

Expert Guidance on Responding to U Visa and T Visa Certification Requests

BEYOND THE BENCH 24 PRE-CONFERENCE

DECEMBER 18, 2017
SAN DIEGO, CA



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR JUDICIAL EDUCATION AND RESEARCH

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Beyond the Bench 24 Pre-Conference
**Expert Guidance on Responding to
U-Visa and T-Visa Certification Requests**

December 18, 2018
1:30 p.m. - 5:00 p.m.
San Diego, CA

FACULTY

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Superior Court of San Francisco County

HON. LORA LIVINGSTON
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HYPOTHETICALS

1. What are the CA Crimes and Qualifying Criminal (Slide 53)

John and Jane have been separated for 2 years. During a custody exchange, John threatens Jane that he will call ICE on her if she doesn't give him full custody of the children. When she tries to leave with their child, he blocks the door and pushes her to the ground. She fell into their 5 year-old child who also got knocked to the ground. Jane tries to call 9-11 with her phone, but John grabs her neck and tries to strangle her, while taking her phone and smashing it.

2. What forms of immigration relief might Zara qualify for? (Slide 80)

Zara (28 yo), a successful business woman from Dubai, met and married Akbar, a U.S. Citizen. Zara lived with Akbar and his 66 yo mother Lori. Akbar took Zara's gold, money, and passport. Lori had her do all the housework and wash their cars daily. Zara was allowed 1 meal a day, and no breaks. Zara was 3 months pregnant, denied prenatal care and slept in the basement. Akbar raped her and took away her Quran. Akbar and Lori also beat and threatened Zara. When Zara said she would call the police, Akbar laughed, "We are U.S. Citizens! You have no documents! They will put you in jail. We'll say you abused Lori and stole money and jewelry from her."

3. Aditi (Slide 101)

The evidence in the case before you includes the following:

One night Aditi who has a student visa was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the "filthy things" she has done if she told anyone. This fear kept Aditi from reporting the rape to the police. Four months later, Aditi realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss called the police. Aditi told the police everything she knew, but she was unable to assist police in making a composite. Two years later, police were able to identify the perpetrator and are building a case against him based on evidence from Aditi and several other victims. He is a wealthy business man living in Aditi's community. Aditi is before the court in a paternity case seeking child support for her son born of the rape. Defendant is denying that the child is his.

- Would you sign a U visa certification for Aditi?

4. Maura (Slide 102)

The evidence in the case before you includes the following:

Maura is 17 years old and from Mexico. When Maura was 12 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 4 years in the abusive household and sexual advances from her step-father, Maura left home and moved in with her boyfriend Juan who is an MS -13 gang leader. Juan started battering Maura when she became pregnant with their child. During an incident of abuse after their child was born, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the domestic violence incidents to the police officer. She did this to protect her daughter, despite fears of gang retaliation and deportation. The police refused to charge Juan with domestic violence and instead want to prosecute Juan's gang violence with Maura as a key witness. Maura and her daughter fled to a shelter at an undisclosed location and Maura has filed for a DV restraining order against Juan.

- What forms of immigration relief might Maura qualify for?
- Is Maura eligible for U visa certification?

5. Alex (Slide 103)

The evidence in the case before you includes the following:

Alex had been dating Sam for about 1 month, when Alex decided to end the relationship by texting Sam, "I enjoyed the time we spent together, but I don't think this relationship can last. We should just be friends." Sam responds, "But, I am in love with you, and you told me you loved me too. Please don't do this." Sam continued to repeatedly send texts like: "are you sleeping with someone else?" "You are a liar, you just used me." "Slut, whore. You should be castrated." "I'm going to tell everyone that you're illegal, maybe ICE will come for you." Alex asked Sam to stop the texts, but Sam continued. Two weeks later, Sam went on Facebook to rant and posted nude photos of Alex with captions like "Open for business 24/7" and "liars should die." Sam then posted a drawing of a dead person hanged by a noose and the word "liar" on the person's shirt. Alex filed a TRO against Sam, which was granted, as was the DVRO.

- Would you sign a U visa certification for Alex after the DVRO? TRO?
- What if Alex was able to serve Sam, but does not appear at the hearing?

SELECTED STATUTES

Penal Code §679.10

Victim of qualifying criminal activity under Immigration and Nationality Act provision; certification of victim helpfulness; use of Form I-918 Supplement B
(Effective: January 1, 2017)

- (a) For purposes of this section, a “certifying entity” is any of the following:
- (1) A state or local law enforcement agency.
 - (2) A prosecutor.
 - (3) A judge.
 - (4) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity.
 - (5) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations.
- (b) For purposes of this section, a “certifying official” is any of the following:
- (1) The head of the certifying entity.
 - (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.
 - (3) A judge.
 - (4) Any other certifying official defined under Section 214.14 (a)(2) of Title 8 of the Code of Federal Regulations.
- (c) “Qualifying criminal activity” means qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the federal Immigration and Nationality Act which includes, but is not limited to, the following crimes:
- (1) Rape.
 - (2) Torture.
 - (3) Human trafficking.

- (4) Incest.
- (5) Domestic violence.
- (6) Sexual assault.
- (7) Abusive sexual conduct.
- (8) Prostitution.
- (9) Sexual exploitation.
- (10) Female genital mutilation.
- (11) Being held hostage.
- (12) Peonage.
- (13) Perjury.
- (14) Involuntary servitude.
- (15) Slavery.
- (16) Kidnaping.
- (17) Abduction.
- (18) Unlawful criminal restraint.
- (19) False imprisonment.
- (20) Blackmail.
- (21) Extortion.
- (22) Manslaughter.
- (23) Murder.
- (24) Felonious assault.
- (25) Witness tampering.
- (26) Obstruction of justice.
- (27) Fraud in foreign labor contracting.
- (28) Stalking.

(d) A “qualifying crime” includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.

(e) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.

(f) For purposes of determining helpfulness pursuant to subdivision (e), there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(g) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

(h) A certifying entity shall process a Form I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.

(i) A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.

(j) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

(k) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.

(l) A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Supplement B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

Penal Code §679.11

Certification of victim cooperation; human trafficking victims; form; disclosure of immigration status

(Effective: January 1, 2017)

(a) For purposes of this section, a “certifying entity” is any of the following:

(1) A state or local law enforcement agency.

(2) A prosecutor.

(3) A judge.

(4) The Department of Industrial Relations.

(5) Any other state or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.

(b) For purposes of this section, a “certifying official” is any of the following:

(1) The head of the certifying entity.

(2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B declarations on behalf of that agency.

(3) A judge.

(4) Any other certifying official defined under Section 214.14(a)(2) of Title 8 of the Code of Federal Regulations.

(c) “Human trafficking” means “severe forms of trafficking in persons” pursuant to Section 7102 of Title 22 of the United States Code and includes either of the following:

(1) 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.

(2) 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.

(d) “Human trafficking” also includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity

described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.

(e) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B declaration, when the victim was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative to the investigation or prosecution of human trafficking.

(f) For purposes of determining cooperation pursuant to subdivision (e), there is a rebuttable presumption that a victim is cooperative, has been cooperative, or is likely to be cooperative to the investigation or prosecution of human trafficking, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(g) The certifying official shall fully complete and sign the Form I-914 Supplement B declaration and, regarding victim cooperation, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's cooperation or likely cooperation to the detection, investigation, or prosecution of the criminal activity.

(h) A certifying entity shall process a Form I-914 Supplement B declaration within 90 days of request, unless the noncitizen is in removal proceedings, in which case the declaration shall be processed within 14 days of request.

(i) A current investigation, the filing of charges, or a prosecution or conviction is not required for the victim to request and obtain the Form I-914 Supplement B declaration from a certifying official.

(j) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

(k) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-914 Supplement B declaration, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-914 Supplement B declaration.

(l) A certifying entity that receives a request for a Form I-914 Supplement B declaration shall report to the Legislature, on or before January 1, 2018, and annually thereafter, the number of victims who requested Form I-914 Supplement B declarations from the entity, the number of those declaration forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

Penal Code §236.23

Coercion to commit offense as direct result of being human trafficking victim; affirmative defense to charge of a crime

(Effective: January 1, 2017)

(a) In addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. This defense does not apply to a serious felony, as defined in [subdivision \(c\) of Section 1192.7](#), or a violent felony, as defined in [subdivision \(c\) of Section 667.5](#), or a violation of [Section 236.1](#).

(b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.

(c) Certified records of a federal, state, tribal, or local court or governmental agency documenting the person's status as a victim of human trafficking at the time of the offense, including identification of a victim of human trafficking by a peace officer pursuant to [Section 236.2](#) and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, may be presented to establish an affirmative defense pursuant to this section.

(d) The affirmative defense may be asserted at any time before the entry of a plea of guilty or nolo contendere or admission to the truth of the charges and before the conclusion of any trial for the offense. If asserted before the preliminary hearing held in a case, the affirmative defense shall, upon request by the defendant, be determined at the preliminary hearing.

(e) If the defendant prevails on the affirmative defense provided under subdivision (a), the defendant is entitled to all of the following relief:

(1)(A) The court shall order that all records in the case be sealed pursuant to [Section 851.86](#).

(B) Records that have been sealed pursuant to this paragraph may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

(2) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.

(3)(A) The person may in all circumstances state that he or she has never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.

(B) The person may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or his or her failure or refusal to disclose the existence of or information concerning those events.

(C) The person may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.

(f) If, in a proceeding pursuant to [Section 602 of the Welfare and Institutions Code](#), the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a human trafficking victim, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in [Section 786 of the Welfare and Institutions Code](#).

Penal Code §236.2

Identification of victims of human trafficking; indicators

(Effective: November 7, 2012)

Law enforcement agencies shall use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. When a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a minor who has engaged in a commercial sex act, a person suspected of violating [subdivision \(a\)](#) or [\(b\) of Section 647](#), or a victim of a crime of domestic violence or sexual assault, the peace officer shall consider whether the following indicators of human trafficking are present:

- (a) Signs of trauma, fatigue, injury, or other evidence of poor care.
- (b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person.
- (c) The person does not have freedom of movement.
- (d) The person lives and works in one place.
- (e) The person owes a debt to his or her employer.
- (f) Security measures are used to control who has contact with the person.
- (g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

U Visa Certifications

List of Common Qualifying California Crimes

The following is a list of common California crimes that correspond to “qualifying criminal activity” under Penal Code § 679.10(c) for purposes of completing a U Visa Certification, Form I-918 Supplement B. **This is not an exhaustive list.**

Name of Qualifying Criminal Activity	Penal Code §	Name of Crime in California
Abduction	266(b)	Abduction for cohabitation and illicit relation
Abduction	278	Child abduction
Abusive Sexual Contact	220	Assault with intent to commit sexual act
Abusive Sexual Contact	288	Lewd and lascivious acts with child under 14
Abusive Sexual Contact	288.4	Lewd and lascivious acts with minor
Abusive Sexual Contact	288.5	Continuous sexual abuse of a child
Abusive Sexual Contact	314	Indecent exposure (when against child)
Abusive Sexual Contact	647.6	Annoying or molesting child under 18
Attempt	664	Attempt
Blackmail	518	Extortion
Conspiracy	182	Conspiracy
Domestic Violence	240	Assault (if qualifying DV relationship per PC 13700 or FC 6211)
Domestic Violence	242	Battery (if qualifying DV relationship per PC 13700 or FC 6211)
Domestic Violence	243(e)(1)	Domestic battery
Domestic Violence	273.5	Domestic violence with injury
Domestic Violence	273.6	Restraining order violation, DV-related
Domestic Violence	422	Terrorist threats (if qualifying DV relationship per PC 13700 or FC 6211)
Domestic Violence	594	Vandalism (if qualifying DV relationship per PC 13700 or FC 6211)
Extortion	518	Extortion
False Imprisonment	236	False imprisonment
Felonious Assault	203	Mayhem
Felonious Assault	205	Aggravated mayhem
Felonious Assault	211	Robbery with force or fear - if injury
Felonious Assault	215	Assault
Felonious Assault	240	Assault - if substantial injury
Felonious Assault	242	Battery - if substantial injury
Felonious Assault	243(a)	Battery misdemeanor - if substantial injury
Felonious Assault	243(d)	Battery causing serious bodily injury
Felonious Assault	244	Assault with caustic chemical

