

U and T Visas as Crime Fighting Tools: Best Practices for Law Enforcement and Prosecutors Working With Immigrant Survivors

Monthly Roundtable 1
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Introductions

- Officer Michael LaRiviere
 - Salem, MA Police Department
- Detective Stacey Ivie
 - Alexandria, VA Police Department

Learning Objectives

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

- Hold offenders more accountable by using the U Visa certification process as a crime fighting tool
- Enhance victim safety and participation in the criminal justice system

Overview of the U Visa

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

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

U Visa Facts

- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

DHS Terminology: Who Can Certify?

“law enforcement” & “law enforcement agencies” =

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

U Visa Basics

- Law enforcement certification is just one part of the overall process, it does not = Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Can be “revoked”
- Increases immigrant victim participation in criminal justice system

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



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

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

Qualifying Criminal Activity

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

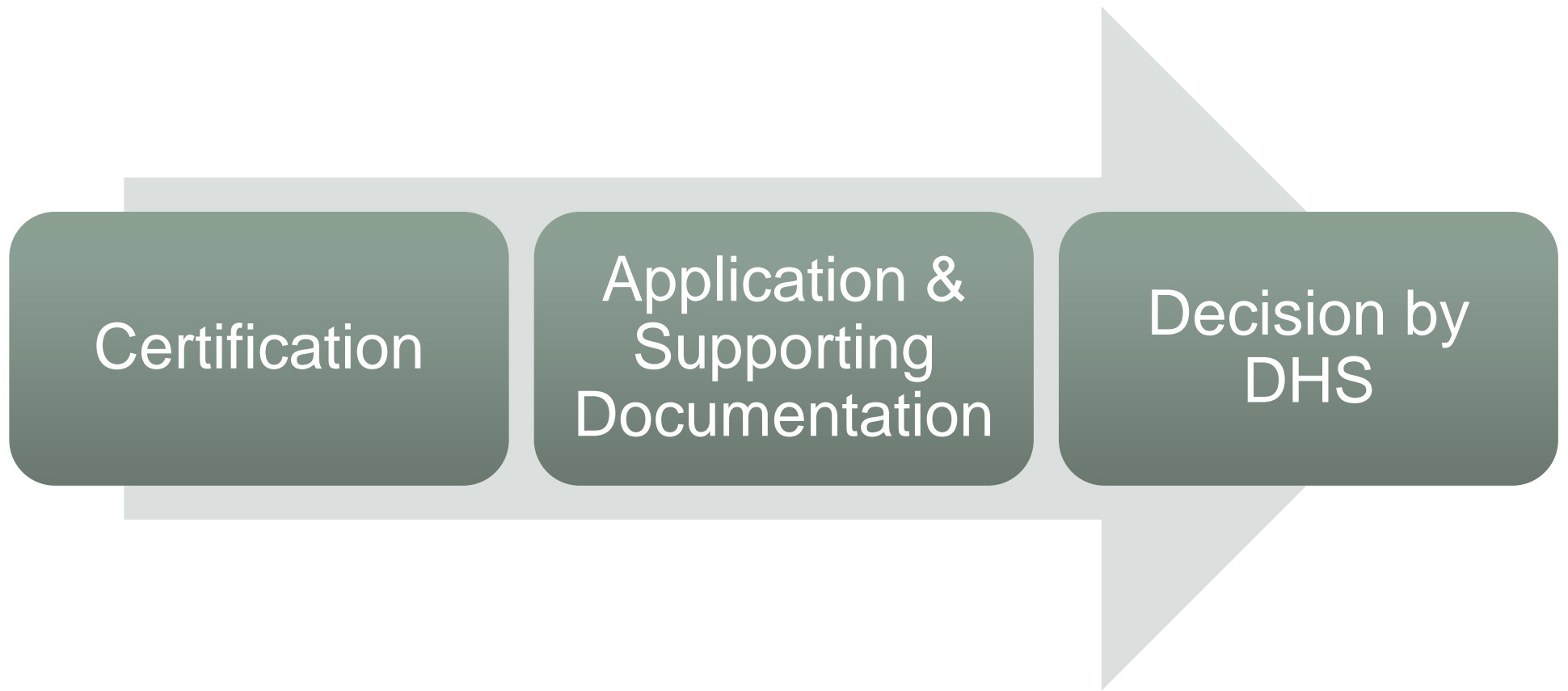
*Attempt, conspiracy or solicitation to commit any of these crimes
any similar activity

U Visa Criminal Activities (2/2014 data*)

- Domestic violence **45.9%**
- Human Trafficking **49.2%**
- Rape, sexual assault, or incest **9.3%**
- 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%**

*Kristina E. Szabo, David Stauffer, Benish Anver, & Leslye E. Orloff, Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants (Feb. 12, 2014)

The U Visa Application Process



Typical length of process = 9 -12 months

DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
 - Review of criminal history
 - Review of immigration history

U Visa Certification Overview

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

Form I-918 Supplement B,
U Nonimmigrant Status Certification



NIWAP

National Immigrant Women's Advocacy Project at the
American University Washington College of Law

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 a victim's U visa eligibility

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

Review the U Visa Certification Form

- **Goals:** Identify the criminal activity and the victim, then begin the certification process

Form I-918 Supplement B,

U Nonimmigrant Status Certification

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

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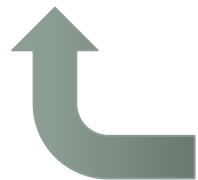
Part 1. Victim Information

Family Name	Given Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Other Names Used *(Include maiden name/nickname)*

Date of Birth <i>(mm/dd/yyyy)</i>	Gender
<input type="text"/>	<input type="checkbox"/> Male <input type="checkbox"/> Female

For USCIS Use Only	
Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	



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



This should be left blank

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



Part 2. Agency Information		
Name of Certifying Agency		
<input type="text"/>		
Name of Certifying Official	Title and Division/Office of Certifying Official	
<input type="text"/>	<input type="text"/>	
Name of Head of Certifying Agency		
<input type="text"/>		
Agency Address - Street Number and Name		
<input type="text"/>		
Suite No.		
<input type="text"/>		
City	State/Province	Zip/Postal Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Daytime Phone No. <i>(with area code and/or extension)</i>		Fax No. <i>(with area code)</i>
<input type="text"/>		<input type="text"/>
Agency Type		
<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local		
Case Status		
<input type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> Other: _____		
Certifying Agency Category		
<input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other: _____		
Case Number		FBI No. or SID No. <i>(if applicable)</i>
<input type="text"/>		<input type="text"/>

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”



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)

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?

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.

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 . | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (<i>Attach an explanation briefly detailing the assistance the victim has provided.</i>) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Has not been requested to provide further assistance in the investigation and/or prosecution. (<i>Example: prosecution is barred by the statute of limitation.</i>) (<i>Attach an explanation.</i>) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (<i>Attach an explanation.</i>) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

5. Other, please specify.

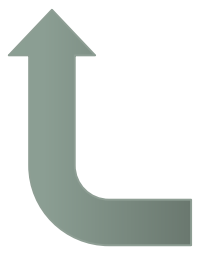
NOTE: This will be discussed in detail in the next section.

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.

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.

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?

Technical Assistance and Materials

- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library:
www.niwaplibrary.wcl.american.edu

Questions



Join us next month for a detailed
discussion on helpfulness

Thank you!