

## U-Visa: "Helpfulness" Checklist<sup>12</sup>

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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>

### **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, including city and states' attorneys and state attorneys general<sup>6</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/pubs/dhs-u-visa-guide-2012/> (Hereinafter DHS Resource Guide)

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

<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/pubs/federal-register-new-classification-victims-criminal-activity-eligibility-u-nonimmigrant-status-interim-rule/>.

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

- Federal or State Judge,<sup>7</sup> commissioner, magistrate,<sup>8</sup> or other judicial officer in a civil, family, juvenile, criminal, or administrative law case<sup>9</sup>
- Child or Adult Protective Services<sup>10</sup>
- Equal Employment Opportunity Commission (EEOC)<sup>11</sup>
- Department of Labor (DOL)<sup>12</sup>
- Other Federal, State, Local, Tribal, or Territorial government agencies with investigative duties, including agencies that have criminal, civil, or administrative investigative or prosecutorial authority<sup>13</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 police, local police, and sheriffs' offices will receive helpfulness directly and will also be able to detect helpfulness for others. Examples include:
  - Prosecutors, child/adult protective services, FBI, EEOC
- Prosecutors will receive helpfulness directly and will also be able to detect helpfulness for others. Examples include:
  - Police, child/adult protective services, FBI, EEOC
- Judges, Commissioners, Magistrates, and other judicial officials will:
  - Detect helpfulness to police, prosecutors, child/adult protective services, the EEOC, or other state, local, or federal agencies that the court observes or learns about through pleadings, court filings, and evidence offered
  - Observe helpfulness when victims seek help from the justice system and/or provide evidence of crime victimization in a criminal case, a protection order, divorce, custody, employment enforcement, housing, administrative law, or other civil or family court proceeding
  - Observe helpfulness when a victim discloses criminal activity in pleadings, motions, or other documents filed with the court
  - Detect helpfulness when victims register with VINE or other victim notification networks or receive Victims of Crime Act (VOCA) assistance
  - Observe helpfulness when victims attend court proceedings and/or work with sheriffs/police who serve protection orders
- The EEOC, U.S. or state departments of labor: will receive helpfulness of crime victims who come

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

<sup>8</sup> DHS Resource Guide at 16 ("Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.").

<sup>9</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/december-1-2014-expert-advice-for-judges-webinar/>.

<sup>10</sup> 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet. USCIS Publishes Rule for Nonimmigrant Victims of Criminal Activity. September 5, 2007 <http://niwaplibrary.wcl.american.edu/pubs/certifying-u-factsheet/> (Hereinafter USCIS Fact Sheet) (e.g. Federal Bureau of Investigation, Human Rights Commissions, and City and State Departments of Labor, Housing, and Human Rights).

<sup>11</sup> 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet.

<sup>12</sup> 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet.

<sup>13</sup> DHS Resource Guide at 6.

forward to make labor law complaints or cooperate in employment investigations and will detect helpfulness to other agencies when victims that the EEOC of state departments of labor is working with made police reports, provided information to police or prosecutors, or sought protection orders or injunctions

- Child protective services (CPS) and Adult protective services (APS): CPS and APS agencies will receive helpfulness of crime victims directly in child and elder abuse investigations. CPS and APS will also detect helpfulness to other agencies when victims that CPS and APS 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 likely to be helpful?

DHS summarizes the U visa statute<sup>14</sup> and regulations<sup>15</sup> helpfulness requirement as follows:

*“Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim.”*<sup>16</sup>

The U visa was created to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Nonetheless, Congress understood based on social science<sup>17</sup> that in many criminal cases, particularly victims of domestic violence and sexual assault, often find, for very compelling reasons, that they cannot further cooperate with requests from law enforcement and prosecutors after reporting the crime. The pattern of difficulty these victims have in providing ongoing cooperation is due to many factors and often is primarily based on fears of retaliation or because the victim is experiencing the perpetrator’s retaliation and witness tampering efforts<sup>18</sup> or part of the trauma due to crime victimization.<sup>19</sup> These retaliation and witness tampering efforts with immigrant victims often include immigration related abuse — threats of deportation and abusers contacting immigration enforcement officials to provide “tips” designed to trigger immigration enforcement actions, detention, and deportation of the crime victim.

Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes while offering protection to victims<sup>20</sup> who might “be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”<sup>21</sup> U-visas are intended, in part, to help overcome this reluctance.<sup>22</sup>

<sup>14</sup> INA Section 101(a)(15)(U)(i)(III); 8 U.S.C. 1101(a)(15)(U)(i)(III).

