

U Visas and Potential Impeachment Disclosure



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U VISAs

- ▶ The U Visa was created in the Violence Against Women Act (VAWA) under the Victims of Trafficking and Violence Prevention Act of 2000
- ▶ It was created to “(1) strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, and other criminal activities; and (2) to protect immigrant victims of such activities.”¹

U VISAs

- ▶ “The legislation was 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 also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.”²

What does a U Visa Do?

- ▶ “If approved for a U visa, a victim will receive legal status for up to four years.
- ▶ This status will permit the crime victim to live and work in the United States for the duration of the U visa.
- ▶ At the end of the third year, the U visa recipient may be eligible to apply to adjust his or her status to lawful permanent residence (commonly known as a “green card”).
- ▶ Receiving a U Visa does not directly or necessarily grant lawful permanent residency.
- ▶ Lawful permanent residency will be granted only to U visa recipients who can provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution and that their continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.”³

Eligibility

- ▶ “Direct Victims
- ▶ The victim of qualifying criminal activity.
- ▶ A person who has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- ▶ A person who has information about the criminal activity. If that person is under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may provide the information about the crime on their behalf.
- ▶ The person was helpful, is helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime. If the person is 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 their behalf.
- ▶ The crime occurred in the United States or violated U.S. laws.”⁴

Eligibility

- ▶ People who are culpable for the criminal activity being investigated or prosecuted are not eligible for a U Visa.
- ▶ Domestic Violence victims that are accused by their abusers of committing domestic violence crimes, may still be eligible for a U Visa where the evidence suggests that the allegations were fabricated by the victim's abuser.
- ▶ The certifying agency may still complete the U Visa application.⁵

Eligibility

- ▶ “Indirect Victims:
 - ▶ A person may be eligible as an indirect victim if:
 - ▶ The person has a qualifying family relationship to the direct victim
 - ▶ If the direct victim is age 21 or older at the time the qualifying crime was committed, their spouse and unmarried children under age 21 may qualify.
 - ▶ If the direct victim is under age 21 at the time the qualifying crime was committed, their spouse, unmarried children under age 21, parents, and unmarried siblings under age 18 may qualify.
 - ▶ The direct victim is unable to assist law enforcement because they are deceased due to murder or manslaughter; or
 - ▶ In competent or incapacitated due to injury, trauma, or age.”⁶

Qualifying Crimes

- ▶ Abduction
- ▶ Abusive Sexual Contact
- ▶ Blackmail
- ▶ Domestic Violence
- ▶ Extortion
- ▶ False Imprisonment
- ▶ Female Genital Mutilation
- ▶ Felonious Assault
- ▶ Fraud in Foreign Labor Contracting
- ▶ Hostage
- ▶ Incest
- ▶ Involuntary Servitude
- ▶ Kidnapping
- ▶ Manslaughter
- ▶ Murder
- ▶ Obstruction of Justice
- ▶ Peonage
- ▶ Perjury
- ▶ Prostitution
- ▶ Rape
- ▶ Sexual Assault
- ▶ Sexual Exploitation
- ▶ Slave Trade
- ▶ Stalking
- ▶ Torture
- ▶ Trafficking
- ▶ Witness Tampering
- ▶ Unlawful Criminal Restraint
- ▶ Other Related Crimes*†
- ▶ *Includes any similar activity where the elements of the crime are substantially similar.
- ▶ †Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.⁷

Qualifying Crimes

- ▶ Congress established the qualifying criminal activities listed above for the U Visa.⁸
- ▶ The crimes listed are general categories of crimes and are not specific to any criminal code.
- ▶ The only exception is the “Fraud in Foreign Labor Contracting” charge, which is a specific federal offense.⁹
- ▶ A victim may also qualify for a U Visa if the crime detected, investigated, or prosecuted by a certifying agency involves activity where the nature and elements of the crime are substantially similar to a qualifying crime listed.¹⁰

