

U Visa Certifications, T visa Declarations, and Continued Presence: Range of Potential Certifiers at the Local, State, and Federal Government Levels

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I. Introduction

This publication explores the wide range of potential certifiers that can sign U visa certifications that are a necessary prerequisite to the filing of victims’ U visa applications and T visa declarations, which are helpful in immigrant victims’ T visa applications. Additionally, this publication will discuss the list of federal government agencies authorized to file Continued Presence applications with the U.S. Department of Homeland Security (DHS)² on behalf immigrant victims who have been identified as victims of severe forms of human trafficking.³ Congress created the U visa, T visa, and Continued Presence to achieve several goals:

- To strengthen the ability of law enforcement to effectively detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, child and elder abuse, and other serious crimes;
- To achieve this through increasing immigrant victims’ willingness and ability to safely cooperate and participate in the justice system and in criminal investigations and prosecutions of perpetrators; and
- To enhance relationships between law enforcement and immigrant communities improve the safety of victims, communities,⁴ and law enforcement officials.⁵

Law enforcement agencies, prosecutors, judges, and other state and federal government officials play an important role in providing information to DHS for an immigrant victim’s application for crime victim-based humanitarian immigration relief created by Congress to help immigrant victims of crime and abuse. Each of the three forms of immigration relief discussed in this publication requires a specific form be completed by a state or federal government official. The role the form plays and who files that form differs by the immigration relief for which the immigrant victim of crime or abuse is applying.

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² USCIS Center for Countering Human Trafficking, Continued Presence Resource Guide (July 2021) <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021> [hereinafter CONTINUED PRESENCE RESOURCE GUIDE].

³ TRAFFICKING VICTIMS PROTECTION ACT OF 2000, Pub. L. No. 106-386, § 103(8-9), as amended in 22 U.S.C. § 7102(11-12) (A person is a victim of a severe form of human trafficking when the person is subjected to:

- (a) Sex trafficking, which is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for a commercial sex act either induced by force, e, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (b) Forced labor, which is 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.)

⁴ LESLYE E. ORLOFF, PRADINE SAINT-FORT, ROCIO MOLINA, SYLVIE SHENG, ALINA HUSAIN, & BENISH ANVER, U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS (Aug. 2021), at 5,11, <https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-toolkit-law-enforcement-prosecutor> [hereinafter “U AND T VISA TOOLKIT”]; *see also* CONTINUED PRESENCE RESOURCE GUIDE at 6.

⁵ International Association of Chiefs of Police, Support For Education and Awareness on U Visa Certifications and T Visa Declarations (2018), <https://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education> (“[T]he International Association of Chiefs of Police commits to continued, input, representation, and collaboration in ongoing efforts to prioritize the need to communicate the benefits of U visa certification and T visa declaration to Chiefs of Police, highlighting them as effective tools for law enforcement agencies that enhance public safety, officer safety, and protection of victims nationwide.”).

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- U visa certification form (I-918B): is *required* evidence for U visa applications. The form is completed and signed by a federal or state government official who certifies that the criminal activity took place and the applicant immigrant victim was helpful, is being helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the perpetrator. The immigrant crime victim includes the signed U visa certification in their application. Applications submitted without a completed U visa certification form will be rejected as incomplete.⁶
- T visa declaration form (I-914B): is supplemental, helpful evidence for T visa applications. The T visa declaration is a form completed and signed by a federal or state government official, which demonstrates a victim’s assistance and describes the trafficking victim’s responses to a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official’s reasonable request for assistance in a human trafficking case.⁷ T visa applications may be submitted by the victim with or without a T visa declaration. The T visa declaration provides helpful evidence that is considered by adjudicators for the victim’s T visa application.⁸
- Continued Presence form (73-031): is an application filed by an authorized federal government agency on the victim’s behalf after a federal, state, tribal, territorial, or local law enforcement or prosecution agency identifies a victim of a severe form of human trafficking who may be a potential witness or who filed a civil action.⁹ The Continued Presence application is a mandatory prerequisite to Continued Presence relief and may only be filed by a federal government agency¹⁰ on the adult or child, sex or labor, human trafficking victim’s behalf.¹¹

