were abused, abandoned, or neglected by at least one of the child’s biological or adoptive parents. A child can qualify for SIJS when they have suffered a harm similar to abuse, abandonment, or neglect against which state laws protect children. The maltreatment may have occurred in the United States or been perpetrated abroad at any location in the world.<sup>19</sup>

## Forms of Immigration Relief and Benefits for Noncitizen Victims

CPS workers play a critical role in enabling abused victims to access immigration relief and benefits. Often, CPS workers may be the first to encounter noncitizen children or parents in the course of their work. Early screening of immigrant child victims is imperative to ensuring that they can apply for all possible forms of immigration relief they may be eligible for before aging out of qualification. Getting immigrant children early access to immigration relief puts the child on a path to lawful permanent residency or qualified immigrant status that enables the child to access federal public benefits including public and assisted housing, post-secondary educational grants and loans, LIHEAP, adoption assistance, assistance for heating and cooling for their family residence and often SNAP funded food assistance.

CPS workers are also authorized to provide critical documentation such as U visa certifications and T visa declarations. In some cases, such as the U visa certification, this documentation is a required part of the application. CPS workers can attest to many of a victim’s U visa requirements, such as helpfulness; indeed, cooperating with CPS workers may itself fulfill the helpfulness requirement in many circumstances. CPS workers also play in an important role

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<sup>19</sup> Leslye E. Orloff & Hannah Bridges, *Answers to Questions from State Court Judges on the 2022 Special Immigrant Juvenile Status (SIJS) Regulations* at 17 (Apr. 4, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-q-and-a>.

in building trust with immigrant victims and communities.<sup>20</sup> CPS workers play an integral role in assisting abused victims overcome their trauma and assist law enforcement.

This section provides a more detailed discussion of each type of immigration relief available to abused noncitizen children and the protective parents of abused citizen and noncitizen children. It provides a detailed discussion of the eligibility requirements for each visa type, application requirements (e.g. whether a declaration is required), the benefits available, and the role CPS workers can play in fulfilling those requirements. It is important for CPS workers to be able to identify the full range of immigration options an abused immigrant child, or an abused immigrant or citizen child's noncitizen, non-abusive parent, may be eligible to receive. Some forms of immigration relief come with greater and swifter access to federal and state funded public benefits, work authorization, and protection from deportation.

## Definition of Domestic Violence Under Immigration Law

DHS regulations define domestic violence under immigration law as battering or extreme cruelty. This immigration law definition of domestic or family violence applies as do all state law definitions of domestic/family violence, elder abuse and child abuse for all VAWA, U visa and SIJS immigration cases. The immigration law definition was first stated in the VAWA regulations preamble:

"[W]as battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), forced prostitution shall be considered acts of violence"<sup>21</sup>

"The acts mentioned in this definition—rape, molestation, incest if the victim is a minor, and forced prostitution—will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence."<sup>22</sup>

<sup>20</sup> *Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims*, Police Chief Magazine (April 2018), available at [https://niwaplibrary.wcl.american.edu/pubs/policechief\\_april-2018\\_building-trust-immigrant-victims](https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims).

<sup>21</sup> Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,061, 13,062, 13,065 (Mar. 26, 1996).

<sup>22</sup> Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. §13,061-02, 13065 (Mar. 26, 1996), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

“It is not possible to cite all perpetrations that could be act of violence under certain circumstances The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty."”<sup>23</sup>

“[T]he regulatory definition has proven be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty.”<sup>24</sup>

This DHS regulation’s description of battering or extreme cruelty is broad enough to be consistent with and include the Centers for Disease Control and Prevention (CDC) definitions of child abuse:<sup>25</sup>

“Acts of Commission (Child Abuse): Words or overt actions that cause harm, potential harm, or threat of harm. Acts of commission are deliberate and intentional; however, harm to a child might not be the intended consequence of those acts. For example, a caregiver might intend to hit a child as punishment (i.e., hitting the child is not accidental or unintentional), but not intend to cause the child to have a concussion. The following types of maltreatment involve acts of commission:

- Physical abuse
- Sexual abuse
- Psychological abuse”

“Acts of Omission (Child Neglect): The failure to provide for a child’s basic physical, emotional, or educational needs or to protect a child from harm or potential harm. Like acts of commission, harm to a child may or may not be the intended consequence. The following types of maltreatment involve acts of omission:

- Failure to provide
  - Physical neglect
  - Emotional neglect
  - Medical/dental neglect
  - Educational neglect
- Failure to supervise

<sup>23</sup> Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. §13,061-02, 13065 (Mar. 26, 1996), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

<sup>24</sup> Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,061, 13,065 (Mar. 26, 1996).

<sup>25</sup> Leeb, Rebecca T. et al., *Child Maltreatment Surveillance*, Center for Disease Control and Prevention (Jan. 2008), available at, [https://www.cdc.gov/violenceprevention/pdf/CM\\_Surveillance-a.pdf](https://www.cdc.gov/violenceprevention/pdf/CM_Surveillance-a.pdf).

- Inadequate supervision
- Exposure to violent environments”

## Multiple Applications

Many immigrant victims will be eligible for more than one form of immigration relief. When a victim is eligible for multiple forms of immigration relief, they may file for and have several immigration cases pending simultaneously. The most common examples are children who are eligible for U visas either based on their own, their parent’s, or their sibling’s crime victimization. When children with pending U visa applications were abused, abandoned, or neglected by one of their parents, the child will also qualify for SIJS. If a child who was abandoned or abused by one of their parents in their home country ends up being subjected to labor trafficking after they arrive in the U.S., the child will be eligible for a T visa and an OTIP child eligibility letter in addition to SIJS.

Whenever a victim is eligible for multiple visas, it is important that CPS workers assist them in filing for all forms of relief for which they are eligible. Some visa categories allow immigrant victims better access to benefits faster than others or extend greater eligibility. Some victims, like human trafficking victims, may also be eligible for temporary forms of relief that provide immediate access to critical benefits while they wait for their visa application to be adjudicated. Visas also differ in critical ways; for instance with respect to what family members can be included in the petition, whether and when a recipient can adjust their immigration status (i.e. file for Legal Permanent Residency), and other important factors.

It is important for CPS staff to build relationships in the state with programs with expertise on immigration relief for victims of crime and abuse<sup>26</sup> that can help the victim through which option is best in their individual case.<sup>27</sup> To make this determination, the victim, their attorneys, and their victim advocates will need to consider:

- Whether the victim needs to include family members in their application;
- Any special needs the victim has whether or not they are related to crime victimization;
- What public benefits are available in the state for which forms of immigration relief; and

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<sup>26</sup> To locate programs in each state with expertise serving immigrant victims of crime and abuse, including children and their immigrant parents, see *Directory of Programs With Experience Serving Immigrant Victims* (2023), available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

<sup>27</sup> For a list of legal services and victim advocacy programs with experience working with immigrant crime survivors, see *Directory of Programs With Experience Serving Immigrant Victims* (2023), available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

- How long it will take to gain each of the following protections under each form of immigration relief for which the child, or the immigrant parent whose child or stepchild was abused, qualifies:
  - Work authorization;
  - Protection from deportation through deferred action;
  - Violence Against Women Act (VAWA) confidentiality protections;<sup>28</sup>
  - Access to federal and/or state funded public benefits;
  - Approval of the child’s immigration case;
  - Lawful permanent residency; and
  - Citizenship through naturalization.

## Adjudication Times for VAWA Immigration Relief

Although federal agencies have taken numerous steps to mitigate the impact of processing delays, including instituting a Bona Fide Determination process for U visa applicants<sup>29</sup> and creating a dedicated processing center to speed adjudication of some visa types,<sup>30</sup> the wait time to receive either a bona fide or prima facie determination, deferred action, work authorization, or final adjudication while improving are still very long. The unpredictability of these wait times increases the risk to victims and impede effective safety planning. A highly anticipated final rule may implement a statutorily created bona fide determination process for T visas, providing T visa applicants swifter to access public benefits.<sup>31</sup>

CPS workers should be aware of the long wait times for each visa category, as they can have a significant impact on decision making. For instance, the lengthy and variable adjudication times for visas necessitates that CPS workers apply for all possible forms of relief, including Continued Presence and/or benefits eligibility letters when appropriate. CPS workers should also be aware of when a victim is eligible for state and/or federal benefits, as this varies significantly between visa categories. Additional information on public benefits access, including how to find detailed information on what benefits are available to which applicants in each state can be found later in this section.

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<sup>28</sup> VAWA confidentiality protects against immigration enforcement actions that are based on tips and information from the perpetrator; keeps VAWA, T and U visas (*but not SIJS*) files confidential, with very limited exceptions; and prohibits immigration enforcement against victims of crime and/or abuse who are at specified protected locations. Monica Bates, Mikaela Rodriguez, and Leslye E. Orloff, *VAWA Confidentiality Protections, Courthouse Enforcement, and Protected Areas Policies at a Glance* (Dec. 27, 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Victims-and-Protected-Locations-Policies-at-a-Glance-12.29.21.pdf>.

<sup>29</sup> <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>

<sup>30</sup> *USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center*, USCIS PUBLIC ENGAGEMENT DIVISION, <https://www.uscis.gov/sites/default/files/document/notices/USCISOpenstheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf> (last accessed 2/6/2024).

<sup>31</sup> 81 Fed. Reg. 92266.

Understanding wait times is also important for CPS workers required to certify helpfulness for U visa applicants. As discussed further below, U visa applicants are required to provide ongoing helpfulness to law enforcement, provided that helpfulness is reasonable. Individuals are not required to provide ongoing helpfulness if their refusal is not unreasonable. Over the course of a years-long adjudication period, an individual’s reasonable capacity for helpfulness may change substantially, due to changing circumstances, threats by their abuser, or other factors. Understanding the mean adjudication times will allow CPS workers to better fulfill their requirements and advise immigrant victims.

In FY 2022<sup>32</sup>, the mean adjudication times for each visa category were:

- **T visa from application to adjudication:** 17 months
- **U visa from application to Wait List Adjudication or BFD Review:** 58.7 months
- **VAWA Self-Petitioners from application until adjudication:** 19-28 months depending on whether the self-petitioner is an abused parent, spouse, or child.
- **Special Immigrant Juvenile Status:** 263 days to approval of petition (in excess of the 180-day statutory requirement), time to adjust to LPR status varies considerably, up to almost four years,<sup>33</sup> because SIJS petitioners must wait for a visa to become available.

## Family Members included in Visa Petitions

Many visa categories allow abused victims to include family members in their petitions, including parents, spouses, children, and in some cases siblings. In some cases, family members or guardians who are not eligible to be included in a petition may still be eligible for certain immigration benefits, such as Deferred Action (relief from removal) so that they can serve as witnesses or guardians to the abused victim. Specific information on which family members can be included in petitions for each visa category are provided in detail below and noted in each Quick Reference Guide.

***Noncitizen family members of abused citizen children are eligible for many forms of immigration relief. It is therefore critical that CPS workers not stop screening for eligibility even if they learn that the child is a U.S. citizen.*** Even if the child victim is a U.S. citizen, CPS

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<sup>32</sup> *Annual Report on Immigration Applications and Petitions Made by Victims*, USCIS (April 13, 2023) [https://www.uscis.gov/sites/default/files/document/reports/FY22\\_Immigration\\_Applications\\_Made\\_by\\_Victims\\_of\\_Abuse\\_5.17.23.pdf](https://www.uscis.gov/sites/default/files/document/reports/FY22_Immigration_Applications_Made_by_Victims_of_Abuse_5.17.23.pdf).

<sup>33</sup> Children with approved special immigrant juvenile status receive their lawful permanent residence through the EB-4 employment based visa progra wait list. As of December 2023 the wait to apply was between 3 and 4 years. See *Visa Bulletin*, U.S. DEP’T OF STATE, BUREAU OF CONSULAR AFFAIRS, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>.



should screen to determine if the child’s noncitizen protective parent qualifies for immigration relief. Noncitizen parents of immigrant and citizen children who are abused, battered, subjected to extreme cruelty, victims of trafficking, or victims of criminal activity can apply for immigration protections under the VAWA, U visa, and T visa programs. Congress created these parental protections to help ensure that noncitizen parents could come forward and seek help from child protective services, the courts, law enforcement, and/or prosecutors for their children and stepchildren who have suffered abuse or crime victimization. Congress’s decision to provide noncitizen parents of abused children and stepchildren has proved to be an effective way to reduce child abuse and neglect of children living in immigrant families. Research has shown that when abused immigrant mothers seek immigration relief and/or protections from state courts, the co-occurrence of domestic violence and child abuse within those families declines dramatically from 77% to 23%.<sup>34</sup>

Immigrant parents can file VAWA self-petitions, U visas, and T visas based on harms that happened to their children and stepchildren whether or not the immigrant parent also suffered additional abuse or crime victimization. It is also important to screen noncitizen parents because the citizen or noncitizen child who has come to the attention of CPS may have an immigrant parent who is eligible for VAWA, T visa, or U visa immigration relief and can include their noncitizen children in their applications.

By identifying pathways to lawful status for the immigrant children and both immigrant and citizen child victim’s noncitizen family members, CPS can help stabilize the child’s living situation. Research has also found that immigrant victims with pending VAWA, T visa, and U visa applications are more likely to turn to the justice system for help, to report future crimes to police, and seek help from and work with government agencies, including courts and child protective services.<sup>35</sup> When immigrant children and their parents file for VAWA, T visa, and U visa protections, by the time they obtain work authorization and formal protection from deportation through deferred action, victims overcome victimization, heal, become resilient, engage in their communities, and thrive.<sup>36</sup>

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<sup>34</sup> See Nawal Ammar et al., *Presentation at the International Family Violence Conference, Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status* (Sept. 19- 25, 2004), slides available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Co-occurrence-of-DV-and-Child-9.20.2004-1.pdf>; Meaghan Fitzpatrick & Leslye E. Orloff, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls*, 4 Penn. St. J.L. & Int’l Aff. 614, 637-38 (2016), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Abused-Abandoned-or-Neglected-Legal-Options-Recent-Imm-Women-and-Girls.pdf>.

<sup>35</sup> Leslye E. Orloff, Haley Iesha Magwood, Yasmin Campos-Mendez, and Giselle A. Haas, *Executive Summary – Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status* (June 8, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final>.

<sup>36</sup> Leslye E. Orloff, Haley Iesha Magwood, Yasmin Campos-Mendez, and Giselle A. Haas, *Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Survivors and their Children After Employment-Authorization and Legal Immigration Status* (June 8, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/niwap-transforming-lives-abstract-conclusions>.

## VAWA Self Petitions for Victims of Child and Spousal Abuse

### VAWA Self-Petition: Immigration Relief for Victims of Child and Spousal Abuse

#### Quick Reference Guide

The VAWA Self-Petition provides immigration relief and a path to lawful permanent residence for immigrant children, stepchildren, spouses, and former spouses who are battered or subject to extreme cruelty by their U.S. citizen or lawful permanent resident parent, stepparent, spouse, or former spouse. VAWA self-petitioning abused immigrant children, spouses, and immigrant parents of child abuse victims are authorized to file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of the abusive spouse or parent.

There are several different forms of VAWA immigration relief created by the Violence Against Women Act of 2000. These include the VAWA Self-Petition and the Battered Spouse Waiver.

#### Who is eligible

- **Immigrant adults and children** who were battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse, former spouse, parent, or stepparent.
- **Immigrant parents of U.S. citizen children** who are victims of child abuse
- **Immigrant parents** who are subject to elder abuse by a U.S. citizen or lawful permanent resident child

**VAWA Self-Petition:** Protects immigrants who are abused spouses, children, and stepchildren of U.S. citizens and lawful permanent residents. To be eligible for a VAWA Self-Petition, an immigrant child or adult must prove that

- They were battered or subject to extreme cruelty
- For children, that at least part of the battering or extreme cruelty occurred when the child was under the age of 21
- For spouses, that the marriage was entered into in good faith
- The battering or extreme cruelty was perpetrated by the petitioner's U.S. Citizen or lawful permanent resident parent (natural, adoptive, or stepparent), spouse, intended spouse (if the immigrant spouse unknowingly married a bigamist), former spouse (must file within 2 years after marriage terminated)

**Eligibility Requirements for the VAWA Self-Petition:** a petitioner must establish

- That they have a qualifying relationship to the abuser, namely that they are a:
  - Abused spouse of a U.S. Citizen or lawful permanent resident
  - Spouse or former spouse of a U.S. Citizen or lawful permanent resident whose child or stepchild was abused by the U.S. Citizen or legal permanent resident spouse
  - Abused child of a U.S. citizen or legal permanent resident spouse
  - Abused parent of an adult U.S. citizen child
- That the abusive spouse, parent, or child is a U.S. Citizen or lawful permanent resident
- That the petitioner **at one time** resided with the abuser (note: a self petitioner does not need to reside with the abuser at the time the application is filed, during the marriage, or at the time the parent/child/stepparent relationship was formed; self petitioners do not need to separate from abuser in order to file)
- That they experienced battery or extreme cruelty, such as but not limited to acts or threatened acts of violence, psychological abuse, child neglect, abandonment or willful desertion, rape, and sexual assault
- That they are of good moral character
- That they entered the marriage in good faith (not for the purpose of evading immigration laws)

- That child petitioners were subject to some battery or extreme cruelty before the age of 21 and are under the age of 25 at filing

**Battered Spouse Waiver:** Protects abused immigrant spouses, children, and stepchildren of U.S. citizens and lawful permanent residents, in cases where the U.S. Citizen or lawful permanent resident has filed an immigrant application that resulted in the abused spouse being granted conditional permanent residence. The Battered Spouse Waiver allows the abused immigrant spouse, as well as any children or stepchildren, to receive full lawful permanent residency without having to wait two years; continuing to reside with the abuser for two years; or the abusers knowledge, consent, or cooperation.

**VAWA Cancellation of Removal and Suspension of Deportation:** Protects immigrant spouses, children, and stepchildren of U.S. citizen and lawful permanent resident abusers who have an open deportation case against them. Note, children must file their own petitions.

**VAWA Self-Petitioning Protection for Non-abusive Immigrant Parents of Abused Immigrant Children and Stepchildren:** Provides protection for immigrant parents whose children or stepchildren under the age of 21 have been subject to battering or extreme cruelty by their other U.S. citizen or lawful permanent resident parent (natural, adoptive, stepparent) or by the immigrant parent's spouse or former spouse, regardless of whether they have been abused themselves.

- If the child was abused by their other parent, the non-abusive parent is eligible for VAWA cancellation of removal or suspension of deportation
- If the child was abused by the immigrant parent's spouse, intended spouse, or former spouse, the non-abusive parent is eligible for a VAWA self-petition and Battered Spouse Waiver

**Certification Required:** No. Certification is not required for self-petitioning.

**Is there a mental or physical suffering requirement:** No. Unlike the U visa, which requires applicants to prove that they suffered mental or physical abuse as a result of the qualifying criminal activity, VAWA self-petitioners are not required to prove how or to what extent they were harmed by the battering or extreme cruelty.

## Overview of VAWA Self Petitions

The VAWA self-petition is a form of humanitarian immigration relief that allows noncitizen spouses, former spouses, children, and stepchildren abused by U.S. citizens or lawful permanent residents to petition for lawful permanent residence on their own - without their abusive spouse's, parent's, or stepparent's knowledge, consent, or participation in the victim's immigration case process.<sup>37</sup> Congress created the VAWA self-petition in 1994 in order to prevent abusers from using immigration status as a tool of power and control over immigrant victims of domestic violence and child abuse. It was also intended to allow noncitizen victims to

<sup>37</sup> Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, Alicia (Lacy) Carra, Matison Miller, and Leslye E. Orloff, *Chapter 03.3: Preparing the VAWA Self-Petition and Applying for Residence at 2-3* (Aug. 15, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

leave abusive situations, or report abuse to the authorities, even if they depend on their relationship to the abusive U.S. citizen or lawful permanent resident family members to secure legal immigration status.

Abused noncitizen spouses, former spouses, children, and stepchildren may be eligible to file for a VAWA self petition. Noncitizen parents subject to elder abuse by adult citizen or lawful permanent resident children are also eligible. Critically, noncitizen parents or stepparents of abused children may also be eligible for a VAWA Self Petition *even if* their child is a U.S. citizen and *even if* they themselves were not abused. Therefore, it is important that CPS staff not stop screening for immigration relief when they discover that the child victim is a U.S. citizen; rather, they should determine whether the child’s non-abusive parent is a noncitizen who will be eligible to self-petition based on the abuse their child suffered.<sup>38</sup>

Adult and child VAWA self-petitioners can obtain legal immigration status and lawful permanent residence for any of their immigrant children by including them in their VAWA self-petition. In 2023, VAWA self-petitioners were receiving work authorization and formal protection from deportation through deferred action within 34 months of filing.<sup>39</sup> Self-petitioning spouses and children of U.S. citizens will receive work authorization typically within 3 to 6 months of filing their VAWA self-petition. VAWA self-petitioners begin to gain access to an expanded range of state and federal public benefits often within 3 months after their VAWA self-petition is filed.<sup>40</sup>

## Eligibility Requirements for VAWA Self Petitions

In order to be eligible to submit a VAWA self-petition, victims must establish:<sup>41</sup>

1. **Relationship to the abuser:** Self-petitioners must prove that they have a qualifying relationship with the abuser. This includes:<sup>42</sup>
  - An abused spouse of a U.S. citizen or lawful permanent resident

<sup>38</sup> See 8 C.F.R. § 204.2(c)(2)(ii); 3 USCIS-PM D.2(B)(2), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

<sup>39</sup> For processing times, see <https://egov.uscis.gov/processing-times/>. In early 2023, the U.S. Citizenship and Immigration Services (USCIS) established a new Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center that took over responsibility for adjudicating VAWA self-petitions and undertook the process of hiring additional adjudicators with a goal of reducing wait times to work authorization in VAWA self-petition, U visa, and other humanitarian immigration cases.

<sup>40</sup> *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>41</sup> See Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, Alicia (Lacy) Carra, Matison Miller, and Leslye E. Orloff, *Chapter 03.3: Preparing the VAWA Self-Petition and Applying for Residence* (August 16, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>; See also Leslye Orloff & Deborah Birnbaum, *VAWA Self-Petitioning Eligibility Flow Chart for Abused Children* (June 17, 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioning-child-abuse-flow-chart-6-17-19-pdf>.

<sup>42</sup> See 3 USCIS-PM D.2(B), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

- A spouse or former spouse of a U.S. citizen or lawful permanent resident whose child or stepchild was abused by their U.S. citizen or lawful permanent resident spouse
  - An abused child of a U.S. citizen or lawful permanent resident; or
  - An abused parent of an adult U.S. citizen son or daughter.<sup>43</sup>
2. **Immigration status of the abusive spouse or parent:** The abuser must be either a U.S. citizen or a lawful permanent resident.
  3. **Residence with the abuser:** A self-petitioner does not have to reside with the abuser at the time of filing, and does not have to have resided with the abuser during the marriage or since the formation of the parent/child or stepparent/stepchild relationship; but, the self-petitioner must still prove that they at one time resided with the abuser.<sup>44</sup> Self-petitioners *do not* have to separate from the abuser in order to file a self-petition.<sup>45</sup>
  4. **Battery or extreme cruelty:** Some examples include acts or threatened acts of violence, psychological abuse, child neglect, abandonment or willful desertion,<sup>46</sup> rape, or sexual assault.<sup>47</sup>

<sup>43</sup> See 3 USCIS-PM D.2(B)(4), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>; Section 101(b)(1)(B) of the Immigration and National Act (Act), 8 U.S.C. § 1101(b)(1)(b), defines “child” to include a “stepchild...provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.” The Act also defines “child” to include certain adopted children. INA § 101(b)(1)(E), (F) and (G). Similarly, “parent,” “father,” and “mother” are defined in section 101(b)(2) to include stepparents and certain adoptive parents. An abused parent, stepparent, or adoptive parent of a U.S. citizen is therefore eligible to apply for VAWA relief pursuant to 201(a)(1)(A)(vii) provided that the self-petitioner is a “parent” (as defined in section 101(b)(2)) and has or had a qualifying relationship to a U.S. citizen son or daughter. Additionally, the qualifying relationship must have been in existence at the time of the abuse and at the time of filing.

<sup>44</sup> See 3 USCIS-PM D.2(F), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

<sup>45</sup> Self-petitioners planning to remain with the abuser should have a safe address not accessible to the abuser where the Department of Homeland Security can reach them.

<sup>46</sup> See Leeb, Rebecca T. et al., *Child Maltreatment Surveillance*, Center for Disease Control and Prevention (Jan. 2008), available at [https://www.cdc.gov/violenceprevention/pdf/CM\\_Surveillance-a.pdf](https://www.cdc.gov/violenceprevention/pdf/CM_Surveillance-a.pdf).

<sup>47</sup> It is recognized that abuse is a pattern. 8 C.F.R. 204.2(c)(1)(i)(H)(vi); see also *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003). Some portion of the pattern of abuse must have occurred while in one of the following relationships: 1) In marriage-based petitions, some portion of the abuse must have occurred during the time a couple was married; 2) In parent to child relationship-based petitions, some portion of the abuse must have occurred during the parental relationship (however, termination of parental rights does not end the relationship for VAWA immigration relief); or 3) In step-parent to child based petitions, some portion of the abuse must have occurred while the marriage creating the step-parent relationship existed. See also 3 USCIS-PM D.2(E), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>; Leslye E. Orloff, Brittany Roberts, and Stefanie Gitler, “*Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases* (Sept. 12, 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>.

5. **Good moral character:** Self-petitioners must be of “good moral character,” which USCIS evaluates on a case-by-case basis.<sup>48</sup>
6. **Marriage in good faith:** Self-petitioners must prove they got married in good faith and not for the purpose of evading immigration laws.<sup>49</sup>
7. **Filing Age Limit:** Child self-petitioners must have been subjected to battering or extreme cruelty when they were under the age of 21 and must file their VAWA self-petitions before they turn age 25.<sup>50</sup>

## Types of VAWA Self Petitions

There are several types of VAWA self petitions that apply to a variety of circumstances. These include the VAWA Self Petition (for victims of abuse), the Battered Spouse Waiver, VAWA Suspension of Deportation or Cancellation of Removal, and VAWA Self Petitioning Protection for Non-abusive Parents of Abused Children and Stepchildren. Non-abusive parents of abused children may also be eligible for VAWA Suspension of Deportation or Cancellation of Removal. There are also several regionally specific VAWA self petitions that apply in more limited circumstances, including the VAWA Self Petition Through the Nicaraguan and Central American Relief Act, the VAWA Self Petition through the Haitian Refugee Immigration Fairness Act, and VAWA Self Petition through the VAWA Cuban Adjustment Act.

### VAWA Self Petitions (for Victims of Abuse)

VAWA Self Petitions protect abused spouses, some former spouses, children, and stepchildren of U.S. citizen and Lawful Permanent Resident abusers. It provides an alternate pathway for victims to seek legal status apart from, and without the knowledge or cooperation of, their abuser.

In order to file a VAWA self petition a **noncitizen child** must demonstrate that:

- They were battered or subject to extreme cruelty under the federal definition (provided above)

<sup>48</sup> See 3 USCIS-PM D.2(G), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

<sup>49</sup> **Petitions for relatives, widows and widowers, and abused spouses and children**, 8 C.F.R. § 204.2 (a)(1)(i)(B) (2007); see also Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, Alicia (Lacy) Carra, Matison Miller, and Leslye E. Orloff, *Chapter 03.3: Preparing the VAWA Self-Petition and Applying for Residence* at 4-6 (August 16, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/https-niwaplibrary-wcl-americ-edu-pubs-ch3-3-selfpetitionprep>.

<sup>50</sup> INA Section 204(a)(1)(D)(v); USCIS-PM: Vol. 3, Part D, Chapter 3 – Effect of Certain Life Events, Section G – Child Turning 21 Years Old [3 USCIS-PM D.3(G)(1)] (Last updated Sept. 12, 2023), available at <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>.

- At least some part of the battering or extreme cruelty occurred when the child was under age 21
- That they are under the age of 25 when filing
- The battering or extreme cruelty was perpetrated by the child's U.S. citizen or lawful permanent resident parent (natural, adoptive, or stepparent)
- That they *at one time* resided with the abuser. There is no requirement that they continue to reside with the abuser *or* that they stop living with the abuser to be eligible for a self petition

In order to file a VAWA self petition for their own abuse, a **noncitizen parent** must demonstrate that:

- They were battered or subject to extreme cruelty under the federal definition (provided above)
- The battering or extreme cruelty was perpetrated by a U.S. citizen or lawful permanent resident spouse, intended spouse (if the victim unintentionally married a bigamist), or a former spouse (if the marriage was terminated less than 2 years ago)
- That they entered into the marriage in good faith
- That they *at one time* resided with the abuser. There is no requirement that they continue to reside with the abuser *or* that they stop living with the abuser to be eligible for a self petition

## Battered Spouse Waivers

The Battered Spouse Waiver provides an alternative pathway for abused children and spouses whose abusive U.S. citizen or lawful permanent resident spouse or stepparent has filed for a family-based visa petition that has granted them conditional (two-year) lawful permanent residency. The waiver allows noncitizens in this situation to pursue lawful status independent from and without the knowledge and cooperation of their abuser.

To receive a protection from the battered spouse waiver program noncitizen children or adults must be:

- Battered or subjected to extreme cruelty by their:
  - U.S. citizen or lawful permanent resident spouse who filed a family based visa petition that granted them conditional (two-year) lawful permanent residency; or
  - U.S. citizen or lawful permanent resident stepparent who filed a family based visa petition that granted them conditional (two-year) lawful permanent residency.

VAWA Self Petitioning Protection for Non-abusive Immigrant Parents of Abused Children and Stepchildren

VAWA self petitioning protection is also available to the non-abusive noncitizen parents and stepparents of children under the age of 21 who were battered or subject to extreme cruelty by a qualifying abuser. This protection applies even when the child is a U.S. citizen. The parent or stepparent does not need to have been abused in order to receive this protection.<sup>51</sup> As discussed further in the section on VAWA Cancellation of Removal and VAWA Suspension of Deportation, this protection can also be raised in removal proceedings.<sup>52</sup>

For a noncitizen parent to file for protection, the **child** must have been:

- Battered or subject to extreme cruelty by the child’s other natural, adoptive, or stepparent who is a U.S. citizen or lawful permanent resident
- Battered or subject to extreme cruelty by the immigrant parent’s spouse, intended spouse, or former spouse
  - Note: the immigrant parent here is eligible for both a VAWA self petition and a Battered Spouse Waiver

## VAWA Cancellation of Removal<sup>53</sup> and VAWA Suspension of Deportation<sup>54</sup>

In affirmative cases, the eligible noncitizen files a petition with the Department of Homeland Security (DHS), which adjudicates the application. VAWA Cancellation of Removal and VAWA Suspension of Deportation are raised during removal proceedings and are granted by Immigration Judges. These protections apply to noncitizen victims of abuse (VAWA self petitioners) *and* to non-abusive noncitizen parents of abused children and stepchildren.

To receive protection through VAWA Cancellation of Removal<sup>55</sup> or VAWA Suspension of Deportation<sup>56</sup>, the child must be:

- Battered or subjected to extreme cruelty by their:
  - Natural, adoptive, or step- parent;
  - Spouse;

<sup>51</sup> The abusive parent need not be the natural parent of the abused child and may be a step-parent. Further, the parent of an abused child may file for VAWA cancellation of removal whether or not she was ever married to the child’s abusive parent.

<sup>52</sup> See INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (this remedy is only available in immigration court from an immigration judge.); *see also* INA § 244(a)(3) (in effect as of Mar. 31, 1997) (this remedy is only available in immigration court from an immigration judge).

<sup>53</sup> See INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (this remedy only available in immigration court from an immigration judge).

<sup>54</sup> See INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (this remedy only available in immigration court from an immigration judge).

<sup>55</sup> See INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (this remedy only available in immigration court from an immigration judge).

<sup>56</sup> See INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (this remedy only available in immigration court from an immigration judge).



- Former spouse; or
- Intended spouse (immigrant spouse unknowingly married a bigamist).

The following are examples of abused **immigrant parents and parents of abused immigrant children** who may also qualify for VAWA cancellation of removal or suspension of deportation:<sup>57</sup>

- The parent of an abused child, regardless of the child’s U.S. citizenship, who was never married to the child’s abusive U.S. citizen or permanent resident parent;
- The abused spouse of a U.S. citizen or permanent resident spouse who has died;
- An abused spouse who was divorced for over 2 years from the U.S. citizen or permanent resident abuser spouse;
- An abused spouse or child whose citizen or legal permanent resident parent renounced citizenship or lost lawful permanent resident status over 2 years ago.

The following are examples of other **abused immigrant children** who may also qualify for VAWA cancellation of removal or suspension of deportation:<sup>58</sup>

- An abused stepchild whose immigrant parent has been divorced from the abusive parent for over 2 years
- Victims of child abuse or incest abused by a U.S. citizen or permanent resident parent while under 21 years of age but who did not file their VAWA self-petition while they were under 21 and who are now over 21 years of age
- Victims of child abuse who cannot establish that they have resided with the U.S. citizen or permanent resident abuser parent.
- Any abused children of a U.S. citizen or permanent resident parent who has died over 2 years ago

## VAWA Self Petition Through the Haitian Refugee Immigration Fairness Act (VAWA HRIFA)<sup>59</sup>

VAWA Self Petitioning protection is also available to eligible noncitizens through the Haitian Refugee Immigration Fairness Act, who were abused by a HRIFA eligible parent or spouse. The Haitian Refugee Immigration Fairness Act (HRIFA) was enacted by Congress to

<sup>57</sup> Rebecca Story, Cecilia Olavarria, and Moira Fisher Preda, *Chapter 03.4: VAWA Cancellation of Removal* (July 10, 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-4-vawa-cancellation-of-removal>.

<sup>58</sup> Rebecca Story, Cecilia Olavarria, and Moira Fisher Preda, *Chapter 03.4: VAWA Cancellation of Removal* (July 10, 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-4-vawa-cancellation-of-removal>.

<sup>59</sup> See Leslye Orloff, *Comparing VAWA Haitian Refugee Immigrant Fairness Act of 1988 (“VAWA HRIFA”), VAWA Cuban Adjustment Act and VAWA Self-Petitioning* (Jan. 28, 2021), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/VAWA-HRIFA-Cubans-Self-Petition-Chart-4.28.20.pdf>.

allow certain nationals of Haiti who had been residing in the United States to become legal permanent residents.<sup>60</sup>

To receive protection, noncitizens must prove that:

- They were battered or subjected to extreme cruelty by the child’s HRIFA eligible:
  - Natural, adoptive, or step- parent; or
  - Spouse.

## VAWA Self Petition Through the VAWA Cuban Adjustment Act<sup>61</sup>

VAWA Self Petitioning is also available to battered or abused noncitizen spouses and children whose abuser is a qualifying Cuban national under the Cuban Adjustment Act. The Cuban Adjustment Act was passed by Congress in 1966 to permit Cuban nationals living in the United States to adjust their status to legal permanent resident. VAWA Self Petitioning allows spouses, former spouses (including of deceased abusers), and parents of eligible Cuban nationals to file for adjustment of status.<sup>62</sup>

To receive protection, noncitizens must prove that:

To receive protection, noncitizens must prove that:

- They were battered or subjected to extreme cruelty by the child’s CAA eligible:
  - Natural, adoptive, or step- parent; or
  - Spouse
  - Former spouse or deceased spouse (within 2 years)

## VAWA Self Petition Through the VAWA Nicaraguan and Central American Relief Act (VAWA NACARA)<sup>63</sup>

VAWA Self Petitioning is also available to battered or abused noncitizen spouses and children whose abuser qualifies for adjustment of Status under the Nicaraguan and Central American Relief Act (NACARA). NACARA was passed in 1997 to provide immigration relief,

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<sup>60</sup> See USCIS, *Green Card for Haitian Refugee* (Nov. 17, 2017), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/USCIS-Green-Card-HRIFA.pdf>.

<sup>61</sup> See Leslye Orloff, *Comparing VAWA Haitian Refugee Immigrant Fairness Act of 1988 (“VAWA HRIFA”), VAWA Cuban Adjustment Act and VAWA Self-Petitioning* (Jan. 28, 2021), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/VAWA-HRIFA-Cubans-Self-Petition-Chart-4.28.20.pdf>.

<sup>62</sup> See Policy Memorandum: *VAWA Amendments to the Cuban Adjustment Act: Continued Eligibility for Abused Spouses and Children*, USCIS (July 29, 2016), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2016-0729-PM-602-0110-VAWA-Amendments-CAA-2.pdf>.

<sup>63</sup> See Leslye Orloff, *Comparing VAWA Haitian Refugee Immigrant Fairness Act of 1988 (“VAWA HRIFA”), VAWA Cuban Adjustment Act and VAWA Self-Petitioning* (Jan. 28, 2021), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/VAWA-HRIFA-Cubans-Self-Petition-Chart-4.28.20.pdf>.

including the ability to seek legal permanent residence to certain nationals of Nicaraguan and Central American nationals.<sup>64</sup>

To receive protection, noncitizens must prove that:

- They were battered or subjected to extreme cruelty by the child’s CAA eligible:
  - Natural, adoptive, or step- parent; or
  - Spouse
  - Former spouse or deceased spouse (within 2 years)

## Child Protective Services’ Role in Assisting VAWA Self Petitioners

### CPS Role Overview:

Inform the victim that they can file for full lawful permanent residency without the abuser’s knowledge or help and refer the victim to an agency with expertise on crime victim’s immigration relief. CPS is **not required** to provide a certification.

Immigrant children who are victims of battering or extreme cruelty are eligible to self-petition without any certifications or other government agency involvement. Thus, for VAWA self-petitioning cases, no certification by CPS is necessary. However, CPS officials play a critical role in early screening and identification of potentially eligible victims. CPS can also assist by identifying and developing relationships with agencies in the state with expertise providing victim advocacy and/or legal services to assist immigrant victims filing self-petitions.<sup>65</sup>

There are several common family relationships that CPS workers may encounter when screening for VAWA self-petition eligibility. For example, the abused child and the non-abusive parent may both be undocumented. Additionally, it is possible that the child will be a U.S. citizen or lawful permanent resident, but the non-abusive parent is undocumented. The Quick Screening Tool at the top of this section, and the VAWA self-petitioning flow chart for abused

<sup>64</sup> See USCIS, *Nicaraguan Adjustment and Central American Relief Act (NACARA) 203: Eligibility to Apply with USCIS* (Sept. 21, 2017), <https://www.uscis.gov/humanitarian/refugees-and-asylum/nicaraguan-adjustment-and-central-american-relief-act-nacara-203-eligibility-to-apply-with-uscis>.

<sup>65</sup> To identify a victim advocacy or legal services organization with experience assisting immigrant victims with filing VAWA self-petitions, see *NIWAP’s National Directory*, available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>. NIWAP is available to provide technical assistance to CPS workers who choose to help child abuse or neglect victims with immigration relief. Please call (202) 274-4457 or email [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu). Materials on self-petitioning including evidence collection checklists are available from NIWAP’s web library at [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu).

# NIWAP



children, included in Appendix A is a useful tool to assist CPS workers in determining whether the immigrant victim they are working with is eligible to self-petition.

## Special Immigrant Juvenile Status (SIJS) for Abused, Abandoned, and Neglected Noncitizen Children

### Special Immigrant Juvenile Status: Immigration Relief Child Victims of Abuse

#### Quick Reference Guide

Special Immigrant Juvenile Status (SIJS) provides immigration status, protection from deportation, and lawful permanent residence to immigrant children who are abused, abandoned, or neglected by at least one of their parents. The maltreatment by the immigrant child's parent may have occurred in the United States or been perpetrated abroad, anywhere in the world.

#### Who is eligible

- **Immigrant children under the age of 21** who are unmarried and who were abused, abandoned, or neglected by one of their parents, as defined by state law.

**Who else can be included in the petition:** Petitioner's family members cannot be included in the application.

#### Eligibility Requirements

- Be under the age of 21 at the time the application is filed
- Be unmarried at the time of filing through the time of adjudication
- Be physically present in the United States
- Have received an **SIJS judicial determination** by a state court that has jurisdiction under state law to make judicial determinations about dependency and/or custody and care of juveniles

**Age requirements for SIJS:** There are two important age requirements to consider for SIJS

- **Age at judicial determination:** The child must be under the age of majority set by state law when the child receives state court orders containing SIJS judicial determinations
- **Age at filing:** The child must file their petition for SIJS before they turn 21

**Judicial Determination Required:** Yes. SIJS applicants must obtain a SIJS judicial determination from a state juvenile or family court that has jurisdiction over the child. These findings do not award SIJS and are not determinative; only DHS has the authority to adjudicate legal immigration status.

**Judicial Determination Requirements:** Petitioners must submit an order from a state juvenile or family court that contains three best interest and child welfare related judicial determinations. The federal SIJS statute relies on state court judges to make these factual determinations because they have particularized expertise in the care and custody of children.

