

## U-Visa: “Helpfulness”<sup>1</sup>

### The National Immigrant Women’s Advocacy Project American University, Washington College of Law<sup>2</sup>

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By: Benish Anver, Rocio Molina, Andrea Carcamo-Cavazos,  
Peter Helein, Devon E. Turner, and Spencer Cantrell

The victim can be said to satisfy the “helpfulness” requirement of the U-Visa

*...when the victim has been helpful, is willing to be helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a **qualifying criminal activity**.*

Qualifying Criminal Activity is defined under immigration law<sup>3</sup> as:

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contract (8 U.S.C. 1351)
- 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

This includes any similar activity where the elements of the crime are substantially similar, including attempt, conspiracy, or solicitation to commit any of the above, and other related, crimes.<sup>4</sup>

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<sup>3</sup> Department of Homeland Security, U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visa\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visa_certification_guide.pdf/view) (Hereinafter DHS Resource Guide)

<sup>4</sup> DHS Resource Guide at 13.

## Who detects a U visa victim's helpfulness in the detection, investigation, prosecution, conviction or sentencing of criminal activity?

- Federal, state, or local law enforcement agency<sup>5</sup>
- Prosecutor or other Authority<sup>6</sup>
- Federal or State Judge,<sup>7</sup> commissioner, magistrate, or other judicial officer in a civil, family, criminal or administrative law case<sup>8</sup>
- Child Protective Services<sup>9</sup>
- Equal Employment Opportunity Commission (EEOC)<sup>10</sup>
- Department of Labor (DOL)<sup>11</sup>

### Certifiers can either detect or receive helpfulness.

Whether a certifier or certifying agency receives the following types of helpfulness or detects this helpfulness will depend on the type of certifier or certifying agency. Below is a non-exhaustive list of examples.

- State and local police and sheriffs will receive helpfulness directly and will also be able to detect helpfulness to others:
  - Prosecutors, child/adult protective services
- Prosecutors will receive helpfulness directly and will also be able to detect helpfulness to others:
  - Police, child/adult protective services
- Judges, Commissioners, Magistrates will:
  - Detect helpfulness to police, prosecutors, child/adult protective services, sheriffs/police who serve protection orders
  - Observe helpfulness when victims seek help from the justice system and provide evidence of crime victimization in a criminal case, protection order, divorce, custody, or employment enforcement proceeding
- The EEOC, U.S. or state departments of labor: will receive helpfulness of crime victims who come forward to make labor law complaints and cooperate in employment investigations and will detect helpfulness to other agencies when victims employment agencies are working with make police reports, provide information to police or prosecutors, or seek protection orders or injunctions
- Child and Adult protective services workers: will receive helpfulness of crime victims

<sup>5</sup> Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule. September 17, 2007. (Hereinafter U Visa Rule) [http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA\\_interim-regs-Fed-Reg.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view)

<sup>6</sup> U Visa Rule at 53019.

<sup>7</sup> U Visa Rule at 53019.

<sup>8</sup> See *Expert Advice for Judges: How to Handle U Visa Certification and T Visa Endorsement Requests* (Webinar), NIWAP (Dec. 1, 2014) <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/december-1-2014-expert-advice-for-judges/recording-expert-advice-for-judges>.

<sup>9</sup> USCIS Fact Sheet. USCIS Publishes Rule for Nonimmigrant Victims of Criminal Activity. September 5, 2007. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU\\_QAforLawEnforcement.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view) (Hereinafter USCIS Fact Sheet)

<sup>10</sup> USCIS Fact Sheet.

<sup>11</sup> USCIS Fact Sheet.

directly in child and elder abuse investigations and will detect helpfulness to other agencies when victims they are working with make police reports, provide information to police or prosecutors, or seek protection orders, or provide evidence of child or elder abuse in family court proceedings.