Congress “explicitly included federal, state, and local law enforcement officials, prosecutors, and judges in the list of U visa certifiers,” so victims would have a range of potential certifiers and increased access to certifications.¹² These U visa certifiers are the same agencies that can sign T visa declarations. All of the federal agencies authorized to file Continued Presence applications for victims are also agencies authorized to sign U visa certifications and T visa declarations.¹³ Despite the range of certifiers that Congress envisioned, attorneys and advocates frequently limit themselves to obtaining certifications from the local police department investigating the criminal activity or the prosecutor on the victim’s case.

Certifying agencies are defined to include “a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of the

⁶U AND T VISA TOOLKIT at 6.

⁷ T Visa Law Enforcement Resource Guide: For Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies iii, 1 (October 20, 2021) <https://niwaplibrary.wcl.american.edu/pubs/t-visa-resource-guide> [hereinafter “USCIS T VISA RESOURCE GUIDE”]

⁸ USCIS T VISA RESOURCE GUIDE at 1-2.

⁹ CONTINUED PRESENCE RESOURCE GUIDE at 7-8.

¹⁰ CONTINUED PRESENCE RESOURCE GUIDE at 8 (The range of federal agencies authorized to file Continued Presence applications for immigrant human trafficking victims include Department of Homeland Security’s Homeland Security Investigation (HIS); Federal Bureau of Investigations (FBI); U.S. Department of State Diplomatic Security Service (DSS); U.S. Attorneys’ Offices; the Civil Rights Division, Criminal Section of the U.S. Department of Justice (DOJ); U.S. Marshals Service; U.S. Department of Labor (DOL); and the Equal Employment Opportunity Commission (EEOC)).

¹¹ CONTINUED PRESENCE RESOURCE GUIDE.

¹² U AND T VISA TOOLKIT at 6 (citing 8 U.S.C. § 1101(a)(15)(U)(I) (2006)).

¹³ DEPARTMENT OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND OTHER GOVERNMENT AGENCIES (2015) at 11, <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015> [hereinafter “DHS U and T Visa Resource Guide”]; *see also* CONTINUED PRESENCE RESOURCE GUIDE at 7.

qualifying criminal activities designated in the [U visa statute].”¹⁴ The U visa regulations define “investigation or prosecution” to include detection, investigation, prosecution, conviction, or sentencing of the criminal activity¹⁵ in a civil, criminal, or administrative law related matter.¹⁶ T visa certifying agencies include federal, state, local, tribal, and territorial law enforcement agencies, prosecutors’ offices, and judges, Departments of Labor, and other government agencies that have criminal, civil, or administrative investigative or prosecutorial authority related to human trafficking.¹⁷ For purposes of Continued Presence, federal, state, tribal, territorial, or local law enforcement or prosecution agencies investigating or prosecuting human trafficking that identify potential trafficking can request that federal agencies file Continued Presence applications for those trafficking victims.¹⁸

The phrase “investigating or prosecuting” is defined in the U visa regulations to include the full timeline of helpfulness victims can provide to government officials in criminal cases from assisting in the detection of the crime, through investigation, to prosecution, and ultimately to conviction, and/or sentencing for the purposes of assessing helpfulness.¹⁹ For T visa, the investigation and prosecution encompasses the victim’s compliance with the “reasonable request for assistance” by a government agency in a human trafficking investigation or prosecution.²⁰ Requests for Continued Presence do not require helpfulness or assistance from the victim because the victim “may be a potential witness” in a government agency’s investigation into human trafficking.²¹ This expands the range of possible certifiers that judges can refer victims to, and that attorneys and advocates can seek the U visa certifications and T visa declarations from. U visa certification are required and T visa declarations are helpful for immigrant crime victims to be able to file crime, abuse, or trafficking victim-based visa applications. It also makes attorneys and advocates aware of the federal agencies that can file victim’s Continued Presence applications.