Applying for a U Visa

- ▶ Form I-918, Supplement B, U Nonimmigrant Status Certification. The Form I-918, Supplement B, must be signed by an authorized official of the certifying law enforcement agency and the official must confirm that you were helpful, and currently being helpful, or will likely be helpful in the investigation or prosecution of the case.¹¹
- ▶ Forms can be found at <https://www.uscis.gov/I-918>

Applying for a U Visa

- ▶ Certain qualifying family members are eligible for a derivative U visa based on their relationship to the principal, filing for the U visa. The principal petitioner must have their petition for a U Visa approved before their family members can be eligible for their own derivative U Visa.¹²

Law Enforcement Certification

- ▶ Form I-918B is a five-page form that immigrant victims of crime must submit as part of their U Visa Application.¹³
- ▶ The form must be signed by a certifying law enforcement agency or official which attests to specific information.

Law Enforcement Certification

- ▶ “Certifying Agency:
 - ▶ Detects, investigates, and/or prosecutes allegations of qualifying crimes, including the conviction, or sentencing of the perpetrator.
 - ▶ Determines, within the certifying agency’s discretion, whether to complete and sign Form I-918B, in accordance with the agency’s procedures and designated signing authority.
 - ▶ Confirms to USCIS that the victim is complying with reasonable requests for assistance.”¹⁴

Signing Authority

- ▶ Certifying Agency:
 - ▶ The head of the certifying agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications.¹⁵
 - ▶ The person signing should either be the head of the certifying agency or the person the agency has designated as a certifying official.
 - ▶ The form must contain an original signature.

What information must the applicant possess?

- ▶ “The applicant must possess credible and reliable information about qualifying criminal activities or events leading up to the victimization.
- ▶ The applicant must provide ongoing assistance with the investigation or prosecution related to the qualifying crimes when reasonably requested.
- ▶ This responsibility continues even after the U nonimmigrant status is granted to the victim.”¹⁶

Is an investigation or prosecution required?

- ▶ There is no requirement that an investigation or prosecution be initiated or completed after the victim reports the crime and makes themselves available to reasonable requests for assistance.¹⁷

What Does Signing Mean?

- ▶ By signing a U Visa certification, you are attesting that:
 - ▶ “The person is a victim of qualifying criminal activity; and
 - ▶ The person has been, is being, or is likely to be, helpful in the detection, investigation, or prosecution, of the qualifying criminal activity; and
 - ▶ The person has complied with all reasonable requests for assistance; and
 - ▶ The information on the form is accurate to the best of your knowledge; and
 - ▶ You have direct knowledge of the information listed or you have reviewed relevant records.”¹⁸

What does signing mean?

- ▶ By signing a U Visa certification, you are not granting immigration status.¹⁹

What is Helpfulness?

▶ Examples:

- ▶ “Permission given to law enforcement for a minor victim or witness to be interviewed;
- ▶ Consent given to recorded forensic interview at a child advocacy center;
- ▶ Allowed evidentiary photographs to be taken of communications, injuries, property, etc;
- ▶ Signed a medical release of information;
- ▶ Maintained contact with Victim/Witness Case Manager regarding case status;
- ▶ Submitted written or oral victim impact statement to court;
- ▶ Conferred with prosecution team prior to plea negotiations or evidentiary hearings;
- ▶ Provided testimony in court;
- ▶ Conferred with Pre-Sentence Investigator;
- ▶ Did not unreasonably interfere with the prosecution of the case; and/or
- ▶ Did not unreasonably recant or minimize statement to law enforcement or DA's Office.”²⁰

What if the statute of limitations has run?

- ▶ Prosecution agencies can complete a Form 1-918B for investigations or cases that are closed. There is no applicable statute of limitations that precludes the signing of a certification.²¹

Duration of the application

- ▶ A victim must submit the U Visa petition within 6 months of the date the Form 1-918B was signed.²²

Termination/Revocation

- ▶ “Inform U.S. Citizenship and Immigration Services (USCIS) when a victim refuses or fails to provide assistance when reasonably requested.
- ▶ Inform USCIS of any known criminal activity.
- ▶ Alert USCIS of any suspected fraud.”²³

Is certification required?

