


**Operation U:
Demystifying the I-918b U Visa
Certification Form**

Day Two
Session 4B
New Orleans, LA



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Introductions

- Officer Michael LaRiviere
 - Officer, Investigator, Salem Police Department, Massachusetts
- Rocio Molina
 - Associate Director, National Immigrant Women's Advocacy Project
- Eric Tijerina/Jessica Salsbury
 - Policy Analysts, USCIS Office of Policy and Strategy
- Session 1: Honorable Lora Livingston, Travis County Courts, Austin, Texas
- Session 2: Judge Ramona Gonzalez, La Crosse County Circuit Courts, La Crosse, Wisconsin

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Learning Objectives

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

- Understand basic eligibility requirements for the U visa
- Hold offenders more accountable by using the U Visa certification process as a crime fighting tool
- Enhance victim/officer/community safety and participation in the criminal justice system
- Understand what is being asked of certifiers when determining whether to sign U visa certifications

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General Caveats

1. Women, men, and children can qualify for U Visas
2. Victims of almost all violent crimes, and many other crimes are eligible to apply for U visas

That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault



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Overview of the U Visa

- Purpose: Why does it exist?
- What is the U visa?



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Purpose

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe



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Important to Know

- Law enforcement certification is just one part of the overall process it does not = U.S. Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Can be “revoked”

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How do law enforcement and prosecution benefit from the U visa?



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U Visa Benefits to Law Enforcement and Prosecutors


- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhanced immigrant community involvement
- Makes it easier to identify victim witnesses
- Reduces repeat calls and recanting victims
- Fosters community policing partnerships
- Enhances Officer and Community Safety

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OVERVIEW: U VISAS



- # Lawful status for 4 years (with possibility for permanent status)
- # Work permit
- # Lawful status to certain family members
- # Subject to an annual cap of 10,000 for "principals"

BASIC U VISA REQUIREMENTS



- # Victim of qualifying criminal activity
- # Crime must have occurred in U.S. or violated U.S. law within jurisdiction where crime occurred
- # Victim has credible & reliable information about crime
- # Victim must have been, is being, or is likely to be helpful to law enforcement in the investigation or prosecution of qualifying crime – ongoing requirement
- # Victim suffered substantial physical or mental abuse as a result of qualifying crime



U VISA STATUTORY LIST OF CRIMES



• Abduction	• Kidnapping	• Unlawful Criminal Restraint
• Abusive Sexual Contact	• Manslaughter	• Witness Tampering
• Blackmail	• Murder	
• Domestic Violence	• Obstruction of Justice	
• Extortion	• Peonage	
• False Imprisonment	• Perjury	
• Felonious Assault	• Prostitution	
• Female Genital Mutilation	• Rape	
• Fraud in Foreign Labor Contracting	• Sexual Assault	
• Hostage Taking	• Sexual Exploitation	
• Incest	• Slave Trade	
• Involuntary Servitude	• Stalking	
	• Torture	
	• Trafficking	

Includes: -- Attempt, conspiracy or solicitation to commit any of crimes
-- Substantially similar crimes

U Visa Criminal Activities (11/2011 data)

- Domestic violence **45.9%**
- Rape, sexual assault, incest, trafficking **30.4%**
- Felonious assault, murder, manslaughter **9.9%**
- Kidnapping, being held hostage, unlawful criminal restraint, torture **8.47%**
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**



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WHO IS A VICTIM?



- Generally, it is the individual acted upon during the crime
- Includes certain family members when the crime is murder/manslaughter, or when the direct victim is incapacitated or incompetent

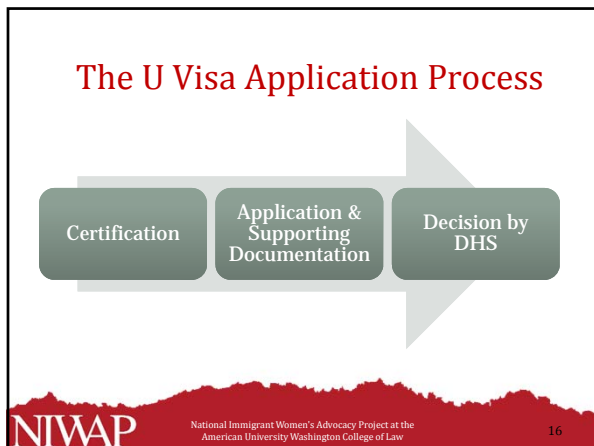


U VISA "POSSESSES INFORMATION"



- Victim must have information about the crime that law enforcement considers useful to the detection, investigation, or prosecution of the crime
- If victim is under 16, incompetent, or incapacitated, then a parent, guardian, or "next friend" may "possess" the information





HOW DOES VICTIM PROVE ELIGIBILITY?