II. Law Enforcement Agencies at the Local, State, and Federal Levels

Attorneys and advocates should be aware of the range of law enforcement agencies that can sign certifications²² as well as those federal agencies that can file Continued Presence applications. Many agencies have overlapping jurisdiction in the state or community in addition to the local police department that is investigating the criminal activity perpetrated against the immigrant victim. Often, local police departments are the first responders to crime, but they are not the only law enforcement, prosecution, or other government agency that can provide a victim with a certification or can file or request that a federal agency file Continued Presence applications once the agency identifies the victim is eligible.

¹⁴ U.S. Department of Homeland Security, New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule (hereinafter “U Visa Interim Rule”), 72 Fed. Reg. 53014, 53019 (Sept. 17, 2009) (citing INA § 101(a)(15)(U)(i)(III), 8U.S.C. § 1101(a)(15)(U)(i)(III)), <https://niwaplibrary.wcl.american.edu/pubs/federal-register-new-classification-victims-criminal-activity-eligibility-u-nonimmigrant-status-interim-rule> ; see also U AND T VISA TOOLKIT at 42.

¹⁵ 8 C.F.R. 214.12(2)(5).

¹⁶ DHS U AND T VISA RESOURCE GUIDE AT 6, 11.

¹⁷ DHS U AND T VISA RESOURCE GUIDE AT 11.

¹⁸ CONTINUED PRESENCE RESOURCE GUIDE at 7-8.

¹⁹ U VISA INTERIM RULE, at 53019-20; For an illustrative list of the variety of ways immigrant victims of criminal activity can be helpful 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. 21, 2019) available at <https://niwaplibrary.wcl.american.edu/pubs/federal-register-new-classification-victims-criminal-activity-eligibility-u-nonimmigrant-status-interim-rule>.

²⁰ DHS U AND T VISA RESOURCE GUIDE at 12.

²¹ CONTINUED PRESENCE RESOURCE GUIDE at 7 (citing 22 U.S.C. § 7105(C)(3)(A)(i)).

²² While technically the T visa requires a declaration, for the purposes of this document, “certifications” will refer to both U and T visa unless explicitly preceded by the specifying visa.

State and Local Law Enforcement Agencies

If victims encounter barriers in obtaining certifications from the local police department that is investigating the underlying criminal activity, consider turning to the local sheriff's office or the State Police for a certification. These agencies can sign certifications because they are able to detect the underlying criminal activity and presence of the perpetrator in their jurisdiction when the immigrant victim goes to them for help. Conversely, if the local sheriff's department has taken a police report, is investigating the crime, or refuses to investigate the crime and will not sign a certification, consider approaching local police or State Police for certification. The following state/local law enforcement agencies may certify:

- Police departments
- Sheriffs' offices
- State Police
- State Highway patrol
- University police who are sworn officers
- State Marshals

These state, local, or university police can identify victims of human trafficking who may be potential witnesses in a trafficking investigation and contact and request that federal agencies file Continued Presence applications for the victims they have identified.

Federal Law Enforcement Agencies

Federal law enforcement agencies are another certification option. There are many victims eligible for U and T visas and/or Continued Presence immigration relief who may have relationships with or may be helping government agency officials working for any number of the following federal agencies.

The U visa regulations, for example, explicitly recognize that victims of U visa criminal activities may also be victims of other criminal activities. When the perpetrator is charged with a non-qualifying criminal activity, the government agency investigating or prosecuting the non-qualifying criminal activity can sign a U visa certification for the qualifying criminal activity that is not being prosecuted.²³ The following federal law enforcement agencies may sign U and T visa certifications. These same federal agencies are the agencies authorized to file Continued Presence applications for immigrant victims they identify and for immigrant victims identified by state or local law enforcement or prosecution agencies. Federal agencies authorized to file Continued Presence requests include:

- U.S. Department of Justice
 - Civil Rights Division
 - Federal Bureau of Investigation (FBI)
- Department of state
 - Diplomatic Security Service (DSS)
- U.S. Marshals Service
- Department of Homeland Security (DHS)
 - Immigration and Customs Enforcement (ICE)

²³ U VISA INTERIM RULE at 53018 (E.g. perpetrator charged with federal embezzlement charges and the investigator discovers that the perpetrator's wife has been a victim of domestic violence. The U visa certification would be signed by the federal prosecutor based on the domestic violence offense).