<sup>15</sup> 8 C.F.R. 214.14(b)(3).

<sup>16</sup> DHS Resource Guide at 7. The U visa regulations in 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows:

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

<sup>17</sup> Evan Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty* (2012); Edward W. Gondolf, *The Effect of Batterer Counseling on Shelter Outcome*, 3 *Journal of Interpersonal Violence*, No. 3 at 276 (Sept. 1988); Cynthia Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law* at 129 (1989).

<sup>18</sup> Kerry Healey, *Victim and Witness Intimidation: New Developments and Emerging Responses*, National Institute of Justice: Research in Action (Oct. 1995) (Only unsuccessful intimidation ever came to the attention of police or prosecutors),

<https://www.ncjrs.gov/pdffiles/witintim.pdf>.

<sup>19</sup> “Demographics Statistics indicate that aliens may be victimized at even higher rates than citizens”. Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

<sup>20</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,015 (2007).

<sup>21</sup> New Classification for Victims of Criminal Activity; 72 Fed. Reg. 53,014 (2007).

<sup>22</sup> Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

*“The findings that Congress expressed in sections 1513(a)(1) and (2) of the BIWPA make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity.”<sup>23</sup>*

In 1994, when Congress enacted the Violence Against Women Act (VAWA) and in 2000 when VAWA was amended to add the U Visa, Congress clearly understood how perpetrators of domestic violence, child abuse, sexual assault, human trafficking, and other crimes use threats of deportation, coercive control, and other forms of intimidation and abuse to impede or interfere with victims ability and willingness to provide ongoing cooperation in investigations, prosecutions, and court cases involving the victim’s crime perpetrator. DHS describes in its issuance of policies governing VAWA confidentiality an example:

*“There are a number of ways DHS employees might receive “tips” from an abuser or an abuser’s family, such as: calling ICE to report the victim as illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented, or providing information to USCIS rebutting the basis for the victim’s application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking, or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect.”<sup>24</sup>*

In order to ensure that the U visa would properly offer protection for victims in light of Congress’s understanding of the dynamics of domestic violence, sexual assault and human trafficking suffered by immigrant victims, Congress designed the legislation<sup>25</sup> and regulations<sup>26</sup> so that victims would be eligible to file for U visa protections at the very early stages of an investigation. Therefore victims can receive certification once they demonstrate that they have been, are being, or are likely to be helpful.<sup>27</sup>

Once the victim obtains a certification based on their past helpfulness, present helpfulness, or likely future helpfulness and files their U visa application, the U visa regulations impose a responsibility upon the U visa applicant/recipient to provide ongoing assistance when reasonably requested.<sup>28</sup> Those who unreasonably refuse to assist after reporting a criminal activity will not be eligible for a U visa.<sup>29</sup>

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<sup>23</sup> New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53,018.

<sup>24</sup> Dept. of Homeland Security, Instruction Number: 002-02-001, Implementation of Section 1367 Information Provisions, 10 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02001/>.

<sup>25</sup> 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(o)(1).

<sup>26</sup> 8 C.F.R. 214.14(a)(12).

<sup>27</sup> 53019 Fed. Reg. Vol. 72, No. 179. (2007); “8 U.S.C. 1101(a)(15)(U)(i)(III) (“USCIS interprets ‘helpful’ to mean assisting ... authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.”); *see also* 53019 Fed. Reg. Vol. 72, No. 179 (2007) (The requirement was written with several verb tenses, recognizing that an alien may apply for U nonimmigrant status at different stages of the investigation or prosecution. By allowing an individual to petition for U nonimmigrant status upon a showing that he or she may be helpful at some point in the future, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation.”).

<sup>28</sup> 8 C.F.R. § 214.14(b)(3).

<sup>29</sup> DHS Resource Guide at 7.

The U visa statute was structured to offer a realistic flexible approach that would:

- Encourage more victims to come forward and report criminal activity;<sup>30</sup>
- Offer U visa protection early in the case soon after a victim offered helpfulness;<sup>31</sup>
- Encourage ongoing cooperation in investigations and prosecutions when reasonably requested;<sup>32</sup> and
- Recognize that few victims of domestic violence, sexual assault, child abuse, elder abuser, and human trafficking due to trauma, the perpetrator's threat and action, and/or safety concerns may not be able to consistently provide ongoing cooperation every time requested.<sup>33</sup>

To accomplish this, the statute was written to grant immigrant crime victims the ability to attain U visas and lawful permanent residency even when they do not offer ongoing assistance so long as their refusal to provide assistance was not unreasonable.