- Form I-918 (main application)
- Signed statement from petitioner
- Evidence of the criminal activity including...
 - Form I-918B certification (required)
 - Police reports
 - Other evidence such as court transcripts, medical reports, affidavits, psychological reports, news reports,...
- Any credible evidence supporting eligibility
- Form I-192 if applicable

U.S. Citizenship and Immigration Services

U VISA WAITING LIST

- After 10,000 approvals of principal petitioners are issued in a fiscal year, we cannot approve more until additional visas become available the next fiscal year (Oct 1).
- All eligible cases that cannot be granted solely because of the cap are put on a waiting list.
- VSC sends written notification and grants Deferred Action if petitioner/derivatives are in the U.S.
- When next fiscal year begins, if petitioner and derivatives are still eligible, cases are processed on a "first in, first out" basis.

Homeland Security


**FORM I-918 SUPPLEMENT B,
LAW ENFORCEMENT CERTIFICATION**

U.S. Citizenship and Immigration Services

† This form is **MANDATORY** for U visa cases.

† Certifying official specifies:

- † which crime petitioner suffered
- † statutory citation for crime
- † whether and how victim helpful
- † any observations of injury to victim
- † any other relevant information



**FORM I-918 SUPPLEMENT B,
LAW ENFORCEMENT CERTIFICATION**

U.S. Citizenship and Immigration Services

What kind of agencies can sign?

- † Any Federal, State, or local law enforcement office or agency that has authority to detect, investigate, or prosecute qualifying criminal activity.
- † Includes agencies with criminal investigative jurisdiction such as child and adult protective services, the Equal Employment Opportunity Commission, and the Department of Labor.




**FORM I-918 SUPPLEMENT B,
LAW ENFORCEMENT CERTIFICATION**

U.S. Citizenship and Immigration Services

Who in the agency can sign?

- † The head of the certifying agency, or
- † Any person in a supervisory role who the head of the certifying agency has designated to issue law enforcement certifications, or
- † A Federal, State or local judge



U Visa Certification Overview

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-918 Supplement B,
U Nonimmigrant Status Certification

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How Will a U Visa Certification Request Come to You?

- From victim advocate or immigration attorney
- As a police officer, you are the first responder
- As a prosecutor, you might have continued contact with the victim and might be first to identify victim's U visa eligibility

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U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime

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Review the U Visa Certification Form

- **Role Play: DV Response**

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OMB No. 1615-0104 Expires 01/31/2016


**Form I-918 Supplement B,
U Nonimmigrant Status Certification**

Department of Homeland Security
U.S. Citizenship and Immigration Services

START HERE - Please type or print in black ink.

Part 1. Victim Information			For USCIS Use Only	
Family Name	Given Name	Middle Name	Returned	Receipt
<input type="text"/>	<input type="text"/>	<input type="text"/>	Date	<input type="text"/>
Other Names Used (Include maiden name/nickname)			Date	<input type="text"/>
<input type="text"/>			Resubmitted	<input type="text"/>
Date of Birth (mm/dd/yyyy)	Gender		Date	<input type="text"/>
<input type="text"/>	<input type="checkbox"/> Male <input type="checkbox"/> Female		Date	<input type="text"/>

 This is usually filled out by the victim's immigration attorney or advocate.

 This should be left blank

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Part 2. Agency Information

Name of Certifying Agency

Name of Certifying Official Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

Agency Address - Street Number and Name Suite No.

City State/Province Zip/Postal Code


Daytime Phone No. (with area code and/or extension) Fax No. (with area code)

Agency Type
 Federal State Local

Case Status
 On-going Completed Other:

Certifying Agency Category
 Judge Law Enforcement Prosecutor Other:

Case Number FBI No. or SID No. (if applicable)

 Usually one person within an agency is designated as the "Certifying Official"


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Part 3. Criminal Acts

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	<input type="text"/>

You can & should certify multiple offenses when present. Other can include criminal activity present, but not listed specifically, e.g., "stalking"



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Dates do not have to be precise – you can use months, seasons or years.

