

**STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY**  
DEPARTMENT OF HEALTH - KA 'OIHANA OLAKINO

**JOSH GREEN, MD**  
GOVERNOR OF HAWAII  
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII

**KENNETH S. FINK, MD, MGA, MPH**  
DIRECTOR OF HEALTH  
KA LUNA HO'ŌKELE

**JOHN C. (JACK) LEWIN, MD**  
ADMINISTRATOR

1177 Alakea Street, #402, Honolulu, HI 96813

Phone: 587-0788 Fax: 587-0783 [www.shpda.org](http://www.shpda.org)

March 24, 2026

**TO:** SENATE COMMITTEE ON JUDICIARY  
Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Honorable Members

**FROM:** John C. (Jack) Lewin, MD, Administrator, SHPDA, and Sr. Advisor to  
Governor Josh Green, MD on Healthcare Innovation

**RE: HB 1838-HD2 -- RELATING TO VISAS**

**HEARING:** Friday, March 27, 2026 @ 10:00 am; Conference Room 016

**POSITION:** SUPPORT with COMMENTS

---

Testimony:

SHPDA strongly supports HB 1838-HD2, with comments.

The U and T visas are humanitarian forms of immigration relief for survivors of crime. They were created by Congress in 2000 under the Victims of Trafficking and Violence Protection Act. U visas are for victims of certain crimes who have suffered substantial physical or mental abuse and have information about the crime, while T visas are for victims of human trafficking who assist law enforcement in the investigation or prosecution of trafficking crimes. Both visas provide legal status, work authorization, and a pathway to permanent residency. They also encourage victims to cooperate with law enforcement without fear of deportation.

These visa programs are vital tools that protect victims of crime and individuals who contribute significantly to our communities.

As we are witnessing, immigration issues are complex. Because of the complexities, some entities are resistant to certify victim helpfulness due to lack of understanding about the U or T nonimmigrant status process or the lack of resources, among other reasons. Absent uniform standards for U and T visa certifications, noncitizen victims face inconsistent access to justice. Uniform policies and training of individuals involved will help to address these inconsistencies. By supporting use of U and T visas, we ensure that vulnerable individuals can come forward without fear, assist law enforcement, and help strengthen the fabric of our society. I urge you

*HB 1838-HD2: testimony of SHPDA (2026), continued.*

to support these essential pathways so that our immigration system remains fair, humane, and effective.

Thank you for hearing HB 1838-HD2.

Mahalo for the opportunity to testify.

■ -- Jack Lewin, MD, Administrator, SHPDA



March 26, 2026

Position: **SUPPORT** of **HB1838 HD2**, Relating to Visas

**To:** Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Members of the Senate Committee on Judiciary

**From:** Llasmin Chaine, LSW, Executive Director, Hawaii State Commission on the Status of Women

**Re:** Testimony in **SUPPORT** of **HB1838 HD2**, Relating to Visas

Hearing: Friday, March 27, 2026, 10:00 a.m.  
Conference Room 016, State Capitol

The Commission on the Status of Women is dedicated to advancing the rights and well-being of women and girls in Hawaii, with a particular focus on those who are most vulnerable to violence, exploitation, and discrimination. The Commission **supports HB1838 HD2**, as **it seeks to standardize and improve the process by which noncitizen victims of crime, including survivors of domestic violence, sexual assault, and human trafficking, can access U and T visa certifications**. These visas provide a critical pathway to safety for individuals who have suffered from serious crimes and are willing to assist law enforcement, enabling them to seek help and participate in the justice system without fear of deportation.

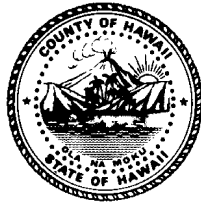
By establishing uniform statewide requirements and mandating consistent policies across state and county certifying entities, this **bill addresses longstanding barriers to justice and equitable access for noncitizen victims** due to their immigration status. Inconsistent practices and lack of clear guidance have historically resulted in confusion, delays, and, in some cases, the denial of protections for those most in need. The bill's provisions for training and resource allocation to certifying officials are especially vital, as they **will help ensure that staff are equipped with the knowledge and sensitivity required to handle these cases appropriately** and in accordance with federal law.

HB1838 HD2 aligns with best practices recognized nationally, which emphasize the importance of clear, survivor-centered protocols and interagency coordination in the certification process. **By supporting a more uniform, transparent, and accessible system, Hawaii can better fulfill its obligations to protect crime victims, promote public safety, and uphold the dignity of all residents.**

The Commission urges this Committee to **pass HB1838 HD2**.

Thank you for this opportunity to submit testimony.

**Jennifer Kagiwada**  
Council Member District 2 South Hilo



Office: (808) 961-8272  
jennifer.kagiwada@hawaiicounty.gov

## HAWAI'I COUNTY COUNCIL - DISTRICT 2

25 Aupuni Street • Hilo, Hawai'i 96720

DATE: Mar 26, 2026  
TO: Senate Committee on Judiciary  
FROM: Jennifer Kagiwada, Council Member  
Council District 2  
SUBJECT: HB1838 HD2

Aloha Chair Rhoads, Vice Chair Gabbard, and Committee Members,

I am writing in strong support of HB 1838 HD2. I support this bill because it will:

- **Enhance access to justice and community trust.**

By requiring that law enforcement agencies, prosecutors, courts, and other certifying entities adopt clear, consistent policies, this bill promotes fairness and transparency in the certification process. This gives survivors confidence that their cooperation will be supported, which in turn strengthens trust between immigrant communities and public safety officials.

- **Ensure proper training and accountability for certifying officials.**

The bill's training requirements for state and county certifying officials are critical to preventing improper denials and ensuring compliance with federal and state law. Well-trained officials are better equipped to understand their roles and responsibilities, protect sensitive populations, and uphold victims' rights. This is especially important for individuals who may otherwise avoid authorities due to fear or misinformation.

Mahalo,

A handwritten signature in black ink, appearing to read "Jenn Kagiwada".

Jenn Kagiwada



## TESTIMONY IN SUPPORT OF HB1838, HD2 - RELATING TO VISAS

### Senate Committee on Judiciary

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Hearing Date: March 27, 2026 | Letter Date: March 26, 2026

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Legal Clinic (TLC) strongly supports HB1838, HD2, a measure that strengthens public safety and due process by establishing consistent statewide procedures for U and T visa certification for noncitizen survivors of serious crime and human trafficking. TLC is a nonprofit organization dedicated to advancing justice for immigrants and migrants across Hawai'i through immigration legal services, community education, and policy advocacy. We also serve on the steering committee of the Campaign for Immigrant Justice alongside the Hawai'i Coalition for Immigrant Rights and the American Civil Liberties Union of Hawai'i, and this measure is among the campaign's top legislative priorities.

U and T visas are important public safety tools created by Congress to support the detection, investigation, prosecution, conviction, and sentencing of serious crimes, including domestic violence, sexual assault, and human trafficking. These programs provide humanitarian protections that allow noncitizen survivors to report crimes and cooperate with the justice system without fear of immigration consequences. Certification confirming victimization and helpfulness is a required first step in the visa application process. Although federal law authorizes state and county law enforcement agencies, prosecutors, courts, and other entities to issue certifications, it does not require them to do so. In the absence of uniform statewide standards, practices have varied across counties and agencies, resulting in confusion, improper delays and denials, and unequal access to protection for survivors.

TLC appreciates the improvements made to the bill by the House Committee on Economic Development and Technology and the House Committee on Judiciary and Hawaiian Affairs. The amendments clarify and strengthen survivor protections while maintaining the bill's core purpose of establishing uniform statewide certification standards aligned with federal law and best practices. We particularly support the preservation of judicial review and the clarification that survivors are not required to seek re-evaluation before pursuing judicial review. These provisions ensure that survivors facing urgent immigration or safety concerns retain meaningful and timely access to relief.

### **Recommendation to Reinstate Courts and Judges as Certifiers**

TLC respectfully requests that the Committee amend this measure to reinstate language from HB1838, HD1 recognizing state courts and judges as U and T visa certifiers. State courts and judges are explicitly authorized under federal law to issue certifications, and Hawai`i courts have exercised this authority. The Hawai`i Judiciary has also invested in judicial training on U and T visa certification, including as recently as January 2024 and September 2023, reflecting the courts' essential role in enhancing access to justice for noncitizen survivors.

Moreover, state courts are often the first - and sometimes the only - viable certifying option available to survivors. Judges may sign certifications whether a criminal investigation or prosecution has occurred or will occur. In many cases, judges may be the only government officials positioned to certify a survivor's helpfulness, particularly in non-criminal proceedings involving domestic violence, child abuse or neglect, sexual assault, stalking, or human trafficking. These proceedings include civil protection orders, injunctions against harassment, gun violence protective orders, child welfare matters, workplace sexual assault and labor abuse cases, adult protection proceedings, and civil lawsuits seeking damages. Such proceedings provide meaningful accountability and court-ordered protection but do not require involvement in the criminal legal system. For many survivors seeking safety and stability, state courts and judges serve as a critical access point for U and T visa certification.

### **Proposed Amendments: Definitions of "Certifying Entity" and "Certifying Official" (Section 1)**

Consistent with best practices, statewide standards for U and T visa certification should apply uniformly to all authorized certifiers, including state courts and judges, and should clearly list all the major types of entities or officials that are listed in the federal statute or regulations as authorized certifiers. We therefore recommend restoring and clarifying the HD1 definitions of definitions of "certifying entity" and "certifying official" as follows:

#### **On page 4, lines 8-10:**

**"Certifying entity" means any state or county ~~entity that is authorized under federal law to issue U or T visa certifications, excluding state courts~~ law enforcement agency, the department of the attorney general, the child welfare services branch of the department of human services, the adult protective and community services branch of the department of human services, a state court, a county prosecuting agency, or other entity that has criminal, civil, or administrative authority to detect, investigate, prosecute, convict, or sentence criminal activities within its respective purview and**

**that is authorized under federal law, regulations, and policies to issue U or T visa certifications.**

**On page 4, lines 11-16:**

“Certifying official” means:

- (1) The head of a certifying entity;
- (2) A person employed in a supervisory role specifically designated by the head of a certifying entity to respond to requests for U or T visa certifications; ~~or~~
- (3) A state or county prosecutor; or
- (4) A state judge.**

#### **Proposed Amendments: Judicial Review (Section 9)**

Under federal law, regulations, and policies, any judge may issue U and T visa certifications, whether based on their review of court records or the judge’s detection of a qualifying criminal activity during a civil or criminal proceeding over which they presided. To address concerns regarding the judicial review provisions in section 9 of the bill, the Committee may wish to clarify that court-issued certifications are not subject to judicial review. TLC would have no objection to amendments such as the following:

**On page 8, lines 19-21, to page 9, lines 1-3:**

§ -9 Judicial review. (a) **The provisions of this section apply to all certifying officials and certifying entities, except state judges and state courts.** If a certifying entity, **other than a state court,** or certifying official, **other than a state judge,** fails to respond within the applicable time periods set forth in section -3 or denies a requested U or T visa certification, the requester may seek judicial review by filing an action in the circuit court within ninety days of the denial or expiration of the statutory timeframe for response.

#### **Proposed Amendments: Definition of “Helpfulness” (Section 5)**

Finally, we respectfully urge the Committee to revisit section 5 of the bill, which currently adopts a narrower and more restrictive definition of “helpfulness” than the federal law. We recommend restoring language from the HD1 definition of “helpfulness,” which more accurately reflects federal standards by recognizing the existing exception related to victim cooperation and acknowledging that requests for cooperation may come from certifying entities or certifying officials other than law enforcement. We propose the following amendments to this section:

**On page 7, lines 4-16:**

§ -5 Determination of helpfulness. For purposes of determining helpfulness for a request for U or T visa certification, there is a rebuttable presumption that a victim is helpful, ~~has been helpful, or is likely to be helpful to the investigation or prosecution of that qualifying criminal activity~~ if, since the initiation of the helpfulness, the victim has not unreasonably refused to cooperate or unreasonably failed to provide information and assistance reasonably requested by law enforcement a certifying entity or certifying official, or was otherwise exempt from compliance. The existence of a current investigation, the filing of charges, the apprehension of a suspect who committed the qualifying ~~crime~~ criminal activity, or a prosecution or conviction of a suspect who committed the qualifying criminal activity shall not be required for a certifying official to certify victim helpfulness.

**Conclusion**

HB1838, HD2 promotes safer communities by supporting survivors and establishing fair, transparent, and consistent certification practices statewide. The bill requires certifying entities to adopt written public policies, designate certifying officials, and comply with reasonable response timelines. It also preserves confidentiality safeguards, language access provisions, and reporting and training requirements – all essential to supporting statewide implementation and survivor access to relief.

We are grateful for the Legislature’s leadership in advancing survivor protection and public safety, and we urge the Committee to pass this measure with the recommended amendments.

Respectfully submitted on behalf of The Legal Clinic  
and Board President Amefil Agbayani,



Christina Sablan  
Community & Policy Advocate



[www.hicir.org](http://www.hicir.org) | Instagram @hicir  
[hicoalitionforimmigrantrights@gmail.com](mailto:hicoalitionforimmigrantrights@gmail.com)

## **In SUPPORT of HB1838 HD2**

Hearing Date: March 27, 2026

Dear Chair Rhoads, Vice Chair Gabbard, and members of the Committee on Judiciary,

My name is Liza Ryan-Gill, testifying on behalf of the **Hawai'i Coalition for Immigrant Rights (HCIR)**. HCIR is a coalition of 30+ immigrant-serving and immigrant-led organizations across the pae 'āina working to advance policies that protect immigrant and migrant communities and strengthen Hawai'i as a place where all families can thrive. HB1838 HD2 is among the top legislative priorities of the **Campaign for Immigrant Justice**, a coordinated statewide coalition effort of which HCIR is a lead co-organizer alongside the ACLU of Hawai'i and The Legal Clinic.

We write in **strong support** of HB1838 HD2, which establishes uniform statewide requirements for U and T visa certification policies and processes, requires each state and county certifying entity to adopt a compliant policy, and appropriates funds for the Department of the Attorney General to provide training so agencies can implement the law correctly.

### **Survivors should not face a "zip code lottery."**

U and T visas are federal public safety tools created by Congress to help noncitizen survivors of qualifying crimes — including domestic violence, sexual assault, and human trafficking — come forward, cooperate with investigations, and stabilize their lives. Certification confirming a victim's helpfulness is a required first step in the visa application process. But right now, Hawai'i has no statewide policy requiring or standardizing that process. A survivor's access to this federally authorized protection depends entirely on which county or agency they happen to contact — and that agency's individual policies, if any exist at all. This patchwork approach leads to inconsistent outcomes, improper delays and denials, and unequal access to protection based solely on geography.

HB1838 HD2 fixes this by establishing a clear statewide baseline and requiring every certifying entity to follow it. When survivors trust that the process is fair, timely, and consistent, they are more likely to come forward — helping hold offenders accountable and making our communities safer.

### **State courts and judges must be included as certifiers.**

HCIR joins The Legal Clinic in respectfully requesting that the Committee reinstate language from HB1838, HD1 recognizing state courts and judges as U and T visa certifiers, consistent



[www.hicir.org](http://www.hicir.org) | Instagram @hicir  
[hicoalitionforimmigrantrights@gmail.com](mailto:hicoalitionforimmigrantrights@gmail.com)

with federal law. State courts are often the first — and sometimes the only — viable certifying option available to survivors. Judges may sign certifications whether or not a criminal investigation or prosecution has occurred or will occur. In many cases involving domestic violence, child abuse or neglect, sexual assault, stalking, or human trafficking, proceedings unfold in civil rather than criminal courts — including civil protection orders, injunctions against harassment, child welfare matters, adult protection proceedings, and civil lawsuits. These proceedings provide meaningful accountability and court-ordered protection without requiring involvement in the criminal legal system.

Excluding courts from the definition of certifying entities under HD2 narrows survivors' access to relief in precisely those situations where they are most vulnerable and least likely to be engaged with law enforcement. The Hawai'i Judiciary has invested in judicial training on U and T visa certification as recently as January 2024, recognizing the courts' essential role. Reinstating court and judicial certification authority would strengthen — not complicate — the bill's core purpose.

### **Training is the bill's "make it work" component.**

Even well-intentioned certifying officials make errors without proper guidance on federal requirements, trauma-informed practices, and their own legal obligations. The AG training funded by this bill reduces improper denials, unnecessary delays, and inconsistent practices statewide. From a Judiciary Committee perspective, this appropriation is essential to prevent agencies from inadvertently violating survivors' rights and to ensure Hawai'i's certification system is grounded in federal law and best practices.

### **This is a public safety bill.**

U and T visas exist specifically because Congress recognized that survivors cannot cooperate with law enforcement if they fear deportation. When the certification process is confusing or unpredictable, crimes go unreported and offenders remain in the community. A consistent, transparent system builds trust, increases cooperation, and supports law enforcement and prosecutors in holding perpetrators accountable. HB1838 HD2 strengthens Hawai'i's response to crime and trafficking — for the benefit of all residents.

HB1838 HD2 passed the House with strong support. We urge the Senate Judiciary Committee to advance it, with the recommended amendment reinstating courts and judges as certifiers, toward Ways and Means and final passage.

For these reasons, HCIR respectfully urges you to **PASS HB1838 HD2**.

Mahalo for the opportunity to testify.



[www.hicir.org](http://www.hicir.org) | Instagram @hicir  
[hicoalitionforimmigrantrights@gmail.com](mailto:hicoalitionforimmigrantrights@gmail.com)

Liza Ryan-Gill Executive Director Hawai'i Coalition for Immigrant Rights [www.hicir.org](http://www.hicir.org) |  
[hicoalitionforimmigrantrights@gmail.com](mailto:hicoalitionforimmigrantrights@gmail.com)

**HB-1838-HD-2**

Submitted on: 3/24/2026 7:05:59 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b>                                 | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---|---------------------------|------------------------|
| Yvette Kay          | Testifying for Kona Indivisible & Matriarchy Rising | Support                   | Written Testimony Only |

Comments:

I am writing in strong support of HB1838 HD2 both personally and as a member of the Indivisible Hawaii Statewide Network (IHSN). This Bill would add a new Chapter to the Hawaii Revised Statutes setting standardized procedures for applying for U and T visa status for noncitizen victims of crime. These visas were established by Congress to protect noncitizen victims of human trafficking or other crimes to avoid deportation by immigration authorities while assisting local law enforcement to find and prosecute the perpetrators.

Everyone in the community is harmed when serious crimes are not reported to the authorities or prosecuted. Noncitizen residents may be afraid to report crimes or assist in investigation and prosecution if they face deportation by coming forward. These special visa categories are intended to protect victims who come forward to assist law enforcement from immigration proceedings.

The application for these visas must be filed with federal authorities by local law enforcement and prosecuting agencies. Since the application is a discretionary process there are significant differences in filing across Hawaii's agencies and islands. This bill is an important step toward providing support for noncitizens who have been victimized, and a step toward more effective prosecution of human traffickers and criminals.

I urge you to Pass HB1838 HD2.

Thank you for the opportunity to testify on this Bill.

My name is Yvette Kay and I am a resident of Kailua Kona in Hawai'i County. I am on the leadership team for Kona Indivisible and run the protest arm of Kona Indivisible named, Matriarchy Rising. I support this bill.

yvettekay\_99@yahoo.com

96740

415-706-9638



**Testimony of Megahn Chun and Alejandro Villarino  
In SUPPORT of HB1838 HD2**

Committee on Judiciary

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

Hearing Date: March 27, 2026

Dear Chair Karl Rhoads, Vice Chair Mike Gabbard, and members of the Committee on Judiciary,

Our names are Megahn Chun and Alejandro Villarino, and we submit this testimony in **support of HB1838 HD2**, which establishes uniform statewide requirements for policies and processes for the issuance of U and T visa certifications for noncitizen victims of crime and trafficking, requires each state and county certifying entity to adopt a compliant policy and process, and appropriates funds for the Department of the Attorney General to provide training to certifying entities and officials on all federal and state requirements.

Mercado de la Raza is a community-driven Latin market in Hawai'i that serves as a hub for Latino and immigrant entrepreneurs, families, and cultural exchange. Through small business support, community programming, and accessible resources, Mercado de la Raza works to uplift historically underserved communities and create pathways to economic stability, safety, and belonging. In our daily work, we are in direct relationship with immigrant families whose well-being is deeply impacted by state policies, and we are committed to advocating for initiatives like these that promote equity, protection, and opportunity for our community.

Survivors of serious crimes and trafficking should not face a “zip code lottery” when seeking U or T visa certification. Right now, a survivor’s access to a federally authorized protection pathway depends on which county or agency they contact — not on the merits of their case. HB1838 HD2 fixes this by creating clear, uniform statewide standards so that every certifying entity in Hawai'i follows the same requirements. When survivors trust that the process is fair, timely, and consistent, they are more likely to come forward — helping hold offenders accountable and making our communities safer.