### What constitutes being helpful, having been helpful or being willing to be helpful?

- Not to unreasonably refuse to provide help, information, or assistance.<sup>12</sup>
  - Viewed examining the totality of the circumstances including the nature of the victimization, victim's fear or the abuser, trauma suffered, force, fraud or coercion.<sup>13</sup>
  - The victim's ongoing cooperation in the criminal investigation may jeopardize the *victim's safety* or the *safety of her family* members in the U.S. or abroad, then the victim's failure to cooperate is **not** unreasonable.<sup>14</sup>
- Being helpful is **not** related to whether the perpetrator of the criminal activity has a warrant issued, is prosecuted, is arrested, is convicted, the case is ongoing or is closed, etc.
- Being "helpful" is **independent** from the results of the case.<sup>15</sup> For example:
  - If the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances, the victim was still helpful;<sup>16</sup>
  - If the victim has reported a crime, and the perpetrator has run away, the victim can still be deemed helpful;<sup>17</sup>
  - If the victim cooperated with law enforcement and the case is dismissed due to the mishandling of evidence or an unlawful search, the victim is still helpful.<sup>18</sup>

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<sup>12</sup> USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU\\_QAforLawEnforcement.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view); Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule. September 17, 2007. [http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA\\_interim\\_regs-Fed-Reg.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim_regs-Fed-Reg.pdf/view); U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visa\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visa_certification_guide.pdf/view); NIWAP: U-Visas - Victims of Criminal Activity. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10\\_U-visa-MANUAL-ES.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view).

<sup>13</sup> Department of Homeland Security, 8 C.F.R. Parts 103, 212, 214, 245 and 299, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status Vol. 73, No 240 Fed Reg. 75540, 75547(December 12, 2008)(Here in after T and U Adjustment Rule) [http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT\\_Regulations\\_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%202012.08.08.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%202012.08.08.pdf/view)

<sup>14</sup> National Immigrant Women's Advocacy Project, American University, Washington College of Law, The Vera Institute Of Justice, Legal Momentum, *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (November 2012) (Funded by the Bureau of Justice Assistance and the Office on Violence Against Women, U.S. Department of Justice) (U Visa Toolkit) [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/U-visa\\_toolkit\\_August\\_2011.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/U-visa_toolkit_August_2011.pdf/view)

<sup>15</sup> USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU\\_QAforLawEnforcement.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view); NIWAP: U-Visas - Victims of Criminal Activity. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10\\_U-visa-MANUAL-ES.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view); U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u\\_visa\\_certification\\_guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visa_certification_guide.pdf/view)

<sup>16</sup> DHS Resource Guide at 11.

<sup>17</sup> U Visa Toolkit at 5.

<sup>18</sup> DHS Resource Guide at 11-12.

### Documents that can be used to prove helpfulness:

- Photographs of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity<sup>19</sup>
- Trial transcripts<sup>20</sup>
- Court Findings, rulings and other documents<sup>21</sup>
- Police reports<sup>22</sup>
- News articles<sup>23</sup>
- Copies of Reimbursement form for travel to and from court.<sup>24</sup>
- Affidavits of other witnesses or officials<sup>25</sup>

### In Cases Where the Victim is a Child or Incapacitated:

If victim is a child or incapacitated or incompetent, the “helpfulness” requirement can be satisfied by the following, given that the indirect victim applicant submits the necessary evidence on behalf of the petitioner:<sup>26</sup>

- The parent can be the “indirect” victim if
  - The principal victim is a child under 21 years of age, or
  - A child is murdered
- Guardian
- Next friend

### CHECKLIST

### Helpfulness can be met in a variety of ways in criminal cases that include but are *not* limited to:

- Reporting a crime to 911 – depends on the way it was reported
- Making or attempting to make a police report
- Reporting a Crime
- Participating in pre-arrest identification on scene
- Providing information to police at the crime scene
- Attempting to provide information to the police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter

<sup>19</sup> U Visa Rule at 53024.

<sup>20</sup> U Visa Rule at 53024.