- The child has been declared dependent on a juvenile or family court or the child has been "legally committed to or placed under the custody of an agency, or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States."
- The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law
- It would not be in the child's best interest to be returned to their or their parent's previous country of nationality or last habitual residence

**One or Both Parents Requirement:** Federal law permits a child to be reunified with one parent and still qualify for SIJS. CPS should *continue screening* children for SIJS even if they are still living with one parent.

## Overview of SIJS

Special Immigrant Juvenile Status (SIJS) is a form of immigration relief available to children under the age of 21 who have been abused, abandoned, or neglected by one or both of their parents<sup>66</sup> either in the United States or abroad.

Family relationships form the core of the most common routes to lawful immigration status in the United States, which means that children’s immigration status is greatly reliant on their parents’ status and actions.<sup>67</sup> However, Congress recognized that immigration law had failed to provide protection for vulnerable immigrant children without lawful immigration status who were abused, abandoned, or neglected by and/or separated from their parents. In response, Congress created SIJS in 1990<sup>68</sup> with the intent “to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care.”<sup>69</sup> Initially, this form of relief extended primarily to immigrant children formally placed in state care. Over time, Congress expanded this effective program to offer this important humanitarian protection to greater numbers of abused, abandoned, or neglected immigrant children, including those interacting with the child welfare system. These amendments to the SIJS program were designed to offer protection particularly for children who were subject to maltreatment by one parent who they were living with and being cared for by their other non-abusive parent or kinship care placements outside of the formal foster care system.

SIJS is one of several options that U.S. immigration law offers as a possible form of humanitarian immigration relief for immigrant children.<sup>70</sup> Compared to the U visa, SIJS provides a faster and less complex route to lawful permanent residence for eligible immigrant children. It

<sup>66</sup> This includes biological parents, adoptive parents, and stepparents.

<sup>67</sup> See Anita Ortiz Maddali, *Left Behind: The Dying Principle of Family Reunification Under Immigration Law*, 50 U. Mich. J.L. Reform 107 (2016); see also David B. Thronson, *You Can't Get Here from Here: Toward a More Child-Centered Immigration Law*, 14 Va. J. Soc. Pol’y & L. 58 (2006).

<sup>68</sup> Although enacted in 1990 as Section 153 of the Immigration Act of 1990, Pub. L. No. 101–649, 104 Stat. 4978, Nov. 29, 1990, necessary technical amendments and regulations delayed implementation until late in 1993. See Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102–232, 105 Stat. 1733, Dec. 12, 1991; 58 Fed. Reg. 42843–42851 (Aug. 12, 1993) (codified at 8 C.F.R. § 204.11 (2001)). Together with subsequent amendments, the provision is now codified at INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012). See also *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, SIJS Bench Book (2017), available at <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/>.

<sup>69</sup> See 6 USCIS-PM J.1(A), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>; see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* at 2 (Mar. 24, 2009), available at <http://niwaplibrary.wcl.american.edu/pubs/imm-govuscismemotvpra2008-03-04-09/>.

<sup>70</sup> See DHS Infographic on Protections for Immigrant Victims (Jan. 12, 2017), available at <https://niwaplibrary.wcl.american.edu/pubs/infographic-on-protections-for-immigrant-victims>; Department of Homeland Security’s Interactive Infographic on Protections for Immigrant Victims (2017), available at <https://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims>.

is important to note that SIJS children currently have quicker access to work authorization and deferred action than child trafficking victim T visa applicant who did not seek OTIP letters. However, T visa victims receive greater public benefits access over time than SIJS children.

## Eligibility Requirements for SIJS

To qualify, SIJS immigrant child petitioners must:<sup>71</sup>

- Be under 21 years old at the time the application is filed with USCIS;
- Be unmarried at the time of filing through the time that USCIS adjudicates the child’s SIJS application;<sup>72</sup>
- Be physically present in the United States; and
- Have received an SIJS judicial determination by a state court with jurisdiction under state law to make judicial determinations about dependency and/or custody and care of juveniles.

## Understanding the SIJS Judicial Determination

SIJS is unique from other forms of immigration relief because statutory law requires state family or juvenile courts with jurisdiction over the child be involved in the process through which immigrant children can receive lawful permanent residency through the SIJS program. DHS regulations define a “juvenile court” as “any court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.”<sup>73</sup> This definition covers any family, juvenile, probate, or other state court that has jurisdiction under state law to issue court orders regarding the custody, placement, or dependency of the child.

In order to file for SIJS, the petitioner must submit an order from a state juvenile or family court that contains three best interest and child welfare related judicial determinations:

1. The child has been declared dependent on a juvenile or family court or the child has been “legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.”

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<sup>71</sup> INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012).

<sup>72</sup> Because the SIJS regulation requires that SIJS applications be adjudicated within 180 days of filing. This means that the wait from filing to adjudication is approximately 6 months. After the child’s SIJS application is approved, the immigrant SIJS applicant child is free to marry without any impact on the child’s SIJS application. *See* 8 C.F.R. § 204.11(g) (2023).

<sup>73</sup> 8 C.F.R. § 204.11(a) (2023).

2. The child’s reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.
3. It would not be in the child’s best interest for the child to be returned to the child’s or child’s parent’s previous country of nationality or last habitual residence.<sup>74</sup>

The findings and judicial determinations in the state court’s order provide evidence that helps DHS adjudicate the SIJS application. The federal SIJS statute relies upon state court judges to make these factual determinations about children’s best interest because state courts have particularized expertise in the area of the care and custody of children.<sup>75</sup> The state court orders must have been issued under *state law*, not the federal statute defining SIJS, in order to be valid for the purposes of establishing SIJS eligibility.<sup>76</sup> The federal statute intentionally does not define abuse, abandonment, or neglect; rather, it relies upon state court judges’ expertise in applying their state law’s definitions of these terms to the facts of the case before the court.

***The state juvenile court’s findings do not award SIJS.*** Only USCIS has the authority to adjudicate legal immigration status.<sup>77</sup> However, CPS workers must be aware of the judicial finding requirement and the age limits attached (see below) since they are an essential prerequisite for filing for SIJS.

**Note on “one or both parents” requirement:** Federal law permits a child to be reunified with one parent and still qualify for SIJS.<sup>78</sup> Therefore, if CPS encounters an immigrant child victim who is still living with a parent, the child may still qualify for SIJS and CPS should continue screening the child for relief.

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<sup>74</sup> INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

<sup>75</sup> “The reliance upon state juvenile courts anticipated in the SIJ statutory scheme signals Congress’ recognition that the states retain primary responsibility and administrative competency to protect child welfare. . . . The federal government lacks the professional staff and administrative support to make assessments of individual children’s mental and physical conditions and their welfare needs. Furthermore, within the judicial branch, federal courts have more limited jurisdiction over such matters. As a result, state courts have developed greater competency for administration of child welfare matters.” Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children Under the Special Immigrant Juvenile Statute*, 27 *Hastings Const. L.Q.* 597, 609, 611 (2000).

<sup>76</sup> 6 USCIS-PM J.3(A)(2), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>; 6 USCIS-PM J.2(D)(4), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

<sup>77</sup> Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13067 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245).

<sup>78</sup> Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13080 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245). “In the event that a juvenile court determines that it needs to intervene to protect a child from one parent’s abuse, neglect, abandonment, or a similar basis under State law, that court’s determination may fulfill the parental reunification requirement. Similarly, the ability of a court to exercise its authority to place a child in the custody of a non-offending parent is also a matter of State law. Therefore, if reunification with only one of the petitioner’s parents is not viable, the petitioner may be eligible for SIJ classification.”



## Understanding the SIJS Age Requirements

There are two age requirements that are important for CPS staff to be aware of for immigrant child CPS clients who are SIJS eligible. These two age requirements are critical because they set different age deadlines for critical phases of the SIJS application process.

1. **Age at time of judicial determination:** the child must be under the age of majority *set by state law*. This means that the child must file for and receive the SIJS judicial determination (see above) before they reach the age of majority in their state.
2. **Age at time of filing:** the child must be under the age of 21. This means that the child must file their SIJS petition with USCIS before they turn 21 years old.

Federal SIJS law requires that the child remain subject to the state juvenile court’s jurisdiction on the date their SIJS application is filed. In many jurisdictions, the definition of “child” is an individual who is younger than 18 years of age.<sup>79</sup> Some states have extended the age at which children can enter the dependency system to permit persons between the age of 18 and 21 who meet other requirements to avail themselves of the jurisdiction of the state court and, by extension, of the protections provided by SIJS.<sup>80</sup> The age to which a child who is already in state care can remain in care or continue to receive support also varies by state.<sup>81</sup> USCIS will consider the petitioner’s age at the time the SIJS petition is filed to determine whether the child met the age requirement.<sup>82</sup>

The two age requirements make early screening and detection critical for noncitizen children and impose critical responsibilities on CPS workers. CPS workers should screen all foreign born children for SIJS eligibility as soon as they begin working with them.

## Routinely Requesting Judicial Determinations Through Juvenile Court Proceedings

There are three common types of Juvenile Court Proceedings through which CPS officials should routinely request SIJS judicial determinations for noncitizen children: (1) Adoption and Termination of Parental Rights, (2) Dependency, (3) Delinquency. If the noncitizen child qualifies for SIJS, the judicial determination will allow them to file a petition with USCIS.

<sup>79</sup> See, e.g., Mich. Comp. Laws § 722.1102(b) (2015).

<sup>80</sup> See, e.g., N.Y. Fam. Ct. Act § 661 (2012); Md. Code Ann., Cts. & Jud. Proc. § 3-804 (2013); see also Mass. Gen. Laws, ch. 215 § 6, ch. 231A §§ 1, 9 (conferring jurisdiction to enter declaratory and equitable relief in equity).

<sup>81</sup> For a discussion of the different jurisdictional requirements, see Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 Colum. Hum. Rts. L. Rev. 266, 322 (2014).

<sup>82</sup> See TVPRA 2008 § 235(d)(6) of the, Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections).

## 1. Adoption and Termination of Parental Rights Proceedings<sup>83</sup>

Adoption is a frequent and appropriate state court proceeding in which children can obtain SIJS judicial determinations.<sup>84</sup> In adoption proceedings, courts will make findings

### **WORD OF CAUTION**

When CPS staff are working with an immigrant family, CPS staff and attorneys have an obligation to ensure that a parent’s immigration status, detention by immigration officials, or deportation is *never* treated by the CPS staff or offered to a court by state government attorneys representing CPS as a basis to find that a noncitizen parent abused, abandoned, or neglected their child. This approach is consistent with the law. Furthermore, CPS staff and attorneys must never ask a judge to engage in a comparison between the parent’s home country and the United States as a place to raise the child when the child’s natural parent did not maltreat their child when the court is making a decision about whether to terminate parental rights.

regarding the history and dynamics of child abuse, neglect, abandonment, or similar harms as defined by state law perpetrated by one or both of the child’s parents. When CPS requests SIJS orders on behalf of the child during an adoption proceeding, the judge has the ability to make the SIJS findings based on the facts presented in the case and/or based on facts determined by a court in any abuse, neglect, or termination of parental rights (TPR) proceeding that may have preceded the adoption case.<sup>85</sup>

Termination of Parental Rights proceedings are especially critical for CPS worker involvement since (in most cases) CPS will be involved in the proceedings, and in the vast majority of cases termination proceedings are pursuant to child abuse, neglect, or other harm perpetrated against the child that may qualify them for SIJS.

It is **critically important** that CPS workers exercise great caution in Termination of Parental Rights proceedings involving immigrant parents, to ensure that an immigrant parents parental rights are not terminated because they are undocumented. CPS workers must also be aware of the immigration consequences of child welfare proceedings for immigrant parents, *even if* CPS workers or the court ultimately finds no evidence of child abuse or neglect.

CPS workers should also be aware that the best interests of the child standard “does not require simply that a determination be made that one environment or set of circumstances is

<sup>83</sup> See Leslye E. Orloff, *Chapter V-1 Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Termination of Parental Rights and Adoption*, SIJS Bench Book (2017), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-v-1-adoption-quick-reference>.

<sup>84</sup> Adoption by U.S. citizen parents does not automatically resolve a child’s immigration status. SIJS is often the best and most appropriate way to ensure the child’s stability. SIJS may still be needed and is not necessarily superfluous just because adoptive parents are citizens or lawful permanent residents.

<sup>85</sup> *In re C.G.H.*, 75 A.3d 166, 166 (D.C. 2013).

superior to the other.”<sup>86</sup> Therefore, a judge should never terminate an undocumented parent’s parental rights based on a comparison of the conditions in their home country to those of the United States. Furthermore, this case reaffirms that *all* parents, regardless of their immigration status, have a constitutional right to care for and have custody of and control over their children.<sup>87</sup>

There have been a number of trial court cases across the country in which state courts have terminated the parental rights of immigrant parents who were undocumented and were or became the targets of immigration enforcement actions. This has led to the termination of the parental rights of immigrant parents who had not abused or neglected their children.<sup>88</sup> Although, in some cases, the terminations were reversed on appeal, both parents and children were irreparably harmed by months or years of unlawful separation. In the case of *In re Angelica L and Daniel L*, as well as others, the reversal of termination and subsequent finding of no abuse did not reverse the parent’s deportation on child abuse or endangerment grounds.<sup>89</sup> These tragic cases emphasize the need for both caution, and awareness of immigration law, on behalf of CPS workers working with immigrant parents.

## 2. Dependency Proceedings<sup>90</sup>

If CPS files a dependency case on behalf of an SIJS eligible immigrant child, CPS attorneys should request that the court include SIJS judicial determinations and the supporting detailed findings regarding child abuse, abandonment, and/or neglect in the court’s dependency orders.

The fact that the child is seeking SIJS orders does not limit the dependency court’s placement options. CPS should ensure that the court is aware that SIJS children can benefit from the full range of placements options available in their state, and therefore the judge may consider

<sup>86</sup> *In Re Interest of Angelica L. and Daniel L.*, 277 Neb. 984, 1009 (2009), available at <https://niwaplibrary.wcl.american.edu/pubs/nebraska-advance-sheets>; see also *Brief for the S. Ct. of Neb. As Amicus Curiae*, p. 6, *In Re Interest of Angelica L. and Daniel L.*, 277 Neb. 984 (2009), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2009-04-07-Amicus-Brief-of-Legal-Momentum-ISO-Appellant-Luis.pdf>.

<sup>87</sup> See *In Re Interest of Angelica L. and Daniel L.*, 277 Neb. 984, 1012 (2009), available at <https://niwaplibrary.wcl.american.edu/pubs/nebraska-advance-sheets>; see also *Fact Sheet on State v. Maria L.* (Nov. 2009), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/z-FAM-Qref-Statev.Maria-11.09.pdf>.

<sup>88</sup> See e.g. *In Re Interest of Angelica L. and Daniel L.*, 277 Neb. 984 (2009), available at <https://niwaplibrary.wcl.american.edu/pubs/nebraska-advance-sheets>; see also *Fact Sheet on State v. Maria L.* (Nov. 2009), available at <http://niwaplibrary.wcl.american.edu/pubs/fact-sheet-state-v-maria/>; *Case of Maria L.* (11-13) (Winter 2017) in *Family Court Proceedings in Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights* <https://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>

<sup>89</sup> *In Re Interest of Angelica L. and Daniel L.*, 277 Neb. 984, 1009 (2009), available at <https://niwaplibrary.wcl.american.edu/pubs/nebraska-advance-sheets>.

<sup>90</sup> See Leslye E. Orloff, *Chapter V-6 Quick Reference Guide: Special Immigrant Juvenile Status Findings in Dependency Proceedings*, SIJS Bench Book (Dec. 18, 2017), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-v-6-dependency-quick-reference>.

any of the placement options that the court typically considers in dependency cases to identify one that is in the child’s best interest. Placement options include the child’s non-abusive parent, kinship care placements, and the state’s foster care system. The immigration status of the person in whose custody the child is placed is *not* relevant to making this determination<sup>91</sup> and courts should not consider the custodian’s immigration status as a factor in the child’s placement.<sup>92</sup> Immigration status only affects whether the state-funded foster care payments can be made to the family with whom the child is placed.<sup>93</sup>

**Note on multiple abusive parents:** In dependency cases where both parents maltreated the child, the court must make findings separately for each parent. This means that the judge will need to separately make findings of fact with regard to which specific acts of abuse, abandonment, and/or neglect each of the child’s parents perpetrated. CPS attorneys may need to remind the judge to make all of the required dependency-specific findings of fact and conclusions of law needed to support the child’s SIJS application.<sup>94</sup>

**Note on Non-Viability findings:** If the court places the child with someone other than the child’s abusive parent, it can still make a non-viability of reunification finding, *which does not require* termination of parental rights.<sup>95</sup> Non-viability of reunification means that the court is

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<sup>91</sup> Leslye E. Orloff, Andrea Carcamo Cavazos, and Abigail Whitmore, *Family Court Bench Card on Issues That Arise in Custody Cases Involving Immigrant Parents, Children and Crime Victims* (Nov. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/benchcard-issues-arise-custody-cases>.

<sup>92</sup> For example, from 2013 to 2020 the parents most likely to be removed from the United States were those with criminal convictions. See Leslye E. Orloff, et. al., *DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges* (Dec. 27, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/enforcement-priorities-courthouse-enforcement-sensitive-locations-bench-card>.

<sup>93</sup> When an immigrant SIJS eligible child is placed with a citizen or qualified immigrant foster parent, the foster parent is eligible to receive the Title IV-E foster care payments for the care they provide the SIJS eligible child. Title IV-E foster care payments are funds paid from the Federal Foster Care Program to provide safe and stable out-of-home care for children until they can be safely returned to their home, placed permanently with adoptive parents, or placed in other permanent arrangements. However, if the foster parent is not a qualified immigrant or citizen, the foster parent cannot receive Title IV-E foster care payments to their household. Additionally, foster parents who recently became qualified immigrants will have to wait five years after the date they became qualified immigrants before they can receive foster care payments. The list of qualified immigrants includes, but is not limited to, lawful permanent residents, refugees, asylees, Amerasians, T visa applicants, and VAWA self-petitioners. *Title IV-E, General Title IV-E Requirements, Aliens/Immigrants: Question 9, Are Title IV-E Agencies Required to Verify the Citizenship or Immigration Status of Individuals Receiving Services or Payments Under Title IV-E?*, Children’s Bureau, Dep’t of Health & Hum. Servs., Child Welfare Policy Manual (2023), available at [https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp\\_pf.jsp?citID=45](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=45); see also Soraya Fata, Leslye E. Orloff & Monique Drew, *Chapter 16: Access to Programs and Services that Can Help Victims of Sexual Assault*, Empowering Survivors at 3 (2014), available at <https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims>; see full discussion in this Toolkit in the section titled “Kinship Care Placements: Effect on Accessing Immigration Relief.”

<sup>94</sup> For examples of SIJS findings of fact and judicial determinations that need to be included in state court orders for dependency cases, see Leslye E. Orloff, *Chapter V-6 Quick Reference Guide: Special Immigrant Juvenile Status Findings in Dependency Proceedings*, SIJS Bench Book at 11-12 (Dec. 18, 2017), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-v-6-dependency-quick-reference>.

<sup>95</sup> 8 C.F.R. § 204.11(c)(1)(ii) (2023) (“The temporary unavailability of a child’s parent(s) does not meet the eligibility requirement that family reunification is not viable. However, actual termination of parental rights is not

issuing a final order that addresses the custody or placement of a child that is appealable, and that the court expects that the order will remain in effect for the foreseeable future. The DHS regulations expect that the non-viability of reunification will last from the time of the court’s order through at least the USCIS adjudication of the child’s SIJS case.<sup>96</sup>

### 3. Delinquency Proceedings<sup>97</sup>

Delinquency proceedings are appropriate and common cases in which SIJS findings can be issued. Although most states do not integrate child welfare and juvenile justice into one agency, and thus keep the systems separate,<sup>98</sup> it is still possible that CPS will encounter a child victim who is also involved in the juvenile justice system through delinquency proceedings. If CPS encounters an SIJS eligible child involved in a delinquency case, it will be important for the child’s CPS caseworker to communicate with the child’s caseworker, attorney, and/or advocate from the juvenile justice system, if any, to ensure that they are aware of SIJS and its requirements.

CPS staff should be prepared to advocate on behalf of the immigrant child victim within the juvenile justice system in order to obtain the necessary SIJS judicial determinations from the court handling the child’s dependency proceeding. Should the judge issue a delinquency order or otherwise make a placement of the child in the delinquency proceeding, that court order should contain detailed findings of fact regarding the parent-perpetrated abuse, abandonment, or neglect the child suffered and the SIJS required conclusion of law.<sup>99</sup>

Similar to dependency hearings, the fact that the child is seeking an SIJS order does not limit the delinquency court’s placement options.<sup>100</sup> Placement options could include in-home placement with the child’s non-abusive parent (with ongoing court supervision of the juvenile), kinship care placement, state foster care, or a juvenile detention facility. Additionally, the court in a delinquency case must make separate findings in their order as to each parent concerning the

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required.”); *see also* 6 USCIS-PM J.2(D)(2), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

<sup>96</sup> SIJS cases are required to be adjudicated within 180 days of the date that the immigrant child files their SIJS petition. *See* 8 C.F.R. § 204.11(g); Leslye E. Orloff & Hannah Bridges, *Answers to Questions from State Court Judges on the 2022 Special Immigrant Juvenile Status (SIJS) Regulations* at 3 (Apr. 4, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-q-and-a>.

<sup>97</sup> *See* Leslye E. Orloff, *Chapter V-5 Quick Reference Guide: Special Immigrant Juvenile Status Findings in Delinquency Proceedings*, SIJS Bench Book (Dec. 17, 2017), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-v-5-delinquency-quick-reference>.

<sup>98</sup> *See* Reno, NV National Council of Juvenile and Family Court Judges, *Systems Integration, Juvenile Justice Geography, Policy, Practice and Statistics (JJGPS)* (last visited April 4, 2023), available at <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/Intersection-Juvenile-Justice-Child-Welfare-Systems#References>.

<sup>99</sup> *See Intersection of Juvenile Justice and Child Welfare Systems*, Office of Juvenile Justice and Delinquency Prevention (OJJDP) (May 2021), available at <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/Intersection-Juvenile-Justice-Child-Welfare-Systems#References>.

<sup>100</sup> *See* full discussion in this Toolkit in the section titled “Dependency Proceedings.”

child’s history of abuse, neglect, or abandonment and will apply the state best interests factors to the determination of the child’s custody, care, or placement. It is important for courts writing SIJS orders to list the services and requirements that the court is ordering for the juvenile and to discuss how the child’s return to their home country would interfere with the delivery of these services that under state law it is in the child’s best interest to receive.<sup>101</sup>

## Child Protective Services’ Role in Assisting SIJS Petitioners

CPS can provide essential support to immigrant children with whom CPS staff have contact, including immigrant children within the child welfare system who qualify for SIJS relief. First, CPS staff can serve a vital role as screeners of immigrant children for immigration relief eligibility using the “Screening for Victims Who Qualify for Immigration Protective Relief” tool included in this toolkit.<sup>102</sup> SIJS statutory age restrictions make it imperative that CPS staff screen for SIJS eligibility early after the agency begins working with the immigrant child. This promotes earlier access to federal and state funded public benefits for the immigrant child client. It also avoids the child aging out of immigration status eligibility because CPS failed to timely identify the child’s SIJS eligibility and seek court orders containing SIJS judicial determinations before the child turned the age of majority set by state law. A few states have statutes or court rules that direct their child welfare systems to screen immigrant children they encounter for SIJS eligibility.<sup>103</sup> However, because most jurisdictions do not expressly require child welfare systems to conduct SIJS screenings, it is recommended that CPS develop their own internal policies mandating a screening requirement so that immigrant children are able to access this vital form of relief.

CPS staff are likely to be one of the first points of contact for an immigrant child victim of abuse, neglect, or abandonment, and therefore are in the best position to help get the SIJS process started as early as possible. Second, CPS staff can help immigrant child victims obtain required evidence for their SIJS petition.

<sup>101</sup> For examples of SIJS findings found in delinquency orders, see Leslye E. Orloff, *Chapter V-5 Quick Reference Guide: Special Immigrant Juvenile Status Findings in Delinquency Proceedings*, SIJS Bench Book at 10-11 (Dec. 17, 2017), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-v-5-delinquency-quick-reference>.

<sup>102</sup> See also Katelyn Deibler, Abigail Whitmore, and Leslye E. Orloff, *Bench Card – Identifying Victims Who May Qualify for Immigration Relief* (Mar. 9, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/https-niwaplibrary-wcl-american-edu-pubs-judges-immigration-relief-tool>; Kristina E. Szabo, Spencer Cantrell, Abigail Whitmore, and Leslye E. Orloff, *Comparison Chart of U visa, T Visa, Violence Against Women Act (VAWA) Self-Petition, Special Immigrant Juvenile Status (SIJS), and Deferred Action for Childhood Arrivals (DACA)* (Dec. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca> (The DACA section of this chart is presently outdated due to recent litigation).

<sup>103</sup> San Diego Superior Court requires counsel to develop a working knowledge of Special Immigrant Juvenile Status, among other areas of law. San Diego, Cal. Sup. Ct. R. 6.3.4 (2022), available at [https://www.sdcourt.ca.gov/sites/default/files/SDCOURT/GENERALINFORMATION/LOCALRULESOFCOURT/2022\\_san\\_diego\\_county\\_superior\\_court\\_rules.pdf](https://www.sdcourt.ca.gov/sites/default/files/SDCOURT/GENERALINFORMATION/LOCALRULESOFCOURT/2022_san_diego_county_superior_court_rules.pdf); see also Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 Colum. Hum. Rts. L. Rev. 266, 302 (2014) (addressing some states’ explicit policies regarding immigrant children in their care).

Third, in working with child victims of abuse, CPS staff already routinely initiate and attend the types of state court proceedings where SIJS judicial determinations can be issued.<sup>104</sup> Therefore, CPS staff can play a key role by ensuring that attorneys representing the state in state court proceedings affirmatively seek SIJS judicial determinations in all court cases involving foreign born children who are not citizens or lawful permanent residents.

### SIJS Practice Pointers:

1. **Screen early.** If CPS staff encounters any child without lawful immigration status, they should immediately screen the child for immigration relief based on the abuse suffered. Since an SIJS eligible child must receive a court order containing judicial determinations from a state court judge while the state court has jurisdiction over their custody, care, and placement, which requires them to be considered a “child” as defined by state law, it is essential that CPS determine if their immigrant child client is eligible for SIJS as soon as they make contact and conduct intake.
2. **Do not automatically disqualify immigrant children from SIJS eligibility based on their particular living arrangement.** Even immigrant children placed with kin or a guardian may qualify for SIJS so long as they receive a court order governing their custody, placement, care, or dependency before the child turns the age of majority as defined by state law.
3. **Do not automatically disqualify immigrant children from SIJS eligibility because they are living with one parent.** To qualify for SIJS, the child must have suffered maltreatment by one *or* both parents. If the child is living with the non-abusive parent, they can still qualify for SIJS.
4. **Ask the court to appoint immigration counsel to the child.** It is essential that an SIJS eligible child begin the application process right away and therefore it would be useful for CPS to incorporate this request into their routine practice in court on behalf of the child.

<sup>104</sup> For more information on the courts’ authority to issue SIJS judicial determinations in a wide range of state court proceedings, see *Chapter V – Quick Reference Guides*, Ch. V-1 – V-8, available at <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents> (last visited Sept. 18, 2023).

## The U Visa for Victims of Violent Crime

### U Visa: Immigration Relief for Victims of Qualifying Criminal Activity

#### Quick Reference Guide

The U visa offers immigration protection for victims of qualifying criminal activity *or any similar activity*. Qualifying criminal activities include domestic violence, human trafficking, and sexual assault.<sup>105</sup> The United States Citizenship and Immigration Service (USCIS) defines child and elder abuse as similar activities for which immigrant victims may also be eligible for a U visa. Solicitation, attempt, or conspiracy to commit a qualifying criminal activity is also a qualifying criminal activity for the purposes of U visa eligibility.

The U visa was created by the Violence Against Women Act of 2000 to strengthen the ability of law enforcement agencies to detect, investigate, prosecute criminal activity. By providing immigration relief to immigrant victims of qualifying criminal activity, the U visa encourages immigrant victims to report crimes committed against them and aid in the investigation and prosecution of perpetrators.

#### Who is eligible

- **Immigrant adults and children** who have suffered qualifying criminal activity
- **Immigrant parents** whose U.S. citizen child or stepchild has suffered qualifying criminal activity. The immigrant parent or stepparent of a child victim need not be abused themselves
  - Because immigrant parents may be eligible for a U visa if their child suffers qualifying criminal activity, CPS should continue screening **even if the child is a U.S. citizen**.

#### Who else can be included in the petition

- **Adult applicants (over the age of 21) can include:** their spouses and children
- **Child applicants (under the age of 21) can include:** their own children, their spouses, their parents, and their unmarried siblings under the age of 18

#### Eligibility Requirements

- Have been the victim of a qualifying criminal activity or other similar activity, **perpetrated in the United States** or one that violated the federal or state laws of the United States
- Possess information concerning such criminal activity
- Have been, are being, or are likely to be helpful in the detection, investigation, prosecution, conviction, and sentencing of such activity
- Have **suffered substantial physical or mental abuse** as a result of being a victim of a listed criminal activity

**Is there a time limit within which victims must file:** No. Victims who meet the eligibility requirements can file at any time after the qualifying criminal activity occurs.

<sup>105</sup> The U visa statute provides a non-exhaustive list of qualifying criminal activities, including: rape, abusive sexual contact, peonage, manslaughter, torture, prostitution, blackmail, sexual exploitation, false imprisonment, murder, domestic violence, sexual assault, stalking, slave trade, trafficking, female genital mutilation, kidnapping, involuntary servitude, incest, being held hostage, abduction, extortion, obstruction of justice. The United States Citizenship and Immigration Service has identified several similar crimes that also qualify, including child abuse, elder abuse, video voyeurism, aggravated robbery, and hate crimes.



**Certification Required:** Yes. Applicants must provide a U visa certification (Form I-918B) from an authorized federal agency.

**Can CPS Certify:** Yes, CPS is authorized under federal law to issue U visa certifications. Federal regulations allow the head of the certifying agency to grant any person(s) at the agency with supervisory authority to issue U visa certifications.

**Is CPS Required to Certify:** Federal law does not require CPS to sign certifications. However, some states have passed laws requiring the signing of U visa certifications by state agencies authorized to sign under federal law.

**Certification Form (I-918B) Requirements: Sample Certification Form Appendix R**

- The type of criminal activity or criminal activities perpetrated against the victim (Form I-918B; Part 3)
- The person seeking certification has been a victim of criminal activity
- The victim has been helpful, is being helpful or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of a U visa listed criminal activity (Form I-918B: Part 4)
- May include notes of any injuries or other facts about the criminal activity the immigrant suffered (Form I-918B: Part 3)
- Should include information they have about any perpetrators who are family members of the victim (Form I-918B: Part 5).

**Satisfying the “Helpfulness” Requirement:** U visa applicants must demonstrate that they have been helpful, are being helpful, or are likely to be helpful in the detection, investigation, conviction, or sentencing of a qualifying criminal activity.

- Helpfulness is defined broadly to include a broad range of actions including, but not limited to, calling 911 to report the criminal activity, providing a statement to CPS or another government agency, attending meetings with CPS staff, appearing in court, filing a police report, filing a victim impact statement, or seeking a protection order.
- Victims can still satisfy the helpfulness requirement even if no formal investigation is launched, the investigation is closed, or a prosecutor declines to bring charges
- **Age Exception:** If a child victim is under the age of 16, their parent, guardian, or other next friend can satisfy the helpfulness requirement on their behalf.

**Satisfying the “Continuing Assistance” Requirement:** After receiving certification, U visa applicants are required by U visa regulations to provide ongoing assistance to law enforcement and prosecutors when reasonable requested. The continuing assistance requirement applies from the time of application to when the victim is granted lawful permanent residency.

- **Reasonableness Exception:** An applicant may refuse to provide ongoing cooperation if their inability or refusal is not unreasonable. Examples of reasonable refusal include, but are not limited to, threats, surveillance, retaliation or other harm committed by the perpetrator. Victims who were initially helpful may refuse ongoing assistance because of trauma.

**Assessing Credibility:** CPS can still issue certifications if they have doubts about a victim's credibility. DHS will make all necessary determinations as to whether an applicant meets the U visa requirements.

**Assessing Mental or Physical Abuse:** Victims must have suffered mental or physical abuse to qualify for a U visa. CPS **does not** need to evaluate the victim's experience or assess whether the abuse meets the criteria for a U visa

in order to certify. DHS will make all necessary determinations as to whether an applicant meets the U visa requirements.

## Overview of the U Visa

The U visa provides a pathway to legal status and protection from deportation for immigrant victims of certain crimes who are helpful in detecting criminal activity and cooperate with law enforcement, prosecutors, or other government officials responsible for the investigation and prosecution of the criminal activity. Congress created the U visa through the Violence Against Women Act of 2000 (VAWA) in order to (1) strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, stalking, elder abuse, child abuse, human trafficking, and other crimes; and (2) offer protection to the immigrant victims of such criminal activities.<sup>106</sup>

Lawmakers recognized that a victim’s helpfulness, cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of these criminal activities.<sup>107</sup> Immigrant victims who fear deportation, however, will be unlikely to provide information about the perpetrators of their crime victimization to police, prosecutors, child or adult protective services, and other government agencies charged with the detection, investigation, prosecution, conviction, or sentencing of perpetrators.<sup>108</sup> Furthermore, perpetrators often use the victims’ lack of legal immigration status as a means to exploit and control them.<sup>109</sup> By providing protection against immigration enforcement,<sup>110</sup> detention, and deportation, the U visa program

<sup>106</sup> 72 Fed. Reg. 53014, 53015 (2007) (citing Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464); *see also* Dep’t of Homeland Sec., *U Visa Law Enforcement Resource Guide* (hereinafter *DHS U Visa Law Enforcement Resource Guide*) at 13 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>107</sup> Congress created the U visa because it was important for U.S. humanitarian interests to enhance the safety of crime victims and encourage them to cooperate with the justice system. Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>108</sup> *See* Dep’t of Homeland Sec., *U and T Visa Law Enforcement Resource Guide* (hereinafter *DHS U and T Visa Resource Guide*) at 3 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015> (“Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims’ lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to providing victims of crime a greater sense of security that also makes it easier for them to assist [law enforcement officials] with [their] law enforcement and prosecutorial efforts.”).

<sup>109</sup> *See* *DHS U and T Visa Resource Guide* at 3 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>; *see also* *DHS U Visa Law Enforcement Resource Guide* at 13 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022> (“Signing [a U visa certification] may strengthen your agency’s ability to detect, investigate, and prosecute serious crimes and may encourage victims to report crimes committed against them and to participate in the investigation and prosecution of those crimes. These actions bolster relationships between law enforcement and the communities they protect and make communities safer as a whole.”).

<sup>110</sup> Immigration enforcement activities include but are not limited to actions by immigration officials to:

- Stop, question, or arrest a noncitizen for an administrative violation of the civil immigration laws;

encourages immigrant victims to report criminal activity and fosters increased trust between CPS, law enforcement, courts, and other government agencies and the immigrant populations they serve.<sup>111</sup>

In its work with children living in immigrant families, CPS staff should be aware of a couple important considerations for child victims, discussed in greater depth below.

1. **The child does not have to be the victim of the qualifying criminal activity in order to be eligible for a U visa.** If the child’s non-abusive parent (or in some cases the child’s sibling) was the victim of a qualifying criminal activity, the child could obtain a U visa by being included in their parent’s or sibling’s U visa application.<sup>112</sup>
2. If CPS encounters a U.S. citizen child who is a victim of a U visa criminal activity, and their non-abusive parent is undocumented, **the non-abusive parent may qualify for a U visa as an “indirect victim” based on the crime victimization suffered by their U.S. citizen child.**<sup>113</sup> Therefore, CPS staff should not end the screening for immigration relief once they determine the child victim is a citizen; rather, they should determine whether the child has a noncitizen parent who is being helpful in the CPS investigation and provide that parent with information about immigration protections available through the VAWA, U visa, and T visa programs to noncitizen parents whose children have suffered child abuse or crime victimization.

## U Visa Qualifying Crimes

The U visa statute provides a “non-exclusive”<sup>114</sup> list of qualifying criminal activities, including:

- Rape
- Torture
- Domestic violence
- Trafficking
- Incest

- 
- Focus resources on administrative violations or conduct;
  - Issue a detainer or assume custody of a noncitizen subject to a previous detainer;
  - Issue, reissue, serve, file, or cancel a Notice to Appear;
  - Detain or release from custody subject to conditions;
  - Grant deferred action or parole; and
  - Execute a final order of removal (and under what circumstances).

*ICE Directive 11005.3 – Using a Victim-Centered Approach with Noncitizen Crime Victims* (Aug. 10, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>.

<sup>111</sup> Victims of Trafficking and Violence Protection Act of 2000 § 1513(a), Pub. L. No. 106-386, 114 Stat. 1464; 67 Fed. Reg. 4782, 4785 (2002); *see also DHS U and T Visa Resource Guide* at 9 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>; *see also DHS U Visa Law Enforcement Resource Guide* at 14 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>112</sup> *See* 8 C.F.R. § 214.14(f)(4).

<sup>113</sup> *See* 72 Fed. Reg. 53,014, 53,017 (Sept. 17, 2007).

<sup>114</sup> INA § 101(a)(15)(U)(iii); 8 U.S.C. 1101 (a)(15)(U)(iii); 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

- Abusive sexual contact
- Peonage
- Manslaughter
- Unlawful criminal restraint
- Prostitution
- Blackmail
- Sexual exploitation
- False imprisonment
- Murder
- Perjury
- Sexual assault
- Stalking
- Slave trade
- Fraud in foreign labor contracting
- Felonious assault
- Female genital mutilation<sup>115</sup>
- Kidnapping
- Involuntary servitude
- Witness tampering
- Being held hostage
- Abduction
- Extortion
- Obstruction of justice

This list is not exhaustive and includes *any similar activity*<sup>116</sup> in violation of federal, state, or local criminal law that can also constitute a qualifying crime for purposes of a U visa. Additionally, solicitation, attempt, or conspiracy to commit any of the above listed criminal activities will count as a qualifying criminal activity. CPS staff should refer to this list as it represents various types of behavior classified as domestic violence, sexual abuse, trafficking, or other criminal activity that often affect immigrants.<sup>117</sup> This list also appears in Part 3 of Form I-918B.

There are several criminal activities that have been formally recognized by USCIS to constitute “similar criminal activities.”<sup>118</sup> USCIS considers child abuse to be a form of domestic violence, which is a qualifying criminal activity if the perpetrator, victim relationship, and abuse experienced by the child meets the statutory elements of domestic violence under any state

<sup>115</sup> The United States federal government defines Female Genital Mutilation or Cutting (“FGM/C”) as follows:

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia major or labia minor or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

(b) A surgical operation is not a violation of this section if the operation is –

(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioners, midwife, or person in training to become such a practitioner or midwife.

(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

(d) Whoever knowingly transports from the United States and its territories a person in foreign commerce for the purpose of conduct with regard to that person that would be a violation of subsection (a) if the conduct occurred within the United States, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both. 18 U.S.C. § 116 (2013).

DHS developed a brochure that provides information clarifying the criminal consequences for performing FGM/C on a minor, attempting to send her outside the United States for FGM/C to be performed, or performing FGM/C on a woman over the age of 18 without consent. In addition, this brochure details the immigration consequences to performing or assisting in FGM/C, and that immigration relief may be available for those that have undergone FGM/C or are at risk of undergoing FGM/C. Dep’t of Homeland Security, *Female Genital Mutilation/Cutting*, available at [http://library.niwap.org/wp-content/uploads/FGMC\\_Brochure\\_FINAL.pdf](http://library.niwap.org/wp-content/uploads/FGMC_Brochure_FINAL.pdf).

<sup>116</sup> 8 C.F.R. § 214.14(a)(9).

<sup>117</sup> 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007).