- U.S. Customs and Border Patrol (CBP)
- Homeland Security Investigations (HSI)
- Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

To facilitate U and T visa and Continued Presence applications, victims should try to obtain the following pieces of evidence to make it easier for government agencies signing U and T visa certifications and filing Continued Presence applications. Providing this information is particularly helpful in speeding up certification response times when the agency providing the certification may not have been the agency involved in the investigation of criminal activity:

- Police report(s)
- Copies of 911 calls reporting the crime
- Copies of protection orders or court orders issued

This evidence is particularly important when the case is closed or occurred a long time ago, and the relevant evidence may be archived. Victims should only bring records that the agency already has because if a criminal case against the perpetrator is pending, any records provided to the investigating agency will be discoverable. Victims should be aware that certification request cover letters are also discoverable.

Approaching other law enforcement and/or government agencies alerts government agencies about crimes occurring in their jurisdictions. This is particularly helpful when a victim of criminal activity has fled the jurisdiction where the criminal activities occurred and is living in a new location. Notifying local and/or federal law enforcement in that area about prior criminal activities suffered helps these law enforcement agencies by informing them of the criminal history of the perpetrator who may follow the victim to the new location and perpetrate new crimes there. This is particularly important in domestic violence cases and in cases where the criminal perpetrator is actively trying to retaliate against the victim. The victim's helpfulness in detection of these cases can be very important to local law enforcement agencies that are often able to sign certifications upon review of police reports from the prior jurisdiction. These cases provide an opportunity to expand the network of law enforcement agencies that are involved in issuing U visa certifications, T visa declarations, and in requesting Continued Presence for human trafficking victims from federal agencies in the jurisdiction.

III. Prosecutors at the Local, State, and Federal Levels

Similar to law enforcement agencies, prosecutors' offices exist at several levels in each jurisdiction. Depending on the state or jurisdiction, the agencies authorized to sign U and T visa certifications may include agencies with the following in their agency titles:

- State, County, and Municipal Level
 - District Attorneys
 - State's Attorneys
 - Commonwealth's Attorney
 - County Attorney
 - County Prosecutor
 - Solicitor
 - State Attorney General

- Federal Prosecutors
 - U.S. Attorney's Offices
 - Department of Justice
 - Criminal Division

Prosecutors' offices in most jurisdictions receive cases for prosecution and may sign certifications in cases initiated in one of the following ways:

- Case sent for prosecution from the police department.
- The victim files a private criminal complaint with the prosecutor's office. This option is used most often in misdemeanor cases when local police would need to obtain a warrant to initiate a criminal case against the perpetrator because the police did not observe the violence. When, because of language access issues or other reasons local police would not take a police report,²⁴ a private criminal complaint is a viable option for immigrant crime victims. Filing a private criminal complaint is a form of helpfulness that can be the basis for prosecutors signing certifications.
- Some prosecutors' offices chosen to take a lead in their jurisdictions on both U visa certification and T visa endorsement signing certifications for cases that they prosecute, for cases they have reviewed for prosecution, and for cases of other immigrant victims who have not had any prior contact with the prosecutor's office.

Under each of these scenarios, under the U and T visa regulations any federal, state, or local prosecutor's office is authorized to sign certifications and request assistance from federal agencies to file Continued Presence applications for victims of a severe form of trafficking in persons who may be a potential witness in a human trafficking investigation or prosecution.²⁵

Additionally, judges, advocates, and attorneys who encounter immigrant survivors in their work should develop relationships with prosecutor's offices that could initiate prosecutions in the jurisdictions. In most jurisdictions, there can be multiple prosecutors' offices that could provide certifications. For example, both the local district attorney's office and the state Attorney General's office may have jurisdiction to prosecute similar crimes. A broad range of criminal activities covered by the U and T visa and Continued Presence programs could be prosecuted by either local or state level prosecutors, any of which would be able to sign T or U visa certifications and provide or request Continued Presence on a trafficking victim's behalf.

