

**NC Association of District Court Judges Fall Conference**  
*Strangers in a Strange Court*  
*How Immigrant status (or lack thereof) can affect District Court cases*  
Hans Christian Linnartz

**1. MOST OF WHAT YOU NEED TO KNOW ABOUT IMMIGRATION IN THREE MINUTES**

**It is illegal to exist in America without the permission of our government.**

This fundamental reality allows us to categorize people by the kind of permission they have – or don't have:

- Citizens by birth or naturalization. Can vote, run for office, serve on juries, do certain jobs, can't be deported.

**Everyone else is an alien:**

- LPRs (green card) – Allowed to live here, work here. Can be deported for crimes and adverse circumstances.
- Lawful non-immigrants (80 per cent of whom are “tourists”). Present lawfully, but only for a limited time and limited activities. Can be deported, if they overstay, violate the terms of their visa, work without authorization.
- Unauthorized aliens. Not permitted legally to work (except for DACA and a few other categories), nor get a driver license, and subject to deportation at any time.

**2. FAMILY MATTERS: HOW FAMILY DISRUPTION INTERACTS WITH IMMIGRATION**

- a. Trouble in the family: DVPOs
  - i. Effect for the defendant – None, if he (or she) behaves!
  - ii. Possible effect for an abused plaintiff – Potential beginning of a claim for status under the Violence Against Women Act (VAWA)
- b. Separation, Divorce and their possible immigration effects
  - i. Pending green card applications – separation could and divorce would doom the application.
  - ii. When “removing the condition.” (Two years after green card – spouses need to jointly file to make it permanent) – problem, but not insurmountable.
  - iii. The support requirement: You promised. Sponsoring spouse must support the sponsored alien at 125% of the poverty rate for a long time, regardless of separation, divorce, etc.
- c. Child custody determinations between parents: Does immigrant status matter?
- d. Child custody determinations for Special Immigrant Juvenile Status: What's going on?

\*\* [See USCIS “Information for Juvenile Courts” about SIJS.](#)

**3. CRIME MAY MEAN MORE THAN TIME.**

- a. DVPO violations and more – family problems that lead to deportation.
    - i. Crimes involving domestic violence, stalking, or violation of protection orders, crimes of child abuse, neglect, or abandonment – basis of deportation.
    - ii. Rape or sexual abuse of a minor or a violent crime punished by more than 1 year imprisonment – and other aggravated felonies.
    - iii. Crimes “involving moral turpitude.”
  
  - b. ICE detainers, bond, and forfeiture issues
    - i. Nature of a detainer – a *request*. Duration: 48 hours excluding holidays and weekends.
- \*\* See Detainer example.
- ii. Practicalities: Paying a bond when a detainer is active – swept away
  - iii. Forfeiture – State law issue
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- c. Knowing what immigration law calls a “conviction.”
  - i. Final, adult convictions
  - ii. When adjudication of guilt is reserved: (a) admission or finding of guilt; (b) “the judge has ordered” fine, penalty, punishment, restraint on liberty.
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- d. Motions for appropriate relief  
To be effective for immigration, must be based on “defect in the original proceeding”

**4. U VISA CERTIFICATIONS AND JUDICIAL STANDARDS**

\*\* See Judicial Standards Commission Opinion, DHS U Visa Certification Guide



# U.S. Citizenship and Immigration Services

## Special Immigrant Juvenile Status: Information for Juvenile Courts

### What is Special Immigrant Juvenile Status?

Some children present in the United States without legal immigration status may be in need of humanitarian protection because they have been abused, abandoned, or neglected by a parent. Special Immigrant Juvenile (SIJ) status is an immigration classification that may allow for these vulnerable children to immediately apply for lawful permanent resident status (“LPR” status or a “Green Card”).

### Who is Eligible?

A child must be unmarried, under 21 years of age at the time of filing with U.S. Citizenship and Immigration Services (USCIS), physically present in the United States, and have a qualifying juvenile court order. SIJ-eligible children may come from a variety of circumstances, including, but not limited to, children in federal custody in the U.S. without parents or legal guardians, children in a state’s child welfare system (for example, foster care), and children in the court-ordered custody of a state agency or individual. This can include adoption or guardianship.

### What is the Role of the Juvenile Court?

Juvenile courts issue orders that help determine a child’s eligibility for SIJ status. A child cannot apply to USCIS for SIJ status without an order from a juvenile court. However, juvenile judges should note that providing an order does not grant SIJ status or a “Green Card” - only USCIS can grant or deny these benefits. The role of the court is to make factual findings based on state law about the abuse, neglect, or abandonment; family reunification; and best interests of the child.



### Which Courts May Issue the Order?

A juvenile court is a court in the United States that has jurisdiction under state law to make judicial determinations about the custody and care of children. Examples include: juvenile, family, orphans, dependency, guardianship, probate and delinquency courts.

### What is the Role of USCIS?

USCIS determines eligibility for SIJ status by adjudicating the **Form I-360**, Petition for Amerasian, Widow(er), or Special Immigrant, which includes review of supporting documentation and the juvenile court order. USCIS may also determine a special immigrant juvenile’s eligibility for lawful permanent resident status by adjudicating **Form I-485**, Application to Register Permanent Residence or Adjust Status.