<sup>118</sup> *DHS U Visa Law Enforcement Resource Guide* at 5 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

statutes.<sup>119</sup> Other examples of similar criminal activities recognized by USCIS include: elder abuse, hate crimes, aggravated robbery,<sup>120</sup> and video voyeurism.<sup>121</sup>

There are many state crimes that may be also be qualifying U visa crimes *even if* they do not appear on the federal list. This is because state statutes may break down federally qualifying crimes into component pieces. For example, the federal statute lists domestic violence as a U visa-qualifying crime. However, most state statutes do not specify domestic violence as a crime; instead they list criminal activities 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.<sup>122</sup> *Although the federal U visa statute does not enumerate these specific crimes, they are included within the qualifying crime of domestic violence for U visa purposes.*<sup>123</sup>

If a perpetrator commits a qualifying crime in the course of committing a non-qualifying crime, and they are only charged with the non-qualifying crime, certifiers may still issue U visa certifications, and doing so is explicitly encouraged by DHS.<sup>124</sup>

## Eligibility Requirements for U Visas

To be eligible for a U visa, immigrant victims must satisfy all four of the following statutory requirements:

1. **Have been the victim of a qualifying criminal activity**<sup>125</sup> perpetrated in the United States, or one that violated the federal or state laws of the United States
2. **Possess information** concerning such criminal activity
3. Have been, are being, or are likely to be **helpful in the detection, investigation, prosecution,**<sup>126</sup> **conviction, or sentencing** of the criminal

<sup>119</sup> DHS U Visa Law Enforcement Resource Guide at 4 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>120</sup> DHS U Visa Law Enforcement Resource Guide at 4-5 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>121</sup> DHS U and T Visa Resource Guide at 22 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

<sup>122</sup> See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 849–76 (1993).

<sup>123</sup> DHS U Visa Law Enforcement Resource Guide at 4 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>124</sup> See 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

<sup>125</sup> Congress used the term “criminal activity” rather than “crime” to provide victims access to U visa protection as early as possible after the crime was committed or reported. See INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U).

<sup>126</sup> All statutory references to “investigation or prosecution” have been defined by USCIS regulations on the U visa program to include: detection, investigation, prosecution, conviction and sentencing. 8 C.F.R. § 214.14(a)(5).

activity. (Immigrant victims must include a certification to this effect from a certifying official or agency.)<sup>127</sup>

4. **Have suffered substantial physical or mental abuse** as a result of being a victim of a listed criminal activity.<sup>128</sup>

## U Visa Certifications and CPS' Role as a Certifying Agency

In order to apply for a U visa, the child victim must obtain a certification from an authorized government official attesting that the applicant has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity.<sup>129</sup> If the child is under age 16, incapacitated, or incompetent, the child can satisfy the U visa helpfulness requirements when the child's parent, guardian, or next friend possesses information about the qualifying criminal activity the child suffered<sup>130</sup> and provides the helpfulness required on the child's behalf.<sup>131</sup>

CPS is one of the government agencies with authorization under federal regulations to provide this essential certification.<sup>132</sup> CPS workers regularly encounter and work with immigrant child victims and are able to attest to the child's or their parent's, guardian's or next friend's helpfulness or willingness to be helpful. During the process of responding to, investigating, assessing, and determining the disposition of reports of abuse, neglect, or abandonment, CPS workers must determine whether they believe the alleged conduct occurred and whether the child has been a victim of criminal activity.<sup>133</sup> If CPS makes this determination and the crime victim child or the child's parent is a noncitizen, CPS is authorized under federal law to issue a U visa certification.

<sup>127</sup> INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U visa eligibility and contains non-exhaustive list of qualifying criminal activities. Congress used the term "criminal activity" rather than "crime" to provide victims access to U visa protection as early as possible after the crime was committed or was reported.); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

<sup>128</sup> If the petitioner is under 16 years of age, incapacitated, or incompetent, the victim is not required to personally possess information regarding the qualifying criminal activity. In these cases, an exception permits a parent, guardian, or "next friend" of the minor, incapacitated, or incompetent petitioner to provide information and assist in the investigation or prosecution. *See* INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

<sup>129</sup> Other authorized certifiers include Adult Protective Services (APS) workers, prosecutors, judges, law enforcement officials, and other federal or state authority that are tasked with responding to, detecting, investigating, prosecuting, convicting, or sentencing any of the qualifying criminal activities listed in the U visa statute or regulations. *See* INA § 214(p)(1); 8 U.S.C. § 1184(p)(1); 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

<sup>130</sup> INA § 101(a)(15)(U)(i)(II); 8 U.S.C. § 1101(a)(15)(U)(i)(II); 8 C.F.R. § 214.14(b)(2).

<sup>131</sup> INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(III); 8 C.F.R. § 214.14(b)(2).

<sup>132</sup> 8 C.F.R. § 214.14(a)(2).

<sup>133</sup> U visa certification can and should occur as early as possible after taking a report or interviewing a credible victim of suspected criminal activity. Certification need not wait until the case reaches a probable cause determination. *See* 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

DHS encourages federal, state, and local government agencies to develop internal policies and procedures to respond to requests for U visa certifications. However, DHS does not require agencies to have U visa certification policies or protocols in place in order to be authorized to sign U visa certifications. The U visa regulations allow the head of the certifying agency to grant any person(s) at their agency with supervisory responsibilities the authority to issue U visa certifications.<sup>134</sup> The regulations contemplate granting certification authority to multiple supervisory personnel.

**Note for Agency Heads on Certifications:** CPS' certification authority is established by federal statute, regulations, and policies, and such authority is effective even before an agency has decided whether it will issue the certification and even when it does not presently have an existing policy or protocol for signing certifications. As a result, *CPS agency heads can start signing U visa certifications immediately upon identification of immigrants* who have suffered from U visa listed criminal activities.

## Requirements for U Visa Certification

The law enforcement certification (Form I-918B<sup>135</sup>) is a five-page form that immigrant crime victims must submit as part of their U visa application. The form includes seven short parts and must be signed by a certifying law enforcement official, prosecutor, judge or APS, CPS or other government agency official authorized to certify that attests to the following:

- 1) The type of criminal activity or criminal activities perpetrated against the victim (Form I-918B: Part 3)
- 2) The person seeking the certification has been a victim of criminal activity
- 3) The person possesses information about the criminal activity (Form I-918B: Part 4);<sup>136</sup>

<sup>134</sup> See 8 C.F.R. § 214.14(a)(3), (c)(2)(i); *DHS U Visa Law Enforcement Resource Guide* at 3 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>135</sup> See *Form I-918, Supplement B*, USCIS (Dec. 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/i918-supb-certification>.

<sup>136</sup> This information may be possessed by the child or in the case of under 16 year old, incompetent, or incapacitated children this information may be possessed by the child's parent, guardian, or next friend. INA § 101(a)(15)(U)(i)(II); 8 U.S.C. § 1101(a)(15)(U)(i)(II); 8 C.F.R. § 214.14(b)(2).

<sup>136</sup> In the case of an under 16 year old child or a child who is incompetent or incapacitated present, past, or future helpfulness may be provided by the child's parent, guardian, or next friend. INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(III); 8 C.F.R. § 214.14(b)(2).

- 4) The victim has been helpful, is being helpful or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a U visa listed criminal activity (Form I-918B: Part 4);<sup>137</sup>
- 5) May include notes of any injuries or other facts about the criminal activity the immigrant suffered (Form I-918B: Part 3)
- 6) Should include information they have about any perpetrators who are family members of the victim (Form I-918B: Part 5).

To increase victims' access to certifications, Congress explicitly included federal, state, and local law enforcement, prosecutors, judges, and other government officials (including CPS and APS)<sup>138</sup> in the list of U visa certifiers.<sup>139</sup>

## Evaluating “Helpfulness”

CPS staff must assess the child victim's or the child's parent's, guardian's, or next friend's helpfulness<sup>140</sup> prior to signing a U visa certification. For purposes of certification, “helpful” means the child victim or their parent, guardian, or next friend has been, is being, or is likely to assist CPS, law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity.<sup>141</sup>

Congress intentionally defined “helpfulness” very broadly, to allow an individual to apply for status at virtually any stage of the investigation or prosecution after detection.<sup>142</sup> Therefore, the definition of “investigation or prosecution” in the statute is interpreted broadly so that victims can apply for certification as early as possible after they help government officials detect the criminal activity to which they were subjected.<sup>143</sup>

<sup>137</sup> In the case of an under 16 year old child, or a child who is incompetent or incapacitated, present, past, or future helpfulness may be provided by the child's parent, guardian, or next friend. INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(III); 8 C.F.R. § 214.14(b)(2).

<sup>138</sup> 8 C.F.R. § 214.14(a)(2) (2023).

<sup>139</sup> 8 U.S.C. § 1101(a)(15)(U)(I) (2006); 8 C.F.R. § 214.14(a)(2); 72 Fed. Reg. 53014, 53023–24 (Sept. 17, 2007).

<sup>140</sup> “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 he or she is a victim.” *DHS U and T Visa Resource Guide* at 7; *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>141</sup> 8 U.S.C. § 1184(p)(1); see also *DHS U and T Visa Resource Guide* at 7 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

<sup>142</sup> 72 Fed. Reg. 53014, 53019-20 (Sept. 17, 2007).

<sup>143</sup> 8 C.F.R. § 214.14(a)(5); 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007).



***Law enforcement investigation or successful prosecution is not a prerequisite for helpfulness.*** The victim’s actions can alone fulfill this requirement, irrespective of what actions law enforcement or prosecutors subsequently take.

Some examples of helpful actions include, but are not limited to:

- calling 911 to report the criminal activity
- providing a statement to CPS or another government agency
- attending meetings with CPS staff
- appearing in court, filing a police report
- seeking a protection order.<sup>144</sup>

**Ongoing Helpfulness Requirement:** A victim who has received a U visa certification has an ongoing obligation to provide assistance or cooperation reasonably requested by law enforcement or prosecutors, starting from the time the victim files their U visa case to even after they have been granted a U visa.<sup>145</sup> According to DHS “this means that since the initiation of cooperation, the victim has not unreasonably refused to cooperate or failed to provide information and assistance reasonable requested by law enforcement or prosecution in connection with a criminal investigation or prosecution.”<sup>146</sup>

Certifiers may inform USCIS 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.*<sup>147</sup> Whether the victim’s lack of cooperation is unreasonable is to be assessed in light of the totality of the circumstances.<sup>148</sup> If the victim has unreasonably refused to cooperate or failed to provide information and assistance when reasonably requested, they will

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<sup>144</sup> For more details on the types of actions an immigrant victim of crime or abuse may take to show helpfulness, see Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, Rocio Molina, Benish Anver, Faiza Chappell, Andrea Carcamo-Cavazos, and Rafaela Rodrigues, *U-Visa: “Helpfulness” Checklist* (Oct. 28, 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

<sup>145</sup> 8 C.F.R. § 214.14(a)(5); 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007); *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>146</sup> *DHS U and T Visa Resource Guide* at 18; *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>147</sup> 8 C.F.R. § 245.24(a)(5); see also *June 2022 Recordings – Two Part Series April 13, 2022 Webinar: Understanding Helpfulness for U Visa Certification and the Ongoing Assistance Requirement* (April 13, 2022), available at <https://niwaplibrary.wcl.american.edu/uvisa-helpfulness-webinar-april2022>.

<sup>148</sup> 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008) (“The rule provides that the determination of whether an alien’s refusal to provide assistance was unreasonable will be based on all 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 fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant. New 8 CFR 245.24(a)(5).”)

not be eligible for a U visa.<sup>149</sup> Failure to do so could result in USCIS revoking the victim's U visa.<sup>150</sup>

Determining reasonableness is especially important in cases of domestic violence or abuse. In particular, Congress recognized that there are specific dangers to crime victims of domestic violence, child abuse, sexual assault, and human trafficking that might make them unwilling to cooperate or provide assistance to law enforcement. Because of this, Congress created an exception to the ongoing assistance requirement for when victims can show that their refusal to cooperate was *reasonable* under the totality of the circumstances.<sup>151</sup>

A few common examples of when a victim's lack of ongoing cooperation is *not* unreasonable includes:<sup>152</sup>

- When perpetrators, through coercion and threats, make the victim unavailable for interview with CPS workers;
- When perpetrators use other tactics of power and control, such as isolation and emotional abuse, to manipulate the victim;
- The victim fears for their safety or the safety of their children; or
- The victim fears retaliation from their perpetrator if they cooperate or meet with CPS workers or testify at trial.

**Exception for Children Under the Age of Sixteen:** There is an exception to the helpfulness requirement for children under the age of sixteen. In such cases, the child's parent, guardian, or "next friend" can satisfy the helpfulness requirement by providing the required assistance in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity instead of the child.<sup>153</sup> (A "next friend" for U visa purposes is a person who appears in a lawsuit to act for the benefit of the child under the age of sixteen, or an individual who is

<sup>149</sup> "The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the U visa revoked by USCIS." *DHS U and T Visa Resource Guide* at 18 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>; see also 8 C.F.R. § 214.14(b)(3); 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007).

<sup>150</sup> 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007); *DHS U and T Visa Resource Guide* at 7 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015> ("The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the U visa revoked by USCIS.").

<sup>151</sup> 8 C.F.R. § 245.24(a)(5); 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008) ("The rule provides that the determination of whether an alien's refusal to provide assistance was unreasonable will be based on all 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 fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant.").

<sup>152</sup> INA § 245(m)(1); 8 U.S.C. § 1255(m)(1).

<sup>153</sup> See INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III).

incapacitated or incompetent.<sup>154</sup> The next friend is not a party to the legal proceeding, nor appointed as a guardian.<sup>155</sup>)

The parent, guardian, or “next friend” must provide evidence of their qualifying relationship to the petitioner and evidence establishing the age of the petitioner. Examples of such evidence include birth certificates, court documents demonstrating recognition of an individual as the petitioner’s “next friend,” and medical records.<sup>156</sup>

**U Visa Eligibility of Parents, Guardians, and Next Friends:** Parents who provide assistance on behalf of their children become U Visa eligible. As a general matter, guardians and next friends are not U Visa eligible on the basis of their assistance. To be eligible, they would need to qualify independently for a U Visa (i.e. meet all of the eligibility requirements). However, DHS offers protection from deportation or immigrants assisting in the criminal or civil justice system as witnesses or as “next friends” to an incompetent or incapacitated crime victim by making them a low priority for removal from the United States. DHS has encouraged immigration enforcement officials to exercise discretion not to remove immigrants serving as witnesses in the criminal and civil justice systems because they can provide information about the criminal activity and offer helpfulness on the abused immigrant child’s behalf.

## Family Members Who Can Be Included in U Visa Applications

A U visa holder can include petitions with their application seeking U visas for eligible family members.<sup>157</sup> Eligible family members include:<sup>158</sup>

- If the victim is under 21 years of age, qualifying family members include the victim’s spouse, parents, and children, unmarried siblings under 18 years of age (on the filing date of the principal victim’s petition);<sup>159</sup> and
- If the victim is 21 years of age or older, qualifying family members include their spouse and children.<sup>160</sup>

The U visa and T visa application process includes a bona fide determination. For U visa cases, an applicant receives a bona fide determination (BFD) after USCIS reviews the case and

<sup>154</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14(a)(7)).

<sup>155</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14(a)(7)).

<sup>156</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,019 (Sept. 17, 2007) (codified at 8 CFR § 214.14(a)(7)).

<sup>157</sup> 72 Fed. Reg. 53013, 53039 (codified at 8 C.F.R. § 214.14(f)) (2007)); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(c)(2)) (2016)).

<sup>158</sup> *U Visa Protections for Family Members* (Aug. 12, 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-family-member>.

<sup>159</sup> INA § 101(a)(15)(U)(ii)(I); 8 U.S.C. 1101(a)(15)(U)(ii)(I).

<sup>160</sup> INA § 101(a)(15)(U)(ii)(II); 8 U.S.C. 1101(a)(15)(U)(ii)(II).

finds that the application contains the required initial evidence, the applicant successfully completed a background check, and the U visa application was made in good faith, without fraud or deceit.<sup>161</sup> Recipients of U visa bona fide determinations are granted “deferred action status,” which is formal protection against deportation, and legal work authorization, both of which last for 4 years and can be renewed.<sup>162</sup> U visa applicants and recipients have limited access to state and federally funded public benefits.<sup>163</sup>

Similarly, when T visa applicants receive bona fide determinations,<sup>164</sup> they receive deferred action and work authorization.<sup>165</sup> T visa applicants with bona fide determinations are also granted access to a broad array of federally and state funded public benefits.<sup>166</sup> USCIS is not currently conducting bona fide determinations (BFD) for T visa applications.<sup>167</sup>

NIWAP has developed helpful tools for identifying which family members U visa and T visa applicants can include in their applications. *These tools can be found in Appendix B.*

## Child Protective Services’ Role in U Visa Applicants

### CPS Role Overview:

CPS is a certified agency that can issue the **required U Visa Certifications**. CPS agency heads are always authorized to issue U Visa Certifications (they do not require additional permission or certification from DHS in order to do so). Agency heads may also designate additional individuals within CPS who can issue U Visa certifications.

<sup>161</sup> USCIS, *Policy Manual Chapter 5 Bona Fide Determination Process* (June 14, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process--uscis>.

<sup>162</sup> USCIS Policy Alert (PA-2021-13), *Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners* (June 14, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-bona-fide>.

<sup>163</sup> Access to public benefits varies by state, by benefits program and by immigration status. To look up what state or federal public benefits an immigrant victim qualifies to receive go to <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>164</sup> 8 C.F.R. § 214.11(a).

<sup>165</sup> 67 Fed. Reg. 4784, 4790 (January 31, 2002).

<sup>166</sup> § 107(b), Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 [H.R. 3244], (October 28, 2000). To look up what state or federal public benefits an immigrant victim qualifies to receive, see <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>167</sup> *Human Trafficking Prevention Engagement Pre-Submitted Questions*, USCIS at 2-3 (Jan. 27, 2022), available at [https://www.uscis.gov/sites/default/files/document/questions-and-answers/National\\_Human\\_Trafficking\\_Prevention\\_Month\\_Webinar-Q%26A.pdf](https://www.uscis.gov/sites/default/files/document/questions-and-answers/National_Human_Trafficking_Prevention_Month_Webinar-Q%26A.pdf). (USCIS is reviewing the public comments received with regard to the possible implementation of a T visa bona fide process as part of the T Visa Final Rule.)

## T Visa for Victims of Human Trafficking

### T Visa: Immigration Relief for Victims of Severe Forms of Trafficking

#### Quick Reference Guide

The T visa provides immigration relief to children and adult victims of severe forms of human trafficking perpetrated in the United States. Human trafficking is defined by federal law, and can be either sex trafficking or labor trafficking.

The T visa was created by the Trafficking Victims Protection Act of 2000, out of recognition that immigrant trafficking victims without legal status would be reluctant to help in the investigation or prosecution of their traffickers. The T visa strengthens the ability of law enforcement, prosecutors, and child and adult protective services to protect immigrant trafficking victims, as well as detect, investigate, and prosecute human trafficking.

#### Who is eligible

- Immigrant victims of a severe form of human trafficking, either sex trafficking or labor trafficking, as defined by federal law
- Federal law defines human trafficking as:
  - **Sex trafficking:** any commercial act in which a commercial sex act is induced by force, fraud, or coercion; or when the person induced to perform such an act is under the age of 18
  - **Labor trafficking:** 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 (including psychological coercion), peonage, debt bondage, or slavery.

#### Who else can be included in the petition

- Children
- Spouses
- Parents of child trafficking victims who are under the age of 21 at the time of application
- Parents of *any* trafficking victim who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement agencies (including CPS)
- Unmarried siblings under the age of 18 of child victims under the age of 21 at the time of filing
- Unmarried siblings under the age of 18 who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement agencies (including CPS)
- Adult or minor children of any T-visa recipient who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement agencies (including CPS)

#### Eligibility Requirements: An applicant must meet all of the following criteria

- The person is or was the victim of a severe form of trafficking in persons, as defined by federal law
- Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a U.S. port of entry due to human trafficking
- Has complied with any reasonable request from child or adult protective services, law enforcement, or prosecution agency for assistance in the detection, investigation or prosecution of human trafficking
- Would suffer extreme hardship involving unusual and severe harm if removed from the United States
- Must be admissible (based on a review of criminal history, immigration violations, and other factors). If inadmissible, victims may apply for a waiver for which they may be eligible.

**Is there a time limit within which victims must file:** No. Victims who meet the eligibility requirements can file at any time after the trafficking occurs.

**Declaration Required:** No. The T visa declaration is supplementary evidence that child or adult protective services, law enforcement, prosecutors, and other authorized agencies can complete for a T visa applicant to help demonstrate their compliance with reasonable requests for assistance. T visa declarations are also an important way of compiling evidence for law enforcement and for building trust between victims and agency staff.

**Can CPS Certify:** Yes, CPS is authorized under federal law to issue T visa declarations.

**Is CPS Required to Certify:** Federal law does not require CPS to sign declarations. However, some states have passed laws requiring the signing of T visa declarations by state agencies authorized to sign under federal law.

**Declaration Form (I-914B) Requirements:** The applicant (or their child or stepchild) is or has been a victim of a severe form of trafficking in persons (I-914B Form: Part C)

- The applicant has complied with requests for assistance in the detection, investigation or prosecution of a human trafficking related crime (I-914B Form: Part D)
- Information the agency signing the declaration has about any family members of the victim believed to be involved in the victims trafficking to or within the United States (I-918 Form: Part E)

**Satisfying the “Assistance” Requirement:** T visa applicants must comply with any **reasonable request** from child or adult protective services agency staff, law enforcement, prosecutors, or law enforcement in the detection, investigation, or prosecution of human trafficking and/or the investigation of any crime where acts of trafficking where at least one central reason for the commission of the crime.

- The proper standard for assessing reasonableness is whether the *request* is reasonable, not whether a victim unreasonably refused to assist.
- **Reasonableness Exception:** A victim may decline to cooperate with requests for assistance if:
  - The victim is under the age of 18
  - The victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request

**Assessing Credibility:** CPS can still issue certifications if they have doubts about a victim’s credibility. DHS will make all necessary determinations as to whether an applicant meets the T visa requirements.

## Overview of the T Visa

The T visa provides a pathway to legal status and protection from deportation for immigrant victims of human trafficking and allows eligible victims to temporarily remain and work in the U.S. for up to four years. The visa may be extended in limited cases, such as when the presence of the victim is necessary to assist the investigation or prosecution of the trafficking activity.<sup>168</sup> If certain conditions are met, an individual with a T visa may apply for lawful

<sup>168</sup> INA § 214(o)(7)(B); 8 U.S.C. 1184(o)(7)(B).

permanent residency after three years of presence in the United States as a T visa holder,<sup>169</sup> or upon completion of the investigation or prosecution, whichever occurs earlier.<sup>170</sup>

Congress created the T visa program through the Trafficking Victims Protection Act of 2000 (TVPA) out of recognition that immigrant human trafficking victims without legal status may be reluctant to help in the detection, investigation, or prosecution of human trafficking-related criminal activities.<sup>171</sup> Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.<sup>172</sup> Accordingly, in both the TVPA and VAWA, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, including human trafficking, but also to strengthen relationships between law enforcement, government agencies, and immigrant communities.<sup>173</sup> The T visa assists in efforts to bring perpetrators of trafficking to justice and to provide protection and a sense of safety and security for immigrant victims.<sup>174</sup>

CPS may encounter child victims of both sex and labor trafficking. Labor trafficking may take different forms, including domestic servitude as nannies or housekeepers, labor exploitation in agriculture, restaurants, construction, and factories, forced peddling, or gang- or drug-related trafficking.<sup>175</sup> There may also be instances in which a child is voluntarily sent to the United States, but then is forced to work long hours as a servant for the household. Additionally, there are instances where foreign-born athletes are lured to the United States with a

<sup>169</sup> For victims who are granted continued presence, the three year time period can be counted from the date on which continued presence was granted, which is generally an earlier date than the date on which the victim received their T visa. To benefit from this earlier access to apply for lawful permanent residence, the T visa holder must submit a document signed by the Attorney General or their designee attesting to the fact that the investigation or prosecution into the trafficking is complete. 8 C.F.R. §§ 245.23(e)(2)(i)(B), 245(l)(1)(B); 8 U.S.C. § 1255(l)(1)(B).

<sup>170</sup> See generally *Adjustment of Status to Lawful Permanent Resident Aliens in T or U Nonimmigrant Status*, 73 Fed. Reg. 75540, 75540 (2008).

<sup>171</sup> See *DHS U and T Visa Resource Guide* at 4 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>; *DHS T Visa Law Enforcement Resource Guide* at 2 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

<sup>172</sup> *DHS U and T Visa Resource Guide* at 4 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>; *DHS T Visa Law Enforcement Resource Guide* at 1-2 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

<sup>173</sup> *DHS U and T Visa Resource Guide* at 4 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>; see also Victims of Trafficking and Violence Protection Act of 2000, § 1513(c), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>174</sup> *DHS T Visa Law Enforcement Resource Guide* at 1-2 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

<sup>175</sup> *Training Manual to Fight Trafficking in Children for Labor, Sexual and Other Forms of Exploitation*, UNICEF (2009), available at [https://www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PUB\\_10771/lang--en/index.htm](https://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_10771/lang--en/index.htm).

promise of high school or college education or scholarships, but are instead held hostage or forced to work to pay off debts when they arrive in the United States.<sup>176</sup>

22 U.S.C. § 7102(12): **The term “severe forms of trafficking in persons” means—**

- (A) 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
- (B) 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.

## Eligibility for a T Visa

NB: Victims of human trafficking who do not qualify for a T Visa *or who are awaiting T visa application processing* may qualify for Continued Presence, a temporary form of immigration relief discussed further in the next section.

USCIS may find an individual eligible for a T visa if the victim:

1. Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;
2. Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry on account of trafficking;<sup>177</sup>

<sup>176</sup> Katherine Kaufka Walts, *Child Labor Trafficking in the United States: A Hidden Crime*, Center for the Human Rights of Children at 62 (June 2017), available at [https://niwaplibrary.wcl.american.edu/pubs/child-labor-trafficking-in-the-united-states\\_-a-hidden-crime](https://niwaplibrary.wcl.american.edu/pubs/child-labor-trafficking-in-the-united-states_-a-hidden-crime).

<sup>177</sup> The trafficking victim need not have been brought into the U.S. by the trafficker. A person is considered to meet the “on account of” trafficking requirement if at the time of filing their T visa application they:

- Were present in the U.S. and currently being subjected to trafficking;
- Were liberated from human trafficking by law enforcement;
- Escaped their traffickers prior to law enforcement involvement;
- Were trafficking at some point in the past and their continuing presence in the U.S. is directly related to the original trafficking; or
- Were present after having been allowed to enter the U.S. to participate in an investigation or judicial process associated with an act of or the perpetrator of trafficking.

See *DHS T Visa Law Enforcement Resource Guide* at 4 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.



3. Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking<sup>178</sup> (except victims who are under 18 years of age, and trafficking victims who are unable to cooperate due to physical or psychological trauma<sup>179</sup>)
4. Would suffer extreme hardship involving unusual and severe harm if removed from the United States.<sup>180</sup>

**Admissibility Requirement:** In addition, to the above requirements, the victim must also be admissible to the United States (based on a review of criminal history, immigration violations, and other factors).<sup>181</sup> If the individual is not inadmissible, they may apply for any waiver of inadmissibility for which the victim may be eligible.<sup>182</sup>

## T Visa Declarations

Unlike U Visa applicants, T Visa applicants **are not required** to provide a declaration as part of their application. However, T Visa declaration, when provided, is useful<sup>183</sup> and valuable evidence of a victim’s cooperation.<sup>184</sup> DHS encourages law enforcement, prosecutors, judges, CPS, and other government officials to sign T visa certifications.<sup>185</sup> The T visa regulations assure certifiers that the declaration is useful, rather than controlling evidence in the case, and should result in certifiers being “more likely to sign [declarations], increasing the likelihood that T visa will be utilized as the law enforcement tool that it is intended to be.”<sup>186</sup>

<sup>178</sup> 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)(i)) (2016).

<sup>179</sup> See INA § 101(a)(15)(T)(i) (III); 8 U.S.C. 1101(a)(15)(T)(i)(III); see also *DHS U and T Visa Resource Guide* at 12 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015> (“There are certain times when a victim is not required to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.”).

<sup>180</sup> 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

<sup>181</sup> See *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Dec. 26, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs> (This chart also tracks inadmissibility exemptions and waivers available for each of the forms of crime victim based immigration relief including the T visa.).

<sup>182</sup> 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(i)) (2016); *DHS U and T Visa Resource Guide* at 4 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>; Limayli Huguet, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Jan. 28, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>.

<sup>183</sup> 72 Fed. Reg. 92266, 92276 (2016).

<sup>184</sup> *DHS U and T Visa Resource Guide* at 3, 10.

<sup>185</sup> See generally *DHS T Visa Law Enforcement Resource Guide* (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

<sup>186</sup> 72 Fed. Reg. 92266, 92276 (2016).

*Certifying officials who sign declarations do not confer any visa upon the victim, nor do they decide whether the victim meets the eligibility standards.*<sup>187</sup> The declaration is not conclusive evidence that the applicant meets the eligibility requirements. Only USCIS has the discretion to grant or deny T visa to the victim.<sup>188</sup>

## Requirements for a T Visa Declaration

The T visa declaration must be provided on Form I-914, Supplement B. The declaration (Form I-914B) is a four-page form that immigrant trafficking victims can submit as part of their T visa application.

The form includes six short parts and must be signed by a law enforcement, prosecution, CPS, a judge, or other government agency authorized to sign declarations that attests to the following:

- 1) The applicant (or their child or stepchild) is or has been a victim of a severe form of trafficking in persons. (I-914B Form: Part C)
- 2) The applicant has complied with requests for assistance in the detection, investigation, or prosecution of a human trafficking related crime. (I-914B Form: Part D)
- 3) Information the agency signing the declaration has about any family members of the victim believed to have been involved in the victim's trafficking to or within the United States. (I-914B Form: Part E)

## Evaluating Victimization

In order for CPS to sign a declaration, the applicant (or the applicant's child or stepchild) must be or have been a victim of a severe form of trafficking in persons. "Severe form of trafficking in persons" is defined as:<sup>189</sup>

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- (2) Sex trafficking in which the person induced to perform such an act is under the age of 18; or
- (3) 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

<sup>187</sup> 72 Fed. Reg. 92266, 92276 (2016); Dep't of Homeland Security, *Instructions for Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* (expires 04/30/2021), available at <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>.

<sup>188</sup> 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016).

<sup>189</sup> 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.

DHS clarifies that an individual need not actually perform labor, services, or a commercial sex act to meet the definition; even if the illicit end is never realized, the definition is met as long as a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery) is present in the case.<sup>190</sup> This would include, for example, a situation where the victim was brought to the United States through force, fraud, or coercion for performing a commercial sex act, but the victim was rescued or escaped before doing so.<sup>191</sup>

Child abuse victims may fall victim to human trafficking perpetrated in the context of their intimate partner or family relationships.<sup>192</sup> USCIS has recognized that human trafficking and involuntary servitude can occur alongside intimate partner abuse, child abuse, or family violence when the abuse involves compelled or coerced labor or services of forced sexual activity that is induced by force, fraud, or coercion.<sup>193</sup> Labor trafficking compelled by domestic violence may be enforced by abuse or the threat of abuse with the goal of forcing labor or services through fear or coercion. This causes the victim to feel that they do not have their own liberty or self-determination, which creates conditions of servitude.<sup>194</sup> When a child has been a victim of involuntary servitude, they are eligible to apply for a T visa based on labor trafficking.<sup>195</sup>

USCIS will accept any credible evidence of victimization, including but not limited to a T visa declaration signed by an authorized government agency.<sup>196</sup> A government agency such as CPS signing a T visa declaration does not determine if the victim actually meets the “severe form of trafficking” definition under federal law. USCIS makes this determination.<sup>197</sup>

## Evaluating Assistance

The T visa requires that the victim has complied with any reasonable requests from law enforcement or prosecutors in detection, investigation, or prosecution of human trafficking or of

<sup>190</sup> 81 Fed. Reg. 92266, 92270, 92307 (codified at 8 C.F.R. § 214.11(f)(1)) (2016); see also *General Tips for T Visas for Victims of Severe Form of Trafficking in Persons*, Freedom Network (Apr. 2018), available at <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

<sup>191</sup> 81 Fed. Reg. 92266, 92270 (2016).

<sup>192</sup> Matison Miller & Leslye E. Orloff, *Domestic Violence and Involuntary Servitude as Human Trafficking* (Aug. 17, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/dv-involuntary-servitude-dhs>.

<sup>193</sup> 3 USCIS-PM B.2(B)(4), available at <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>.

<sup>194</sup> 3 USCIS-PM B.2(B)(4), available at <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>.

<sup>195</sup> Depending on the facts of the case, the immigrant victim may also qualify for a VAWA self-petition or a U visa and can apply for all forms of immigration relief they may be eligible to receive. Trafficking victims who apply for T visas generally have greater access to state funded public benefits than U visa applicants or VAWA self-petitioners.

<sup>196</sup> 81 Fed. Reg. 92266, 92272, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016).

<sup>197</sup> 81 Fed. Reg. 92266, 92272 (2016).

crime where acts of trafficking are at least one central reason for the commission of that crime.<sup>198</sup> USCIS will accept any credible evidence of assistance, including but not limited to a T visa declaration signed by law enforcement, a prosecutor, CPS, a judge, or another government agency.<sup>199</sup> The government official signing the declaration does not determine if the victim meets the assistance requirement; that is a determination made by USCIS.<sup>200</sup>

In determining the “reasonableness” of the request for assistance, USCIS will consider the totality of the circumstances using a broad range of factors, including, but not limited to:

- General law enforcement and prosecutorial practices;
- The nature of the victimization; and
- The specific circumstances of the victim, including their level of fear, the severity of the traumatization, and their age and maturity.<sup>201</sup>

DHS emphasizes that the proper standard focuses on the reasonableness of the request, not whether a victim unreasonably refused to assist.<sup>202</sup> It is generally reasonable for CPS certifiers to ask a victim the same questions as other comparably situated crime victims, such as child abuse, domestic violence, or sexual assault victims.<sup>203</sup>

The victim has an ongoing responsibility to provide assistance from the time of their initial application through the time they apply for lawful permanent residency and their application is adjudicated.<sup>204</sup> A government agency signing a declaration may revoke or disavow it at their discretion if a victim stops cooperating. After revocation or disavowal of the declaration, it may no longer be used as evidence.<sup>205</sup>

## Agencies Authorized to Provide T Visa Declarations

CPS is authorized to provide T visa declarations. Other authorized agencies include federal, state, or local law enforcement agencies, prosecutors, judges, labor agencies, child protective services, or other authorities that have the responsibility and authority to conduct investigations in the course of their work that could lead to the detection, investigation, and/or prosecution of severe forms of trafficking in persons.<sup>206</sup>

<sup>198</sup> INA § 101(a)(15)(T)(i)(III)(aa); 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa).

<sup>199</sup> 81 Fed. Reg. 92266, 92272, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016).

<sup>200</sup> 81 Fed. Reg. 92266, 92272 (2016).

<sup>201</sup> 81 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

<sup>202</sup> 81 Fed. Reg. 92266, 92275 (2016).

<sup>203</sup> 81 Fed. Reg. 92266, 92275 (2016).

<sup>204</sup> 81 Fed. Reg. 92266, 92274 (2016).

<sup>205</sup> 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

<sup>206</sup> 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

## Continued Presence for T Visa Applicants

As soon as CPS workers encounter a victim of a severe form of human trafficking, they should file for Continued Presence. Continued presence is a temporary form of immigration relief that allows adult and child victims of severe forms of human trafficking who may be potential witnesses in the investigation or prosecution of the trafficker to lawfully remain in the United States. This relief lasts for two years with the possibility of renewal.<sup>207</sup>

Continued presence is a significant remedy because it provides child and adult victims of human trafficking protection from deportation *while they are in the process of applying for a T visa*. Additionally, continued presence allows victims to work and receive a broad range of federal and state public benefits while the investigation or prosecution of their trafficker is ongoing, and while the victim files for and awaits adjudication of their T visa application.<sup>208</sup>

The requirements and process for Continued Presence are discussed further below.

## Family Members Who Can Be Included in T Visa Applications

A T visa holder can include petitions with their application seeking T visas for eligible family members.<sup>209</sup> Eligible family members include:<sup>210</sup>

- Children;
- Spouse;
- Parents of child trafficking victims who are under age 21 at the time of application, or any victim’s parents who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement;
- Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim’s unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement; and
- Adult or minor children of any T visa recipient (including eligible family members of the victim), if the children face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement.<sup>211</sup>

<sup>207</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>208</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>209</sup> 72 Fed. Reg. 53013, 53039 (codified at 8 C.F.R. § 214.14(f)) (2007); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(c)(2)) (2016)).

<sup>210</sup> Sylvie Sheng & Leslye E. Orloff, *T Visa Protections for Family Members* (July 3, 2020), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/T-Visa-for-Family-Members7.7.20.pdf>.

<sup>211</sup> Age-out protection applies. See 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016)).

The U visa and T visa application process includes a bona fide determination. For U visa cases, an applicant receives a bona fide determination (BFD) after USCIS reviews the case and finds that the application contains the required initial evidence, the applicant successfully completed a background check, and the U visa application was made in good faith, without fraud or deceit.<sup>212</sup> Recipients of U visa bona fide determinations are granted “deferred action status,” which is formal protection against deportation, and legal work authorization, both of which last for 4 years and can be renewed.<sup>213</sup> U visa applicants and recipients have limited access to state and federally funded public benefits.<sup>214</sup>

Similarly, when T visa applicants receive bona fide determinations,<sup>215</sup> they receive deferred action and work authorization.<sup>216</sup> T visa applicants with bona fide determinations are also granted access to a broad array of federally and state funded public benefits.<sup>217</sup> USCIS is not currently conducting bona fide determinations (BFD) for T visa applications.<sup>218</sup>

NIWAP has developed helpful tools for identifying which family members U visa and T visa applicants can include in their applications. *These tools can be found in Appendix C: Access to State and Federal Public Benefits, Charts for Wall Display.*

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<sup>212</sup> USCIS, *Policy Manual Chapter 5 Bona Fide Determination Process* (June 14, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process--uscis>.

<sup>213</sup> USCIS Policy Alert (PA-2021-13), *Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners* (June 14, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-bona-fide>.

<sup>214</sup> Access to public benefits varies by state, by benefits program and by immigration status. To look up what state or federal public benefits an immigrant victim qualifies to receive go to <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>215</sup> 8 C.F.R. § 214.11(a).

<sup>216</sup> 67 Fed. Reg. 4784, 4790 (January 31, 2002).

<sup>217</sup> § 107(b), *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106-386 [H.R. 3244], (October 28, 2000). To look up what state or federal public benefits an immigrant victim qualifies to receive, see <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>218</sup> *Human Trafficking Prevention Engagement Pre-Submitted Questions*, USCIS at 2-3 (Jan. 27, 2022), available at [https://www.uscis.gov/sites/default/files/document/questions-and-answers/National\\_Human\\_Trafficking\\_Prevention\\_Month\\_Webinar-Q%26A.pdf](https://www.uscis.gov/sites/default/files/document/questions-and-answers/National_Human_Trafficking_Prevention_Month_Webinar-Q%26A.pdf). (USCIS is reviewing the public comments received with regard to the possible implementation of a T visa bona fide process as part of the T Visa Final Rule.)

## Child Protective Services' Role in T Visa Applicants

### **CPS Role Overview:**

CPS is a certified agency that can issue **T Visa Declarations**. CPS should also file for **Continued Presence** as soon as they encounter noncitizen victims of human trafficking. CPS can also assist child victims in obtaining **Child Eligibility Letters** from the Office of Trafficking in Persons at the U.S. Department of Health and Human Services, so that they can obtain lifesaving federal benefits. For more information on public benefits eligibility see below.

## Continued Presence for Victims of Human Trafficking

### Continued Presence: Temporary Immigration Relief for Victims of Severe Forms of Trafficking

#### Quick Reference Guide

Continued Presence is the first form of immigration relief available to undocumented victims of human trafficking. It is temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. Continued Presence is also authorized for victims who file civil actions under 18 U.S.C. §1595.

Continued Presence allows victims to remain in the United States legally for up to two years (renewable) because they are a victim and they are potential witness in a human trafficking investigation. In addition to protection from deportation, Continued Presence allows victims to work and receive a broad range of federal and state public benefits while the investigation or prosecution of their trafficker is ongoing.

Continued Presence is a standalone form of immigration relief; however T and U visa applicants who are victims of a severe form of trafficking can also file for Continued Presence while they are in the process of applying for their T or U visa, which provides protection from deportation and access to public benefits during the application process.

#### Who is eligible

- Immigrant victims of a severe form of human trafficking, either sex trafficking or labor trafficking, as defined by federal law
- Federal law defines human trafficking as:
  - **Sex trafficking:** any commercial act in which a commercial sex act is induced by force, fraud, or coercion; or when the person induced to perform such an act is under the age of 18
  - **Labor trafficking:** 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 (including psychological coercion), peonage, debt bondage, or slavery.