Similarly, federal prosecutors could be in a position to sign certifications for immigrant crime victims, and they are also in a position to file a Continued Presence applications as soon as they identify a victim of a severe form of human trafficking in one of their own cases or based on a referral from a state or local government official. In domestic violence cases, this can occur when there has been interstate domestic violence that both state prosecutors and Assistant U.S. Attorneys could prosecute. Sexual assault or human trafficking that occurs on federal land would be prosecuted by the U.S. Attorney's Office. Additionally, federal prosecutors prosecuting drug or firearms cases may be working with witnesses who have also

²⁴ NATALIA LEE, DANIEL J. QUINONES, NAWAL AMMAR & LESLYE E. ORLOFF, NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION, AND LANGUAGE ACCESS (Apr. 16, 2013), <https://niwaplibrary.wcl.american.edu/pubs/national-survery-on-police-response-u-visas-language-access-report-4-16-13-final>.

²⁵ CONTINUED PRESENCE RESOURCE GUIDE at 7.

suffered criminal activities perpetrated by the offender being prosecuted (e.g. domestic violence, sexual assault, or human trafficking) covered by the U visa, T visa, or Continued Presence immigration relief programs. When this occurs, federal prosecutors can sign U visa certifications, T visa declarations, and can file Continued Presence applications for victims.

IV. Judges at the Local, State, and Federal Levels

For U and T visa certifications, judicial officials may sign certifications based on court proceedings, records, and/or orders, findings, and/or rulings made by the judge signing the certification or by another judicial officer.²⁶ Judges are specifically listed on both the U and T visa certification forms as possible certifiers.²⁷ Depending on the jurisdiction, these judicial officials who can sign certifications could have a number of different titles, so long as they judicial official signing the certification or declaration is a person with delegated authority from the court to issue decisions.²⁸

- Types of Cases Judicial Officials Hear:

- State
- Federal
- Tribal
- Territorial
- Criminal
- Civil
- Family
- Juvenile
- Probate
- Administrative Law

- Titles of Judicial Officials:

- Judges
- Commissioners
- Magistrates
- Aldermen
- Judicial referees
- Surrogates
- Masters
- Chancellors

Judges may certify at the following stages of the court case: arraignment, preliminary hearing, pre-trial motions, all stages of the criminal trial/civil or family court proceeding, after the criminal/civil/family has issued orders, and after the proceeding is completed or closed.²⁹ Judges and judicial officials cannot file Continued Presence applications for victims.

For Continued Presence, judges who identify immigrant victims of human trafficking can refer victims to federal law enforcement officials who are responsible for filing Continued Presence requests.

²⁶ U AND T VISA TOOLKIT FOR JUDGES at 8.

²⁷ U AND T VISA TOOLKIT FOR JUDGES at 10, 21 (citing I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1) and 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

²⁸ DHS U AND T VISA RESOURCE GUIDE at 16.

²⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016); *see also* DHS U AND T VISA RESOURCE GUIDE at 21.

These Continued Presence requests must be sponsored by a federal agency with the authority to conduct investigations or prosecutions that could include uncovering facts that human trafficking is occurring (e.g., HIS, FBI, DSS, DOL, EEOC and any U.S. Attorney's Offices).³⁰ These agencies are ultimately responsible for filing Continued Presence applications.³¹ Judges can refer immigrant adult and child victims of human trafficking identified by the court to government agencies that can directly file Continued Presence applications for victims. Alternatively, judges can refer immigrant victims to state or local law enforcement or prosecution agencies asking their assistance in requesting that federal agencies file Continued Presence applications on the immigrant victim referred by the judge.