Training is equally essential. Even well-intentioned certifying officials make errors without proper guidance on federal requirements, trauma-informed practices, and their own legal obligations. The AG training funded by this bill reduces improper denials, unnecessary delays, and inconsistent practices statewide. This is a public safety bill as much as an immigrant rights bill: U and T visas exist specifically because Congress recognized that survivors cannot cooperate with law enforcement if they fear deportation. HB1838 HD2 passed the House with strong support. The Senate Judiciary Committee can now advance it toward Ways and Means and final passage.

For these reasons, we respectfully request that the Committee **PASS HB1838 HD2**.

Mahalo for the opportunity to provide testimony.

Sincerely,  
Megahn Chun and Alejandro Villarino  
Mercado de la Raza  
808.593.2226



*Hawai'i Children's Action Network Speaks! is a nonpartisan 501c4 nonprofit committed to advocating for children and their families. Our core issues are safety, health, and education.*

To: Senate Committee on Judiciary  
Re: **HB1838 HD2– Relating to Visas**  
Hawai'i State Capitol & Via Videoconference  
March 27, 2026, 10:00 AM

Aloha Chair Rhoads, Vice Chair Gabbard, and members of the committee,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of HB1838 HD2**. This bill establishes uniform statewide requirements for policies and processes for the issuance of U and T visa certifications for noncitizen victims of crime, requires each state and county certifying entity to adopt a policy and process for the issuance of U and T visa certifications consistent with those statewide requirements. It also appropriates funds for the Department of the Attorney General to provide training on federal and state requirements for U and T visa certifications.

Across our state, many mothers who are victims of domestic violence, sexual assault, or trafficking are raising children while navigating the criminal justice system. When a mother cooperates with law enforcement but cannot obtain timely certification for a U or T visa, her entire family is placed at risk. The fear of deportation or family separation can force mothers to choose between protecting their children and seeking safety.

For children, the consequences are profound. Instability in immigration status can mean housing insecurity, economic hardship, and ongoing exposure to trauma. When mothers are unable to secure legal protection, children may remain in dangerous situations or lose access to stability that supports healing and healthy development.

This bill provides clear timelines, written policies, and accountability so that families are not left in limbo due to inconsistent practices. The bill's training provisions will also help ensure that agencies respond in a trauma-informed and family-centered manner.

Mahalo for this opportunity to provide testimony. Please pass this bill.

Sincerely,

Nicole Woo  
Director of Research and Economic Policy



**TESTIMONY IN STRONG SUPPORT OF HB1838 HD2**  
**Committee on Judiciary**  
Friday, March 27, 2026  
10:00 AM

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

My name is Abby Simmons, Chair of the Stonewall Caucus of the Democratic Party of Hawai'i. I am writing in **strong support** of HB1838 HD2 on behalf of our Caucus.

At its core, this bill is about access to justice, safety, and dignity for survivors of crime. HB1838 HD2 establishes uniform, statewide standards for U and T visa certifications, ensuring that noncitizen victims are treated consistently, fairly, and with humanity across all counties and agencies. For LGBTQ+ people, especially transgender individuals, immigrants, and those at the intersection of multiple marginalized identities, these protections are not abstract. They are life-saving.

Many LGBTQ+ survivors face heightened risks of violence, exploitation, and trafficking. They are also more likely to hesitate in reporting crimes due to fear of discrimination, retaliation, or immigration consequences. When systems are inconsistent or opaque, that fear deepens and justice becomes out of reach. This bill directly addresses those barriers by requiring clear policies, reasonable timelines, and written explanations for denials. HB1838 HD2 brings transparency and accountability to a process that too often depends on discretion or lack of awareness. The inclusion of a presumption of helpfulness recognizes the reality that survivors may face trauma-related barriers while still participating in the justice process.

The bill's confidentiality protections are especially critical for LGBTQ+ individuals. Many survivors face real danger if their identity or immigration status is disclosed. Ensuring privacy is not just good policy, it is essential for safety.

Language access requirements further ensure that survivors are not excluded simply because of limited English proficiency. This is vital in Hawai'i's diverse communities.

Equally important, the bill creates a pathway for accountability through judicial review. When survivors are denied unjustly or ignored, they will have recourse. That is a powerful and necessary safeguard.

For LGBTQ+ immigrants, particularly those who are transgender, nonbinary, or gender nonconforming, this bill affirms something deeply important: that their lives matter, that their safety matters, and that they deserve equal access to justice.

HB1838 HD2 strengthens trust between communities and law enforcement, improves public safety, and aligns Hawai'i with best practices nationwide.

## Testimony in Strong Support of HB1838 HD2

For these reasons, the Stonewall Caucus respectfully urges this Committee to pass HB1838 HD2. Mahalo for the opportunity to testify.

Respectfully submitted,

Abby Simmons (she/her)

Chair

Stonewall Caucus of the Democratic Party of Hawai'i



March 27, 2026

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Rep. Stanley Chang  
Rep. Joy A. San Buenaventura  
Rep. Brenton Awa

Re: HB1838 HD2 Relating to Visas

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) mission is to unite Hawai'i to end all forms of domestic violence. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 20 member programs statewide, I respectfully submit testimony in support of HB1838 HD2, which mandates the creation of uniform certification standards for U and T visas that:

- are aligned with federal law;
- requires written certification policies;
- statewide training for certifying entities;
- provides language access; and
- maintains victim confidentiality.

**Why this matters:**

The lack of certification standards is delaying victims' visa petitions/applications and jeopardizing their safety.

This is a problem because, by federal statute, no more than 10,000 principal U visas and 5,000 T visas may be granted in any fiscal year. U.S. Citizenship and Immigration Services (USCIS) has reached this statutory cap every year since fiscal year 2010. **In Fiscal Year 2024, USCIS received 41,556 principal U visa petitions and 15,332 T visa applications. It takes approximately 5-7 years to process U visas, and 12-36 months to process T visas.**<sup>1</sup>

---

<sup>1</sup>[https://www.uscis.gov/sites/default/files/document/data/fy24\\_immigration\\_applications\\_made\\_by\\_victims\\_of\\_abuse.pdf](https://www.uscis.gov/sites/default/files/document/data/fy24_immigration_applications_made_by_victims_of_abuse.pdf)

U and T visas provide critical federal protections for noncitizen survivors of serious crimes, including domestic violence and human trafficking. Certification from law enforcement, prosecutors, or the courts is required as a first step. Yet in Hawai'i, access to U and T visa certification varies by county and agency, creating unequal outcomes for survivors who otherwise qualify under federal law.

**Not only is this a delay in justice, but it is also a delay in victim safety.**

We respectfully urge passage of HB1838 HD2 with full funding. Thank you for the opportunity to testify on this important matter.

Sincerely,  
Angelina Mercado, Executive Director

**Statement of Nupur Chandna NIWAP,  
Washington College of Law, American University,  
Washington D.C. [nchandna@american.edu](mailto:nchandna@american.edu)/202-  
[247-4457](tel:202-247-4457) on HB1838, HD2  
March 25, 2026**

Testimony of Nupur Chandna, Policy Attorney, NIWAP  
In Support of Including Judicial U and T Visa Certification in  
HB1838, HD2

My name is Nupur Chandna. I am a Policy Attorney with experience working at the intersection of immigration and domestic violence. I work at the National Immigrant Women’s Advocacy Project Inc.(“NIWAP”) and have worked at the Indiana Coalition Against Domestic Violence (ICADV), where I provided legal services to survivors and developed policy guidance to improve access to justice for immigrant victims of crime. I appreciate the opportunity to testify in favor of House Bill 1838, HD2 Relating to Visas. I strongly support the Bill as it represents a crucial step for victims of crime improving access to U and T visa certification in Hawaii.

I strongly support the definitions of “certifying entity” and “certifying official” in §1 of the Bill HD1 to include the full list of state agencies and officials authorized to certify U and T visas under federal law. However, we oppose HD2’s removal of judges from the definitions of certifying official and certifying entity. The U visa statute explicitly include judges as certifiers as a means to enhance access to justice in criminal, family, child welfare, and civil court cases for immigrant crime victims and their families.<sup>1</sup> T visa regulations<sup>2</sup> and U visa regulations<sup>3</sup> both include judges among the government officials authorized to sign U visas under federal law. Judges can sign U visa certifications consistent with and without violating ethical judicial rules and canons, particularly since most judicial certifications are signed after the judge signing the certification has ruled in the case before them. In a growing number of jurisdictions across the country courts will select a certifying judge who is selected and who is responsible for signing T and U visa certifications based on court records in cases that the judge did not hear themselves. This is a best practice that reduces the number of cases where a certifying judge may need to recuse themselves in a future matter involving the victim who sought certification.

NIWAP collaborating with a national team of judicial experts on the U visa and the National Council of Juvenile and Family Court Judges recently published an article discussing how consistent with American Bar Association and state judicial ethics requirements judges can ethically sign U and T visa certifications. The publication “U Visa Certification: Ethical Considerations for Judicial Officers” (December 31, 2024) is attached to this testimony and incorporated herein by reference as Exhibit A.

---

<sup>1</sup> 101(a)(15)(U)(i)(III) of the Immigration and Nationality Act.

<sup>2</sup> Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status (T Visa Final Rule April 30, 2024) <https://niwaplibrary.wcl.american.edu/pubs/2024-t-visa-final-rule/>

<sup>3</sup> Federal Register: New Classification for Victims of Criminal Activity for Eligibility for “U” Nonimmigrant Status (U Visa Regulations) (September 17, 2007) <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>

**EXHIBIT A**

U Visa Certification: Ethical Considerations for Judicial Officers (December 31, 2024)- Attached on the following page.

# U Visa Certification:

## Ethical Considerations for Judicial Officers

NCJFCJ  
*est. 1937*



AMERICAN UNIVERSITY  
WASHINGTON  
COLLEGE of LAW

NIWAP

# U Visa Certification: Ethical Considerations for Judicial Officers <sup>1</sup>

By Hon. Rosemary Collins (Ret.), Hon. Lora Livingston (Ret.), Hon. Chanpone Sinlapasi,  
Hon. Ramona Gonzalez (Ret.), Leslye E. Orloff, and Rafaela Rodrigues

December 31, 2024

---

## I. Introduction

The U visa is the result of a bipartisan effort to create a crime-fighting tool, to enhance access to justice, and to provide humanitarian relief for victims of crime.<sup>2</sup> In the Violence Against Women Act (VAWA 2000), Congress created the U visa to strengthen the justice system's ability to detect, investigate, prosecute, convict, and sentence perpetrators of crime, especially crimes involving domestic violence, child abuse, sexual assault, human trafficking, and other qualifying criminal activities.<sup>3</sup> The U visa offers significant protections to many immigrant victims who often fall prey to such criminal activity. One way the U visa achieves these goals is by offering victims access to humanitarian immigration relief, which affords them a path to lawful permanent residency.<sup>4</sup>

One critical step in the U visa process is U visa certification. U visa certifications can be completed by any federal, state, tribal, territorial, or local judge, law enforcement, prosecutor, or other government agency that has the responsibility to detect, investigate, prosecute, convict or sentence in cases involving qualifying criminal activity. This includes any judicial official with delegated authority from a federal, state, local, tribal or territorial court. Agencies with criminal, civil, or administrative investigative jurisdiction can also certify.<sup>5</sup>

---

<sup>1</sup> This project was supported by Grant No.15JOVW-21-GK-02256-MUMU 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 U.S. Department of Justice. The recipient also agrees to ensure that any subrecipient at any tier will comply with this condition.

The opinions expressed in this article are those of the authors and are based on the authors' experience and expertise on U.S. immigration laws and how issues about federal immigration laws arise in state court proceedings. This is not intended to be a substitute for settled law in any particular jurisdiction.

<sup>2</sup> See Violence Against Women Act (VAWA)2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464.

<sup>3</sup> See generally, VAWA 2000, Pub. L. No. 106-386, § 1513(a), 114 Stat. 1464.

<sup>4</sup> See generally Katrina Castillo et al., Legislative History of VAWA (94, 00, 05), T an U-Visas, Battered Spouse Waiver, and VAWA Confidentiality, (January 5, 2023), <https://niwaplibrary.wcl.american.edu/pubs/vawa-t-u-leg-history/>.

<sup>5</sup> DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015 at 6, <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

As judges across the country undertake the role of U visa certification assigned to courts by Congress it is important for judges, courts and judicial ethics boards, to be aware of the most up to date, legally accurate information about U visa immigration laws, as well as where to go to ensure that they are applying legally correct information.<sup>6</sup>

Immigration laws are complex, nuanced, and evolving. State courts and judicial ethics boards are best able to make informed legally accurate decisions, rulings, and opinions about U visa immigration laws when they rely upon the full range of information on the program developed by the U.S. Department of Homeland Security (DHS) or supported by the U.S. Department of Justice (DOJ) and the State Justice Institute (SJI).

U visa laws are comprised of several component parts. First is Congress, which created the statute and legislative history.<sup>7</sup> Second are agencies. DHS and U.S. Citizenship and Immigration Services (USCIS) which are responsible for issuing U visa regulations, regulatory history,<sup>8</sup> policies, policy manuals,<sup>9</sup> and publications.<sup>10</sup> Together these provide legally accurate information on the U visa program for U visa certifiers, including judges, and for U visa applicants and adjudicators. DHS and USCIS policy manuals and resource guides provide detailed explanations about the U visa program that are grounded in the statutes and regulations, the legislative and regulatory history, as well as the agency's expertise as adjudicators.

---

<sup>6</sup> See, U and T Visa Training Materials (July 12, 2024), <https://niwaplibrary.wcl.american.edu/pubs/u-and-t-certification-training-materials/> (Includes all DHS publications on the U visa including regulations, regulatory history, the USCIS policy manual, policies, and DHS and USCIS issued publications, DOJ and SJI supported training materials for judges and state courts on U visa certification, benchcards, webinars, journal articles, and other training tools).

<sup>7</sup> See generally Katrina Castillo et al., *Legislative History of VAWA (94, 00, 05), T and U-Visas, Battered Spouse Waiver, and VAWA Confidentiality*, (January 5, 2023). <https://niwaplibrary.wcl.american.edu/pubs/vawa-t-u-leg-history/>.

<sup>8</sup> Federal Register: New Classification for Victims of Criminal Activity for Eligibility for "U" Nonimmigrant Status (U Visa Regulations) (September 17, 2007), <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>.

<sup>9</sup> USCIS, POLICY MANUAL, VOLUME 3 HUMANITARIAN PROTECTION AND PAROLE, PART C VICTIMS OF CRIME, <https://www.uscis.gov/policy-manual/volume-3-part-c>.

<sup>10</sup> USCIS, Victims of Criminal Activity: U Nonimmigrant Status, <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>; USCIS, POLICY MANUAL, VOLUME 3 HUMANITARIAN PROTECTION AND PAROLE, PART C VICTIMS OF CRIME, <https://www.uscis.gov/policy-manual/volume-3-part-c>; U.S. Citizenship and Immigration Services U Visa Regulations, Policies and Publications, <https://niwaplibrary.wcl.american.edu/uscis-u-visa-regs-policies-pubs/>.

A U visa certification toolkit, designed specifically to provide courts with easily accessible, legally correct information on U visa certification has been funded by the Office on Violence Against Women at the U.S. Department of Justice and the State Justice Institute. This toolkit also provides legally accurate information on the T visa for victims of human trafficking.<sup>11</sup>

This guidance document will focus specifically on when and how state, federal and tribal court judges can ethically sign U visa certifications<sup>12</sup> under the guidance provided by the American Bar Association's Model Code of Judicial Ethics (ABA Model Code) since most state's Codes of Judicial Conduct are closely aligned with the ABA Model Code.<sup>13</sup> First Section II of this document provides a brief introduction to the U visa program, focusing on common misunderstandings about immigration law and the U visa program that arise in Judicial Ethics Board opinions and court cases.<sup>14</sup>

---

<sup>11</sup> U Visa Certification and T visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers (June 17, 2021), <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2/>.

<sup>12</sup> This article focuses on U visa certification, however Congress and DHS through implementing regulations, policies and publication have confirmed that they may play a similar role as certifiers of T visa declarations in cases of immigrant victims of human trafficking (sex or labor, adults and children). Since the T visa declaration is a preferred piece of evidence in a T visa application, but is not mandatory, judges will see fewer T visa certification requests. The same ethical considerations discussed in this article apply to T visa declarations signed by judges. For information on T visa declarations and the T visa program see, *T- Visa Law Enforcement Resource Guide* (October 20, 2021), <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide/>; *T Visa Regulations: 2002, 2016 & 2024 – Regulations, Comparison, and Regulatory History* (June 24, 2024), <https://niwaplibrary.wcl.american.edu/pubs/t-visa-regs-reg-history/>. Judges should also note that when they encounter foreign national minors who may have experienced human trafficking, federal law requires that courts ensure that the child's case is referred to the Office on Trafficking in Persons (OTIP) for assessment within 24 hours. HHS, REPORT TRAFFICKING CONCERNS AND REQUEST ASSISTANCE ON BEHALF OF A FOREIGN NATIONAL MINOR, <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/request-assistance>; see also, *National Judicial Network Peer-to-Peer Forum (November 7, 2023): Encountering Immigrant Child Trafficking Victims in Court: The Court's Role & Tips, Tools, and Steps Courts Can Take*, <https://niwaplibrary.wcl.american.edu/njn-encountering-child-trafficking-victims-in-court-nov-7-2023/>.

<sup>13</sup> MODEL CODE OF JUDICIAL CONDUCT, (Am. Bar Ass'n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/); Jurisdictional Adoption of Revised Model Code for Judicial Conduct, (Am. Bar Ass'n), [https://www.americanbar.org/groups/professional\\_responsibility/resources/judicial\\_ethics\\_regulation/map/](https://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/map/) (last visited December 29, 2024).

<sup>14</sup> This article will focus on judicial ethics board opinions. For a detailed discussion of judicial authority to sign U visa certifications, the legislative history of the U visa program, DHS's expertise on the U visa program, and an analysis of court cases that fail to fully understand U visa law, and court cases that are consistent with U visa law as set forth by DHS in its regulations, policies, and publications see, Kendall Niles, Veronica Thronson & Leslye Orloff, *Understanding the Judicial Role in U Visa Certification*, 31 Am. J. Fam. L. 208, (2018), <https://niwaplibrary.wcl.american.edu/pubs/understanding-u-visa-certification-by-judges/>.

Courts and judicial ethics boards are better able to issue opinions and decisions that reflect Congressional and DHS intent, by relying upon the expertise of and publications issued by DHS and USCIS for legally accurate information about immigration law.

Section III of this guidance document will then discuss the ABA Model Code of Judicial Ethics sections relevant to U visa certification by judges, as well as four Judicial Ethics Board opinions issued through 2024. The document will correct inaccuracies and misconceptions in these ethics opinions, provide legally accurate information on immigration law that is consistent with DHS and USCIS regulations, policy, and publications and will demonstrate when and how judges can ethically sign U visa certifications.

## **II. The U Visa – Overview, Myths, and Facts**

### **A. Legislative History and Purpose**

By providing protection against deportation and a path to possible legal immigration status for eligible immigrant crime victims, the U visa program is a powerful tool that increases access to justice by promoting detection of and encouraging reporting of criminal activities to courts, law enforcement, prosecutors, and state and federal government agencies.<sup>15</sup>

---

<sup>15</sup> Once victims file for immigration relief and gain work authorization research finds a 114% increase in immigrant survivors' willingness to trust police and 36% of VAWA and U visa applicants continuing to make police reports regarding future crimes. See, Leslye E. Orloff, et al., Executive Summary – Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status (June 8, 2021), <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final/> There is a 62% -70% increase in VAWA self-petitioners and U visa applicants seeking protection orders and custody and participating in criminal investigations and prosecutions. See, Krisztina E. Szabo et al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants (Feb. 12, 2014), [https://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12;](https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12;) Rafaela Rodrigues et al., Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey (May 3, 2018), <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>.

The U visa helps U.S. justice system agencies build trust and fortify relationships with immigrant communities and can be effectively employed to lessen immigrant victims' fear of and increase trust in the courts, law enforcement, and prosecutors by demonstrating these agencies' commitment to serving, protecting, and providing access to justice for victims of crimes.<sup>16</sup> These goals, which promote offender accountability in tandem with enhancing victim and community safety, were top of mind for Congress when it created the U visa program.<sup>17</sup>

Congress created the U visa in part because it found that immigrant women and children are especially vulnerable to certain crimes and forms of exploitation.<sup>18</sup> This is due to several factors, including language barriers, isolation from family and friends, limited knowledge of U.S. laws, fear of deportation, and cultural differences.<sup>19</sup> Immigrant victims may also be additionally harmed, or chilled from reporting, because of their immigration status. Perpetrators also weaponize their victim's immigration status to prevent them from reporting.

---

<sup>16</sup> For more information about how language access and U visa certification by courts build trust and improve access to justice for immigrant and limited English proficient victims see, *National Center for State Courts White Paper: Improving the Courts' Capacity to Serve Limited English Proficient Persons Seeking Protection Orders* (2006), <https://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>; see also, *Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Policy Recommendations* (National Center for State Courts, 2018) <https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>.