Name of Qualifying Criminal Activity	Penal Code §	Name of Crime in California
Felonious Assault	245(a)(1)	Assault with deadly weapon - not firearm
Felonious Assault	245(a)(3)	Assault with machine gun
Felonious Assault	245(a)(4)	Assault with great bodily injury
Felonious Assault	246	Shooting at inhabited dwelling
Felonious Assault	422.55	Hate crime
Felonious Assault	451	Arson
Felonious Assault	452	Recklessly causing a fire
Female Genital Mutilation	203	Mayhem
Hostage	210.5	Hostage
Incest	285	Incest
Kidnapping	207	Kidnapping
Kidnapping	209	Kidnapping during carjacking
Kidnapping	209(b)	Kidnapping to commit felony
Kidnapping	278.5	Kidnapping of a child
Manslaughter	191.5(a)	Gross vehicular manslaughter while intoxicated
Manslaughter	191.5(b)	Vehicular manslaughter while intoxicated
Manslaughter	192(a)	Voluntary manslaughter
Manslaughter	192(b)	Involuntary manslaughter
Manslaughter	192(c)	Vehicular manslaughter
Murder	187	Murder
Obstruction of Justice	112	Sale of false government document concealing another's immigration status
Obstruction of Justice	113	Sales of false document concealing another's immigration status
Obstruction of Justice	132	Offering false evidence
Obstruction of Justice	136.1	Dissuading a witness or victim
Obstruction of Justice	140	Force or threats or property damage against witness or victim or another
Obstruction of Justice	591.5	Blocking wireless communication from crime reporting
Perjury	118	Perjury
Prostitution	266	Female child enticed to prostitution
Prostitution	266(a)	Forced prostitution
Prostitution	266(g)	Forced prostitution by wife of husband
Prostitution	267	Kidnapping for prostitution
Rape	261	Rape
Rape	261.5	Statutory rape
Rape	262(a)	Spousal rape

Name of Qualifying Criminal Activity	Penal Code §	Name of Crime in California
Rape	266(c)	Oral copulation by force
Sexual Assault	269	Aggravated sexual assault of a child
Sexual Assault	286	Sodomy
Sexual Assault	288.7	Adult has sexual intercourse or sodomy with child under 11
Sexual Assault	288(a)	Oral copulation by force
Sexual Exploitation	288.2	Distribution of child pornography
Sexual Exploitation	311.3	Sexual exploitation of a child
Solicitation	653(f)	Solicitation
Solicitation of Prostitution and Prostitution	647	Solicitation of prostitution, prostitution
Stalking	273.6	Restraining order violation
Stalking	646.9	Stalking
Torture	206	Torture
Trafficking	236.1	Labor trafficking
Trafficking	265	Forced marriage
Witness Tampering	132.5(a)	Witness bribery
Witness Tampering	133	Fraudulent influence of a witness
Witness Tampering	136.1	Dissuading a witness or victim
Witness Tampering	140	Force or threats or property damage against witness or victim or another
Witness Tampering	591.5	Blocking wireless communication from crime reporting

Name of Qualifying Criminal Activity	Vehicle Code §	Name of Crime in California
Felonious Assault	20001(a)	Hit and run - felony
Felonious Assault	20001(b)	Hit and fun - felony

Name of Qualifying Criminal Activity	Family Code §	Name of Crime in California
Domestic Violence	6203	Abuse
Domestic Violence	6209	Cohabitant
Domestic Violence	6211	Domestic violence
Domestic Violence	6320	Abuse

NOTE: California defines a domestic violence crime as ANY CRIME involving parties who have a qualifying domestic violence relationship as defined under Penal Code §13700 OR Family Code §6211. See Penal Code §§ 136.2 and 1203.097.

Superior Court of California
County of San Francisco
Civil Division

U-Visa Certification Protocol
October 27, 2017

Congress created the U-Visa program for certain victims of criminal activity with the enactment of the Victims of Trafficking and Violence Protection Act of 2000.¹ Under the statute, a non-citizen may be entitled to a U-Visa if the Secretary of the Department of Homeland Security determines that the applicant has suffered substantial physical or mental abuse as a result of a having been a victim of a qualifying criminal activity, and was helpful, is being helpful or is likely to be helpful to law enforcement, prosecutors, judges, or government officials in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity.²

In order to be eligible for a U-Visa, the applicant must obtain a certification from a certifying agency or official³ explaining that the victim has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity.⁴

The Presiding Judge will assign all U Visa certification requests received by the Civil Division of the San Francisco Superior Court to a Judge designated to sign U Visa certifications.⁵ This approach helps ensure uniformity of decision and a clear transparent process for the applicant.

United States Citizenship and Immigration Services (USCIS) Form I-918, Supplemental B, is the document by which an applicant requests a judge's certification.⁶ In order to be entitled to a U-Visa certification, the only three elements the applicant must establish are that they:

- (1) are a victim of a qualifying crime;

¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

² Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. 214.14(a)(5), (c)(2)(i); **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 Agencies** 4 (2017) [hereinafter **DHS U Visa Resource Guide**], https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

³ Approved certifying agencies or officials include (1) federal, state or local law enforcement officials, (2) federal, state or local prosecutors, and (3) federal or state judges, administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors. 8 U.S.C. § 1101(a)(15)(U)(i)(III); **DHS U Visa Resource Guide**, *supra* note 2, at 16.

⁴ Admission of Nonimmigrants, 8 U.S.C. § 1184(p)(1); **DHS U Visa Resource Guide**, *supra* note 2, at 5, 7.

⁵ Courts may select a judicial officer receive and sign U visas on behalf of the court in addition to individual judicial officers being authorized by federal statutes and regulations to sign U visas. No delegation of authority is needed or required in the context of judicial certification. **DHS U Visa Resource Guide**, *supra* note 2, at 8.

⁶This form is available at <https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>.

(2) possesses information concerning a qualifying crime; and

(3) has been, are being, or are likely to be helpful in the investigation or prosecution of a qualifying crime.⁷

Department of Homeland Security (DHS) regulations define “investigation or prosecution” to include detection, investigation, prosecution, conviction or sentencing of a criminal activity.⁸

DHS takes the position that judges make findings and issue orders not only in criminal cases, but in other types of civil and family court proceedings. For example, in civil protection order, custody and child abuse cases, judges “detect” criminal activity in order to issue protection order, make determination in child abuse proceedings, or award custody.⁹

Qualifying criminal activity includes any one or more of the following enumerated crimes, “or *any similar activity*”: “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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes”.¹⁰ “Similar activity” refers to a criminal activity that may be named differently in a state statute where the nature and elements of the criminal activities are comparable.¹¹

Conviction or even prosecution of the offender are not necessary to obtain a certification. Any investigation, the filing of charges, a prosecution, or a conviction is not required.¹² Seeking a protection order or providing information about the criminal activity in a custody or civil court case is sufficient for certification.¹³ There is no statute of limitations on a certification request.¹⁴ Instead, the applicant must only demonstrate that they possess information concerning the criminal activity enumerated in the statute, and that they are being, has been or is likely to be helpful to in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.¹⁵ “Helpful”, for the purpose of U-Visa applications, “includes providing assistance when reasonably requested.”¹⁶ The helpfulness requirement is an ongoing obligation on the part of the victim to be helpful. Thus, anyone who unreasonably refuses to assist after reporting a

⁷ Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); **DHS U Visa Resource Guide**, *supra* note 2, at 6.

⁸ Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. 214.14(a)(5); **DHS U Visa Resource Guide**, *supra* note 2, at 8.

⁹ *See* New Classification for Victims of Criminal Activity U Visa Regulations; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014, 53,020 (September 17, 2007) (to be codified at 8 C.F.R. pt. 103, 212, 214, 248, 274a, 299) [hereinafter U Visa Regulations].

¹⁰ Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(iii); *see* Attachment A. California Penal Code Sections.

¹¹ *See* U Visa Regulations, 72 Fed. Reg. at 53,018; **DHS U Visa Resource Guide**, *supra* note 2, at 7-8.

¹² **DHS U Visa Resource Guide**, *supra* note 2, at 7, 22.

¹³ **DHS U Visa Resource Guide**, *supra* note 2, at 19, 22-23.

¹⁴ **DHS U Visa Resource Guide**, *supra* note 2, at 7, 19.

¹⁵ *See* Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i)(II-III); **DHS U Visa Resource Guide**, *supra* note 2, at 4, 7.

¹⁶ **DHS U Visa Resource Guide**, *supra* note 2, at 5, 7.

crime are not eligible for a U-Visa. The duty to remain helpful to law enforcement exists even after a U visa is granted.¹⁷ Federal regulations require federal officials to decide whether a victim’s refusal to cooperate was unreasonable examining the totality of the circumstances including but not limited to force, fraud or coercion the victim was subjected to, the nature of the victimization and the specific circumstances of the victim’s fear, trauma, age, and maturity.¹⁸ Certifying agencies should inform USCIS of the victim’s unreasonable refusal to provide assistance.¹⁹

Whether or not the applicant has suffered substantial mental or physical harm as a result of having been a victim of a qualifying criminal activity—is adjudicated by the USCIC and is not a requirement of the certifying official.²⁰

The official’s decision to sign a certification application is discretionary.²¹ Signatures should be in blue ink, photocopies are not acceptable.²² A signed original certification form together with any attachments (e.g. a copy of a court order, photo)²³ should be returned directly to the applicant (or counsel), not to USCIS.²⁴

Judges sign certifications based on information from a variety of sources that include but are not limited to: court’s records, transcripts, evidence, court findings, court orders, testimony, and conversations with and notes from any judicial officer involved with the matter. Since judges sign certifications based on factors other than their “investigation of the facts” judges signing U visa certifications may need to amend the U visa certification form to reflect the judges’ basis for certification, which can include amendments similar to the following examples:

- Based on my findings and issuance of a protection order
- Based on my finding of probable cause
- Based on my finding in a (custody/divorce/child abuse) case
- Based upon my presiding over the case and hearing evidence
- Based on my review of the court records

The certifying judicial officer may request additional information and/or documents from the applicant, if necessary. If approved the court will return the signed and dated certification to the applicant. If the request is not approved the judicial officer will return the document unsigned document with a cover memo explaining why the certification was not signed.

All California Courts are required to report the number of U visa certifications that were signed and the number of certifications that were not signed to the California Legislature. Decisions on certification requests must be made with 90 calendar days of the request. If the

¹⁷ **DHS U Visa Resource Guide**, *supra* note 2, at 7.

¹⁸ Adjustment of Aliens in U Nonimmigrant Status, 8 C.F.R. 245.24(a)(5).

¹⁹ **DHS U Visa Resource Guide**, *supra* note 2, at 7.

²⁰ **DHS U Visa Resource Guide**, *supra* note 2, at 6, 24.

²¹ **DHS U Visa Resource Guide**, *supra* note 2, at 8.

²² **DHS U Visa Resource Guide**, *supra* note 2, at 8.

²³ **DHS U Visa Resource Guide**, *supra* note 2, at 13, 25.

²⁴ **DHS U Visa Resource Guide**, *supra* note 2, at 25.

requestor is in removal proceedings the decision on the certification must be made within 14 days.²⁵

Attachments [Can attach following documents to the protocol for additional guidance]:

Department of Homeland Security U and T Certification Resource Guide available at:
https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf

Penal Code List

Infographic (See Protections for Immigrant Victims infographic available at:
<http://library.niwap.org/wp-content/uploads/DHS-Protections1.6-links-121516.pdf>)

Sample Certification Form (I-918 Supplement B Form, available at:
<https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>

²⁵ Immigrant Victims of Crime Equity Act, California Penal Code 679.10.

U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial
Law Enforcement, Prosecutors, Judges, and
Other Government Agencies



Homeland
Security

Available at:

https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf

U and T Visa Resource Guide

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California Penal Code Statutes that Constitute U Visa Criminal Activities
October 27, 2017

Below is a non-exclusive list of the California Penal Code Sections that constitute criminal activities listed in the U Visa Statute Immigration and Nationality Act Section 101(a)(15)(U)(iii), 8 U.S.C. 1101(a)(15)(U)(iii). U Visa certifiers are directed on the U visa certification form I-918 supplement B Section to "select all that apply."²⁶ The I-918 supplement B instructions further request that the certifier --

"provide the dates of the criminal activity. If the criminal activity occurred over a period of time, provide a date on which at least one act constituting an element of qualifying criminal activity occurred. If multiple incidents occurred, provide the date of each incident investigated or prosecuted. List the statutory citations for the crimes in the space provided. If the crimes of which the petitioner is a victim are not listed, select the crimes that are similar to those crimes. You may provide a written explanation regarding how the crime of which the petitioner is a victim is similar to the listed crimes. Similar activity refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the list of criminal activity at section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (INA) and found on the certification form itself."²⁷

DHS explained the following when it issued the U visa regulations --

“the criminal activity listed is stated in broad terms. The rule’s definition of “any similar activity” takes into account the wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list, while the nature and elements of both criminal activities are comparable. In addition, qualifying criminal activity may occur during the commission of non-qualifying criminal activity. For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the nonqualifying 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 nonqualifying Federal embezzlement and fraud crimes.”²⁸

Best practices for completing the U visa certification form are to check off all criminal activities detected that the victim has suffered that are U visa listed criminal activities or similar criminal activities. The following list provides certifiers with a quick reference list of the state criminal law section numbers for many of the U visa criminal activities.