Part 3. Criminal Acts (continued)

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States? Yes No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? Yes No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

c. Where did the criminal activity occur?

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Part 3. Criminal Acts (continued)

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

Make copies of all reports and attach.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Be as specific as possible, highlighting visible injuries observed (even if not photographed). If you are aware of mental injury, include as well.

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Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in **Part 3**. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided.) Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.) Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.) Yes No

5. Other, please specify.

NOTE: This will be discussed in detail in the next section.


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Part 5. Family Members Implicated in Criminal Activity

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

Full Name	Relationship	Involvement

 Because many applications will include domestic violence, this may likely be the defendant.

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Part 6. Certification

I am the head of the agency listed in **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2. Date (mm/dd/yyyy)

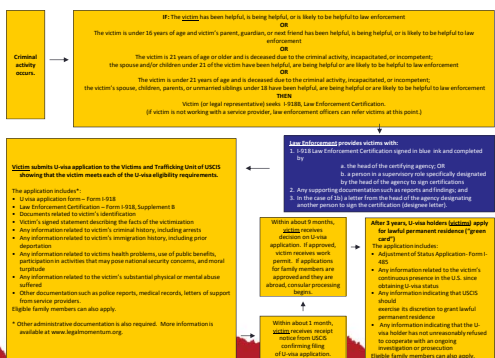
REMEMBER: This is merely a certification that you believe they were a victim of a crime. This does not automatically mean that the victim will be granted immigration relief.

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Things to Know About Certifying

- “Do I believe this person was a victim of a qualifying crime?”
- “Did the person assist or willing to assist in detection, investigation, conviction, prosecution, and/or sentencing?”
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor’s office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?

U-visa Application Victim Flow Chart



Law Enforcement provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by:
 - a. the head of the certifying agency; OR
 - b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b) a letter from the head of the agency designating another person to sign the certification (designee letter).

Helpfulness

By the end of this segment, you will be able to:

- Understand the scope of the helpfulness standard
- Apply the helpfulness standard to U visa certifications



U VISA "HELPFULNESS"



- Victim has been, is being, or is likely to be helpful to law enforcement
- Victim has not refused reasonable requests for information and assistance
- "Helpfulness" by victim is an ongoing requirement
- If victim is under 16, incompetent, or incapacitated, then a parent, guardian, or "next friend" may be the "helpful" party



What does "helpful" mean to you?

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. Yes No
(Attach an explanation briefly detailing the assistance the victim has provided.)

Helpfulness

Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):


1. Possesses information concerning the criminal activity listed in **Part 3**. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)* Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)* Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)* Yes No

Form I-918 Supplement B (01/15/13) Y Page 2



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Case Scenarios Large Group Discussion

- Scenario #1
- Scenario #2
- Scenario #3

Is this person eligible for a U Visa certification?

If yes: How?


If no: Why?



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What does "helpful" mean?




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Helpfulness in the Regulations

- Statute and DHS Regulations: has been helpful, is being helpful, or is likely to be helpful in the
 - Detection, or Investigation, or
 - Prosecution, or Conviction, or
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete a U visa certification once they assess the victim's helpfulness
- The investigation or prosecution can still be ongoing



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Helpfulness can be satisfied even if:


- Victim reports a crime where there's no further investigation
- Report is of a past crime that the victim did not report at the time
- Perpetrator absconds or is subject to immigration removal
- The perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history or is subject to immigration enforcement
- Victim fully discloses story after better understanding of rights, the U-visa, and meaningful language access



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TIPS FOR COMPLETING FORM I-918B

- I-918B should be completed entirely by the law enforcement agency and given to the victim or their representative.
- Victim sends U visa petition and the signed Supplement B to USCIS
- Use victim's full legal name and include aliases if known
- Sign in [blue ink](#); USCIS needs the original signature of certifying official.
- Keep a copy of the form for your files



What does it mean for a victim to “unreasonably refuse” to provide assistance?

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.) Yes No

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Why would a victim report a crime and then refuse to participate in the ensuing investigation and trial?

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Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was “Unreasonable”

- Considerations:
 - Totality of the circumstances, including the nature of the victimization
 - Victim's fear or the abuser
 - Trauma suffered
 - Force, fraud, or coercion

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If you still believe the victim is unreasonably refusing...

