

How to Obtain U Visa Certification in Family and Criminal Courts

July 29, 2015
Workshop II, Session C
New Orleans, LA

Introductions

Commissioner Loretta Young

- New Castle County Family Court,
Wilmington, Delaware

Judge Mary Weir

- Jackson County Court, Kansas City, Missouri

Leslye E. Orloff

- Director, National Immigrant Women's
Advocacy Project (NIWAP)

Learning Objectives

By the end of this workshop you will be better able to:

- Inform judges about the U visa and its legislative/regulatory history and purpose
- Cite correct information on U visa certification to judges about their role from the U.S. Citizenship and Naturalization Services (USCIS)
- Articulate how U visa certification promotes justice and fairness
- Obtain U visa certifications from judicial officers in family, civil, and criminal court cases

Large Group Discussion

What are the questions about U visa certification by judges that you would like answered by the end of this workshop?

Have you worked on a case in which a judge signed a U visa certification?



Brief U Visa Overview

U Visa Requirements

- “Victim” of a **qualifying criminal activity** who possesses credible information
- Has been, is being or is likely to be helpful in detection, investigation, prosecution, conviction, or sentencing of a criminal activity
- Substantial physical or mental abuse as a result of the victimization
 - Includes effect on the victim and the severity of the perpetrator’s conduct
- Crime occurred in the U.S. or violated **U.S. law**

U Visa Qualifying Criminal Activities

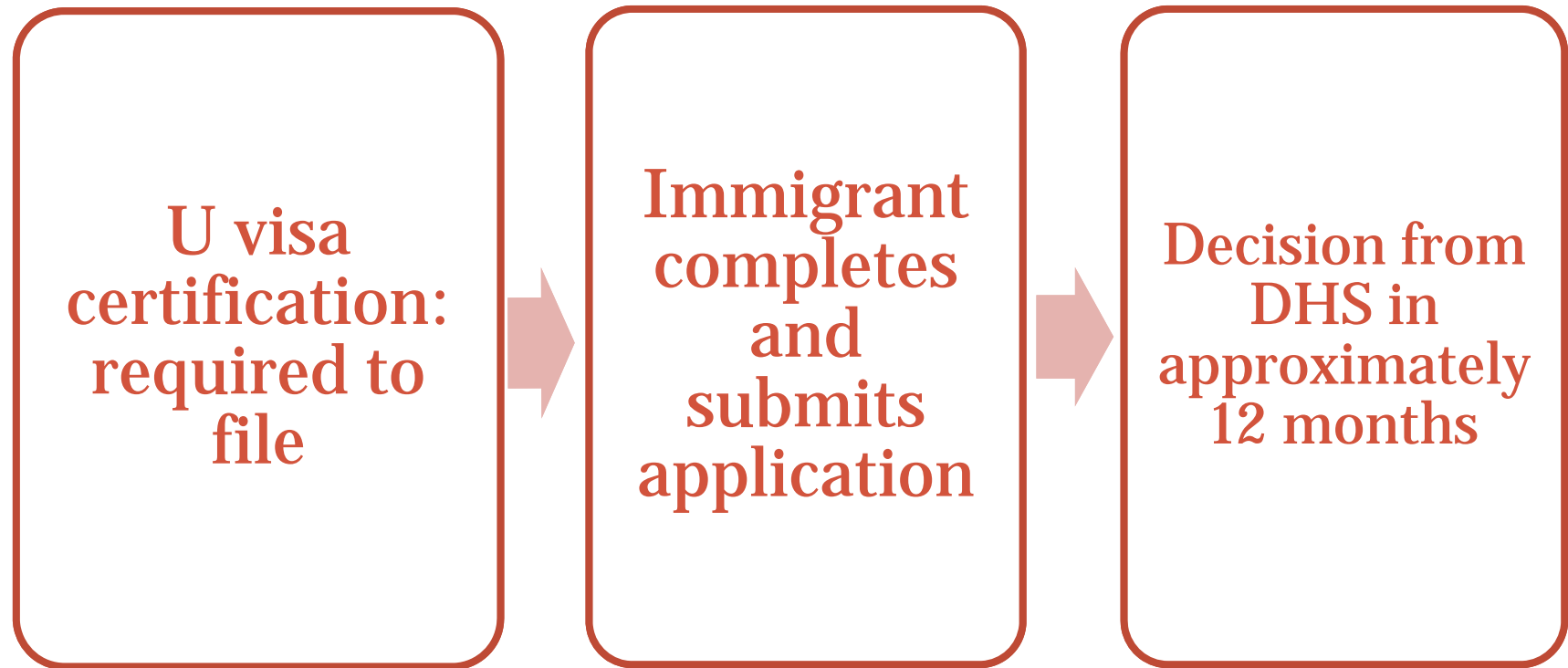
Abduction	Murder
Abusive Sexual Contact	Obstruction of Justice
Blackmail	Peonage
Domestic Violence	Perjury
Extortion	Prostitution
False Imprisonment	Rape
Felonious Assault	Sexual Assault
Female Genital Mutilation	Sexual Exploitation
Fraud in Foreign Labor Contracting	Slave Trade
Hostage Taking	Stalking
Incest	Torture
Involuntary Servitude	Trafficking
Kidnapping	Unlawful Criminal Restraint
Manslaughter	Witness Tampering