²⁶ **Dep’t of Homeland Security, U.S.C.I.S., Form I-918, Supplement B, U Nonimmigrant Status Certification** 2, pt. 3 (expires Feb. 28, 2019) [hereinafter **U Visa Form I-918B**], <https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>.

²⁷ **Dep’t of Homeland Security, U.S.C.I.S., Form I-918, Instructions for Supplement B, U Nonimmigrant Status Certification** 3, pt. 3 (expires Feb. 28, 2019) [hereinafter **U Visa Form I-918B Instructions**], <https://www.uscis.gov/sites/default/files/files/form/i-918supbinstr.pdf>.

²⁸ Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. 214.14(a)(9), pmb1.

Name of U Qualifying Criminal Activity	California Penal Code	Name of Crime in California	Notes
Abduction	266b	Abduction for cohabitation and illicit relation	
Abduction	278	Childabduction	
Abusive Sexual Contact	220	Assault with intent to commit sexual act	
Abusive Sexual Contact	288	Lewd and lascivious acts with child under 14	
Abusive Sexual Contact	288.4	Lewd and lascivious acts with minor	
Abusive Sexual Contact	288.5	Continuous sexual abuse of a child	
Abusive Sexual Contact	314	Indecent Exposure (when against child)	
Abusive Sexual Contact	647.6	Annoying or molesting a child under 18	
Attempt	664	Attempt	
Blackmail	518	Extortion	
Conspiracy	182	Conspiracy	
Domestic Violence	240	Assault (could be DV-related)	
Domestic Violence	242	Battery (could be DV-related)	
Domestic Violence	243(e)(1)	Domestic battery	
Domestic Violence	273.5	Domestic violence with injury	
Domestic Violence	273.6	Restraining order violation, DV-related	
Domestic Violence	422	Terrorist threats (could be DV-related)	
Domestic Violence	594	Vandalism	
Extortion	518	Extortion	
False Imprisonment	236	False imprisonment	
Felonious Assault	203	Mayhem	Dismembers, disables, disfigures, a body part
Felonious Assault	205	Aggravated Mayhem	
Felonious Assault	211	Robbery with force or fear - potentially argue FA if injury	
Felonious Assault	215	Assault	Carjacking
Felonious Assault	240	Assault - potentially argue FA if substantial injury	
Felonious Assault	242	Battery - potentially argue FA if substantial injury	
Felonious Assault	243(a)	Battery misdemeanor - potentially argue FA if substantial injury	
Felonious Assault	243(d)	Battery causing serious bodily injury	
Felonious Assault	244	Assault with caustic chemical	
Felonious Assault	245(a)(1)	Assault with deadly weapon - not firearm	Ex: assault with a knife, tequila bottle, automobile, etc.
Felonious Assault	245(a)(2)	Assault with firearm	
Felonious Assault	245(a)(3)	Assault with machine gun	
Felonious Assault	245(a)(4)	Assault with great bodily injury	Ex: assault with punches to the face, multiple perps, etc.
Felonious Assault	246	Shooting at inhabited dwelling	
Felonious Assault	422.55	Hate Crime	
Felonious Assault	451	Arson	
Felonious Assault	452	Recklessly Causing a Fire	
Female Genital Mutilation	203	Mayhem	
Hostage	210.5	Hostage	
Incest	285	Incest	
Kidnapping	207	Kidnapping	
Kidnapping	209	Kidnapping during carjacking	
Kidnapping	209(b)	Kidnapping to commit Felony	
Kidnapping	278.5	Kidnapping of a child	
Manslaughter	191.5(a)	Gross vehicular manslaughter while intoxicated	
Manslaughter	191.5(b)	Vehicular manslaughter while intoxicated	
Manslaughter	192(a)	Voluntary manslaughter	
Manslaughter	192(b)	Involuntary manslaughter	
Manslaughter	192(c)	Vehicular manslaughter	
Murder	187	Murder	
Obstruction of Justice	112	Sale of false government document concealing another's immigration status	
Obstruction of Justice	113	Sale of false document concealing another's immigration status	
Obstruction of Justice	132	Offering false evidence	
Obstruction of Justice	136.1	Dissuading a witness or victim	
Obstruction of Justice	140	Force or threats or property damage against witness or victim or another	
Obstruction of Justice	591.5	Blocking wireless communication from crime reporting	
Perjury	118	Perjury	
Prostitution	266	Female child enticed to prostitution	
Prostitution	266a	Forced prostitution	
Prostitution	266g	Forced prostitution by wife of husband	
Prostitution	267	Kidnapping for prostitution	
Rape	261	Rape	
Rape	261.5	Statutory rape	

Rape	262(a)	Spousal rape	Ex. penetration with a foreign object
Rape	266c	Oral copulation by force	
Rape	289	Forcible sexual penetration	
Sexual Assault	243.4	Sexual Battery	
Sexual Assault	269	Aggravated sexual assault of a child	
Sexual Assault	286	Sodomy	
Sexual Assault	288.7	Adult has sexual intercourse or sodomy with child under 11	
Sexual Assault	288(a)	Oral copulation by force	

Name of U Qualifying Criminal Activity	California Vehicle Code	Name of Crime in California	Notes
Felonious Assault	20001(a)	Hit and run - felony	
Felonious Assault	20001(b)	Hit and run - felony	

Name of U Qualifying Criminal Activity	California Family Code	Defined Term in California	Notes
Domestic Violence	6203	Abuse	
Domestic Violence	6209	Cohabitant	
Domestic Violence	6211	Domestic Violence	



Supplement B, U Nonimmigrant Status Certification

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

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

For USCIS Use Only	Remarks
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▶ **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
▶ A-

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

4. Date of Birth (mm/dd/yyyy)

5. Gender Male Female

Name of Head of Certifying Agency

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

Agency Address

5.a. Street Number and Name

5.b. Apt. Ste. Flr.

5.c. City or Town

5.d. State 5.f. ZIP Code

5.g. Province

5.h. Postal Code

5.i. Country

Other Agency Information

6. Agency Type Federal State Local

7. Case Status On-going Completed
 Other

8. Certifying Agency Category Judge Law Enforcement Prosecutor
 Other

9. Case Number

10. FBI Number or SID Number (if applicable)

Part 2. Agency Information

1. Name of Certifying Agency

Name of Certifying Official

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. Title and Division/Office of Certifying Official

Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select all applicable boxes)

- Abduction
- Abusive Sexual Contact
- Attempt to Commit Any of the Named Crimes
- Being Held Hostage
- Blackmail
- Conspiracy to Commit Any of the Named Crimes
- Domestic Violence
- Extortion
- False Imprisonment
- Felonious Assault
- Female Genital Mutilation
- Fraud in Foreign Labor Contracting
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Solicitation to Commit Any of the Named Crimes
- Stalking
- Torture
- Trafficking
- Unlawful Criminal Restraint
- Witness Tampering

Provide the dates on which the criminal activity occurred.

- 2.a. Date (mm/dd/yyyy)
- 2.b. Date (mm/dd/yyyy)
- 2.c. Date (mm/dd/yyyy)
- 2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.
Fam. C 6211; Pen. C. 519(5), 236,
243(e), 273.5, 211, 136.1, 273a, 206

4.a. 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

4.b. If you answered "Yes," where did the criminal activity occur?
San Francisco, CA

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

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

6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.
I have probable cause to believe ex-
husband strangled Mrs. Doe threatened
Mrs. Doe, took away and smashed her
phone when she tried to call police,
threatened he would call ICE if she
refused to give him full custody of
their child, blocked her movements and
pushed her to the ground. I also have
probable cause to believe he caused
their 5-year old child to also be
knocked to the ground during the
incident.

7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.
As a result of being assaulted and
strangled, Mrs. Doe suffered injuries
to her neck. Attached are copies of
the police report and photographs
submitted to the court, and the
restraining order I issued.

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in Part 7. Additional Information.)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

3.d. Relationship

3.e. Involvement

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

4.d. Relationship

4.e. Involvement

Part 6. Certification

I am the head of the agency listed in Part 2. or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. ~~Based upon investigation of the facts,~~ I certify, under penalty of perjury, that the individual identified in Part 1. is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, 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 U.S. Citizenship and Immigration Services (USCIS), 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 or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Part 7. Additional Information

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name

Judge of the Superior Court

Petitioner's Name

2.a. Family Name (Last Name) Doe

2.b. Given Name (First Name) Jane

2.c. Middle Name

3. A-Number (if any) ▶ A-

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d. [Lined area for handwritten notes]

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d. [Lined area for handwritten notes]

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d. [Lined area for handwritten notes]



Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons

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

USCIS
Form I-914
OMB No. 1615-0099
Expires 01/31/2019

START HERE - Type or print in blank ink. This form should be completed by Federal, State, or local law enforcement authorities for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386, as amended.

PART A. Victim Information

Family Name (Last Name) **Given Name (First Name)** **Middle Name (if any)**

Ali Zara

Other Names Used (include maiden name/nickname)

Date of Birth (mm/dd/yyyy) **Gender**

04/20/1989 Male Female

A # (if known) **Social Security # (if known)**

Part B. Agency Information

Name of Certifying Agency

Judge of the Superior Court

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

Susan M Breall Judge of the Superior Court

Agency Address - Street Number and Name **Suite #**

375 Woodside Avenue

City **State/Province** **Zip/Postal Code**

San Francisco CA 94127

Daytime Phone # (area code and/or extension) **Fax # (with area code)**

4156825203

Agency Type

Federal State Local

Case Status

On-going Completed Local

Certifying Agency Category

Judge Law Enforcement Prosecutor Other

Case Number **FBI # or SID # (if applicable)**

FL-987654

Part C. Statement of Claim

1. The applicant is or has been a victim of a severe form of trafficking in persons. Specifically, he or she is a victim of: *(Check all that apply. Base your analysis on the practices to which the victim was subjected rather than on the specific violations charged, the counts on which convictions were obtained, or whether any prosecution resulted in convictions. Note that the definitions that control this analysis are not the elements of criminal offenses, but are those set forth at 8 CFR 214.11(a).)*

Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Sex trafficking and the victim is under the age of 18.

For USCIS Use Only

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	

Remarks

Part C. Statement of Claim (Continued)

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery.
- Not applicable.
- Other, specify on attached additional sheets.

2. Please describe the victimization upon which the applicant's claim is based and identify the relationship between that victimization and the crime under investigation/prosecution. Attach the results of any name or database inquiry performed in the investigation of the case, as well as any relevant reports and findings. Include relevant dates, etc. Attach additional sheets, if necessary.

I have probable cause to believe Ms. Ali's husband and mother-in-law subjected her to involuntary servitude from about September 15, 2017 through December 1, 2017. Ms. Ali was required to do all the housework and wash the cars daily on 1 meal a day and no breaks. She was also 3 months pregnant when the trafficking began and yet, was denied prenatal care and forced to sleep in a basement. The husband raped and beat her, and deprived her of her ability to pray by taking away her Quran. The husband and mother-in-law also threatened to accuse her of theft and have her arrested if she called the police. They also took possession of her gold, money, and passport.

3. Has the applicant expressed any fear of retaliation or revenge if removed from the United States? If yes, explain. Attach additional sheets, if necessary.

I have not inquired into whether Ms. Ali fear retaliation or revenge if removed from the U.S.

4. Provide the date(s) on which the acts of trafficking occurred.

Date (mm/dd/yyyy)

09/15/2017

Date (mm/dd/yyyy)

12/01/2017

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

5. List the statutory citation(s) for the acts of trafficking being investigated or prosecuted, or that were investigated or prosecuted.

Penal Code 236.1(a), (g)

6. Provide the date on which the investigation or prosecution was initiated.

Date (mm/dd/yyyy)

12/04/2017

7. Provide the date on which the investigation or prosecution was completed (if any).

Date (mm/dd/yyyy)

12/18/2017

Part D. Cooperation of Victim *(Attach additional sheets, if necessary)*

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

Ms. Ali came to court to seek a domestic violence restraining order against her husband and her mother-in-law, which were both granted.