- ▶ RCW 7.98.020 provides:
 - ▶ (1) Upon the request by the victim or representative thereof ... a certifying agency shall:
 - ▶ (a) Make a determination on United States citizenship and immigration services form I-918 supplement B or relevant successor certification form, whether the victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity; or
 - ▶ (b) make a determination on United States citizenship and immigration services form I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim.

Is certification required?

- ▶ RCW 7.98.020 (2) provides:
 - ▶ Upon a certifying agency's affirmative determination under subsection (1) of this section, the certifying official shall fully complete and sign the certification, including, if applicable, the specific details regarding the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of criminal activity.

Is certification required?

- ▶ RCW 7.98.020 (3) provides:
 - ▶ A certifying agency shall process the certification within ninety days of request.
 - ▶ If the victim is in federal immigration removal proceedings, the certifying agency shall execute the certification no later than fourteen days after the request is received by the agency.
 - ▶ In any case in which the victim or the victim's children would lose any benefits under 8 U.S.C. Sec. 1184 (o) and (p) by virtue of having reached the age of twenty-one years within ninety days after the certifying agency receives the certification request, the certifying agency shall execute the certification no later than fourteen days before the date on which the victim or child would reach the age of twenty-one years or ninety days from the date of the request, whichever is earlier.
 - ▶ Requests for expedited certification must be affirmatively raised by the victim.

Is certification required?

- ▶ RCW 7.98.020 (5) provides:
 - ▶ A certifying agency may only withdraw the certification if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated criminal activity when reasonably requested by the certifying agency.

What else is required?

- ▶ RCW 7.98.020 (6) provides:
- ▶ The head of each certifying agency shall designate an agent, who performs a supervisory role within the agency, to perform the following responsibilities:
 - ▶ (a) Respond to requests for certifications;
 - ▶ (b) Provide outreach to victims of criminal activity and trafficking to inform them of the agency's certification process; and
 - ▶ (c) Keep written documentation regarding the number of victims who requested certifications, the number of certification forms that were signed, the number of certification forms that were denied, and the number of certifications that were withdrawn, which must be reported to the office of crime victims advocacy on an annual basis.

What else is required?

- ▶ RCW 7.98.020 (6)(c) requires each certifying agency identified in RCW 7.98 to keep written documentation of the following:
 - ▶ The number of certification forms requested
 - ▶ The number of certification forms signed
 - ▶ The number of certification forms denied
 - ▶ The number of certification forms withdrawn

What else is required?

- ▶ Annual reports are due to the Office of Crime Victims Advocacy by August 15th for the state fiscal year time period: July 1 – June 30.
- ▶ **Certifying Agency Reporting Form**
 - ▶ <https://app.smartsheet.com/b/form/0197cc7fbef67853abad15047861ad8f>
- ▶ **Annual reporting Form and data**
 - ▶ <https://app.smartsheet.com/b/publish?EQBCT=ff44e279d255401c81690f2123d477fb>

What else is required?

- ▶ RCW 7.98.020 (7) provides:
- ▶ All certifying agencies shall develop a language access protocol for limited English proficient and deaf or hard of hearing victims of criminal activity.

What else is required?

- ▶ RCW 7.98.020 (8) provides:
- ▶ A certifying agency shall reissue any certification within ninety days of receiving a request from the victim of criminal activity or trafficking or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider.

What else is required?