<sup>17</sup> 8 CFR § 214.14(a)(5); Rules and Regulations, 72 Federal Register 53019-20 (September 17, 2007), <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>; VAWA 2000, Pub. L. No. 106-386, § 1513(a)(2)(A); *DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015* at 20 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>. See also, Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know*, at 1 (July 8, 2015),

<https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

<sup>18</sup> VAWA 2000, Pub. L. No. 106-386, § 1513(a)(1)(A), <https://niwaplibrary.wcl.american.edu/pubs/vawa-ii-vawa/>; USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 4 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>19</sup> *U Visa Law Enforcement Resource Guide* at ii (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; *DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015* at 4 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

Research has found that perpetrators of crimes against immigrant victims often attempt to report their victims to immigration enforcement authorities as a tactic to undermine criminal investigations, avoid criminal prosecution, and to gain leverage or advantage in civil, family, or criminal law cases.<sup>20</sup>

To address this myriad of complex barriers, Congress and DHS designed U visa legislation<sup>21</sup> and regulations<sup>22</sup> to protect victims by enabling them to apply for U visa protections at the earliest stages of contact with the justice system, such as when victimization is revealed in a pleading, in a call to a government agency for help, in a police report, or in a conversation with law enforcement or prosecutors. Victims qualify for certification *as soon as* they demonstrate that they are or have been helpful to a certifying agency or official. These procedures reflect Congress's understanding of the unique challenges faced by immigrant victims.<sup>23</sup>

---

<sup>20</sup> *DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015* at 20 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> (“It is common for perpetrators to report immigrant crime victims and witnesses to immigration enforcement officials to gain advantage in a civil or family law case and/or to avoid prosecution in a criminal case. Congress created the U visa as a tool to counter such efforts by perpetrators”); *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims* at p 36, [https://niwaplibrary.wcl.american.edu/pubs/policechief\\_april-2018\\_building-trust-immigrant-victims/](https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims/); *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* at 14-17, 48-51, 97-99, 102, 109 (May 3, 2018), <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report/>; *Transforming Lives: How the VAWA Self-Petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status* at 4-57 (June 8, 2021), <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report/>

<sup>21</sup> 5 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(o)(1).

<sup>22</sup> 8 C.F.R. 214.14(a)(12).

<sup>23</sup> 72 Fed. Reg. 53019 (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, 72 Fed. Reg. Vol.

53019 (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.”).

## B. U Visa Basics

i. *Who qualifies for a U visa?* Applicants must:

1. Be a victim of a qualifying criminal activity;
2. Possess credible and reliable information about the criminal activity;
3. Have been *or* are currently being, *or* are likely to be helpful<sup>24</sup> to government officials in one of the following;<sup>25</sup>
  - a. Detection, investigation, prosecution, conviction or sentencing of the criminal activity.
4. Have been a victim of criminal activity committed in the U.S. or that violated U.S. law;
5. Submit a U visa certification addressing 1-4 above signed by a judge, law enforcement, a prosecutor, or other government agency authorized to sign certifications;<sup>26</sup>

Additionally, the victim must prove to DHS that:

6. The victim suffered substantial physical or mental abuse as a result of the criminal activity; and
7. The victim is admissible to the United States.<sup>27</sup>

---

<sup>24</sup> 8 U.S.C. § 1101(a)(15)(U)(i)(III). (The statute authorizes certification for victims who may not have provided helpfulness in the past or present, but who are likely to be helpful in the future. However, judicial certifications are based only on information in court records or from court proceedings regarding the victim's past or present helpfulness).

<sup>25</sup> When a victim is under 16 years of age on the date the qualifying criminal activity occurred, or a victim is incapacitated or incompetent, a parent, guardian, or next friend<sup>18</sup> may provide information on their behalf. See U.S.

DEP'T OF HOMELAND SEC., *U Visa Law Enforcement Resource Guide For Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies*, (2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>26</sup> 8 C.F.R. § 214.14(c)(2)(i); USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 2, 3, 10 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 1, 2, 4 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/> (Judicial certifications are based on detection, conviction or sentencing of a criminal activity. By signing the certification the judges is attesting that the immigrant is a victim of a qualifying criminal activity and the immigrant's helpfulness to the court or other government officials in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity).

<sup>27</sup> If the victim is not admissible, the victim may apply for an inadmissibility waiver from DHS as part of the U visa application. See INA § 245(m); 8 U.S.C. § 1255(m); 72 Fed. Reg. 53013.

*ii. What are U visa qualifying criminal activities?*

The U visa statute provides categories of U visa qualifying criminal activities. These categories are not specific crimes or citations to a criminal code.<sup>28</sup> Rather, to be a U visa qualifying crime, the criminal activity must involve on or more of the following *types* of criminal activities, in violation of local, state or federal law, or a substantially similar activity:<sup>29</sup>

- 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 Taking
- 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
- Attempt, conspiracy or solicitation to commit any of these listed criminal activities<sup>30</sup>

---

<sup>28</sup>USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 4 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>29</sup> USCIS recognizes that there “are a wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list of qualifying criminal activities for the U visa, but the nature and elements of those activities are... substantially similar” to a U visa listed qualifying criminal activity. See, USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 5(February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>30</sup> See INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III).

U.S. Citizenship and Immigration Services (USCIS) has provided examples of similar criminal activities. For instance, hate crimes is considered a similar criminal activity by USCIS. Also child abuse and elder abuse may be classified as forms of domestic violence if the child, incapacitated adult, or elderly individual, meets the legal criteria for domestic violence under applicable statutes.<sup>31</sup> In some states aggravated robbery may also be considered similar criminal activities.<sup>32</sup>

*Which government agencies are authorized to sign U visa certifications?*

U visa certifications can be completed by any federal, state, tribal, territorial, or local judge, law enforcement, prosecutor, or other government agency that has the responsibility to detect, investigate, prosecute, convict or sentence in cases involving qualifying criminal activity. Agencies with criminal, civil, or administrative investigative jurisdiction, such as child and adult protective services, the Equal Employment Opportunity Commission, and federal and state Departments of Labor are also authorized by the U visa statute and regulations to be certifying agencies.<sup>33</sup>

Any judicial official with delegated authority from a federal, state, local, tribal or territorial court to decide cases is authorized by the federal U visa statute and regulations to sign U visa certifications.<sup>34</sup> All judges have the authority to sign U visa certifications including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.<sup>35</sup>

---

<sup>31</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 4 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>

<sup>32</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 5 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>

<sup>33</sup> *DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015* at 6, <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

<sup>34</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 16 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>

<sup>35</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 16 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

Judges play a vital role in promoting access to justice and protecting the integrity of the justice system. For this reason, in the Violence Against Women Act of 2000, Congress specifically listed judges as government officials authorized to sign U visa certifications. Judges detect criminal activities and encounter victims of criminal activities in court in a wide range of criminal, civil, family, and child welfare cases. Judges were included among the government agency personnel authorized to certify U visas because judges have expertise in and regularly hear civil, family, and criminal court cases that involve domestic violence, sexual assault, stalking, child abuse, and human trafficking, all of which account for 58% of all U visa cases filed nationally.<sup>36</sup>

*iii. What protections do victims filing U visas receive?*

U visa applicants receive some protections at each stage of the U visa process, beginning with certification and application. Once victims receive a U visa certification and submit their applications, even before any further adjudication is performed, they receive some protection from deportation through VAWA Confidentiality laws, which prevents ICE from taking any enforcement action against them based on information provided by a perpetrator. This vital notification function prevents perpetrators from attempting to halt investigations and prosecutions by having their victims deported.<sup>37</sup> Victims receive additional protections and may be eligible for some services once they receive a bona fide determination, on average 3-5 years after filing their application.<sup>38</sup> Victims must then wait in line for final adjudication of their U visa applications until a U visa becomes available, a wait of up to 15 years.<sup>39</sup>

---

<sup>36</sup> USCIS, U VISA REPORT, TRENDS IN U VISA LAW ENFORCEMENT CERTIFICATIONS, QUALIFYING CRIMES, AND EVIDENCE OF HELPFULNESS (July 2020), [https://niwaplibrary.wcl.american.edu/pubs/u\\_visalea-certs-report/](https://niwaplibrary.wcl.american.edu/pubs/u_visalea-certs-report/).

<sup>37</sup> *Bench Card on Violence Against Women Act (VAWA) Confidentiality* (December 3, 2021), <https://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-va-wa-confidentiality/>; *VAWA Confidentiality Statutes, Legislative History and Implementing Policy* (Updated June 7, 2022), <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>.

<sup>38</sup> USCIS, POLICY MANUAL, VOLUME 3 HUMANITARIAN PROTECTION AND PAROLE, PART C VICTIMS OF CRIME, CHAPTER 5 BONA FIDE DETERMINATION PROCESS, <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>. It is at receipt of work authorization and deferred action that victims lives begin to stabilize and many aspects of victim's and their children's lives improve. See generally, *Executive Summary – Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status* (June 8, 2021), <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final/>.

<sup>39</sup> *Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status and Form I-918, Petition for U Nonimmigrant Status, Bona Fide Determination Review (Fiscal Year 2024, Quarter 4)*, [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.uscis.gov%2Fsites%2Fdefault%2Ffiles%2Fdocument%2Fdata%2Fi918u\\_visastatistics\\_fy2024\\_q4.xlsx&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.uscis.gov%2Fsites%2Fdefault%2Ffiles%2Fdocument%2Fdata%2Fi918u_visastatistics_fy2024_q4.xlsx&wdOrigin=BROWSELINK).

iv. *What is the victim's ongoing cooperation requirement and its exceptions?*

Throughout the process, the victim has an ongoing obligation to cooperate, assist, or not unreasonably refuse to provide cooperation or assistance in an investigation or prosecution related to the qualifying criminal activities when reasonably requested by certifying officials if there is an ongoing need.<sup>40</sup> A crucial exception exists for situations when ongoing cooperation would be unreasonable, including (but not limited to) situations when the victim fears retaliation or harm by the perpetrator.

The regulations governing U visa victim applications for lawful permanent residency articulate how USCIS adjudicators and U visa certifiers should assess whether a victim's refusal to cooperate was unreasonable based on affirmative evidence and the totality of the circumstances in the victim's case.<sup>41</sup> DHS Directives also require that DHS employees making this determination take a victim-centered approach that "[e]qually values identification and stabilization of victims, and the detection, investigation, and prosecution of perpetrators of abuse, exploitation and violence."<sup>42</sup> Many victims continue to cooperate over time, especially after receiving work authorization and deferred action, which can provide them with a sense of security and stability.<sup>43</sup>

---

<sup>40</sup>USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 2, 8 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>41</sup> 8 C.F.R. § 245.24(a)(5); 73 Fed. Reg. / 75547 (December 12, 2008) (Factors considered include "general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant").

<sup>42</sup> DHS DIRECTIVE 002-03: PREVENTING AND ADDRESSING GENDER-BASED VIOLENCE THROUGH A VICTIM CENTERED APPROACH at 4 (November 1, 2023), [https://niwaplibrary.wcl.american.edu/pubs/24\\_0521-dhs-gbv-directive/](https://niwaplibrary.wcl.american.edu/pubs/24_0521-dhs-gbv-directive/).

<sup>43</sup> Krisztina E. Szabo et al., *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants* (Feb. 12, 2014), [https://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12/](https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/); Rafaela Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018), [https://niwaplibrary.wcl.american.edu/pubs/immigrant\\_access-to-justice-national-report/](https://niwaplibrary.wcl.american.edu/pubs/immigrant_access-to-justice-national-report/); Leslye Orloff, et. al., *U Visa Victims and Lawful Permanent Residency* at 5 (September 6, 2012) <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12/> (70% continued cooperation and 29% victims were willing to cooperate if their criminal case went forward).

## C. U Visa Myths and Facts

### i. *Is the U visa a preferential status under immigration law?*<sup>44</sup>

No. There are three major routes to legal immigration status in the United States that are all co-equal legitimate pathways to lawful permanent residency and ultimately citizenship. These are family sponsorship, employer sponsorship, and humanitarian relief. Each are separate paths with none treated as a preferential status. The humanitarian relief path to lawful permanent residency is available to refugees, asylees and victims of qualifying crimes including domestic violence, sexual assault, child abuse, stalking, and human trafficking. This path is also available to children who have suffered child abuse, abandonment, or neglect perpetrated by their parent.<sup>45</sup>

### ii. *Does a judge or other certifying official grant a U visa to a victim by signing a U visa certification?*

No. The U visa certification (Form I-918B) is a required piece of evidence that victims must submit as part of their U visa application.<sup>46</sup> It is an application requirement, and applications filed without certifications will be rejected as incomplete.<sup>47</sup> The signed U visa certification does not change a victim's legal immigration status<sup>48</sup> or guarantee that the victim's U visa application will be granted.<sup>49</sup>

---

<sup>44</sup> *Formal Advisory Opinion: 2014-03* (N.C. Jud. Standards Comm'n Aug. 8, 2014)

<sup>45</sup> USCIS, HUMANITARIAN, <https://www.uscis.gov/humanitarian>.

<sup>46</sup> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53023 (Sept. 17, 2007), <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>.

<sup>47</sup> 8 C.F.R. § 214.14(2)(i). See also, Form I-918 Instructions (Feb. 7, 2017) ("Supplement B. You must submit an original, properly and timely executed Supplement B certification with your Form I-918.").

<sup>48</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 1 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

<sup>49</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3, 11 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

The certifying agency *is not responsible* for determining whether a victim is eligible for immigration status under the U visa program.<sup>50</sup> USCIS has sole responsibility for adjudicating all U visa applications<sup>51</sup> and adjudicating U visa recipients' applications for lawful permanent residency.<sup>52</sup>

*iii. In order to sign a certification, does a certifier have to determine whether a victim will provide future helpfulness in addition to the past or present helpfulness the victim has already provided?*

No. Judges may sign U visa certifications as soon as they are able to assess the victim's current or past helpfulness to the court in detecting the criminal activity the victim suffered. When judges sign a certification based on a victim helping the court detect criminal activity that they or their child suffered, the certification is based on helpfulness the victim has already provided. This can include helping the court detect through pleadings, testimony, participation at hearings, or evidence submitted (e.g., medical records, police reports).

It is important for judges to remember that only one of the statutorily listed forms of helpfulness is required to support U visa certification.<sup>53</sup> The victim must have provided helpfulness in the past, *OR* they are currently being helpful, *OR* if they have not provided past or present helpfulness the certifier believes that are likely to be helpful in the future. When the victim has already provided past or present helpfulness, this is sufficient for the certifier to sign the U visa certification. The certifying judge or judicial officer does not *and should not* base certification on what the victim may do in the future. As will be discussed in Section III of this article, judicial U visa certifications based on past or present helpfulness observed by the judge or documented in court records is a best practice that is consistent with judicial ethical obligations.

---

<sup>50</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 10 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>51</sup> *DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015* at 8, 20, <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

<sup>52</sup> See generally, 8 C.F.R. § 245.24.

<sup>53</sup> 72 Fed. Reg. 53019 (2007); Sylvie Sheng et al., *U Visa Certification and T Visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers* at 46-47 (2021),

iv. Can judges **only** sign U visa certifications for victims who were helpful in **criminal investigations and criminal prosecutions**?

No. The U visa statute lists judges as certifiers.<sup>54</sup> This means that they can certify based on any kind of helpfulness permitted by DHS regulations, policies, and guidance. DHS regulations, policies, and guidance confirm that the term "investigation or prosecution" in the statute is broadly interpreted under federal immigration law regulations to always include helpfulness in the detection of criminal activities in **any** type of court case. It also includes helpfulness in conviction or sentencing in criminal cases.<sup>55</sup> DHS recognizes that judges will base certification on a victim's helpfulness in the detection of criminal activity in family,<sup>56</sup> civil or criminal cases,<sup>57</sup> or in the conviction or sentencing of perpetrators in criminal cases because "[j]udges neither investigate crimes nor prosecute perpetrators."<sup>58</sup>

It is especially important for judges to understand the full scope of their certifying authority, because there are many instances where the judge may be the only certifying official in a position to assess the victim's helpfulness because the victim's only contact with the justice system has been at court.<sup>59</sup> This commonly occurs in situations involving protection orders, custody, and divorce cases where the victim provides evidence to the court about their own or their child's victimization.

---

<sup>54</sup> 8 U.S.C. § 1101(a)(15)(U)(i)(III); See also, New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status: Interim Rule," 72 Fed. Reg. 53013, 53020 (Sept. 17, 2007) <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>.

<sup>55</sup> 8 C.F.R. § 214.14(a)(5); New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53023 (Sept. 17, 2007), <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>.

<sup>56</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15.13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 2-3 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

<sup>57</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>58</sup> New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007) <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>.

<sup>59</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15.13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 2-3 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

<sup>60</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15.13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 2-3 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/> (Including recommending that judges make available at courthouses DHS know your rights brochures on immigration protections for victims of crime and abuse <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/resources-for-victims-of-human-trafficking-and-other-crimes>); SYLVIE SHENG ET AL., *U Visa Certification and T Visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers* at 10(2021),

For instance, victims may have revealed sexual assault to a court when seeking a sexual assault protection order or in a civil employment case against an abusive employer. Common scenarios also include cases where a child victim or their parent provides helpfulness to the court in detecting criminal activity by providing information about child abuse to the court in a child welfare proceeding.

In some jurisdictions victims will also turn to the courts for certification, because the court is the only justice system agency that provides qualified interpreters needed for Limited English Proficient (LEP) victims to report crime victimization.<sup>60</sup>

Judges assess the helpfulness of a victim using the same standard the judge uses in making probable cause determinations. DHS advises certifiers that certification be granted based upon “any credible evidence” which is parallel to probable cause.<sup>61</sup>

No statute of limitations: The U visa statute,<sup>62</sup> and USCIS U visa regulations and policies do not impose a statute of limitations or signing a U visa certification.<sup>63</sup> According to DHS and USICS:

“There is no statute of limitations on signing the certification – one can be signed for a crime that happened many years ago or recently.”<sup>64</sup>

“The key is the victim’s helpfulness, not the timing of the helpfulness.”<sup>65</sup>

---

<sup>61</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 4 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-u-visa-judicial-training-update/>.

<sup>62</sup> 8 U.S.C. § 1101(a)(15)(U); 8 U.S.C. § 1184(p).

<sup>63</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES (February 28, 2022) at 8 <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>;

<sup>64</sup> *DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015* at 7, 19 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> (“There is no statute of limitations regarding the time frame in which the criminal activity must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful in the past to the detection, investigation, prosecution, conviction, or sentencing of criminal activity. A crime victim may be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial and whether or not the prosecution resulted in a conviction. . A trafficking victim could be eligible to receive a T visa declaration when a case is closed for similar reasons. The petitioner must still meet all the eligibility requirements for a U or T visa to be approved”).

<sup>65</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 8 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

A judge detects crime victimization and helpfulness to the courts when the judge observes or receives evidence of helpfulness including but not limited to when the victim.<sup>66</sup>

- Provided information about or evidence of domestic violence, child abuse, elder abuse, sexual assault, stalking, human trafficking, or other U visa criminal activity in a custody, divorce, paternity, child support or other family court action, including but not limited discussing victimization in pleadings, providing testimony, photographs of injuries, or medical records;
- Provided information regarding child or elder abuse to protective services agency staff or investigators;
- Filed for and was granted a civil protection order;
- Sought or received a temporary, interim, or ex parte protection order;
- Testified in a default or contested protection order proceeding;
- Testified or provided evidence about the victim or their child's victimization in a custody, child welfare, or other family court proceeding;
- Brought their abused children to court to participate in child welfare or criminal proceedings regarding abuse of their child;
- Called police to report the crime;
- Testified at or attended pre-trial motions hearings or status hearings in a civil, family or criminal proceeding;
- Testified at or attended a criminal trial;
- Provided a statement to police, even if there was no arrest;
- Participated in a criminal investigation;
- Identified the perpetrator at line up;
- Testified before a grand jury or at a criminal trial; or
- Provided a victim statement at sentencing

v. *Does issuance of a U Visa by USCIS or the victim's ability to obtain a U visa certification require or contemplate a **past, present, or future criminal investigation or criminal prosecution?***

No. Any victim who provides information to a government agency that is helpful in detecting criminal activity is eligible for certification. No criminal investigation or prosecution is required or need be initiated either before certification or ever in the future.<sup>67</sup> There are a wide range of civil, family and child welfare contexts<sup>68</sup> where an immigrant victim helps with the detection of criminal activity committed against themselves or their child.

U visa certification is authorized by both the U visa statute<sup>69</sup> and regulations<sup>70</sup> which recognize detection as sufficient grounds for issuance of U visa certifications.

The U visa program was designed to promote access to justice in civil, child welfare, adult protection, administrative law, and criminal cases. By the time the U visa was created in 2000, offering crime victims a civil remedy and assistance unrelated to whether or not a criminal case had or would ever be initiated<sup>71</sup> was well established in domestic violence protection order statutes, in early sexual assault protection order statutes, in adult and child protective services cases, and in the work of the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor.