U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

The U Visa Application Process



Who Can Sign a U visa Certification?



Who Can Sign a U Visa Certification?

- Any entity that detects, investigates, prosecutes, convicts, or sentences criminal activity may sign a certification including:
 - Based on probable cause or detection of criminal activity
 - Judges, Magistrates, Commissioners, Other Judicial Officers
 - EEOC, State and federal departments of labor

Who Can Sign a U Visa Certification?

- Based on investigation or prosecution of criminal activity
 - Police and prosecutors
 - Child or Adult Protective Services
 - Federal agencies (DHS, ATF, FBI, DOL)
- Based on Conviction or Sentencing
 - Prosecutors
 - Judges, magistrates, commissioners, and other judicial officers

Why Would a Victim Seek U Visa Certification From a Judge?



Importance of Legislative History and Purpose in Seeking U Visa Certification

What role does VAWA and U Visa legislative history play in seeking certification from judges?

- Counter incorrect U visa information in published court cases with correct information from:
 - Legislative history
 - U visa regulations and regulatory history (Preamble)
 - DHS policies and training materials

Violence Against Women Act – Purpose

- Federal role in stopping
 - Domestic violence
 - Sexual assault
 - Trafficking in persons
- Meeting two equally important goals
 - Increasing justice system's role in offender accountability
 - Victim assistance, protection and services
- Designed to help ALL victims
 - Immigration relief key component of legislation
 - Builds upon 1990 Battered Spouse Waiver

Historical Context of VAWA Immigration Legislation

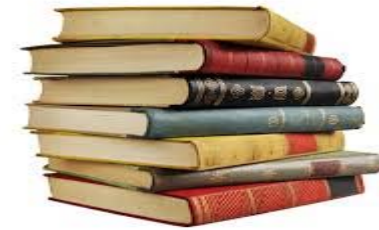
“Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic, and immigration barriers to their safety. Abusers of immigrants- spouses or children are liable to use threats of deportation to trap them in endless years of violence.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