Part E. Family Members Implicated In Trafficking

Yes No Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States? If "Yes," list the relative(s) and describe the involvement. Attach additional sheets if necessary.

Full Name	Relationship	Involvement
Akbar Jalal	Husband	Respondent
Lori Jalal	Mother-in-law	Respondent

Based on my finding of probable cause

Part F. Attestation

~~Based upon investigation of the facts~~, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTVPA. 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 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 acts of trafficking of which he/she is a victim, I will notify USCIS.

Signature of Law Enforcement Officer *(identified in Part B) (sign in ink)* **Date** *(mm/dd/yyyy)*
Judge Susan M. Breall 12/18/2017

Signature of Supervisor of Certifying Officer *(sign in ink)* **Date** *(mm/dd/yyyy)*

Printed Name of Supervisor

U AND T VISA CERTIFICATION TRAINING MATERIALS¹

Also see our full library of SJI supported materials for courts at www.niwap.org/go/UVisa

Immigration Relief for Crime Victims and Children

Know Your Rights Information

- DHS Interactive Infographic on Protections for Immigrant Victims
<http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516>
- Immigration Options for Victims of Crime -DHS Brochure
<http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes>
- Multilingual Materials for Victims and Advocates
<http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>
- Pathways to Immigration Relief for Students
<http://niwaplibrary.wcl.american.edu/pubs/screening-students-for-immigraiton-protections/>

Forms of Immigration Relief

- Bench Card: Overview of Types of Immigration Status
<http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstatustypes>
- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Immigrant Crime Victims
<http://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimimmrights10-11-13>
- Immigration Relief for Abused Children
http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure
- Blue Card: Screening for Victims Who Qualify for Immigration Protective Relief (Squad Car Screening Tool)
<http://niwaplibrary.wcl.american.edu/pubs/squadcarscreeningbluecard>

U and T Visa Certification

Government Materials

- U and T Visa Law Enforcement Resource Guide DHS published resource guide for law enforcement, prosecutors, judges, and other certifying officials.
<http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>
- USCIS U Visa Certification Factsheet Q&A
<http://niwaplibrary.wcl.american.edu/pubs/imm-relief-victims-trafficking-and-other>

¹ This materials list includes publications issued by government agencies and materials produced by NIWAP in collaboration with national experts. Each of the materials included in this list developed with support from government funders contains government agency disclaimers.

This was developed under grant SJI-12-E-169 from State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of State Justice Institute.

- DHS: Instructions for Form I-914, Supplement B
<http://niwaplibrary.wcl.american.edu/pubs/i-916-supplement-b-instructions>
- DHS: Form I-914, Supplement B for T visa Endorsement
<http://niwaplibrary.wcl.american.edu/pubs/i-914-supplement-b-instructions>
- DHS: Form I-918, Supplement B, for U visa Certification
<http://library.niwap.org/wp-content/uploads/2015/IMM-Temp-FormI918SupplementB.pdf>
- DHS: Instructions for Form I-918, Supplement B, for U visa Certification
<http://library.niwap.org/wp-content/uploads/2015/IMM-Qref-FormI918.pdf>
- Blue Campaign: What You Can Do- Recognizing and Supporting Trafficking Victims in the Courtroom <http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-judicial-english>
- Brochure: Continued Presence & Temporary Immigration Status for Victims of Human Trafficking <http://niwaplibrary.wcl.american.edu/pubs/continued-presence-temp-imm-status>
-

Training Materials and Tools

- *U Visa Certification Tool Kit for Federal, State, and Local Judges, Commissioners, Magistrates, and Other Judicial Officers (2107)*
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates>
- U-Visa: "Helpfulness" Checklist
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-helpfulness-chcklist/>
- State Laws
 - California: U Visa Certification Law (2016)- Statute and Fact Sheet
<http://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/>
 - Connecticut: U Visa Certification Law (2010)
<http://niwaplibrary.wcl.american.edu/connecticut-u-cert-laws/>
- U-Visa Flow Chart <http://niwaplibrary.wcl.american.edu/pubs/uvisaflowchart/>
- DHS Policy Answers to Law Enforcement Reasons for Not Certifying
<http://niwaplibrary.wcl.american.edu/pubs/dhs-answers-to-reasons-for-not-certifying>
- U Visa News Articles <http://niwaplibrary.wcl.american.edu/pubs/uvisa-news-articles/>
- 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)
<http://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca/>
- Glossary of Terms for Work with Immigrant Survivors
<http://niwaplibrary.wcl.american.edu/pubs/glossary-of-terms/>
- The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials - Views from Around the Country <http://library.niwap.org/wp-content/uploads/2015/IMM-Qref-UVisaCrimeFightingTool-12.03.12.pdf>
- Protecting Our Communities and Officer Safety
http://niwaplibrary.wcl.american.edu/pubs/may_june_sheriff
- Sample Questions for Identifying a Trafficked/Enslaved Person
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-identifying-trafficking>

U Visa Certification and State Court Discovery

Criminal

- What's Immigration Status Got to Do with It? Prosecution Strategies for Cases Involving Undocumented Victims <http://niwaplibrary.wcl.american.edu/pubs/pretrial-strategies-7-24-17-final-with-logos/>
- VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information <http://niwaplibrary.wcl.american.edu/pubs/discovery-and-vawa-confidentiality-tool-final-7-24-17/>
- Certifying Early: When Should You Sign a U or T Visa Certification for a Victim? <http://niwaplibrary.wcl.american.edu/pubs/certifying-early-7-24-17-final-w-logo/>
- Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law <http://niwaplibrary.wcl.american.edu/pubs/case-law-quick-reference-tool-7-24-17-final-w-logo/>

Family and Civil Court Discovery

- Family Court Bench Card on VAWA Confidentiality <http://library.niwap.org/wp-content/uploads/2015/pdf/CONF-VAWA-BchCrd-FamCtConfidentiality-10.11.2013.pdf>
- VAWA Confidentiality Statutes, Legislative History and Implementing Policy (2.23.17) <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>
- Three Prongs of VAWA Confidentiality <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-bro-3prongsofconfidentiality/>
- Chapter 3 of Empowering Survivors: VAWA Confidentiality, History, Purpose, DHS Implementation, and Violations of VAWA Confidentiality Protections <http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/>
- Utilizing VAWA Confidentiality Protections in Family Court Proceedings** <https://www.civresearchinstitute.com/online/article.php?pid=6&iid=1270>

VAWA Self-Petition

Government

- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the US and Facts about Immigrating on a Marriage-based Visa <http://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>

Training Materials and Tools

- VAWA Self-Petitioning Flow Chart for Child Applicants <http://niwaplibrary.wcl.american.edu/pubs/vawa-flow-chart-child/>
- Flowchart: VAWA Self-Petitioning Eligibility for Elder Abuse Survivors <http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-elder-abuse/>
- Flowchart: VAWA Self-Petitioning Eligibility for Adults <http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-adults>

- Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order/>

Language Access

- DOJ Letter to State Chief Justices and State Court Administrators on Access for Limited English Proficient Persons to State Court Proceedings
<http://niwaplibrary.wcl.american.edu/pubs/lang-gov-doj-courts-letter08-16-10>
- Judicial Bench Card for Court Interpretation
<http://niwaplibrary.wcl.american.edu/pubs/ncsc-bench-card-language-access>
- Serving Limited English Proficient Immigrant Victims**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1269>

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SJI TRAINING MATERIALS¹

Also see our full library of SJI supported materials for courts at www.niwap.org/go/sji

Immigration Relief for Crime Victims and Children

Know Your Rights Information

- DHS Interactive Infographic on Protections for Immigrant Victims
<http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516>
- Immigration Options for Victims of Crime -DHS Brochure
<http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes>
- Multilingual Materials for Victims and Advocates
<http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>
- Pathways to Immigration Relief for Students
<http://niwaplibrary.wcl.american.edu/pubs/screening-students-for-immigraiton-protections/>

Forms of Immigration Relief

- Bench Card: Overview of Types of Immigration Status
<http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstatustypes>
- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Immigrant Crime Victims
<http://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimimmrights10-11-13>
- Prosecutorial Discretion: Certain Victim, Witnesses and Plaintiffs
<http://niwaplibrary.wcl.american.edu/pubs/discretion-victims-witnesses-plaintiffs/>
- Bench Card: DHS Enforcement Priorities Information for State Court Judges
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-dhsenforcementpriorities-11-12-15>
- 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)
<http://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca/>
- Identifying Forms of Immigration Relief Available for Battered Immigrant Victims**
<https://www.civresearchinstitute.com/online/article.php?pid=6&iid=1269>

U Visa Certification

- U Visa Certification Tool Kit for Federal, State, and Local Judges, Commissioners, and Magistrates
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates>

¹ This materials list includes publications issued by government agencies and materials produced by NIWAP in collaboration with national experts. Each of the materials included in this list developed with support from government funders contains government agency disclaimers.

This was developed under grant SJI-12-E-169 from State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of State Justice Institute.

- U and T Visa Law Enforcement Resource Guide DHS published resource guide for law enforcement, prosecutors, judges, and other certifying officials.
http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit_ah-3-21-17
- U-Visa: "Helpfulness" Checklist
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-helpfulness-checklist/>
- State Laws
 - California: U Visa Certification Law (2016)- Statute and Fact Sheet
<http://niwaplibrary.wcl.american.edu/california-sb-674-u-cert-law/>
 - Connecticut: U Visa Certification Law (2010)
<http://niwaplibrary.wcl.american.edu/connecticut-u-cert-laws/>

VAWA Self-Petition

- VAWA Self-Petitioning Flow Chart for Child Applicants
<http://niwaplibrary.wcl.american.edu/pubs/vawa-flow-chart-child/>
- Flowchart: VAWA Self-Petitioning Eligibility for Elder Abuse Survivors
<http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-elder-abuse/>
- Flowchart: VAWA Self-Petitioning Eligibility for Adults
<http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-adults>
- Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases
<http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order/>

Human Trafficking

- Blue Campaign: What You Can Do- Recognizing and Supporting Trafficking Victims in the Courtroom
<http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-judicial-english>
- Sample Questions for Identifying a Trafficked/Enslaved Person
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-identifying-trafficking>

Special Immigrant Juvenile Status, Child Abuse & Protective Battered Immigrant Parents

- Immigration Protection Screening Checklist: Special Immigrant Juvenile Status
<http://niwaplibrary.wcl.american.edu/pubs/imm-sijs-checklist>
- Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls (August 2016)
<http://niwaplibrary.wcl.american.edu/pubs/legal-options-recent-imm-women-and-girls>
- State Proceedings in Which Courts Can Enter Findings and Orders Needed by Children Filing for Special Immigrant Juvenile Status Protections
<http://niwaplibrary.wcl.american.edu/pubs/state-proceedings-sijs>
- Immigration Relief for Abused Children (brochure)
http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure
- Special Immigrant Juvenile Status: Information for Juvenile Courts
<http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts>

- Special Immigrant Juvenile Status; Information for Child Welfare Workers
<http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-info-for-childwelfareworkers>
- Comparison Chart of VAWA, U, and SIJS
<http://niwaplibrary.wcl.american.edu/pubs/comparison-chart-vawa-u-sijs>
- Representing Undocumented Children Who Have Been Abused, Neglected, or Abandoned (Special Immigrant Juvenile Status)**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1270>

Language Access

- DOJ Letter to State Chief Justices and State Court Administrators on Access for Limited English Proficient Persons to State Court Proceedings
<http://niwaplibrary.wcl.american.edu/pubs/lang-gov-doj-courts-letter08-16-10>
- Judicial Bench Card for Court Interpretation
<http://niwaplibrary.wcl.american.edu/pubs/ncsc-bench-card-language-access>
- Serving Limited English Proficient Immigrant Victims**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1269>

Family Law Cases: Special Issues for Immigrant Crime Victims and Children

Custody

- Family Court Bench Card on Issues that Arise in Custody Cases Involving Immigrant Parents, Children, and Crime Victims <http://niwaplibrary.wcl.american.edu/pubs/common-imm-issues-custody-cases>
- Custody of Children in Mixed Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings
<http://niwaplibrary.wcl.american.edu/pubs/mixed-status-fams-child-custody>
- How to get a Detained Person to Court for Family Court Cases Involving Children and/ or Criminal Proceedings <http://niwaplibrary.wcl.american.edu/pubs/detained-parent-to-court>
- Obtaining Custody of Children for Battered Immigrants**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1270>
- Chapter 06.1: Countering Abuser's Attempts to Raise Victim's Immigration Status in Custody Cases <http://niwaplibrary.wcl.american.edu/pubs/ch6-1-counterabuserraisingimmstatus/>
- Chapter 06.3: The Implications of the Hague International Child Abduction Convention: Cases and Practice <http://niwaplibrary.wcl.american.edu/pubs/ch6-3-hagueintlchildabduction/>