---

<sup>66</sup> See more Peter Helein et al., *U-Visa: "Helpfulness" Checklist*, (2019), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist/>.

<sup>67</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 8,10 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>68</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3, 6 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>69</sup> VAWA 2000, Pub. L. No. 106-386, §1513(a)(2)(A).

<sup>70</sup> 72 Federal Register 53020 (September 17, 2007)

("The rule provides that the term "investigation or prosecution," used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity. New 8 CFR 214.14(a)(5). Referring to the AG Guidelines, USCIS is defining the term to include the detection of qualifying criminal activity because the detection of criminal activity is within the scope of a law enforcement officer's investigative duties. AG Guidelines, at 22–23. Also referring to the AG Guidelines, USCIS is defining the term to include the conviction and sentencing of the perpetrator because these extend from the prosecution. Id. at 26–27. Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which permits judges to sign certifications... INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1). Judges neither investigate crimes nor prosecute perpetrators. Therefore, USCIS believes that the term 'investigation or prosecution' should be interpreted broadly as in the AG Guidelines.")

<sup>71</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/> ("The initiation of a criminal case is not required to establish eligibility for a U visa.")

The U visa statute<sup>72</sup> and regulations<sup>73</sup> were designed to ensure that access to justice offered by courts and the work of state and federal agencies would be enhanced because U visa certification could be based upon detection of criminal activity in a wide range of non-criminal law cases. Under federal U visa laws, the following are examples of U visa certification authorized based on detection of criminal activity. Examples include:

- Victims providing courts information about domestic violence, child abuse, elder abuse, sexual assault, stalking, or human trafficking in a civil protection order, custody, divorce, or child welfare case through pleadings testimony, motions, or court appearances.
- Victims helping the EEOC, DOL, and/or state departments of labor detect sexual assault, felonious assault, domestic violence, extortion, and other U visa criminal activities in the course of labor violations and discrimination investigations.
- State child and elder abuse protection staff regularly working with victims who help with detection of U visa criminal activities including child abuse, elder abuse, sexual assault, and unlawful criminal restraint during abuse related investigations.

USCIS and DHS confirm that a criminal investigation or criminal prosecution is not required in the past, present, or future for a victim who has provided helpfulness in the detection, or investigation, or prosecution, or conviction, or sentencing to receive U visa certification.

“The initiation or progress on a investigation or prosecution is outside of the victim’s control.”<sup>74</sup> DHS and USCIS documents state that the following are not required:<sup>75</sup>

---

<sup>72</sup> 8 U.S.C. § 1101(a)(15)(U)(i)(III).

<sup>73</sup> 8 C.F.R. § 214.14(a)(2).

<sup>74</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 8 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>75</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at iii, 6, 8, 13 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015 at 7, 15, 19, 21 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>; Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 4 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-u-visa-judicial-training-update/>.

- An active criminal investigation or prosecution;
- That a criminal case was opened or has been closed.
- Filing of criminal charges;
- That the offender can be identified or located;
- An arrest;
- A prosecution;
- A conviction;
- A plea;
- Initiation of a criminal case either an investigation or prosecution;
- That a grand jury issued an indictment;
- That an investigation or prosecution of a crime is initiated or completed after a victim reports the crime; or
- That the agency that detected the criminal activity is the agency with the authority to decide whether or not to pursue a criminal investigation or criminal prosecution.

*vi. Does the judge who signs the U visa certification have to be the judge who presided over the case in which the victim provided helpfulness?*

No. Any judge can sign a U visa certification who has observed or is able to obtain from court records information needed to complete the certification form about the criminal activity that was perpetrated against the victim or the victim's child and about helpfulness to the court, police, prosecutors, child welfare, labor enforcement agencies, or other government official in the detection, investigation, prosecution, conviction or sentencing related to the criminal activity.

According to USCIS:

“Judges may sign certifications based on a review of court records involving the victim. A judge may sign the certification based on having conducted the sentencing in a criminal case. A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which they presided.”<sup>76</sup>

---

<sup>76</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

### III. Potential Ethics Implications

This section of the article reviews four judicial ethics opinions from three states issued prior to December 2024. These opinions are:

- Maryland Judicial Ethics Committee, Opinion 2024-24 – Judges Signing of Federal U Visa Certifications – Supplemental Opinion (October 17, 2024).<sup>77</sup>
- Maryland Judicial Ethics Committee, Opinion 2023-20 – Judges Signing of Federal U Visa Certifications (August 21, 2023).<sup>78</sup>
- Minnesota Board on Judicial Standards, Opinion 2015-2 – U-Visa Certifications (June 26, 2015).<sup>79</sup>
  - National Judicial Training Update 15-13, Immigrant Crime Victims & U- Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know (July 8, 2015).<sup>80</sup>
  - Minnesota, Judicial Training & Education Update, 15-13. Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know (July 8, 2015).<sup>81</sup>
- Judicial Standards Commission State of North Carolina, Formal Advisory Opinion 2014-03 (August 8, 2024).<sup>82</sup>

---

<sup>77</sup> Maryland Judicial Ethics Committee Opinion 2024-24 Judges' Signing of Federal U visa Certifications – Supplemental Opinion (October 17, 2024) <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u-visa/>.

<sup>78</sup> Maryland Judicial Ethics Committee Opinion 2023-20 Judges' Signing of Federal U visa Certifications (August 21, 2023) <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

<sup>79</sup> Minnesota Board of Judicial Standards Advisory Opinion 2015-2 U Visa Certification by Judges (June 26, 2015) <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>80</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

<sup>81</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *Minnesota Judicial Training & Education Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/minnesota-uvisa-judicial-training-update/>.

<sup>82</sup> Judicial Standards Commission State of North Carolina, *Formal Advisory Opinion 2014-03* (August 8, 2024) <https://niwaplibrary.wcl.american.edu/pubs/nc-u-visa-judicial-ethics-advisory-opinion-2014-03/>. The Minnesota Board on Judicial Standards noted that the North Carolina opinion has two significant limitations with regard to its usefulness to judges and Judicial Ethics Boards in other states. "First, the opinion is based on the North Carolina Code of Judicial Conduct as adopted in January 2006. This version of the Code antedates substantial amendments to the ABA Model Code of Judicial Conduct (2006)... Second, the North Carolina opinion directly analyzes only pre-conviction of an I-918B form [U visa certification] that does not discuss the possibility that a judge may certify... after conviction" Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 4 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

This review is divided into sections organized by topics addressed in the ABA Model Code of Judicial Conduct Rules.<sup>83</sup> It includes an analysis of each opinion in relation to the following relevant topics. The guidance document will then consider key issues for U visa certification with respect to the rules identified:

- Identify judicial ethics rules that are not implicated when judges sign U visa certifications.
- Demonstrate the extent to which, if at all, and where in the judicial ethics opinions they include and apply information about immigration laws that is not consistent with U visa statutes and DHS regulations, policies and publications on the U visa.
- Discuss where the judicial ethics opinions make assumptions about federal immigration laws with regard to U visa certification and the requirements of the U visa program that are inconsistent with U visa statute and the DHS regulations, policies, and publications that lead to faulty judicial ethics conclusions in these opinions.

**A. ABA Model Code of Judicial Conduct Rules 3.1 and 1.3 – Signing a U Visa Certification is a Judicial Act and Not an Extra-Judicial Activity and Does Not Lend the Prestige of the Judge’s Office to The Victim Seeking Certification**

Rules 3.1 and 1.3 consider judges engagement in extrajudicial activities and prestige seeking activities, respectively. As this section will articulate, signing a U visa certification is a judicial, rather than extra judicial activity, and does not lend prestige of the judge’s office to the victim seeking certification. Neither of these rules is implicated in U visa certification by judges. Indeed, judges are Congressionally authorized to certify U visas.

---

<sup>83</sup> This article uses as reference the ABA Model Code of Judicial Conduct (2020 Edition)  
[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/).

*i. Text of relevant rules*

- Rule 3.1: Extrajudicial Activities in General:
  - “A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:
    - (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
    - (B) participate in activities that will lead to frequent disqualification of the judge;
    - (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;
    - (D) engage in conduct that would appear to a reasonable person to be coercive; or
    - (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.”<sup>84</sup>
  
- Rule 1.3: Avoiding Abuse of the Prestige of Judicial Office:

“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”<sup>85</sup>

---

<sup>84</sup> MODEL CODE OF JUDICIAL CONDUCT, Rule 3.1: Extrajudicial Activities in General (Am. Bar Ass’n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_3/rule3\\_1extrajudicialactivitiesingeneral/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_3/rule3_1extrajudicialactivitiesingeneral/).

<sup>85</sup> MODEL CODE OF JUDICIAL CONDUCT, Rule 1.3: Avoiding Abuse of the Prestige of Judicial Office (Am. Bar Ass’n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/mcjc\\_canon\\_1/rule1\\_3avoidingabuseoftheprestigeofthejudicialoffice/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/mcjc_canon_1/rule1_3avoidingabuseoftheprestigeofthejudicialoffice/).

ii. *Signing a U visa certification is a judicial act, not an extra-judicial activity*

The Maryland Judicial Ethics Committee concluded that signing of a U visa certification is a judicial act and is not an extrajudicial activity. The Maryland Judicial Ethics Committee concluded that completing a U visa certification

“is a judicial act because it is an action taken by a judge in the judge’s official capacity and in connection with some proceeding within the court’s jurisdiction.”<sup>86</sup>

It is an official act, not an extra-judicial activity and is therefore not governed by Rule 3.1.<sup>87</sup>

iii. *Certification can be made by a certifying judge, the court’s presiding or administrative judge, or the judge who presided over the proceedings involving the victim*

The Minnesota Board on Judicial Standards concurs generally that a judge in a criminal or civil case that has been completed can ethically sign U visa certifications so long as they have an adequate basis to make the averments called for in the certification.<sup>88</sup> The Maryland Judicial Ethics Commission states that judges may sign U visa certifications when the conclusions necessary for the U visa certification can be made based on completed court proceedings.<sup>89</sup>

---

<sup>86</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges’ Signing of Federal U visa Certifications* at 6 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>; Maryland Judicial Ethics Committee, *Opinion 2024-24 Judges’ Signing of Federal U visa Certifications – Supplemental Opinion* at 5 (October 17, 2024), <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u-visa/>.

<sup>87</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges’ Signing of Federal U visa Certifications* at 7 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

<sup>88</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 6-7, (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/> (This opinion is not fully consistent with the U visa regulations which recognize that judicial certifications are not limited to conviction and sentencing. The U visa regulations and the regulatory history both include of detection as a grounds for certification, particularly as it is related to certification by judges.). See, 72 Fed. Reg. 53020 (September 17, 2007), <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>; 8 C.F.R. § 214.14(a)(5); and Section II of this article.

<sup>89</sup> Maryland Judicial Ethics Committee, *Opinion 2024-24 Judges’ Signing of Federal U visa Certifications – Supplemental Opinion* at 6 (October 17, 2024), <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u-visa/>.

USCIS accepts certifications signed by judges including “certifications signed by judges who were not assigned the case when the judge has knowledge of the case by reviewing the record or consulting with the judge who heard the case.”<sup>90</sup> USCIS, in its 2022 resource guide for certifiers confirms:

“Judges may sign certifications based on a review of court records involving the victim. A judge may sign the certification based on having conducted the sentencing in a criminal case. A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which they presided.”<sup>91</sup>

The facts needed for certification about crime victimization and the victim’s helpfulness<sup>92</sup> can be obtained by a certifying judge from a wide range of court records including judicial findings, pleadings, motions, settlement agreements, notes in the court record made by the presiding judge, and evidence submitted in the case.

In *Matter of Rosales*, the judge who issued the U visa certification was not the same judge who presided over the victim’s protection order case, as the original judge had retired. To assess the applicant’s eligibility for certification, the certifying judge carefully reviewed the hearing transcripts, the court’s file, and the family offense petition.<sup>93</sup> The certifying judge was able to rely on the enumerated acts outlined in the family offense petition to complete the certification.<sup>94</sup>

---

<sup>90</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *Minnesota Judicial Training & Education Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 5 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/minnesota-uvisa-judicial-training-update/>. (Includes a note from Judge Alan Pendelton’s 2015 interview with USCIS subject matter experts from the USCIS Office on Policy and Strategy).

<sup>91</sup> *U Visa Law Enforcement Resource Guide* at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>92</sup> For a list of examples of a victims helpfulness see Section II(C)(iv).

<sup>93</sup> *In re Rosales*, 40 Misc. 3d 1216(A) (N.Y. Fam. Ct. 2013).

<sup>94</sup> *In re Rosales*, 40 Misc. 3d 1216(A) (N.Y. Fam. Ct. 2013).

In a number of courts across the country, all certification requests are assigned to a certifier judge or the presiding judge. Judges hearing cases forward all U-visa certification requests to the Certifier Judge who develops expertise on U visa certification. According to the Superior Court of California, “this approach helps ensure uniformity of decision and a clear transparent process for the applicant.”<sup>95</sup> This approach, like that adopted by the *Matter of Rosales* court, which is consistent with USCIS practice and guidance, facilitates access to certification by judges.<sup>96</sup>

The Minnesota Board on Judicial Standards also recognizes that “[t]here may be unusual circumstances in which such a certification could be proper, e.g., when the prosecutor is unavailable to sign the certification, there has been a conviction, and the presiding judge is incapacitated.”<sup>97</sup> Other examples of when certification by a judge who did not hear the victim’s can appropriately sign U visa certifications based on court records include: when judges are rotated to a new calendar, judges have switched dockets, have taken extended leave, or are part of a circuit rotation. Having a certifier judge or presiding judge certify also reduces the need for recusal since the judge hearing the case is not the judge signing the U visa certification.

---

<sup>95</sup> Superior Court of California, *U-Visa Certification Protocol* at 1 (2022), <https://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol> (last visited Dec 10, 2024).

<sup>96</sup> When a presiding judge or certifier judge handles U visa certifications for the court this facilitates early access to U visa certification including for victims who are granted ex parte protection orders. When the judge issuing ex parte protection orders receives information of a victim’s helpfulness the court can sign a U visa certification. That might include helpfulness to police evidence by a copy of a police report that the victim provided to the judge as part of the ex parte protection order request. The judge who issues that ex parte protection order can issue a judicial U visa certification based on the information they detected about the crime victimization and the victim’s helpfulness. When the judge issuing the ex parte protection order will not be the judge hearing the protection order case judicial ethical rules are not implicated. See Sections III(A)(iii), III(B)(vi), and III(E)(iii) for more information.

<sup>97</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 8 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

iv. *U visa certification by a judge does not abuse the prestige of judicial office.*

The ABA Judicial Code of Conduct Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office states that “A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” The Maryland Judicial Ethics Commission<sup>98</sup> correctly held that completing a U visa certification on the basis of completed proceedings does not amount to a judge lending the prestige of their judicial office to a person in violation of the rule. The act of signing a U visa certification advances the interests of the immigrant victim who requests the certification; however, this is no different than a judge deciding an issue in a case on the merits in favor of a litigant.<sup>99</sup>

The Minnesota Board on Judicial Standards<sup>100</sup> came to the same conclusion holding that although a certification advances an immigrant’s interests, the Board does not believe that certification involves the “prestige” of judicial office. It also correctly notes federal regulations contemplate that a judge may sign a U visa certification<sup>101</sup> and federal courts<sup>102</sup> have recognized certifications by judges are authorized by the U visa statute.<sup>103</sup> There is no abuse of the prestige of a judge’s office involved when the law and the courts countenance judicial certifications.

---

<sup>98</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges’ Signing of Federal U visa Certifications* at 7 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>; Maryland Judicial Ethics Committee, *Opinion 2024-24 Judges’ Signing of Federal U visa Certifications – Supplemental Opinion* at 5 (October 17, 2024), <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u-visa/>.

<sup>99</sup> North Carolina and Maryland both have Judicial Ethics Codes that use the terminology “lend” instead of the Model Code’s and Minnesota’s “abuse”. However, Minnesota and Maryland reached the same conclusion that Rule 1.3 is not implicated. North Carolina did not address this rule in its opinion. Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 4 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>100</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 4 (June 26, 2015) <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>101</sup> 8 C.F.R. § 214.14(c)(4).

<sup>102</sup> See generally, Kendall Niles, Veronica Thronson & Leslye Orloff, *Understanding the Judicial Role in U Visa Certification*, 31 Am. J. OF Fam. L. 208, 225 (2018); <https://niwaplibrary.wcl.american.edu/pubs/understanding-u-visa-certification-by-judges/>

<sup>103</sup> 8 U.S.C. § 1184(p)(1).

## **B. ABA Model Code of Judicial Conduct Rules 2.2, 1.2, 2.7, and 2.11(A)(6)(d) – Judicial Approaches to U Visa Certification that Maintain Judicial Impartiality**

In analyzing the judicial ethics boards' opinions regarding how the ABA Model Code of Judicial Conduct Code Rules 2.2, 1.3, 2.7 and 211(A)(6)(d) apply to U visa certifications by state court judges, it is important to first address how the incorrect assumptions and legal misunderstandings about federal U visa immigration law discussed above in the U visa Myths and Facts Sections II (C) (iii), (iv) and (v), may have influenced each of the Judicial Ethics Committees' opinions on ABA Model Code Rules 2.2, 1.2, 2.7, and 2.11 (A)(6)(d):

### *i. Text of Relevant Rules*

- 2.2 Impartiality and Fairness: “A judge shall uphold and apply the law, and shall perform the duties of judicial office impartially and fairly.”<sup>104</sup>
- 1.2 Promoting Confidence in the Judiciary: “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”<sup>105</sup>
- Rule 2.7: Responsibility to Decide: “A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.”<sup>106</sup>

---

<sup>104</sup>MODEL CODE OF JUDICIAL CONDUCT, r. 2.2 (Am. Bar Ass'n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_2impartialityandfairness/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_2impartialityandfairness/).

<sup>105</sup>MODEL CODE OF JUDICIAL CONDUCT, r. 1.2 (Am. Bar Ass'n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/mcjc\\_canon\\_1/rule1\\_2promotingconfidenceinthejudiciary/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/mcjc_canon_1/rule1_2promotingconfidenceinthejudiciary/).

<sup>106</sup>MODEL CODE OF JUDICIAL CONDUCT, r. 2.7 (Am. Bar Ass'n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_7responsibilitytodecide/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_7responsibilitytodecide/).

- Rule 2.11(A)(6)(d): Disqualification: “A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances...
  - “(6) The judge: ... (d) previously presided as a judge over the matter in another court.”<sup>107</sup>

ii. *A criminal investigation or prosecution need never be initiated*

The Judicial Ethics Boards opinions in all three states reviewed for this article focused on the issues of avoiding the appearance of impropriety and promoting public confidence all assume that under U.S. immigration laws U visa certification always requires that there be a criminal court case in the past or currently open or impending. The opinions appear to anticipate that there must be a future criminal investigation or prosecution. As discussed in detail in sections C(iv) and C(v) above, *this is incorrect*.

U visa certifications can be issued in civil cases without any requirement that either a criminal investigation or a criminal prosecution will ever be initiated.<sup>108</sup> Judicial certification can be based solely on an immigrant crime victim’s past or present helpfulness to the court in a civil, family, or child welfare case including when there has never been and may never be any criminal case involving the victim.

The North Carolina ethics opinion errs by narrowly viewing U visa certification by judges from only one vantage point and thus assuming that judicial certifications are only made pre-trial in pending cases. In doing so the North Carolina opinion fails to recognize that when judges sign certifications, after a court case involving the victim has been completed, judicial ethics codes are not implicated. Whereas judicial ethics codes could be implicated when a judge signs a U visa certification in a pending case over which the judge is presiding.

---

<sup>107</sup>MODEL CODE OF JUDICIAL CONDUCT, r. 2.11 (Am. Bar Ass’n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_11disqualification/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_11disqualification/).

<sup>108</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 8, 10(February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/> (“The initiation of a criminal case is not required to establish eligibility for a U visa.”).

The Maryland Judicial Ethics Committee’s Opinion 2024-24 provides an incomplete reading of the federal U visa regulations. The opinion correctly notes that: “Maintaining the independent judicial role promotes compliance with the bedrock impartiality principles” of judicial ethics rules.<sup>109</sup> This Maryland opinion also correctly cites the federal law from the federal U visa regulations<sup>110</sup> and regulatory history<sup>111</sup> that explicitly recognizes that judges sign certification based on “detection,” “conviction,” or “sentencing” because judges “neither investigate crimes nor prosecute perpetrators.”<sup>112</sup> However, the Maryland opinion inexplicably ignores “detection” as a basis for certification in the regulation.<sup>113</sup> Further, the opinion assumes that judges only certify based on helpfulness “in the prosecution of criminal conduct,”<sup>114</sup> a view with which DHS and USCIS disagree.<sup>115</sup>

---

<sup>109</sup> Maryland Judicial Ethics Committee, *Opinion 2024-24 Judges’ Signing of Federal U visa Certifications – Supplemental Opinion* at 4 (October 17, 2024) <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u- visa/>.