Senator Ted Kennedy, VAWA 2005

Congressional Testimony

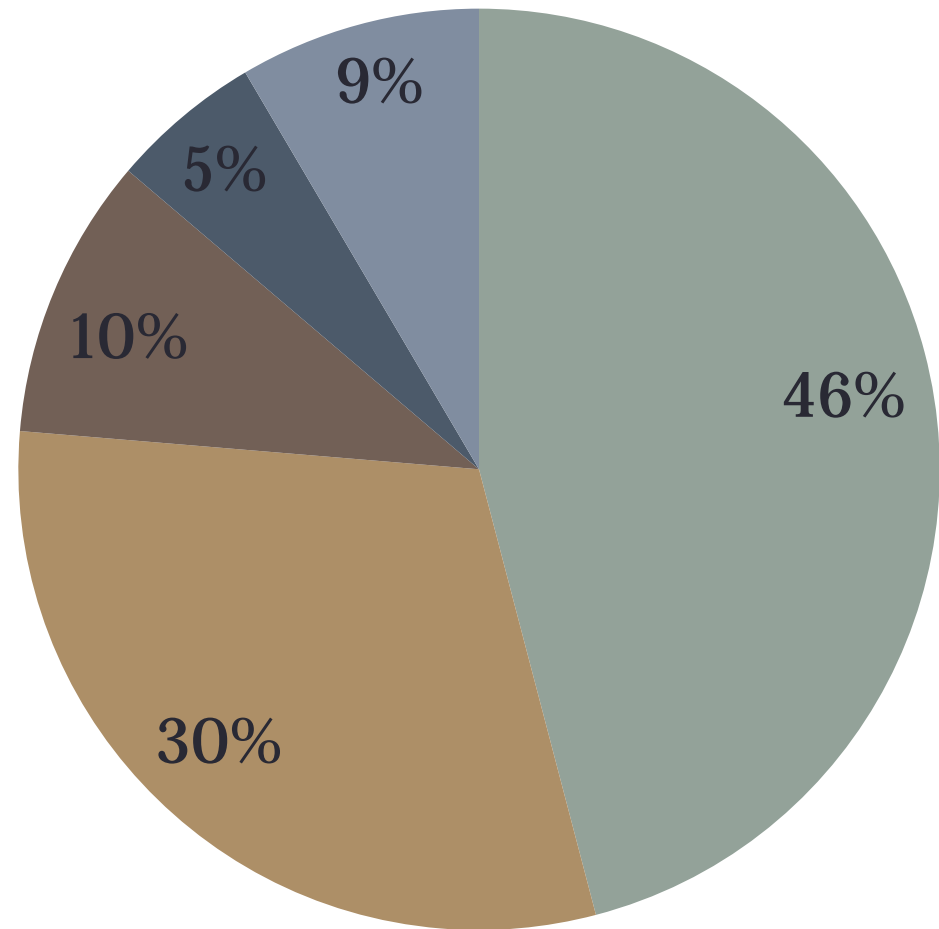
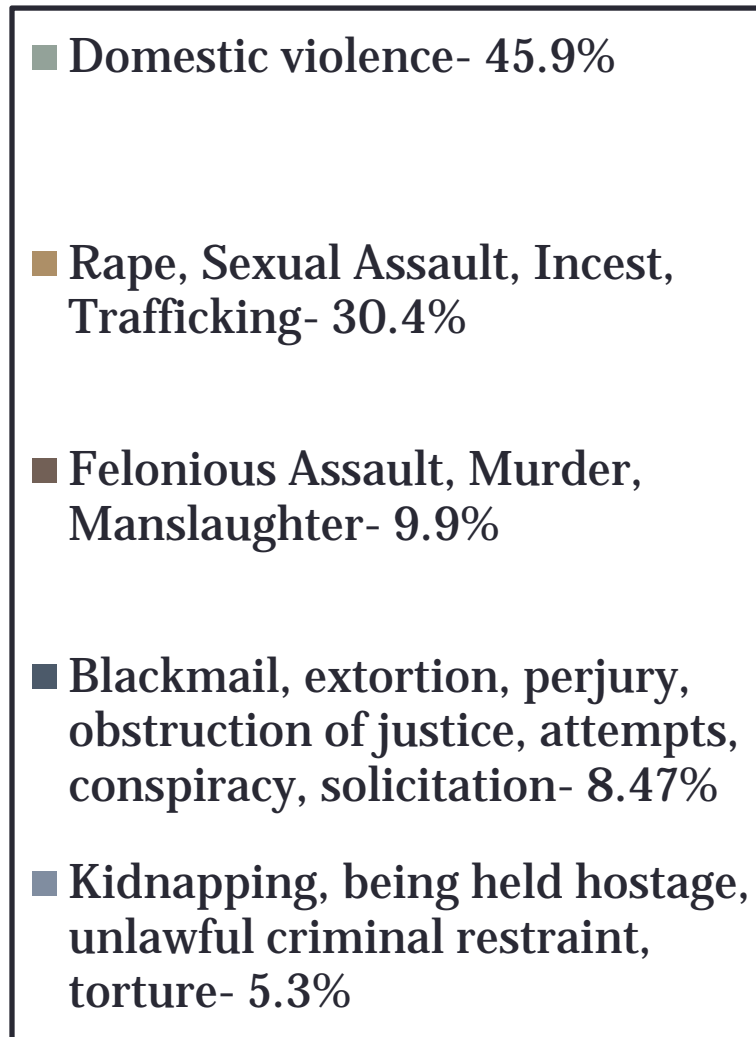
U Visa Legislative History:

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



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

U-Visa Criminal Activities (11/2011 data)



T and U Visa Legislative History:

House Congressional Record 10/6/2000

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

Excerpt of Speech by Rep. John Conyers, Jr.