- ▶ RCW 7.98.020 (9) provides:
- ▶ A certifying agency shall not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless required to do so by applicable federal law or court order, or unless the certifying agency has written authorization from the victim or, if the victim is a minor or is otherwise not legally competent, by the victim's parent or guardian.
- ▶ ***This subsection does not modify prosecutor or law enforcement obligations to disclose information and evidence to defendants under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), or Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555; 131 L. Ed. 2d 490 (1995), or any related Washington case law, statutes, or court rules.***

Does a U Visa Application Indicate Bias?

- ▶ “... [T]he right to present evidence of a witness's bias is essential to the fundamental constitutional right of a criminal defendant to present a complete defense, which encompasses the right to confront and cross-examine adverse witnesses.” ***State v. Orn*, 197 Wash.2d 343 (2021)**
- ▶ “Evidence of bias is particularly probative of a witness's credibility when it stems from a witness's motive to cooperate with the State based on the possibility of leniency or the desire to avoid prosecution.” ***Orn at 354***.
- ▶ “Such evidence serves as a ‘more particular attack on the witness’ credibility’ because it exposes a witness's motivation in testifying.” ***Id.***
- ▶ And “[t]he right of cross-examination allows more than the asking of general questions concerning bias; it guarantees an opportunity to show *specific reasons why* a witness might be biased in a particular case.” ***Id.***

Does a U Visa Application Indicate Bias?

- ▶ “In *State v. Carballo*, 17 Wash. App. 2d 337 (2021), this court addressed the admissibility of a witness's immigration status to demonstrate bias. We held that the trial court committed error in violation of the defendant's Sixth Amendment right to cross examination and to present a defense, when it refused to allow the defendant to cross-examine the State's key witness about her immigration status.” ***State v. Bravo*, 33 Wash.App.2d 749, 762 (2025)**
- ▶ “We agreed and reasoned, “[t]he ability to provide the motive to fabricate after the key witness admits to being untruthful is critical for the defense in a case in which the State's theory relied so heavily on that witness' credibility.” ***Id.***
- ▶ “To justify exclusion, the State must show that the evidence is ‘so prejudicial as to disrupt the fairness of the factfinding process.’” ***Id. at 763.***

What Does ER 413 Require?

- ▶ In September 2017, our Supreme Court adopted ER 413, “prohibiting the introduction of evidence concerning a person's immigration status unless certain procedural requirements are met.” ***State v. Ritchie*, 24 Wn. App. 2d 618, 633 (2022)**.
- ▶ ER 413, as applied to criminal cases, provides:
 - ▶ (a) Criminal Cases; Evidence Generally Inadmissible. In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607.
 - ▶ The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

What Does ER 413 Require?

- ▶ (1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.
- ▶ (2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.
- ▶ (3) If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.

What Does ER 413 Require?

- ▶ (4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.
- ▶ (5) Nothing in this section shall be construed to exclude evidence if the exclusion of that evidence would violate a defendant's constitutional rights.

Application of ER 413

- ▶ In *Bedada*, the defendant sought to introduce evidence of his own immigration status for the purpose of showing bias or prejudice of the State's "key witness," the victim of the alleged crimes. ***State v. Bedada*, 13 Wn. App. 2d 185, 198 (2020)**.
- ▶ The State charged Bedada with multiple crimes based on Bedada's alleged assaultive and threatening behavior towards his wife and their children. All charges were primarily supported by the testimony of the wife.
- ▶ Bedada wanted to introduce the wife's US citizenship status and his own nonpermanent resident status to demonstrate her intent to prompt his deportation so she and their kids would not have to deal with him anymore.
- ▶ However, the trial court excluded the evidence based on relevance.

Application of ER 413

- ▶ Division One held that the trial court abused its discretion under ER 413 and reversed Bedada's convictions. In its reasoning, Division One explained that the wife “was the primary witness against Bedada in every charge against him. She was the State's most important witness.”
- ▶ It then noted how demonstrating bias of a key witness has long been considered an important element of a defendant's right to present a defense.