## Helpful Tips for Juvenile Courts

- **Be familiar with current immigration law.** The Immigration and Nationality Act (INA) section 101(a)(27)(f) establishes the definition of a Special Immigrant Juvenile. This definition can change by acts of Congress. For example, the Trafficking Victims Protection Reauthorization Act of 2008, **Pub. L. 110-457** amended the SIJ **definition**. These statutory changes supersede portions of the Code of Federal Regulations relating to SIJ status (**8 CFR 204.11**). Note: All findings must be based on state law.
- **Ensure HHS consent has been obtained if it is necessary.** If a child currently in the custody of the U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) seeks a juvenile court order that also alters his or her custody status or placement, HHS must specifically consent to the court's jurisdiction. If the order simply restates the child's current ORR placement, HHS consent is not required. See ORR's website at <http://www.acf.hhs.gov/programs/orr/programs/ucs>.
- **Be timely.** A child must obtain a juvenile court order and apply to USCIS for SIJ status before the child ages out of the juvenile court's jurisdiction (usually before 18 years of age), and before he or she turns 21 (even in states where juvenile court jurisdiction extends beyond age 21). In some cases, children may need to obtain SIJ status prior to turning 18 years of age to access certain benefits (such as federally-funded foster care).
- **Ensure the court order makes all required findings.** The order must make the following findings:
  - o Declares the child dependent on the court, or legally commits or places the child under the custody of either a state agency or department or an individual or entity appointed by a juvenile court.
  - o Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. Note: The abuse may have occurred in the United States or prior to the child's arrival in the United States.
  - o It would not be in the child's best interest to be returned to his or her country of origin.
- **Provide a detailed court order.** The Secretary of Homeland Security, through USCIS, must consent to the grant of SIJ status. This means that for a child to be eligible for SIJ status, USCIS must determine that the juvenile court order was sought primarily to obtain relief from abuse, neglect or abandonment, rather than primarily to obtain an immigration benefit. Template orders are usually not sufficient to establish this. The court order should include the factual basis for the findings on parental reunification, dependency or custody, and best interests. Alternatively, the child or the child's attorney may submit separate findings of fact, records from the judicial proceedings, or affidavits summarizing the evidence presented to the court. The court order need not be overly detailed, and need not recount all of the circumstances of the abuse, abandonment or neglect, but must show the factual basis for the court's findings.



DEPARTMENT OF HOMELAND SECURITY  
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: \_\_\_\_\_  
Event #: \_\_\_\_\_

File No: \_\_\_\_\_  
Date: \_\_\_\_\_

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

**MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS**

Name of Alien: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Sex: \_\_\_\_\_

**THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:**

Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):

- has a prior a felony conviction or has been charged with a felony offense;
- has three or more prior misdemeanor convictions;
- has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
- has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- has illegally re-entered the country after a previous removal or return;
- has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
- otherwise poses a significant risk to national security, border security, or public safety; and/or
- other (specify): \_\_\_\_\_.

Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on \_\_\_\_\_ (date).

Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on \_\_\_\_\_ (date).

Obtained an order of deportation or removal from the United States for this person.

***This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.***

**IT IS REQUESTED THAT YOU:**

Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling \_\_\_\_\_ during business hours or \_\_\_\_\_ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.

Provide a copy to the subject of this detainer.

Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.

Consider this request for a detainer operative only upon the subject's conviction.

Cancel the detainer previously placed by this Office on \_\_\_\_\_ (date).

\_\_\_\_\_  
(Name and title of Immigration Officer)

\_\_\_\_\_  
(Signature of Immigration Officer)

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to \_\_\_\_\_. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: \_\_\_\_\_ Latest criminal charge/conviction: \_\_\_\_\_ (date) Estimated release: \_\_\_\_\_ (date)

Last criminal charge/conviction: \_\_\_\_\_

**Notice:** Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

\_\_\_\_\_  
(Name and title of Officer)

\_\_\_\_\_  
(Signature of Officer)



## NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253).** If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

## NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253).** Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).

## Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253).** Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.

## AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253.** Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903

## THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

### 对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据对你的刑事起诉或判罪的基础, 在本当由州或地方执法当局释放你时, 继续拘留你, 为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留, 你应该联系你的监管单位 (现在拘留你的执法当局或其他单位), 询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉, 请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center), 电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人, 请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center), 告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。







JUDICIAL STANDARDS COMMISSION  
STATE OF NORTH CAROLINA

**FORMAL ADVISORY OPINION: 2014-03**

August 8, 2014

**BACKGROUND:**

Judges have recently been presented with requests to complete a Nonimmigrant Status Certification Form I-918 Supplement B (I-918B), a document from the federal office of the U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security. It appears that federal law provides temporary immigration benefits to aliens who are victims of certain qualifying criminal activity. This often allows these victims to remain available as witnesses for the prosecution of that activity, or potentially other related activity.

This federal document is used to certify that certain individuals who have submitted a Form I-918 Petition for Nonimmigrant Status are victims of qualifying criminal activity and are, have been, or are likely to be helpful in the investigation or prosecution of that qualifying activity. The instructions the I-918B define “helpful” as assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. USCIS has recently begun to contact judges to collect and maintain “Certifying Official” information; i.e. the names of individuals authorized to sign the I-918B on behalf of law enforcement agencies.

The instructions for the I-918B advise that a judge’s decision to provide certification is entirely discretionary and that the judge is under no legal obligation to complete a I-918B for any particular alien, but that without a completed I-918B the alien crime victim will be ineligible for “U Nonimmigrant Status”, a preferential status under the law. The I-918B may also be filled out by prosecutors, traditional law enforcement officers, and other agencies that have criminal investigative jurisdiction in their respective areas of practice, such as child protective services, the Equal Employment Opportunity Commission, the Department of Labor, and others.

## **QUESTION:**

- Should judges complete a document to certify that individuals submitting I-918B are victims of certain qualifying criminal activity and are, have been, or are likely to be helpful in the investigation or prosecution of that qualifying activity?
- Should judges register with the USIC office of the Department of Homeland Security that they are a “Certifying Official” authorized to sign a I-918B on behalf of law enforcement agencies?
- If a judge has already completed a I-918B, certifying his or her assessment of an individual as a victim of a qualifying criminal offense and the individual’s helpfulness in assisting in the investigation or prosecution of a criminal matter, what are the judge’s obligations in any future matter concerning adjudication of that individual?

## **COMMISSION CONCLUSION:**

The Judicial Standards Commission determined that judges should not execute I-918B forms, certifying the likelihood that an alien victim of criminal activity is, has been, or will be helpful in the investigation or prosecution of that activity. As a judge should not execute one of these forms, a judge should not provide information for a federal “Certifying Official” registry.

Where a judge has executed a I-918B certifying the helpfulness or potential helpfulness of an alien victim in the prosecution of a crime, that judge should disqualify himself or herself from any criminal matters involving that victim.

## **DISCUSSION:**

The Commission first reasoned that certification by a judge as to the potential "helpfulness" of a witness to the prosecution of a criminal matter would seem to violate the North Carolina Code of Judicial Conduct's prohibition on a judge providing voluntary character testimony, under Canon 2B. A judge should not make personal recommendations to a federal agency predicting how useful a victim or witness might or might not be to a future prosecution. Such assessments are, in essence, the endorsement of the victim’s honesty, reliability, potential for cooperation and other character traits.