Protection Orders

- Immigrants and Protection Orders Bench Card
<http://niwaplibrary.wcl.american.edu/pubs/bench-card-imm-protection-orders>
- Battering or Extreme Cruelty Drawing Examples from Civil Protection Orders and Family Law Cases <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order>
- Seeking Protection Orders for Immigrant Victims**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1269>
- Chapter 05.1: Battered Immigrants and Civil Protection Orders

<http://niwaplibrary.wcl.american.edu/pubs/ch5-1-imm-civil-protection-orders/>

- Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research

<http://niwaplibrary.wcl.american.edu/pubs/battered-women-protection-order-research/>

Economic Relief

- Bench card on Common Issues that Arise from Parties' Immigration Status; Economic Remedies <http://niwaplibrary.wcl.american.edu/pubs/guide-judges-economic-remedies>
- Immigration Status, Work Authorization, and Ability to Sponsor Children <http://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus>
- Providing Economic Relief for Immigrant Victims: Child Support and Spousal Support** <https://www.civresearchinstitute.com/online/article.php?pid=6&iid=1270>
- Immigration Concerns for Family Law Practitioners <http://niwaplibrary.wcl.american.edu/pubs/family-law-journal-immigration-concerns-for-family-law-practitioners/>

Child Abuse, Neglect and Termination of Parental Rights

- Protecting Parental Rights When the Immigrant Parent is Detained or Deported** <https://www.civresearchinstitute.com/online/article.php?pid=6&iid=1270>
- Case of Maria L.** <https://www.civresearchinstitute.com/online/article.php?pid=6&iid=1269>

Public Benefits Access of Immigrant Victims

- Public Benefits Bench Card <http://niwaplibrary.wcl.american.edu/pubs/pb-bchcrd-pubbenefits>
- VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation <http://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>
- U Visa Victims Benefits Eligibility Process (Bench Card) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>
- Trafficking Victims Benefits Eligibility Process (Bench Card) <http://niwaplibrary.wcl.american.edu/pubs/bchcrd-trafficking-victim-benefits-eligibility-process>
- Joint Agency Letter on Shelters and Transitional Housing <http://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing/>
- Access to Publicly Funded Legal Services for Battered Immigrants <http://niwaplibrary.wcl.american.edu/pubs/lsc-tool-accesspubliclyfundedls>
- Access to Public and Assisted Housing VAWA Self-Petitioners –Webpage (January 26, 2017) <http://niwaplibrary.wcl.american.edu/access-public-assisted-housing-vawa-self-petitioners/>
- Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status <http://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants>

- Anti-Discrimination Provisions that Apply to Programs Receiving Federal Funding Serving Victims of Violence against Women Crimes <http://niwaplibrary.wcl.american.edu/pubs/pb-tool-antidiscrimilaws/>

VAWA Confidentiality

- Family Court Bench Card on VAWA Confidentiality
<http://library.niwap.org/wp-content/uploads/2015/pdf/CONF-VAWA-BchCrd-FamCtConfidentiality-10.11.2013.pdf>
- VAWA Confidentiality Protections for Immigrant Crime Victims (Webpage) (February 23, 2017)
<http://niwaplibrary.wcl.american.edu/vawa-confidentiality-materials-tools/>
- VAWA Confidentiality Webinar (February 9, 2015)
<http://niwaplibrary.wcl.american.edu/vawa-confidentiality-webinar/>
- Enhanced Safety Planning for Immigrant Survivors of Domestic and Sexual Violence Webinar: Early Identification of Victims and VAWA Confidentiality (February 24, 2017)
<http://niwaplibrary.wcl.american.edu/early-identification-victims-vawa-confidentiality/>
- Interlineated statute:
<http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-interliniated/>
- VAWA Confidentiality Statutes, Legislative History and Implementing Policy (2.23.17)
<http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>
- All DHS Directive on VAWA Confidentiality Implementation which included and explains the annual requirement for training taking the FLTEC and DHS developed on line course ‘VAWA Confidentiality and Immigration Relief:
<http://niwaplibrary.wcl.american.edu/pubs/implementation-section-1367/>
- All DHS VAWA confidentiality instruction:
<http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>
- DHS Broadcast Code of Admission for VAWA confidentiality protected cases the DHS computerized red flag system for cases that have already been filed:
<http://niwaplibrary.wcl.american.edu/pubs/dhs-broadcast-class-admission-code/>
- ICE and OPLA VAWA confidentiality operations memos:
<http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia/>
- DHS Civil Rights Civil Liberties Complaint instructions for violation investigations:
<http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-dhscomplaintinstrts-2008/>
- CRCL Complaint form (general use)
<http://niwaplibrary.wcl.american.edu/pubs/dhs-crclcomplaintform/>
- Memorandum: Non-disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA §384
<http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-insconfvawamemo-05-05-1997/>
- Executive Office of Immigration Review EOIR: VAWA Confidentiality Procedures for Immigration Court
<http://niwaplibrary.wcl.american.edu/pubs/operating-policies-procedures-memorandum-no-97-7-procedures-identifying-potential-battered-spouse-battered-child-cases/>
- Three Prongs of VAWA Confidentiality
<http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-bro-3prongsofconfidentiality/>
- Chapter 3.2: VAWA Confidentiality and Breaches of Confidentiality

- <http://niwaplibrary.wcl.american.edu/pubs/ch3-2-vawa-confidentiality/>
- Service Provider Confidentiality Safeguards: Best Practices
<http://niwaplibrary.wcl.american.edu/pubs/service-provider-confidentiality-safeguards/>
- Advocate's Guide to Immigrant Survivors' Rights and Protections (2013)
<http://niwaplibrary.wcl.american.edu/pubs/advocates-guide-rights-protections/>
- Chapter 3 of Empowering Survivors: VAWA Confidentiality, History, Purpose, DHS Implementation, and Violations of VAWA Confidentiality Protections
<http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/>
- Newsletter on VAWA Confidentiality
<http://niwaplibrary.wcl.american.edu/niwap-newsletter-january-2015-vawa-confidentiality/>
- Family Court Bench Card on VAWA Confidentiality
<http://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-vawa-confidentiality/>
- Preparing Victims for Encounters with DHS**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1269>
- Utilizing VAWA Confidentiality Protections in Family Court Proceedings**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1270>

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Beyond the Bench 24 - Pre-Conference

**Expert Guidance on
Responding to
U-Visa and T-Visa
Certification Requests**

December 18, 2017
San Diego, CA

Faculty

Hon. Susan Breall
Judge, Superior Court of California, San Francisco County

Hon. Lora Livingston
Judge, 261st Judicial District Court, Travis County, Texas

Leslye E. Orloff
Director, National Immigrant Women's Advocacy Project,
American University, Washington College of Law

Sally Kinoshita
Deputy Director, Immigrant Legal Resource Center

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Learning Objectives

- Recognize the purpose of the U and T visa programs and the judicial role in U and T visa certification.
- Understand how to access legally correct information from the U.S. Department of Homeland Security on U and T visa certifications.

3

Learning Objectives

- Discuss how courts can implement procedures for signing U or T visa certifications in civil and criminal cases that are consistent with federal and state law.
- Issue rulings on discovery motions that are consistent with VAWA confidentiality laws
- Identify persons who may be eligible for and should receive information about immigration relief for immigrant crime victims.

4

Large Group Discussion

What questions do you have about U and T Visa certifications that you would like answered by the end of this workshop?

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WHY IS IMMIGRATION STATUS IMPORTANT?

6

**Immigration Status May Impact
One's Ability To:**

Work legally Travel freely Vote Apply for certain jobs
Have non-citizen family members live with you
Live in the U.S. – temporarily or indefinitely Obtain housing
Obtain a Social Security Number Receive Social Security Benefits
Access or Receive Public Benefits Obtain a Driver's License
Access certain legal services Get Financial Aid
Open a bank account Remain in the U.S.

7

**May Also Impact One's
Perception of Ability To:**

Access the State Courts

8

What are some challenges,
barriers or concerns of
immigrant victims to
accessing the courts?

9

Statement by Victim arrested in El Paso Courthouse

"This is something he always threatened me with," she said. "He would tell me that, if I reported him to the police, they would only believe him, because he is a U.S. citizen and not me."

10

"Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic, and immigration barriers to their safety. Abusers of immigrants - spouses or children are liable to use threats of deportation to trap them in endless years of violence. Many of us have heard horrific stories of violence in cases where the threat of deportation is used against spouses and children - if you leave me, I'll report you to immigration authorities, and you will never see your children again."

**Senator Ted Kennedy,
VAWA 2005 Congressional Testimony**

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Washington College of Law

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Violence Against Women Act – Purpose

- Federal role in stopping DV, Sexual Assault, and Trafficking in Persons
- Increasing justice system's role in offender accountability
- Victim assistance, protection and services
- Designed to help ALL victims – immigration relief as key component of legislation

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Washington College of Law

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California Law Now Mandates:

(Penal Code §§ 679.10 & 679.11)

- Judges to respond to requests for U or T visa certifications within a set amount of time (14 or 90 days)
- Courts to provide annual reports to the Legislature on the number of U and T visa certifications signed and denied

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Large Group Discussion

What is your court doing in response to U and T Visa certification requests in criminal and civil cases?

12/12/2017 ... 14

**Immigrant Crime
Victim Protections**

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DHS Victim Protection Role

- Statutory immigration protections for victims
 - Domestic violence, child abuse, sexual assault, stalking, human trafficking & other crimes
- VAWA Confidentiality (8 U.S.C. § 1367)
 - 384 DHS computer system (VAWA, T visas, U visas)
- Explicit role for state court judges in immigrant crime victim cases
 - U and T Visa Certifications: SIJS Findings

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Immigrant Protections for Victims

See Web library www.niwap.org/go/sji:

- Bench Card: Immigration Rights of Battered Immigrant Spouses, Children and other Immigrant Crime Victims
- DHS Victim Protection Resources
 - VAWA, T and U Visa, SIJS Programs

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Protections for Immigrant Victims

For trafficking victims

T VISA

For victims of domestic violence who are married to, or are the child or parent of an abusive U.S. Citizen or Permanent Resident

VAWA

For victims of persecution in home country (including domestic violence grounds)

ASYLUM

For victims of domestic violence, sexual assault, stalking, trafficking and other serious crimes

U VISA

For child victims of abuse, neglect or abandonment by one or both parents

SIJS

For victims of trafficking

CONTINUED PRESENCE

18

Legal Immigration Status Options for Non-citizen Crime Victims and Children

VAWA Self-Petition	Abused spouses/children of US citizens and lawful permanent residents; Abused parents of U.S. citizens over 21 years of age	U Visa	Victims of certain criminal activity who have been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing, and suffered substantial harm as result of being victim of criminal activity
VAWA Cancellation of Removal	Abused spouses/children of US citizen and lawful permanent residents' protection from deportation	T Visa & Continued Presence	Victims of a severe form of human trafficking
Battered Spouse Waiver	Abused spouses of US citizens or LPR with two-year conditional permanent residency	Asylum	Well founded fear of persecution on account of race, religion, nationality, political opinion, social group; Domestic violence as gender-based asylum
Special Immigrant Juvenile Status (SIJS)	Children abused, neglected or abandoned by one or both parents		

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Access to Legal Immigration Status:

Provides a path to economic security	<ul style="list-style-type: none"> • Work authorization • Drivers licenses • Financial aid for college • Access public benefits safety net in CA
Promotes safety and stability	<ul style="list-style-type: none"> • Removes fear of deportation • Stable living situation, school environment • Focus on healing and recovery
Facilitates and increases access to services/ resources	<ul style="list-style-type: none"> • Access to health care, mental health/ counseling services • Mentors, role models and community support

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Some Ways Immigration Affects State Courts

- Judicial role in U and T Visa certification, and SIJS findings, created by federal/ state laws
- Federal VAWA confidentiality laws affect rulings on civil/ criminal discovery motions
- Legally correct or incorrect information can influence family court rulings (e.g. custody, protection orders, support etc.)