Application of ER 413

- ▶ **State v. Rivera-Diaz** 13 Wash.App.2d 1129 (2020) (UNPUBLISHED)
 - ▶ Rivera-Diaz sought to admit evidence of A.G.'s immigration status to show bias or prejudice under ER 413(a). Rivera-Diaz's offer of proof failed to satisfy the rule's requirements.
 - ▶ ER 413(a)(2) requires the proponent of the evidence to submit "an affidavit or affidavits" setting forth the offer of proof, but Rivera-Diaz provided no affidavit or declaration from a competent witness that set forth what he would prove.
 - ▶ He did not submit his own declaration or affidavit. And he did not submit a declaration or affidavit of any other witness.
 - ▶ Instead, the only declaration Rivera-Diaz submitted was that of defense counsel, who simply asserted she "has reason to believe" that A.G. "has made statements to the effect of having him arrested so that she could get "papers," meaning documentation to allow her to become a United States citizen or lawful status in the United States."

Application of ER 413

- ▶ **State v. Rivera-Diaz** 13 Wash.App.2d 1129 (2020) (UNPUBLISHED)
 - ▶ Rivera-Diaz's failure to meet the threshold requirements of the rule rendered it impossible for the trial court to engage in the balancing analysis under ER 413(a)(4).
 - ▶ Not only did the purported offer of proof come in the form of counsel's declaration, it fell short in significant respects; for example, it failed to identify who would testify, the substance of the testimony, when the witness came to learn of the substance, and the basis for the witness's knowledge.
 - ▶ This deprived the trial court of the ability to evaluate the materiality of the purported evidence and how to address it.
- ▶ Addressing Sixth Amendment Violations
 - ▶ The court held that “[b]oth the confrontation and compulsory process aspects of the Sixth Amendment can be subject to a reasonable procedural rule.”
 - ▶ As discussed above, Rivera-Diaz failed to comply with the reasonable requirements of ER 413, thereby depriving the trial court of a basis to make a ruling. Thus, the trial court properly excluded the evidence and there is no basis for the confrontation claim

Is the U Visa Application Discoverable?

- ▶ CrRLJ 4.7 (a)(3): Except as otherwise provided by protective orders, the prosecuting authority shall disclose to defendant's lawyer any material or information within the prosecuting authority's knowledge that tends to negate defendant's guilt as to the offense charged.
- ▶ We have already established that a U Visa Application is potentially relevant to show bias.
- ▶ Therefore, the application is discoverable under CrRLJ 4.7

Is the U Visa Application Discoverable?

- ▶ Are there portions of the U Visa application which are not discoverable pursuant to CrRLJ 4.7?
 - ▶ Attached medical records?
 - ▶ Other documents which include protected information?
 - ▶ Motion practice to protect said information from disclosure.

Is the U Visa Application Discoverable?

- ▶ What if your agency is not the certifying agency?
 - ▶ The prosecution may also not have the certification in its “care, custody or control” when certified by others.
 - ▶ Other certifiers could include judges or child/adult protective services, the Equal Employment Opportunity Commission, and state or federal labor enforcement agencies.
 - ▶ It would be a best practice to inform the defense of such applications, when you have knowledge of them, even where they are not in your possession.

Which Ethics Rules Apply?

- ▶ **RPC 3.8(d) - Special Responsibilities of a Prosecutor**: Requires prosecutors to make timely disclosures to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.
- ▶ **RPC 3.4 - Fairness to Opposing Party**: Prohibits unlawfully obstructing another party's access to evidence or altering/concealing documents with potential evidentiary value.
- ▶ **RPC 3.3 - Candor Toward the Tribunal**: Requires lawyers to be truthful and not knowingly fail to disclose evidence or legal authority.