Secondly, the Commission finds that, by the language used in the I-918B and its instructions, the form clearly solicits information more appropriately provided by law enforcement or prosecutors. A judge sits in the role of an impartial arbiter and is responsible for the adjudication, not the prosecution, of criminal matters. A judge is not a representative of the prosecutorial team and should not collude with law enforcement or prosecutors in evaluating the helpfulness of potential witnesses in a case. A judge’s determination as to the credibility of victims should be formed through the hearing and trial process, and not be determined prior to adjudication. Such active involvement in securing witnesses for the prosecution and predetermining their helpfulness puts the judge in an inappropriate role that could reasonably suggest bias, or the appearance of bias, on

the part of the judge in potential violation of Canon 2A and Canon 3 which require a judge to act to promote public confidence in the impartiality of his or her office.

Canon 3 also proscribes, under subsection 3A(6) that a judge should “abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law...” While Canon 3A(6) permits a judge to make public statements in the course of official duties, the I-918B essentially asks that a judge forecast the helpfulness of a potential witness. To do so would be improper.

In recognition of cases where a judge has already executed a I-918B, the judge is thereafter obligated to disclose that certification of the helpfulness of the victim and, upon motion of any party, disqualify himself or herself from any further involvement in that matter and any matter in which the judge’s certification as to the victim’s helpfulness would present a reasonable question as to the judge’s impartiality in the matter.

#### References:

North Carolina Code of Judicial Conduct

Canon 1

Canon 2A

Canon 2B

Canon 3A

Canon 3C

Instructions for Form I-918 Supplement B, “U Nonimmigrant Status” Certification (1/15/13)

Form I-918 Supplement B, “U Nonimmigrant Status” Certification (1/15/13)



# U Visa Law Enforcement Certification Resource Guide

for Federal, State, Local, Tribal and Territorial  
Law Enforcement





# U Visa Resource Guide

## Table of Contents

Introduction.....	1
U Visa Basics .....	1
U Visa Certification Form (Form I-918B).....	5
Frequently Asked Questions.....	8
Other Forms of Relief for Victims.....	15
DHS U Visa Contact Information .....	17

## Introduction

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The Department of Homeland Security (DHS) provides this guidance to federal, state, local, tribal and territorial law enforcement officers. This public guidance primarily concerns law enforcement certifications for U nonimmigrant status, also known as U visas. The U visa is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity. The law enforcement certification [USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification \(Form I-918B\)](#) is a required element for U visa eligibility. Included in this resource is information about U visa requirements, the certification process, best practices, frequently asked questions from law enforcement agencies, and contact information for DHS personnel on U visa issues.

## U Visa Basics

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The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000<sup>1</sup>, passed with bipartisan support in Congress, encourages victims to report crimes and contribute to investigations and prosecutions regardless of immigration status, and supports law enforcement efforts to investigate and prosecute crimes committed against immigrant victims.

The U visa is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or

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<sup>1</sup> (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

who are likely to be helpful in the investigation or prosecution of criminal activity. The U visa provides eligible victims with nonimmigrant status in order to temporarily remain in the United States (U.S.) while assisting law enforcement. If certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status. Congress capped the number of available U visas to 10,000 per fiscal year.

Immigrants, especially women and children, can be particularly vulnerable to crimes like human trafficking, domestic violence, sexual assault, and other abuse due to a variety of factors. These include, but are not limited to, language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Congress recognized that victims who do not have legal status may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States. The VTVPA was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country. Congress also sought to encourage law enforcement officials to serve immigrant crime victims.<sup>2</sup>

If an individual believes he or she may qualify for a U visa, then that individual or his or her representative will complete the USCIS Form I-918, Petition for U Nonimmigrant Status (Form I-918), and submit it to U.S. Citizenship and Immigration Services (USCIS) with all relevant documentation, including Form I-918B, the U visa law enforcement certification. Given the complexity of U visa petitions, petitioners often work with a legal representative or victim advocate.

### **What Is a U Visa Certification and Which Agencies Can Certify?**

USCIS Form I-918, Supplement B is the U visa certification document that a law enforcement agency can complete for a victim who is petitioning USCIS for a U visa. USCIS is the federal component of DHS with the responsibility to determine whether immigration benefits and immigration status should be granted or denied. Form I-918B is a required piece of evidence to confirm to USCIS that a qualifying crime has occurred and that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of criminal activity.

Form I-918B and its instructions are available on the USCIS website at [www.uscis.gov](http://www.uscis.gov) with the Form I-918 for the U visa. In order to be eligible for a U visa, the victim must submit a law enforcement certification completed by a certifying agency. Certifying agencies include all authorities responsible for the investigation, prosecution, conviction or sentencing of the qualifying criminal activity, including but not limited to:

- Federal, State and Local law enforcement agencies;
- Federal, State and Local prosecutors' offices;

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<sup>2</sup> VTVPA, Pub.L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533-34 (2000). *See also* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007) (amending 8 C.F.R. §§ 103, 212, 214, 248, 274a and 299).

- Federal, State and Local Judges;
- Federal, State, and Local Family Protective Services;
- Equal Employment Opportunity Commission;
- Federal and State Departments of Labor; and
- Other investigative agencies.

The law enforcement certification, Form-918B, is a required piece of evidence to confirm that a qualifying crime has occurred and that the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation or prosecution of criminal activity. Although a law enforcement certification is a required part of a victim’s petition for a U visa, law enforcement officers cannot be compelled to complete a certification. Whether a certifying law enforcement agency signs a certification is at the discretion of that law enforcement agency and the policies and procedures it has established regarding U visa certifications. The law enforcement certification validates the role the victim had, has, or will have in being helpful to the investigation or prosecution of the case; therefore, it is important that the law enforcement agency complete certifications on a case-by-case basis. Without a completed U visa certification, the victim will not be eligible for a U visa.