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Some Ways Immigration Affects State Courts, cont.

- Criminal court orders where defendant's immigration consequences are addressed related to:
 - Bail
 - Protection order enforcement
 - Pleas
 - Sentencing

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Immigrant Children

- May have options for legal immigration status (own application or parent's application)
- Immigrant children's best interests are promoted when state courts:
 - Sign U or T visa certifications
 - Award custody to non-abusive parents, family members, guardians
 - Issue detailed findings for purposes of SIJS application
 - Distribute U.S. DHS legal rights for victims/children brochures
- Update: unaccompanied minors HHS/ ORR placements

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Deference to DHS Regulations and Publications Required Under *Chevron* --

- Legislative history
- U visa regulations and regulatory history (Preamble)
- DHS policies and training materials
- Supreme Court Cases on Chevron Deference Apply
- Many published decisions do not reflect *Chevron* deference to legislative history and DHS Regulations/Publications

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VAWA, T and U Visa Legislative History:

House Congressional Record 10/6/2000

- VAWA and the TVPA are “important bipartisan pieces of legislation that together advance the cause of justice for crime victims and truly offer the prospect of improving public safety.” (Rep. Henry Hyde)
- “[G]rant nonimmigrant visas to victims who would face a significant possibility of retribution or other harm if they were forced to leave.” (Rep. Chris Smith)
- “Allow immigrants to safely escape the violence and bring their abusers to justice.” (Rep. Shella Jackson Lee)

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U Visa Legislative History:

Senator Joe Biden, Senate Congressional Record 10/11/2000

- “The single most important provision we add to the Violence Against Women Act is the battered immigrant women provision”
- Abusers “are brought to justice and the battered immigrants also escape abuse without being subject to other penalties.”

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Excerpt of Speech by Rep. John Conyers, Jr.

“Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims to avoid criminal prosecution.”

Re: VAWA 2005 (12/18/2005)

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U Visa Bi-Partisan Legislative History:

VAWA 2000 Section 1513(a)

- "Immigrant women and children are often targeted to be victims of crimes committed against them in the United States."
- Victims of criminal activities "committed against them in the United States must be able to report ... to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes."
- "Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States."

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Tools on the Web for Judges on U and T Visa Certification

- Legislative History of VAWA (94, 00, 05), T and U Visas, Battered Spouse Waiver, and VAWA Confidentiality
- Judges U Visa Certification Toolkit
- DHS Resource Guide on U and T Visa Certification

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New California Law on Certifications

PC 679.10
U Visa
Certifications

- Certifying "helpfulness" of victim of qualifying criminal activity
- Effective January 1, 2016

PC 679.11
T Visa
Certifications

- Certifying "cooperation" of victim of severe form of human trafficking
- Effective January 1, 2017

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PC 679.10 & 679.11

- Addresses inconsistencies in the state (access)
- Requires certifiers to respond to certification requests within set amount of time
- Creates rebuttable presumption of helpfulness or cooperation
- Prohibits disclosure of immigration status of victim or person requesting certification
- Mandates annual reporting to the state

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Certifying Entities

- State or local law enforcement agencies
- Prosecutors
- **Judges**
- Any other authority (civil, criminal or administrative) with responsibility for detection, investigation, prosecution, conviction or sentencing of --
 - Criminal activities OR civil/administrative violations
- Including, but not limited to, CPS, DFEH, and Department of Industrial Relations

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PC 679.10(a), 679.11(a)

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Who Can Sign a Certification Form?

- Head of the certifying entity
- Person in a supervisory role who has been specifically designated
- **A judge**
- Any other certifying official defined under 8 CFR 214.14(a)(2)

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PC 679.10(b), 679.11(b)

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“Judge” includes “any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases” (DHS)

- Judges
- Magistrates
- Commissioners
- Judicial Referees
- Masters
- Alderman
- Administrative Law Judges
- Surrogates
- Chancellors
- Assigned Judges

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Why might a victim come to a judge for certification?

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Why victims seek certification from courts

- Only justice system contact was a protection order, custody, or civil case
- No language access when called police for help
- Police did not investigate and case never sent to the prosecutor

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**Role Language Access Plays in Requests for Judicial Certification –
In some cases courts will be the only option**

- When police at crime scenes do not use qualified interpreters to provide language access when responding to calls from LEP victims
 - Police used qualified interpreters = 29.4%
 - Police identified language spoken = 42.6%
 - Prosecutors use unqualified interpreters = 25.1%
- Police spoke only to perpetrator
 - 10.7% of sexual assault cases
 - 8.1% of domestic violence cases
 - 4.8% of human trafficking cases

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Certification that victim has been, is being, or is likely to be helpful with criminal activity:

- Detection, OR
- Investigation, OR
- Prosecution, OR?
- Conviction, OR
- Sentencing

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Certification By Judges Based On

- **Detecting** criminal activity or human trafficking based on e.g.
 - Probable cause – criminal/civil case
 - Issuance of a protection order
 - Findings in a custody or divorce case
 - Evidence of helpfulness that is part of a court record (e.g. calling 911, testifying, appearances)
- **Conviction or sentencing** of criminal activity or human trafficking
- Can certify old, closed or pending cases

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When Does the Clock Start Ticking?

- Upon the request of the victim or victim's family member
- A certifying entity shall process a certification request
 - within 90 days of request
 - unless requestor is in removal proceedings, in which case the certification shall be processed within 14 days of request

PC 679.10(h), 679.11(h)

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Rebuttable Presumption of Helpfulness or Cooperation

- Rebuttable presumption that victim:
 - Is, has been, or is likely to be helpful to the detection, investigation or prosecution of criminal activity
 - Is, has been, or is likely to be cooperative to the detection, investigation or prosecution of human trafficking
- If victim has not refused or failed to provide information and assistance reasonably requested by law enforcement

PC 679.10(f), 679.11(f)

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What is Required of the Certifying Official?

- Shall fully complete and sign the certification
- Shall include specific details regarding victim helpfulness/ cooperation, including
 - ✓ details about nature of the crime detected, investigated or prosecuted
 - ✓ detailed description of the victim's helpfulness/ cooperation or likely helpfulness/ cooperation to the detection or investigation or prosecution or conviction or sentencing of the criminal activity

PC 679.10(g), 679.11(g)

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What is Not Required?

Victim may request & receive certification despite lack of:

- ❖ A current investigation
- ❖ The filing of charges
- ❖ A prosecution
- ❖ A conviction

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Confidentiality

- A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the certification
 - except to comply with federal law or legal process, or
 - if authorized by the victim or person requesting the certification

PC 679.10(k), 679.11(k) 44

Reporting

- A certifying entity that receives a request for certification shall report to the Legislature,
 - on or before January 1, 2017, and
 - annually thereafter
 - the number of victims that request certifications from the entity
 - the number of those certification forms that were signed, and
 - the number that were denied

PC 679.10(j), 679.11(j) 45

U Visa and T Visa Application Process

U Visa: Nuts and Bolts

U Visa Eligibility

- A victim of qualifying criminal activity is eligible for a U Visa when:
 - The criminal activity occurred in the U.S. **or** violated U.S. law;
 - The victim possesses information about the crime;
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense; and
 - The victim has suffered substantial physical or mental abuse as a result of the victimization

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U Visa Regulations Definitions

(Terms are often used interchangeably)

- “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
- “crime” always means
 - “criminal activity”
- “criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

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U Visa Certification Mandatory

- Department of Homeland Security U visa regulations require a certification
- Eligible immigrant victim cannot file a U visa case without a certification
- Certification provides required evidence
 - Is not dispositive
 - Certification does not contain all the evidence a victim must present to win approval from DHS of a U visa

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“Helpfulness” in the Regulations

- DHS determines whether a victim:
 - has been helpful,
 - is being helpful or
 - is likely to be helpful
 - In the Detection, or Investigation, or Prosecution, or Conviction, or Sentencing
- Certification provides required evidence

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“Qualifying Criminal Activity”

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- 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

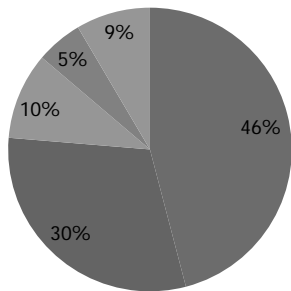
➤ Includes attempt, conspiracy, or solicitation to commit any of the above/ related crimes

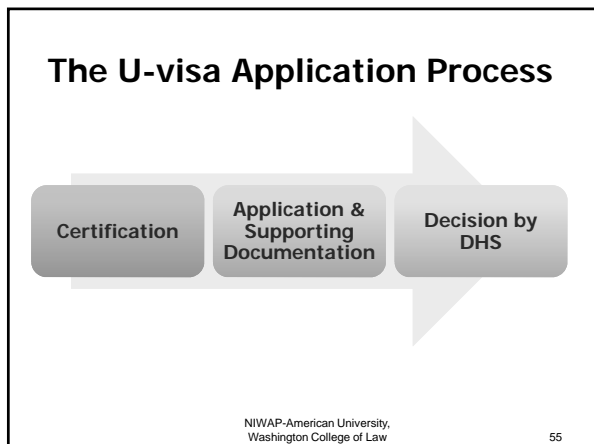
What are the CA Crimes and Qualifying Criminal Activity?

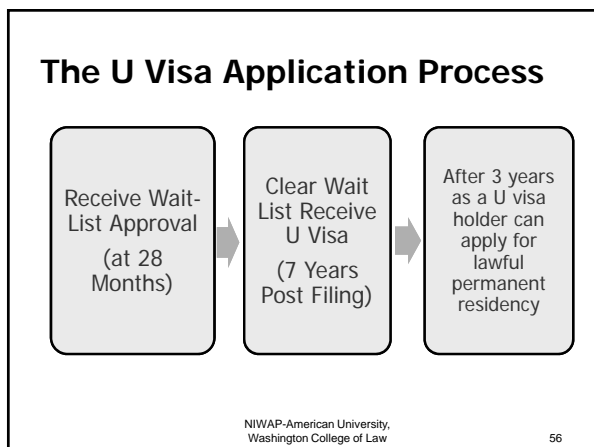
John and Jane have been separated for 2 years. During a custody exchange, John threatens Jane that he will call ICE on her if she doesn't give him full custody of the children. When she tries to leave with their child, he blocks the door and pushes her to the ground. She fell into their 5 year-old child who also got knocked to the ground. Jane tries to call 9-11 with her phone, but John grabs her neck and tries to strangle her, while taking her phone and smashing it.

U-Visa Criminal Activities (11/2011 data)

- Domestic violence- 45.9%
- Rape, Sexual Assault, Incest, Trafficking- 30.4%
- Felonious Assault, Murder, Manslaughter- 9.9%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation- 8.47%
- Kidnapping, being held hostage, unlawful criminal restraint, torture- 5.3%







According to DHS, a U Visa Certification Tells DHS 3 Things:

- Certifier has seen evidence of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, **or** is likely to be helpful
- Can also provide evidence of harm

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How Long is a Signed Certification Valid?

- 6 months from date of signature
- May be asked to certify in same case more than once
 - Expired certification
 - At U Visa application phase
 - At Adjustment of Status (green card) application phase

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Large Group Discussion

In what types of cases or contexts might a judge detect criminal activity?

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Cases in Which A Judge Could Certify

- Family
 - ✓ Civil Protection Order
 - ✓ Custody Case
 - ✓ Child Abuse, Neglect, or Termination of Parental Rights
 - ✓ Divorce Case
 - ✓ Paternity Case
- Juvenile
- Criminal
 - ✓ Elder / Dependent Adult Abuse
 - ✓ Guardianship
 - ✓ Conservatorship
- Probate
 - ✓ Employment
 - ✓ Tort damages against a perpetrator
- Civil

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U Visa Certification in Proceedings Involving Children in Immigrant Families

- Child or non-abusive parent seeking U visa
- Proceedings
 - Protection order
 - Custody
 - Criminal case
 - Child abuse case
 - Other civil case where the court is provided evidence and making findings of abuse

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Small Group Exercise

Provide examples of helpfulness that court could detect in a

- Civil or Family court case
- Criminal case

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Evidence of Helpfulness: Some Examples in Criminal Case

- Evidence in case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grant jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim witness statement
 - Testimony at sentencing

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**Evidence of Helpfulness:
Some Examples in Family/ Civil Case**

- Filed and/ or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal investigation
- Serving the perpetrator with notice of case with underlying abuse facts

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**T Visa:
Nuts and Bolts**

Human Trafficking

- Use of force, fraud, or coercion to obtain a person's labor or services, including sex.
- Federal statute: TVPA 2000
- California law: Penal Code § 236.1

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T Visa Eligibility

1. Victim of a severe form of trafficking in persons
2. Present in U.S. on account of trafficking
3. Complied with reasonable requests for assistance in investigation or prosecution of acts of trafficking (if over 18 - adult)**
4. Would suffer extreme hardship involving unusual and severe harm if removed from U.S.