Best Practices

- ▶ “Ensure that advocates and victim attorneys understand the prosecutor’s discovery obligation and potential risk to the victim’s privacy should material be turned over by police or prosecutors involved in the case.”²⁴
- ▶ “Educate advocates, and attorneys working with immigrant victim U visa applicants, that any information they provide police or prosecutors in their advocacy is information that the prosecutor will have to turn over to the defense as part of the prosecutor’s criminal discovery obligations. Often times this means that victim advocates and attorneys will limit the information provided in the certification request letter.”²⁵
- ▶ “Consider your ethical obligation to disclose any witnesses that were involved in the certification; e.g. systems based advocates who do not have a confidential relationship with the victim and who have information that is relevant and material to your case or to any *Brady* information.”²⁶

Best Practices

- ▶ Letter to Defense attorney disclosing the application and providing a copy where appropriate.
- ▶ Letter to the applicant or their attorney advising them of the disclosure.

Best Practices

- ▶ “Prepare victim for direct and cross-examination about immigration status and any applications for immigration relief based upon their victimization.”²⁷
- ▶ “Work with systems and community based advocates to ensure that the victim has a safety plan in place and is supported throughout the investigation and prosecution.”²⁸
- ▶ For more information, see Jane Anderson & Benish Anver, Pretrial/Trial Strategies to Limit Evidence of or Attempts by Defense Counsel to Raise Victim’s Immigration Status (2016).

<https://niwaplibrary.wcl.american.edu/wp-content/uploads/Whats-Immigration-Status-Got-To-Do-With-It-Undocumented-Prosecution-Case-Strategies.pdf>

To Certify or Not to Certify?

- ▶ Request from counsel to certify as an attempted felonious assault, an assault with a plastic water bottle as a deadly weapon under RCW 9A.04.110.
- ▶ Victim stated that their head hurt but officers could not see an injury.
- ▶ Definition of deadly weapon, means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm. RCW 9A.04.110(6).
- ▶ "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part. 9A.04.110(4)(b).

To Certify or Not to Certify?

► Form 1-918 certification:

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

1. Signature of Certifying Official (sign in ink)



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

To Certify or Not to Certify?

- ▶ Would you certify?
- ▶ Why or why not?

To Certify or Not to Certify?

- ▶ Facts:
- ▶ Defendant is being chased on a bicycle by law enforcement for a traffic infraction.
- ▶ Defendant has not stopped when he was signaled to do so.
- ▶ He fled into a back yard of a home.
- ▶ The bike was abandoned in the yard.
- ▶ Officers contact the homeowner.
- ▶ Homeowner has limited English proficiency.
- ▶ Homeowner tells law enforcement that a man they do not know has entered the home and was hiding. Homeowner exits home with their children and all are frightened.
- ▶ When law enforcement enters the home the defendant has already left the home.

To Certify or Not to Certify?

- ▶ Facts:
- ▶ When interviewed, the homeowner states that a man they did not know came into the home and crouched down by the dining room table.
- ▶ The man put his finger over his mouth as if telling them to be quiet.
- ▶ The man then got up and ran out the front door.
- ▶ Homeowner stated that they thought the man might steal the child.
- ▶ No facts or actions associated with an attempt to take the child were provided.
- ▶ Homeowner stated that they believed they might be hurt or killed by the subject.
- ▶ No other facts were provided as to how the subject's actions led to this belief.
- ▶ Medical records provided to support PTSD, for the homeowner, because of this event.

To Certify or Not to Certify?

- ▶ Counsel's argument:
 - ▶ The subject's actions amounted to Residential Burglary and Attempted Felonious Assault.
 - ▶ Subject's actions of putting his finger to his mouth and hiding by the dining room table caused the homeowner to believe they or the children might be hurt or killed if they did not comply.
 - ▶ Homeowner is currently in fear the subject might return and retaliate against the family.
 - ▶ RCW 9A.36.031(1)(a); (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree: (a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another.
 - ▶ RCW 9A.28.020; (1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

To Certify or Not to Certify?

- ▶ Counsel's argument:
 - ▶ Subject was evading law enforcement, entered the home, placed the family in extreme fear, ordered them to remain quiet and pointed his finger at them in a threatening manner when leaving.
 - ▶ Counsel requests that the U Visa application be signed on the premise that this was a felony assault or an attempted felony assault.
- ▶ Do you sign?
 - ▶ Why or why not?