**What Constitutes a Qualifying Crime?**

<ul style="list-style-type: none"> <li>• Abduction</li> <li>• Abusive Sexual Contact</li> <li>• Blackmail</li> <li>• Domestic Violence</li> <li>• Extortion</li> <li>• False Imprisonment</li> <li>• Felonious Assault</li> <li>• Female Genital Mutilation</li> <li>• Felonious Assault</li> <li>• Being Held Hostage</li> </ul>	<ul style="list-style-type: none"> <li>• Incest</li> <li>• Involuntary Servitude</li> <li>• Kidnapping</li> <li>• Manslaughter</li> <li>• Murder</li> <li>• Obstruction of Justice</li> <li>• Peonage</li> <li>• Perjury</li> <li>• Prostitution</li> <li>• Rape</li> </ul>	<ul style="list-style-type: none"> <li>• Sexual Assault</li> <li>• Sexual Exploitation</li> <li>• Slave Trade</li> <li>• Torture</li> <li>• Trafficking</li> <li>• Witness Tampering</li> <li>• Unlawful Criminal Restraint</li> <li>• Other Related Crimes*†</li> </ul> <p>*Includes any similar activity where the elements of the crime are substantially similar.</p> <p>†Also includes attempt, conspiracy, or solicitation to commit any of the above, and other related, crimes.</p>
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**What Does “Helpful” In the Investigation or Prosecution Mean?**

Helpfulness means the victim was, is, or is likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. This includes being helpful and providing assistance when reasonably requested. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after

reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement remains even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted may have the visa revoked by USCIS. Law enforcement agencies should contact and inform USCIS of the victim's unreasonable refusal to provide assistance in the investigation or prosecution should this occur.

A current investigation, the filing of charges, a prosecution or conviction are not required to sign the law enforcement certification. Many instances may occur where the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials. There is no statute of limitations on signing the law enforcement certification. A law enforcement certification can even be submitted for a victim in a closed case.

### **USCIS Review of U Visa Law Enforcement Certifications**

USCIS is the federal component of DHS responsible for approving and denying immigration benefits and status, including the U visa. Federal, State and local law enforcement agencies **do not** grant or guarantee a U visa or any other immigration status by signing a U visa certification (Form I-918B). Only USCIS may grant or deny a U visa after a full review of the petition to determine whether all the eligibility requirements have been met and a thorough background investigation. An individual may be eligible for a U visa if:

- He/she is the victim of qualifying criminal activity.
- He/she has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- He/she has information about the criminal activity. If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on the individual's behalf.
- He/she was helpful, is being helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime. If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on behalf of the individual.
- The crime occurred in the United States or violated U.S. laws
- He/she is admissible to the United States. If not admissible, an individual may apply for a waiver on a [Form I-192, Application for Advance Permission to Enter as a Non-Immigrant](#).

By signing a law enforcement certification, the law enforcement agency is stating that a qualifying criminal activity occurred, that the victim had information concerning the criminal activity, and that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying crime. In addition, law enforcement may report information about any harm sustained by the victim that law enforcement has knowledge of or observed.

While a U visa petition will not be granted without the required law enforcement certification, the fact that a certification has been signed does not automatically grant the victim a U visa. The certification is only one of the required pieces of evidence needed to be eligible for a U visa.

For all U visa petitioners, USCIS conducts a thorough background investigation which includes a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS will also review the petitioners' immigration records to assess whether any inadmissibility issues exist, such as the petitioner's criminal history, immigration violations, or security concerns. Any evidence that law enforcement and immigration authorities possess may be used when determining eligibility for a U visa. This evidence includes, but is not limited to, the person's criminal history, immigration records, and other background information. USCIS may contact the certifying law enforcement agency if there are any issues or questions arise during the adjudication based on information provided in the law enforcement certification.

### **Benefits of the U Visa to the Recipient**

If found eligible and a petition is approved, a U visa recipient receives nonimmigrant status to live and work in the United States for no longer than 4 years. Qualified recipients may apply to adjust status to become a lawful permanent resident (green card) after three years of continuous presence in the U.S. while having a U visa. The petitioner will have to meet other eligibility requirements for a green card as well, including the ongoing duty to cooperate with law enforcement and not unreasonably refuse to assist with the investigation or prosecution of the qualifying crime. Additionally, certain immediate family members of U visa recipients may also be eligible to live and work in the United States as derivative U visa recipients based on their relationship with the principal recipient. These family members include:

- Unmarried children under the age of 21 of principal U visa recipients;
- Spouses of principal U visa recipients;
- Parents of principal U visa recipients under age 21; and
- Unmarried siblings under 18 years old of principal U visa recipients under age 21.

## **U Visa Certification Form (Form I-918B)**

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### **Tips for Filling Out the Form I-918B**

The U visa certification can be initiated by the law enforcement agency itself or by the crime victim. If initiated by the crime victim, this is usually done with the assistance of an advocate or an attorney. By signing a certification, the law enforcement agency attests that the information is true and correct to the best of the certifying official's knowledge. The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications. An agency's decision to sign a certification is completely discretionary and under the authority of that agency. Neither DHS nor any other federal agency have the authority to request or demand that any law enforcement agency sign the certification. There is also no legal obligation to



complete and sign Form I-918B. However, without a certification signed by law enforcement, the individual will not be eligible to be granted a U visa.

By signing a certification, the law enforcement agency attests that the information is true and correct to the best of the certifying official's knowledge. The law enforcement certification essentially states to USCIS that:

- The petitioner was a victim of a qualifying crime;
- The petitioner has specific knowledge and details of crime; and
- The petitioner has been, is being, or is likely to be helpful to law enforcement in the detection, investigation, or prosecution of the qualifying crime.

If a law enforcement agency signs a Form I-918B, the certification must be returned to the victim (or the victim's attorney, representative, etc.). The law enforcement agency does not need to send the signed certification separately to USCIS. The victim is required to send the original signed certification form along with his or her complete U visa petition to USCIS. If the law enforcement official is providing additional documents (e.g., a copy of the police report, additional statements, photos, etc.) along with the certification, law enforcement should indicate on Form I-918B a note of "see attachment" or "see addendum". Question 5 of Part 4 on Form I-918B, the certifying official may document the helpfulness of the victim and if that victim refused to be helpful at any time throughout the investigation/prosecution at the point. The certification form must contain an original signature and should be signed in a color of ink other than black for verification purposes. Photocopies, faxes, or scans of the certification form cannot be accepted by USCIS as an official certification.