<sup>110</sup> 8 C.F.R. § 214.14(a)(5).

<sup>111</sup> 8 CFR § 214.14(a)(5); 72 Fed. Reg. 53020 (September 17, 2007) <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>.

<sup>112</sup> 72 Fed. Reg. 52,020 (Sept 17, 2007).

<sup>113</sup> 8 C.F.R. § 214.14(a)(5).

<sup>114</sup> Maryland Judicial Ethics Committee, *Opinion 2024-24 Judges’ Signing of Federal U visa Certifications – Supplemental Opinion* at 5 (October 17, 2024), <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u- visa/>.

<sup>115</sup> U Visa Law Enforcement Resource Guide at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa- certification-resource-guide-2022/> (“A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which they presided.”);

*DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015 at 19 (Certifiers -- “may sign a certification regardless of the outcome of the qualifying criminal case, including in the following instances:*

- the prosecutor decided not to prosecute;
- the grand jury did not issue an indictment;
- the case was dismissed by the prosecutor or a judge;
- a case brought by the EEOC or DOL resulted in a judgment, settlement, or dismissal;
- a judge issued a protection order or custody ruling;
- a child abuse case was settled;
- the defendant entered a plea, whether or not the plea was to an offense that is a qualifying criminal activity; and
- the defendant was found not guilty.”)

*iii. Impartiality – certification in open and closed cases differ*

Whether U visa certification impairs a judge's impartiality turns on whether the judge is being asked to sign a U visa certification in an open case or in a case that has already been concluded. All three Judicial Ethics Boards essentially concur that signing a U visa certification in proceedings that have not been completed based upon "partial or nonexistent record risks impairing the judge's impartiality."<sup>116</sup>

The Maryland Committee noted that "The judge's conclusions that criminal conduct has been committed and that the requesting party is the victim may be viewed as pre-judging issues that have not yet been resolved with the presentation of all evidence in an adversarial process. The judge may be perceived as crossing over into the law enforcement or prosecutorial roles of investigation and prosecution. The additional conclusion that the victim has been or will be helpful in the prosecution may be perceived as an endorsement of the victim's credibility. The judge has an ethical obligation both to remain impartial and to avoid even the perception of partiality."<sup>117</sup>

The Minnesota Board considered whether signing certifications involves judges improperly in the prosecution role of forecasting whether a witness may be helpful to the prosecution. Involvement in the prosecution role could bring into question whether a judge was performing duties "fairly and impartially," Rule 2.2, and whether the judge was impairing public confidences in the impartiality of the judiciary and creating "the appearance of impropriety." Rule 1.2.<sup>118</sup> It concluded that post-conviction certifications do not involve such forecasting as to a witness and do not involve judges in functions that are intrinsically those of a prosecutor.<sup>119</sup>

<sup>116</sup> Maryland Judicial Ethics Comm., Op. 20, 9 (2023) (Judges' Signing of Federal U Visa Certifications).

<sup>117</sup> Maryland Judicial Ethics Comm., Op. 20, 9 (2023) (Judges' Signing of Federal U Visa Certifications).

<sup>118</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 5-6 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>119</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 6 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

The North Carolina Commission, focusing exclusively on pre-trial certifications where there exists a pending criminal case, similarly concluded that

“A judge sits in the role of an impartial arbiter and is responsible for the adjudication, not the prosecution, of criminal matters. A judge is not a representative of the prosecutorial team and should not collude with law enforcement or prosecutors in evaluating the helpfulness of potential witnesses in a case. A judge's determination as to the credibility of victims should be formed through the hearing and trial process, and not be determined prior to adjudication. Such active involvement in securing witnesses for the prosecution and predetermining their helpfulness puts the judge in an inappropriate role that could reasonably suggest bias, or the appearance of bias, on the part of the judge in potential violation of Canon 2A and Canon 3 which require a judge to act to promote public confidence in the impartiality of his or her office.”<sup>120</sup>

The Maryland and Minnesota opinions both confirm that when the criminal case has been completed, judges could sign U-visas without impairing their impartiality. Judges may ethically sign certifications in completed criminal cases based on the record of the case and consistent with the criminal case outcome including in cases that concluded without a verdict.<sup>121</sup> Once a case is completed and is no longer pending, the court will generally have sufficient bases to determine a victim's helpfulness for U visa certification purposes.<sup>122</sup>

---

<sup>120</sup> Judicial Standards Commission State of North Carolina, *Formal Advisory Opinion 2014-03* at 2-3 (August 8, 2024), <https://niwaplibrary.wcl.american.edu/pubs/nc-u-visa-judicial-ethics-advisory-opinion-2014-03/>.

<sup>121</sup> Maryland Judicial Ethics Comm., Op. 20, 9 (2023) (Judges' Signing of Federal U Visa Certifications).

<sup>122</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 6 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

The Minnesota opinion also recognizes with regard to Rule 1.2, public confidence in an impartial judiciary, that in open criminal cases courts may

“properly make probable cause determinations at early stages of criminal proceedings. When judges assess helpfulness using the same standard as probable cause determinations, certifications may properly be made at an early stage of the case.<sup>123</sup> Whether a judge should sign a U visa certification is an issue of law that does not implicate the Code.”<sup>124</sup>

The Minnesota opinion notes that certification in a civil case before the case is completed could raise impartiality issues similar to those identified in pending criminal cases. However, U visa certification by a judge after a civil court case is completed does not raise impartiality issues.<sup>125</sup>

According to the DHS, a judge’s ability to sign certification is not limited to criminal court cases. “A judge may sign the certification based on having conducted the sentencing in a criminal case. A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which they presided.”<sup>126</sup> DHS also recognizes that a judge that did not preside over the case can sign U visa certifications based on the court records in the case involving the victim.<sup>127</sup>

---

<sup>123</sup> See Section III(E) for a discussion of ethical rules on ex parte communications that apply when judges are considering certification in open civil, family, and criminal court matters that have not been concluded.

<sup>124</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 8 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>125</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 7 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>126</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>127</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3 (February 28, 2022) <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

In both civil and criminal cases a judge may ethically sign certifications when the judge has an adequate basis to support the averments that the court is required to make on the U visa certification form. The court obtains information of victimization and helpfulness from the court proceedings, decisions, court records, and/or the victim's actions in the case. Details about the types of helpfulness a victim could have provided in connection with the court proceedings are discussed in Section II(C)(iv) above.

*iv. Judges should only sign certifications based on past or present helpfulness*

Judicial certifications should be based on information derived from court records and may be based additionally on the judge's observations in cases when the judge presided over the court case involving the victim. Judicial certifications should not be based on any independent investigation.<sup>128</sup> All judicial certifications should be limited to past or present helpfulness, and judicial certifications must avoid any prediction of the victim's future helpfulness.<sup>129</sup> This includes any future helpfulness the victim might provide in a future court case, criminal or civil<sup>130</sup>.

*v. To comport with ethical rules, judges must amend the form and place limitations on U visa certifications*

The Maryland Judicial Ethics Committee states three specific ways judges should modify the U visa certification form before signing:

1. Judges should state that the "certification is based on information derived from court records and from the judge's observations during proceedings before the judge...The certification should be supported with relevant court records where possible."<sup>131</sup>

---

<sup>128</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 12 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

<sup>129</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 12 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

<sup>130</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 13,16 (August 21, 2023) <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>; Judicial Standards Commission State of North Carolina, *Formal Advisory Opinion 2014-03* at 2 (August 8, 2024) <https://niwaplibrary.wcl.american.edu/pubs/nc-u-visa-judicial-ethics-advisory-opinion-2014-03/>.

<sup>131</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 12 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

To implement this, judges should amend the form to delete the phrase “based upon investigation of the facts” and replace it with language indicating the basis for certification. Examples include:<sup>132</sup>

- Based on my findings and issuance of a protection order;
  - Based on my finding of probable cause;
  - Based on my finding in a (custody/divorce/child abuse) case;
  - Based upon my presiding over the case and hearing evidence;
  - Based on my review of the court record; and/or
  - Based upon my review of court records and attached documents.<sup>133</sup>
2. Judges should “explicitly limit the certification to past helpfulness and should explicitly avoid any prediction of helpfulness by the victim in the future.”<sup>134</sup>
  3. To be consistent with judicial ethical obligations, judges must strike the last sentence on the certification form which states: “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.” Judges cannot ethically promise any future action regarding the victim.<sup>135</sup>

---

<sup>132</sup> *U Visa Certification and T visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers* at 10, 100, 114 (June 17, 2021) <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2/> (Contains a sample completed judicial U visa certification form at 97-101).

<sup>133</sup> A victim seeking certification may have attached to the certification request documents that might include: police report(s); incident report(s); photographs, medical records.

<sup>134</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 12 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

<sup>135</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 12-13, 16 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

vi. *Recusal in future cases involving the same parties and the same or similar issues*

The judge who signs a U visa certification has an increased risk of having their impartiality questioned in future proceedings. In order to comply with the judicial ethics code's requirements regarding impartiality and avoiding the appearance of impropriety in any subsequent proceeding involving the same or similar issues and the same victim and perpetrator, judges will need to disclose the U visa certification and be prepared to entertain a request for recusal.<sup>136</sup>As discussed above, a number of courts across the country have reduced the need for recusal by assigning one certifier judge or having the presiding judge responsible for U visa certifications for the entire court.

C. **ABA Model Code of Judicial Conduct Rule 3.3 – Signing a U Visa certification is not an impermissible character reference**

Another issue that judicial ethics boards have ruled on relates to the distinction between certifying helpfulness and testifying or vouching for the character of the person seeking certification. Signing a U visa certification is not an impermissible character reference.

i. *Text of Relevant Rule*

Model Conduct Rule 3.3: Testifying as a Character Witness states that:

“A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.”<sup>137</sup>

---

<sup>136</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 16 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>; Judicial Standards Commission State of North Carolina, *Formal Advisory Opinion 2014-03* at 3 (August 8, 2024), <https://niwaplibrary.wcl.american.edu/pubs/nc-u-visa-judicial-ethics-advisory-opinion-2014-03/>.

<sup>137</sup> MODEL CODE OF JUDICIAL CONDUCT, r. 3.3: Testifying as a Character Witness (Am. Bar Ass'n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_3/rule3\\_3testifyingasacharterwitness/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_3/rule3_3testifyingasacharterwitness/).

ii. *Signing a U visa certification is not an impermissible character reference*

In 2014 The North Carolina Judicial Standards Commission's Advisory Opinion misconstrued the nature of certification, characterizing it as voluntary character testimony and stating that "A judge should not make personal recommendations to a federal agency predicting how useful a victim or witness might or might not be to a future prosecution."<sup>138</sup> This North Carolina opinion also erroneously interprets<sup>139</sup> certification as to helpfulness as, "in essence the endorsement of the victim's honesty, reliability, potential for cooperation and other character traits."<sup>140</sup>

Both DHS and each Judicial Ethics Board that has issued an opinion<sup>141</sup> since the North Carolina Judicial Standards Commission was issued in 2014 have all disagreed with North Carolina's conclusion. The DHS Resource Guide states that

"by signing a U visa certification, the ... judge is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the petition."<sup>142</sup>

Judges routinely make credibility determinations and issue findings of fact in the course of their judicial duties. In carrying out these core judicial roles, judges are clearly acting to fulfill their legal obligations, and this decision-making is not characterized as character testimony as to any individual or party.<sup>143</sup>

---

<sup>138</sup> *Formal Advisory Opinion: 2014-03* (N.C. Jud. Standards Comm'n Aug. 8, 2014).

<sup>139</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges at 5* (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-broard-judicial-standards-opinion-2015-2-final/> (Disagreeing with the North Carolina opinion stated "In the Board's opinion, a certification does not vouch for an alien's character. Instead, the certification pertains to the alien's helpfulness...A helpful alien may or may not have good character.").

<sup>140</sup> *Formal Advisory Opinion: 2014-03* at 2 (N.C. Jud. Standards Comm'n Aug. 8, 2014).

<sup>141</sup> Maryland Judicial Ethics Comm., *Op. 20, 7* (2023) (Judges' Signing of Federal U Visa Certifications); Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges at 5* (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-broard-judicial-standards-opinion-2015-2-final/>.

<sup>142</sup> Dep't of Homeland Sec., *U and T Visa Law Enforcement Resource Guide, 6* (2015), <http://library.niwap.org/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf>.

<sup>143</sup> MODEL CODE OF JUDICIAL CONDUCT, Canon 3, r. 3.2, Comment [1] (Am. Bar Ass'n 2010) ("Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.").

According to DHS, when a certifying official, including a judge, completes a U visa certification the certification simply attests to the following facts:<sup>144</sup>

1. A qualifying criminal activity occurred;
2. The victim possesses information about the criminal activity; and
3. The victim has been or is being helpful in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.

This is a fact-based assessment, where the certifying official “confirm[s] to USCIS that a qualifying crime has occurred and that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of criminal activity.”<sup>145</sup> Judges, however, always certify based on a victim’s past or present helpfulness, which once established eliminates the need for predictions of future helpfulness and which judges cannot ethically make.

Judges who sign U Visa certifications are not acting as character witnesses. Maryland Judicial Ethics Committee does not consider U-visa certification an impermissible character reference in violation of judicial ethics rules. The Committee stated that “[t]he quality certified is helpfulness...[a]lthough it is unlikely that a victim who is fundamentally incredible would be regarded as “helpful,” a judge does not need to make specific credibility determinations to conclude that the victim was “helpful.” More broadly, the relatively narrow “helpfulness” conclusion does not amount to a general vouching for good character”<sup>146</sup> in violation of judicial ethics rules.

---

<sup>144</sup>DHS *U and T Visa Law Enforcement Resource Guide Updated November 30, 2015* at 6 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>; *U Visa Law Enforcement Resource Guide* at 4 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>;

<sup>145</sup> *U Visa Law Enforcement Certification Guide* at 2.

<sup>146</sup> Maryland Judicial Ethics Comm., Op. 20, 7 (2023) (Judges’ Signing of Federal U Visa Certifications).

The Minnesota Board of Judicial Conduct concurred stating, “[i]n the Board’s opinion, a certification does not vouch for an alien’s character. Instead, the certification pertains to the alien’s helpfulness ... A helpful alien may or may not have good character.”<sup>147</sup> The State of Minnesota’s National Judicial Training Update on the Minnesota Board’s 2015 U visa advisory opinion further clarified:

“Judges are not testifying as character witnesses when they make U visa certifications. Certifications do not vouch for the alien’s character. Instead, it pertains to the court’s averments regarding observations of the alien’s helpfulness or a review of court records, transcripts, recordings, and judicial findings that contain evidence of helpfulness.”<sup>148</sup>

#### **D. ABA Model Code of Judicial Conduct Rule 2.10 – U Visa Certification Does Not Violate Public Statements Prohibitions**

When a judge signs a U visa certification based on past helpfulness the victim has provided to the court based on court orders, the judge’s observations of the victim’s actions in a court case, or the record of proceedings over which the judge or another judge in the court presided, the certification would not be considered an inappropriate public statement that could be suggestive of the judge’s pre-judgment of a pending court matter.

##### *i. Text of Relevant Rule*

Rule 2.10 – Judicial Statements on Pending and Impending Cases –

“(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

---

<sup>147</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 5 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>148</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 5 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”<sup>149</sup>

*ii. U visa certification does not violate the public statements provision*

Minnesota’s National Judicial Training Update following the issuance of the Minnesota Board of Judicial Standards U visa advisory opinion in 2015 explained that:

“The Model Code creates an exception that ‘a judge may make public statements in the course of official duties.’<sup>150</sup> In an open case the prohibition does not apply to U visa certifications because federal law and DHS regulations list judges as U visa certifiers making U visa certification one of the judges’ official duties. Certifications occurring after a civil or criminal matter has been completed do not implicate this rule.”<sup>151</sup>

The signing of a U visa certification form that a victim submits to USCIS as required evidence for the victim’s U visa application is distinguishable from other types of behavior where judges have been found to have made inappropriate public comments. Public comment by a judge has been defined as a judge’s remarks and comment to the media,<sup>152</sup> including when a judge “held a press conference in chambers, granted interviews, and appeared on several television news shows.”<sup>153</sup> The Code of Conduct for United States Judges Canon 3A(6) states that a “judge should not make public comment on the merits of a matter. . . the prohibition on public comment on the merits does not extend to public statements made in the course of the judge’s official duties...”<sup>154</sup>

---

<sup>149</sup> MODEL CODE OF JUDICIAL CONDUCT, r. 2.10:Judicial Statements on Pending and Impending Cases (Am.BarAss’n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_10judicialstatementsonpendingandimpendingcases/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_10judicialstatementsonpendingandimpendingcases/).

<sup>150</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know at 5 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

<sup>151</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, Crime National Judicial Training Update 15-13, Immigrant Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know at 5 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>.

<sup>152</sup> United States v. Microsoft Corp., 253 F.3d 34, 107 (D.C. Cir. 2001).

<sup>153</sup> In re Charge of Judicial Misconduct, 47 F. 3d 399 (Feb. 1995).

<sup>154</sup> Guide to Judiciary Policy, Vol. 2A, Ch. 2 at 7 [https://www.uscourts.gov/sites/default/files/code\\_of\\_conduct\\_for\\_united\\_states\\_judges\\_effective\\_march\\_12\\_2019.pdf](https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf).

Judicial signing of U visa certifications was specifically authorized by Congress as a power given to judges in the Violence Against Women Act of 2000.<sup>155</sup> Since the authority to sign U visa certifications was granted to judges by Congress in the federal U visa statute, signing certifications is part of a judge's official duties. The Minnesota Board of Judicial Standards opinion makes the distinction, consistent with DHS regulations, policies and guidance, that a judge may make such statements in the course of official duties and further recognized certification for U visa as falling into the category of a judge's "official duties."<sup>159</sup> The Minnesota Board further noted that since signing a U visa certification is one of the judge's official duties, then the prohibition on official statements does not apply.<sup>156</sup>

Lastly, a U visa certification signed by a judge is also not a public statement because the U visa certification is filed in the victim's U visa case file that is confidential and not open to the public or obtainable from DHS.<sup>157</sup> The only exception is that the judicial certification may need to be disclosed to a defendant in pending criminal proceedings.<sup>158</sup>

#### **E. ABA Model Code of Judicial Conduct Rules 2.2, 2.9, and 2.11 – U Visa Certification in Closed Cases Does Not Implicate the Ex Parte Communications Bar, in Open Cases Requires VAWA Confidentiality Compliant Notice and When Recusal is Appropriate**

This section will discuss how judges can sign U visa certifications in a manner that is consistent with and does not violate the following ABA judicial ethical rules by following the procedures outlined in this article.

##### *i. Text of Relevant Rules*

- Rule 2.2: Impartiality and Fairness: "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."<sup>159</sup>

---

<sup>155</sup> VAWA 2000, § 1513(b) and (c), Pub. L. No. 106-386, 114 Stat. 1464. 8 U.S.C. 1101(a)(15)(U)(i)(III); 8 U.S.C. § 1184(p)(1).

<sup>156</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 5 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>157</sup> 8 U.S.C. § 1367(a)(2).

<sup>158</sup> 8 C.F.R. § 214.14(e)(1)(ix). 72 Fed. Reg. 53027 (September 17, 2007).

<sup>159</sup>

[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_2impartialityandfairness/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_2impartialityandfairness/)

- Rule 2.11(A)(6)(d): Disqualification: “(A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances...
  - 1) “(6) The judge: ... (d) previously presided as a judge over the matter in another court.”<sup>160</sup>
  
- Rule 2.9: Ex Parte Communications: “(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:
  - 1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
    - a. the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
    - b. the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond...
  - 2) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.”

Whether and how judicial ethics rules limiting ex parte communications and potentially implicating judicial fairness apply when a court is asked to sign a U visa certification for an immigrant crime victim will depend on whether the court proceeding involving the immigrant victim seeking certification is an open, pending, or impending proceeding or a case that has been concluded, completed, or closed.

---

<sup>160</sup> MODEL CODE OF JUDICIAL CONDUCT, r. 2.11 (Am. Bar Ass’n 2010), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_11disqualification/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_11disqualification/).

The ABA Code of Model Judicial Conduct applies the following definitions in its terminology section:

- **Impending matter:** “is a matter that is imminent or expected to occur in the near future.”<sup>161</sup>
- **Pending matter:** “is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.”<sup>162</sup>

ii. *U visa Certification in Open Pending and Impending Cases*

The U visa statute and regulations were designed to encourage certifying government officials to sign U visa certifications very soon after a criminal activity is detected, and a victim provides initial helpfulness to law enforcement, prosecutors, or other government agencies conducting investigations that detect qualifying criminal activities.<sup>163</sup> The U visa regulations are carefully crafted to reflect Congresses’ intent. DHS defines helpfulness in “investigation or prosecution” as “includ[ing] detection, conviction, and sentencing of the qualifying criminal activity they were a victim of.”<sup>164</sup> DHS’s definitions reflect Congresses recognition that judges will only be able to certify on the basis of detection, because “[j]udges neither investigate crimes nor prosecute perpetrators.”<sup>165</sup>

The U visa regulations also recognize “that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation”<sup>166</sup> in which the qualifying criminal activity was detected.