- U visa applicants and recipients can receive wait-list approval, be granted the U visa, and be granted lawful permanent residency as U visa holders if they provide ongoing cooperation or if they demonstrate to DHS that they did not to unreasonably refuse to provide help, assistance, or cooperation.<sup>34</sup> Whether a victim's refusal or inability to cooperate was unreasonable is determined by:
  - 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>35</sup>
  - If the victim's ongoing cooperation in the investigation or prosecution 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>36</sup>
- Being helpful is **not** related to whether the perpetrator of the criminal activity has a warrant issued, whether the case is ongoing or closed, is prosecuted, is arrested, is convicted, etc.

<sup>30</sup> Kristina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending*, National Immigrant Women's Advocacy Project at 2-3 (2014) (Research has found that once immigrant victims file for immigration relief, they are more willing to turn to the justice system (police, prosecutors, courts) for help), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Qref-SafetyPlanning-06.18.14.pdf>; Kristina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants*, National Immigrant Women's Advocacy Project at 29-30 (2014), [http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL\\_Report-on-Early-Access-to-EAD\\_02.12.pdf](http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL_Report-on-Early-Access-to-EAD_02.12.pdf).

<sup>31</sup> 53019 Fed. Reg. Vol. 72, No. 179. (2007).

<sup>32</sup> *Id.*

<sup>33</sup> 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008).

<sup>34</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);

<sup>35</sup> 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008); 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%2012.08.08.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view)

<sup>36</sup> Leslye E. Orloff, Alina Husain, Alisha Lineswala and Benish Anver, U Visa Quick Reference for Judges (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>; Leslye E. Orloff, Alina Hussain, Alisha Lineswala, Benish Anver and Daniel Enos, U Visa Quick Reference for Law Enforcement and Prosecutors (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-law-enforcement-and-prosecutors>; NIWAP, American University, Washington College of Law, The Vera Institute Of Justice, Legal Momentum, *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (2018)(Funded by the Bureau of Justice Assistance and the Office on Violence Against Women, U.S. Department of Justice and the State Justice Institute) (U Visa Toolkit) <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; NIWAP, American University, Washington College of Law, U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officials (2018) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.

- Being “helpful” is **independent** from the results of the case.<sup>37</sup> Once the victim has provided helpfulness, the “helpfulness” requirement is satisfied even if:
  - An arrest or prosecution cannot take place due to evidentiary or other circumstances;<sup>38</sup>
  - The victim reported the crime but there was no further investigation;
  - Victims give helpful information to law enforcement which is documented in a police report, but the charging deputy declines to file charges;
  - The perpetrator has not been identified, has absconded, or is in hiding to avoid arrest;<sup>39</sup>
  - If the victim cooperated with law enforcement and the case is dismissed due to the mishandling of evidence or an unlawful search;<sup>40</sup>
  - The victim is not needed as a witness;
  - Victim reported a past crime that at the time of the incident the victim did not feel safe to report (there is no statute of limitations);<sup>41</sup>
  - The perpetrator has been deported;
  - The perpetrator is prosecuted for a different crime;
  - The criminal case did not result in a guilty plea or conviction;
  - 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 for which the victim is providing evidence, the victim reports a qualifying U visa criminal activity which is not being prosecuted (e.g. a decision is made to prosecute a drug or gang related case instead of the domestic violence or sexual assault);
  - 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;
  - The victim is dead and the immigrant seeking certification is an indirect victim family member;
  - The court case related to the criminal activity (criminal, civil, or family) is closed or was completed a long time ago;
  - Victim has a criminal history;
  - Victim is subject to immigration enforcement;
  - Victim is reticent at first to cooperate, but later discloses events or offers helpfulness after better understanding rights or after being provided meaningful language access;
  - Victim did not initially report to EEOC, but was identified as a similarly situated class member of the qualifying criminal activity;

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<sup>37</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>38</sup> DHS Resource Guide at 11.

<sup>39</sup> U Visa Toolkit at 5.

<sup>40</sup> DHS Resource Guide at 11-12.

<sup>41</sup> *Information for Law Enforcement Agencies and Judges: Important Things to Remember*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>.