**Who else is eligible for “Significant Public Benefits Parole”:** Certain family members of trafficking victims can also seek protection through Significant Public Benefits Parole. Eligible family members include

- **Children under the age of 21:** their spouse, child, parent, or unmarried siblings under the age of 18
- **Adults:** their spouse or children
- **For all CP recipients:** parents or siblings of a continued presence recipient who are in present danger due to the trafficking victims escape from trafficking or cooperation in an investigation or prosecution of trafficking

**Application Process:** Only law enforcement can apply for Continued Presence on behalf of a victim. This is true regardless of whether the applicant receives Continued Presence pursuant to a criminal investigation and prosecution, or a civil action. Authorized agencies include, but are not limited to

- State, tribal, territorial, and local law enforcement working through their local Homeland Security Investigations (HSI) office
- Federal Bureau of Investigation (FBI)
- U.S. Attorney’s Offices



- U.S. Department of Diplomatic Security
- Federal Agencies including the Department of Justice Civil Rights Division, the Department of Justice Criminal Section, the U.S. Department of Labor, the Equal Opportunity Employment Commission, and the U.S. Marshals Service
- Other federal law enforcement agency partners

**Can CPS Apply for Continued Presence on behalf of a victim:** No. Only federal law enforcement and their agency partners can file for Continued Presence at this time. However, CPS agencies provide critical assistance to trafficking victims by referring potentially qualifying individuals to federal law enforcement, who may then apply for Continued Presence on their behalf. They can also assist victims who have been granted Continued Presence obtain a certification to access public benefits.

**Must victims cooperate with law enforcement to receive Continued Presence:** Victims can qualify for Continued Presence even when they have not cooperated with law enforcement, as some victims may have experienced severe trauma that prevents them from being able to assist.

## Overview of Continued Presence

Continued presence is a temporary form of immigration relief that allows adult and child victims of severe forms of human trafficking who may be potential witnesses in the investigation or prosecution of the trafficker to lawfully remain in the United States. This relief lasts for two years with the possibility of renewal.<sup>219</sup>

As soon as CPS identifies a victim of human trafficking, DHS encourages CPS staff to “request continued presence as early and as expeditiously as possible.”<sup>220</sup> Continued presence is a significant remedy because it provides child and adult victims of human trafficking protection from deportation while they are in the process of applying for a T visa. Additionally, continued presence allows victims to work and receive a broad range of federal and state public benefits while the investigation or prosecution of their trafficker is ongoing, and while the victim files for and awaits adjudication of their T visa application.<sup>221</sup>

Only federal government officials can file continued presence applications on a trafficking victim’s behalf.<sup>222</sup> Thus, CPS should establish relationships with state and local law enforcement who can assist CPS in developing relationships with the federal agency staff authorized to file continued presence applications. This will ensure that when CPS staff

<sup>219</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>220</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>221</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>222</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 9 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

encounter an immigrant child victim of human trafficking, there will already be a system in place to swiftly file a continued presence application for the victim with the assistance of the federal agency.

Those authorized to file continued presence applications include, but is not limited to:

- State, tribal, territorial, and local law enforcement working through their local Homeland Security Investigations (HSI) office;
- Federal Bureau of Investigations (FBI);
- U.S. Department of Diplomatic Security Service (DSS);
- U.S. Attorney’s Offices;
- Civil Rights Division, Criminal Section of the U.S. Department of Justice (DOJ); U.S. Marshals Service; U.S. Department of Labor (DOL);
- Equal Employment Opportunity Commission (EEOC); and
- Another federal law enforcement agency partner.<sup>223</sup>

Certain eligible family members of trafficking victims can also seek protection through “Significant Public Benefit Parole.”<sup>224</sup> Eligible family members include:

- For children under age 21, their spouse, child, parent, or unmarried siblings under the age of 18;
- For adults, their spouse or children; and
- Parents or siblings of a continued presence recipient who are in present danger due to the trafficking victim’s escape from trafficking or cooperation in an investigation or prosecution of trafficking.

Victims can qualify for continued presence even when they have not cooperated with law enforcement, as some victims may have experienced severe trauma that prevents them from being able to assist.<sup>225</sup> However, after victims receive continued presence, which gives them greater access to essential services, victims may be in a better place physically and mentally to assist law enforcement or other government officials conducting investigations related to the child’s trafficker.<sup>226</sup> Continued presence is part of a victim-centered approach that “places equal value on the investigation and prosecution of human traffickers and on the identification and stabilization of victims of human trafficking.”<sup>227</sup> CPS agencies that routinely assist noncitizen child trafficking victims with applying for continued presence will be able to build trust with

<sup>223</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 7-8 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>224</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 14 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>225</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 8 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>226</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 8 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

<sup>227</sup> See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

victim services organizations and other service providers who serve as an important bridge for identifying human trafficking victims and supporting them in healing and accessing justice.<sup>228</sup>

## Public Benefits for VAWA Visa Holders and Applicants

Immigrant CPS clients who are screened and found to be eligible for immigration relief based on abuse or crime victimization become eligible for work authorization and for federal and state funded public benefits as they move through the immigration relief process. The sooner an immigrant abuse victim is screened and referred to an agency with expertise providing legal assistance to immigrant victims of crime and abuse, the sooner they can begin the process through which they gain greater economic stability that comes with work authorization and more access to publically funded benefits and services that provide support for immigrant child victims. This greater access to benefits results in more options that help immigrant survivors of crime and abuse at a lower cost to the immigrant and the local jurisdiction assisting them.

CPS staff need to be aware that there is a broad array of government funded services and assistance that are open to all victims of abuse and crime victimization without regard to the victim's immigration status.<sup>229</sup> Examples of programs open to all without immigration restrictions include, but are not limited to:<sup>230</sup>

- Adult and child protective services
- Emergency shelter and transitional housing
- Legal Services<sup>231</sup>
- Crisis counseling and intervention programs
- Violence and abuse prevention

<sup>228</sup> See *Continued Presence: Temporary Immigration Designation for Victims of Human Trafficking*, U.S. Immigration and Customs Enforcement (hereinafter ICE) (2019), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Pamphlet-2019.pdf>.

<sup>229</sup> DOJ [A.G. Order No. 2353–2001], Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613 (2001), available at <https://niwaplibrary.wcl.american.edu/pubs/protectionlifeorsafetyagreg>; Soraya Fata, Leslye E. Orloff, and Monique Drew, *Access to Programs and Services That Help Immigrant Victims of Sexual Assault and Domestic Violence* (2011), available at <https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims>.

<sup>230</sup> Catherine Longville & Leslye E. Orloff, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status* (May 22, 2014), available at <https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants>; Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang, *Chapter 04.1: Access to Programs and Services That Can Help Battered Immigrants* (July 10, 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch4-1-access-to-services-helpbatteredimm>.

<sup>231</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. § 104 (2005); *National Legal Aid & Defender Association Cornerstone: The Need for Pro Bono Assistance to Unaccompanied Immigrant Children*, Vol. 36, No. 1 (Jan. 2015), available at [https://niwaplibrary.wcl.american.edu/wp-content/uploads/Anti-Abuse-LSC-Reg-Articles-Cornerstone\\_Vol\\_36\\_No\\_1\\_96-Jan-Apr-2015.pdf](https://niwaplibrary.wcl.american.edu/wp-content/uploads/Anti-Abuse-LSC-Reg-Articles-Cornerstone_Vol_36_No_1_96-Jan-Apr-2015.pdf).

- Services for victims of domestic violence, elder abuse, abuse of persons with disabilities, sexual assault, stalking, human trafficking and other crimes
- Soup kitchens, food banks, senior nutrition programs, WIC
- Healthcare from Federally Qualified Health Centers and Community and Migrant Health Centers
- Help from courts, police, prosecutors, file, ambulance, sanitation
- Crime Victims Compensation<sup>232</sup>

As CPS immigrant clients file for immigration relief and their cases are processed, applicants' access to federal and state public benefits will expand beyond the assistance open to all persons without regard to immigration status. Which federal or state funded public benefits an immigrant qualifies for varies based on several factors:<sup>233</sup>

- The state in which the immigrant victim of abuse or crime lives;
- The type of immigration status the immigrant victim has applied for or been granted;
- The stage in the immigration process their case has reached;
- When they first entered the United States;
- Their age;
- Whether they are a person with disabilities; and
- Which federal or state public benefits program(s) they need.

To help CPS workers, courts, victim advocates, and attorneys better understand which public benefits immigrant survivors are eligible to receive and how long it takes to reach the points in the survivor's immigration case benefits increase, NIWAP created a series of public benefits bench cards and timeline tools for cases involving T visa trafficking victims,<sup>234</sup> VAWA self-petitioners,<sup>235</sup> Special Immigrant Juvenile Status children,<sup>236</sup> and U visa victims.<sup>237</sup> Since

<sup>232</sup> Funding through the Victims of Crime Act crime victim's compensation is open to all crime victims without regard to immigration status in all U.S. jurisdictions except Alabama.

<sup>233</sup> Soraya Fata, Leslye E. Orloff, and Monique Drew, *Chapter 16: Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, Empowering Survivors Manual (July 2014), available at <https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims>.

<sup>234</sup> Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *Trafficking Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>; Katelyn Deibler & Leslye E. Orloff, *T Visa Timeline with Background Checks* (June 12, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline>.

<sup>235</sup> Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>; Katelyn Deibler & Leslye E. Orloff, *VAWA Self-Petition Timeline with Background Checks* (June 12, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-timeline>.

<sup>236</sup> Abigail Whitmore & Leslye E. Orloff, *Bench Card: Special Immigrant Juvenile Status Immigration and Public Benefits Eligibility Process* (July 14, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-benefits-eligibility-bench-card>.

<sup>237</sup> Jordan Tacher, Aditi Kumar, Abigail Whitmore, and Leslye E. Orloff, *U Visa Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa->

many CPS immigrant clients could qualify for multiple forms of immigration relief, it is important to screen for all options. It is important that CPS staff always screen for human trafficking,<sup>238</sup> including trafficking occurring within family relationships.<sup>239</sup>

## Access to Public Benefits for VAWA Self Petitioners<sup>240</sup>

Immigrant victims of domestic violence or child abuse who self-petition through VAWA become eligible for a broad range of federal and state public benefits, **even while their application is pending**. These benefits include, but are not limited to, TANF,<sup>241</sup> SSI,<sup>242</sup> heating assistance, SNAP food assistance, SCHIP, Medicaid,<sup>243</sup> TANF-funded childcare, and adoption assistance.<sup>244</sup> After filing the VAWA self-petition, if USCIS expert adjudicators at the HART<sup>245</sup> Service Center believe that the victim would meet all of the requirements if all of the information in the application were true, USCIS will issue a “notice of *prima facie* case.”<sup>246</sup> Victims and their children who receive *prima facie* determinations become “qualified immigrants,” making them generally eligible for federal and state funded public benefits.

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[benefits-benchmark](#); Katelyn Deibler & Leslye E. Orloff, *U Visa Timeline with Background Checks* (Sept. 15, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline>.

<sup>238</sup> *Questions for Identifying Trafficked or Enslaved Persons* (June 2011), available at

<https://niwaplibrary.wcl.american.edu/pubs/questions-for-identifying-trafficked-or-enslaved-persons>.

<sup>239</sup> 3 USCIS-PM B.2, available at <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>.

<sup>240</sup> See Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>.

<sup>241</sup> Benish Anver and Leslye E. Orloff, *Eligibility for State Funded TANF Replacement Programs for Immigrant Crime Victims* (Dec. 15, 2016), available at <https://niwaplibrary.wcl.american.edu/pubs/pb-chart-tanf> (providing a list of states where TANF benefits are available).

<sup>242</sup> For persons who are blind, disabled, or over five years of age with limited income and resources. Immigrants who entered before August 22, 1996 are eligible for Supplemental Security Income (SSI) only if they were qualified immigrants lawfully residing in the United States and were receiving SSI on August 22, 1996. See *Supplemental Security Income (SSI) For Noncitizens*, United States Social Security Administration (Jan. 2023), available at <https://www.ssa.gov/pubs/EN-05-11051.pdf>. For detailed information on immigrant survivors’ limited eligibility for state-funded SSI, see also *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>243</sup> *Bench Card: VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (December 31, 2021) <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>.

<sup>244</sup> TANF, SNAP, and Medicaid are limited to qualified immigrants who either (1) entered before August 22, 1996, or (2) have been qualified immigrants for more than five years.

<sup>245</sup> HART (Humanitarian, Adjustment, Removing Conditions, and Travel Documents) Service Center. Suzanne Monyak, U.S. Citizenship and Immigration Services sets up new virtual service center for Humanitarian Immigration Relief (Roll Call) (March 30, 2023) <https://rollcall.com/2023/03/30/immigration-agency-sets-up-new-virtual-service-center/>

<sup>246</sup> Processing time for *prima facie* determinations runs from 90 months to about 150 days. For a report on DHS case processing times, see Leslye E. Orloff, *National Survey on Timing of Access to Work Authorization by Immigrant Victim VAWA Self-Petitioners and U-Visa Applicants* (Sept. 28, 2011), available at <https://niwaplibrary.wcl.american.edu/pubs/imm-qref-timingaccessworkauthoriz9-28-11>.

There is a 5-year bar (or waiting period) before noncitizens can access means tested federal benefits, which includes those listed above. Whether VAWA self-petitioners can access federal means-tested public during the first five years after obtaining qualified immigrant status varies by state.<sup>247</sup> Many states have opted to provide state-funded access to TANF and Medicaid, and to a lesser extent food stamps and SSI, during the five-year bar to accessing federally funded public benefits.<sup>248</sup> For a full detailed list of the state and federal public benefits and services CPS immigrant clients are eligible to receive in your state, see NIWAP’s *All State Public Benefits Charts and Interactive Public Benefits Map (2022)*.<sup>249</sup> These tools were designed to help CPS workers, judges, victim advocates, and attorneys quickly look up when immigrant children and immigrant parents of abused children will or will not be eligible for any particular public benefit in your state, and to enable the download the legal citations that prove immigrant client eligibility.

Additionally, there are federally funded benefits and services that are generally open to all survivors of abuse and crime victimization without regard to immigration status. These include crime victims’ compensation and victim assistance funded by the Victims of Crime Act (VOCA)<sup>250</sup> and free legal representation from VAWA funded<sup>251</sup> and Legal Services Corporation<sup>252</sup> (LSC) funded agencies.<sup>253</sup> It is also important to emphasize that even prior to filing a self-petition or any other kind of immigration relief, immigrant victims and their children qualify for the same publicly funded benefits and services that are available to undocumented immigrants.<sup>254</sup>

## Access to Public Benefits for Victims of Human Trafficking

<sup>247</sup> Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* at 5 (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>.

<sup>248</sup> For an overview of state-funded public benefits available to VAWA self-petitioners, see *Benefits Map* (Oct. 24, 2022), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits>.

<sup>249</sup> *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>250</sup> See *Victims of Crime Act Assistance (VOCA) for Immigrant Survivors* (Dec. 17, 2020), available at <https://niwaplibrary.wcl.american.edu/voca-for-immigrant-survivors>.

<sup>251</sup> VAWA 2000 TITLE II—STRENGTHENING SERVICES TO VICTIMS OF VIOLENCE SEC. 1201(a). LEGAL ASSISTANCE FOR VICTIMS in Violence Against Women Reauthorization Act of 2000 § 1201(a); Pub. L. 106-386, 114 Stat. 1464 (2000) (codified at 42 U.S.C. § 3796gg (2000)).

<sup>252</sup> See Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. § 104 (2005).

<sup>253</sup> For a list of legal services and victim advocacy programs with experience working with immigrant crime survivors, see *NIWAP’s National Directory*, available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

<sup>254</sup> See *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status* (July 23, 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants>.

T visa recipients or individuals who have received a Bona Fide Determination on a T visa application, or have been granted Continued Presence have access to a substantial number of state and federal benefits. Child victims of human trafficking are also eligible for these benefits with a child eligibility letter from the Office in Trafficking in Persons (OTIP) at the U.S. Department of Health and Human Services.

In all states, trafficking victims who receive T visas or continued presence have greater access to federal and state public benefits<sup>255</sup> as compared to VAWA self-petitioners, U visa recipients and applicants, and children with SIJS.<sup>256</sup> In order to gain greater access to public benefits, OTIP will grant certification and eligibility letters to the trafficking victim. Agencies that grant public benefits must accept this HHS documentation in lieu of immigration documentation to satisfy eligibility requirements.<sup>257</sup> Once the trafficking victim has received this documentation from OTIP, they will have the same access to public benefits as refugees. Noncitizen children with OTIP letters also receive case management services from the federal government which can be very helpful to both the noncitizen trafficked child and to CPS staff assisting the child.<sup>258</sup>

Additionally, children who are granted T visas or bona fide determinations in T visa cases become qualified immigrants, which makes them eligible to continue to receive many public benefits. Some benefits programs may require that the recipient have a social security number; however, if a social security number is required for benefits eligibility (e.g., Public or

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<sup>255</sup> For comprehensive information on benefits available to T visa applicants and holders in all states, see *All State Public Benefits Charts and Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>256</sup> See Jordan Tacher, Aditi Kumar, Abigail Whitmore, and Leslye E. Orloff, *U-Visa Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchmark>; Jordan Tacher, Abigail Whitmore and Leslye E. Orloff, *VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>; see also Danies Enos, Abigail Whitmore, Jordan Tacher, Leslye E. Orloff, and David Stauffer, *Bench Card on Immigrant Crime Victim's and Children's Access to Public Benefits and Services* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/pb-bchcrd-pubbenefits> (Includes information on publicly-funded benefits and services open to all persons without regard to immigration status. These benefits and services are available to help human trafficking victims before they file for and receive HHS certification or eligibility letters as a result of having filed for continued presence or a T visa.).

<sup>257</sup> See *State Letter #01-13: The Trafficking Victims Protection Act of 2000*, U.S. Dep't of Health and Human Services Office of Refugee Resettlement (hereinafter ORR) (May 3, 2001), available at <https://www.acf.hhs.gov/archive/otip/policy-guidance/state-letter-01-13> (last visited Mar. 23, 2023) (not current).

<sup>258</sup> See generally, National Judicial Network Webinar (October 10, 2023) – Identifying Human Trafficking in Domestic Violence Relationships: How OTIP Letters and Certifications Can Enhance Access to Public Benefits and Services for Survivors of Trafficking and Their Children <https://niwaplibrary.wcl.american.edu/dv-trafficking-otip-webinar>; and National Judicial Network Peer-to-Peer Forum – HHS' Office on Trafficking in Persons (OTIP) Answers Questions on Identifying and Reporting Child Trafficking Victims (May 2, 2023) <https://niwaplibrary.wcl.american.edu/njn-otip-may-2-2023>

Assisted Housing,<sup>259</sup> Medicaid, TANF, Food Stamps), the agency must grant the trafficking victim benefits while they are in the process of obtaining a social security number from the Social Security Administration.<sup>260</sup>

Some states provide additional benefits to victims of human trafficking at earlier stages of the application process, before they are eligible for federal benefits. For instance, some states provide some benefits to individuals who have filed or are preparing to file for a T visa or Continued Presence. For a full detailed list of the state and federal public benefits and services CPS immigrant clients are eligible to receive in your state, see NIWAP's *All State Public Benefits Charts and Interactive Public Benefits Map (2022)*.<sup>261</sup> These tools were designed to help CPS workers, judges, victim advocates, and attorneys quickly look up when immigrant children and immigrant parents of abused children will or will not be eligible for any particular public benefit in your state, and to enable the download the legal citations that prove immigrant client eligibility.

### Access to Public Benefits for Special Immigrant Juvenile Status Children:<sup>262</sup>

Immigrant children who suffered abuse, abandonment, neglect, or similar maltreatment as defined by state law committed by one of the child's parents are eligible to file for Special Immigrant Juvenile Status (SIJS).<sup>263</sup> In 31 states, children who file for SIJS are immediately eligible to purchase health care insurance through the state health care exchanges and receive health care subsidies as lawfully present immigrant children. This eligibility is faster than T visa applicant and VAWA self-petitioner children and can be similar in terms of timeliness of access to what child trafficking victims receive through OTIP child eligibility letters and trafficking victims granted continued presence.

However, unlike children who are identified as human trafficking victims and receive OTIP child eligibility letters, SIJS children's eligibility is usually solely for health care benefits

<sup>259</sup> See Limayli Huguet & Leslye E. Orloff, *Obtaining Non-work Social Security Numbers Needed by VAWA Self-Petitioners to Maintain Public and Assisted Housing (Section 214 Housing)* (Nov. 7, 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/non-work-ssns-ava-self-petitioners>.

<sup>260</sup> See *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status, and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, Dep't of Health and Human Services (July 26, 2013), available at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/national-origin/tri-agency/index.html> ("Under Medicaid, TANF, and Food Stamps, family members who are applicants, and who do not have SSNs, must apply for one, but the state may not delay, deny or discontinue assistance pending the issuance of their SSNs. State and local agencies also must assist applicants to apply for SSNs.").

<sup>261</sup> *All State Public Benefits Charts and Interactive Public Benefits Map (2022)*, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>262</sup> Abigail Whitmore & Leslye E. Orloff, *Bench Card: Special Immigrant Juvenile Status Immigration and Public Benefits Eligibility Process* (July 14, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-benefits-eligibility-bench-card>.

<sup>263</sup> INA § 101(a)(27)(J); see also *Special Immigrant Juvenile Status (SIJS) Bench Book Table of Contents*, available at <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents> (last visited Sept. 26, 2023).



and for many SIJS eligible children this subsidized health care eligibility ends in most states when the child turns age 19. In order to continue to be eligible to purchase health care on the exchanges and to receive health care subsidies after the child turns 19, SIJS children will have had to have gained lawful permanent residence through the SIJS program and will have to have been a lawful permanent resident for 5 years before the child turns age 19.<sup>264</sup>

Additionally, with regard to public benefits other than rapid healthcare access, including post-educational grants and loans, housing, and food stamps through SNAP, children who receive OTIP child eligibility letters, file for T visas, or are VAWA self-petitioners receive greater access to state and federally funded public benefits than do SIJS children.

For information on additional benefits provided at the state level, please see NIWAP's *All State Public Benefits Charts and Interactive Public Benefits Map (2022)*.<sup>265</sup> These tools were designed to help CPS workers, judges, victim advocates, and attorneys quickly look up when immigrant children and immigrant parents of abused children will or will not be eligible for any particular public benefit in your state, and to enable the download the legal citations that prove immigrant client eligibility.

## U Visa Crime Victims:<sup>266</sup>

Immigrant victims of domestic violence, elder abuse, sexual assault, stalking, kidnapping, felonious assault, extortion, human trafficking, and other U visa listed criminal activities will be eligible for a U visa when they assist with CPS investigations. U visa victims have less access to federal and state funded public benefits than human trafficking victims and SIJS and VAWA eligible victims. It can take up to 5 years for U visa victims to be granted bona fide determinations, which provide protection from deportation through deferred action and work authorization. U visa victims with bona fide determinations are eligible to purchase health insurance on the exchanges, get drivers' licenses and state issued IDs, and in some states qualify for additional state funded public benefits. However, U visa victims in most states only qualify for state or federally funded benefits 5 years after the U visa attains lawful permanent residence.<sup>267</sup>

<sup>264</sup> See Leslye Orloff & Axelle Pesme, State-Funded Public Benefits Comparison Chart (June 29, 2022, updated July 7, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/state-benefits-comparison-chart> (Comparing states offering lawful permanent resident adults, including SIJS children, access to subsidized health care and TANF funded cash assistance.)

<sup>265</sup> *All State Public Benefits Charts and Interactive Public Benefits Map (2022)*, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>266</sup> Jordan Tacher, Aditi Kumar, Abigail Whitmore, and Leslye E. Orloff, *U Visa Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchmark>.

<sup>267</sup> As of March 2023, the waiting time before U visas will become available is approximately 19.5 years for cases filed in 2023. Only 10,000 U visas can be granted per year, per statutory limits, and there are 195,619 pending cases. Thus, U visa applicants will receive their U visas approximately 19.5 years after filing, and must be in U visa

It is important to note that many U visa eligible immigrant victims of domestic violence, child abuse, and/or human trafficking, and/or the children who are included in their parent’s U visa applications, may also qualify to apply for immigration benefits through VAWA, SIJS, or a T visa. For these potential U visa applicants, access to public benefits can be a significant factor for an immigrant survivor in determining which form(s) of relief to pursue.<sup>268</sup> Noncitizen child abuse victims should be screened for immigration relief eligibility as early as possible by CPS staff so that CPS can issue U visa certifications and T visa declarations. Additionally, children should be urgently referred to an agency in the state with expertise on crime and abuse victim-based forms of immigration relief.<sup>269</sup>

Since access to federal and state public benefits and services varies by state and by public benefits program, NIWAP has developed a set of tools that will help CPS staff, victim advocates, attorneys, social workers, and other service providers working with immigrant child victims identify all of the federal and state funded public benefits the abused immigrant qualifies to receive in your state. These tools include an interactive public benefits map,<sup>270</sup> state-by-state screening tools,<sup>271</sup> and state-by state detailed public benefits charts<sup>272</sup> that contain all of the legal citations needed to prove an immigrant survivor’s public benefits eligibility in the state. NIWAP has also published a helpful guide on how to use these state public benefits maps and charts<sup>273</sup> and can provide case specific technical assistance to CPS staff and other professionals on immigrant survivors’ legal rights to access federal and state public benefits.<sup>274</sup> *For helpful tools that promote better understanding of the eligibility of immigrant victims of child abuse for federal and state funded public benefits, see Appendix A and Appendix C.*

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status for 3 years before they are eligible to apply for lawful permanent residence. USCIS, *Immigration and Citizenship Data*, available at [https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic\\_id%5B%5D=33695&ddt\\_mon=&ddt\\_yr=&query=&items\\_per\\_page=10](https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic_id%5B%5D=33695&ddt_mon=&ddt_yr=&query=&items_per_page=10) (last visited Sept. 26, 2023).

<sup>268</sup> To determine whether your client might qualify for one of these forms of immigration relief in addition to the U-visa, see Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *Trafficking Victim Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>; Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>. For a chart comparing these forms of relief and their eligibility requirements, see Krisztina E. Sbazzo, Spencer Cantrell, Abigail Whitmore, and Leslye E. Orloff, *Comparison Chart of U visa, T visa, Violence Against Women Act (VAWA) Self-Petition, Special Immigrant Juvenile Status (SIJS), and Deferred Action for Childhood Arrivals (DACA)* (Dec. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca>.

<sup>269</sup> To locate a program with expertise on immigration relief for immigrant victims of crime and abuse see, NIWAP Directory <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>

<sup>270</sup> *Interactive Public Benefits Map*, available at <http://niwaplibrary.wcl.american.edu/interactive-public-benefits-map/>.

<sup>271</sup> *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>272</sup> *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>273</sup> *Guide-to-the-Public-Benefits-Map* (Oct. 9, 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/guide-to-the-public-benefits-map>.

<sup>274</sup> For technical assistance email [info@niwap.org](mailto:info@niwap.org) or call (202) 274-4457.

## The U and T Visa Application Process

USCIS has sole jurisdiction over all petitions for U and T visas.<sup>275</sup> A person seeking a U visa must submit, by mail, 1) Form I-918, “Petition for U Nonimmigrant Status,” 2) all supporting documents establishing eligibility, and 3) certification Form I-918B.<sup>276</sup> Form I-918B must be signed by a qualified certifier, such as a CPS director or supervisor, who has been designated the authority to sign U visa certifications.<sup>277</sup> The date of the certification must be within the six months immediately preceding the filing of the U visa application.<sup>278</sup>

A person seeking a T visa must submit a T visa application (Form I-914), “Application for T Nonimmigrant Status,” and supporting documents establishing eligibility.<sup>279</sup> A T visa declaration (Form I-914 Supplement B) may be submitted with the application, but is not required evidence; however, it does provide helpful evidence of the victimization, trafficking, and assistance offered by the victim.<sup>280</sup>

All U and T visa applications are filed with specialized sections of USCIS whose adjudicators have specialized training on domestic violence, sexual assault, child abuse, and human trafficking. This specialized unit is trained to adjudicate cases involving crime victims and is the only adjudication unit within DHS that can grant U visas or T visas.<sup>281</sup>

By preparing and signing the U visa certification (Form I-918 Supplement B) or the T visa declaration (Form I-914 Supplement B), *a certifier is not conferring legal immigration*

<sup>275</sup> 72 Fed. Reg. 53014, 53022 (2007); 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016)).

<sup>276</sup> “Without a completed and signed U visa certification, the victim will not qualify for a U visa, as it is a required part of the application, and there is no exception to this requirement. However, by signing a U visa certification, the certifying agency or official is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. USCIS determines the victim’s credibility and whether to approve the petition based on the totality of the evidence and circumstances of each case.” *DHS U and T Visa Resource Guide* at 6 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

<sup>277</sup> The U visa implementing regulations require that the certifying official be the head of the certifying agency or a supervisor specifically designated by the head of the certifying agency to issue U visa certifications. *See* 8 C.F.R. §§ 214.14(a)(3) & 214.14(c)(2)(i).

<sup>278</sup> “Federal, state, local, tribal, or territorial judges may sign U visa certifications. Delegation of authority is not applicable to or required of certifications by judges.” *DHS U and T Visa Resource Guide* at 8; *see also* 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)) (2007)).

<sup>279</sup> 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016)).

<sup>280</sup> 81 Fed. Reg. 92266, 92276 (2016).

<sup>281</sup> Even where a case is before an immigration judge, adjudication for visas may still only be conducted by the USCIS Vermont Service Center.

*status upon a noncitizen applicant or making a determination of the applicant's eligibility for a U or T visa.*<sup>282</sup>

For the U visa, the certification is a mandatory part of the evidence the victim must submit to USCIS to prove eligibility. By signing the certification, the certifying agency verifies that the individual is a victim of a qualifying criminal activity and that the victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.<sup>283</sup> In addition to the certification, the applicant must demonstrate that they suffered substantial mental or physical abuse<sup>284</sup> as a result of having been a victim of a qualifying criminal activity. The victim should also provide a statement describing the facts of the victimization in their own words. However, the certifier is not required to assess whether the victim actually suffered substantial mental and physical abuse in order to sign the certification.<sup>285</sup>

For the T visa, the declaration is not mandatory and is one type of evidence that the T visa applicant can submit that provides evidence of victimization and the assistance the trafficking victim has offered, provided, or is providing to government officials detecting, investigating, or prosecuting the human trafficking.<sup>286</sup> The declaration is limited to helping demonstrate victimization and compliance with reasonable requests.<sup>287</sup> Even if the declaration, along with other evidence the applicant submits, successfully demonstrate these two prongs, the applicant must meet several other requirements, including demonstrating that the trafficking victim would suffer extreme hardship involving unusual and severe harm upon removal.<sup>288</sup>

Additionally, to be granted a U or T visa, victims are required to prove that they are eligible for admission<sup>289</sup> to the United States. If the immigrant victim cannot prove inadmissibility, DHS may grant a discretionary waiver as authorized by the U and T visa statutes.<sup>290</sup> In making this determination, DHS will consider the totality of the victim's case and

<sup>282</sup> *DHS U Visa Law Enforcement Certification Resource Guide* (January, 2012), available at [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visa\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visa_certification_guide.pdf/view) (last visited Feb. 26, 2014).

<sup>283</sup> See Janell Ross, *Metro Nashville Police Block Visas for Crime Victims, Witnesses*, *The Tennessean* (Apr. 18, 2010), available at <http://www.tennessean.com/article/20100418/NEWS01/4180357/1001/NEWS> (quoting DHS spokeswomen 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>284</sup> *DHS U and T Visa Resource Guide* at 24 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015> (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>285</sup> *DHS U and T Visa Resource Guide* at 6 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

<sup>286</sup> 72 Fed. Reg. 92266, 92272 (2016).

<sup>287</sup> 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)) (2016).

<sup>288</sup> 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

<sup>289</sup> See INA § 212; 8 U.S.C. § 1182 (grounds of inadmissibility).

<sup>290</sup> See Limayli Hugué et. al., *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Dec. 26, 2022), available at

circumstances.<sup>291</sup> *For an overview of the full U visa and T visa process and the role that U visa certifications and T visa declarations play in the full U and T visa application and adjudication process, see the charts located in Appendix D.*<sup>292</sup>

## List of Appendices

This Manual includes several appendices that provide additional information on VAWA Visas, as well as resources that can be posted in an office or isolated for field use. Please find a list of the appendices related to VAWA visas below.

**Appendix A:** Compiled Quick Reference Guides for Field Use

**Appendix B:** U and T Visa Protection for Family Members, Charts for Wall Display

**Appendix C:** Access to Public Benefits for Immigrant Survivors, Charts for Wall Display

**Appendix D:** U and T Visa Application Flowchart for Wall Display

**Appendix E:** U Visa Certification and T Visa Declaration FAQs

**Appendix F:** U Visa “Helpfulness” Checklist

**Appendix G:** Best Practices Guide for CPS Workers Working with Noncitizen Families

**Appendix H:** U Visa Statutory and Regulatory Background

**Appendix I:** T Visa Statutory and Regulatory Background

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<https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs> (This chart also tracks inadmissibility exemptions and waivers available for each of the forms of crime victim based immigration relief, including the U visa.)

<sup>291</sup> "For all U visas petitioners and their qualifying family members, USCIS conducts a thorough background investigation including a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS also reviews the petitioner's immigration records to assess whether any inadmissibility issue exist, such as the petitioner's criminal history, immigration violations, or any security concerns. The results of these checks, as well as any evidence that certifying officials and immigration authorities possess, may be considered when determining eligibility for a U visa." *DHS U and T Visa Resource Guide* at 5.

<sup>292</sup> Additionally, for a comparison of the U visa and the T visa, *see supra* Appendix J. For a comparison of the U visa and VAWA forms of relief, *see supra* Appendix K.

## Kinship Care Placements: Impact on Access to Immigration Relief

This section provides detailed information on how CPS should approach kinship care arrangements for abused noncitizen children. Careful attention to kinship placements is especially important for noncitizen children, because of their potential immigration consequences. With whom the child resides can be a significant factor that can impact a child’s immigration relief options and any pending immigration applications.

CPS workers must also be aware of the immigration-specific relationships between family members. For instance, a child in an abusive home may be relying on the abusive parent for immigration status. The abusive parent may control the child victim’s immigration status application or that of a child’s noncitizen parent.<sup>293</sup> When this occurs, the abusive parent may be using their control over the child’s and/or their parent’s immigration status to prevent cooperation with CPS, law enforcement investigations, and/or the ability of the victims to obtain or enforce a civil protection order.

The forms of immigration relief for immigrant victims of domestic violence, child abuse, trafficking, and other forms of crime victimization were created in VAWA and the TVPA to provide immigrant victims with a path to lawful permanent residence and citizenship that could not be controlled by their abusers. This is one reason why it is essential to routinely screen noncitizen children for VAWA, T visa, SIJS, and U visa immigration relief, as well as the noncitizen parents of both citizen and noncitizen child victims for VAWA, T visa, and U visa immigration relief.

However, since children can quickly age out of qualification for immigration relief, it is vital that CPS know how to identify immigrant children who are eligible for immigration relief as early in the process of CPS’ work with the child as possible. For these reasons, CPS staff need to understand their specific role in aiding noncitizen child victims who live in a range of different types of living situations obtain eligible relief, especially those in non-permanent kinship<sup>294</sup> care placements. This section will walk CPS staff through what to do if they encounter an immigrant child victim in a kinship care placement.

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<sup>293</sup> To look up under immigration law when one family member can exert control over the immigration status of a child or the child’s non-abusive parent, see *Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children* (Dec. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus>.

<sup>294</sup> The term “kin” encompasses blood relatives, relatives by marriage, and those who are unrelated but are considered like family to the children due to their close emotional relationship. *Kinship care and the child welfare system*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 2 (May 2022), available at [https://www.childwelfare.gov/pubpdfs/f\\_kinshi.pdf](https://www.childwelfare.gov/pubpdfs/f_kinshi.pdf).

## Types of Kinship Care

The Children’s Bureau, an office of the Administration for Children & Families under the Department of Health & Human Services, has divided kinship care into three different categories:<sup>295</sup>

- Voluntary kinship care,
- Formal kinship care, and
- Informal kinship care.

Depending on which category the immigrant child victim falls into, the role of CPS staff in helping them access immigration relief will differ. It is possible that CPS will be involved earlier in the process when placement decisions are being made, or they may begin working with a child victim who is already in a kinship care placement. Regardless of CPS’ level of involvement in the placement decisions of the child, CPS staff are able to play an important role in helping the child obtain lawful immigration status and expanded access to government funded benefits and services.

## Voluntary Kinship Care

Voluntary kinship care refers to situations where the child is living with a family member and the child welfare agency is involved. However, the child welfare agency does not take responsibility for the child and the child never comes into state custody. This process is sometimes called “diversion,” where the child welfare agency arranges for a kinship placement without involving the courts.<sup>296</sup> The child welfare agency may choose not to involve the courts after determining that the child is in a safe living situation and no further oversight or monitoring by the agency is needed. This type of placement can allow the children to remain in the legal custody of their parents; or, it is also possible that the child’s parents signed over temporary guardianship to the family member kinship caregiver, which gives the kinship caregiver more decision-making power with respect to the child.<sup>297</sup>

Once a child becomes known to CPS, and that child is not under the legal custody and oversight responsibility of the state, any placements with kinship caregivers will be considered

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<sup>295</sup> *Kinship care and the child welfare system*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 4 (May 2022), available at [https://www.childwelfare.gov/pubpdfs/f\\_kinshi.pdf](https://www.childwelfare.gov/pubpdfs/f_kinshi.pdf).

<sup>296</sup> *Working With Kinship Caregivers*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 3 (June 2018), available at <https://www.childwelfare.gov/pubPDFs/kinship.pdf>.

<sup>297</sup> *Supporting Caregivers Through Kinship Navigator Programs*, Children’s Bureau Express, Vol. 22, No. 8 (Sept. 2021), available at <https://cbexpress.acf.hhs.gov/article/2021/september/supporting-caregivers-through-kinship-navigator-programs/da3844031b92c150517620efe54bcbe5>; see also *Working With Kinship Caregivers*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 3 (June 2018), available at <https://www.childwelfare.gov/pubPDFs/kinship.pdf>.

“voluntary.”<sup>298</sup> The child may already be placed with kin, or, if not, CPS can arrange for a placement with a family member without any court involvement.<sup>299</sup> Voluntary placements are typically utilized by child welfare agencies when the risk to the child suspected of abuse is not high enough to require an official case to be opened.<sup>300</sup> However, this does not mean that CPS cannot still formally open a case for the child. Some local agencies will open a case and provide services even in situations of voluntary placements, depending on the availability of resources.<sup>301</sup>

When CPS encounters an immigrant child they suspect has been abused or neglected, but do not have enough evidence to necessitate case opening and court involvement, CPS staff should still conduct a screening for the noncitizen child’s eligibility for VAWA, T visa, U visa, or SIJS immigration relief. If CPS believes that the child could be eligible for one of these forms of victimization-based immigration relief, they should arrange for the child to receive legal representation through an organization in the state with expertise on VAWA, T visa, U visa, and SIJS immigration relief.<sup>302</sup> Additionally, CPS should sign U visa certifications or T visa declarations based the detection of child abuse, domestic violence, human trafficking, or other crime victimization the child suffered. CPS can sign certifications based on detection whether or not CPS ultimately decides to formally make the child a CPS client (if CPS has not already done so).

If the child was a victim of child abuse, abandonment, neglect, or similar harm defined by state law, CPS should consider opening a case for the child and seeking formal placement of the child, which could be with the person who is currently providing voluntary kinship care for the child. CPS would request that the court grant custody, guardianship, or placement of the child and request SIJS judicial determinations from a state court judge which will enable the immigrant victim child to file for SIJS immigration protections. When CPS decides not to open a formal case, CPS may also be able to help the child’s voluntary kinship care providers obtain custody or guardianship of the child from a state court with an order that contains the findings of fact and conclusions of law included in a judicial determination needed for the child to be eligible to file for SIJS immigration relief.

<sup>298</sup> *Working With Kinship Caregivers*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 3 (June 2018), available at <https://www.childwelfare.gov/pubPDFs/kinship.pdf>.

<sup>299</sup> *Working With Kinship Caregivers*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 3 (June 2018), available at <https://www.childwelfare.gov/pubPDFs/kinship.pdf>.

<sup>300</sup> “Voluntary placements occur when there is not enough evidence for legal removal of the child or where the abuse is difficult to prove but the agency still has concerns about the situation.” Karin Malm & Rob Green, *When Child Welfare Agencies Rely on Voluntary Kinship Care Placements*, The Urban Institute, Series A, No. A-61 at 2 (Apr. 2003), available at <https://www.urban.org/sites/default/files/publication/58911/310772-When-Child-Welfare-Agencies-Rely-on-Voluntary-Kinship-Placements.PDF>.

<sup>301</sup> Karin Malm & Rob Green, *When Child Welfare Agencies Rely on Voluntary Kinship Care Placements*, The Urban Institute, Series A, No. A-61 at 3 (Apr. 2003), available at <https://www.urban.org/sites/default/files/publication/58911/310772-When-Child-Welfare-Agencies-Rely-on-Voluntary-Kinship-Placements.PDF>.

<sup>302</sup> To locate programs in each state with expertise serving immigrant victims of crime and abuse including children and their immigrant parents, see *Directory of Programs With Experience Serving Immigrant Victims* (2023), available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.



