

Tip Sheet for Courts Developing U Visa Certification Protocols

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This tip sheet has been developed to assist judges and courts developing U visa certification protocols and policies. The list below contains information that addresses common questions from judges and courts regarding U visa certification by judges and connects readers with legally correct information from federal statutes, regulations, and the U.S. Department of Homeland Security (DHS).

- The U visa statutory terms ‘investigating or prosecuting’ are defined to include any, and not required to include all, of the following:¹
 - “Detection, investigation, prosecution, conviction, or sentencing.”
 - Since judicial officials do not investigate or prosecute criminal activity, inclusion of detection, conviction or sentencing in the regulations’ definition of “investigation or prosecution” it is “necessary to give effect to ...8 U.S.C. 1184(p)(1), which permits judges to sign certifications.”²
- ‘Crime’ is always ‘criminal activity’³
 - “Investigation, the filing of charges, a prosecution or conviction is not required”⁴
 - The perpetrator need not be charged with the criminal activity or could be charged with another crime which is not listed in the U visa statute⁵
- A victim’s helpfulness may be past, present or future helpfulness
 - The U visa statute makes U visas available to a victim who “is being, has been, or is likely to be” helpful⁶
 - Judicial certifications are most often made based on present or past helpfulness
- The following are judicial officers who can sign U visa certification:
 - 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.”⁷

¹ 8 U.S.C. § 1101(a)(15)(U)(i); 8 C.F.R. 214.14(a)(5); U.S. Dep’t of Homeland Security, U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement, Prosecutor, Judges, and Other Government Agencies8(2017) [hereinafter DHS T and U Visa Resource Guide], <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

² New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,020 (Sept. 17, 2007).

³ 8 U.S.C. § 1101(a)(15)(U)(i); DHS T and U Visa Resource Guide, *supra* note 1, at 6.

⁴ DHS T and U Visa Resource Guide, at 7.

⁵ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,018 (Sept. 17, 2007).

⁶ See 8 U.S.C. § 1101(a)(15)(U)(i)(II-III); DHS T and U Visa Resource Guide, at 4, 7.

⁷ DHS T and U Visa Resource Guide, at 16.

- The U visa certification may be signed by any judicial official. The judge signing the U visa certification need not be the judge who presided over a case involving the victim seeking certification.⁸
- Courts detect criminal activity in a wide range of court cases including but not limited to the following civil and family court cases:
 - Protection orders;⁹
 - Custody;¹⁰
 - Child abuse;¹¹
 - Elder abuse;¹²
 - Disabled or dependent adult abuse;¹³
 - Dating violence;¹⁴
 - Employment and labor cases.¹⁵
- There is no statute of limitations on when the criminal activity being certified occurred¹⁶
 - The criminal activity “may have happened many years ago or recently”¹⁷
 - A law enforcement certification can even be submitted for a victim in a closed case¹⁸
- Judges may amend Part 6 Certification by –
 - Crossing out “Based upon investigation of the facts” and replacing that language on the certification form to reflect the factual basis for the court’s certification, such as:¹⁹
 - “Based on my findings and issuance of a protection order”
 - “Based on my finding of probable cause”
 - “Based on my findings in a (custody/divorce/child abuse) case”
 - “Based upon my presiding over the case and hearing evidence”
 - “Based on my review of court records”
 - To comply with judicial ethical canons that require judges to preserve their impartiality, judges who sign certifications commonly cross out the statement in Part 6 of the certification stating that the judge would notify USCIS should the victim unreasonably refuse to assist in the investigation or prosecution in the future.
 - Judges are required to maintain their roles as impartial triers of fact and
 - Judges would not likely have continuing ongoing information about these facts.

⁸ See e.g., San Francisco Superior Court Civil Division U Visa Certification Protocol, <http://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol/>.

⁹ DHS T and U Visa Resource Guide, at 19, 22.

¹⁰ DHS T and U Visa Resource Guide, at 19.

¹¹ DHS T and U Visa Resource Guide, at 15, 19, 22.

¹² DHS T and U Visa Resource Guide, at 22, 23.

¹³ DHS T and U Visa Resource Guide, at 22, 23.

¹⁴ DHS T and U Visa Resource Guide, at 23.

¹⁵ DHS T and U Visa Resource Guide, at 6, 15; New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,019 (Sept. 17, 2007); 8 C.F.R. 214.14(a)(2).

¹⁶ DHS T and U Visa Resource Guide, at 7, 19.

¹⁷ DHS T and U Visa Resource Guide, at 7.

¹⁸ DHS T and U Visa Resource Guide, at 4.

¹⁹ National Immigrant Women’s Advocacy Project, *U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers* (last updated Sept. 18, 2018), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.