Victim info. →

Agency Info. →

Crime info. →

**U Nonimmigrant Status Certification**

**Part 1 - Victim Information**

Name: Given Name, Middle Name, Other Names Used (Include middle name/surname)

Date of Birth (month/day/year), Gender (Male/Female)

**Part 2 - Agency Information**

Name of Certifying Agency

Name of Certifying Official, Title and Position/Office of Certifying Official

Name of Head of Certifying Agency

Agency Address - Street Number and Name, Suite #, City, State/Province, Zip/Postal Code

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

Agency Type: Federal, State, Local

Case Status: Ongoing, Completed, Other

Certifying Agency Category: Judge, Law Enforcement, Prosecutor, Other

Case Number, FBI # or IED # (if applicable)

**Part 3 - Criminal acts**

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

- Abduction, Abuse Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Physical Assault, Attempt to commit any of the named crimes
- Female Sexual Mediation, Stalking, Secret, Involuntary Servitude, Kidnapping, Molestation, Murder, Conspiracy to commit any of the named crimes
- Obstruction of Justice, Forgery, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Solicitation to commit any of the named crimes
- Slave Trade, Torture, Trafficking, Unlawful Criminal Extortion, Witness Tampering, Related Crimes

Other: (If more space needed, attach separate sheet of paper)

Date, location and other crime info.



**Part 3. Criminal acts. (Continued)**

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

Date (mm/dd/yyyy)      Date (mm/dd/yyyy)      Date (mm/dd/yyyy)      Date (mm/dd/yyyy)

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

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

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

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

c. Where did the criminal activity occur?

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

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

Helpfulness statement



**Part 4. Helpfulness of the victim. (Continued)**

The victim (or parent, guardian or next friend, if the victim is under the age of 18, incompetent or incapacitated):

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

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

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

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

Form I-918 Supplement B (10/20/00) Page 3

Additional helpfulness info.



**Part 4. Helpfulness of the victim. (Continued)**

5. Other, please specify:

Culpable family members



**Part 5. Family members implicated in criminal activity.**

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

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

Full Name	Relationship	Involvement

Certification



**Part 6. Certification.**

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

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

Form I-918 Supplement B (Rev. 10/20/00) Page 3

## Best Practices in U Visa Certifications (Form I-918B)

Across the United States, law enforcement agencies have taken different procedural approaches to U visa certifications. DHS does not endorse or recommend any particular practice, as the certifying agency has the sole authority on the policies and procedures it will use in signing law enforcement certifications. Some examples of how various law enforcement agencies educate their officers about U visa certifications and how they designate a certifier or certifiers in their agencies include:

- Department policy or general order on the process and use of the U visa certification written and distributed;
- A Letter or Memorandum designating a process and authority to certify has been sent from the Chief to the Lieutenant(s) or supervisor(s) in charge of certifying U visas;
- Chief designates the head of the Victim-Witness Assistance Program as the certifier;
- Teletype message or similar written notification sent out from the Chief to the entire department explaining the purpose of the U visa, the certification process, and who is/are designated as the certifier(s); and
- The Investigations Bureau Chief, assigned as certifier, delegates an officer or supervisor to review requests made by both law enforcement officers and the community and makes a recommendation on the certification to the Bureau Chief.

## Frequently Asked Questions

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### **What do I do with a completed certification?**

Once the law enforcement official completes and signs Form I-918B, the original should be given to the victim or the victim's legal representative or victim advocate, so that he or she can add the certification to the original U visa petition packet before submission to USCIS.

Please also note that only a law enforcement official may complete and sign the Form I-918B. The victim, victim's attorney, or advocate may not sign the Form I-918B.

### **If I certify a petition, does the victim automatically get a U visa or lawful immigration status?**

No. There are many additional eligibility requirements that USCIS evaluates based on a victim's U visa petition, including whether the victim suffered "substantial physical or mental abuse." Moreover, upon receiving a U visa petition, including Form I-918B, USCIS will conduct a full review of the petition and a thorough background check of the petitioner before approving or denying the petition. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds. A victim may be found inadmissible if they do not meet required criteria in the Immigration and Nationality Act to gain admission or legal status in the U.S. Generally, USCIS does not initiate removal proceedings. However, if there are serious inadmissibility issues, such as security related concerns, multiple or violent criminal arrests, or multiple immigration violations, USCIS may find the victim to be inadmissible and may also initiate removal proceedings. If USCIS finds the victim

to be inadmissible after a removal proceeding was stayed or terminated to pursue the U visa application, the proceedings may be reinstated or DHS may file a new Notice to Appear (NTA) for that individual.

If USCIS needs further information, evidence, or clarification of an issue, USCIS officers may request additional evidence from the petitioner. USCIS may also contact the certifying law enforcement agency for further information if necessary.

**Which law enforcement agencies are eligible to make certifications?**

A federal, state, local law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the investigation or prosecution of a qualifying crime or criminal activity is eligible to sign Form I-918B. This includes agencies with criminal investigative jurisdiction in their respective areas of expertise, including but not limited to child and adult protective services, the Equal Employment Opportunity Commission, and Federal and State Departments of Labor.

**Who in the law enforcement agency can sign Form I-918B?**

A certifying official(s) can sign Form I-918B. The U visa regulation defines a certifying official as: “[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency.” 8 C.F.R. § 214.14(a)(3).

Although not required with each certification, it is helpful to include a letter showing the designation of the signing official(s). The letter would be signed by the agency head and would reflect that person with a particular rank or title within the agency is to be the signing official(s).

**If my law enforcement agency has a Memorandum of Understanding (MOU) with DHS under the 287(g) program, are we still able to sign U visa certifications?**

Yes, Form I-918B can be signed regardless of such an MOU with DHS. DHS encourages all jurisdictions to implement U visa certification practices and policies.

**What if the victim or witness in my case has been detained or ordered removed for an immigration violation?**

Individuals currently in removal proceedings or with final orders of removal may still apply for a U visa. Absent special circumstances or aggravating factors, it is against U.S. Immigration and Customs Enforcement (ICE) policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. To avoid deterring individuals from reporting crimes, ICE has issued guidance to remind ICE officers, special agents, and attorneys to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to victims of domestic violence, human trafficking, or other serious crimes, and witnesses involved in pending criminal investigations or prosecutions.

If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact their local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Chief Counsel to make ICE aware of the situation. Specifically with regard to a lodged detainer, the law enforcement official may notify the ICE Law Enforcement Support Center at (802) 872-6020, if the individual may be the victim of a crime, or if the officials want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness.

**Will a certifying law enforcement agency be liable for any future conduct of someone who is granted a U visa? What if I signed a certification for someone who later commits a crime?**

A certifying law enforcement agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or to whom DHS granted a U visa. The U visa certification simply states that the person was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the investigation or prosecution of that crime. The certification does not guarantee the future conduct of the victim or grant a U visa. USCIS is the only agency that can grant a U visa.

If a victim is granted a U visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues.