Once a child becomes known to CPS, and that child is not under the legal custody and oversight responsibility of the state, any placements with kinship caregivers will be considered “voluntary.”<sup>303</sup> The child may already be placed with kin, or, if not, CPS can arrange for a placement with a family member without any court involvement.<sup>304</sup> Voluntary placements are typically utilized by child welfare agencies when the risk to the child suspected of abuse is not high enough to require an official case to be opened.<sup>305</sup> However, this does not mean that CPS cannot still formally open a case for the child. Some local agencies will open a case and provide services even in situations of voluntary placements, depending on the availability of resources.<sup>306</sup>

## CPS’s Role in Voluntary Kinship Care Cases Involving Abused Noncitizens

CPS Role: Voluntary Kinship Care			
U Visa <i>Victim of Crime</i> <i>*Including Battering or Extreme Cruelty</i>	T Visa <i>Victim of Trafficking</i>	SIJS <i>Victim of Abuse, Neglect, Abandonment</i>	VAWA Self-Petition <i>Victim of Battery or Extreme Cruelty</i>
If CPS detects that an immigrant child has been a victim of child abuse, human trafficking, or one or more of the listed qualifying U visa criminal activities, CPS should then sign a U visa certification for the child based on the child’s or their parent’s, guardian’s, or next friend’s helpfulness to CPS in detecting the criminal activity. CPS may also	If CPS has concerns that a noncitizen child may be a victim of labor or sex trafficking, CPS should: <ul style="list-style-type: none"> <li>• File a request for assistance with OTIP</li> <li>• Seek continued presence for the child trafficking victim by asking a federal government agency to file for continued presence on the child’s behalf<sup>307</sup></li> <li>• Sign a T visa declaration.</li> </ul>	CPS should formally make the child a client (if they have not already) and help the voluntary kinship caregiver seek court orders that officially appoint them as the child’s guardian or custodian. CPS attorneys should ask the judge to include SIJS judicial determinations (findings of fact and	In the screening process, CPS should determine whether the child suffered battering or extreme cruelty (child abuse or neglect) perpetrated by the child’s U.S. citizen or lawful permanent resident parent, stepparent, or spouse. VAWA eligible child

<sup>303</sup> *Working With Kinship Caregivers*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 3 (June 2018), available at <https://www.childwelfare.gov/pubPDFs/kinship.pdf>.

<sup>304</sup> *Working With Kinship Caregivers*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 3 (June 2018), available at <https://www.childwelfare.gov/pubPDFs/kinship.pdf>.

<sup>305</sup> “Voluntary placements occur when there is not enough evidence for legal removal of the child or where the abuse is difficult to prove but the agency still has concerns about the situation.” Karin Malm & Rob Green, *When Child Welfare Agencies Rely on Voluntary Kinship Care Placements*, The Urban Institute, Series A, No. A-61 at 2 (Apr. 2003), available at <https://www.urban.org/sites/default/files/publication/58911/310772-When-Child-Welfare-Agencies-Rely-on-Voluntary-Kinship-Placements.PDF>.

<sup>306</sup> Karin Malm & Rob Green, *When Child Welfare Agencies Rely on Voluntary Kinship Care Placements*, The Urban Institute, Series A, No. A-61 at 3 (Apr. 2003), available at <https://www.urban.org/sites/default/files/publication/58911/310772-When-Child-Welfare-Agencies-Rely-on-Voluntary-Kinship-Placements.PDF>.

<sup>307</sup> For details on the federal government agencies authorized to file continued presence requests on behalf of human trafficking victims, see U.S. Immigration & Customs Enforcement (ICE) Center for Countering Human Trafficking, *Continued Presence Resource Guide* (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

decide to may officially screen the child and formally make the child a client (if they have not already) and sign a U visa certification on that basis.	All three of these actions may be taken for a child in voluntary kinship care case whom CPS believes is or may be a victim of human trafficking. CPS may also officially screen the child and formally make the child a client (if they have not already) and sign a T visa declaration for the child.	conclusions of law) in the state court judge’s order. CPS should assist the kinship care relative in obtaining these court orders even when CPS does not formally make the child a client.	victims should be referred to counsel with expertise serving immigrant victims of crime and abuse and CPS can assist in providing the child helpful evidence in support of the self-petition.
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## Formal Kinship Care

Formal kinship care refers to cases in which children are placed in the legal custody of the state by a judge and the child welfare agency then finds a placement for the child.<sup>308</sup> This means that the child welfare agency, acting on behalf of the state, has legal custody of the children, while the kinship caregivers have physical custody.<sup>309</sup> Formal kinship care can also be thought of as “relative foster care,” where children are formally removed from their parents’ custody and placed into the physical custody of kin, which includes blood relatives and individuals who are similarly situated to that of a family member.<sup>310</sup> In formal kinship care, the child’s caregivers may not be fully licensed<sup>311</sup> foster families, as required for nonrelative foster care caregivers. Formal kinship caregivers are not required to be licensed; however, these caregivers may not have full access to the benefits and financial assistance available to formal, fully licensed foster family caregivers.<sup>312</sup>

When a child is in formal kinship care, CPS will have been granted legal custody of the child by a court. At the same time that a court is placing or has placed a noncitizen child in CPS’ legal custody, CPS attorneys and staff should request that the state court issue the noncitizen child the SIJS judicial determinations necessary to file for SIJS immigration relief. CPS should routinely seek SIJS judicial determinations in all cases involving noncitizen children who have been abused, abandoned, or neglected by one or both of their parents whom courts place in the

<sup>308</sup> *Working With Kinship Caregivers*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 3 (June 2018), available at <https://www.childwelfare.gov/pubPDFs/kinship.pdf>.

<sup>309</sup> *Kinship care and the child welfare system*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 5 (May 2022), available at [https://www.childwelfare.gov/pubpdfs/f\\_kinshi.pdf](https://www.childwelfare.gov/pubpdfs/f_kinshi.pdf).

<sup>310</sup> *Supporting Caregivers Through Kinship Navigator Programs*, Children’s Bureau Express, Vol. 22, No. 8 (Sept. 2021), available at <https://cbexpress.acf.hhs.gov/article/2021/september/supporting-caregivers-through-kinship-navigator-programs/da3844031b92c150517620efe54bc5>.

<sup>311</sup> “Federal law does not prohibit individuals with undocumented immigration status from becoming either licensed or unlicensed foster care providers.” *Immigrant Caregivers: The Implications of Immigration Status on Foster Care Licensure*, American Bar Association Center on Children and the Law at 1 (Sept. 2022), available at [https://www.americanbar.org/groups/public\\_interest/child\\_law/project-areas/immigration/](https://www.americanbar.org/groups/public_interest/child_law/project-areas/immigration/).

<sup>312</sup> *Kinship care and the child welfare system*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 5 (May 2022), available at [https://www.childwelfare.gov/pubpdfs/f\\_kinshi.pdf](https://www.childwelfare.gov/pubpdfs/f_kinshi.pdf).

care of CPS. If children were previously placed in CPS custody, CPS attorneys should expeditiously request that the court amend its orders to include the SIJS judicial determinations.<sup>313</sup>

Similarly, when CPS is granted custody of a child and places the child in formal kinship care, CPS will have opened an official case for the child and will be able to attest to the child’s victimization and the child’s, their parent’s, guardian’s, or next friend’s helpfulness in the detection, investigation, prosecution, conviction, or sentencing of the criminal activities, family violence, child abuse, or human trafficking that the child suffered. On this basis, CPS should sign U visa certifications and T visa declarations for the immigrant child or citizen and/or the immigrant child’s immigrant, protective parent.

### CPS’s Role in Formal Kinship Care Cases Involving Abused Noncitizens

<b>CPS Role: Formal Kinship Care</b>			
<b>U Visa</b> <i>Victim of Crime</i> <i>*Including Battering or Extreme Cruelty</i>	<b>T Visa</b> <i>Victim of Trafficking</i>	<b>SIJS</b> <i>Victim of Abuse, Neglect, Abandonment</i>	<b>VAWA Self-Petition</b> <i>Victim of Battery or Extreme Cruelty</i>
If CPS detects that an immigrant child has been a victim of child abuse, human trafficking, or one or more of the listed qualifying U visa criminal activities, CPS should then sign a U visa certification for the child based on the child’s or their parent’s, guardian’s, or next friend’s helpfulness to CPS in detecting the criminal activity.	If CPS has concerns that a noncitizen child may be a victim of labor or sex trafficking, CPS should: <ul style="list-style-type: none"> <li>• File a request for assistance with OTIP</li> <li>• Seek continued presence for the child trafficking victim by asking a federal government agency to file for continued presence on the child’s behalf<sup>314</sup></li> <li>• Sign a T visa declaration.</li> </ul>	In the same court case in which CPS formally asks that a court grant the state legal custody or placement of an immigrant child, CPS should routinely ask the court to grant the child SIJS judicial determinations (findings of fact and conclusions of law) in any orders the state court issues. These court orders can name formal kinship caregiver as the placement for the child in the court’s orders.	In the screening process, CPS should determine whether the child suffered battering or extreme cruelty (child abuse or neglect) perpetrated by the child’s U.S. citizen or lawful permanent resident parent, stepparent, or spouse. VAWA eligible child victims should be referred to counsel with expertise serving immigrant victims of crime and abuse and CPS can assist in providing the child helpful evidence in

<sup>313</sup> See full discussion in this Toolkit of Special Immigrant Juvenile Status (SIJS): Relief for Abused, Abandoned, and Neglected Immigrant Children.

<sup>314</sup> For details on the federal government agencies authorized to file continued presence requests on behalf of human trafficking victims, see U.S. Immigration & Customs Enforcement (ICE) Center for Countering Human Trafficking, *Continued Presence Resource Guide* (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

	All three of these actions may be taken for a child in formal kinship care case whom CPS believes is or may be a victim of human trafficking.		support of the self-petition.
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## Informal Kinship Care

Informal kinship care is another form of kinship care that refers to situations where the child is living with kin due to an arrangement made by their parent or legal guardian without any involvement from CPS or the state court.<sup>315</sup> The family members providing kinship caregiving in this situation will not have legal custody of the child, only physical custody. In immigrant communities parents are encouraged to set up powers of attorney and to appoint temporary guardians who will care for children should an immigrant parent be detained, deported, or should something else happen to the parent.<sup>316</sup> So long as the child’s living situation remains safe, there may not be a need for CPS to intervene and the child may not even come to the attention of CPS.

CPS staff, as experts in child welfare, may be involved in coalition work and in partnerships in their communities with schools, child advocates, legal services, the courts, and community, faith-based, culturally specific, and/or immigrant serving organizations that are supporting families offering informal kinship care to child family members. This involvement provides an opportunity for CPS to play a leadership role in educating these organizations about immigration relief available to abused immigrant children and immigrant, non-abusive parents of abused children. In this coalition work, CPS staff can encourage families providing informal kinship care for abused immigrant children to take steps that will result in attaining legal immigration status for the children in their care. CPS can also connect collaborating organizations and families with legal services programs in the state who have expertise in serving immigrant victims of crime and abuse.<sup>317</sup> When these partner agencies know about CPS’ practices of signing U visa certifications and T visa declarations and helping immigrant children secure SIJS judicial determinations, this can play an important role in CPS efforts to build trust with the immigrant communities CPS serves.

CPS may also encounter informal kinship care arrangements in cases CPS is investigating. In these cases, CPS should engage in fact finding to determine if the child qualifies for immigration relief due to past abuse, which might have led to the informal kinship placement.

<sup>315</sup> *Kinship care and the child welfare system*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 4 (May 2022), available at [https://www.childwelfare.gov/pubpdfs/f\\_kinshi.pdf](https://www.childwelfare.gov/pubpdfs/f_kinshi.pdf).

<sup>316</sup> Leslye Orloff, *Detention and Termination of Parental Rights Tool Kit* (Oct. 2012), available at <https://niwaplibrary.wcl.american.edu/pubs/terminationofparentalrightsindetention>.

<sup>317</sup> For a list of legal services and victim advocacy programs with experience working with immigrant crime survivors, see *Directory of Programs With Experience Serving Immigrant Victims* (2023), available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

As soon as the child, the child’s parent, the child’s guardian, or the child’s next friend provides information or assists in any way in the CPS case or investigation without regard to and without waiting for the outcome of the CPS case, CPS can sign U visa certifications. For immigrant children who may be victims of sex or labor trafficking, CPS can sign T visa declarations, help the child file for continued presence, and file requests for assistance from OTIP on the child’s behalf.

## CPS’s Role in Informal Kinship Care Cases Involving Abused Noncitizens

<b>CPS Role: Informal Kinship Care</b>			
<b>U Visa</b> <i>Victim of Crime</i> <i>*Including Battering or Extreme Cruelty</i>	<b>T Visa</b> <i>Victim of Trafficking</i>	<b>SIJS</b> <i>Victim of Abuse, Neglect, Abandonment</i>	<b>VAWA Self-Petition</b> <i>Victim of Battery or Extreme Cruelty</i>
CPS should collaborate with agencies supporting families providing informal kinship care to educate them about immigration relief for victims, including identifying and making referrals to local programs with this expertise. When CPS encounters families providing informal kinship care to immigrant children CPS should engage in fact finding to determine if the child qualifies for immigration relief due to past abuse, which might have led to the informal kinship placement.	CPS should collaborate with agencies supporting families providing informal kinship care to educate them about immigration relief for trafficking victims including local programs serving trafficking victims. When CPS encounters families providing informal kinship care to immigrant children CPS should engage in fact finding to determine if the child qualifies for immigration relief due to human trafficking, which might have led to the informal kinship placement. If CPS has concerns that a noncitizen child may be a victim of labor or sex trafficking, CPS should: <sup>318</sup> <ul style="list-style-type: none"> <li>• File a request for assistance with OTIP</li> <li>• Seek continued presence for the trafficking victim child</li> </ul>	CPS should collaborate with agencies supporting families providing informal kinship care to educate them about immigration relief for victims including local programs with this expertise. CPS should also encourage the non-abusive custodian to pursue a court order from a state court granting them legal custody, guardianship, or other formal placement and request that the court include in the court order SIJS judicial determinations on the child’s behalf. When CPS encounters families providing informal kinship care to immigrant children CPS should engage in fact finding to	CPS should collaborate with agencies supporting families providing informal kinship care to educate them about immigration relief for victims of child abuse and domestic violence perpetrated by a U.S. citizen or lawful permanent resident parent, stepparent of spouse, including local programs with expertise serving VAWA self-petitioners. When CPS encounters families providing informal kinship care to immigrant children CPS should engage in fact finding to determine if the child qualifies for immigration relief due to past child abuse or domestic violence, which might have led

<sup>318</sup> *Cross-Reporting Among Responders to Child Abuse and Neglect*, U.S. Dep’t of Health and Human Servs., Children’s Bureau at 2 (June 2016), available at <https://www.childwelfare.gov/pubpdfs/xreporting.pdf>.

	<ul style="list-style-type: none"><li>• Sign a T visa declaration.</li></ul>	determine if the child qualifies for immigration relief due to past abuse, which might have led to the informal kinship placement.	to the informal kinship placement.
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# Appendix A: Compiled Quick Reference Guides, Forms of Immigration Relief

## **VAWA Self-Petition: Immigration Relief for Victims of Child and Spousal Abuse**

### **Quick Reference Guide**

The VAWA Self-Petition provides immigration relief and a path to lawful permanent residence for immigrant children, stepchildren, spouses, and former spouses who are battered or subject to extreme cruelty by their U.S. citizen or lawful permanent resident parent, stepparent, spouse, or former spouse. VAWA self-petitioning abused immigrant children, spouses, and immigrant parents of child abuse victims are authorized to file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of the abusive spouse or parent.

There are several different forms of VAWA immigration relief created by the Violence Against Women Act of 2000. These include the VAWA Self-Petition and the Battered Spouse Waiver.

#### **Who is eligible**

- **Immigrant adults and children** who were battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse, former spouse, parent, or stepparent.
- **Immigrant parents of U.S. citizen children** who are victims of child abuse
- **Immigrant parents** who are subject to elder abuse by a U.S. citizen or lawful permanent resident child

**VAWA Self-Petition:** Protects immigrants who are abused spouses, children, and stepchildren of U.S. citizens and lawful permanent residents. To be eligible for a VAWA Self-Petition, an immigrant child or adult must prove that

- They were battered or subject to extreme cruelty
- For children, that at least part of the battering or extreme cruelty occurred when the child was under the age of 21
- For spouses, that the marriage was entered into in good faith
- The battering or extreme cruelty was perpetrated by the petitioner's U.S. Citizen or lawful permanent resident parent (natural, adoptive, or stepparent), spouse, intended spouse (if the immigrant spouse unknowingly married a bigamist), former spouse (must file within 2 years after marriage terminated)

**Eligibility Requirements for the VAWA Self-Petition:** a petitioner must establish

- That they have a qualifying relationship to the abuser, namely that they are a:
  - Abused spouse of a U.S. Citizen or lawful permanent resident
  - Spouse or former spouse of a U.S. Citizen or lawful permanent resident whose child or stepchild was abused by the U.S. Citizen or legal permanent resident spouse
  - Abused child of a U.S. citizen or legal permanent resident spouse
  - Abused parent of an adult U.S. citizen child
- That the abusive spouse, parent, or child is a U.S. Citizen or lawful permanent resident
- That the petitioner **at one time** resided with the abuser (note: a self petitioner does not need to reside with the abuser at the time the application is filed, during the marriage, or at the time the parent/child/stepparent relationship was formed; self petitioners do not need to separate from abuser in order to file)
- That they experienced battery or extreme cruelty, such as but not limited to acts or threatened acts of violence, psychological abuse, child neglect, abandonment or willful desertion, rape, and sexual assault
- That they are of good moral character
- That they entered the marriage in good faith (not for the purpose of evading immigration laws)

- That child petitioners were subject to some battery or extreme cruelty before the age of 21 and are under the age of 25 at filing

**Battered Spouse Waiver:** Protects abused immigrant spouses, children, and stepchildren of U.S. citizens and lawful permanent residents, in cases where the U.S. Citizen or lawful permanent resident has filed an immigrant application that resulted in the abused spouse being granted conditional permanent residence. The Battered Spouse Waiver allows the abused immigrant spouse, as well as any children or stepchildren, to receive full lawful permanent residency without having to wait two years; continuing to reside with the abuser for two years; or the abusers knowledge, consent, or cooperation.

**VAWA Cancellation of Removal and Suspension of Deportation:** Protects immigrant spouses, children, and stepchildren of U.S. citizen and lawful permanent resident abusers who have an open deportation case against them. Note, children must file their own petitions.

**VAWA Self-Petitioning Protection for Non-abusive Immigrant Parents of Abused Immigrant Children and Stepchildren:** Provides protection for immigrant parents whose children or stepchildren under the age of 21 have been subject to battering or extreme cruelty by their other U.S. citizen or lawful permanent resident parent (natural, adoptive, stepparent) or by the immigrant parent's spouse or former spouse, regardless of whether they have been abused themselves.

- If the child was abused by their other parent, the non-abusive parent is eligible for VAWA cancellation of removal or suspension of deportation
- If the child was abused by the immigrant parent's spouse, intended spouse, or former spouse, the non-abusive parent is eligible for a VAWA self-petition and Battered Spouse Waiver

**Certification Required:** No. Certification is not required for self-petitioning.

**Is there a mental or physical suffering requirement:** No. Unlike the U visa, which requires applicants to prove that they suffered mental or physical abuse as a result of the qualifying criminal activity, VAWA self-petitioners are not required to prove how or to what extent they were harmed by the battering or extreme cruelty.



# Special Immigrant Juvenile Status: Immigration Relief Child Victims of Abuse

## Quick Reference Guide

Special Immigrant Juvenile Status (SIJS) provides immigration status, protection from deportation, and lawful permanent residence to immigrant children who are abused, abandoned, or neglected by at least one of their parents. The maltreatment by the immigrant child's parent may have occurred in the United States or been perpetrated abroad, anywhere in the world.

### Who is eligible

- **Immigrant children under the age of 21** who are unmarried and who were abused, abandoned, or neglected by one of their parents, as defined by state law.

**Who else can be included in the petition:** Petitioner's family members cannot be included in the application.

### Eligibility Requirements

- Be under the age of 21 at the time the application is filed
- Be unmarried at the time of filing through the time of adjudication
- Be physically present in the United States
- Have received an **SIJS judicial determination** by a state court that has jurisdiction under state law to make judicial determinations about dependency and/or custody and care of juveniles

**Age requirements for SIJS:** There are two important age requirements to consider for SIJS

- **Age at judicial determination:** The child must be under the age of majority set by state law when the child receives state court orders containing SIJS judicial determinations
- **Age at filing:** The child must file their petition for SIJS before they turn 21

**Judicial Determination Required:** Yes. SIJS applicants must obtain a SIJS judicial determination from a state juvenile or family court that has jurisdiction over the child. These findings do not award SIJS and are not determinative; only DHS has the authority to adjudicate legal immigration status.

**Judicial Determination Requirements:** Petitioners must submit an order from a state juvenile or family court that contains three best interest and child welfare related judicial determinations. The federal SIJS statute relies on state court judges to make these factual determinations because they have particularized expertise in the care and custody of children.

- The child has been declared dependent on a juvenile or family court or the child has been "legally committed to or placed under the custody of an agency, or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States."
- The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law
- It would not be in the child's best interest to be returned to their or their parent's previous country of nationality or last habitual residence

**One or Both Parents Requirement:** Federal law permits a child to be reunified with one parent and still qualify for SIJS. CPS should *continue screening* children for SIJS even if they are still living with one parent.

# U Visa: Immigration Relief for Victims of Qualifying Criminal Activity

## Quick Reference Guide

The U visa offers immigration protection for victims of qualifying criminal activity *or any similar activity*. Qualifying criminal activities include domestic violence, human trafficking, and sexual assault.<sup>319</sup> The United States Citizenship and Immigration Service (USCIS) defines child and elder abuse as similar activities for which immigrant victims may also be eligible for a U visa. Solicitation, attempt, or conspiracy to commit a qualifying criminal activity is also a qualifying criminal activity for the purposes of U visa eligibility.

The U visa was created by the Violence Against Women Act of 2000 to strengthen the ability of law enforcement agencies to detect, investigate, prosecute criminal activity. By providing immigration relief to immigrant victims of qualifying criminal activity, the U visa encourages immigrant victims to report crimes committed against them and aid in the investigation and prosecution of perpetrators.

### Who is eligible

- **Immigrant adults and children** who have suffered qualifying criminal activity
- **Immigrant parents** whose U.S. citizen child or stepchild has suffered qualifying criminal activity. The immigrant parent or stepparent of a child victim need not be abused themselves
  - Because immigrant parents may be eligible for a U visa if their child suffers qualifying criminal activity, CPS should continue screening **even if the child is a U.S. citizen**.

### Who else can be included in the petition

- **Adult applicants (over the age of 21) can include:** their spouses and children
- **Child applicants (under the age of 21) can include:** their own children, their spouses, their parents, and their unmarried siblings under the age of 18

### Eligibility Requirements

- Have been the victim of a qualifying criminal activity or other similar activity, **perpetrated in the United States** or one that violated the federal or state laws of the United States
- Possess information concerning such criminal activity
- Have been, are being, or are likely to be helpful in the detection, investigation, prosecution, conviction, and sentencing of such activity
- Have **suffered substantial physical or mental abuse** as a result of being a victim of a listed criminal activity

**Is there a time limit within which victims must file:** No. Victims who meet the eligibility requirements can file at any time after the qualifying criminal activity occurs.

**Certification Required:** Yes. Applicants must provide a U visa certification (Form I-918B) from an authorized federal agency.

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<sup>319</sup> The U visa statute provides a non-exhaustive list of qualifying criminal activities, including: rape, abusive sexual contact, peonage, manslaughter, torture, prostitution, blackmail, sexual exploitation, false imprisonment, murder, domestic violence, sexual assault, stalking, slave trade, trafficking, female genital mutilation, kidnapping, involuntary servitude, incest, being held hostage, abduction, extortion, obstruction of justice. The United States Citizenship and Immigration Service has identified several similar crimes that also qualify, including child abuse, elder abuse, video voyeurism, aggravated robbery, and hate crimes.

**Can CPS Certify:** Yes, CPS is authorized under federal law to issue U visa certifications. Federal regulations allow the head of the certifying agency to grant any person(s) at the agency with supervisory authority to issue U visa certifications.

**Is CPS Required to Certify:** Federal law does not require CPS to sign certifications. However, some states have passed laws requiring the signing of U visa certifications by state agencies authorized to sign under federal law.

**Certification Form (I-918B) Requirements: Sample Certification Form Appendix R**

- The type of criminal activity or criminal activities perpetrated against the victim (Form I-918B; Part 3)
- The person seeking certification has been a victim of criminal activity
- The victim has been helpful, is being helpful or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of a U visa listed criminal activity (Form I-918B: Part 4)
- May include notes of any injuries or other facts about the criminal activity the immigrant suffered (Form I-918B: Part 3)
- Should include information they have about any perpetrators who are family members of the victim (Form I-918B: Part 5).

**Satisfying the “Helpfulness” Requirement:** U visa applicants must demonstrate that they have been helpful, are being helpful, or are likely to be helpful in the detection, investigation, conviction, or sentencing of a qualifying criminal activity.

- Helpfulness is defined broadly to include a broad range of actions including, but not limited to, calling 911 to report the criminal activity, providing a statement to CPS or another government agency, attending meetings with CPS staff, appearing in court, filing a police report, filing a victim impact statement, or seeking a protection order.
- Victims can still satisfy the helpfulness requirement even if no formal investigation is launched, the investigation is closed, or a prosecutor declines to bring charges
- **Age Exception:** If a child victim is under the age of 16, their parent, guardian, or other next friend can satisfy the helpfulness requirement on their behalf.

**Satisfying the “Continuing Assistance” Requirement:** After receiving certification, U visa applicants are required by U visa regulations to provide ongoing assistance to law enforcement and prosecutors when reasonable requested. The continuing assistance requirement applies from the time of application to when the victim is granted lawful permanent residency.

- **Reasonableness Exception:** An applicant may refuse to provide ongoing cooperation if their inability or refusal is not unreasonable. Examples of reasonable refusal include, but are not limited to, threats, surveillance, retaliation or other harm committed by the perpetrator. Victims who were initially helpful may refuse ongoing assistance because of trauma.

**Assessing Credibility:** CPS can still issue certifications if they have doubts about a victims credibility. DHS will make all necessary determinations as to whether an applicant meets the U visa requirements.

**Assessing Mental or Physical Abuse:** Victims must have suffered mental or physical abuse to qualify for a U visa. CPS **does not** need to evaluate the victim’s experience or assess whether the abuse meets the criteria for a U visa in order to certify. DHS will make all necessary determinations as to whether an applicant meets the U visa requirements.

# T Visa: Immigration Relief for Victims of Severe Forms of Trafficking

## Quick Reference Guide

The T visa provides immigration relief to children and adult victims of severe forms of human trafficking perpetrated in the United States. Human trafficking is defined by federal law, and can be either sex trafficking or labor trafficking.

The T visa was created by the Trafficking Victims Protection Act of 2000, out of recognition that immigrant trafficking victims without legal status would be reluctant to help in the investigation or prosecution of their traffickers. The T visa strengthens the ability of law enforcement, prosecutors, and child and adult protective services to protect immigrant trafficking victims, as well as detect, investigate, and prosecute human trafficking.

### Who is eligible

- Immigrant victims of a severe form of human trafficking, either sex trafficking or labor trafficking, as defined by federal law
- Federal law defines human trafficking as:
  - **Sex trafficking:** any commercial act in which a commercial sex act is induced by force, fraud, or coercion; or when the person induced to perform such an act is under the age of 18
  - **Labor trafficking:** 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 (including psychological coercion), peonage, debt bondage, or slavery.

### Who else can be included in the petition

- Children
- Spouses
- Parents of child trafficking victims who are under the age of 21 at the time of application
- Parents of *any* trafficking victim who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement agencies (including CPS)
- Unmarried siblings under the age of 18 of child victims under the age of 21 at the time of filing
- Unmarried siblings under the age of 18 who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement agencies (including CPS)
- Adult or minor children of any T-visa recipient who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement agencies (including CPS)

### Eligibility Requirements: An applicant must meet all of the following criteria

- The person is or was the victim of a severe form of trafficking in persons, as defined by federal law
- Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a U.S. port of entry due to human trafficking
- Has complied with any reasonable request from child or adult protective services, law enforcement, or prosecution agency for assistance in the detection, investigation or prosecution of human trafficking
- Would suffer extreme hardship involving unusual and severe harm if removed from the United States
- Must be admissible (based on a review of criminal history, immigration violations, and other factors). If inadmissible, victims may apply for a waiver for which they may be eligible.

**Is there a time limit within which victims must file:** No. Victims who meet the eligibility requirements can file at any time after the trafficking occurs.

**Declaration Required:** No. The T visa declaration is supplementary evidence that child or adult protective services, law enforcement, prosecutors, and other authorized agencies can complete for a T visa applicant to help

demonstrate their compliance with reasonable requests for assistance. T visa declarations are also an important way of compiling evidence for law enforcement and for building trust between victims and agency staff.

**Can CPS Certify:** Yes, CPS is authorized under federal law to issue T visa declarations.

**Is CPS Required to Certify:** Federal law does not require CPS to sign declarations. However, some states have passed laws requiring the signing of T visa declarations by state agencies authorized to sign under federal law.

**Declaration Form (I-914B) Requirements:**

- The applicant (or their child or stepchild) is or has been a victim of a severe form of trafficking in persons (I-914B Form: Part C)
- .The applicant has complied with requests for assistance in the detection, investigation or prosecution of a human trafficking related crime (I-914B Form: Part D)
- Information the agency signing the declaration has about any family members of the victim believed to be involved in the victims trafficking to or within the United States (I-918 Form: Part E)

**Satisfying the “Assistance” Requirement:** T visa applicants must comply with any **reasonable request** from child or adult protective services agency staff, law enforcement, prosecutors, or law enforcement in the detection, investigation, or prosecution of human trafficking and/or the investigation of any crime where acts of trafficking where at least one central reason for the commission of the crime.

- The proper standard for assessing reasonableness is whether the *request* is reasonable, not whether a victim unreasonably refused to assist.
- **Reasonableness Exception:** A victim may decline to cooperate with requests for assistance if:
  - The victim is under the age of 18
  - The victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request

**Assessing Credibility:** CPS can still issue certifications if they have doubts about a victim’s credibility. DHS will make all necessary determinations as to whether an applicant meets the T visa requirements.

# Continued Presence: Temporary Immigration Relief for Victims of Severe Forms of Trafficking

## Quick Reference Guide

Continued Presence is the first form of immigration relief available to undocumented victims of human trafficking. It is temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. Continued Presence is also authorized for victims who file civil actions under 18 U.S.C. §1595.

Continued Presence allows victims to remain in the United States legally for up to two years (renewable) because they are a victim and they are potential witness in a human trafficking investigation. In addition to protection from deportation, Continued Presence allows victims to work and receive a broad range of federal and state public benefits while the investigation or prosecution of their trafficker is ongoing.

Continued Presence is a standalone form of immigration relief; however T and U visa applicants who are victims of a severe form of trafficking can also file for Continued Presence while they are in the process of applying for their T or U visa, which provides protection from deportation and access to public benefits during the application process.

### Who is eligible

- Immigrant victims of a severe form of human trafficking, either sex trafficking or labor trafficking, as defined by federal law
- Federal law defines human trafficking as:
  - **Sex trafficking:** any commercial act in which a commercial sex act is induced by force, fraud, or coercion; or when the person induced to perform such an act is under the age of 18
  - **Labor trafficking:** 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 (including psychological coercion), peonage, debt bondage, or slavery.

**Who else is eligible for “Significant Public Benefits Parole”:** Certain family members of trafficking victims can also seek protection through Significant Public Benefits Parole. Eligible family members include

- **Children under the age of 21:** their spouse, child, parent, or unmarried siblings under the age of 18
- **Adults:** their spouse or children
- **For all CP recipients:** parents or siblings of a continued presence recipient who are in present danger due to the trafficking victims escape from trafficking or cooperation in an investigation or prosecution of trafficking

**Application Process:** Only law enforcement can apply for Continued Presence on behalf of a victim. This is true regardless of whether the applicant receives Continued Presence pursuant to a criminal investigation and prosecution, or a civil action. Authorized agencies include, but are not limited to

- State, tribal, territorial, and local law enforcement working through their local Homeland Security Investigations (HSI) office
- Federal Bureau of Investigation (FBI)
- U.S. Attorney's Offices
- U.S. Department of Diplomatic Security
- Federal Agencies including the Department of Justice Civil Rights Division, the Department of Justice Criminal Section, the U.S. Department of Labor, the Equal Opportunity Employment Commission, and the U.S. Marshals Service
- Other federal law enforcement agency partners

**Can CPS Apply for Continued Presence on behalf of a victim:** No. Only federal law enforcement and their agency partners can file for Continued Presence at this time. However, CPS agencies provide critical assistance to trafficking victims by referring potentially qualifying individuals to federal law enforcement, who may then apply for Continued Presence on their behalf. They can also assist victims who have been granted Continued Presence obtain a certification to access public benefits.

**Must victims cooperate with law enforcement to receive Continued Presence:** Victims can qualify for Continued Presence even when they have not cooperated with law enforcement, as some victims may have experienced severe trauma that prevents them from being able to assist.

## **Continued Presence: Temporary Immigration Relief for Victims of Severe Forms of Trafficking**

### **Quick Reference Guide**

Continued Presence is the first form of immigration relief available to undocumented victims of human trafficking. It is temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. Continued Presence is also authorized for victims who file civil actions under 18 U.S.C. §1595.

Continued Presence allows victims to remain in the United States legally for up to two years (renewable) because they are a victim and they are potential witness in a human trafficking investigation. In addition to protection from deportation, Continued Presence allows victims to work and receive a broad range of federal and state public benefits while the investigation or prosecution of their trafficker is ongoing.

Continued Presence is a standalone form of immigration relief; however T and U visa applicants who are victims of a severe form of trafficking can also file for Continued Presence while they are in the process of applying for their T or U visa, which provides protection from deportation and access to public benefits during the application process.

#### **Who is eligible**

- Immigrant victims of a severe form of human trafficking, either sex trafficking or labor trafficking, as defined by federal law
- Federal law defines human trafficking as:
  - **Sex trafficking:** any commercial act in which a commercial sex act is induced by force, fraud, or coercion; or when the person induced to perform such an act is under the age of 18
  - **Labor trafficking:** 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 (including psychological coercion), peonage, debt bondage, or slavery.

**Who else is eligible for “Significant Public Benefits Parole”:** Certain family members of trafficking victims can also seek protection through Significant Public Benefits Parole. Eligible family members include

- **Children under the age of 21:** their spouse, child, parent, or unmarried siblings under the age of 18
- **Adults:** their spouse or children
- **For all CP recipients:** parents or siblings of a continued presence recipient who are in present danger due to the trafficking victims escape from trafficking or cooperation in an investigation or prosecution of trafficking

**Application Process:** Only law enforcement can apply for Continued Presence on behalf of a victim. This is true regardless of whether the applicant receives Continued Presence pursuant to a criminal investigation and prosecution, or a civil action. Authorized agencies include, but are not limited to

- State, tribal, territorial, and local law enforcement working through their local Homeland Security Investigations (HSI) office
- Federal Bureau of Investigation (FBI)
- U.S. Attorney's Offices
- U.S. Department of Diplomatic Security
- Federal Agencies including the Department of Justice Civil Rights Division, the Department of Justice Criminal Section, the U.S. Department of Labor, the Equal Opportunity Employment Commission, and the U.S. Marshals Service
- Other federal law enforcement agency partners

**Can CPS Apply for Continued Presence on behalf of a victim:** No. Only federal law enforcement and their agency partners can file for Continued Presence at this time. However, CPS agencies provide critical assistance to trafficking victims by referring potentially qualifying individuals to federal law enforcement, who may then apply for Continued Presence on their behalf. They can also assist victims who have been granted Continued Presence obtain a certification to access public benefits.

**Must victims cooperate with law enforcement to receive Continued Presence:** Victims can qualify for Continued Presence even when they have not cooperated with law enforcement, as some victims may have experienced severe trauma that prevents them from being able to assist.

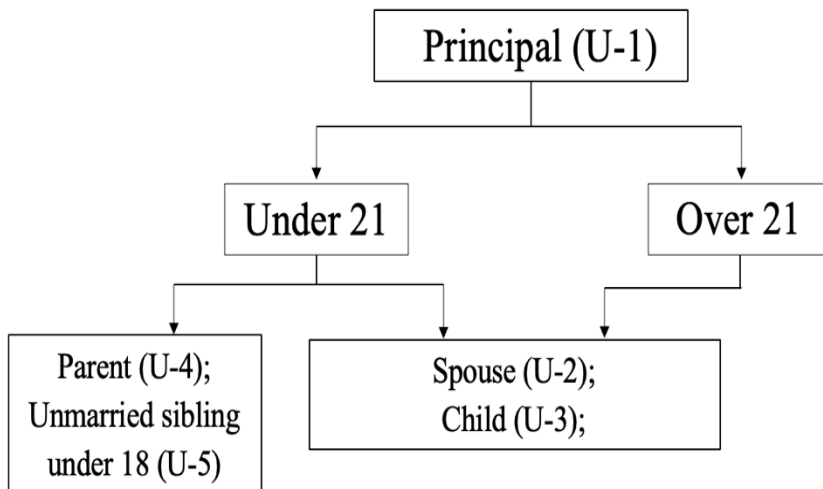


## Appendix B: U and T Visa Flow Charts for Wall Display

### 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>320</sup>

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

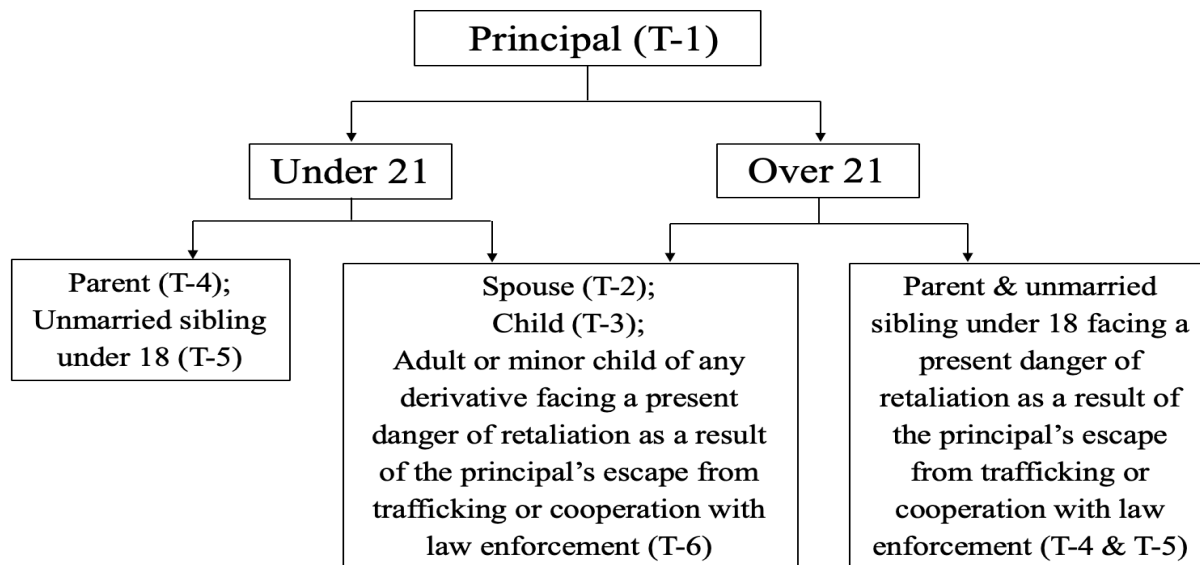


<sup>320</sup> See INA § 214(p)(7); 8 U.S.C. § 1184(p)(7).

## T Visa Protections for Family Members (8 C.F.R. § 214.11(k)(1))

A T visa applicant may apply for the admission of eligible family members. The applicant is called a principal, and the family members are called derivatives. The following chart outlines each classification of the T visa. Age-out protections are provided for principals and derivatives under 21 years of age.<sup>321</sup>

Code	Name
T-1	<b>Principal</b> (the victim)
T-2	<b>Principal's spouse</b> (always eligible)
T-3	<b>Principal's child</b> (always eligible)
T-4	<b>Principal's parent</b> (eligible only when principal is under 21 years of age, or when the parent faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)
T-5	<b>Principal's unmarried sibling under the age of 18</b> (eligible only when principal is under 21 years of age, or when the sibling faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)
T-6	<b>Adult or minor child of any derivative (T-2–T-5)</b> (eligible only when the adult or minor child of a derivative faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)



<sup>321</sup> See INA § 214(o)(4)–(5); 8 U.S.C. § 1184(o)(4)–(5); 8 C.F.R. § 214.11(k)(5)(ii)–(iii).