- Note on the certification, sign, and return to victim or victim's attorney
- Burden shifts to victim to prove the refusal is not unreasonable
- DHS makes the ultimate decision



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National Survey Results

LE Reasons for NOT Certifying

- | | |
|---|--|
| 1. The criminal was not prosecuted | 10. Victim may stop cooperating after U visa certification is signed |
| 2. The crime happened too long ago | 11. The criminal was not identified |
| 3. The criminal was not arrested | 12. Victim is a child and the parent is seeking certification |
| 4. The victim's case was closed | 13. The criminal has not been convicted |
| 5. The victim did not show enough assistance to law enforcement | 14. The victim never testified |
| 6. Law enforcement has the discretion not to certify | 15. Agency did not want to certify due to concern about liability |
| 7. The victim did not have any or enough injuries | 16. Victim has a removal order or is in removal proceedings |
| 8. The certifier did not feel comfortable granting legal status | 17. Victim no longer in the U.S. |
| 9. The agency does not know they can certify | 18. Agency has no certification policy |



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When should you certify?



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Timeline

- Certification must be included in the initial application for a U visa
- Once the initial application is processed:
 - Victim is entered into a database and flagged as an applicant for a U visa



- Immigration proceedings will not be initiated
- Offender can not intimidate with threats

Challenges to Prosecution

- Similar to challenges facing law enforcement
 - Victim involvement
 - Recantation or minimization
- Locating victims and witnesses
- Misunderstandings surrounding U visas
- Bias of jury pool
- Discovery implications U visas
- Cross examination of victim

#1 Concern:

Explicit or implicit accusation
that the victim is lying to stay in
the country

U Visa gives victim motive to lie

Proof of lack of motive

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Rebuttal

Prosecutors can:

- Establish timeline of when victim was told about U visa
- Introduce prior consistent statements

Victim statements including 911 call and statements to first responders, friends, family, and advocate

Motive to Lie

Rebut charge that victim is lying to get U Visa

Use these statements

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Prior Consistent Statements

- 911 call*
- Statements to first responder*
- Statements to detective
- Conversations with family and friends
- Other disclosures

Typically, all of these are inadmissible hearsay

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Collaboration between Law Enforcement and Prosecution

- Maintain victim and witness contact
- Update victims on case status
- Coordinate victim services
- Investigate witness tampering and other co-occurring crimes
- Cooperation is key



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WITHDRAWING FORM I-918B

Written notification should include:

- Agency's name and contact information
- Name, DOB and alien number of victim
- Name of person who signed certification and the date it was signed
- Reason agency is withdrawing/disavowing
- Signature and title of official withdrawing/disavowing
- Attach copy of original certification (if copy was kept)



IMPORTANT NOTES FOR LAW ENFORCEMENT

- All applicants for U visas are fingerprinted and prints are run through background checks
- U visa petitioners are subject to grounds of inadmissibility; all cases are reviewed a second time at adjustment of status phase
- USCIS has fraud protection mechanisms in place
- Law enforcement is not liable in any way
- Law enforcement can update or disavow certification at any time



Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2016
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu



HOW TO CONTACT U.S. Citizenship and Immigration Services

To request information about your case, write to:
USCIS Vermont Service Center
 Attn: Humanitarian Division
 75 Lower Welden Street
 St. Albans, VT 05479

Hotline for Attorneys/Representatives only:
 802-527-4888

E-mail for Attorneys/Representatives only:
 HotlineFollowUp19181914.vsc@uscis.dhs.gov (T & U)
 HotlineFollowUp1360.vsc@uscis.dhs.gov (VAWA)

USCIS Public Engagement Division
 E-mail: T_U_VAWATraining@uscis.dhs.gov



RESOURCES


DHS Blue Campaign Resources:
www.dhs.gov/blue-campaign
www.dhs.gov/humantrafficking
 E-mail: BlueCampaign@dhs.gov

USCIS Online Information on T and U visas and VAWA:
www.uscis.gov/humanitarian
<https://egov.uscis.gov/cris/processTimesDisplayInIt.do> (processing times)

For law enforcement:
[DHS T and U visa Law Enforcement Resource Guide](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf)
https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf
<https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>



Questions




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Thank you!

THIS PROJECT WAS SUPPORTED BY GRANT NO. 2015-TA-AX-K043 AWARDED BY THE OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE. THE OPINIONS, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS EXPRESSED IN THIS PUBLICATION/ PROGRAM/ EXHIBITION ARE THOSE OF THE AUTHOR(S) AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN.

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