If a law enforcement agency later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency wishes to withdraw the certification, the law enforcement agency should contact USCIS.

**If an investigation or case is closed, can law enforcement still complete Form I-918B? Is there a statute of limitations?**

Yes, law enforcement can still complete Form I-918B for an investigation or case that is closed. There is no statute of limitations regarding the time frame in which the crime must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful in the past to investigate or prosecute a crime. A crime victim could be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial whether or not the prosecution resulted in a conviction. The petitioner must still meet all the eligibility requirements for a U visa to be approved.

**Can I complete a U visa certification for a victim who is no longer in the United States?**

Yes. While the crime must have occurred in the United States, its territories, or possessions, or have violated U.S. law, victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply from outside the United States.

**Who determines if the “substantial physical or mental abuse” requirement has been met?**



USCIS will make the determination as to whether the victim has met the “substantial physical or mental” standard on a case-by-case basis during its adjudication of the U visa petition. Certifying law enforcement agencies do not make this determination. Certifying agencies may, however, provide any information the agency deems relevant regarding injuries or abuse on Form I-918B. The U visa certification signed by law enforcement states that the person was a victim of a qualifying crime, possessed information relating to the crime, and was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of that crime. Question 6 of Part 3 on Form I-918B asks that law enforcement provide information about any injuries the law enforcement agency knows about or has documented. While this provides some of the evidence USCIS will use to make the substantial physical or mental abuse determination, the U visa petitioner has the burden of proving the substantial physical or emotional abuse.

USCIS adjudication officers receive extensive training in statutory and regulatory requirements in determining whether a victim has suffered substantial physical or mental abuse. Factors that USCIS uses to make this determination are: the nature of the injury inflicted; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.

The existence of one or more of the factors does not automatically signify that the abuse suffered was substantial. The victim will have to provide evidence to USCIS showing that the victim meets the standard of substantial physical or mental abuse.

**Can I still certify if the perpetrator is no longer in the jurisdiction or prosecution is unlikely for some reason?**

Yes. There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to be eligible to apply for a U visa. Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another agency in another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations. The petitioner will still have to meet the helpfulness requirement by reasonably assisting the certifying law enforcement agency, and will also have to meet all other eligibility requirements in order to qualify for a U visa.

**Does the victim have to testify to be eligible for certification?**

As mentioned above, there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U visa. While there is no requirement for the victim to testify at a trial to be eligible for a U visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with law enforcement. If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed Form I-918B.

**Can a victim’s petition still be approved if the defendant is acquitted or accepted a plea to a lesser charge, or if the case was dismissed?**

Yes. As mentioned above, a conviction is not required for someone to be eligible for a U visa. Plea agreements and dismissals do not negatively impact the victim's eligibility. As long as the victim has been helpful in the investigation or prosecution of the qualifying criminal activity and meets all other eligibility requirements, the victim may petition for a U visa.

If the victim unreasonably refuses to assist the investigation or prosecution and harms the criminal case, that will negatively impact the victim's ability to receive an approval. The certifying law enforcement agency should notify USCIS if the victim has unreasonably refused to cooperate in the investigation or prosecution of the crime.

### **What constitutes “helpfulness” or “enough cooperation”?**

USCIS regulation requires that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of the criminal activity. This means that since the initiation of cooperation, the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

USCIS will not provide a U visa to those petitioners who, after initially cooperating with law enforcement, refuse to provide continuing assistance when reasonably requested. USCIS also will not approve the petitions of those who are culpable for the qualifying criminal activity.

### **What if the victim stops cooperating after I sign his/her certification?**

At its discretion, a certifying agency may withdraw or disavow a Form I-918B at any time if a victim stops cooperating. To do so, the certifying agency must notify the USCIS Vermont Service Center in writing (see below).

Written notification regarding withdrawal or disavowal should include:

- The agency's name and contact information (if not included in the letterhead);
- The name and date of birth of the individual certified;
- The name of the individual who signed the certification and the date it was signed;
- The reason the agency is withdrawing/disavowing the certification including information describing how the victim's refusal to cooperate in the case is unreasonable;
- The signature and title of the official who is withdrawing/ disavowing the certification; and
- A copy of the certification the agency signed (if a copy was retained by the agency).

The letter should be either scanned and emailed to the Vermont Service Center at [LawEnforcement\\_UTVAWA.vsc@uscis.dhs.gov](mailto:LawEnforcement_UTVAWA.vsc@uscis.dhs.gov), or mailed to:

USCIS—Vermont Service Center  
ATTN: Division 6  
75 Lower Welden Street  
St. Albans, VT 05479

**If one crime is initially investigated but a different crime is eventually prosecuted, does that have an impact on the certification?**

A law enforcement certification is valid regardless of whether the initial crime being investigated is different from the crime that is eventually prosecuted. As long as the person is a victim of a qualifying criminal activity, that person may be eligible for a U visa. Examples include:

- An initial investigation of rape eventually leads to a charge and prosecution of sexual assault. Both rape and sexual assault are qualifying crimes.
- An initial investigation of embezzlement leads to a charge and prosecution of extortion. While embezzlement is not a qualifying crime, the investigation eventually led to a charge of extortion, which is a qualifying crime. If the person assisting in the investigation or prosecution is a victim of extortion, that person may qualify for a U visa.
- In the process of investigating drug trafficking allegations, police determine that the drug trafficker's wife is a victim of domestic violence. The victim reported the domestic abuse. The state brings a prosecution against the husband for drug offenses but not domestic violence crimes. The wife is cooperating in the drug prosecution. Law enforcement may complete a Form I-918B certification for reporting the domestic abuse case that is not being prosecuted.

Form I-918B certifications may also be submitted for crimes similar to the list of qualifying criminal offenses. An investigation or prosecution into a charge of video voyeurism may fall under the qualifying crime of sexual exploitation. This may be determined by state or local criminal law and the facts and evidence in that specific case. Please note that while video voyeurism is not specifically listed as a qualifying crime, it may be considered a type of sexual exploitation, which is a qualifying crime. The victim would need to show how these crimes are related and present this evidence to USCIS, along with Form I-918B certification form signed by a certifying law enforcement agency.