V. Other Federal and State Agencies

The U.S. Citizenship and Immigration Services (USCIS) have determined that certain federal agencies, and their state counterparts also have “investigative jurisdiction in their respective areas of expertise.”³² These agencies can sign U and T visa certifications based on detection of U visa criminal activities or human trafficking that the victim suffered that were in addition to or part of the factual background of the case the federal or state agency is investigating.

Federal Agencies (other than law enforcement or prosecutors)

The following are examples of the federal agencies that can sign U visa certifications, T visa declarations and are authorized to file Continued Presence applications for human trafficking victims:

- Department of Labor (DOL).³³ DOL investigates labor violations and can sign certifications for immigrants that were victims of qualifying criminal activity in the workplace, including crimes such as sexual assault/rape, human trafficking (U and T visa), peonage, fraud in foreign labor contracting, felonious assault, extortion, kidnapping, stalking, or other U visa criminal activities. The DOL can also sign certifications for criminal activity, such as witness tampering, perjury, obstruction of justice, that is the focus of their investigation involving immigrant victims.
- Equal Employment Opportunity Commission (EEOC).³⁴ The EEOC investigates claims of discrimination in the workplace. Certifications can be obtained for criminal activity discovered in the course of their investigation, which may include, sexual assault/rape, human trafficking (U and T visa), peonage, fraud in foreign labor contracting, felonious assault, extortion, kidnapping, stalking, domestic violence, or other U visa criminal activities, such as witness tampering, perjury, obstruction of justice, that is the focus of their investigation involving victims.
- Environmental Protection Agency (EPA).³⁵ The EPA conducts civil investigations into violations of environmental laws and may encounter immigrant victims in the course of their investigation (i.e., victim is employed by a company that is being investigated, the victim suffered a criminal activity on the premises of the workplace, etc.) and can sign certifications for criminal activity they discover, such as sexual assault/rape, human trafficking (T visa), felonious assault,

³⁰ U AND T VISA TOOLKIT FOR JUDGES at 42.

³¹ *Id.*

³² U VISA INTERIM RULE at 53019-20.

³³ For more information about the types of investigations DOL conducts, please visit <http://www.oig.dol.gov/>.

³⁴ For more information about the types of investigations the EEOC conducts, please visit <http://www.eeoc.gov/eeoc/index.cfm>.

³⁵ For more information about the types of investigations the EPA conducts, please visit: <http://www.epa.gov/oig/about.html#4>; <http://www2.epa.gov/enforcement/enforcement-basic-information>.

kidnapping, stalking, and other U visa criminal activity. In addition to civil investigations, the EPA Office of Investigations may also encounter U visa eligible immigrant victims in the course of their criminal investigations of allegations, including “threats against EPA employees, contractors, facilities and assets” and “assaults on EPA employees or contractors and other acts of violence committed in EPA facilities.” This can include sexual assault/rape, felonious assault, stalking, etc. If an immigrant was a victim of a crime at an EPA facility where they were an employee or a contractor, the victim can obtain a certification from the EPA.

- National Labor Relations Board (NRLB):³⁶ The NRLB investigates violations of the National Labor Relations Act (NLRA) and receives complaints from employees, unions, and employers. Immigrant victims are protected under NLRA. The NRLB may take legal action against employers unlawfully using a victim’s immigration status to threaten or retaliate against a victim exercising their legal rights. The NRLB may sign certifications related to “an unfair labor practice case or a representation case that is under NLRB’s jurisdiction.”³⁷ The investigations into these unfair practices may detect facts and uncover incidents of qualifying U visa criminal activities (e.g., sexual assault, domestic violence, extortion, felonious assault, unlawful restraint) as well as T visa human trafficking which can each be the basis of U or T visa certification.