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

Re: VAWA 2005 (12/18/2005)

U Visa Legislative History:

VAWA 2000 Section 1513(a)

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

Purpose of the U Visa

- Improves access to justice for immigrant crime victims
- Is a tool that helps build community policing and relationships with immigrant crime victims
- Increases prosecution of perpetrators of crimes against immigrant victims
- Allows victims to report crimes without fear of deportation
- Enhances victim safety
- Keeps communities safe



How can you use the information you learned today to help educate the courts in your community and in your individual cases?

Tools on the Web: To Use in Preparing Requests to Judges for Certification

- Legislative History of VAWA (94, 00, 05), T and U Visas, Battered Spouse Waiver, and VAWA Confidentiality
- Judges and U Visa Certification: A Guide to Legally Correct Information
- Judges U Visa Certification Toolkit

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

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

OMB No. 1615-0104 Expires 09/31/2010
I-918 Supplement B

U Nonimmigrant Status Certification

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

START HERE - Please type or print in black ink.

Part 1. Victim information.			For USCIS Use Only.	
Family Name	Given Name	Middle Name	Returned	Receipt
Other Names Used (Include maiden name/nickname)			Date	Date
Date of Birth (mm/dd/yyyy)	Gender		Resubmitted	Date
	<input type="checkbox"/> Male <input type="checkbox"/> Female		Date	Date
Part 2. Agency information.			Date	Reloc Sent
Name of Certifying Agency			Date	Date
Name of Certifying Official	Title and Division/Office of Certifying Official		Date	Reloc Rec'd
Name of Head of Certifying Agency			Date	Date
Agency Address - Street Number and Name			Date	Remarks
Suite #				
City	State/Province	Zip/Postal Code		
Daytime Phone # (with area code and/or extension)	Fax # (with area code)			
Agency Type				
<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local				
Case Status				
<input type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> Other				
Certifying Agency Category				
<input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other				
Case Number				
FBI # or SID # (if applicable)				
Part 3. Criminal acts.				
I. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)				
<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade	
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture	
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking	
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint	
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering	
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)	
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)	
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes		

Form I-918 Supplement B (08/31/07)

Will Judges Most Often Certify...

- *Based on past or present helpfulness?*
- *Based on future helpfulness?*



What are examples of helpfulness that a victim may have provided to police/prosecutors on which a court can detect helpfulness for certification?



Small Group Discussion

- List the types of cases that would contain information about crime victimization and helpfulness sufficient for a judge to sign a certification
 - For each case type list the evidence the judge could have in that case of:
 - Victimization
 - Helpfulness



Cases in Which A Judge Could Certify

- Family
 - Civil Protection Order
 - Custody Case
 - Child Abuse, Neglect, or Termination of Parental Rights
 - Divorce Case
- Criminal
- Juvenile
- Civil
 - Employment
 - Tort damages against a perpetrator

When the Court is the “First Responder” to Provide Language Access: Only Certification Option

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

Helpfulness Requirement Met *Even When:*

- Victim reports a crime and there's no further investigation
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order, but domestic violence is not being criminally prosecuted

Criminal Activity and Helpfulness

Evidence Standard Sufficient for Certification

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

Criminal Activity and Helpfulness

Evidence Standard Sufficient for Certification

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

Certifying Judges Will Need to Amend Form I-918, Supplement B

- Judges may amend the language of the form to accurately reflect the basis upon which the judge is signing the certification
 - Probable cause, findings, rulings;
 - Include the type of proceeding; and
 - If orders were issued, attach a copy of the order
- Judges can amend the form – e.g., I certify:
 - Based upon my having probable cause
 - Based upon my issuance of a civil protection order
 - Based on my having presided over the criminal case
 - Based upon my findings in a [custody/divorce] case of [domestic violence/child abuse]

Addressing Common Myths and Misinformation About the U Visa

True/False

1. DHS adjudicates U visas *de novo* after judicial certification
2. A certification attests to the immigrant's helpfulness -- a helpful immigrant may or may not have good moral character
3. If a judge signs a certification and the victim later fails to provide future cooperation, the judge must notify DHS and withdraw the certification

Reasonable Refusal to Cooperate?