# Appendix C: Access to Federal and State Public Benefits for U Visa Victims, VAWA Self Petitioners, and Victims of Human Trafficking, Charts for Wall Display

## U Visa Victims

<https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/PB-PPWbnr-PBFlowchart-07.30.14.pdf>

## VAWA Self Petitioners

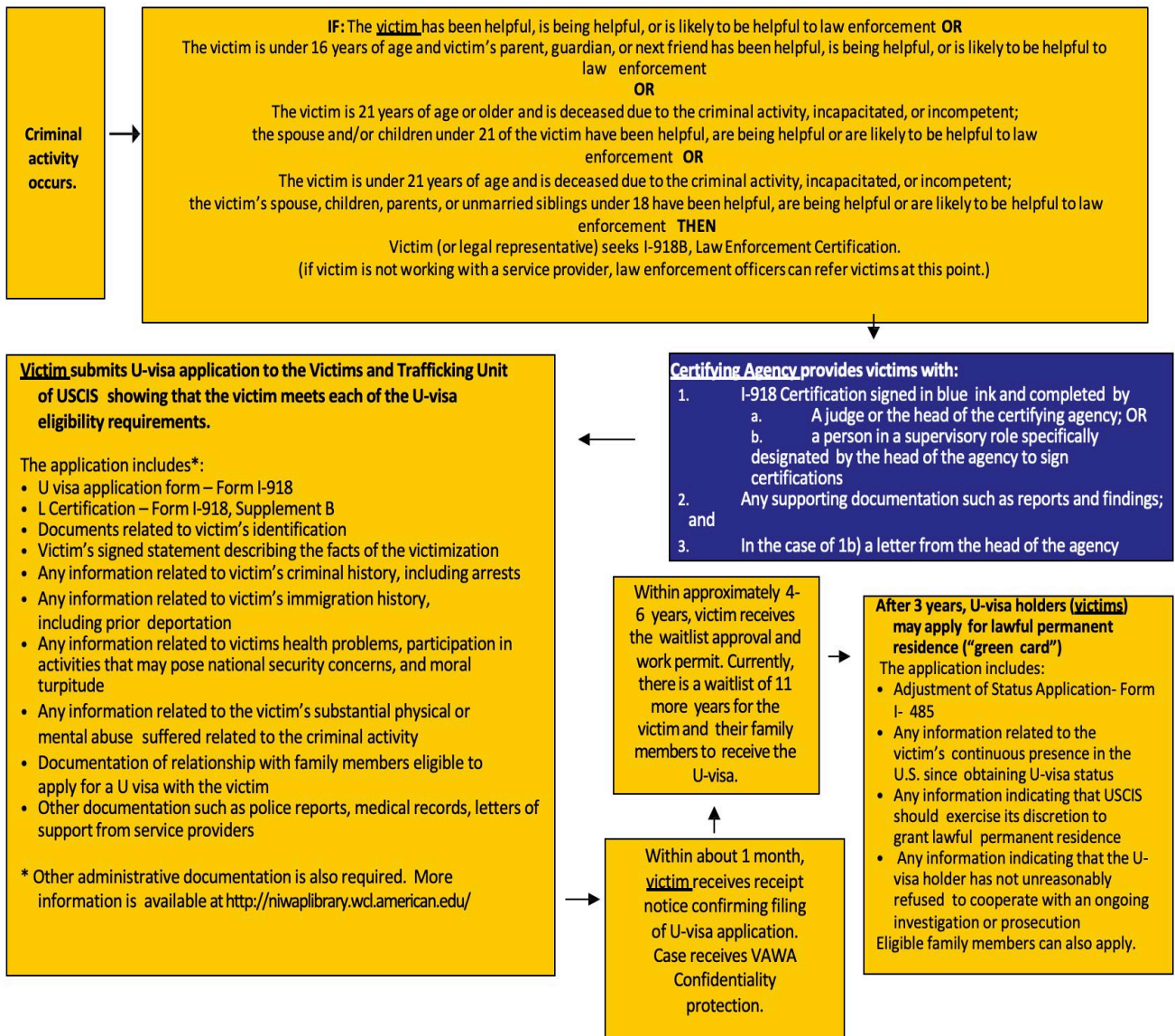
<https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/PB-PPWbnr-PBFlowchart-07.30.14.pdf>

## Victims of Human Trafficking

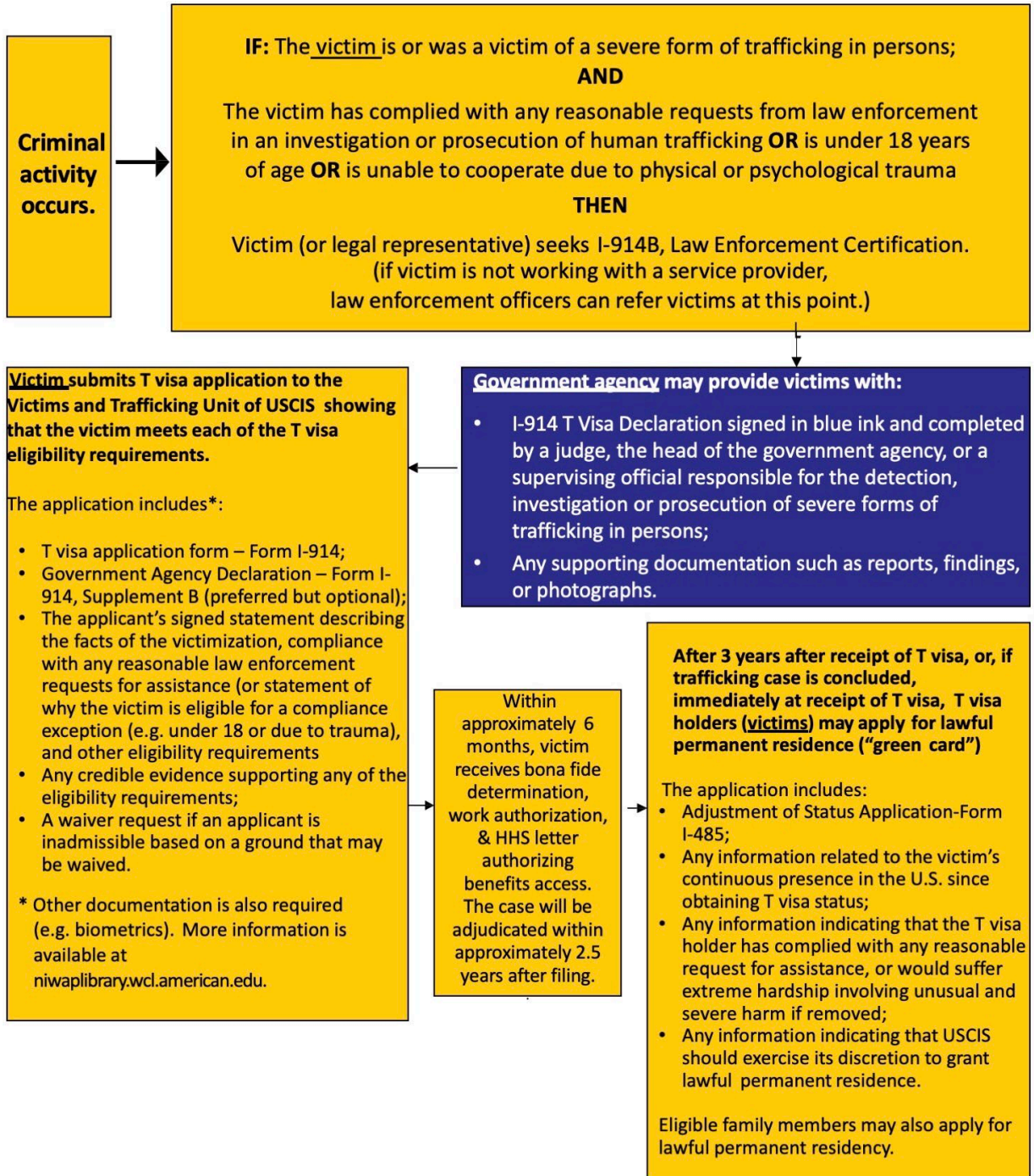
<https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/PB-PPWbnr-PBFlowchart-07.30.14.pdf>

# Appendix D: U and T Visa Application, Flowcharts for Wall Display

## U Visa Application Flow Chart



# T Visa Application Flow Chart



# Appendix E: U Visa Certification and T Visa Declaration By Child Protective Services, Frequently Asked Questions <sup>322</sup>

## BACKGROUND

### What is the purpose of the U visa and the T visa?

In keeping with humanitarian interests of the United States, Congress created the U visa and the T visa to encourage immigrant crime victims to report crimes without fear of deportation and to “encourage law enforcement to better serve immigrant crime victims.”<sup>323</sup>

### How do Child Protective Services (CPS) agencies benefit from the U visa?

To provide protective, emergency or other supportive services to children, the U and T visas reinforce a CPS agency’s commitment to victim safety, protection, and recovery from trauma. Victims without immigration status are more likely to report crimes to CPS agency staff and cooperate in the investigation and any court case or prosecution of the perpetrator if they have no reason to fear that doing so could cause them to be deported. Immigrant victims with U and T visas will be less susceptible to and less likely to succumb to the perpetrator’s intimidation. The community itself will also be safer as a result.<sup>324</sup> Government agencies responsible for detecting, investigating, prosecuting, convicting, or sentencing criminal activity can use the U and T visas in conjunction with other measures also to prove to immigrants and the community that they are serious about providing services to older immigrants and protecting them from criminal activities.

### What is the U visa Certification?

The U visa certification is a Department of Homeland Security (DHS) form (I-918 Supplement B) that a U visa applicant submits with a U visa application to the United States Citizenship and Immigration Services (USCIS) of DHS.<sup>325</sup> The certification is a sworn statement that says an individual is a victim of a qualified criminal activity and has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of that criminal activity.<sup>326</sup>

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<sup>322</sup> This document was modeled after the *Questions and Answers about U Visas* document, created by the International Institute of the Bay Area. Legal Momentum and the Vera Institute of Justice wish to acknowledge Susan Bowyer.

<sup>323</sup> Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a), Pub. L. 106–386, 114 Stat. 1464.

<sup>324</sup> See Rafaela Rodrigues, Monica Bates, and Leslye E. Orloff, *Improving Crime Fighting Outcomes in Cases of Immigrant Victims: The Role of Continued Presence U and T Visas as Tools for Law Enforcement* (Nov. 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/improving-crime-fighting-outcomes-in-cases-of-immigrant-victims-11-17-20-1>.

<sup>325</sup> USCIS is the agency within DHS responsible for adjudicating applications for immigration benefits, work authorization, and naturalization. Two other branches of DHS are responsible for immigration enforcement activities: Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

<sup>326</sup> INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2000).

## What is the T visa declaration?

The T visa declaration is a DHS form (I-914 Supplement B) that a T visa applicant may submit when they file a T visa application with USCIS. The declaration is supplementary evidence to demonstrate that the applicant is or was a victim of severe forms of trafficking in persons and has not rejected reasonable requests for assistance from law enforcement or prosecutors.<sup>327</sup>

## What is U visa qualifying criminal activity?

U visa qualifying criminal activity involves a violation of federal, state, or local criminal law (or any similar activity). Although not all-inclusive, the list of qualifying criminal activity represents the many types of behavior, including abuse, neglect and abandonment of children, which can constitute domestic violence, sexual abuse, trafficking, or are crimes that often target vulnerable immigrants as victims.<sup>328</sup> The U visa specifically includes the following criminal activities:<sup>329</sup>

*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 (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.*

DHS in its resource guide on the U visa explains how child abuse is covered as a U visa criminal activity:<sup>330</sup>

*Various federal, state, and local statutes may contain specific crimes that fall into these more general categories. For example, child abuse and elder abuse could be considered forms of domestic violence if the perpetrator/victim relationship and the abuse experienced by the child, incompetent or incapacitated adult, or senior meets the statutory elements of domestic violence under relevant statutes.*

*In the case of witness tampering, obstruction of justice, or perjury, a person may be considered a victim of these crimes if they can reasonably demonstrate that the perpetrator principally committed the offense to avoid or frustrate efforts to investigate,*

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<sup>327</sup> 81 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016).

<sup>328</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014-01, 53,017 (Sept. 17, 2007) .

<sup>329</sup> INA § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii) (2000) (As amended by the Violence Against Women Reauthorization Act of 2013).

<sup>330</sup> *DHS U Visa Law Enforcement Resource Guide* at 4 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

*arrest, prosecute, or otherwise bring the perpetrator to justice, or to further their abuse, exploitation of, or control over the person through manipulation of the legal system.*

The DHS resource guide also explains that there are a wider variety of state crimes in which the criminal activity may be similar in nature and elements to the criminal activities specifically listed in the U visa statute.<sup>331</sup> In addition to having concluded that child abuse is included in state law definitions of domestic violence and that it may also be a similar criminal activity, other crimes DHS has concluded can constitute similar criminal activity include hate crimes and aggravated robbery.<sup>332</sup>

### **What is considered T visa qualifying criminal activity?**

DHS defines “severe forms of trafficking in persons” as either:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- Sex trafficking in which the person induced to perform such an act is under the age of 18;
- 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 (including psychological coercion), peonage, debt bondage, or slavery.<sup>333</sup>

### **What are the evidentiary standards for U visa and T visa?**

For both visas, federal statutes and DHS regulations apply the Violence Against Women Act’s “any credible evidence” standard.<sup>334</sup> When USCIS conducts its adjudication of the case USCIS reviews all evidence submitted and will determine, in its sole discretion, the evidentiary value of the evidence.<sup>335</sup> The rules reflect the broad protections and flexible evidentiary standards envisioned by Congress.<sup>336</sup>

### **Which family members can be included in a U visa and T visa application?**

The federal law permits certain qualifying family members to obtain U or T visas when the family member is accompanying (in the U.S. with together with the victim) or following to join the immigrant victim applying for the U or T visa. USCIS refers to such family members as “derivatives.” The immigrant who was the victim of the criminal activity applying for the U visa or T visa is referred to under immigration law as the “principal” applicant. The determination of

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<sup>331</sup> *DHS U Visa Law Enforcement Resource Guide* at 5 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>332</sup> *DHS U Visa Law Enforcement Resource Guide* at 5 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

<sup>333</sup> 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

<sup>334</sup> 72 Fed. Reg. 53014, 53038 (codified at 8 C.F.R. § 214.11(c)(4)) (2007); 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(5)) (2016).

<sup>335</sup> 72 Fed. Reg. 53014, 53038 (codified at 8 C.F.R. § 214.11(c)(4)) (2007); 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(5)) (2016).

<sup>336</sup> *See, e.g.*, H.R. REP. NO. 103-395, at 38 (1993).



which family members are considered “qualifying” depends on their relationship to the principal immigrant victim and the age of the principal immigrant victim.<sup>337</sup>

For the U visa, if the immigrant victim applicant is under 21 years of age at the time the victim’s application for a U visa is properly filed, qualifying family members eligible to file for U visas, together with the victim, include the victim’s spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal’s petition), and parents. If the immigrant victim is 21 years of age or older, the only family members who are eligible to apply for U visas are the victim’s spouse and children.<sup>338</sup>

For the T visa, as with the U visas, when the immigrant victim applicant is under 21 years old at the time they file a T visa application, qualifying family members eligible to file for T visas, together with the victim, include the victim’s spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal’s petition), and parents. If the immigrant victim is over the age of 21 the family members for which they may seek T visas are the victim’s spouse and children. In addition, T visa victims, without regard to age, can apply for parents, unmarried siblings under 18 years of age, or children (adult or minor) of the principal victim’s eligible family members, if the family member faces a present danger of retaliation as a result of the principal’s escape from the severe form of trafficking in persons or cooperation.<sup>339</sup>

The law includes “age out” protections for T and U visa victims and their child family members who are under 21 years old on the date their U or T visa application is filed. Once a victim or the family member of a victim who is under the age of 21 files a U or T visa application, the age of the child on the date of filing is by law fixed in time so that when their case is adjudicated even if the applicant is over 21 on the date of adjudication, their case is adjudicated as if they are still under 21 years of age.<sup>340</sup>

### **Why is the CPS agency’s certification so important to immigrant victims?**

The U and T visas afford undocumented victims temporary legal immigration status. Without this protection, victims may be afraid to seek assistance from CPS agency staff because they are afraid of being victimized or threatened with deportation in retaliation for revealing information to CPS about the abuse and criminal activities they have been subjected to. Due to this fear, immigrant victims may risk exploitation and ongoing victimization rather than come forward to report the abuse, neglect, exploitation, and/or other criminal activities suffered. At the same time they may also be unaware of U.S. laws and often cultural norms may pose barriers to reporting maltreatment. For these reasons, it is important to build trust among immigrant communities by protecting those whom are most vulnerable. The U and T visas also provide a victim with employment authorization, protection against deportation, and increased access to

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<sup>337</sup> USCIS, *Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions*, PM-602-0102 (April 15, 2015), available at <https://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TVVRA-2013-PM.pdf>.

<sup>338</sup> INA § 101(a)(15)(U)(ii)(I)–(II); 8 U.S.C. § 1101(a)(15)(U)(ii) (I)–(II).

<sup>339</sup> INA § 101(a)(15)(T)(ii)(III); 8 U.S.C. § 1101(a)(15)(T)(ii)(III); 8 C.F.R. § 214.11(k)(1)(ii)–(iii).

<sup>340</sup> INA § 214(p)(7); 8 U.S.C. § 1184(p)(7); INA § 214(o)(4)–(5); 8 U.S.C. § 1184(o)(4)–(5).

public benefits, which are critical tools in establishing economic independence and long-term safety.

## CERTIFICATION PROCESS

### Who can sign a U visa certification/T visa declaration?

Any agency that detects, investigates, prosecutes, convicts, or sentences criminal activity or perpetrators of criminal activity may sign a U visa certification or a T visa declaration.<sup>341</sup> Statutes and DHS regulations explicitly lists as agencies and state government officials authorized to sign certifications the following agencies: state and local judges, 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 have civil, criminal, or administrative investigative authority.<sup>342</sup> Individual federal, state, and local judges adjudicating any type of proceeding (family, civil, criminal, or administrative) are authorized by federal statute and federal regulations to act as certifying officials.<sup>343</sup> Within an agency, only an individual in a supervisory role specifically designated by the head of the agency to sign U visa certifications and T visa declarations may sign the certification.<sup>344</sup> Every CPS official with a supervisory role may be delegated the authority by the head of the CPS agency to sign U visa certifications. An agency head may designate any number of CPS supervisory staff to sign these certifications.

The U visa regulations state that someone designated in a supervisory role may designate or delegate individual(s) to sign U visas. The person in the authority to delegate a U visa certifier varies by state. In the majority of states, CPS has a centralized administrative system throughout the state.<sup>345</sup> In nine states,<sup>346</sup> child welfare services are county administered. In the county administered states, head of the county agency may sign certifications and may delegate certification authority to any county CPS agency official(s) with supervisory authority. In the state administered child welfare systems, the delegating authority must be the head of the state CPS agency, who is authorized by federal regulations to sign U visa certifications for the state CPS agency and who has the authority to delegate certification authority to government officials working for CPS at the state and/or county levels who are supervisors within the CPS agency. Additionally, two states<sup>347</sup> have a “hybrid” system in which CPS agencies are administered by both the state and county. In these states, the certifying authority would be the head of the CPS

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<sup>341</sup> INA § 214(p)(1); 8 U.S.C. § 1184(p)(1); *DHS U and T Visa Resource Guide* at 15.

<sup>342</sup> INA § 214(p)(1); 8 U.S.C. § 1184(p)(1); 72 Fed. Reg. 53014, 53015 & 53019 (2007); *DHS U and T Visa Resource Guide* at 15.

<sup>343</sup> 8 C.F.R. § 214.14(a)(2). Unlike other certifying officials, approval by any supervisor is needed for judicial certifications.

Each individual judge or magistrate is authorized to sign certifications.

<sup>344</sup> INA § 214(p)(1); 8 U.S.C. § 1184(p)(1) (2000).

<sup>345</sup> *State vs. County Administration of Child Welfare Services*, CHILD WELFARE INFORMATION GATEWAY (2012), available at <https://www.childwelfare.gov/pubPDFs/services.pdf>.

<sup>346</sup> California, Colorado, Minnesota, New York, North Carolina, North Dakota, Ohio, Pennsylvania, and Virginia. See U.S. Dep’t of Health and Human Servs., Child Welfare Information Gateway, *State vs. County Administration of Child Welfare Services* (2018), available at <https://www.childwelfare.gov/pubPDFs/services.pdf>.

<sup>347</sup> Nevada and Wisconsin. See U.S. Dep’t of Health and Human Servs., Child Welfare Information Gateway, *State vs. County Administration of Child Welfare Services* (2018), available at <https://www.childwelfare.gov/pubPDFs/services.pdf>.

agency for the state and may also include the head of the CPS agencies at the county level. Since it is less clear whether the head of the county agencies also have the authority to certify along with the head of CPS for the state, best practice may be for the head of CPS in these states to delegate certification authority to the heads of the county CPS agencies and to any of the supervisors each CPS county head designates.

### **Why did Congress authorize multiple certifiers?**

Congress sought to protect immigrant crime victims and encourage their cooperation in the detection of crime, criminal investigations, and prosecutions as early as possible after the victim was identified as a crime victim. Immigrant victims first come in contact with the justice system in a variety of ways. For example, some victims find their way to advocates who assist them in filing for a civil protection order and only after receiving the protection order do victims feel able to cooperate in the criminal prosecution of their abuser. Other victims call the police or CPS to report domestic violence, sexual assault or other crimes committed against them and CPS staff or police or prosecution based victim system advocates inform them about the U or T visa program.

The goal was to provide a range of avenues for U visa certification and T visa declaration from child protective services staff and justice system professionals whose jobs include making determinations about whether there was reasonable suspicion or probable cause to believe that criminal activity was perpetrated, and against which victim. The authority to issue U visa certifications and T visa declarations was not designed to be consecutive or mutually exclusive among authorized certifiers, but rather was designed to facilitate certification as early as possible in the case. The federal statute is designed to provide multiple avenues to certification/declaration so that eligible victims may obtain a certification even when they live in a jurisdiction in which one agency eligible to issue certifications/declarations, as a matter of practice, never issues them.<sup>348</sup>

### **Are CPS agency staff required to sign the U visa certifications or T visa declarations?**

No. A CPS agency is not required by federal law to sign the certifications.<sup>349</sup> Under federal law, whether a certifying agency signs a certification/declaration is at the discretion of the agency. However, some states have passed laws that require the signing of U or T visa

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<sup>348</sup> Several states have begun to address the issue of state agencies who have the authority to sign U visa and T visa certifications whose agencies have policies or practices that result in their agencies not issuing certifications by passing state laws requiring that these state agencies have certification practices that result in their issuance of certifications. A list of state laws regarding U and T visa certification is available at <http://niwaplibrary.wcl.american.edu/state-u-visacertification-laws>. See also Oregon Senate Bill 962 (2019), <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB962/Enrolled>; Alison Kamhi and Sarah Lakhani, *A Guide to State Laws on U Visa and T Visa Certifications*, IMMIGRANT LEGAL RES. CTR. (Apr. 2020) (listing IN, NY, RI, VT, Virgin Islands, and WY laws), [https://www.ilrc.org/sites/default/files/resources/u\\_visas\\_and\\_t\\_visas\\_pa-04.2020.pdf](https://www.ilrc.org/sites/default/files/resources/u_visas_and_t_visas_pa-04.2020.pdf).

<sup>349</sup> See *Orosco v. Napolitano*, 598 F.3d 222 (5th Cir. 2010) (holding that the decision to decline to issue certification is discretionary); *DHS Resource Guide* at 17.

certifications by state agencies authorized to sign U or T visa certifications under federal law.<sup>350</sup> Congress enacted the U visa and T visa protections with the expectation that certain government agencies are in a good position to assess the helpfulness or assistance of a victim.<sup>351</sup> A victim cannot obtain a U visa without a certification.<sup>352</sup>

The U visa certification (Form I-918B) is one of the required pieces of evidence to confirm that:

- The applicant was a victim or, in some cases, an indirect victim of the qualifying criminal activity;
- The applicant has specific knowledge and details of the crime; and
- The applicant was helpful, is being helpful or is likely to be helpful in the detection, investigation or prosecution of the criminal activity.

The declaration is not required for a T visa, but it is a helpful piece of evidence submitted by the applicant.<sup>353</sup> In addition, signing a certification or declaration will not subject an agency to liability and does not grant any immigration benefit. USCIS adjudicates the victim's case based on the totality of the evidence in the record including a full background investigation. Only USCIS has the authority to grant or deny immigration benefits of the U or T visa to an immigrant victim applicant.<sup>354</sup>

### **Is CPS required to create a policy for reviewing and signing Form I-918B and Form I-914B?**<sup>355</sup>

No. Certifying agencies are not required under federal regulations to create a policy in order for authorized certifiers to review and sign Form I-918B (U visa certification) or Form I-914B (T visa declaration). However, many agencies have found this to be helpful. Certifying agencies are also not required to notify DHS in advance that the agency will be signing certifications. Training on U visa and T visa certification is recommended for child protective services agency staff and staff at any government agency signing certifications.<sup>356</sup>

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<sup>350</sup> A list of state U and T visa certification laws is available at: <https://niwaplibrary.wcl.american.edu/state-u-visa-certification-laws>

<sup>351</sup> Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a)(2)(B), Pub. L. 106–386, 114 Stat. 1464.

<sup>352</sup> INA § 214(p)(1); 8 U.S.C. § 1184 (p)(1).

<sup>353</sup> See 81 Fed. Reg. 92266, 92276 (2016).

<sup>354</sup> DHS Blue Campaign, Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and other Crimes at p. 2, available at <http://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>

<sup>355</sup> *DHS U and T Visa Resource Guide* at 16.

<sup>356</sup> On-line webinars on U visa certification by CPS, law enforcement, prosecutors, judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials and a webinar for CPS agencies on U visa and T visa certification is available at: <https://niwaplibrary.wcl.american.edu/webinar-aps>. Training is available CPS staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu). Details on the technical assistance and training available to CPS staff and all professionals who work with immigrant survivors is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

**If an authorized CPS official signs the certification, does the victim automatically get a U visa, T visa, or lawful immigration status?**

No. There are many additional eligibility requirements that USCIS evaluates when it adjudicates a victim's U visa or T visa application, depending on which visa the victim is seeking (see above sections for list of eligibility requirements). Upon receiving a U or T visa application, USCIS will conduct a full review of all evidence and a thorough background check of the victim before approving or denying the application. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds.

A victim may be found inadmissible if the victim does not meet required criteria in the Immigration and Nationality Act to gain admission to or lawful immigration status in the United States. Victims may seek a waiver of inadmissibility, which USCIS has discretion to grant. Waivers are considered based on the totality of the evidence in the case and the results of the background check. USCIS may also contact the certifying official for further information if necessary.

**Will CPS staff who sign a certification be liable for any future conduct of someone who is granted a U or T visa? What if I signed a certification or declaration for someone who later commits a crime?<sup>357</sup>**

No. A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa. The U visa certification simply addresses whether the petitioner was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the detection, investigation, prosecution, conviction, or sentencing of that crime. The T visa declaration simply addresses whether the victim was a victim of human trafficking and has complied with all reasonable requests for assistance.

The certification or declaration does not guarantee the future conduct of the victim or grant a U or T visa. USCIS is the only agency that can grant a U or T visa. If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues. If a certifying agency or official later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency or official wishes to withdraw the certification, the agency or official should contact USCIS.

**Who decides which benefit to seek, a U or T visa?<sup>358</sup>**

The victim or victim's advocate or attorney will usually make that decision and indicate to the certifying agency or judge whether the victim is seeking a U visa certification or a T visa declaration. It is important to note that victims of human trafficking may qualify for and may apply for both a U and a T visa. Immigrant child victims of abuse may be initially

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<sup>357</sup> *DHS U and T Visa Resource Guide* at 17.

<sup>358</sup> *DHS U and T Visa Resource Guide* at 17.

identified as a U visa crime victim, but later it is discovered they also experienced human trafficking. Since T visa victims receive broad access to federal and state public benefits, CPS staff and victim advocates and attorneys working with child victims should screen all clients for trafficking victimization.<sup>359</sup> Furthermore, because immigrants are particularly vulnerable for being targeted by traffickers, screening should occur not just once, but at regular intervals.

## U VISA HELPFULNESS AND T VISA ASSISTANCE REQUIREMENTS

### What constitutes *helpfulness* for U visa certification purposes?

“Helpfulness” means the victim has been, is being, or is likely to assist child protective services, 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>360</sup> Helpfulness can be as simple as a victim reporting a crime to the police, reporting victimization to CPS, or filing for a protection order or a temporary protection order, such as a civil protection order, sexual assault protection order, or a harassment restraining order. Child victims can provide helpfulness in many ways, including by speaking with CPS staff, showing up at appointments with CPS, and participating in activities or taking action on the advice of CPS workers. Their guardians or next friends can also provide information and assistance in CPS investigations.

Victims who seek civil protection orders demonstrate willingness to be helpful by revealing the facts of the abuse they have suffered to the court and by coming to court to obtain the order. With a protection order, the victim is obtaining an order that the violation of which is a crime that they can enforce by calling the police to report future protection order violations. Some of those future protection order violations will be crimes in and of themselves (e.g. assault, threats to kill) other protection order violations become crimes because the actions violate the provisions of the protection order issued by the judge against the perpetrator. (E.g. violation of a no contact provision). Victims may also demonstrate helpfulness through sworn statements in the protection order application, by providing the court a copy of a police report they made, or by testimony before the court about steps they have taken to help police or prosecutors.

When there is a criminal investigation of the perpetrator, the victim may have provided helpfulness to police or prosecutors by participating in various aspects of the investigation or prosecution, such as speaking with investigators, providing information for a police report, identifying a perpetrator, appearing at court hearings, testifying, or filing victim-impact statements.

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<sup>359</sup> For examples of screening questions, please refer to Appendix D “Sample Questions for Identifying a Trafficked/Enslaved Person.”

<sup>360</sup> Helpfulness is defined in the U visa statute 8 U.S.C. § 1101(a)(15)(U)(i)(III); The U visa regulations at 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. See Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist* (2019), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of the case, including past helpfulness and willingness to be helpful in the future.<sup>361</sup> Congress intended for individuals to be eligible for a U visa at the very early stages of an investigation.<sup>362</sup> Once a victim has provided any form of helpfulness they are eligible to receive a U visa certification. The victims must file their U visa application within six (6) months of receiving the certification. If the victim needs more time to document their U visa case before filing, they will need to return to the agency or judge that issued the U visa certification and request reissuance of a new certification.

After the victim has provided helpfulness, received certification and filed for the U visa, the victim is required by the U visa regulations to provide ongoing assistance to law enforcement and prosecution officials when reasonably requested. This requirement to offer ongoing assistance or cooperation applies from the time the victim files their U visa application, through receipt of a bona fide determination, full adjudication of the U visa case, receipt of wait-list approval, receipt of the U visa, and through the time the victim applies for and is granted lawful permanent residency.<sup>363</sup>

To prevent further harm to victims that could be caused by the cooperation requirement, Congress created an exception to the ongoing cooperation requirement when victims can demonstrate that their inability or refusal to cooperate is not unreasonable.<sup>364</sup> In some cases it may be unsafe for a victim to fully cooperate with law enforcement. Such situations include trauma, threats of retaliation, or the victim being physically restrained or monitored by the perpetrator.<sup>365</sup> If a victim has been helpful in detection or investigation of criminal activity, CPS staff, judges, law enforcement and other certifying officials can issue U visa certification even if the victim later found it too difficult to continue participating.

It is important to distinguish “continuing assistance” from “helpfulness” because continuing assistance is a standard that applies after the victim files their U visa application and also after the victim obtains their U visa. For the purpose of obtaining an initial certification from CPS, law enforcement, prosecutors, a judge, or other government agency, only the victim’s past helpfulness, current helpfulness, or the likelihood of future helpfulness can be considered.

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<sup>361</sup> 72 Fed. Reg. 53013, 53019 (2007). Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist* (2019), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

<sup>362</sup> 72 Fed. Reg. 53013, 53019 (2007). Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist* (2019), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

<sup>363</sup> 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)(3)) (2007); 73 Fed. Reg. 75540, 75561 (codified at 8 C.F.R. § 245.24(e) (2008)).

<sup>364</sup> U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 4, January 2012, available at, [http://www.dhs.gov/xlibrary/assets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf](http://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf).

<sup>365</sup> USCIS will consider in deciding reasonableness of non-cooperation general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant. 8 C.F.R. § 245.24(a)(5); 73 Fed. Reg. 75540, 75547, 75560 (Dec. 12, 2008).

## **What constitutes “complying with any reasonable request” for a T visa declaration?**

USCIS regulations require that the victim of trafficking comply with reasonable requests from child protective services agency staff, law enforcement, or prosecution officials for assistance in the detection, investigation or prosecution of the acts of trafficking in persons.<sup>366</sup> To determine whether the request from a government official is reasonable, USCIS takes into account the totality of the circumstances, such as general CPS agency, law enforcement, and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.<sup>367</sup> DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.<sup>368</sup> It is generally reasonable for child protective services agency staff, law enforcement or prosecutors to ask a victim similar things they would ask other comparably situated crime victims, such as domestic violence and sexual assault victims.<sup>369</sup>

## **A victim is requesting a U visa certification or T visa declaration, but I am unsure whether they meet the *helpfulness* requirement or the *compliance with reasonable requests* requirement. May I sign this certification?**

Yes. Both the I-918B (U visa certification) and the I-914B (T visa declaration) provide an opportunity for the certifying agency completing the form to provide information to USCIS about the extent of the victim’s helpfulness in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. Certifiers may complete the form including all information they find relevant about the victim’s assistance. USCIS will ultimately determine whether the victim meets all of the U visa or T visa requirements.

- Form I-918B U visa certification form asks whether the victim possesses information concerning the criminal activity; was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the criminal activity; was asked to provide further assistance; and has unreasonably refused to provide assistance. Certifiers may select “yes” or “no” to these questions and further explain their answers.
- Form I-914B T visa declaration form asks the certifying official to provide information about the victim’s cooperation and includes several options to select regarding the victim’s cooperation with child protective services agency staff, law enforcement and/or prosecutors.

## **DECIDING WHETHER TO CERTIFY**

### **Can an authorized CPS agency official complete a U or T visa certification form if an investigation or case is closed or happened a long time ago? What if the statute of limitations for the qualifying criminal activity has lapsed?**

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<sup>366</sup> INA § 101(a)(15)(T)(i)(III)(aa); 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

<sup>367</sup> 81 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

<sup>368</sup> 81 Fed. Reg. 92266, 92275 (2016).

<sup>369</sup> 81 Fed. Reg. 92266, 92275 (2016).



Yes. There is no applicable statute of limitations (i.e. time limit) that precludes signing a U visa certification or T visa declaration.<sup>370</sup> The two visas were enacted in January 2001 as part of the Violence Against Women Act and the Trafficking Victims Protection Act of 2000 and were drafted to offer access to U and T visas to immigrants who were victims of criminal activity both before and after the date of enactment.<sup>371</sup> In addition, T visa regulations were not promulgated until 2002 and the U visa regulations were not issued until September 2007.<sup>372</sup> There were significant periods of time between enactment of U and T visa protections and the dates on which victims could begin to apply for these protections. Since Congress did not apply any statute of limitations to U and T visa cases, the impact of the delays was mitigated, and victims who have provided helpfulness remain eligible to file for U and T visas. No requirements will be imposed regarding the length of time that may have passed between the commission of the crime and date the victims files their U or T visa application.<sup>373</sup>

Most victims who report crimes do not know at the time of the report about the existence of the U and T visa programs. Other victims are too scared to report crimes to child protective services agency staff or law enforcement for the reasons Congress contemplated.<sup>374</sup> The Congressional goal of improving trust between government agencies, courts, and immigrant crime victims was best met by providing access to U and T visa certification to any immigrant crime victim who mustered the courage and overcame fear to seek help from these officials. When victims report child abuse and other criminal activities and seek help from CPS in obtaining U and T visa protections, the word spreads that the courts and justice system officials are willing to help immigrants, which will result in more immigrant victims coming forward.<sup>375</sup>

### **What if the victim is in immigration removal proceedings or immigration detention?**

The fact that an immigrant is in removal proceedings and/or detention does not impact the victim's eligibility to apply for and be granted a U or T visa.<sup>376</sup> Many circumstances,

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<sup>370</sup> "Certifying officials may complete Form I-918B or Form I-914B for an investigation or prosecution that is closed. There is no statute of limitations regarding the time frame in which the criminal activity must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful *in the past* to the detection, investigation, prosecution, conviction, or sentencing of criminal activity." *DHS U and T Visa Resource Guide* at 18. "USCIS will accept applications regardless of when the applicant was victimized." 72 Fed. Reg. 92266, 92278 (2016).

<sup>371</sup> Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386.

<sup>372</sup> 72 Fed. Reg. 53013 (2007).

<sup>373</sup> For the T visa, a filing deadline was imposed in the 2002 interim rule, but the application volume has not reached expected levels. To protect as many victims as possible, DHS removed the deadline in its 2016 interim rule. 72 Fed. Reg. 92266, 92278 (2016).

<sup>374</sup> Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a).

<sup>375</sup> "Evidence to further establish that the petitioner is a victim of qualifying criminal activity may include: trial transcripts, court documents, news articles, police reports, orders of protection, and affidavits of other witnesses such as medical personnel." 72 Fed. Reg. 53013, 53024 (2007).

<sup>376</sup> 72 Fed. Reg. 53013, 53041 (2007); 81 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(d)(9)) (2016); "Individuals currently in removal proceedings or with final orders of removal may still apply for a U or T visa. A petitioner for U nonimmigrant status or an applicant for T nonimmigrant status has administrative remedies and is not prejudiced by completion of removal proceedings. Specifically, a victim who is the subject of a final order of removal, deportation, or exclusion may still file a petition or application for U or T nonimmigrant status directly with USCIS. If a victim is granted U or T nonimmigrant status prior to, or after, removal, the regulations provide a

including reports about the victim to DHS by the perpetrator, can lead a crime victim to be detained and placed in removal proceedings. Immigration enforcement actions are subject to prosecutorial discretion and DHS policies discourage initiation or continuation of removal proceedings against crime victims and witnesses and in particular victims of domestic violence, sexual assault, human trafficking, U visa and other serious crimes.<sup>377</sup> The fact that an immigrant victim is in immigration detention or is in immigration proceedings before an immigration judge is not relevant to whether an official signs the U visa certification or T visa declaration, or whether USICS grants the victim a U or T visa. Officials should encourage immigrants in removal proceedings to obtain legal advice from an experienced immigration attorney.<sup>378</sup>

**Can an authorized CPS agency official sign a certification if the agency investigates abuse or a criminal activity that is not listed as a qualifying crime under the U visa statute?**

Yes. The certifying official is only required to state in the U visa certification one or more qualifying criminal activities suffered by the victim that were identified through the agency's investigation or work with the victim.<sup>379</sup> It is not necessary that the qualifying criminal activity be investigated or prosecuted.<sup>380</sup> For example, if CPS is investigating a case of alleged child abuse and discovers that the home is being used as a methamphetamine lab by their mother and her companions and the victim is being physically assaulted, CPS may provide supportive services for the victims while law enforcement investigates the mother's illegal drug activity (a non-qualifying criminal activity). CPS may certify that the children are victims of a qualifying criminal activity (felonious assault) even though the criminal activity being investigated is a non-qualifying criminal activity under the U visa statute and the felonious assault is not pursued by the criminal justice system.

**Can an authorized CPS agency official sign a certification if the victim is not needed in the course of a criminal investigation or prosecution?**

Yes. Congress explicitly crafted the U visa immigration protections for victims so as not to interfere with the discretion that government agency investigators, law enforcement, and prosecutors have to investigate and choose whether to open a civil, family, or criminal case against the perpetrator, or to prosecute criminal activity in any particular case. Additionally, Congress specified that victims are eligible for certification as long as that victim does not

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procedure whereby the victim may remain in or return to the United States." *DHS U and T Visa Resource Guide* at 19.

<sup>377</sup> *ICE Confirms Continued Effectiveness of Victim Witness Protections* (April 19, 2019), available at <http://niwaplibrary.wcl.american.edu/pubs/ice-confirmation-of-continued-effect-victim-witness-memo>; Dep't of Homeland Security, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011), <http://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>.

<sup>378</sup> *DHS U and T Visa Resource Guide* at 20.

<sup>379</sup> 8 C.F.R. § 214.14(c)(2)(i); New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,023-24.