State and Local Agencies

State and Local government agencies responsible for investigating labor, human rights, and housing violations, child, elder, and vulnerable adult abuse, neglect or exploitation, or the violation of other state or local laws can also sign U visa certifications and T visa declarations. The certifications are based upon facts of U visa criminal activities and/or human trafficking that are uncovered or detected during the agency’s investigations and/or enforcement actions under. These state agencies conduct their investigations based on the administrative, civil, and or criminal law authority granted the agency under state and local laws. Examples of the state agencies that can sign certifications and declarations can include:

- State Departments of Labor
- State Equal Opportunity Employment Agencies or Boards
- State and local human rights investigations
- State and local housing enforcement agencies

There are state and local agencies that are closely allied with state and local law enforcement agencies with whom they often work closely on criminal cases. The two primary agencies that will potentially have significant contacts with immigrant crime victims are:

- Adult Protective Services (APS)
- Child Protective Services (CPS)

³⁶ For more information about types of investigations the NLRB conducts, please visit <https://www.nlr.gov/about-nlr/what-we-do/investigate-charges>; see also National Labor Relations Board, Immigrant Employee Rights Under the National Labor Relations Act, https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant_employee_rights_one_pager_english_pdf_21860.pdf; see also Office of the General Counsel, Updated Procedures in Addressing Immigration Status Issues that Arise During NLRB Proceedings, (June 7, 2011), <https://niwaplibrary.wcl.american.edu/pubs/nlr-u-and-t-certs-and-addressing-immigration-status>.

³⁷ USCIS Approves First U Petitions Certified by National Labor Relations Board for Victims of Unfair Labor Practices, HUNTON ANDREWS KURTH (March 14, 2016), <https://www.huntonimmigrationlawblog.com/2016/03/articles/nonimmigrant-visas/uscis-approves-first-u-petitions-certified-by-national-labor-relations-board-for-victims-of-unfair-labor-practices/>.

Adult and child protective services agencies can be the first responding government agency to encounter immigrant children, immigrant elder abuse victims, and immigrant victims who are disabled adults. Attorneys, advocates, police, prosecutors, and judges should work collaboratively with state and local adult and child protective services agency officials to promote use of U and T visa certifications as a tool that supports APS and CPS investigations and court actions in cases involving immigrant victims.

Offer to train state and local APS and CPS agency staff on the range of immigration relief available to immigrant crime victims and U and T visa certification as well as the Continued Presence application process.³⁸ APS and CPS workers will also find information very useful to their work about the public benefits and services immigrant crime victims qualify to receive and that fact that victims gain greater access to benefits after they file a U visa case, a T visa or a VAWA self-petition. Additionally, the agency can request that federal officials file Continued Presence applications for immigrant human trafficking victims in their APS and CPS cases.

By assisting immigrant victims of child, elder, or disabled adult abuse, neglect, or endangerment file for abuse related forms of immigration relief, these agencies help victims gain greater access to the federally funded public benefits that immigrant victims are eligible to receive. As APS and CPS agencies learn about the immigration relief available to victims through their community partners and the courts, they become more helpful in providing U and T visa certifications and in identifying Continued Presence eligible human trafficking victims. State and local APS and CPS will need to refer Continued Presence eligible victims to federal government agencies who to file applications on APS and CPS victim's behalf.

APS and CPS agencies are organized differently from state to state.³⁹ In some states, each county has their own APS or CPS agency with an agency head that can sign certifications or designate certifiers similar to how certification works for local police departments and prosecutors' offices. Other states have a statewide system for APS and/or CPS administration where the head of the agency for the state will be the authority responsible for signing certifications for the whole agency or designating certifiers in each region or counter to whom certification authority is delegated.

³⁸ See generally LESLYE ORLOFF, ROCIO MOLINA, MARIA JOSE FLETCHER, LINDA DAWSON, CAROLYN S. RONIS, & ADITI KUMAR, TOOLKIT FOR ADULT PROTECTIVE SERVICES' USE OF THE U VISA (Feb. 2014), <https://niwaplibrary.wcl.american.edu/pubs/aps-u-visa-toolkit>.

³⁹ See e.g., *Adult Protective Services Administration by State* (March 2014), <https://niwaplibrary.wcl.american.edu/pubs/imm-qref-stateapsadministration>.