---

<sup>161</sup>MODEL CODE OF JUDICIAL CONDUCT, Preamble (Am. Bar Ass’n 2011), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mcjc\\_preamble\\_scope\\_terminology.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_preamble_scope_terminology.pdf).

<sup>162</sup>MODEL CODE OF JUDICIAL CONDUCT, Preamble (Am. Bar Ass’n 2011), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mcjc\\_preamble\\_scope\\_terminology.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_preamble_scope_terminology.pdf).

<sup>163</sup> *U visa Certification and T visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors* at 5, 16, 26, 28, 43, 50, 53, 65, 72 (August 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-toolkit-law-enforcement-prosecutor/>;

*Child Protective Services Agency Toolkit: U Visa Certification, T Visa Declaration, Special Immigrant Juvenile Status and Violence Against Women Act Immigration Relief for Abused Immigrant Children* at 7, 11, 45, 46, 48, 52 (July 8, 2024), <https://niwaplibrary.wcl.american.edu/pubs/cps-toolkit/>; *U Visa Certification and T Visa Declaration Toolkit for Adult Protective Services (APS)* at 24, 39, 40, 54, 56, 60, 74, 78, 83, 94 (October 19, 2023), <https://niwaplibrary.wcl.american.edu/pubs/aps-u-visa-toolkit/>.

<sup>164</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at ii (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>.

<sup>165</sup> 72 Fed. Reg. 53,014, 53,020 (Sept. 17, 2007).

<sup>166</sup> 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

DHS explains that:<sup>167</sup>

“There is no required time when you may or may not sign a certification. It is possible to sign a certification at any stage in the case, including at the point of detection, during an investigation, when the prosecutor initiates a prosecution, before a trial, whether or not the victim is needed to testify, and after the case is concluded.

You may sign a certification regardless of the outcome of the qualifying criminal case, including in the following instances:

- the prosecutor decided not to prosecute;
- the grand jury did not issue an indictment;
- the case was dismissed by the prosecutor or a judge;
- a case brought by the EEOC or DOL resulted in a judgment, settlement, or dismissal;
- a judge issued a protection order or custody ruling;
- a child abuse case was settled;
- the defendant entered a plea, whether or not the plea was to an offense that is a qualifying criminal activity; and
- the defendant was found not guilty.”

*iii. Whether judges should certify in open and pending cases is matter of law not judicial ethics, however, in open cases ex parte communications ethics rules apply*

With regard to judicial certifications, the Minnesota Board on Judicial Standards states “the certification is in the nature of a probable cause determination which a judge may properly make at an early stage of the case...given the present lack of clarity in the law, the Board believes that whether a judge in a criminal case may sign an I-918B form prior to completion of the case is primarily an issue of law rather than an issue of compliance with the Code...A judge should disclose a pre-conviction certification.”<sup>168</sup>

---

<sup>167</sup> DHS, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL, AND TERRITORIAL LAW ENFORCEMENT, PROSECUTOR, JUDGES, AND OTHER GOVERNMENT AGENCIES at 18-19 (2015)

<https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

<sup>168</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 6-7 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

Addressing civil cases, the Minnesota Board came to a similar conclusion. “Certification in a civil case before the case is completed may raise impartiality issues under Rule 2.2 and 2.11, similar to those identified above regarding certifications signing in pending criminal cases. Since a party to the civil case other than the one requesting the certification may consider the certification relevant to the judge's impartiality, a certification should be disclosed under Rule 2.11”<sup>169</sup>

The state of Minnesota in its Judicial Training and Education Blog in 2015 following the Minnesota Board’s opinion explained that “Since in an ongoing civil or criminal case a party may consider certification relevant to the judge’s impartiality or a violation of ex parte communication rules in “pending or impending matter[s]” the court should give parties notice of the certification request and disclose when certification is made.”<sup>170</sup>

In open criminal, civil, and family court cases when the judge who will be presiding over the case pending before the court is the judge from whom certification will be requested, Rules 2.2, 2.9, and 2.11(A)(6)(d) would require a notice and motion process to promote impartiality and fairness and avoid ex parte communications. However, since the U visa is one of the protections created by the Violence Against Women Act (VAWA) to protect victims of domestic violence, sexual assault, child abuse, stalking, dating violence, and human trafficking, under federal law VAWA confidentiality protections apply to any victim who is in the process of filing a U visa. VAWA confidentiality laws help protect victims from further crime victimization, abuse, deportation threats, and other harms that could be triggered when the abuser learns that the victim is seeking U visa immigration relief.

The next section will discuss the steps courts can take to balance the need to provide victims access to justice, including judicial certifications, with judicial ethics rules regarding impartiality and ex parte communications.

---

<sup>169</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 6-7 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

<sup>170</sup> Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 5 (July 8, 2015), <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training- update/>.

iv. *Violence Against Women Act (VAWA) confidentiality statutory protections for U visa victims*

Abusers and crime perpetrators frequently attempt to exert power and control over their victims by trying to use the immigration system to track and stalk victims, to trigger immigration enforcement actions against victims, and to interfere with and attempt to undermine the victims' ability to attain legal immigration status. Victims can face increased danger when perpetrators learn that victims are taking steps to free themselves from abusive homes, workplaces, and other situations. It is well documented that when victims of domestic violence,<sup>171</sup> trafficking,<sup>172</sup> and workplace sexual violence<sup>173</sup> try to leave, the likelihood that the perpetrator will retaliate using violence, threats, or immigration related abuse is high.<sup>174</sup>

In response, Congress created federal VAWA confidentiality laws<sup>175</sup> that protect immigrant victims of U visa listed criminal activities from having any information on a U visa application disclosed to their perpetrator or anyone who could provide the information to the perpetrator. This includes the existence of the application, actions taken, or information contained in their VAWA, T visa, and U visa applications for immigration relief disclosed or released to their perpetrator or anyone who could provide the information to the perpetrator.<sup>176</sup>

---

<sup>171</sup> VAWnet & The National Resource Center on Domestic Violence, Intimate Partner Homicide Prevention (July 2011), <http://www.vawnet.org/special-collections/DVHomicide.php> – 200.

<sup>172</sup> The Human Trafficking Legal Center, *Human Trafficking and Domestic Violence, Fact Sheet* (September 2012), <https://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-and-Domestic-Violence-Fact-Sheet.pdf>.

<sup>173</sup> Southern Poverty Law Center, *Under Siege: Life for Low-Income Latinos in the South* at 30 (April 2009), <https://www.splcenter.org/20090331/under-siege-life-low-income-latinos-south>.

<sup>174</sup> Leslye E. Orloff, Benish Anver & Rafaela Rodrigues, *Bench Card on Violence Against Women Act (VAWA) Confidentiality* at 1-2 (2021), <https://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-vawa-confidentiality>.

<sup>175</sup> 8 U.S.C. § 1367

<sup>176</sup> For a full legislative and regulatory history and DHS regulations and policies implementing VAWA confidentiality protections, including for U visa applications, see Alina Husain, Daliana Gomez Garcia, and Leslye Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (June 7, 2022) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

In creating VAWA's confidentiality provisions Congress was explicit about its intent.

"In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims."<sup>177</sup>

"This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA."<sup>178</sup>

The point at which victims begin receiving VAWA confidentiality protections varies by the type of crime victimization involved. Crucially, these protections apply *regardless of whether the victim* has filed for a crime victim-based form of immigration relief.<sup>179</sup>

---

<sup>177</sup> DEP'T OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/>.

<sup>178</sup> DEP'T OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/>.

<sup>179</sup> 8 U.S.C. § 1367(a)(1).

Victims of spouse abuse or child abuse receive protection from VAWA confidentiality statutes when they first suffer battering or extreme cruelty perpetrated by their spouse, former spouse, parent, step-parent, or certain other family members.<sup>180</sup> Immigrant victims of intimate partner violence, sexual assault, human trafficking, and other U visa listed crimes receive VAWA confidentiality protections when they are seeking to file a U or T visa or when a DHS employee has reason to believe they may victim eligible to file for T or U visa protection.<sup>181</sup>

DHS recognizes Congressional intent to prevent disclosure of sensitive information to abusers.<sup>182</sup> DHS' implementing VAWA Confidentiality guidance states that any information related to noncitizens who are "seeking or who have been approved for immigration status"<sup>183</sup> under the U visa, T visa, or other VAWA immigration programs may not be disclosed. Victims seeking to apply for a form of VAWA confidentiality protected immigration relief receive VAWA confidentiality protections. This includes protection of the victim's "information that has not yet been included in a [DHS] database."<sup>184</sup> "The nondisclosure provision provides protection as soon as a DHS employee has reason to believe that the alien may be the beneficiary of a pending or approved victim-based application or petition, and the limitation ends when the victim becomes a naturalized citizen<sup>185</sup> or when the application for relief is denied on its merits and all opportunities for appeal of the denial have been exhausted."<sup>186</sup>

---

<sup>180</sup> 8 U.S.C. § 1367(a)(1)(A)-(D).

<sup>181</sup> 8 U.S.C. § 1367(a)(1)(E)-(F); DHS, INSTRUCTION NUMBER: 002-02-001.01, SECTION IV(F)(1), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 3 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

<sup>182</sup> Paul Virtue, *Immigration and Naturalization Services, Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384 2* (May 5, 1997) (Discussing VAWA confidentiality's legislative history reflecting concerns designed to stop abusers from obtaining information about the whereabouts of victims and information about victim-based immigration cases from immigration officials.).

<sup>183</sup> DHS, INSTRUCTION NUMBER: 002-02-001.01, SECTION IV(F)(1), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 3 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

<sup>184</sup> DHS, INSTRUCTION NUMBER: 002-02-001.01, SECTION VI(A)(1)(A), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 6 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

<sup>185</sup> The period of time that passes from the date that a victims filed their U visa application through the date that a victim granted a U visa, lawful permanent residency and ultimately naturalization as recipient of a U visa can take up to or more than two decades. For information on VAWA confidentiality protections ending generally at naturalization see, *Customer Service and Interpretation of 8 U.S.C. 1367 (VAWA) Confidentiality Protections for U.S. Citizens* (June 12, 2024) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-and-naturalization/>.

<sup>186</sup> DHS, INSTRUCTION NUMBER: 002-02-001.01, VI(A)(1)(C), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 6 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

Statutory exceptions to VAWA confidentiality are very limited.<sup>187</sup> Even when disclosure is allowed to law enforcement, national security agencies, or for judicial review of a victim's immigration case<sup>188</sup> agencies are required to handle the information "in a manner that protects the confidentiality of such information."<sup>189</sup> In criminal cases where a U visa or T visa certification has been signed by law enforcement, prosecutors, or the judge hearing the pending criminal case, the certification itself and any accompanying cover letter may be subject to the prosecutor's discovery obligations in a criminal case.<sup>190</sup> All other information, including the existence of the application, actions taken, or documents or details contained within the VAWA confidentiality-protected immigration case file, is "absolutely privileged information"<sup>191</sup> that remains strictly protected and non-discoverable in any criminal, family, or civil case.<sup>192</sup>

The Maryland Judicial Ethics Committee issued two opinions in which they concluded that, under Maryland Rule 18-102.9,<sup>193</sup> Maryland judges considering U visa certification requests must ensure that "all parties to the proceeding are notified of the request and the judge's action on it. The judge should also allow a reasonable opportunity for any party to the proceeding to respond to the request."<sup>194</sup>

---

<sup>187</sup> 8 U.S.C. § 1365(b); DHS, Memorandum For All OPLA Chief Counsel: VAWA 2005 Amendments To The Immigration Laws at 25 (Feb. 1, 2007), <http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia/>; 8 U.S.C. § 1367; see also, USCIS, Policy Manual, 1, part 7. (1 USCIS-PM A.7.) (Sept. 27, 2023), <https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-7>.

<sup>188</sup> *Hawke v. United States Dep't of Homeland Security*, 2008 U.S. Dist. LEXIS 87693, at \*1 (N.D. Cal. Sept. 29, 2008); DHS, Memorandum For All OPLA Chief Counsel: VAWA 2005 Amendments to The Immigration Laws at 25 (Feb. 1, 2007), <http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia/>; 8 U.S.C. § 1367; see also, 1 USCIS-PM A.7. (Sept. 27, 2023), <https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-7>.

<sup>189</sup> 8 U.S.C. § 1365(b); DHS, INSTRUCTION NUMBER: 002-02-001.01, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 6 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

<sup>190</sup> For detailed information see, National Judicial Network Peer-to-Peer Sessions – Violence Against Women Act (VAWA) Confidentiality: Criminal and Family Case Discovery (October 1 & Nov. 12, 2024) <https://niwaplibrary.wcl.american.edu/njn-vawa-criminal-case-discovery-oct-1-2024/> (Discovery in criminal cases that meet the Brady exception are limited to the U visa certification itself and any cover letter provided to the law enforcement, prosecutor, or judicial certifier. No other information about the existence of, actions taken in, or documents contained in the federal U visa immigration case file are discoverable. Courts have ruled that the defendant in a criminal case cannot obtain VAWA confidentiality protected information from the victim, the victim's attorney, a victim advocacy program serving the victim or DHS).

<sup>191</sup> *Hawke v. U.S. Dep't of Homeland Sec.*, No. C-07-03456 RMW, 2008 WL 4460241, at \*7 (N.D. Cal. Sept. 29, 2008).

<sup>192</sup> Rafaela Rodrigues, Leslye E. Orloff & Gabriela Rezetko, How to Argue or Rule on VAWA Confidentiality Protections in Discovery Involving Immigrant Survivors, NIWAP (2022), <https://niwaplibrary.wcl.american.edu/pubs/how-to-vawa-confidentiality-discovery>

<sup>193</sup> This rule is substantively similar to MODEL CODE OF JUDICIAL CONDUCT, r. 2.9: Ex Parte Communications (Am. Bar Ass'n 2011), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_9expartecomunications/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_9expartecomunications/).

<sup>194</sup> Maryland Judicial Ethics Comm., Op. 24, 6-8 (2024) (Judges' Signing of Federal U Visa Certifications-- Supplemental Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 7(August 21, 2023) <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>.

Thereafter, the Committee was asked to reconsider its opinion in light of federal VAWA confidentiality protections,<sup>195</sup> and upon reconsideration, the Committee confirmed its prior decision and its application to both open and closed cases.<sup>196</sup> This conclusion misunderstands federal law and fails to appreciate the nuances of VAWA confidentiality and the U visa certification process. Maryland Judicial Ethics Committee opinion 2024-24 requires notice and an opportunity to be heard in all cases where a victim requests U visa certification from a judge. This means that the perpetrator and all other parties are entitled to notice, even in closed and completed cases. The opinion does not limit the notice requirement to open and pending cases and that failure points to the flaw in the opinion.

It appears that the Maryland Committee's opinion is based on its erroneous assumption that all U visa certification requests must relate to adversarial judicial proceedings.<sup>197</sup>

This assumption is fundamentally flawed and can have a chilling effect on access to justice. This assumption is also not supported by DHS and USCIS experts on U visa immigration law.<sup>198</sup> Victims are eligible for U visa certification when they provide information to a court from which the court detects a qualifying criminal activity that they or their child suffered. This helpfulness can be demonstrated by the victim in court filed pleadings, motions, or brief(s), at hearings, through testimony, or through documentary evidence submitted to the court.

---

<sup>195</sup> 8 U.S.C. § 1367

<sup>196</sup> Maryland Judicial Ethics Comm., Op. 24, 7-9 (2024) (Judges' Signing of Federal U Visa Certifications -- Supplemental Opinion).

<sup>197</sup> Maryland Judicial Ethics Comm., Op. 24, 8 (2024) (Judges' Signing of Federal U Visa Certifications -- Supplemental Opinion). ("The Committee's concern is that any judicial U visa certification necessarily is related to the judge's presiding over an adversarial judicial proceeding. In Opinion 2023-20, the Committee considered the important difference between making a certification based on open versus closed proceedings. As quoted above, the Committee opined that "[a] Maryland judge should complete a DHS Form I-918B only when the necessary conclusions can be made based on completed proceedings." Opinion 2023-20 at 15. This is because of the likely need for recusal in any subsequent proceedings involving the same parties. In the Committee's view, the need to avoid ex parte communications related to the request to complete a DHS Form I-918B arises from the fact that the parties necessarily were involved in a prior adversarial proceeding before that judge and from the potential for future proceedings either on reopening of the prior proceedings or initiation of different, but related proceedings. The Committee does not believe the issue can be avoided simply by classifying completion of a DHS Form I-918B as an administrative function, even if the Maryland Rules other than the Maryland Code of Judicial Conduct could be construed to support such a classification.")

<sup>198</sup> U Visa Law Enforcement Resource Guide at 3 (February 28, 2022, <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>) ("A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which they presided."); *DHS U and T Visa Law Enforcement Resource Guide* at 18-19 (November 30, 2015), <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>

The case may have been a family case (e.g., protection order, divorce, custody, guardianship, child welfare) or a civil court action (e.g., employment discrimination, tort, small claims, landlord tenant) that was uncontested or settled before trial. It may have been a criminal case that ended in a plea, diversion, or a dismissal. In any of these completed cases that did not end up in trial as an adversarial judicial proceeding a victim could have provided evidence of crime victimization and helpfulness sufficient under federal U visa immigration laws to support judicial U visa certification.<sup>199</sup>

In evaluating whether federal VAWA confidentiality laws protect U visa victims applying for certification, the analysis in the Maryland opinion reflects a complete lack of appreciation of the legislative history and purpose of VAWA confidentiality laws. The United States Court of Appeals for the Fifth Circuit in *Cazorla v. Koch Foods of Mississippi*<sup>200</sup> discussed the importance of the U visa program and the VAWA confidentiality protections afforded U visa applicants under federal immigration law. In denying an employer's discovery requests in an employment discrimination case brought by the EEOC<sup>201</sup> on behalf of over fifty (50) workers who suffered physical and sexual assaults while working in a poultry processing plant and vacating the district court's discovery orders the 5<sup>th</sup> Circuit in *Cazorla v. Koch Foods of Mississippi*<sup>202</sup> held that:

“there remains a risk that U visa discovery will cause some claimants or family members to lose their jobs...Nonetheless, if claimants have applied for U visas, their jobs may still be on the line.”<sup>203</sup>

---

(Providing examples for certifying officials signing in a range of civil, family, and criminal cases that concluded without a trial: Civil -- a case brought by the EEOC or DOL resulted in a settlement, or dismissal; Family -- a judge issued a protection order or custody order; a child abuse case settled; Criminal -- the prosecutor decided not to prosecute; the grand jury did not issue an indictment; the case was dismissed by the prosecutor or a judge; the defendant entered a plea).

<sup>199</sup> *U Visa Law Enforcement Resource Guide* at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; *DHS U and T Visa Law Enforcement Resource Guide* at 19 (November 30, 2015) <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

<sup>200</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540 (5th Cir. 2016) <https://niwaplibrary.wcl.american.edu/pubs/cazorla-v-koch-eeoc-5th-cir-2017/>.

<sup>201</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, at 2 (5th Cir. 2016), <https://niwaplibrary.wcl.american.edu/pubs/cazorla-v-koch-eeoc-5th-cir-2017/>.

<sup>202</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, at 34(5th Cir. 2016) <https://niwaplibrary.wcl.american.edu/pubs/cazorla-v-koch-eeoc-5th-cir-2017/>.

<sup>203</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, at 28(5th Cir. 2016), <https://niwaplibrary.wcl.american.edu/pubs/cazorla-v-koch-eeoc-5th-cir-2017/>.

The Fifth Circuit also recognized that VAWA confidentiality was designed to prevent information about a victim's U visa case and immigration status being obtained by the victim's abuser and used against the victim.

"Claimants might not have feared revealing their status only to federal officials who process U visa applications, since those officials apparently are not involved in immigration enforcement. An abuse victim might well be willing to disclose sensitive information to a few sympathetic officials, yet nonetheless fear that his or her abuser might obtain that information and spread it far and wide.<sup>204</sup> In other words, the claimants reasonably might fear disclosure of their status to certain authorities, but not others, so their having submitted U visa applications does not rule out an *in terrorem* effect from further disclosure, as the district court apparently believed."<sup>205</sup>

The 5<sup>th</sup> Circuit Court of Appeals in *Cazorla v. Koch Foods of Mississippi* recognized that actions a court takes in an individual U visa case has ripple effects that could not only harm the individual victim before the court, but can also impact the effectiveness of the U visa program in building trust essential to promoting access to justice for immigrant victims of abuse. The Court described the important purpose of VAWA confidentiality protections for U visa victims as follows:

"More pressing is that the district court did not address how U visa litigation might intimidate individuals outside this litigation, compromising the U visa program and law enforcement efforts more broadly."<sup>206</sup>

---

<sup>204</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, at 29 n.71 (5th Cir. 2016) "Undocumented immigrants can and do distinguish between revealing their status to U visa authorities and other officials: tens of thousands apply for U visas each year." See Number of I-918 Petitions, supra note 67."