- Totality of the circumstances, including the nature of the victimization
- Victim's fear of the abuser
- Trauma suffered
- Force, fraud, or coercion

True/False

1. The certification provides initial evidence, does not control DHS adjudication
2. Judges can only certify within a specified time frame after the case before them has concluded
3. Judges can sign even when criminal case did not go forward
4. A U visa gives an undocumented immigrant “preferential immigration status”

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



How Can Judges Remain Impartial and Avoid the Appearance of Impropriety When Certifying? (Rule 2.2 and 1.2 ABA Model Code of Judicial Conduct)

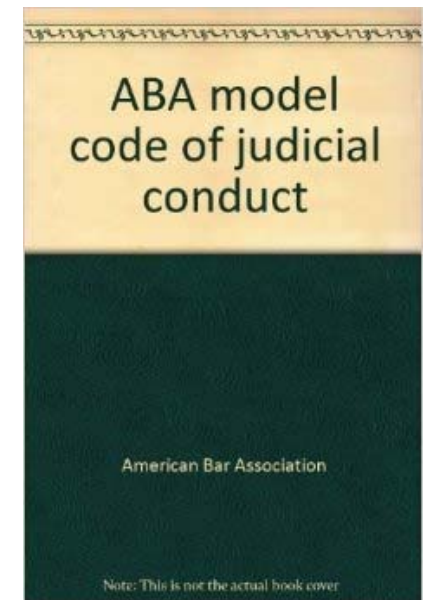
- Completing the certification verifies facts and evidence
 - In findings, rulings, or that the court has probable cause to believe. These are:
 - Part of a judge's regular duties
 - Objective judicial determinations
- Similar to issuing a warrant
- Authorized by federal statute, no impropriety in certifying



Ex Parte Communications Bar

(Rule 2.9 ABA Model Code of Judicial Conduct)

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



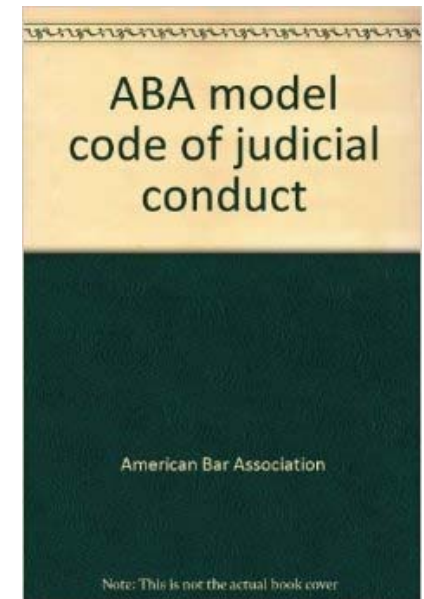
Is Notice Required?

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

Ex Parte Communications Bar

(Rule 2.9 ABA Model Code of Judicial Conduct)

- In *pending and impending* matters
- May qualify as “authorized by law” exception
 - Similar to protection orders, witness protection and warrants
 - Congress listed judges as U visa certifiers
 - Promotes consistency with federal VAWA confidentiality laws applying to U visa cases



Judicial Discretion to Certify in Open Cases

- Not a violation of ethical rules to certify
- Question of law and fact, if appropriate, on a case-by-case basis
- Judge may later have to decide on recusal
- State judicial ethics rules may require notice to the parties of the U visa certification request and opportunity to be heard
- With notice to the perpetrator
- Safety planning essential

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

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

Similar to a TRO/ Preliminary Injunction

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

DHS Contact Information

USCIS Vermont Service Center

802-527-4888 (hotline)

[LawEnforcement_UTVAWA.vsc@
uscis.dhs.gov](mailto:LawEnforcement_UTVAWA.vsc@uscis.dhs.gov)

USCIS Policy

Amany.Ezeldin@uscis.dhs.gov

202-272-8981

USCIS—Vermont Service Center

ATTN: Crime Victims Unit

75 Lower Welden Street

St. Albans, VT 05479

DHS Blue Campaign

www.dhs.gov/bluecampaign

BlueCampaign@dhs.gov

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2015
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

THIS PROJECT WAS SUPPORTED BY GRANT NO. 2013-TA-AX-K009 AWARDED BY THE OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE. THE OPINIONS, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS EXPRESSED IN THIS PUBLICATION/PROGRAM/EXHIBITION ARE THOSE OF THE AUTHOR(S) AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN.

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