**If the victim is a child, why would a non-citizen parent ask for a certification stating that the parent was the victim?**

In many cases where a child is the victim of a crime, the child may not be able to provide law enforcement with adequate assistance. This may be due to the child's age or trauma suffered, among various other reasons. Parents of a child victim play a crucial role in detecting and reporting crimes, providing information and assisting law enforcement in the investigation or prosecution of the crime committed against the child. Recognizing this, an alien parent can apply to be recognized as an "indirect victim" if the principal victim is a child under 21 years of age and is incompetent or incapacitated to provide assistance to law enforcement in the investigation or prosecution of the crime committed against the child or if the child is deceased due to murder or manslaughter. The immigration status of the child victim is not relevant to this determination; Form I-918B can be submitted for an alien parent whether or not the child is a U.S. citizen or a non-citizen.

The parent(s), in order to qualify as an "indirect victim", must meet the remaining eligibility requirements for a U visa to receive an approval. Therefore, the "indirect victim" parents must have information about the crime, and must be helpful to law enforcement in the investigation or

prosecution of the crime and the crime must have occurred in the United States or violated U.S. law. The parents will also be subject to the standard background checks (FBI fingerprint and name/DOB check) and immigration records review as well. .

### **What constitutes “possesses information”?**

To be eligible for a U visa, the victim of the crime must possess credible and reliable information establishing that the victim has knowledge of the details of the criminal activity or events leading up to the criminal activity, including specific facts about the crime/victimization leading law enforcement to determine that the victim has assisted, is assisting, or is likely to provide assistance in the investigation or prosecution of the crime.

If the victim was under 16 years of age or incompetent or incapacitated at the time the qualifying crime occurred, a parent, guardian, or next friend may possess the information. A “next friend” is defined as a person who appears in a lawsuit to act for the benefit of an alien who is under 16 or incompetent or incapacitated. The next friend is someone dedicated to the best interests of the individual who cannot appear on his or her own behalf because of inaccessibility, mental incompetence, or other disability. A next friend cannot be a party to a legal proceeding involving the victim and cannot be a court appointed guardian. A next friend also does not qualify for a U visa or any immigration benefit simply by acting as a next friend for the victim, but he or she may possess information about the criminal activity and may provide the required assistance.

### **Will USCIS approve a victim with a criminal history?**

USCIS may deny a U visa petition for a variety of reasons including if the victim’s criminal history warrants such a decision. Denials may occur in cases where a victim has multiple arrests, convictions, or has a serious or violent criminal arrest record. USCIS will also deny a petition if the victim was complicit or culpable in the qualifying criminal activity of which he or she claims the victimization occurred. USCIS conducts background and security checks (FBI fingerprint check, name/DOB check, check of immigration records) on U visa petitioners and reviews all available information concerning arrests, immigration violations, and security issues before making a final decision.

The fact that a victim has a criminal history does not automatically preclude approval of U status. USCIS has broad authority to waive most inadmissibility issues, including criminal issues. Each U visa petition is evaluated on a case-by-case basis.

If law enforcement believes USCIS should know something particular about a victim’s criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim’s criminal history with that law enforcement agency or his or her involvement in the crime.

### **What are the safeguards for protecting the U visa program against fraud?**

Congress and USCIS recognize that law enforcement agencies that investigate and prosecute the qualifying criminal activities are in the best position to determine if a qualifying crime has taken place. If, in the normal course of duties, a law enforcement agency has determined that a qualifying crime

has taken place, the victim possessed information related to the crime, and the victim has been helpful, law enforcement may sign the U visa certification. Whether a law enforcement agency signs the certification is under the authority of the agency conducting the investigation or prosecution. The law enforcement certification also acts as a check against fraud and abuse, as the certification is required in order to be eligible for a U visa.

USCIS takes fraud and abuse of the U visa program seriously. If USCIS suspects fraud in a U visa petition, USCIS may request further evidence from the petitioner and may also reach out to the law enforcement agency for further information. USCIS also has a dedicated unit whose sole purpose is to target and identify fraudulent immigration applications. The Fraud Detection and National Security (FDNS) unit of USCIS conducts investigations of cases that appear fraudulent and works with other Federal, State, and local law enforcement agencies when fraud or abuse is discovered.

As an additional check against fraud, a U visa recipient cannot obtain a green card unless the victim proves that he or she cooperated, when requested, with law enforcement or prosecutors. In order to obtain a green card, if the U visa victim did not cooperate, he or she must prove to DHS' satisfaction that his or her refusal to cooperate was not unreasonable.

#### **Where can my agency get additional training on U visa certifications?**

Law enforcement agencies may request additional training and information by emailing USCIS at: [T-U-VAWATraining@dhs.gov](mailto:T-U-VAWATraining@dhs.gov).

## Other Forms of Relief for Victims

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Federal law provides additional options to assist law enforcement with providing immigration status to victims and witnesses of crime that may or may not be eligible for the U visa. The following are some of these resources:

### **T Visa**

The T nonimmigrant status (or T visa) provides immigration protection to victims of severe forms of trafficking in persons who comply with reasonable requests for assistance from law enforcement in the investigation or prosecution of human trafficking cases. The T nonimmigrant visa allows victims to remain in the United States to assist in the investigation or prosecution of human traffickers. Unlike the U visa, the T visa does not require a law enforcement certification. Once T nonimmigrant status is granted, a victim can apply for permanent residence after three years. A petitioner for a T visa must send a completed petition ([Form I-914](#)) to USCIS. A signed [I-914 Supplement B](#) may be submitted with the petition to verify that he or she has complied with any reasonable request by law enforcement in the investigation or prosecution of the trafficking crime, but is not required. The certification is one of the pieces of evidence that USCIS will consider to grant or deny a T visa.

### **VAWA**

Recognizing that immigrant victims of domestic violence may remain in an abusive relationship because his or her immigration status is often tied to the abuser, the Violence Against Women Act

(VAWA) in 1994 created a self-petitioning process that removes control from the abuser and allows the victim to submit his or her own petition for permanent residence without the abuser's knowledge or consent. Those eligible for VAWA relief include the abused spouse or former spouse of a U.S. citizen or Lawful Permanent Resident, the abused child of a U.S. citizen or Lawful Permanent Resident, or the abused parent of a U.S. citizen. VAWA immigration relief applies equally to women and men. To file for VAWA immigration relief the self-petitioner must send a completed Form I-360 along with corroborating evidence to USCIS. A law enforcement certification is not needed in these cases.