<sup>205</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540 at 29 n.72 (5th Cir. 2016) "Plaintiffs also point out that an immigrant need not be undocumented to fear U visa discovery. See *Rivera*, 364 F.3d at 1065 ("Even documented workers may be chilled by the type of discovery at issue here. Documented workers may fear that their immigration status would be changed, or that their status would reveal the immigration problems of their family or friends; similarly, new legal residents or citizens may feel intimidated by the prospect of having their immigration history examined in a public proceeding. Any of these individuals, failing to understand the relationship between their litigation and immigration status, might choose to forego civil rights litigation.").

<sup>206</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540 at 31(5th Cir. 2016), <https://niwaplibrary.wcl.american.edu/pubs/cazorla-v-koch-eeoc-5th-cir-2017/>.

“These dynamics jeopardize the EEOC’s interests and those of the broader public. The district court could and should have weighed them in its Rule 26 analysis. But its analysis considered only the immediate chilling effect of U visa discovery *on the individual claimants in this case*. Those individuals are not the only ones who might be affected by the disclosure of the claimants’ U visa information. Thousands apply for U visas each year, and they do so with the assurance that federal authorities will keep their applications confidential.<sup>207</sup> Allowing U visa discovery from the claimants themselves in this high-profile case will undermine the spirit, if not the letter, of those Congressionally sanctioned assurance and may sow confusion over when and how U visa information may be disclosed, deterring immigrant victims of abuse – many of whom already mistrust the government <sup>208</sup> – from stepping forward and thereby frustrating Congress’s intent in enacting the U visa program.”(Italics in original) <sup>209</sup>

“This is a serious concern for plaintiff EEOC, *amicus* NLRB, and the federal and state departments of labor, all of which certify U visa applications. Considerable evidence suggests that immigrants are disproportionately vulnerable to workplace abuse and, not coincidentally, highly reluctant to report it for fear of discovery and retaliation. And threats of deportation are among the most familiar and dreaded means by which unscrupulous employers retaliate against immigrant employees”.

---

<sup>207</sup> See, e.g., *Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers, and Others*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Feb. 2010), <https://www.dhs.gov/publication/immigration-options-victims-crime> (brochure stating that “all agencies within the Department of Homeland Security (DHS), including USCIS, are legally prohibited from disclosing that a victim has applied for VAWA, T, or U immigration benefits”); U.S. Citizenship & Immigration Servs., *Privacy Waiver Authorizing Disclosure to a Third Party, ICE Form 60-001* at 1-2 (Feb. 2011), <https://www.ice.gov/doclib/news/library/forms/pdf/60-001.pdf> (“[Y]ou are under no obligation to consent to the release of your information to any third party...If you have applied for or received [a U visa], you are legally entitled to confidentiality.”).

<sup>208</sup> See, e.g., Alexander & Prasad, *supra* note 59, at 1101 & n.10; Stephen Lee, *Monitoring Immigration Enforcement*, 53 ARIZ. L. REV. 1089, 1100-03 (2011); Meng et al., *supra* note 59, at 72-76.

<sup>209</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, (5th Cir. 2016) at 31-32 <https://niwaplibrary.wcl.american.edu/pubs/cazorla-v-koch-eeoc-5th-cir-2017/>

Thus, if the agencies cannot credibly assure potential U visa seekers that their sensitive information will be kept private, they may become much less able to use the program to solicit cooperation from those most in need of their help. Protective orders will not necessarily reassure potential claimants. Nor can the agencies easily reassure potential claimants that although U visa discovery was allowed in this case, it will not be allowed in *their* cases.” (Footnoted omitted italics in original)<sup>210</sup>

The Maryland Judicial Ethics Committee, like the trial court judge that the 5<sup>th</sup> Circuit overruled in *Cazorla v. Koch Foods of Mississippi*, failed to appreciate the importance for U visa eligible victims of VAWA confidentiality protections to victim safety and promoting access to justice. Additionally, the Maryland Committee appears to have misunderstood when immigrant crime victims are entitled to VAWA confidentiality’s protections as U visa eligible victims under federal immigration laws.

The Maryland Committee concluded that:

“DHS Form I-918B completed by a Maryland judge is information provided to the applicant to be used in the federal administrative proceedings. It is not information disclosed from those administrative proceedings or information received by the certifying judge. The regulation therefore does not require that the certification process outside the federal administrative proceedings be confidential.”

This conclusion is inconsistent with DHS directives governing when U visa victims receive VAWA confidentiality protections. VAWA confidentiality protections apply to U visa victims when they are “seeking or who have been approved for immigration status”<sup>211</sup> This includes when a “DHS employee has reason to believe that the alien may be the beneficiary of a pending or approved victim-based application or petition.”<sup>212</sup>

---

<sup>210</sup> *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, (5th Cir. 2016) at 32-33

<https://niwaplibrary.wcl.american.edu/pubs/cazorla-v-koch-eeoc-5th-cir-2017/>

<sup>211</sup> DHS, *Instruction Number: 002-02-001.01, Section IV(F)(1), Implementation Of Section 1367 Information Provisions* at 3 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

<sup>212</sup> DHS, *INSTRUCTION NUMBER: 002-02-001.01, VI(A)(1)(C), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS* at 6 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

Had the Maryland Judicial Ethics Committee considered the history, purpose, and legislative intent of the U visa program and VAWA confidentiality protections that the 5<sup>th</sup> Circuit outlined in *Cazorla v. Koch Foods of Mississippi*, together with the distinctions between how judicial ethics ex parte communications rules treat open and closed cases, the Committee could have reached an outcome that is consistent with the goals of judicial ethics rules, the U visa program, and VAWA confidentiality protections. That outcome would be to conclude that ABA Model Code of Judicial Conduct Rule 2.9 ex parte communications bars apply to open cases and do not apply to completed or closed cases.

v. *How courts can comply with Rule 2.9 Ex Parte Communications Requirements in light of Violence Against Women Act (VAWA) confidentiality statutes*

The following best practices will assist courts in fairly and equitably balancing compliance with both ethical requirements under the ABA Model Code of Judicial Conduct and VAWA Confidentiality law's requirements and purpose.

Step 1: Ex Parte Communications Bar Exception

ABA Model Code of Judicial Conduct Rule 2.9(A)(5) states that “A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.” In seven (7) states, Rule 2.9(A)(5)'s ex parte communications exception applies as a matter of state law in California,<sup>213</sup> Colorado,<sup>214</sup> Nevada,<sup>215</sup> Oregon,<sup>216</sup> Utah,<sup>217</sup> Washington,<sup>218</sup> and Virginia.<sup>219</sup>

---

<sup>213</sup> Cal. Penal Code. §679.10 (2023).

<sup>214</sup> Colo. Rev. Stat. § 24-4.1-401 (2021).

<sup>215</sup> Nev. Rev. Stat. §§ 217.580-217.585 (2019).

<sup>216</sup> Or. Rev. Stat. §147.620 (2023).

<sup>217</sup> Utah Code Ann Code § 77- 38-502 (2024).

<sup>218</sup> Wash. Rev. Code 7.98.020 (2017).

<sup>219</sup> Va. Code Ann. Code § 9.1-1501 (2021) (Virginia's confidentiality protections apply to judges hearing appeals of U visa certification requests denied or not responded to within statutory timeframes by state agencies required to grant or deny certifications under Virginia's U visa certification law).

Each of these states have state laws on U visa certification that include state law confidentiality provisions that would preclude a judge from disclosing information related to the victim's immigration status except to comply with the constitutional requirements in criminal cases as discussed above.<sup>220</sup> Thus, in these states VAWA confidentiality protections preclude courts in both pending and completed cases from notifying the perpetrator through service of process or any other means that the victim is "seeking" a U visa.

However, in these states, as in all states, in open or pending cases the Model Code of Judicial Conduct Rules 2.2, 1.2, 2.7, and 2.11(A)(6)(d) on impartiality would still apply to judicial certifications by a judge presiding over an open or pending civil, family, or criminal. Therefore, to comply with VAWA confidentiality and state law confidentiality protections and at the same time comply with judicial ethics rules, judges who receive certification requests in open cases over which they are presiding should refer victims to Steps 2 and 3 discussed next.

Step 2: Judicial Leadership encouraging other agencies authorized by federal law to implement U visa certification practices - In criminal, child welfare, adult protective services and other cases involving state government agency staff (e.g., state departments of labor), federal statutes<sup>221</sup> and regulations<sup>222</sup> authorize all state law enforcement, prosecution, adult and child protective services, and labor enforcement agencies to sign U visa certifications. These agencies often detect immigrants who are victims of U visa qualifying criminal activities and who are assisting in their investigations and prosecutions long before the victims might come before a judge. When other agencies in the judge's jurisdiction are signing U visa certifications, the need for U visa certification by judges in open or pending cases drops precipitously reducing judicial ethical concerns and the need for recusal. Judges can play a leadership role that encourages government officials in the judge's jurisdiction to implement U visa certification practices.

---

<sup>220</sup> For details see, Esma Karakas, Abigail Wolfe, and Leslye E. Orloff, *Review and Comparison of All State U and T Visa Certification Law Requirements* (December 27, 2024), <https://niwaplibrary.wcl.american.edu/pubs/u-and-t-visa-certification-state-law-requirements/>.

<sup>221</sup> 8 U.S.C. 1184(p)(1)

<sup>222</sup> 8 C.F.R. 214.14(a)(2)

Step 3: The Court selects a Certifier Judge - As discussed in Section III(A)(ii) above, courts in a number of jurisdictions have assigned one judge to become the Certifier Judge for the court. Some courts assign a judge who develops expertise in U visa certification and in other courts one of the court's presiding judges signs U visa certifications for the court. Judges hearing cases forward all U visa certification requests to the Certifier Judge or the Presiding Judge. According to the Superior Court of California, "this approach helps ensure uniformity of decision and a clear transparent process for the applicant."<sup>223</sup> This approach is consistent with USCIS practice and guidance discussed in detail above. This best practice provides victims access to U visa certification by the courts in a manner that is consistent with all of the judicial ethical considerations discussed in this article. Additionally, it promotes access to justice for immigrant victims in a manner that does not jeopardize the protections federal VAWA confidentiality laws offer victims.

*vi. Certification by a presiding judge in open and pending cases*

Until courts implement all of a combination of steps 1-3 above, courts considering U visa certifications in open or pending civil, family, or criminal court proceedings will need implement notice and motion procedures that address the judicial ethical obligations of presiding judges and also comply with, and do not undermine, federal VAWA confidentiality protections. A VAWA confidentiality compliant motions and notice practice must follow the steps below:

1. Inform the applicant for U visa certification about the procedures that court will follow to issue a U visa certification. The judge should inform the person requesting U visa certification of the judicial ethical requirement that that judge presiding over the open pending case will require a motion requesting U visa certification from the presiding judge. That motion will need to be served on the defendant in a criminal case or on all parties in a civil or family law case to provide notice and a reasonable opportunity to be heard on the victim's motion for certification. This provides the victim an opportunity to safety plan and to decide whether or not to file the motion requesting that the judge presiding over the open court case involving the victim or to withdraw a request they

may have sent to the presiding judge. The victim may also decide to wait to request certification from the presiding judge until after the case before the judge has concluded or may decide to seek certification from another judge or government official. This approach also allows victims who decide to seek certification from the presiding judge to plan for the steps the victim may need to take to be able to safely attend a court hearing on the motion for certification at which the perpetrator will also be present.

2. Waiver of VAWA Confidentiality. In order for a judge to authorize service of a motion that reveals to a defendant or parties to a civil, family, or child welfare case that a victim is seeking U visa certification from a judge, the judge must first obtain from the victim a VAWA confidentiality waiver under 8 U.S.C. 1364 (b)(4). This waiver is only available if all adults involved in the case sign waivers and is not available when the victim is a child.<sup>224</sup> The waiver's content and requirements are governed by 34 U.S.C. 12291(b)(2).<sup>225</sup> Under this statute VAWA confidentiality waivers must be in writing, voluntary, time-limited, and limited for a specific purpose. In cases of U visa certification by a presiding judge in a pending proceeding the waiver would be solely for the limited purpose of the victim filing a motion for U visa certification from the judge and providing notice of that motion to the opposing part(ies) in a civil or family court case and/or to the perpetrator if it is an open criminal case.
3. Judge rules on whether to accept the VAWA confidentiality limited waiver. The judge receiving the VAWA confidentiality waiver will need to review the waiver and may need to ask questions of the victim to determine whether the waiver is:
  - Voluntary;
  - Time-limited; and
  - Limited for the specific purpose of the court considering and ruling on judicial U visa certification.

---

<sup>223</sup> Superior Court of California, *U-Visa Certification Protocol at 1* (2022), <https://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol> (last visited Dec 10, 2024).

<sup>224</sup> DHS, INSTRUCTION NUMBER: 002-02-001.01, VI(A)(1)(D)(4), IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS at 67 (May 28, 2019), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>.

<sup>225</sup> These waiver requirement govern all waivers of Violence Against Women Act protections.

4. Written motion seeking U visa certification. The presiding judge in an open case will need to inform the victim seeking U visa certification that the court will require a written motion requesting judicial certification that will be served on the defendant or opposing parties in the case. This motion will need to be filed along with the VAWA confidentiality waiver discussed in paragraphs 2 and 3 above. Once the judge is satisfied that the VAWA confidentiality waiver meets the requirements, the judge may authorize service of the notice and motion on the defendant or opposing part(ies) and give them a reasonable opportunity to respond before ruling on or issuing the U visa certification.
  
5. VAWA confidentiality bars on release information about protected immigration cases. It is best practice for judges issuing U visa certifications in pending cases using the process described above to confirm for all parties that all information about the existence of, actions taken in, and information contained in any immigration case that the victim may file based on the U visa certification Form I-918B that the judge signed, remains protected by federal VAWA confidentiality laws, and is not discoverable except to comply with the prosecutor's constitutional obligations in a criminal prosecution.

vii. *U visa Certification in closed cases*

As the Minnesota Board on Judicial Standards correctly concluded, judicial ethics codes allow a judge to sign a U visa certification in a completed case so long as the judge has an adequate basis to support the averments made in the certification.<sup>226</sup> In a court case that has been concluded or closed, a judge can gain an adequate basis to support the averments in the certification based on review of court records or on having presided over a civil, family, or criminal court matter that involved the immigrant seeking U visa certification.<sup>227</sup> As discussed above, judges sign U visa certifications most commonly based on a victim's helpfulness to the court or other government agencies in detection of qualifying criminal activity the victim, or their child suffered.<sup>228</sup> The Minnesota Board correctly concluded that the Rule 2.9 ex parte communications prohibitions only apply to require notice to parties only if a victim is seeking certification from a judge presiding over an open, but not a closed, case.<sup>229</sup>

The Maryland Judicial Ethics Committee also correctly concluded that completing a U visa certification does not violate Rule 3.1 because certification “is a judicial act because it is an action taken by a judge in the judge’s official capacity and in connection with some proceeding within the court’s jurisdiction.”<sup>230</sup> The Maryland Committee came to the same conclusion as the Minnesota Board of Judicial Standards that judicial ethics code Rules 1.3, 2.10, and 3.3 do not bar judicial certifications in open or closed cases.<sup>231</sup>

Additionally, both the Maryland Judicial Ethics Committee and the Minnesota Board of Judicial Standards<sup>232</sup> agree that judges, when sign U visa certifications, should consider recusing themselves from “any subsequent proceeding involving the same or similar issues and the same victim or person accused by the victim.”<sup>233</sup>

---

<sup>226</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 1, 5, 8 (June 26, 2015) at 1, 5,-8 <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/> (Addressing Judicial Ethics Rules 1.2, 1.3, 2.2, 2.10, and 3.3 discussed in detail above).

<sup>227</sup> USCIS, U VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES at 3 (February 28, 2022), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>; *In re Rosales*, 40 Misc. 3d 1216(A) (N.Y. Fam. Ct. 2013).

<sup>228</sup> 72 Fed. Reg. 53,014, 53,020 (Sept. 17, 2007).

<sup>229</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 6-7 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>; Minnesota Judicial Training and Education Blog, Judge Alan F. Pendelton, *National Judicial Training Update 15-13, Immigrant Crime Victims & U-Visa Certification What is it and Why Should Judges Care? Ten facts that every judge (and attorney/officer) should know* at 5 (July 8, 2015) <https://niwaplibrary.wcl.american.edu/pubs/national-uvisa-judicial-training-update/>. (After a case has concluded judicial ethics code Rules 2.2, 2.9, 2.10, and 2.11 are no longer implicated in a civil or criminal case).

<sup>230</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 6 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>; Maryland Judicial Ethics Committee, *Opinion 2024-24 Judges' Signing of Federal U visa Certifications – Supplemental Opinion* at 5 (October 17, 2024), <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u-visa/>.

<sup>231</sup> Maryland Judicial Ethics Committee, *Opinion 2023-20 Judges' Signing of Federal U visa Certifications* at 6-7, 13-15 (August 21, 2023), <https://niwaplibrary.wcl.american.edu/pubs/2023-20-md-judicial-ethics-opinion-u-visa/>; Maryland Judicial Ethics Committee, *Opinion 2024-24 Judges' Signing of Federal U visa Certifications – Supplemental Opinion* at 5 (October 17, 2024), <https://niwaplibrary.wcl.american.edu/pubs/2024-24-md-supplemental-judicial-ethics-opinion-u-visa/>.

<sup>232</sup> Minnesota Board of Judicial Standards, *Advisory Opinion 2015-2 U Visa Certification by Judges* at 6 (June 26, 2015), <https://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/>.

Jurisdictions that select a Certifier Judge or have their Presiding Judge process U visa certification requests and issue U visa certifications for the court are better able to issue certifications while reducing the need for recusal and implicating judicial ethical concerns.

Finally, as described in detail in Section III(E) above, in closed cases judges can sign U visa certifications without implicating judicial ethics rules or ex parte communications bars in all states except Maryland. In Maryland, courts considering U visa certifications in closed cases will need to follow the procedures outlined (a)-(e) above<sup>234</sup> for U visa certification by a judge in open cases including the requirement that the court first obtain and determine the voluntariness and content of the victim's VAWA confidentiality waiver before serving employing a notice and motions process that provides the perpetrator and all parties with notice that the victim is seeking U visa certification by a judge.

## **F. Conclusion**

Congress created the U visa with the goal of improving access to justice for all victims and building trust in courts and the U.S. legal system. When judges, courts, and judicial ethics boards fully understand the Congressional intent to explicitly authorize judges to be U visa certifiers, they are better able to understand why judges are vital to the U visa protections Congress established. Not only are judges permitted to certify U visas in a wide variety of circumstances, there are many instances where judges may be the first or only certifying official a victim encounters.

This article has provided an overview of U visa certification and addresses myths and facts regarding U visa certification and the U visa program under U.S. immigration laws. It identifies assumptions and misperceptions about U.S. immigration laws contained in the four Judicial Ethics Board Opinions reviewed for this article and directs judges, judicial ethics boards, and courts, to the DHS policies, rules, and guidance that judges should consult to ensure that they are relying on legally accurate information about the U visa and the U visa certification process under federal immigration laws.

It is crucial that judges have legally accurate information about the U visa certification process, and that judges understand and employ the best practices discussed in this article so that more judges can and will sign U visa certifications in cases involving immigrant victims without fear of implicating judicial ethical codes of conduct. When judges better understand when and how they can ethically sign U visa certifications, judges help build trust in the judicial system and that greatly enhances access to justice,<sup>235</sup> the goal that Congress envisioned for the U visa program.

---

<sup>233</sup> Maryland Judicial Ethics Comm., Op. 24, 7 (2024) (Judges' Signing of Federal U Visa Certifications -- Supplemental Opinion).

<sup>234</sup> Since there is no statute of limitations in U visa cases or for U visa certification requests requiring notice and motion procedures for judicial certification in close cases in addition to posing safety issues for the victim, can also involve complex service of process issues for the victim who will need to locate a perpetrator or party who has moved from the jurisdiction or is deceased or has become incompetent or incapacitated.

<sup>235</sup> See, National Center for State Courts, *Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Policy Recommendations* (2018) <https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>; Executive Summary – *Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status* (June 8, 2021), <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final/>.

This project was supported by Grant No.15JOVW-21-GK-02256-MUMU 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 U.S. Department of Justice. The recipient also agrees to ensure that any subrecipient at any tier will comply with this condition.