** Exception under VAWA 2005 for physical or psychological trauma impeding ability to cooperate

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Federal Definition

22 U.S.C. 7102

Defines "severe form of trafficking" as:

- **Labor trafficking** 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 or debt bondage.
- **Sex trafficking** is a commercial sex act induced by force, fraud or coercion or in which the person has not yet obtained 18 years of age.

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PC 236.1(g)

The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(8) of Title 22 of the United States Code.

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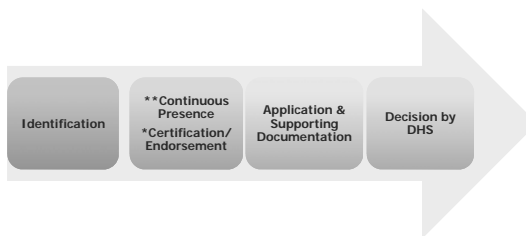
T Visa Certification Not Required for T Visa Application

- Certification provides helpful evidence
- Victim can file for a T visa without a certification

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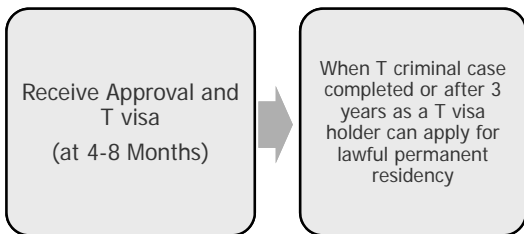
The T Visa Application Process



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The T Visa Application Process



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“Modern Day Slavery”



- Physical force not required.
- Psychological coercion is sufficient
- Includes threats of harm or deportation; destroy or control of visa/ passport
- Fraud includes false offers of employment, marriage, or a better life

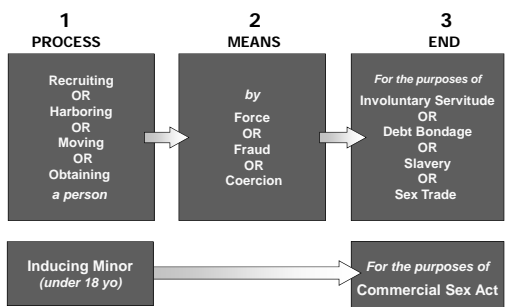
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Common Misconceptions

- Does not require movement of any kind
- Victims can be of any immigration status
- Smuggling ≠ Trafficking
- Prostitution ≠ Trafficking
- Perpetrators can be family members (not just organized crime)
- Victims may be coerced into illegal activity
- Victims can be paid for work

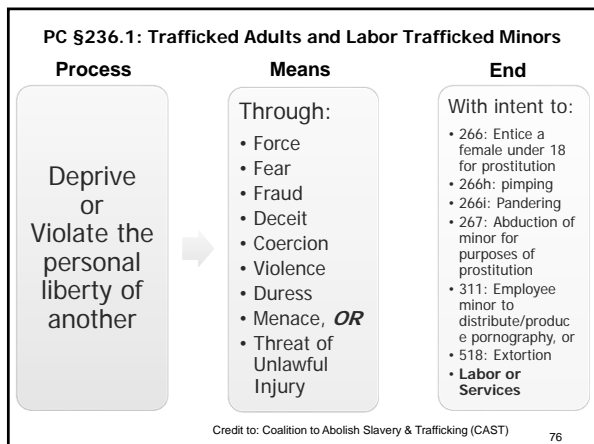
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Elements of Trafficking

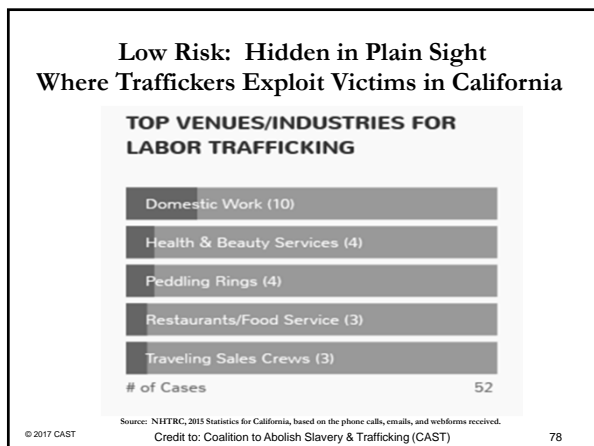


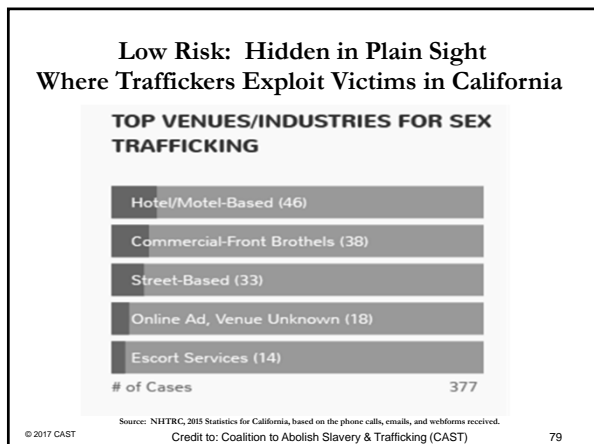
Credit to: Coalition to Abolish Slavery & Trafficking (CAST)

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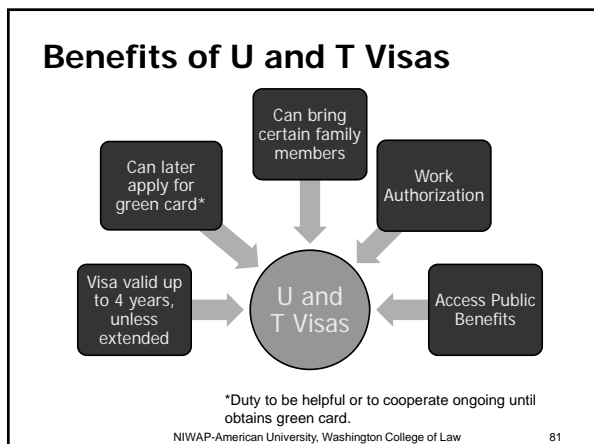




What forms of immigration relief might Zara qualify for?

Zara (28 yo), a successful business woman from Dubai, met and married Akbar, a U.S. Citizen. Zara lived with Akbar and his 66 yo mother Lori. Akbar took Zara's gold, money, and passport. Lori had her do all the housework and wash their cars daily. Zara was allowed 1 meal a day, and no breaks. Zara was 3 months pregnant, denied prenatal care and slept in the basement. Akbar raped her and took away her Quran. Akbar and Lori also beat and threatened Zara. When Zara said she would call the police, Akbar laughed, "We are U.S. Citizens! You have no documents! They will put you in jail. We'll say you abused Lori and stole money and jewelry from her."

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New PC 236.23 Affirmative Defense for Human Trafficking Victims

- A signed U or T Visa Certification document may be a "certified record" for purpose of establishing an affirmative defense under PC 236.23(c):

"Certified records of a federal, state, tribal or local court or governmental agency documenting a person's status as a victim of human trafficking at time of the offense, including identification of a victim of human trafficking by a peace officer pursuant to PC 236.2 and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, may be presented to establish an affirmative defense pursuant to this section."

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U Visa Certification Form Overview



Supplement B, U Nonimmigrant Status Certification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

With Comparison to T Visa Certification Form



Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-914
OMB No. 1615-0099
Expires 01/31/2019

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Part I. Victim Information

- Alien Registration Number (A-Number) (if any)
▶ A-
- Family Name (Last Name)
- Given Name (First Name)
- Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in Part 7. Additional Information.

- Family Name (Last Name)
- Given Name (First Name)
- Middle Name
- Date of Birth (mm/dd/yyyy)
- Gender Male Female

This is sometimes filled out by the victim's immigration attorney or advocate. (Certifier Preference)



T Visa Form similar

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Examples →

1. Commissioner/
Judge Sue Smith

3. Judge, Family
Division

Part 2. Agency Information

1. Name of Certifying Agency
Commissioner/ Judge

Name of Certifying Official

2.a. Family Name (Last Name) Smith

2.b. Given Name (First Name) Sue

2.c. Middle Name

3. Title and Division/Office of Certifying Official
Commissioner, Family Division

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Judges will always fill this out with the contact information of the judge signing the certification.

Head of certifying agency not applicable to judicial certifications

Name of Head of Certifying Agency

4.a. Family Name (Last Name) N/A

4.b. Given Name (First Name)

4.c. Middle Name

Agency Address Judge's contact information here:

5.a. Street Number and Name

5.b. Apt. Ste. Fir.

5.c. City or Town

5.d. State 5.f. ZIP Code

5.g. Province

5.h. Postal Code

5.i. Country

T Visa Form similar

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Other Agency Information

6. Agency Type
 Federal State Local

7. Case Status
 On-going Completed
 Other

8. Certifying Agency Category
 Judge Law Enforcement Prosecutor
 Other

9. Case Number

10. FBI Number or SID Number (if applicable)

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Part D. Cooperation of Victim (Attach additional sheets, if necessary)

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. (Explain below.)
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. (Explain below.)
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

T Visa Form

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Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in Part 7. Additional Information.)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement

T Visa Form Similar

The form asks about family member because DHS wants assistance identifying perpetrator family members

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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 was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of facts, I certify, under penalty of perjury, that the individual identified in Part 1, is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, 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 U.S. Citizenship and Immigration Services (USCIS), 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 or she is a victim, I will notify USCIS.

Judges can amend the form
Examples: Based upon ...

- My findings of fact
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime. Certification provides evidence to DHS.
DHS adjudicates and decides whether to grant the victim immigration relief.

1. Signature of Certifying Official (sign in ink)

2. Date of Signature (mm-dd-yyyy)

3. Daytime Telephone Number

4. Fax Number

T Visa Form Similar

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Criminal Activity and Helpfulness

Evidence Standard Sufficient for Certification

- After ruling or entering a finding based on:
 - Preponderance of the evidence; or
 - Clear and convincing evidence; or
 - Beyond a reasonable doubt
- Evidence in the case that the court finds credible:
 - That the court observed or is in the case file
 - Cases that ended before reaching full adjudication (e.g. settlement, pleas)

Criminal Activity and Helpfulness

Evidence Standard Sufficient for Certification

- Before ruling
 - Some credible evidence: trustworthy, believable although not fully fleshed out
 - Not conjecture
 - Probable cause: to believe the criminal activity occurred and victim was helpful, more than bare suspicion
 - Preliminary finding like TRO

Part 7. Additional Information

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the Page Number, Part Number, and Item Number to which your answer refers, and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name

Petitioner's Name

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name (if any)

3. A-Number (if any)

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d.

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d.

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d.

Hypotheticals Small Group Activity

- Is this person eligible for a U Visa certification?
- Stories handout



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Aditi

The evidence in the case before you includes the following:

One night Aditi who has a student visa was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the "filthy things" she has done if she told anyone. This fear kept Aditi from reporting the rape to the police. Four months later, Aditi realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss called the police. Aditi told the police everything she knew, but she was unable to assist police in making a composite. Two years later, police were able to identify the perpetrator and are building a case against him based on evidence from Aditi and several other victims. He is a wealthy business man living in Aditi's community. Aditi is before the court in a paternity case seeking child support for her son born of the rape. Defendant is denying that the child is his.

Would you sign a U visa certification for Aditi?

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Maura

The evidence in the case before you includes the following:

Maura is 17 years old and from Mexico. When Maura was 12 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 4 years in the abusive household and sexual advances from her step-father, Maura left home and moved in with her boyfriend Juan who is an MS -13 gang leader. Juan started battering Maura when she became pregnant with their child. During an incident of abuse after their child was born, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the domestic violence incidents to the police officer. She did this to protect her daughter, despite fears of gang retaliation and deportation. The police refused to charge Juan with domestic violence and instead want to prosecute Juan's gang violence with Maura as a key witness. Maura and her daughter fled to a shelter at an undisclosed location and Maura has filed for a DV restraining order against Juan.

- What forms of immigration relief might Maura qualify for?
- Is Maura eligible for U visa certification?