To Certify or Not to Certify?

- ▶ Facts:
- ▶ Assailant came back to work after lunch and was acting strangely.
- ▶ The assailant hit another employee by slapping him on the “butt” and grabbing his neck “for a second”.
- ▶ The ability to breathe was not restricted as the victim was able to push the hand off quickly.
- ▶ Slight red marks on the victim’s neck.
- ▶ Assailant agreed he slapped the victim on the “butt” and calling him a “lazy bitch”.

To Certify or Not to Certify?

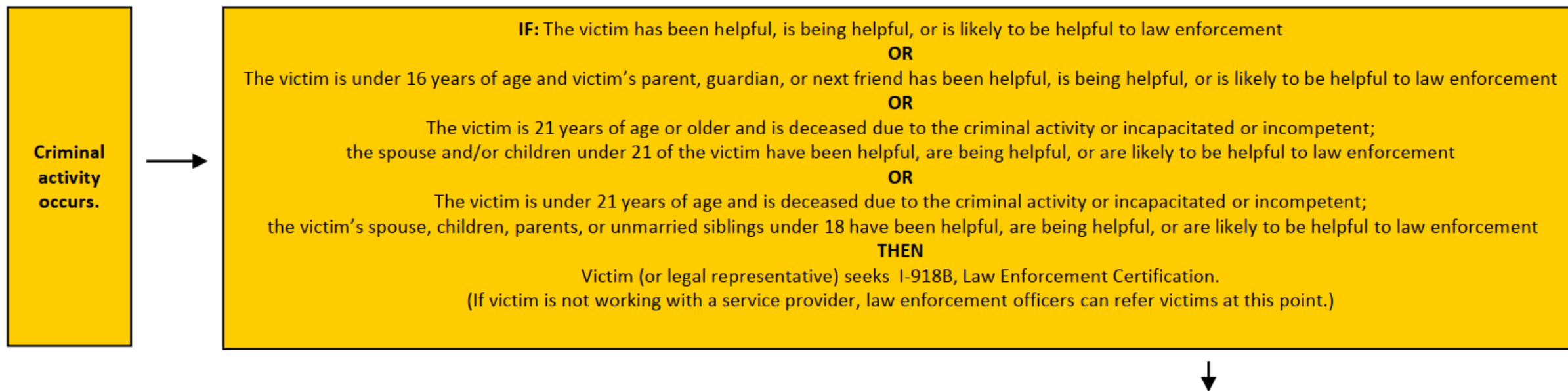
- ▶ Counsel's argument:
 - ▶ This activity amounts to a felonious assault or an attempted felonious assault.
 - ▶ This activity also amounts to Indecent liberties as the assailant knowingly caused the victim to have sexual contact with him where the contact was forced and without consent.
 - ▶ This activity also amounts to extortion as the assailant issued a wrongful threat to do any other act which is intended to harm substantially the person threatened.
 - ▶ The assailant is alleged to have told the victim, "just tell someone what happened and you will see."

- ▶ Do you sign?
 - ▶ Why or why not?

Questions?

- ▶ Michael Rio
- ▶ Michael@riofoltz.com

U Visa Application Flow Chart



U Visa Application Flow Chart



Law Enforcement provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by
 - a. the head of the certifying agency; OR
 - b. a person in a supervisory role specifically designated by the head of the agency to sign certifications
2. Any supporting documentation such as reports and findings; and
3. In the case of 1b, a letter from the head of the agency designating another person to sign the certification (designee letter).



U Visa Application Flow Chart

Victim submits U-visa application to the Victims and Trafficking Unit of USCIS showing that the victim meets each of the U-visa eligibility requirements.