<sup>380</sup> "For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity. For example, in the course of investigating Federal embezzlement and fraud charges, the investigators discover that the perpetrator is also abusing his wife and children, but because there are no applicable Federal domestic violence laws, he is charged only with non-qualifying Federal embezzlement and fraud crimes." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,018.

unreasonably refuse to provide ongoing assistance reasonably requested after the victim's U visa application has been filed.<sup>381</sup> Victims are to be able to obtain U visa certifications when an investigation is ongoing, whether or not a formal investigation was ever opened, the victim's testimony was required, or any investigation or prosecution that was initiated has been completed.

T visa victims are required to comply with reasonable requests for assistance from law enforcement and prosecutors investigating human trafficking<sup>382</sup> unless they fall into one of two statutory exceptions.<sup>383</sup> The exceptions listed in the statute apply when the victim is under the age of 18 or if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request. When an immigrant is incompetent or incapacitated, but their parent, guardian or next friend, is being or has been helpful to CPS investigators, CPS can sign the U or T visa certification, including cases where there is not and may never be a criminal investigation or prosecution.

### **Can an authorized CPS agency official sign a certification if the prosecutors decide(d) not to prosecute the perpetrator?**

Yes. A victim willing to help in the detection, investigation, or prosecution of criminal activity by CPS staff is able to access U visa protections regardless of whether CPS decides to open a formal case involving the perpetrator and whether or not the perpetrator is investigated by law enforcement or prosecuted.<sup>384</sup> In many cases prosecutors do not prosecute, such as when the alleged offender has absconded, enjoys diplomatic immunity, has been deported, or may be a perpetrator against whom law enforcement has not yet fully built a case. The accused person will usually know at least that a police report has been filed against him (or her), even if charges are never filed. The victim needs protection in these cases because risk of retaliation for reporting the crime can be considerable. For these reasons, a victim can apply for and be granted a U visa even when CPS and the police decline to investigate or prosecutors decline to charge perpetrators, when charges are later dismissed, or when prosecutors are unable to secure convictions.

Congress also recognized that for many crimes, particularly those that can be serial in nature (e.g., rape), a victim could come forward, provide evidence, and only much later—after a number of victims have come forward—can child protective services agency staff and/or police build a criminal case against the perpetrator. The U visa was designed to provide protection for immigrant victims, to encourage them to come forward and provide evidence and information about criminal activity committed against them. If an immigrant crime victim has offered or is willing to offer assistance to child protective services agency staff, law enforcement officials, or prosecutors regarding the criminal activity, the outcome of the case (or whether authorities ever proceed with the case) is not relevant to a victim's U visa eligibility.

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<sup>381</sup> *DHS U and T Visa Resource Guide* at 18.

<sup>382</sup> *DHS U and T Visa Resource Guide* at 18, 21.

<sup>383</sup> 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

<sup>384</sup> *DHS U and T Visa Resource Guide* at 21; U.S. Citizenship and Immigration Services, *Information for Law Enforcement Officials, Immigration Relief for Victims of Human Trafficking and Other Crimes*, available at <https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>.

## **Can an authorized CPS official sign a certification or declaration if the individual seeking certification does not appear to be a victim of a qualifying criminal activity?**

No. If the CPS official does not believe that the individual seeking certification is a victim of a qualifying criminal activity (for U visa cases) or a victim of a severe form of human trafficking (for T visa cases), the agency should not sign the U visa certification or T visa declaration. There is one exception, when the immigrant applying for a U visa is an indirect victim (discussed below). CPS officials, however, should remember that many of these crimes, including domestic violence, sexual assault, and human trafficking, are traumatic and are not immediately reported. Furthermore, many perpetrators fuel immigrant victims' perceptions and expectations about government agencies, based on experiences from their home countries, where government investigators might have been corrupt and unreliable. Therefore, a CPS official may not immediately identify someone as a victim because the individual is not yet comfortable disclosing the victimization. Careful investigation of possible victims must be done with the utmost care in instances where victims have not yet disclosed their victimization.

In addition, over time, CPS staff may develop reasons to believe that a child who is receiving support or services is a victim of a qualifying criminal activity. Examples of criminal activities that may emerge include the abuse, neglect, or abandonment of immigrant children. The criminal activity must have violated a state, federal or local criminal law.<sup>385</sup> CPS staff should review the list of U and T visa criminal activities to determine whether the person was a victim of a listed criminal activity or a similar criminal activity.<sup>386</sup>

The criminal activity that the victim suffered from must be “any similar activity in violation of federal, state, or local criminal law.”<sup>387</sup> Child abuse is similar to domestic violence for U nonimmigrant purposes. Additionally, CPS should assess whether the victim is being, has been, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity and to encourage victim helpfulness and certification at the very early stages of detection or investigation of criminal activities.<sup>388</sup> When a criminal activity listed in the U visa statute or a similar criminal activity has occurred and the immigrant victim is a child, and either the victim or their family member or next friend has been, is being, or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing, the CPS agency should sign a U visa certification that the victim can use in applying for U visa protections.

In cases in which the victim may not qualify for a U Visa, the victim may be eligible for a VAWA self-petition or another form of immigration relief described in this toolkit. It is important to note that VAWA self-petition requires that the perpetrator commits “battering or extreme

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<sup>385</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,015.

<sup>386</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,015; *see also* the Quick Reference Guide in this toolkit for a full list of U visa criminal activities.

<sup>387</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,015.

<sup>388</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,019.

cruelty” and there is no requirement that the victim prove how and to what extent the battery or extreme cruelty harmed the victim as an element of proof in the VAWA self-petitioning case. In contrast, U visa victims are required to prove to DHS that the criminal activity they suffered constituted “substantial mental or physical abuse.”

In deciding on substantial mental or physical abuse, DHS considers both the severity of the harm suffered by the victim and the severity of the abuse inflicted by the perpetrator.<sup>389</sup> The certifying agency is authorized to sign the certification without making any assessment of the harm suffered by the victim beforehand. Apart from obtaining the certification, the victim must provide evidence that they suffered substantial harm due to the criminal activity in their U visa application, and USCIS will decide whether the victim has proven substantial harm. CPS and other certifying agencies that have evidence of physical or emotional harm suffered by the immigrant victim can include that information as part of their certification in support of the victim’s case.

**Can an authorized CPS official sign a certification if the victim’s testimony conflicts with earlier statements or is harmful to the case?**

Maybe, depending on why the testimony conflicts with earlier statements. For example, language barriers and the use of unqualified interpreters often create the perception that an immigrant victim’s testimony has changed when the conflict is because of faulty or lack of interpretation. In cases of particularly traumatic crimes, it may take some time before a victim is able to recall or provide complete information, even if the victim is being helpful. This can also lead to unintended conflicting statements.

**Can an authorized CPS official sign a certification if there is evidence that the victim is accused or convicted of a crime?**

Yes. Certification can be granted when a CPS official with authority or delegated authority to sign certifications believes that the immigrant has been the victim of criminal activity, even if the victim has been arrested as a crime perpetrator in the past. Congress anticipated this problem and specifically allowed DHS the discretion on a case-by-case basis to grant waivers of U visa victims’ criminal convictions when it is in the public or national interest.<sup>390</sup> Many immigrant crime victims have been controlled by their abusers in such a way that they end up being arrested based on information from the perpetrator or because of poor interpretation or fear of disclosing the truth about abuse to investigators. Despite federal and state policies to the contrary, some domestic violence incidents result in arrest of both the perpetrator and the victim, despite government policies discouraging arrest of the victim. Such arrests fail to acknowledge an overall power and control dynamic that exists in abusive relationships.<sup>391</sup> DHS will screen the criminal background of every U visa applicant and the

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<sup>389</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,018.

<sup>390</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,015.

<sup>391</sup> See “Family Violence: A Model State Code sec. 205A(2)” The National Council for Juvenile and Family Court Judges (1994) for an outline of considerations in dual arrest cases. Many states have adopted policies that encourage arrest of the predominant aggressor in domestic violence cases.

agency will investigate every arrest. If a U visa applicant is found to be the perpetrator of the crime (e.g., someone identified as a trafficking victim is actually the trafficker), DHS will deny the applicant's case, precluding the individual from obtaining U visa relief.

### **Can an authorized CPS official sign a certification if there are concerns about the victim's credibility?**

Yes. The certifier is responsible for ensuring that the information on the U visa certification or T visa declaration is true and complete.<sup>392</sup> USCIS will adjudicate any issues of credibility and will consider, but is not bound by, the information provided in the U visa certification or T visa declaration. USCIS will consider all evidence submitted and the totality of the circumstances in the case, including statements in the application that suggest issues of credibility. USCIS employs rigorous standards to check the credibility of every applicant.<sup>393</sup>

### **Are there times when someone might be an indirect victim and still seek certification?**

Yes. Indirect victims are able to seek U visas in cases when the direct victim is deceased as a result of the crime (e.g., murder or manslaughter), incompetent, or incapacitated.<sup>394</sup> Indirect victims can also seek U visas when the victim of criminal activity was an under 21 year old child victim. When the victim is an immigrant or U.S. citizen child under the age of 21 their parents and siblings under the age of 18 can be considered indirect victims and can also apply for U visas.<sup>395</sup>

The preamble to the U Visa regulations reflect DHS' intention to with regard to indirect victims to encourage "these family members to fully participate in the investigation or prosecution" and avoid results outcomes that "separate families and lead to anomalous results".<sup>396</sup> 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>397</sup>

CPS clients may also qualify for a U visa when they have been a victim of witness tampering, obstruction of justice, or perjury. The DHS U visa regulations state that:

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<sup>392</sup> DHS USCIS Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

<sup>393</sup> "A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa...The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa...If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues." DHS U and T Visa Resource Guide at 17.

<sup>394</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>395</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>396</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>397</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).

“[T]his rule provides that a victim of witness tampering, obstruction of justice, or perjury is an alien who has been directly and proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of or undue control over the alien through manipulation of the legal system.”<sup>398</sup>

Many CPS clients are victims of various forms of manipulation, which can involve manipulation of the legal system. In other cases, the CPS client may have been a witness to crimes perpetrated against or by members of their extended family who may live in their household. The criminal activities of witness tampering, obstruction of justice, and/or perjury may form the basis for U visa eligibility for a CPS client independent of<sup>399</sup> or in tandem with other U visa criminal activities the CPS immigrant client has suffered.<sup>400</sup> It is important to note that immigrant victims who are themselves culpable of criminal activity unrelated to having been abused and forced by their abuser to commit crimes are not eligible to receive a U visa, subject to certain exceptions.<sup>401</sup>

### **What if a crime victim does not have an immigration attorney, practitioner, or advocate but the authorized CPS official wants to sign a certification?**

The CPS agency head and CPS officials with designated certification authority may sign U and T visa certifications for victims who have not yet secured legal representation.<sup>402</sup> Because immigrant victims are required to file their U visa applications within 6 months of the date that the certification is signed, it is highly recommended that CPS refer the immigrant survivor to an agency in the state that has expertise providing legal representation in VAWA, T visa, and U visa cases. CPS staff can use NIWAP’s online directory of programs with this expertise to identify agencies that provide this assistance in your state.<sup>403</sup> Over 97% of U visa applicants nationally file with the assistance of an attorney or an accredited representative (a non-lawyer advocate).<sup>404</sup>

### **What if a particular jurisdiction has a policy not to protect people who are without lawful immigration status?**

Congress created the two visas to:

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<sup>398</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>399</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>400</sup> See 8 C.F.R. § 214.14(a)(14)(ii).

<sup>401</sup> See 8 C.F.R. § 214.14(a)(14)(iii).

<sup>402</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 or if the certification expires due to delays in the victim attaining legal representation. Note: victims are not required to have attorneys to apply for the U visa.

<sup>403</sup> To identify local programs with experience serving immigrant crime victims, please refer to NIWAP’s directory, available at <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>.

<sup>404</sup> USCIS: *U Visa Demographics: U Visa Report* at 6 (Mar. 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-demographics>.

*strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...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.*<sup>405</sup>

Congress noted that:

*[T]he United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses.*<sup>406</sup>

Jurisdictions that in practice refuse to sign U visa certifications/T visa declarations or that adopt a uniform policy against signing them should consider the ramifications for immigrant victims, the impact on trust of government agencies, including CPS, and how this approach undermines community safety and the government's ability to stop crime and abuse.<sup>407</sup> Excluding a significant and vulnerable part of the population from protection may have long-lasting and serious effects for the entire community.

### **Once a certification or declaration is signed, what are the ongoing obligations for CPS staff?**

CPS cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration and to whom DHS granted a U or T visa.<sup>408</sup> The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa.<sup>409</sup>

If a victim later appears not to be a victim or unreasonably refuses to be helpful or cooperative in a CPS investigation or prosecution, a certifying agency may contact USCIS to report any such changes, and may disavow the certification or declaration in writing.<sup>410</sup> DHS may then revoke the visa after providing notice to the victim of the intent to revoke and an opportunity for the victim to respond.<sup>411</sup>

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<sup>405</sup> Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386, §1513(a).

<sup>406</sup> Trafficking Victims Protection Act of 2000, Pub. L. 106–386, §102(b)(24).

<sup>407</sup> *Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims*, Police Chief Magazine (April 2018), available at [https://niwaplibrary.wcl.american.edu/pubs/policechief\\_april-2018\\_building-trust-immigrant-victims](https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims).

<sup>408</sup> *DHS U and T Visa Resource Guide* at 17.

<sup>409</sup> *DHS U and T Visa Resource Guide* at 17.

<sup>410</sup> 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)) (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

Send the victim's name, date of birth, A-file number (if available) and the reason for the certification's withdrawal to:

U.S. Citizenship and Immigration Services/Vermont Service Center, Attn: T/U visa Unit75 Lower Welden Street  
St. Albans, VT 05479-0001.

<sup>411</sup> 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)) (2007); 72 Fed. Reg. 92266, 92312 (codified at 8 C.F.R. § 214.11(m)(2)) (2016).



However, such notification to DHS is appropriate only when the victim's lack of cooperation is not reasonable. A victim may decide not to continue to provide information or testimony for a number of reasons, including the crime perpetrator's coercing the victim not to testify or threatening the victim or family members with further harm or other retaliation if they continue cooperating. The regulations use a "totality of circumstances" test to assess whether a visa holder unreasonably refused to provide assistance.<sup>412</sup> Some factors to consider in ascertaining whether the victim's lack of cooperation is reasonable are the amount of time that has passed since the victimization, the level of trauma, the availability of victim services and resources, and financial stability.<sup>413</sup>

### **What if the victim is arrested after the certification is signed?**

The certifying agency does not have an obligation to track the criminal history of every victim receiving a U visa certification/T visa declaration. It is the responsibility of USCIS to investigate the arrest of every person with a pending immigration application. Background checks are performed several times over the years in which a U visa case is pending, including when USCIS considers issuing a bona fide determination, when USCIS reviews and extends deferred action and work authorization, when the U visa case is adjudicated before a U visa will be issued, and when a U visa holder is applying for lawful permanent residence.<sup>414</sup>

Applicants with criminal convictions must disclose these convictions and apply for a waiver related to criminal convictions as part of the visa adjudication process. USCIS has the discretion to grant waivers if it is in the national or public interest to do so. After the visa is granted, USCIS will review an individual's criminal history again when the visa holder applies for lawful permanent residency.<sup>415</sup> Once any immigrant applies for an immigration benefit through the time the immigrant receives lawful permanent residency until an immigrant becomes a naturalized citizen, Department of Homeland Security closely monitors any criminal history of the immigrant continuously at multiple stages of the immigration case process. Criminal convictions can result in DHS not granting waivers to applicants and can result in loss of lawful permanent residency.

### **If a CPS agency staff or official has questions about a particular case, who can provide guidance?**

The Department of Homeland Security has created a U and T Visa hotline for certifying officials only. Certifiers with questions about U and T visa certification can call (240) 721-3333 for assistance. There is also a certify agency only email to which certifiers can send questions or ask specific case related questions – [LawEnforcement\\_UTVAWA.VSC@USCIS.dhs.gov](mailto:LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov).<sup>416</sup>

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<sup>412</sup> 8 CFR 245.24(a)(5) (2009); 8 CFR 214.11(h)(2) (2016).

<sup>413</sup> 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008).

<sup>414</sup> Katelyn Deibler & Leslye E. Orloff, *U Visa Timeline with Background Checks* (Sept. 15, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline>.

<sup>415</sup> U visa holders who apply for lawful permanent residence must also meet several other requirements and do not automatically receive permanent immigrant status in the United States. INA §245(m).

<sup>416</sup> Although this email has "law enforcement" in the email title, it is the USCIS email designed to be used for questions from *all* certifying officials, including child protective services agency staff. – according to resource guide it is

Although the email has “law enforcement” in the title the address is for use by all certifiers, not limited to law enforcement officials. It is important to note that DHS officials responding to calls and emails cannot disclose to the caller information contained in U and T visa cases files and cannot reveal the status of a case or decisions made by DHS in the case. Revealing such information is barred by VAWA confidentiality laws 8 U.S.C. 1367.<sup>417</sup>

For CPS agency staff and agency leaders seeking technical support or consultation, please contact the National Immigrant Women’s Advocacy Project (NIWAP), American University, Washington College of Law at (202) 274-4457 or email us at [info@niwap.org](mailto:info@niwap.org) or visit our web library <http://niwaplibrary.wcl.american.edu/>.

NIWAP also maintains a directory of service providers with experience working with immigrant victims of domestic violence, sexual assault, U visa crimes and human trafficking.<sup>418</sup>

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<sup>417</sup> Zachary B. Perez, Alina Husain, and Leslye E. Orloff, *Quick Reference: VAWA Confidentiality Protections: Quoting Statutes, Regulations and Department of Homeland Security Policies* (Mar. 29, 2019), [http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-va-wa-confidentiality-protections\\_3-29-19](http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-va-wa-confidentiality-protections_3-29-19); Alina Husain and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (last updated Apr. 4, 2018), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

<sup>418</sup> See *Directory of Programs with Experience Serving Immigrant Victims*, available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

# Appendix F: U-Visa: “Helpfulness” Checklist<sup>419 420</sup>

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July 23, 2015 (Updated October 28, 2019)

The victim can be said to satisfy the “helpfulness” requirement of the U-Visa

*...when the victim has been helpful, is willing to be helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a **qualifying criminal activity**.*

Qualifying Criminal Activity is defined under immigration law<sup>421</sup> as:

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contract (8 U.S.C. 1351)
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other related crimes

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<sup>421</sup> *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-u-cert-resource-guide> (last visited Feb. 15, 2023).

This includes any similar activity where the elements of the crime are substantially similar including attempt, conspiracy, or solicitation to commit any of the above, and other related crimes.<sup>422</sup>

### **Who detects a U visa victim’s helpfulness in the detection, investigation, prosecution, conviction, or sentencing of criminal activity?**

- Federal, state, or local law enforcement agency<sup>423</sup>
- Prosecutor, including city and states’ attorneys and state attorneys general<sup>424</sup>
- Federal or State Judge,<sup>425</sup> commissioner, magistrate,<sup>426</sup> or other judicial officer in a civil, family, juvenile, criminal, or administrative law case<sup>427</sup>
- Child or Adult Protective Services<sup>428</sup>
- Equal Employment Opportunity Commission (EEOC)<sup>429</sup>
- Department of Labor (DOL)<sup>430</sup>
- Other Federal, State, Local, Tribal, or Territorial government agencies with investigative duties, including agencies that have criminal, civil, or administrative investigative or prosecutorial authority<sup>431</sup>

### **Certifiers can either detect or receive helpfulness.**

Whether a certifier or certifying agency receives the following types of helpfulness or detects this helpfulness will depend on the type of certifier or certifying agency. Below is a non-exhaustive list of examples.

- State police, local police, and sheriffs’ offices will receive helpfulness directly and will also be able to detect helpfulness for others. Examples include:

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<sup>422</sup> *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, at 13, available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-u-cert-resource-guide> (last visited Feb. 15, 2023).

<sup>423</sup> Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007. (Hereinafter U Visa Rule) <http://niwaplibrary.wcl.american.edu/pubs/federal-register-new-classification-victims-criminal-activity-eligibility-u-nonimmigrant-status-interim-rule/>.

<sup>424</sup> U Visa Rule at 53019.

<sup>425</sup> U Visa Rule at 53019.

<sup>426</sup> *DHS Resource Guide* at 16 (“Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.”).

<sup>427</sup> *See Expert Advice for Judges: How to Handle U Visa Certification and T Visa Endorsement Requests* (Webinar) (Dec. 1, 2014) <http://niwaplibrary.wcl.american.edu/december-1-2014-expert-advice-for-judges-webinar/>.

<sup>428</sup> 8 C.F.R. § 214.14 (2007); *see also* USCIS Fact Sheet. USCIS Publishes Rule for Nonimmigrant Victims of Criminal Activity. September 5, 2007 <http://niwaplibrary.wcl.american.edu/pubs/certifying-u-factsheet/> (Hereinafter USCIS Fact Sheet) (e.g. Federal Bureau of Investigation, Human Rights Commissions, and City and State Departments of Labor, Housing, and Human Rights).

<sup>429</sup> 8 C.F.R. § 214.14 (2007); *see also* USCIS Fact Sheet.

<sup>430</sup> 8 C.F.R. § 214.14 (2007); *see also* USCIS Fact Sheet.

<sup>431</sup> *DHS Resource Guide* at 6.

- Prosecutors, child/adult protective services, FBI, EEOC
- Prosecutors will receive helpfulness directly and will also be able to detect helpfulness for others. Examples include:
  - Police, child/adult protective services, FBI, EEOC
- Judges, Commissioners, Magistrates, and other judicial officials will:
  - Detect helpfulness to police, prosecutors, child/adult protective services, the EEOC, or other state, local, or federal agencies that the court observes or learns about through pleadings, court filings, and evidence offered
  - Observe helpfulness when victims seek help from the justice system and/or provide evidence of crime victimization in a criminal case, a protection order, divorce, custody, employment enforcement, housing, administrative law, or other civil or family court proceeding
  - Observe helpfulness when a victim discloses criminal activity in pleadings, motions, or other documents filed with the court
  - Detect helpfulness when victims register with VINE or other victim notification networks or receive Victims of Crime Act (VOCA) assistance
  - Observe helpfulness when victims attend court proceedings and/or work with sheriffs/police who serve protection orders
- The EEOC, U.S. or state departments of labor: will receive helpfulness of crime victims who come forward to make labor law complaints or cooperate in employment investigations and will detect helpfulness to other agencies when victims that the EEOC of state departments of labor is working with made police reports, provided information to police or prosecutors, or sought protection orders or injunctions
- Child protective services (CPS) and Adult protective services (APS): CPS and APS agencies will receive helpfulness of crime victims directly in child and elder abuse investigations. CPS and APS will also detect helpfulness to other agencies when victims that CPS and APS are working with make police reports, provide information to police or prosecutors, or seek protection orders, or provide evidence of child or elder abuse in family court proceedings.

### **What constitutes being helpful, having been helpful or likely to be helpful?**

DHS summarizes the U visa statute<sup>432</sup> and regulations<sup>433</sup> helpfulness requirement as follows:

*“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 he or she is a victim.*”<sup>434</sup>

<sup>432</sup> INA Section 101(a)(15)(U)(i)(III); 8 U.S.C. 1101(a)(15)(U)(i)(III).

<sup>433</sup> 8 C.F.R. 214.14(b)(3).

<sup>434</sup> *DHS Resource Guide* at 7. The U visa regulations in 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows:

(5) *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.”

The U visa was created to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Nonetheless, Congress understood based on social science<sup>435</sup> that in many criminal cases, particularly victims of domestic violence and sexual assault, often find, for very compelling reasons, that they cannot further cooperate with requests from law enforcement and prosecutors after reporting the crime. The pattern of difficulty these victims have in providing ongoing cooperation is due to many factors and often is primarily based on fears of retaliation or because the victim is experiencing the perpetrator's retaliation and witness tampering efforts<sup>436</sup> or part of the trauma due to crime victimization.<sup>437</sup> These retaliation and witness tampering efforts with immigrant victims often include immigration related abuse — threats of deportation and abusers contacting immigration enforcement officials to provide “tips” designed to trigger immigration enforcement actions, detention, and deportation of the crime victim.

Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes while offering protection to victims<sup>438</sup> who might “be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”<sup>439</sup> U-visas are intended, in part, to help overcome this reluctance.<sup>440</sup>

*“The findings that Congress expressed in sections 1513(a)(1) and (2) of the BIWPA make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity.”<sup>441</sup>*

In 1994, when Congress enacted the Violence Against Women Act (VAWA) and in 2000 when VAWA was amended to add the U Visa, Congress clearly understood how perpetrators of domestic violence, child abuse, sexual assault, human trafficking, and other crimes use threats of deportation, coercive control, and other forms of intimidation and abuse to impede or interfere with victims ability and willingness to provide ongoing cooperation in investigations, prosecutions, and court cases involving the victim's crime perpetrator. DHS describes in its issuance of policies governing VAWA confidentiality an example:

*“There are a number of ways DHS employees might receive “tips” from an abuser or an abuser's family, such as: calling ICE to report the victim as*

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<sup>435</sup> Evan Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty* (2012); Edward W. Gondolf, *The Effect of Batterer Counseling on Shelter Outcome*, 3 *Journal of Interpersonal Violence*, No. 3 at 276 (Sept. 1988); Cynthia Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law* at 129 (1989).

<sup>436</sup> Kerry Healey, *Victim and Witness Intimidation: New Developments and Emerging Responses*, National Institute of Justice: Research in Action (Oct. 1995) (Only unsuccessful intimidation ever came to the attention of police or prosecutors), <https://www.ncjrs.gov/pdffiles/witintim.pdf>.

<sup>437</sup> “Demographics Statistics indicate that aliens may be victimized at even higher rates than citizens”. Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

<sup>438</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,015 (2007).

<sup>439</sup> New Classification for Victims of Criminal Activity; 72 Fed. Reg. 53,014 (2007).

<sup>440</sup> Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

<sup>441</sup> New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53,018.

*illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented, or providing information to USCIS rebutting the basis for the victim’s application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking, or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect.*”<sup>442</sup>

In order to ensure that the U visa would properly offer protection for victims in light of Congress’s understanding of the dynamics of domestic violence, sexual assault and human trafficking suffered by immigrant victims, Congress designed the legislation<sup>443</sup> and regulations<sup>444</sup> so that victims would be eligible to file for U visa protections at the very early stages of an investigation. Therefore victims can receive certification once they demonstrate that they have been, are being, or are likely to be helpful.<sup>445</sup>

Once the victim obtains a certification based on their past helpfulness, present helpfulness, or likely future helpfulness and files their U visa application, the U visa regulations impose a responsibility upon the U visa applicant/recipient to provide ongoing assistance when reasonably requested.<sup>446</sup> Those who unreasonably refuse to assist after reporting a criminal activity will not be eligible for a U visa.<sup>447</sup>

The U visa statute was structured to offer a realistic flexible approach that would:

- Encourage more victims to come forward and report criminal activity;<sup>448</sup>
- Offer U visa protection early in the case soon after a victim offered helpfulness;<sup>449</sup>
- Encourage ongoing cooperation in investigations and prosecutions when

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<sup>442</sup> Dept. of Homeland Security, Instruction Number: 002-02-001, Implementation of Section 1367 Information Provisions, 10 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02001/>.

<sup>443</sup> 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(o)(1).

<sup>444</sup> 8 C.F.R. 214.14(a)(12).

<sup>445</sup> 53019 Fed. Reg. Vol. 72, No. 179. (2007); “8 U.S.C. 1101(a)(15)(U)(i)(III) (“USCIS interprets ‘helpful’ to mean assisting ... authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.”); *see also* 53019 Fed. Reg. Vol. 72, No. 179 (2007) (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 an investigation.”).

<sup>446</sup> 8 C.F.R. § 214.14(b)(3).

<sup>447</sup> *DHS Resource Guide* at 7.

<sup>448</sup> Kristina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims’ Immigration Cases Are Pending* at 2-3 (2014) (Research has found that once immigrant victims file for immigration relief, they are more willing to turn to the justice system (police, prosecutors, courts) for help), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Qref-SafetyPlanning-06.18.14.pdf>; Kristina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants* at 29-30 (2014), [http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL\\_Report-on-Early-Access-to-EAD\\_02.12.pdf](http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL_Report-on-Early-Access-to-EAD_02.12.pdf).

<sup>449</sup> 72 Fed Reg. 53,019 (2007).

reasonably requested;<sup>450</sup> and

- Recognize that few victims of domestic violence, sexual assault, child abuse, elder abuser, and human trafficking due to trauma, the perpetrator's threat and action, and/or safety concerns may not be able to consistently provide ongoing cooperation every time requested.<sup>451</sup>

To accomplish this, the statute was written to grant immigrant crime victims the ability to attain U visas and lawful permanent residency even when they do not offer ongoing assistance so long as their refusal to provide assistance was not unreasonable.

- U visa applicants and recipients can receive wait-list approval, be granted the U visa, and be granted lawful permanent residency as U visa holders if they provide ongoing cooperation or if they demonstrate to DHS that they did not to unreasonably refuse to provide help, assistance, or cooperation.<sup>452</sup> Whether a victim's refusal or inability to cooperate was unreasonable is determined by:
  - Examining the totality of the circumstances including the nature of the victimization, victim's fear or the abuser, trauma suffered, force, fraud, or coercion.<sup>453</sup>
  - If the victim's ongoing cooperation in the investigation or prosecution may jeopardize the *victim's safety* or the *safety of her family* members in the U.S. or abroad, then the victim's failure to cooperate is **not** unreasonable.<sup>454</sup>
- Being helpful is **not** related to whether the perpetrator of the criminal activity has a warrant issued, whether the case is ongoing or closed, is prosecuted, is arrested, is convicted, etc.

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<sup>450</sup> 72 Fed Reg. 53,019 (2007).

<sup>451</sup> 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008).

<sup>452</sup> USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU\\_QAforLawEnforcement.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view); Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule. September 17, 2007. [http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA\\_interim-regs-Fed-Reg.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view);

<sup>453</sup> 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008); Department of Homeland Security, 8 C.F.R. Parts 103, 212, 214, 245 and 299, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status Vol. 73, No 240 Fed Reg. 75540, 75547(December 12, 2008)(Here in after T and U Adjustment Rule) [http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT\\_Regulations\\_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view)

<sup>454</sup> Leslye E. Orloff, Alina Husain, Alisha Lineswala and Benish Anver, *U Visa Quick Reference for Judges* (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>; Leslye E. Orloff, Alina Hussain, Alisha Lineswala, Benish Anver and Daniel Enos, *U Visa Quick Reference for Law Enforcement and Prosecutors* (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-law-enforcement-and-prosecutors>; NIWAP, American University, Washington College of Law, The Vera Institute Of Justice, Legal Momentum, *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (2018)(Funded by the Bureau of Justice Assistance and the Office on Violence Against Women, U.S. Department of Justice and the State Justice Institute) (U Visa Toolkit) <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; NIWAP, American University, Washington College of Law, U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officials (2018) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.



- Being “helpful” is **independent** from the results of the case.<sup>455</sup> Once the victim has provided helpfulness, the “helpfulness” requirement is satisfied even if:
  - An arrest or prosecution cannot take place due to evidentiary or other circumstances;<sup>456</sup>
  - The victim reported the crime but there was no further investigation;
  - Victims give helpful information to law enforcement which is documented in a police report, but the charging deputy declines to file charges;
  - The perpetrator has not been identified, has absconded, or is in hiding to avoid arrest;<sup>457</sup>
  - If the victim cooperated with law enforcement and the case is dismissed due to the mishandling of evidence or an unlawful search;<sup>458</sup>
  - The victim is not needed as a witness;
  - Victim reported a past crime that at the time of the incident the victim did not feel safe to report (there is no statute of limitations);<sup>459</sup>
  - The perpetrator has been deported;
  - The perpetrator is prosecuted for a different crime;
  - The criminal case did not result in a guilty plea or conviction;
  - The prosecutor initiates a criminal prosecution then discovers irregularities in the crime lab or irregularities with the police officers’ investigation and either exercises prosecutorial discretion not to file the case or discharges the matter “in the interest of justice”;
  - During the course of a criminal investigation for another crime for which the victim is providing evidence, the victim reports a qualifying U visa criminal activity which is not being prosecuted (e.g. a decision is made to prosecute a drug or gang related case instead of the domestic violence or sexual assault);
  - The criminal case ends in acquittal or with a hung jury and the prosecutor decides not to refile the criminal case;
  - Victim is not needed as a witness;
  - Victim is dead (indirect victim qualifies);
  - Perpetrator is dead;
  - The victim is dead and the immigrant seeking certification is an indirect victim family member;
  - The court case related to the criminal activity (criminal, civil, or family) is closed or was completed a long time ago;
  - Victim has a criminal history;

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<sup>455</sup> USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU\\_OAforLawEnforcement.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_OAforLawEnforcement.pdf/view); *U-Visas - Victims of Criminal Activity*, available at [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10\\_U-visa-MANUAL-ES.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view); *U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security*. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visas\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view).

<sup>456</sup> *DHS Resource Guide* at 11.

<sup>457</sup> *U Visa Toolkit* at 5.

<sup>458</sup> *DHS Resource Guide* at 11-12.

<sup>459</sup> *Information for Law Enforcement Agencies and Judges: Important Things to Remember*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>.

- Victim is subject to immigration enforcement;
- Victim is reticent at first to cooperate, but later discloses events or offers helpfulness after better understanding rights or after being provided meaningful language access;
- Victim did not initially report to EEOC, but was identified as a similarly situated class member of the qualifying criminal activity;

**Documents that can be used to prove helpfulness:**

- Photographs of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity<sup>460</sup>
- Trial transcripts<sup>461</sup>
- Court Findings, rulings, and other documents<sup>462</sup>
- Police reports<sup>463</sup>
- News articles <sup>464</sup>
- Copies of Reimbursement form for travel to and from court.<sup>465</sup>
- Affidavits of other witnesses or officials<sup>466</sup>

**In Cases Where the Victim is a Child or Incapacitated:**

If a child victim is dead, incapacitated, or incompetent, another person can meet the “helpfulness” requirement:

- On behalf of an immigrant victim who is a child, or who is incapacitated or incompetent the person who provides the helpfulness may be:<sup>467</sup>
  - A parent;
  - Guardian; or
  - Next friend
- When a victim has died, is a child, or is incapacitated or incompetent, certain family members are eligible to file for U visas as indirect victims:: <sup>468</sup>
  - Adult victims
    - Spouses
    - Children under 21 years of age
  - Child victims

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<sup>460</sup> U Visa Rule at 53024.

<sup>461</sup> U Visa Rule at 53024.

<sup>462</sup> U Visa Rule at 53024.

<sup>463</sup> U Visa Rule at 53024.

<sup>464</sup> U Visa Rule at 53024.

<sup>465</sup> U Visa Rule at 53024.

<sup>466</sup> U Visa Rule at 53024.

<sup>467</sup> 8 C.F.R. 214.14(b)(2) & (3)

<sup>468</sup>Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007.

[http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA\\_interim-regs-Fed-Reg.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view).

- Spouses
- Children under 21 years of age
- Parents
- Unmarried siblings under the age of 18 years

### Checklist for Criminal Cases

**Helpfulness can be met in a variety of ways in criminal cases that include but are *not* limited to:**

- Victim called police to report the crime
- Victim spoke freely with responding officers
- Victim participated in interviews with police investigators
- Victim allowed the police to take photographs of injuries and/or the crime scene
- Making or attempting to make a police report
- Reporting a Crime
- Providing information to police at the crime scene
- Attempting to provide information to the police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter
- Participating in pre-arrest identification on scene
- Victim sought medical assistance provided as evidence or the victims is willing to sign a medical release form
- Participating in a forensic medical, rape kit, or SART medical examination
- Registering for VINE or other victim notification system
- Victim is willing to answer follow-up questions at a later time
- Identifying and providing background information about the perpetrator
- Providing a history of violence perpetrated by the offender
- Disclosing or reporting prior violence and/or criminal activity to others
- Disclosing criminal activity that the suspect may be involved in
- Disclosing whether the suspect has an existing criminal record or any pending charges
- Victim sought a criminal protection order
- Cooperating as a witness for whom prosecutors seek a criminal stay away as part of bond
- Participating in pre-arrest identification of photo array
- Attending a line-up to identify the perpetrator
- Providing a statement to police, even if there is no arrest
- Providing photographs of injuries
- Providing restitution information
- Attending preparation sessions with the prosecutor
- Testifying at or attending the initial appearance, bond hearing, preliminary hearing, or arraignment
- Testifying as a witness before a grand jury
- Testifying at or attending pre-trial motions
- Testifying at or attending the trial
- Testifying at or attending post-trial motions

- Testifying at or attending sentencing
- Providing a victim impact statement
- Reporting parole/ probation violations
- Testifying at or attending parole hearings
- Testifying at or attending parole/probation violation hearings
- Working with social services, if required
- Serving as a witness in a another prosecution or investigation involving the perpetrator

### Checklist of Family Law Cases

**Helpfulness can be met in a variety of ways in family law cases that include but are *not* limited to:**

- Victim sought a civil protection order
- Victim sought and/or received an temporary, interim, or ex parte protection order<sup>469</sup>
- Victim returns to court to receive a permanent protection order
- Victim testifies in a default or contested protection order proceeding
- Provided information to assist with service of a civil or criminal protection order on the perpetrator by local police and/or sheriff's deputies
- Calling police to enforce or report violations of a civil protection order
- Attempting to provide information to the police to report violations of a protection order that could not be communicated because the police did not obtain a qualified interpreter
- Providing evidence of domestic violence, child abuse, and/or other U visa criminal activity in a custody, divorce, paternity, child support or other family court action, including but not limited to providing testimony, photographs of injuries, or medical records
- Providing information regarding child/elder abuse to protective services/investigators
- Victim attends court for a family court show cause hearing to report perpetrator's violations or contempt of family court custody and visitation order when threats or other criminal activity occurs
- Providing evidence or testifying in a child or elder abuse or neglect case
- Providing a history of violence perpetrated by the offender
- Victim provides the court with information about calling 911 for help, speaking to responding officers, making a police report of providing any other helpfulness to law enforcement or prosecutors listed on the law enforcement/prosecutors checklist above
- Victim provides the court information about filing or participating in and revealing the U visa listed criminal activity in a civil case including the activities listed in the civil

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<sup>469</sup> Certifications signed after the court proceeding has concluded or after the court has issued its final appealable order are signed as an administrative function of the court. Courts considering requests for certification while a civil, family or criminal case is pending will need to provide the parties an opportunity to be heard on the certification request. Judges signing U visa certifications in open cases may need to consider whether judicial ethics rules will allow the judge to continue to hear the case in the future.

court check list below.

### **Checklist for Civil Court Cases**

**Helpfulness can be met in a variety of ways in other civil court cases that include but are *not* limited to**

- Victim of sexual assault in the workplace is cooperating with the EEOC or DOL in another investigation of the employer by the EEOC or DOL
- Victim made a police report regarding crimes that occurred at their workplace
- Victim made a report to the EEOC or an equivalent state agency
- Victim provided information to an EEOC investigator
- Victim testified for the EEOC in a federal case regarding the employer
- Victim testified in a landlord tenant case regarding domestic violence, child abuse, or other U visa listed criminal activity
- Victim filed a small claims case against the abuser providing evidence of a U visa criminal activity
- Victim revealed the U visa criminal activity in a civil court case including but not limited to a tort action
- Providing evidence of domestic violence, child abuse, human trafficking, or other U visa criminal activity in a small claims, housing, or other civil court case, including but not limited to providing testimony, photographs of injuries, or medical records
- The victim provides the court in the civil case information listed on the criminal or family court checklists above.

#### ***A Note on the Status of Deferred Action for Childhood Arrivals (DACA)***<sup>470</sup>

Deferred Action for Childhood Arrivals (DACA) is another form of immigration relief that previously benefitted certain immigrant children. However, as of October 5, 2022, DHS is prohibited from granting new, first-time DACA requests.<sup>471</sup> It is possible that the laws will change in the future to allow adjudication of initial applications for DACA, but this will depend

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<sup>470</sup> On October 5, 2022, the Fifth Circuit affirmed the 2021 decision of the U.S. District Court of the Southern District of Texas, but preserved the partial stay from the 2021 decision with regard to individuals who obtained DACA on or before July 16, 2021, including those with renewal requests. On October 14, 2022, the U.S. District Court of the Southern District of Texas issued an order extending the partial stay to the DACA final rule, which allows USCIS to accept and process renewal DACA requests and accompanying requests for employment authorization under the final DACA rule. *See* 87 Fed. Reg. 53152, 53153 (2023); *see also Consideration of Deferred Action for Childhood Arrivals (DACA)*, USCIS (last updated Nov. 3, 2022), available at <https://www.uscis.gov/DACA>; *DACA Litigation Information and Frequently Asked Questions*, USCIS (last updated Nov. 3, 2022), available at <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions>.