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Alex

The evidence in the case before you includes the following:

Alex had been dating Sam for about 1 month, when Alex decided to end the relationship by texting Sam, "I enjoyed the time we spent together, but I don't think this relationship can last. We should just be friends." Sam responds, "But, I am in love with you, and you told me you loved me too. Please don't do this." Sam continued to repeatedly send texts like: "are you sleeping with someone else?" "You are a liar, you just used me." "Slut, whore. You should be castrated." "I'm going to tell everyone that you're illegal, maybe ICE will come for you." Alex asked Sam to stop the texts, but Sam continued. Two weeks later, Sam went on Facebook to rant and posted nude photos of Alex with captions like "Open for business 24/7" and "liars should die." Sam then posted a drawing of a dead person hanged by a noose and the word "liar" on the person's shirt. Alex filed a TRO against Sam, which was granted, as was the DVRO.

- Would you sign a U visa certification for Alex after the DVRO? TRO?
- What if Alex was able to serve Sam, but does not appear at the hearing?

Helpfulness in the Regulations

- Judges, law enforcement and other certifiers
 - May complete U visa certification if they observe or detect a victim's helpfulness
 - Can be a civil, family, criminal or administrative case
- The investigation, prosecution of case
 - Can still be ongoing
 - Can be closed
 - May have settled
 - Occurred a long time ago
 - May never have been criminally charged or prosecuted
 - May be a government agency investigation (e.g. EEOC, fair housing, labor, CPS, APS)

Helpfulness in the Regulations

- Victim has been OR is being OR is likely to be helpful
- In the detection OR investigation OR prosecution OR conviction OR sentencing
- There is no degree of helpfulness required
- The certification may be completed once the certifier can access or has evidence of the victim's helpfulness
- The investigation or prosecution can still be ongoing
- Criminal activity detected or investigated may be different from the crime prosecuted

**Helpfulness Requirement Met
*Even When:***

- Victim reports a crime and there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator cannot be identified
- Perpetrator absconds or is deported
- Victim is not needed as a witness
- Victims seeks certification for a case that occurred a long time ago

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**Helpfulness Requirement Met
*Even When:***

- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order, but domestic violence has not been criminally reported or is not being criminally prosecuted

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**Evidence of helpfulness when
no criminal case**

- Pleadings with criminal activity facts
- Appearances in court
- Service of perpetrator
- Provided sufficient evidence for court order based on or citing abuse (DVRO, Custody, Divorce, Employment, Tort)

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Discussion

- What evidence, records or documents can a judge rely on to complete the certification form?
- Could you sign a certification if all records have been destroyed and all you have is a record relating to the conviction in a case?
- What role might a victim's declaration play?

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Detecting Helpfulness Older and Closed Cases

- Record of conviction
- DVRO/Custody/Divorce order
- Conversation with or any notes presiding judge may have
- Victim's testimony

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Discussion

The DA and police have denied certification to a victim in a case before you. You presided over the criminal case involving the victim and a request for a U Visa Certification comes to you as the presiding criminal court judge.

How might you detect helpfulness?
What else might you consider?

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Level of Cooperation Required for Visa

U Visa

- Must demonstrate that they have been, are being or are likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- Cannot unreasonably refuse to comply with reasonable requests for assistance
- Exception: victims under 18 another person can provide helpfulness

T Visa

- Has complied with reasonable requests for assistance in the detection, investigation, prosecution, conviction or sentencing of severe forms of human trafficking
- Cannot unreasonably refuse to cooperate with reasonable requests for assistance
- Exception: victims under 18 no cooperation requirement; or for reasons of physical or psychological trauma

Level of Cooperation Required for Green Card

U Visa

- Cooperated with reasonable requests; or
- Did not unreasonably refuse to comply with reasonable requests for assistance with the investigation or prosecution

T Visa

- T visa holders must continue to cooperate with reasonable requests from law enforcement; or
- Demonstrate that they would suffer extreme hardship involving unusual and severe harm upon removal

Discussion

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

Some Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from family/ community
- Financial hardship
- Witness intimidation
- Further trauma

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Totality of Circumstances Must be Considered in Deciding if Victim "Unreasonably Refused" and if There Was a "Reasonable Request."

Defined in 8 C.F.R. 214.11 (T Visa) and 8 C.F.R. 214.14 & 245.24 (U Visa)

- General law enforcement and prosecutorial practices;
- Nature of victimization;
- Age and maturity of the victim
- Specific circumstances of victim including fear;
- Severe traumatization (both mental and physical);
- If victim unable to cooperate due to physical or psychological trauma (T visa only)

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California penal Code PC 679.11

- Provides for a rebuttable presumption of cooperation if victim has not refused or failed to provide information and assistance reasonably requested by law enforcement

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If after considering these factors you believe the victim is unreasonably refusing...

- Note this 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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Withdrawing Certification

- Certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested
 - PC 679.10(j), 679.11(j)
- Refusal must not be unreasonable
 - 8 C.F.R. 214.11(s)(iv) and DHS T and U Resource Guide p 7

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Addressing Common Myths and Misinformation About the U Visa

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True/False

- 1. DHS adjudicates U visas *de novo* after judicial certification
- 2. The certification provides initial evidence, DHS adjudicates and approves or denies the U visa
- 3. Certification attests to the immigrant's helpfulness -- a helpful immigrant may or may not have good moral character

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True/False

- 4. Judges can only certify within a specified time frame after the case before them has concluded
- 5. Judges can sign even when criminal case did not go forward
- 6. A U visa gives an undocumented immigrant "preferential immigration status"

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Best Practices for Signing U Visa Certifications, Consistent With Canons of Judicial Ethics



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Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
 - “adequate basis for the averments made in the certification”
- Certification after the criminal or civil case is completed does not raise impartiality issues
 - In open cases should disclose certification to the parties
- Certification describes immigrant victim's past/ present helpfulness -- Does not vouch for character
- In civil and criminal cases whether to sign a U visa certification is an issue of law that does not implicate judicial ethics codes

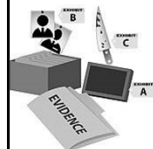
Full Opinion Available at: <http://www.bis.state.mn.us/file/advisory-opinions/opinion-2015-2-final.pdf>
Hon. Pendleton also published a training update based on the opinion at <http://pendletonupdates.com/>

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How Can Judges Remain Impartial and Avoid the Appearance of Impropriety When Certifying?

(Rule 2.2 and 1.2 ABA Model Code of Judicial Conduct)



- Completing the certification verifies facts and evidence
 - In findings, rulings, or that the court has probable cause to believe. These are:
 - Part of a judge's regular duties
 - Objective judicial determinations
- Similar to signing a search warrant or an arrest warrant
- Explicitly authorized by federal statute, no impropriety in certifying

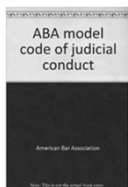
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Ex Parte Communications Bar

(Rule 2.9 ABA Model Code of Judicial Conduct)

- Applies to pending and impending matters only
- Bar does NOT apply to closed cases
 - Once the court has issued a ruling
 - If the case has been settled, a plea entered, or otherwise closed and not going forward



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Is Notice Required?

- When the case is concluded and there is no longer a possibility of appeal
 - Signing U visa certifications without notice to opposing party is consistent with federal VAWA confidentiality laws
- Open cases: ex-parte prohibitions require notice and opportunity to be heard

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Judicial Discretion to Certify in Open Cases

- Not a violation of ethical rules to certify
- Question of law and fact, if appropriate in the particular case before the court for the judge to certify
 - Decided on a case-by-case basis
- Judge may later have to decide on recusal

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Why might U visa certification be sought/granted in a pending case?

- The perpetrator is actively seeking to have the victim deported
- The victim has children who will age out of U visa protections
- Danger to the victim is severe
- Criminal case not able or likely to go forward without the U visa

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Similar to a TRO/ Preliminary Injunction

- U visa certification is analogous to a TRO or preliminary injunction
 - Prevents irreparable harm to the victim pending full adjudication of the case
 - Promotes victim's ability to fully participate in the court case
 - Reduces victim's vulnerability to witness tampering, coercion, retaliation, or manipulation by the perpetrator

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VAWA Confidentiality

- Enforcement locational prohibitions
- DHS cannot disclose information about an immigrant victim's case
- DHS barred from relying on information provided by perpetrators (or their family members) to initiate an enforcement action against or deny a victims case
- **Violation can result in dismissal of immigration case against victim**

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Enforcement Prohibited Locations

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



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Prohibition on Disclosure:

- Information about the existence of the case
- Any information contained in the case
- Action taken on the case by DHS



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Why is VAWA Confidentiality important for state courts?

- Prohibited enforcement locations include courthouses in connection with a case involving a crime victim
- Perpetrators are using state court discovery to obtain federal VAWA confidentiality protected information that
 - DHS will not release
 - Cannot be released under federal law

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VAWA Confidentiality Bars State Court Discovery

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Courts may be asked to rule on

- Motions *in limine*
- Protective orders
 - Objections to discovery
 - Regarding questioning victims about VAWA confidentiality protected case filings in court
- Rule 11 sanctions
- Case law supporting non-disclosure ...

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Hawke v. Dep't of Homeland Security

(N.D. CA, 2008) – VAWA Self-Petition Case

- VAWA Confidentiality Protects cases:
 - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
 - Does not apply to civil or criminal court proceedings
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- "primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer"

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Demaj v Sakaj (D. Conn, 2012) – U Visa Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
 - Prevent disclosure of documents & information in a protected case file to alleged criminals
 - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
 - the victim discloses in state court that DHS has approved her protected immigration case

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EEOC v Koch (5th Circuit)

- In civil discover court must consider
 - How discovery of U visas might intimidate victims outside of the case before the court
 - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
 - Koch: limited discovery crafted to maintain anonymity may be allowable
- Anonymity is not possible in a family or criminal court case

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Discovery in Criminal Case

- Is it in the prosecutor's control?
- Only in U visa cases would any discovery be permitted
 - U visa certification document only
 - Nothing else contained in or about the federal immigration case file is discoverable
- VAWA self-petition, T visa, Visa holder spouse work authorization not discoverable

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State v. Marroquin-Aldana

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- "insufficient justification" to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the "high level of protection" given to documents filed with immigration

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People v. AlvarezAlvarez

No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014), review denied (July 16, 2014)

- "The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status ... which was completely irrelevant to this case."
- The trial court was well within its discretion in excluding reference to the U visa

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Does PC 679.10, 679.11 Apply?

- Statutes require that the immigration status of the victim or requestor may not be disclosed
- Do not address discovery of U and T Visa materials

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Discussion

How can Courts/ Judges prevent prohibited disclosures regarding immigration status or immigration application materials that may be protected under California provisions PC 679.10 and 679.11, or federal VAWA confidentiality statutes?

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Resources for Courts

- Family Court Bench Card on Violence Against Women Act (VAWA) Confidentiality
 - <http://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-va-wa-confidentiality/>
- Court Rulings Confirm Federal VAWA Confidentiality Protections Bar Discovery of VAWA Confidentiality Protected Information in State Family Court Proceedings: Hawke and Demaj
 - <http://niwaplibrary.wcl.american.edu/pubs/conf-va-wa-tool-hawkedemajfactsheet/>
- Confidentiality under the Violence Against Women Act (VAWA) Brochure
 - <http://niwaplibrary.wcl.american.edu/pubs/conf-va-wa-bro-3prongsofconfidentiality/>
- VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy
 - <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>

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Court Procedures for Certification

- Best Practice:
 - Develop policy
 - Policy must be consistent with the statute and DHS regulations, policies, resources

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Legally Available options

- One judge assumes certification responsibilities for the court based on
 - Court records
 - Can include conversation with judge who heard the case
- Need approach for older cases where judge no longer available to certify
- Additionally, each judge can certify cases the judge heard or handled

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Court/judge cannot choose a court employee who is not a judicial officer to certify.

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DHS Contact Information

USCIS Vermont Service Center
802-527-4888 (hotline)
LawEnforcement_UTVAWA.vsc@uscis.dhs.gov

USCIS Policy
Jessica.M.Salsbury@uscis.dhs.gov
202-272-8981

USCIS—Vermont Service Center
ATTN: Crime Victims Unit
75 Lower Welden Street
St. Albans, VT 05479

DHS Blue Campaign
www.dhs.gov/bluecampaign
BlueCampaign@dhs.gov

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Technical Assistance & Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/sji
- **NIWAP Technical Assistance:**
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Questions



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Evaluations



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Thank you!