<sup>21</sup> U Visa Rule at 53024.

<sup>22</sup> U Visa Rule at 53024.

<sup>23</sup> U Visa Rule at 53024.

<sup>24</sup> U Visa Rule at 53024.

<sup>25</sup> U Visa Rule at 53024.

<sup>26</sup> U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security. [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs\\_u visa certification guide.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u visa certification guide.pdf/view); Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007. [http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA\\_interim-regs-Fed-Reg.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view)

- Victim sought medical assistance and is willing to sign a medical release form
- Victim is willing to answer follow-up questions at a later time
- Identifying and providing background information about the perpetrator
- Providing a history of violence, if repeat offender
- Disclosing or reporting prior violence and/or criminal activity to others
- Disclosing criminal activity that the suspect may be involved in
- Disclosing whether the suspect has an existing criminal record or any pending charges
- Victim sought a criminal protection order
- Cooperating as a witness for whom prosecutors seek a criminal stay away as part of bond
- Participating in pre-arrest identification of photo array
- Attending a line-up to identify the perpetrator
- Providing a statement to police, even if there is no arrest
- Providing photographs of injuries
- Providing restitution information
- Attending prep sessions with the prosecutor
- Testifying at the initial appearance, bond hearing, preliminary hearing, or arraignment
- Testifying as a witness before a grand jury
- Testifying at pre-trial motions
- Testifying at trial
- Testifying at post-trial motions
- Testifying at sentencing
- Providing a victim impact statement
- Reporting parole/ probation violations
- Testifying at parole hearings
- Testifying at parole/probation violation hearings
- Working with social services, if required
- Serving as a witness in a prior prosecution or investigation

**Helpfulness can be met in a variety of ways in family law cases that include but are *not* limited to:**

- Victim sought a civil protection order
- Victim received an ex parte protection order which was served on the perpetrator by local police or sheriff's deputies
- Calling police to enforce or report violations of a civil protection order
- Attempting to provide information to the police to report violations of a protection order that could not be communicated because the police did not obtain a qualified interpreter
- Providing evidence of domestic violence or child abuse in a custody case, including providing photographs of injuries or providing medical records
- Providing information regarding child/ elder abuse to protective services/ investigators
- Victim returns to family court for a show cause hearing to report perpetrator's violations or contempt of family court custody and visitation order if threats or other criminal activity occurs
- Providing evidence or testifying in a child or elder abuse or neglect case
- Providing a history of violence, if a repeat offender

**Helpfulness can be met in a variety of ways in other civil court cases that include but are *not* limited to**

- Victim of sexual assault in the workplace is cooperating with the EEOC or DOL in another investigation of the employer by the EEOC or DOL
- Victim made a police report regarding crimes that occurred at their workplace
- Victim made a report to the EEOC or an equivalent state agency
- Victim provided information to an EEOC investigator
- Victim testified for the EEOC in a federal case regarding the employer

**Helpfulness is satisfied *even if*:**

- Victim reported a crime, and there was no further investigation
- Victim gives helpful information to law enforcement which is documented in a police report, but the charging deputy declines to file charges
- Victim reported a past crime that at the moment did not feel safe to report
- The perpetrator absconds or is subject to immigration removal
- The perpetrator is prosecuted for a different crime
- The prosecutor initiates a criminal prosecution then discovers irregularities in the crime lab or irregularities with the police officers' investigation and either exercises prosecutorial discretion not to file the case or discharges the matter "in the interest of justice"
- During the course of a criminal investigation for another crime, a qualifying U visa criminal activity is discovered but not prosecuted, but the victim continues to provide helpfulness in the initial investigation
- The criminal case ends in acquittal or with a hung jury and the prosecutor decides not to refile the criminal case
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history
- Victim is subject to immigration enforcement
- Victim at first keeps some information, but fully discloses events after better understanding rights and having meaningful language access
- Victim did not initially report to EEOC, but was identified as a similarly situated class member of the qualifying criminal activity