### **Continued Presence**

Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. Federal law enforcement officials are authorized to submit a CP application, which should be initiated upon identification of a victim of human trafficking. CP allows victims of human trafficking to remain in the United States during an ongoing investigation into human trafficking-related crimes committed against them. CP is initially granted for one year and may be renewed in one-year increments. Recipients of CP also receive work authorization. CP is authorized by ICE Homeland Security Investigations (HSI) Law Enforcement Parole Unit and can only be sponsored by a federal law enforcement agent.

State, local, tribal and territorial law enforcement officials who would like to request CP for human trafficking victims are encouraged to work with the local HSI office in their area. In addition, Victim Assistance Coordinators can assist law enforcement officials in obtaining referrals to non-governmental victim services providers who can offer a variety of services to assist crime victims, such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job skills training, and case management.

CP is an important tool for federal, state, and local law enforcement in their investigation of human trafficking-related crimes. Victims of human trafficking often play a central role in building a case against a trafficker. CP affords victims a legal means to temporarily live and work in the United States, providing them a sense of stability and protection. These conditions improve victim cooperation with law enforcement, which leads to more successful prosecutions and the potential to identify and rescue more victims. Although cooperation with law enforcement is not an eligibility criterion for CP, victims who are cooperating do receive eligibility for social service benefits through the Department of Health and Human Services Office of Refugee Resettlement. Victims may qualify for other forms of immigration benefits depending on their unique circumstances.

### **Significant Public Benefit Parole**

Significant Public Benefit Parole (SPBP) may be utilized to bring an individual to serve as a witness, defendant, or cooperating source, and if necessary in extremely limited cases, the individual's immediate family members, into the United States for up to one year. It must be emphasized that SPBP will only be granted for the minimum period of time required to accomplish the requested purpose, e.g., if a trial is 3 months long, parole will be granted for 3 months. SPBP is a temporary measure used to allow an individual who is otherwise inadmissible to be present in the United States. SPBP does not

constitute a formal admission to the United States and confers only temporary authorization to be present in the United States without having been admitted. Employment authorization may be granted.

### **Deferred Action**

Deferred Action (DA) is a discretionary decision-making authority that allows DHS to determine which cases merit the commitment of limited resources. It is exercised on a case-by-case basis that focus on the priorities of DHS, by targeting serious criminals and those who are a threat to public safety, and potentially deferring action on cases with a lower priority. There is no statutory definition of DA, but federal regulations provide a description: “[D]eferred action [is] “an act of administrative convenience to the government which gives some cases lower priority....” See 8 C.F.R. § 274a.12(c)(14). DHS officers, special agents, and attorneys consider every DA request individually to decide whether; based on the totality of the circumstances, a favorable grant of deferred action is appropriate. DA requests may, among other things, be based on humanitarian facts and a low-enforcement priority or may be based on an individual’s status as an important witness in an investigation or prosecution. It does not provide a pathway to permanent residency.

## DHS Contact Information

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**For more information about the U visa program and law enforcement certifications, please see:**

### **U.S. Citizenship and Immigration Services**

[www.uscis.gov](http://www.uscis.gov)

[www.uscis.gov/humantrafficking](http://www.uscis.gov/humantrafficking)

To ask a question about a specific case or to rescind a signed certification:

[LawEnforcement\\_UTVAWA.VSC@uscis.dhs.gov](mailto:LawEnforcement_UTVAWA.VSC@uscis.dhs.gov). Please note that this e-mail address is for law enforcement personnel only. Any e-mail sent by any person or entity that is not law enforcement to this specific e-mail address will not be answered.

To request U visa training for your agency:

[T-U-VAWATraining@dhs.gov](mailto:T-U-VAWATraining@dhs.gov)

To ask specific policy questions about T and U visa certifications, call USCIS at (202) 272-1470.

Petitioners and their representatives may submit an inquiry regarding a specific case by emailing:

[hotlinefollowupI918I914.vsc@dhs.gov](mailto:hotlinefollowupI918I914.vsc@dhs.gov)

### **Citizenship and Immigration Services Ombudsman**

To refer U visa petitioners who are experiencing problems that have not been able to be resolved through DHS customer assistance avenues:

[www.dhs.gov/cisombudsman](http://www.dhs.gov/cisombudsman)

Toll Free: (855) 882-8100

Phone: (202) 357-8100

Email: [cisombudsman@dhs.gov](mailto:cisombudsman@dhs.gov)

### **Immigration and Customs Enforcement**

If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact their local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Principal Legal Advisor (OPLA) to make ICE aware of the situation.

To contact your local ICE ERO office, please see the list of contact information here:

<http://www.ice.gov/contact/ero/>

To contact your local ICE OPLA office, please see the list of contact information here:

<http://www.ice.gov/contact/opla/>

Specifically with regard to a lodged detainer, the law enforcement official should notify the ICE Law Enforcement Support Center:

[www.ice.gov/contact/lesc/](http://www.ice.gov/contact/lesc/)

Phone: (802) 872-6050

Email: [ice.osltc@dhs.gov](mailto:ice.osltc@dhs.gov)

LESC Computer Services Division

188 Harvest Lane

Williston, Vermont 05495

### **Office of Civil Rights and Civil Liberties**

To refer individuals who would like to file a complaint concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security:

By mail or phone:

Office for Civil Rights and Civil Liberties

U.S. Department of Homeland Security

Building 410, Mail Stop #0190

Washington, D.C. 20528

Phone: (202) 401-1474

Toll Free: (866) 644-8360

TTY: (202) 401-0470

Toll Free TTY: (866) 644-8361

Fax: (202) 401-4708



E-mail: [crcl@dhs.gov](mailto:crcl@dhs.gov)

**Office for State and Local Law Enforcement**

For information about DHS coordination with federal, state, local, territorial, and tribal law enforcement, please contact the DHS Headquarters Office for State and Local Law Enforcement.

Phone: (202) 282-9545

Email: [oslle@hq.dhs.gov](mailto:oslle@hq.dhs.gov)

**More Federal Government Resources Available:**

[DHS Blue Campaign](#), which includes links to help locate local service providers with experience with immigrant victims of crime.

[USCIS Victims of Criminal Activity: U Nonimmigrant Status](#)

[USCIS Questions and Answers: Victims of Criminal Activity, U Nonimmigrant Status](#)

[DHS Ombudsman Teleconference Recap: U Visas](#)

[October 2009 FBI Law Enforcement Bulletin: The U Visa](#)

[Immigration and Customs Enforcement Toolkit for Prosecutors](#)