### 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>42</sup>
- Trial transcripts<sup>43</sup>
- Court Findings, rulings, and other documents<sup>44</sup>
- Police reports<sup>45</sup>
- News articles<sup>46</sup>
- Copies of Reimbursement form for travel to and from court.<sup>47</sup>
- Affidavits of other witnesses or officials<sup>48</sup>

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

If a child victim is dead, incapacitated, or incompetent, another person can meet the “helpfulness” requirement:

- On behalf of an immigrant victim who is a child, or who is incapacitated or incompetent the person who provides the helpfulness may be:<sup>49</sup>
  - A parent;
  - Guardian; or
  - Next friend
- When a victim has died, is a child, or is incapacitated or incompetent, certain family members are eligible to file for U visas as indirect victims:<sup>50</sup>
  - Adult victims
    - Spouses
    - Children under 21 years of age
  - Child victims
    - Spouses
    - Children under 21 years of age
    - Parents
    - Unmarried siblings under the age of 18 years

### Checklist for Criminal Cases

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

- Victim called police to report the crime
- Victim spoke freely with responding officers
- Victim participated in interviews with police investigators

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<sup>42</sup> U Visa Rule at 53024.

<sup>43</sup> U Visa Rule at 53024.

<sup>44</sup> U Visa Rule at 53024.

<sup>45</sup> U Visa Rule at 53024.

<sup>46</sup> U Visa Rule at 53024.

<sup>47</sup> U Visa Rule at 53024.

<sup>48</sup> U Visa Rule at 53024.

<sup>49</sup> 8 C.F.R. 214.14(b)(2) & (3)

<sup>50</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. [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 allowed the police to take photographs of injuries and/or the crime scene
- Making or attempting to make a police report
- Reporting a Crime
- 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
- Participating in pre-arrest identification on scene
- Victim sought medical assistance provided as evidence or the victims is willing to sign a medical release form
- Participating in a forensic medical, rape kit, or SART medical examination
- Registering for VINE or other victim notification system
- 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 perpetrated by the 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 preparation sessions with the prosecutor
- Testifying at or attending the initial appearance, bond hearing, preliminary hearing, or arraignment
- Testifying as a witness before a grand jury
- Testifying at or attending pre-trial motions
- Testifying at or attending the trial
- Testifying at or attending post-trial motions
- Testifying at or attending sentencing
- Providing a victim impact statement
- Reporting parole/ probation violations
- Testifying at or attending parole hearings
- Testifying at or attending parole/probation violation hearings
- Working with social services, if required
- Serving as a witness in a another prosecution or investigation involving the perpetrator

### **Checklist of Family Law Cases**

**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 sought and/or received an temporary, interim, or ex parte protection order<sup>51</sup>

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<sup>51</sup> Certifications signed after the court proceeding has concluded or after the court has issued its final appealable order are signed as an administrative function of the court. Courts considering requests for certification while a civil, family or criminal case is pending will need to provide the parties an opportunity to be heard on the certification request. Judges signing U visa certifications in open cases may need to consider whether judicial ethics rules will allow the judge to continue to hear the case in the future.

- Victim returns to court to receive a permanent protection order
- Victim testifies in a default or contested protection order proceeding
- Provided information to assist with service of a civil or criminal protection order on the perpetrator by local police and/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, child abuse, and/or other U visa criminal activity in a custody, divorce, paternity, child support or other family court action, including but not limited to providing testimony, photographs of injuries, or medical records
- Providing information regarding child/elder abuse to protective services/investigators
- Victim attends court for a family court show cause hearing to report perpetrator's violations or contempt of family court custody and visitation order when threats or other criminal activity occurs
- Providing evidence or testifying in a child or elder abuse or neglect case
- Providing a history of violence perpetrated by the offender
- Victim provides the court with information about calling 911 for help, speaking to responding officers, making a police report of providing any other helpfulness to law enforcement or prosecutors listed on the law enforcement/prosecutors checklist above
- Victim provides the court information about filing or participating in and revealing the U visa listed criminal activity in a civil case including the activities listed in the civil court check list below.

### Checklist for Civil Court Cases

**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
- Victim testified in a landlord tenant case regarding domestic violence, child abuse, or other U visa listed criminal activity
- Victim filed a small claims case against the abuser providing evidence of a U visa criminal activity
- Victim revealed the U visa criminal activity in a civil court case including but not limited to a tort action
- Providing evidence of domestic violence, child abuse, human trafficking, or other U visa criminal activity in a small claims, housing, or other civil court case, including but not limited to providing testimony, photographs of injuries, or medical records
- The victim provides the court in the civil case information listed on the criminal or family court checklists above.