The application includes*:

- U-visa application form: Form I-918
- Law Enforcement Certification: Form I-918, Supplement B
- Documents related to victim's identification
- Victim's signed statement describing the facts of the victimization
- Any information related to victim's criminal history, including arrests
- Any information related to victim's immigration history, including prior deportation
- Any information related to victim's health problems, use of public benefits, participation in activities that may pose national security concerns, and moral turpitude
- Any information related to the victim's substantial physical or mental abuse suffered
- Other documentation such as police reports, medical records, letters of support from service providers.

Eligible family members can also apply.

* Other administrative documentation is also required. More information is available at www.legalmomentum.org.



U Visa Application Flow Chart



Within about 1 month,
victim receives notice from
USCIS confirming filing
of U-visa application.



Within about 9 months,
victim receives decision on
U-visa application.
If approved, victim receives
work permit.
If applications for family
members are approved and
they are abroad, consular
processing begins.

U Visa Application Flow Chart



After three years, U-visa holders (victims) apply for lawful permanent residence ("green card").

The application includes:

- Adjustment of Status Application: Form I-485
- Any information related to the victim's continuous presence in the U.S. since obtaining U-visa status
- Any information indicating that USCIS should exercise its discretion to grant lawful permanent residence
- Any information indicating that the U-visa holder has not unreasonably refused to cooperate with an ongoing investigation or prosecution

Eligible family members can also apply.

Footnotes

1. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014; <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://asistahelp.org/wp-content/uploads/2019/08/U-Visa-Toolkit-for-LEA-and-Prosecutors.pdf&ved=2ahUKEwiLxYeE0NqTAXqHDQIHfSuMj8QFnoECBkQAQ&usg=AOvVaw2NSKhmln3X9MS7zi2MDUHU> at page 1.
2. <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>
3. U VISA TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS; https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://evawintl.org/wp-content/uploads/UVisaToolkit_AH-3.21.17.pdf at page 7.
4. <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>
5. U VISA LAW ENFORCEMENT RESOURCE GUIDE at page 6; https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator
6. *Id.* at 7.
7. <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>
8. See INA 101(a)(15)(U)(iii), 8 U.S.C. 1101(a)(15)(U)(iii)
9. See 18 U.S.C. 1351.
10. U VISA LAW ENFORCEMENT RESOURCE GUIDE at page 5; https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator
11. <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>

Footnotes

12. <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>
13. <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf&ved=2ahUKEwiGhKO61NqTAXV3NzQIHbliINEQFnoECAwQAQ&usg=AOvVaw1AjGsTYzohYBt17S5CWN3y>
14. U VISA LAW ENFORCEMENT RESOURCE GUIDE at page 3:
https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator
15. See 8 CFR 214.14(c)(2)(i).
16. U VISA LAW ENFORCEMENT RESOURCE GUIDE at page 8:
https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator
17. U VISA LAW ENFORCEMENT RESOURCE GUIDE at page 8:
https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator

Footnotes

18. U VISA LAW ENFORCEMENT RESOURCE GUIDE *at page 10*;
https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator
19. *Id.*
20. Dane County District Attorney's Office Protocol on U and T Visa Certification *at page 4*;
<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://da.danecounty.gov/documents/pdf/DA-Protocol-for-U-Visa-Certification.pdf>
21. DHS, U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Jan.01/2012 *at p 13, available at* http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf
22. U VISA LAW ENFORCEMENT RESOURCE GUIDE *at page 10*;
https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator
23. U VISA LAW ENFORCEMENT RESOURCE GUIDE *at page 14*;
https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf#:~:text=Certifying%20Agencies%20Any%20federal,%20state,%20tribal,%20territorial,,activity,%20or%20convict%20or%20sentence%20the%20perpetrator

Footnotes

24. VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information *at* page 4-5: <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Discovery-and-VAWA-Confidentiality-Tool-FINAL-7.24.17.pdf>
25. *Id.*
26. *Id.*
27. *Id at* 6.
28. *Id.*