<sup>471</sup> *Consideration of Deferred Action for Childhood Arrivals (DACA)*, USCIS (last updated Nov. 3, 2022), available at <https://www.uscis.gov/DACA>.

on the outcomes of pending litigation.<sup>472</sup> CPS staff should stay up to date on the status of DACA by referring to the USCIS webpage for DACA.<sup>473</sup>

DHS is still accepting renewal requests from those with valid grants of DACA, or individuals who were granted initial or renewal requests for DACA prior to July 16, 2021.<sup>474</sup> If CPS staff encounter an individual with a valid grant of DACA, they can inform the individual that they may still request renewals of status and accompanying work authorization. It is also important to note that under current law, in addition to accepting and processing renewal DACA requests, USCIS will also continue to accept and process applications for advance parole for current DACA recipients. Although USCIS cannot process initial DACA requests due to the District Court's extension of its injunction on DACA, USCIS is still *accepting* initial DACA requests. This information can be found on the USCIS webpage for DACA.<sup>475</sup>

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<sup>472</sup> See *DACA Litigation Information and Frequently Asked Questions*, USCIS (last updated Nov. 3, 2022), available at <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions>.

<sup>473</sup> See *Consideration of Deferred Action for Childhood Arrivals (DACA)*, USCIS (last updated Nov. 3, 2022), available at <https://www.uscis.gov/DACA>.

<sup>474</sup> See *Consideration of Deferred Action for Childhood Arrivals (DACA)*, USCIS (last updated Nov. 3, 2022), available at <https://www.uscis.gov/DACA>.

<sup>475</sup> See *DACA Litigation Information and Frequently Asked Questions*, USCIS (last updated Nov. 3, 2022), available at <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions>.

## Appendix G: Best Practices Guide for CPS Workers

The goal of this toolkit is to provide CPS staff with the tools and information they need to effectively serve and support immigrant children who are victims of child abuse, neglect, abandonment, domestic violence, staking, human trafficking, and other U visa covered criminal activities. Helping immigrant child victims and immigrant parents of citizen child victims access the forms of immigration relief Congress designed will offer them protection from deportation, work authorization, and expanded benefits access, which promotes healing, stability, and the wellbeing of children in immigrant families. This section addresses a few best practices for CPS staff to keep in mind when working with child victims who live in immigrant families. Since this section is not exhaustive of all of the potential issues CPS staff may encounter when working with immigrant child victims, NIWAP provides free technical assistance, training, and resource materials to CPS staff working with immigrant children and children living in mixed immigration status families.<sup>476</sup>

### Best Practices as U and T Visa Certifiers

In creating the U visa and T visa, Congress sought to offer immigrant crime victims access to visa protections as early as possible after the victim of a criminal activity came forward and made a report to the police, to a court, to CPS, or other government agency revealing the facts of the criminal activity the immigrant victim suffered. Congress also wanted to ensure that crime victims who came forward to help with any part of a government agency's investigation or court case process could be protected against the perpetrators' threats of deportation, retaliation, and intimidation to coerce victims into not cooperating with government agencies investigating cases involving facts about U or T visa covered criminal activities.

To accomplish this, Congress authorized a range of government officials to be U and T visa certifiers. Police, prosecutors, judges, adult and child protective services, DHS officials, the FBI, federal and state agencies investigating labor violations (including the U.S. Department of Labor and the Equal Employment Opportunity Commission), state and federal Alcohol, Tobacco and Firearms investigators, and any other federal or state government agency were each authorized to sign certifications. The goal was to ensure that any certifying agency that the victim first encounters could sign certifications. Alternatively, if the first agency did not provide language access or was not knowledgeable about the U visa or T visa, victims could obtain certification from another certifying agency that could attest to the veracity of the victimization and the victim's past, present, or future likelihood of helpfulness or assistance.

U visa certifications and T visa declarations should be signed by CPS based on CPS agency records and information. The following information is the only information called for in the certification:

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<sup>476</sup> NIWAP technical assistance is available by contacting at [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu); 202-274-4457. Additional information is available on our website at [www.wcl.american.edu/niwap](http://www.wcl.american.edu/niwap).

- The applicant was a victim or, in some cases, an indirect victim of the qualifying criminal activity;
- The applicant has specific knowledge and details of the crime;
- The applicant was helpful, is being helpful or is likely to be helpful in the detection, investigation or prosecution of the criminal activity;
- In cases of applicants who are incompetent or incapacitated this helpfulness can be provided by a parent, guardian or next friend; and
- Information about any family members of the victim involved in perpetrating the criminal activity.

In T visa cases, the following information is the only information called for in the declaration:

- The applicant was a victim of a severe form of trafficking in persons;
- The applicant has complied with requests for assistance in the investigation/prosecution of the crime of trafficking; and
- Information about any family members of the victim involved in the victim's trafficking to the United States.

CPS workers are encouraged to look closely at the facts of the case before them and to identify all of the types of criminal activities listed on the U visa certification/T visa declaration, as well as all similar criminal activities as defined by state law,<sup>477</sup> that the facts of the case potentially support. Oftentimes as the CPS investigation moves forward and any criminal investigation or prosecution that may be initiated proceeds, the exact criminal activities that become the focus of the CPS investigation, any law enforcement investigation, or prosecution may change. For this reason, it is best practice for CPS workers to check off all of the listed criminal activities that are detected as part of the facts of the case and the abuse or neglect that the child suffered on the U visa certification form.

This is very important because to be granted a U visa, the victim will need to prove that the substantial harm they suffered was connected to one of the criminal activities checked on the certification form. So, in a case where a child abuse perpetrator was obstructing a CPS investigation and witness tampering, and the state was pursuing these charges in a case involving child abuse or child sexual exploitation, the child's substantial harm will be much more likely to stem from the child abuse or sexual exploitation than the witness tampering or obstruction of justice. Similarly, if the facts demonstrate domestic violence and use of a deadly weapon, which would be a felonious assault, both boxes should be checked since both criminal activities occurred. The same set of facts can sometimes be charged under multiple statutes. It is also important to note that an immigrant child victim is eligible for certification even if no criminal investigation or prosecution in the case is ever opened or initiated and no criminal charges are brought against the perpetrator.

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<sup>477</sup> *DHS U Visa Law Enforcement Resource Guide* at 5 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.



## Child Welfare Cases and Relevance of Immigration Status on Parental Rights

All parents, regardless of their immigration status, have a constitutional right to custody, absent a finding of unfitness. Therefore, this right to custody applies to all families, including those without lawful immigration status or those who are currently in immigration detention and facing deportation.<sup>478</sup> The overriding presumption is that the parent-child relationship is constitutionally protected and it is in the child's best interest to stay or be reunited with their parents, *without regard to immigration status*. When CPS is considering a child's best interests and developing an action plan for the child, CPS staff must not make any comparison of the natural parent's versus the adoptive parent's culture, country of origin, or financial means.<sup>479</sup>

Additionally, CPS staff should understand when immigration status is and is not relevant to custody determinations.<sup>480</sup> Immigration status will be relevant when the perpetrator uses immigration-related abuse tactics to assert power and control over the immigrant victim. This can include threats to withdraw or not file an immigration application for the victim or threats to turn the victim in for deportation.<sup>481</sup> These are important factors to consider when documenting and considering the full history of violence suffered by the immigrant victim. However, immigration status is never relevant when making core primary caretaker determinations, evaluating parenting skills, or making best interests of the child determinations.<sup>482</sup> The overriding presumption of familial unity means that custody should be awarded to the non-abusive parent, if any, without regard to immigration status.<sup>483</sup>

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<sup>478</sup> See *In re Interest of Angelica L.*, 767 N.W.2d 74, 92-94 (Neb. 2009) (reversing the juvenile court's termination of mother's rights)

<sup>479</sup> See *In re Interest of Angelica L.*, 767 N.W.2d 74, 92-94 (Neb. 2009) (reversing the juvenile court's termination of mother's rights) (“... the ‘best interests’ of the child standard does not require simply that a determination be made that one environment or set of circumstances is superior to another.”).

<sup>480</sup> Leslye E. Orloff, Andrea Carcamo Cavazos, and Abigail Whitmore, *Family Court Bench Card on Issues that Arise in Custody Cases Involving Immigrant Parents, Children, and Crime Victims* (Nov. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/benchcard-issues-arise-custody-cases>.

<sup>481</sup> Leslye E. Orloff, Andrea Carcamo Cavazos, and Abigail Whitmore, *Family Court Bench Card on Issues that Arise in Custody Cases Involving Immigrant Parents, Children, and Crime Victims* (Nov. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/benchcard-issues-arise-custody-cases>.

<sup>482</sup> Abigail Whitmore & Leslye E. Orloff, *When Family and Immigration Laws Intersect: Case Law and Department of Homeland Security Policy Update* (Sept. 30, 2021), available at

<https://niwaplibrary.wcl.american.edu/pubs/immigration-status-in-custody-cases>; see also Soraya Fata et al., *Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings*, 47.2 FAM. L. Q. 191 (2013), available at

<https://niwaplibrary.wcl.american.edu/pubs/custody-in-mixed-status-families>; Veronica T. Thronson et. al., *Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody, and Parental Rights*, 9 Family & Intimate Partner Violence Quarterly 7 (2016), available at <https://niwaplibrary.wcl.american.edu/winning-custody-article-2017>; Veronica T. Thronson et. al., *Serving Limited English Proficient Immigrant Victims*, 9 Family & Intimate Partner Violence Quarterly 15 (2016), available at

[https://www.civresearchinstitute.com/online/article\\_abstract.php?pid=6&iid=1269&aid=8306](https://www.civresearchinstitute.com/online/article_abstract.php?pid=6&iid=1269&aid=8306); Maureen Hannah, *Editor's Introduction*, 9 Family & Intimate Partner Violence Quarterly 7 (2016), available at

<https://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>.

<sup>483</sup> *Child Custody Newsletter* (Oct. 27, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/child-custody-newsletter>.

## Understanding Whether and When a Child’s Parent or Guardian Is and Is Not at Risk of Being Detained By Immigration Enforcement Officials

CPS workers may find themselves working with children whose parents or legal guardians are detained by or who may be at risk of being detained by Immigration & Customs Enforcement (ICE). It is important for CPS workers to understand the rights of detained parents and their children in order to provide important information to ICE that can influence the ICE decision about whether or not to detain a parent or guardian of a minor child.<sup>484</sup> ICE has an obligation under U.S. immigration laws and policies to:

“ensure that the agency’s civil immigration enforcement activities do not unnecessarily disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children and incapacitated adults...”<sup>485</sup>

Under ICE policies, ICE enforcement officials are required to inquire at their first encounter with a noncitizen about the noncitizen’s status as a parent or legal guardian of a minor child or incapacitated adult. ICE is also required to continue to make these inquiries during all future encounters with the immigrant.<sup>486</sup>

When a parent or guardian is identified as a primary caretaker or custodian of a child or incapacitated adult, or is a person with a direct interest in a state court proceeding or is a person in whose custody the state CPS agency has placed a child or incapacitated adult, that information must be recorded by ICE in the immigrant’s case file. This information must also be reported up the chain of command at ICE to the highest ranking official in the ICE field office.<sup>487</sup>

These requirements help ICE officials identify and consider an immigrant’s status as a primary caregiver for children or an incapacitated adult and exercise ICE’s prosecutorial discretion on the immigrant’s behalf. There are many scenarios where the parents or legal guardians of children and incapacitated adults, particularly those who are or have been involved in family court or child welfare proceedings, are immigrants, but will not be at risk of detention because they are not an ICE enforcement priority. Under DHS policies, noncitizens who are primary caregivers of children or incapacitated adults are generally considered a low priority for removal.

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<sup>484</sup> Benish Anver, Faiza Chappell, Abigail Whitmore, and Leslye E. Orloff, *How to Get a Detained or Removed Person to Court for Family Court Cases Involving Children or Incapacitated Adults* (Aug. 12, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>.

<sup>485</sup> Benish Anver, Faiza Chappell, Abigail Whitmore, and Leslye E. Orloff, *How to Get a Detained or Removed Person to Court for Family Court Cases Involving Children or Incapacitated Adults* at 1 (Aug. 12, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>.

<sup>486</sup> Benish Anver, Faiza Chappell, Abigail Whitmore, and Leslye E. Orloff, *How to Get a Detained or Removed Person to Court for Family Court Cases Involving Children or Incapacitated Adults* at 5 (Aug. 12, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>.

<sup>487</sup> Benish Anver, Faiza Chappell, Abigail Whitmore, and Leslye E. Orloff, *How to Get a Detained or Removed Person to Court for Family Court Cases Involving Children or Incapacitated Adults* at 2 (Aug. 12, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>.

The ICE Parental-Guardian Interests Directive applies to immigrant parents and guardians only in the “limited circumstances in which detention is appropriate,” which are cases that fall under one of the Department of Homeland Security’s three civil immigration enforcement priorities. These three priorities are when the noncitizen is a:<sup>488</sup>

- 1) Threat to national security;<sup>489</sup>
- 2) Threat to border security;<sup>490</sup> or
- 3) Threat to public safety.<sup>491</sup>

It is important that CPS staff are aware that victimization by crime or abuse of the immigrant parent, immigrant guardian, or their child also prevents detention, deportation, and other forms of civil immigration enforcement as part of the ICE policies on a victim-centered approach.<sup>492</sup> To understand whether a party in a case is an enforcement priority and therefore at risk of detention, this publication should be read in conjunction with the NIWAP publication on enforcement priorities.<sup>493</sup>

It is also important for CPS to understand that when they place a child in the care or custody of a parent or guardian, documentation of that placement decision by CPS and/or any

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<sup>488</sup> See *Mayorkas Memorandum: Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/mayorkas-civil-imm-guide-sept-21>.

<sup>489</sup> Leslye E. Orloff, Meaghan Fitzpatrick, Monica Bates, Mikaela Rodriguez, and Abigail Whitmore, *DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges* at 5 (Dec. 27, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard> (“A noncitizen who engaged in or is suspected of terrorism or espionage, or terrorism related or espionage-related activities; or who otherwise poses a danger to national security, is a priority for apprehension and removal.”).

<sup>490</sup> Leslye E. Orloff, Meaghan Fitzpatrick, Monica Bates, Mikaela Rodriguez, and Abigail Whitmore, *DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges* at 5 (Dec. 27, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard> (“A noncitizen apprehended at the border or port of entry while attempting to unlawfully enter the United States; or a noncitizen apprehended in the United States after unlawfully entering after November 1, 2020; in cases concerning border security, there could be mitigating or extenuating facts and circumstances that militate in favor of declining enforcement action.”).

<sup>491</sup> Leslye E. Orloff, Meaghan Fitzpatrick, Monica Bates, Mikaela Rodriguez, and Abigail Whitmore, *DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges* at 5 (Dec. 27, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard> (“noncitizen poses a current threat to public safety, typically because of serious criminal conduct. Whether a noncitizen poses a current threat to public safety requires an assessment of the individual and the totality of the facts and circumstances. In reevaluating whether a noncitizen currently “poses a threat to public safety” requires an assessment of the individual and the totality of the facts and circumstances and consideration of both aggravating and mitigating factors. DHS personnel should, to the fullest extent possible, obtain and review the entire criminal and administrative record and other investigative information to learn of the totality of the facts and circumstances of the conduct at issue.”)

<sup>492</sup> Immigration & Customs Enforcement, *ICE Directive 11005.3 – Using a Victim-Centered Approach with Noncitizen Crime Victims* (Aug. 10, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>.

<sup>493</sup> Leslye E. Orloff, Meaghan Fitzpatrick, Monica Bates, Mikaela Rodriguez, and Abigail Whitmore, *DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges* (Dec. 27, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard>

placement, custody, or guardianship orders regarding any citizen or noncitizen child issued by a court can be used by the parent or guardian in whose case the child was placed to prevent immigration enforcement actions being taken against the person in whose case the child was placed by the CPS agency or the court.<sup>494</sup> Current DHS policies require that immigration enforcement officials to screen immigrants to determine whether they are caregivers of children before taking immigration enforcement actions against any person.<sup>495</sup> CPS and court placements of children and custody and guardianship orders are to be respected and not interfered with by DHS enforcement officials.<sup>496</sup> Persons who have court orders and CPS determinations that place children in their care can also obtain reversals of detention decisions by DHS and release of a child's detained parent or guardian from immigration detention.<sup>497</sup> These policies apply to all children and their parents and guardians without regard to the immigration status of the child.

CPS can play an important role when immigrant parents are detained, including helping secure the parent's attendance at court proceedings involving their children<sup>498</sup> and helping facilitate visitation with the child client and making a determination as to whether and how to pursue SIJS for the immigrant child.<sup>499</sup> Under the 2022 ICE Detained Parents Directive, there are certain actions ICE must take in order to preserve the parental and/or guardianship rights of noncitizen parents and legal guardians:<sup>500</sup>

- If ICE decides to detain a parent or guardian, ICE must detain parents/guardians in the same place as the minor children if they were all in same initial area of apprehension;
- ICE must facilitate transportation for parents/guardians with active family court/child welfare/guardianship proceedings;
- ICE must facilitate regular visitation with the detained parents/guardians and the minor children; and
- When the immigrants ICE is in the process of detaining are the parents/guardians of a U.S. citizen child, ICE must conduct outreach to a local child protection agency if no

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<sup>494</sup> Immigration and Customs Enforcement (ICE) 11064.3 Parental Guardian Interests Directive (July 14, 2022) <https://niwaplibrary.wcl.american.edu/pubs/parental-guardian-interests-directive> (“It is the policy of ICE to ensure that the agency’s civil immigration enforcement activities do not unnecessarily disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children or incapacitated adults, consistent with all legal obligations and applicable court orders.”)

<sup>495</sup> Immigration and Customs Enforcement (ICE) 11064.3 Parental Guardian Interests Directive (July 14, 2022) <https://niwaplibrary.wcl.american.edu/pubs/parental-guardian-interests-directive> at 5.

<sup>496</sup> Immigration and Customs Enforcement (ICE) 11064.3 Parental Guardian Interests Directive (July 14, 2022) <https://niwaplibrary.wcl.american.edu/pubs/parental-guardian-interests-directive> at 5-6.

<sup>497</sup> Immigration and Customs Enforcement (ICE) 11064.3 Parental Guardian Interests Directive (July 14, 2022) <https://niwaplibrary.wcl.american.edu/pubs/parental-guardian-interests-directive> at 5-6.

<sup>498</sup> Benish Anver, Faiza Chappell, Abigail Whitmore, and Leslye E. Orloff, *How to Get a Detained or Removed Person to Court for Family Court Cases Involving Children or Incapacitated Adults* at 2 (Aug. 12, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>.

<sup>499</sup> U.S. Immigration & Customs Enforcement, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (July 14, 2022), available at <https://www.ice.gov/detain/parental-interest>.

<sup>500</sup> U.S. Immigration & Customs Enforcement, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (July 14, 2022), available at <https://www.ice.gov/detain/parental-interest>.

other arrangements can be made. **Under no circumstances can ICE take a U.S. citizen child into custody.**<sup>501</sup>

CPS staff should be aware of these directives in order to advocate for the child victim and ensure family unity. ICE also created a fact sheet for child welfare and guardianship stakeholders containing best practices for how to effectively realize the directives outlined above.<sup>502</sup>

## Adoptions of Foreign Born Children – Intercountry Adoptions

There are specific rules that must be followed to ensure that when a foreign born child is adopted in a state court proceeding that all steps were taken in the correct order to ensure that immigrant children adopted by U.S. citizens will be able to gain legal immigration status in the United States and have a path to citizenship through the adoption. Foreign-born children in the United States who are adopted in a U.S. court may face immigration-related implications. When CPS agency staff and courts fail to follow the correct steps in the correct order foreign born children can face unintended consequences of being left without legal immigration status and denied citizenship. This can lead in some instances to the immigrant child being abandoned by their adoptive parents and other harsh avoidable consequences for children.

. The Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) was created to assist in the prevention of international child abduction and the return of abducted children.<sup>503</sup> Thus, adoption alone does not give a child lawful immigration status. When a U.S. citizen adopts a foreign-born child in the United States without properly considering U.S. immigration law and the Hague Convention, this may delay, prevent, or complicate the child's ability to obtain lawful U.S. immigration status or to become a U.S. citizen. A U.S. citizen generally cannot bypass the requirements of the Convention by identifying a foreign-born child from a Convention member country who is already in the United States and then completing an adoption in the United States. U.S. state courts generally must not enter an order finalizing an adoption in a case subject to the Convention unless the Department of State has certified compliance with the Convention procedures.

Adoption alone does not give a child lawful immigration status. When a U.S. citizen adopts a foreign-born child in the United States without properly considering U.S. immigration law and the Hague Adoption Convention (when applicable), this may delay, prevent, or complicate the child's ability to obtain lawful U.S. immigration status or to become a U.S.

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<sup>501</sup> This includes placing the minor children in an ICE vehicle while they are awaiting the arrival of a third party. U.S. Immigration & Customs Enforcement, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* at 6 n.5 (July 14, 2022), available at <https://www.ice.gov/detain/parental-interest>.

<sup>502</sup> U.S. Immigration & Customs Enforcement, *Fact Sheet for Child Welfare & Guardianship Stakeholders: ICE Policies and Standards Related to Detained Parents & Legal Guardians* (Oct. 2022), available at <https://www.ice.gov/doclib/detention-reform/pdf/factSheetDetainedParentsChildWelfareStakeholders.pdf>.

<sup>503</sup> See generally, Catherine Klein et. al, *Chapter 06.3: The Implications of the Hague International Child Abduction Convention: Cases and Practice* (2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch6-3-hagueintlchildabduction>.

citizen. USCIS has developed a series of tools that will help CPS staff and state courts follow the correct procedures required for an immigrant adopted child to have a path to legal immigration status through the adoption. If CPS encounters an adopted child where the Hague Convention may apply, CPS should immediately utilize the helpful resources USICS created to determine the suitability and eligibility for an adoption that will include immigration benefits.<sup>504</sup> These resources include a fact sheet,<sup>505</sup> flow chart,<sup>506</sup> and policy manual chapters.<sup>507</sup>

## Practice Pointers for Working with Immigrant Survivors of Trauma<sup>508</sup>

Immigrant survivors of trauma may experience different sources of traumatic stress as a result of the crime victimization they have suffered in their home countries, during migration, and/or after they arrived in the United States. These trauma experiences can be amplified by immigration status concerns.<sup>509</sup> For example, the Refugee Task Force of the National Child Traumatic Stress Network finds that some immigrant families experience peri-migration trauma, which refers to psychological distress that occurs at four points in the migration process: before migration, during migration, rejection and suffering after arrival in the U.S. while seeking immigration relief, and discrimination and difficulties of living in the U.S. as an immigrant.<sup>510</sup> Before migration, the distress may have stemmed from domestic violence, child abuse and/or neglect, sexual assault, stalking, extreme poverty, war exposure, torture, and other violence in their country of origin. During migration, immigrant families are particularly vulnerable as a result of migrating with children, and psychological stressors may include parental separation, physical and sexual assault of the parent and/or child, theft of money saved to immigrate with, exploitation by human traffickers, and the death of traveling companions.

Upon arrival in the U.S., immigrant women and children are particularly vulnerable to gender-based violence, including domestic violence, child abuse, child neglect, sexual assault,

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<sup>504</sup> See generally, National Judicial Network Peer-to-Peer Forum – What Judges Need to Know: Adoption of Foreign-Born Children (June 6, 2023) <https://niwaplibrary.wcl.american.edu/njn-adoption-foreign-born-children-june-6-2023>

<sup>505</sup> USCIS Fact Sheet: Adoption in U.S. Courts of Children from Hague Adoption Convention Countries (June 6, 2023) [https://niwaplibrary.wcl.american.edu/pubs/fact-sheet\\_adoption-in-u-s-courts-of-children-from-hague-adoption-convention-contries](https://niwaplibrary.wcl.american.edu/pubs/fact-sheet_adoption-in-u-s-courts-of-children-from-hague-adoption-convention-contries)

<sup>506</sup> USCIS and State Department: Intercountry Adoption Process Flow Chart of Key Steps (June 6, 2023) <https://niwaplibrary.wcl.american.edu/pubs/intercountry-adoption-process-flow-chart-of-key-steps>

<sup>507</sup> National Judicial Network Peer-to-Peer Forum – What Judges Need to Know: Adoption of Foreign-Born Children (June 6, 2023) <https://niwaplibrary.wcl.american.edu/njn-adoption-foreign-born-children-june-6-2023> (contains links to current policy manual chapters).

<sup>508</sup> See materials in NIWAP web library: Dynamics, Culture, & Safety/Trauma-Informed Assistance/Impact of Trauma on the Brain Development of Children, available at <https://niwaplibrary.wcl.american.edu/trauma-informed-help-for-immigrant-survivors>.

<sup>509</sup> *A Social Worker's Tool Kit for Working With Immigrant Families: Healing the Damage: Trauma and Immigrant Families in the Child Welfare System*, Center on Immigration and Child Welfare at 10 (Feb. 2015), available at <https://cimmcw.org/wp-content/uploads/Trauma-Immigrant-Families.pdf>.

<sup>510</sup> *Review of Child and Adolescent Refugee Mental Health*, National Child Traumatic Stress Network Refugee Trauma Task Force (2003), available at <https://www.nctsn.org/resources/review-child-and-adolescent-refugee-mental-health> (describes the different types of traumatic stress in refugee populations).

stalking, dating violence, forced marriage, and human trafficking.<sup>511</sup> New immigrants' vulnerability to violence and abuse is accentuated by experiences with chronic deprivation of basic needs, substandard living conditions, lack of sufficient income, and racism. To compound this distress, immigrant families are experiencing a separation from their support structure, acculturation stress from adjusting to new circumstances in a new cultural context, and a fear of being sent back to the country they just fled.<sup>512</sup>

Additionally, immigrant children face a number of unique vulnerabilities in overcoming the impact of with their trauma once they arrive in the United States. Child vulnerability factors include their young age, immigration status as an undocumented or unaccompanied minor, inappropriate placement in school grade level, and language barriers to accessing education upon arrival. These vulnerabilities can lead to an increased risk of drug and alcohol abuse, behavioral problems, gang involvement, or other post-traumatic and mental health issues. There is also a link between domestic violence and child welfare involvement in the family. Investigating a child abuse report in a home where domestic violence already exists can increase the risk of that violence reaching the child, if it has not already.<sup>513</sup>

CPS staff working together with mental health professionals, social workers, and professionals with expertise serving immigrant children can play a critical role in facilitating immigrant children's healing, adjustment, acculturation, and access to the forms of legal immigration status discussed in this Toolkit that immigrant children are eligible to receive.<sup>514</sup> CPS staff and advocates working with child survivors of abuse, neglect, maltreatment, or similar harms should be aware of signs of trauma and mental health challenges in order to seek

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<sup>511</sup> Meaghan Fitzpatrick & Leslye E. Orloff, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls* at p. 616-17 (Aug. 2016), available at <https://niwaplibrary.wcl.american.edu/pubs/legal-options-recent-imm-women-and-girls>; Gennifer Kully, Wendy Wei Cheung, Huilin Li, Nabamallika Dehingia, Jennifer Yore, Leslye Orloff, Sangeeta Chatterji and Anita Raj, *Violence Experiences of Recent Immigrants to California: Qualitative evidence from providers serving migrant communities in 2022* (Pending publication in *Culture, Health and Sexuality Journal* 2024); Jennifer Cole & Ginny Sprang, *Sex trafficking of minors in metropolitan, micropolitan, and rural communities*, 40 *Child Abuse & Neglect* 113 (Feb. 2014), available at <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>; Katherine Kaufka Walts, *Child Labor Trafficking in the United States: A Hidden Crime* (2017), available at [https://niwaplibrary.wcl.american.edu/pubs/child-labor-trafficking-in-the-united-states\\_-a-hidden-crime](https://niwaplibrary.wcl.american.edu/pubs/child-labor-trafficking-in-the-united-states_-a-hidden-crime); Karoun Demirjian & Hanna Dreier, *Migrant Child Labor Debate in Congress Becomes Mired in Immigration Fight* *New York Times* (May 7, 2023), available at <https://www.nytimes.com/2023/05/07/us/politics/child-labor-immigration-democrats-republicans-biden.html>; Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.* (Feb. 28, 2023), available at <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

<sup>512</sup> *Review of Child and Adolescent Refugee Mental Health*, National Child Traumatic Stress Network Refugee Trauma Task Force (2003), available at <https://www.nctsn.org/resources/review-child-and-adolescent-refugee-mental-health> (describes the different types of traumatic stress in refugee populations).

<sup>513</sup> Rachel Prandini, Melissa Adamson, Neha Desai, *Strengthening Child Welfare Practice for Immigrant Children & Families* (Aug. 2019), available at [https://www.ilrc.org/sites/default/files/resources/2019.09\\_ilrc\\_child\\_welfare\\_toolkit\\_092619-final.pdf](https://www.ilrc.org/sites/default/files/resources/2019.09_ilrc_child_welfare_toolkit_092619-final.pdf).

<sup>514</sup> See generally, Manuel Paris, Caludette "Claudia" Antuna, Charles Baily, Giselle A. Hass, Cristina Muniz de la Pena, Michelle A. Silva and Tjaswinhi Srinivas, *Vulnerable But Not Broken, Psychosocial Challenges and Resilience Pathways Among Unaccompanied Children from Central American* (New Haven, CT, Immigration Psychology Working Group, 2018) <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken> (Hannah please review and add more citations to this here and in other sections.)

counseling and mental health treatment for the child. Trauma responses will vary from child to child, but there are a few examples to look out for.<sup>515</sup>

- The child may go off on tangents or their speech may not seem coherent.
- The child may describe highly emotional experiences with little emotion both in terms of facial expression and body language, and in terms of the tone of their voice (sometimes referred to as “flat affect”).
- The child may be intellectually present but emotionally detached.
- The client may develop a blank stare or an absent look during meetings, indicating that they may be disassociating.
- The child may be unable to remember key details of the abuse (this does *not* signify that the abuse did not happen).

If CPS staff notice any of the above signs, it is essential that those working with the child take steps to avoid triggering feelings that are disruptive to the child as you work together on their case. While advocates cannot ensure that these triggers will not happen, taking steps to remove as many barriers as possible will help the child victim be psychologically present and secure.<sup>516</sup>

CPS staff should utilize a trauma-informed approach when working with immigrant child victims of abuse, neglect, maltreatment, and other similar harms. Detailing the abuse suffered can be incredibly difficult for trauma survivors because it may cause them to relive the trauma by bringing their experiences back into the present. The trauma-informed approach encourages trauma survivors to disclose in-depth information about the abuse they have suffered, which helps CPS build the strongest case possible for the child’s benefit. Additionally, a trauma-informed approach has the effect of maximizing the child’s sense of safety, helping the child reduce overwhelming emotions, and addressing the impact of trauma on the child’s behavior, development, and relationships.<sup>517</sup> NIWAP has specifically developed a trauma informed structured interview questionnaire for immigration cases for advocates to utilize when working with survivors of trauma.<sup>518</sup>

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<sup>515</sup> Mary Malefyt Seighman, Erika Sussman, Olga Trujillo, *Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges: A Handbook for Attorneys*, National Center on Domestic Violence, Trauma & Mental Health (Dec. 2011), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/AttorneyHandbookFINALJan2012.pdf>.

<sup>516</sup> Manuel Paris, Caludette “Claudia” Antuna, Charles Baily, Giselle A. Hass, Cristina Muniz de la Pena, Michelle A. Silva and Tjaswinhi Srinivas, *Vulnerable But Not Broken*, Psychosocial Challenges and Resilience Pathways Among Unaccompanied Children from Central American 11, 19 (New Haven, CT, Immigration Psychology Working Group, 2018) <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken>

<sup>517</sup> *A Social Worker’s Tool Kit for Working With Immigrant Families: Healing the Damage: Trauma and Immigrant Families in the Child Welfare System*, Center on Immigration and Child Welfare at 10 (Feb. 2015), available at <https://cimmcw.org/wp-content/uploads/Trauma-Immigrant-Families.pdf>.

<sup>518</sup> Mary Ann Dutton et. al., *Trauma Informed Structured Interview Questionnaires for Immigration Cases (SIQI)* (Apr. 27, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/siqi-trauma-informed-tool>; see also Meaghan Fitzpatrick, Leslye E. Orloff, and SPARC, *How to Prepare Your Case Through a Trauma Informed Approach: Tips on Using the Trauma Informed Structured Interview Questionnaires for Family Court Cases (SIQI)* (Apr. 27, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/siqi-for-family-lawyers>.



## Appendix H: 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 child and adult protective services agencies as certifiers. In the legislative and regulatory history of the U visa, Congress and DHS often use the term "law enforcement" to refer to all government agencies, including Child and Adult Protective Services agencies, that are authorized to sign U visa certifications. When the legislative and regulatory history refers to "investigations or prosecutions," this term includes "detection, investigation, prosecution, conviction, or sentencing" of U visa listed criminal activity which can occur during the process of many investigations that government agencies conduct in the civil, family, juvenile or criminal context.*

### ***Statutory Authority: Purpose of the U visa***

“Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnapping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.”<sup>519</sup>

“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>520</sup>

“(Sec. 1513 of VAWA) creates new nonimmigrant visa for victims of certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime.”<sup>521</sup>

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<sup>519</sup> Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA), § 1513, Pub L. No. 106-386, 114 Stat. 1464 (2000).

<sup>520</sup> Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA), § 1513, Pub L. No. 106-386, 114 Stat. 1464 (2000).

<sup>521</sup> 146 Cong. Rec. S10196 (2000).

“[I]t is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”<sup>522</sup>

***Regulatory Authority: Purpose of the U Visa As Described By DHS in the U Visa Regulations***

“Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”<sup>523</sup>

“Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering protection to victims of such crimes. Congress also sought to encourage law enforcement officials to better serve immigrant crime victims.”<sup>524</sup>

“USCIS implemented procedures to ensure that those aliens who appeared to be eligible for U nonimmigrant status under the BIWPA would not be removed from the United States until they had an opportunity to apply for such status.”

***Department of Homeland Security Statements on Child Protective Services U Visa Certification Authority***<sup>525</sup>

“Who can complete the Form I-918B?”

- Any federal, state, tribal, territorial, or local law enforcement agency, prosecutor, judge, or other authority that has responsibility to detect, investigate, or prosecute the qualifying criminal activity, or convict or sentence the perpetrator.
- Agencies with criminal investigative jurisdiction, such as child and adult protective services, the Equal Employment Opportunity Commission, and federal and state Departments of Labor.”

***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 being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a *Federal or State judge*, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity...”<sup>526</sup>

***Regulatory Authority: Helpfulness***

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<sup>522</sup> 151 Cong. Rec. E2607 (2005) (Rep. Conyers).

<sup>523</sup> 72 Fed. Reg. 53013, 53014 (2007).

<sup>524</sup> 72 Fed. Reg. 53013, 53014–15 (2007).

<sup>525</sup> <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022> p. iii

<sup>526</sup> Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Pub L. No. 106-386, 114 Stat. 1464 (2000) (*codified at* 8 U.S.C. § 1101(a)(15)(U)(i)(III)).

“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>527</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 continue to provide assistance to an investigation, the purpose of BIWPA [Battered Immigrant Women Protection Act enacted into law as the Violence Against Women Act of 2000] is not furthered.”<sup>528</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>529</sup>

“The rule provides that the determination of whether an alien’s refusal to provide assistance was unreasonable will be based on all 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 fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant.”<sup>530</sup>

“Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”<sup>531</sup>

“Although there are no specific data on alien crime victims, statistics maintained by DOJ [Department of Justice] have shown that aliens, especially those aliens without legal status, are

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<sup>527</sup> New Classification for Victims of Criminal Activity U Visa Regulations; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006- 0069, page 53019 (Sept. 17, 2007), *available at* <https://niwaplibrary.wcl.american.edu/pubs/u-visa-interim-rule>.

<sup>528</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 53019 (Sept. 17, 2007), *available at* <https://niwaplibrary.wcl.american.edu/pubs/u-visa-interim-rule>.

<sup>529</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 53019 (Sept. 17, 2007), *available at* <https://niwaplibrary.wcl.american.edu/pubs/u-visa-interim-rule>.

<sup>530</sup> Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Interim Rule. DHS Docket USCIS-2006-0067, 75547 (December 8, 2008), *available at* <https://niwaplibrary.wcl.american.edu/pubs/federal-register-status-adjustment>.

<sup>531</sup> 72 Fed. Reg. 53014, 53014–15 (2007).

often reluctant to help in the investigation or prosecution of crimes. U visas are intended to help overcome this reluctance and aid law enforcement accordingly.”<sup>532</sup>

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<sup>532</sup> 73 Fed. Reg. 75540, 75554 (2008).

## Appendix I: T Visa Statutory and Regulatory Background<sup>533</sup>

*The following excerpts from the Trafficking Victims Protection Act (TVPA) of 2000 and its implementing regulations summarize the statutory and regulatory background on the T visa's purpose and its authorization of child and adult protective services agencies as certifiers of T visa declarations. In the legislative and regulatory history of the T visa, Congress and DHS often use the term "law enforcement" to refer to all government agencies, including Child and Adult Protective Services agencies, that are authorized to sign T visa declarations. When the legislative and regulatory history refers to "investigations or prosecutions," this term includes "detection, investigation, or prosecution" of human traffickers, which can occur during the process of many investigations that government agencies conduct in the civil, family, juvenile or criminal context.*

### **Statutory Authority: Purpose of the T visa**

The T visa is created "to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims."<sup>534</sup>

"Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. ... Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable."<sup>535</sup>

"Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. ... Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves. ... Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation."<sup>536</sup>

"Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other

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<sup>533</sup> The T visa regulations were initially issued in 2002 and were later updated in 2016. For the T visa regulations and their full regulatory history see Sylvie Sheng and Leslye E. Orloff, *T Visa Regulations 2002 & 2016* (June 23, 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-regulations-2002-and-2016>.

<sup>534</sup> Victims of Trafficking and Violence Protection Act of 2000, § 102(a), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>535</sup> Victims of Trafficking and Violence Protection Act of 2000, § 102(a), (b)(4)–(5), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>536</sup> Victims of Trafficking and Violence Protection Act of 2000, § 102(a), (b)(14), (b)(17), (b)(19), Pub. L. No. 106-386, 114 Stat. 1464.

hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”<sup>537</sup>

“One of the most important of these provisions expands assistance and protection to victims of severe forms of trafficking, ensuring that they receive appropriate shelter and care, and are able to remain in the United States to assist in the prosecution of traffickers. Relief from deportation is also critical for victims who could face retribution or other hardship if removed from the United States.”<sup>538</sup>

“[I]t is very important that the system of services we provide to ... trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”<sup>539</sup>

### **Regulatory Authority: Purpose of the T visa**

“In trafficking in persons situations, perpetrators often target individuals who are likely to be particularly vulnerable and unfamiliar with their surroundings. Congress’s intentions in passing the TVPA were to further the humanitarian interests of the United States and to strengthen the ability of government officials to investigate and prosecute trafficking in persons crimes by providing temporary immigration benefits to victims.”<sup>540</sup>

“Congress established this new classification ... to create a safe haven for certain eligible victims of severe forms of trafficking in persons who are assisting law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.”<sup>541</sup>

### **Department of Homeland Security Statements on Child Protective Services T Visa Declaration Authority<sup>542</sup>**

“A federal, state, local, tribal, or territorial law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the detection, investigation, prosecution, conviction or sentencing of a qualifying crime or criminal activity or human trafficking is eligible to sign Form I-918B or Form I-914B. This includes agencies with investigative jurisdiction in their respective areas of expertise, including but not limited to: child and adult protective services, the Equal Employment Opportunity Commission (EEOC), and Federal and State Departments of Labor (DOL).”

### **Regulatory Authority: Nature of Declaration**

A government agency (LEA) “endorsement is not mandatory and is not given any special evidentiary weight. An LEA endorsement itself does not grant a benefit and is one form of

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<sup>537</sup> Victims of Trafficking and Violence Protection Act of 2000, § 102(a), (b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>538</sup> 146 Cong. Rec. S10170 (2000). (Sen. Kennedy).

<sup>539</sup> 151 Cong. Rec. E2607 (2005). (Rep. Conyers).

<sup>540</sup> 67 Fed. Reg. 4782, 4784 (2002).

<sup>541</sup> 67 Fed. Reg. 4782, 4785 (2002).

<sup>542</sup> *DHS U and T Visa Resource Guide* at 15.

possible evidence but it does not lead to automatic approval of the application for T nonimmigrant status by USCIS. If provided, the LEA endorsement must be submitted on the form designated by USCIS in accordance with the form instructions and must be signed by a supervising official responsible for the detection, investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must attach the results of any name or database inquiries performed and describe the victimization (including dates where known) and the cooperation of the victim. USCIS, not the LEA, will determine if the applicant was or is a victim of a severe form of trafficking in persons, and otherwise meets the eligibility requirements for T nonimmigrant status. The decision whether to complete an LEA endorsement is at the discretion of the LEA. A formal investigation or prosecution is not required to complete an LEA endorsement.”<sup>543</sup>

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<sup>543</sup> 81 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).