**Statement of Leslye E. Orloff and Nupur Chandna  
NIWAP, Inc., Bethesda, Maryland  
orloff@wcl.american.edu/202-210-8886**

**NIWAP Inc.’s Testimony on HB1838, HD2  
March 25, 2026**

Submitted to the  
Hawaii House of Representatives Committee on the Judicial and Hawaiian Affairs  
Hearing on Bills HB 1838, HD1 Relating to Visas Held on March 25, 2026

**I. Introduction**

National Immigrant Women’s Advocacy Project Inc. (“NIWAP”) appreciates the opportunity to testify in favor of House Bill 1838, HD2 Relating to Visas. We strongly support the Bill as it represents a crucial step for victims of crime improving access to U and T visa certification in Hawaii. U visa certification is a required prerequisite to victims’ ability to file their U Visa applications and T visa certification provides primary evidence and critical support for victims of human trafficking (sex and labor) filing for T visa protections. The Bill provides clarity and will promote consistent access to U and T visa certification for immigrant survivors of domestic violence, sexual assault, stalking, child abuse, human trafficking and other criminal activities covered by U and T visa who have mustered the courage to come forward to seek access to justice and provide helpfulness to police, prosecutors, judges, courts, and government agencies in the detection, investigation, prosecution, conviction, or sentencing of the offenders who have perpetrated criminal activities against them.

When victims are able to swiftly attain U and T visa and the certifications needed to file U and T visa cases, victims begin a journey toward healing and safety. They gain trust in courts, law enforcement, prosecutors and the government agencies who offered them help and certifications that evidence-based research has found promotes both greater participation in investigations, prosecutions, and court cases brought against their perpetrators, but also leads victims to report crimes they and others experience in the future.<sup>1</sup> This Bill is an important step forward that will promote victim, community and law enforcement officer safety in Hawaii.<sup>2</sup>

**The National Immigrant Women’s Advocacy Project**

Established in 2012, NIWAP’s mission is to amplify the voices of immigrant survivors of abuse and their advocates and to build capacity of professionals to eliminate the systemic barriers faced by survivors. To further this mission, NIWAP focuses on education, research and policy work. Through the education program, NIWAP helps enhance knowledge and capacity of

---

<sup>1</sup> Executive Summary – Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status (June 8, 2021) <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final/>; Full Report <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report/>.

<sup>2</sup> International Association of Chiefs of Police (IACP)- Support for Education and Awareness of U Visa Certifications and T Visa Declarations (2018) <https://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations/>; Stories From the Field: The Crime Fighting Effectiveness of the U Visa (August 23, 2021) <https://niwaplibrary.wcl.american.edu/pubs/u-visa-crime-fighting-stories/>.

professionals through training, technical assistance, maintaining a library of current publications and a directory of service providers. NIWAP conducts research to identify complex legal issues encountered by immigrant survivors of abuse and through its policy work builds networks and advises key decision makers.

NIWAP'S areas of focus include, immigration law, family law, domestic violence, child abuse, sexual assault, human trafficking, health care and public benefits, trauma informed victim services and language access. NIWAP's President, Leslye E. Orloff has over 43 years' experience representing immigrant survivors and advocating for improving legal rights and protections for immigrant survivors including working with Congress to draft the U visa, the T visa and the Violence Against Women Act self-petition. She also has for over two decades worked with the Department of Homeland Security to implement U and T visa protections. NIWAP's team of experts that include training faculty made up of law enforcement officials, prosecutors, and judges with expertise on the U and T visa programs, government agencies' role as certifiers, and best practices for working on cases involving immigrant survivors provide training and technical assistance nationally for law enforcement, prosecutors, judges, attorneys and victim advocates on U and T visas, best practices for promoting access to justice for immigrant victims, and the special issues that arise in criminal, family law, civil protection order and other civil cases when victims, children, and/or litigants have been victims of abuse or criminal activities perpetrated against them in the United States.

## **II. Definition of Certifying Entity and Certifying Official**

We support the definitions of “certifying entity” and “certifying official” in §1 of the Bill to the extent that the provisions generally include the full list of state agencies and officials authorized to certify U and T visas under federal law. However, we strongly oppose the current version of this legislation's HD2's removal of state court judges from both of these definitions. Certifiers under this Hawaii law must be consistent with federal law. To do so this law needs to be amended to add judges and judicial officials. By doing so the bill will clearly address the three categories of certifying entities and certifying officials who law enforcement, prosecutors, and judges are the certifiers who sign the greatest number of U and T visa certifications nationally.<sup>3</sup>

The text of §1 of the Bill HD2 has been significantly altered and shortened from the bill text contained in version HD1. The current HD2 version was narrowed to remove the detailed list of Hawaii agencies that would be required to certify under Hawaii law and replace it with a general statement that a certifying entity means a state or county entity authorized to certify under “federal law.” This approach poses a number of significant problems:

1. This bill text could be construed by a state or county agencies that not clearly listed in the federal statute, to support the position that they are not required to certify or comply with the timelines and requirements imposed on certifiers by this Hawaii law.
2. This bill text also narrows the requirement of federal law excluding the U and T visa regulations and policy requirements that clearly include child protective services, adult protective services, and state labor enforcement agencies as

---

<sup>3</sup> USCIS: Trends in U Visa Law Enforcement Certifications, Qualifying Crimes and Evidence of Helpfulness (July 2020) [https://niwaplibrary.wcl.american.edu/pubs/u\\_visas\\_lea-certs-report/](https://niwaplibrary.wcl.american.edu/pubs/u_visas_lea-certs-report/)

certifiers and include a catchall provision that was included in the HD1 text of this bill stating that other state or county entities “that have criminal, civil, or administrative authority to detect, investigate, prosecute, convict or sentence criminal activities” are also considered certifying entities and certifying officials under this Hawaii law.

3. Our experience working with states across the country with state U and T visa certification laws is that when states specifically list all of the major types of agencies that are listed in federal statute or in Department of Homeland Security regulations or policies as entities authorized to certify those agencies listed in state statutes are more likely to start issuing U and T visa certifications and they do so much more quickly. This approach removes significant obstacles to certification particularly in cases like protection order, child welfare, and adult protection cases offering victims civil and family law remedies that do not and may never include any criminal justice response.

We strongly recommend replacing the version of §1 of the Bill in HD2 with the bill text of the original HD1. The original text of HD1 (but not the amendment HD2 text) is consistent with the federal law and regulations lists of child and adult protective services, and other state government entities that have criminal, civil, or administrative authority to detect, investigate, prosecutor, convict, or sentence criminal activities in the agency’s area of expertise<sup>4</sup> to be a “certifying entity” and “certifying official under the Hawaii statute. This approach is similar to that taken in 9 other states (California, Colorado, Illinois, Massachusetts, Nebraska, Nevada, Oregon, Utah, and Washington)<sup>5</sup> that have laws like Hawaii is considering in this bill that are in alignment with the U visa federal statute, U and T visa regulations and Department of Homeland Security publications on the U and T visa programs. .

The definition of which state and federal government agencies have the authority to sign U and T visa certifications for U and T Visa applicants was always intended by Congress to be broad. Victims of violence experience numerous barriers that can deter them from coming forward and reporting crime victimization. Congress wanted to foster trust in government agencies and understood which agency a victim would trust to reveal facts about crime victimization would vary in communities across the United States and would include law enforcement, prosecutors, judges, courts, child and adult protective services, state and federal labor agencies, and other government agencies that detect, investigate, prosecute, convict, or sentence in the context of their government work.

NIWAP strongly opposes the amendment in version HD2 that removes judges from the definition of certifying officials under Hawaii law. This is a mistake and will result, regardless to the intent of this amendment in Hawaii judges being less willing to sign certifications. In all of the states that have passed state statutes that failed to list judges as certifiers under state law obtaining certifications consistently from judges across the state can be quite difficult with many judges refusing to sign any certifications.

---

<sup>4</sup> DHS U and T Visa Law Enforcement Resource Guide (November 30, 2015) (pp 6, 11) <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

<sup>5</sup> See Exhibit A, U and T Visa Certification State Law Requirements: Review, Comparison, and Trends (August 20, 2025) Also available at <https://niwaplibrary.wcl.american.edu/pubs/u-and-t-visa-certification-state-law-requirements/>.

We understand that there may be a concern about whether and how the judicial review portions of this bill apply to judicial certifiers. That issue can be resolved by amending §9 of HD2 to add bill text that exempts judicial certifications for the judicial review provisions of this bill. In the interlineated version of this bill that is at the end of this testimony, we suggest bill text that will make it clear that judicial review provisions do not apply to judicial U or T visa certifications.

There are many benefits of explicitly including all state court judges and justices as certifying officials under this law. By doing so, the legislature will ensure that:

- §3 time frames to respond to certification requests apply to state court judges;
- §2 of the Bill’s requirements that certifying entities have a written policy and process that informs the public about the agency’s certification process and procedures and requires appointment of a certifying official will apply to Hawaii state courts.
  - Best practice nationally is for courts to select a judge responsible for issuing U and T visa certifications for that court.<sup>6</sup> The Hawaii statute if amended to add judges back as certifiers as they were in HD1 will promote this best practice.
- §1 of the Bill’s requirements that the definitions to be applied by certifying officials be consistent with, not contrary to, and follow federal laws, regulations, and policies governing the U and T visa programs and U and T visa certification, apply as a matter of Hawaii law provide direction judicial certifiers and to the judges who will hear provide judicial review under §9 of the bill. Including judges as certifying officials and certifying entities in this bill helps guarantee that judges will be bound by the same certification rules as all other certifiers in Hawaii. This will also provide direction to the judges conducting §9’s judicial review directing judges who will be required to turn to federal law and regulations for guidance when this Hawaii statute is silent about the legal requirements of the U and T visa programs and certification that they should apply when conducting judicial reviews of certification. The proposed amendment adding judges as certifiers is needed to accomplish this.
- §4’s notice of denial requirements will apply to judicial certifications.
- §5’s requirements under Hawaii law regarding determinations of helpfulness will apply equally and consistently to judicial certification as to certifications by law enforcement, prosecutors, and other certifying agencies under Hawaii law.

---

<sup>6</sup> See, Superior Court of California County of San Francisco Civil Division U-Visa Certification Protocol (February 2022) <https://sf.courts.ca.gov/system/files/general/u-visa-protocol-sf-court.pdf>; Model: U and T Visa Certification Protocol for State Courts (October 29, 2020) <https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-certification-protocol-courts/>; Hon. Rosemary Collins (Ret.), Hon. Lora Livingston (Ret.), Hon. Chanpone Sinlapasi, Hon. Ramona Gonzalez (Ret.), Leslye E. Orloff, and Rafaela Rodrigues, U Visa Certification: Ethical Considerations for Judicial Officers (December 31, 2024)(Published by the National Council of Juvenile and Family Court Judges and NIWAP, American University Washington College of Law [https://niwaplibrary.wcl.american.edu/pubs/u\\_visas\\_ethics\\_article/](https://niwaplibrary.wcl.american.edu/pubs/u_visas_ethics_article/)).

- §6’s bar on certifiers imposing additional or more restrictive requirements for certification than required by federal or Hawaii law will apply to judges for purposes of certification and judicial review
- §7’s Confidentiality protections will apply to judicial certifications including the requirement that the process for obtaining consent be consistent with federal VAWA confidentiality law requirements.
- §8 will ensure that certification by judges is language accessible
- §10’s reporting requirements will apply to judicial certifications as it does to all other certifying officials and certifying entities under this Hawaii law.

The U visa statute explicitly includes judges as certifiers as a means to enhance access to justice in criminal, family, child welfare, and civil court cases for immigrant crime victims and their families.<sup>7</sup> T visa regulations<sup>8</sup> and U visa regulations<sup>9</sup> both include judges among the government officials authorized to sign U and T visas under federal law. In drafting the U visa statute, we understood that courts may be the first government agency with which victims have contact and wanted to ensure that judges hearing civil protection order, custody, divorce, child welfare, employment discrimination and the full range of civil court cases where judges detect criminal activity could sign U visa certifications<sup>10</sup> whether or not there has been or ever may be a criminal investigation or prosecution. The goal was to have a remedy in the U visa and T visa that provided protection and stability to victims, like state civil protection orders do, without requiring that a victim also report the crime to law enforcement.

Judges can sign U visa certifications consistent with and without violating ethical judicial rules and canons, particularly since most judicial certifications are signed after the judge signing the certification has ruled in the case before them. In a growing number of jurisdictions across the country, courts will select a certifying judge who is selected and who is responsible for signing T and U visa certifications based on court records in cases that the judge did not hear themselves. This is a best practice that reduces the number of cases where a certifying judge may need to recuse themselves in a future matter involving the victim who sought certification. NIWAP collaborating with a national team of judicial experts on the U visa and the National Council of Juvenile and Family Court Judges recently published an article discussing how consistent with American Bar Association and state judicial ethics requirements judges can ethically sign U and T visa certifications. The publication “U Visa Certification: Ethical Considerations for Judicial Officers”<sup>11</sup> (December 31, 2024) linked at the end of this testimony and incorporated herein by reference as Exhibit B.

---

<sup>7</sup> 101(a)(15)(U)(i)(III) of the Immigration and Nationality Act.

<sup>8</sup> Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status (T Visa Final Rule April 30, 2024) <https://niwaplibrary.wcl.american.edu/pubs/2024-t-visa-final-rule/>

<sup>9</sup> Federal Register: New Classification for Victims of Criminal Activity for Eligibility for “U” Nonimmigrant Status (U Visa Regulations) (September 17, 2007) <https://niwaplibrary.wcl.american.edu/pubs/uvisarule/>

<sup>10</sup> DHS U and T Visa Law Enforcement Resource Guide (November 30, 2015) (pp 4, 6, 8, 11, 17, 19) <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

<sup>11</sup> Exhibit B -Hon. Rosemary Collins (Ret.), Hon. Lora Livingston (Ret.), Hon. Chanpone Sinlapasi, Hon. Ramona Gonzalez (Ret.), Leslye E. Orloff, and Rafaela Rodrigues, U Visa Certification: Ethical Considerations for Judicial Officers (December 31, 2024)(Published by the National Council of Juvenile and Family Court Judges and NIWAP, American University Washington College of Law [https://niwaplibrary.wcl.american.edu/pubs/u\\_visas\\_ethics\\_article/](https://niwaplibrary.wcl.american.edu/pubs/u_visas_ethics_article/)

### **III. Section 6 -Barring Imposition of Restrictions in Addition to or More Restrictive than Federal Law**

We strongly support the inclusion of the requirement that under this Hawaii law agencies in writing U and T visa certification policies and when denying or explaining their reasons for denying U visa certification requests will be barred from imposing requirements for U and T visa certification that “are additional to or more restrictive than those under federal law.” This will help ensure that U and T visa certifications by Hawaii state agencies are issued, or denied based on legally correct information about U and T visa immigration laws, regulations, policies and DHS recommended practices. Requiring Hawaii certifying agencies to follow federal U and T visa statutes, policies, and guidelines provide very helpful clarification that will promote consistency in U and T visa certification decision-making across all certifying agencies throughout the state of Hawaii. The inclusion of this reference will help agencies in Hawaii avoid wrongful certification denials.

The language of this section 6 also clarifies what the U and T visa is and is not, providing much needed direction to all of Hawaii’s certifying agencies and to the Hawaii courts who will be adjudicating denials or failure to certify. All of the information provided in this section is derived from U and T visa statutes, regulations, policies and Federal U Visa Guidelines.<sup>12</sup> We strongly support the inclusion of this statutory language in the Hawaii statute.

A nationwide survey<sup>13</sup> on reasons for certification denial revealed 20 out of the 22 reasons for certifications denials were inconsistent with the U visa statute, U visa regulations, and the Department of Homeland Security’s expert views about U visa certification and the U visa program. Certifying agencies commonly have misunderstandings and misperceptions about legal parameters and requirements for signing U Visa certifications. This amendment will help address and end these misunderstandings and misperceptions by U and T visa certifying agencies in Hawaii and will promote greater transparency and access to justice for U and T visa eligible immigrant victims.

Further the inclusion of reference to federal U and T Visa statutes in Section 1 of this Bill’s definitions of “qualifying criminal activity”, “T visa”, “U visa” and “U or T visa certification” ensures that Hawaii’s law is inclusive of all criminal activity included under the federal laws<sup>14</sup>. By adopting this change, Hawaii will follow Colorado, Illinois, Maryland and Utah that each use this approach in their state statutes.<sup>15</sup>

### **IV. The Federal Law Standard: Helpfulness in Detection, or Investigation, or Prosecution, or Conviction, or Sentencing**

---

<sup>12</sup> Exhibit C, USCIS U Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and other Government Agencies (February 28, 2022) p. 3

<https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/> (Requirement for the U visa the victim “Was, is being, or is likely to be helpful to the certifying agency in the detection, investigation, prosecution, conviction, or sentencing of the qualifying crime.”); *See also* Exhibit D, T-Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and other Government Agencies (October 20,2021) <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide/>.

<sup>13</sup> Department of Homeland Security Policy Answers to Law Enforcement Reasons for Not Certifying (2013)

<https://niwaplibrary.wcl.american.edu/pubs/dhs-answers-to-reasons-for-not-certifying/>.

<sup>14</sup> 8 C.F.R. § 214.14 (a)(9) – Definition of Qualifying Criminal Activity

<sup>15</sup> *See* Exhibit A, U and T Visa Certification State Law Requirements: Review, Comparison, and Trends (August 20, 2025) Also available at <https://niwaplibrary.wcl.american.edu/pubs/u-and-t-visa-certification-state-law-requirements/>.

The federal standard for obtaining the certification is that a victim “Was helpful, is being helpful, or is likely to be helpful to law enforcement, prosecutors, judges, or other officials in the *detection, investigation, prosecution, conviction, or sentencing* of the criminal activity.”<sup>16</sup> (emphasis added). We support this Hawaii legislation’s approach that is consistent with federal law. The federal standard is that for certification the victim has to be helpful in any one but not all stages. The certification process is not intended to be a barrier for the victim but a check in which the certifying agency informs DHS that they believe this the person receiving certification is a victim describes the helpfulness the victim has provided or is providing to a government agency up to the time that the certification is signed. Once the victim has offered helpfulness, they are legally entitled to certification. Without certification, the victim cannot file for a U-Visa.

After the victim gets a certification, through the time they file their U visa applications, through adjudication of that application (≈ 8.5 years), and through adjudication of the U visa holder’s application for lawful permanent residency (≈ 13.7 years), the *U visa victim has an obligation to not unreasonably refuse to cooperate with future reasonable request for assistance from certifying agencies*. In creating this U visa requirement Congress understood from law enforcement, prosecutors, attorneys and victim advocates who were experienced in working with victims of domestic violence and sexual assault that many victims of domestic and sexual violence crimes who report crimes and start working with law enforcement and prosecutors do not consistently follow through in cooperating in criminal investigations and prosecutions. This is very common in domestic violence and sexual assault cases because of victim intimidation, witness tampering, threats, coercive control and fears of retribution from the perpetrator if victims continue to cooperate.<sup>17</sup> Since a key goal of Congress was to build trust between victims and government entities that detect, investigate, and prosecute criminal activities, Congress built into the statute flexibility for victims with regard to ongoing helpfulness and cooperation. Congress created an exception to the ongoing cooperation requirement for victims who could show that their refusal to cooperate were not unreasonable.<sup>18</sup>

Additionally, when DHS issued both the T and U visa regulations these federal regulations also require that the requests made of a U or T visa victim for ongoing cooperation with law enforcement or prosecutors must be requests that are reasonable to ask of this and other similarly situated crime victims.<sup>19</sup> The regulations require both that the request being made is proven to be reasonable and allow victims to prove eligibility for the Congressionally created exception by demonstrating that their refusal to cooperate was not unreasonable in light of the totality of the circumstances of the case. The regulations at 8 C.F.R. §245.24(a)(5) states:

“(5) Refusal to Provide Assistance in a Criminal Investigation or Prosecution is the refusal by the alien to provide assistance to a law enforcement agency or official that had

---

<sup>16</sup> See, Exhibit C, USCIS U Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and other Government Agencies (February 28, 2022) p. 3 (Requirement for the U visa the victim “Was, is being, or is likely to be helpful to the certifying agency in the detection, investigation, prosecution, conviction, or sentencing of the qualifying crime.”).

<sup>17</sup> This brochure is used by prosecutors across the country to educate victims about witness intimidation: Victim Witness Resource-Victim Intimidation Brochure (July 21, 2025) <https://niwaplibrary.wcl.american.edu/pubs/victimwitness-6-11-24-final/>

<sup>18</sup> This statutory text is found in 8 U.S.C. 1255(m) which is the section of the U visa Statute that governs a U visa victims access to lawful permanent residency. In adjudicating a request from a U visa recipient to obtain lawful permanent residency that victim must provide that since they begun providing helpfulness that led to their receipt of certification, the victim did not “unreasonably refuse to provide assistance in a criminal investigation or prosecution.” The statute requires that DHS can only deny for non-cooperation based on affirmative evidence.

<sup>19</sup> 8 C.F.R. §245.23(a)(7); 8 C.F.R. §214.213(a)(2)

responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status. The Attorney General will determine whether the alien's refusal was unreasonable under the totality of the circumstances based on all available affirmative evidence. The Attorney General may take into account such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe traumatization (both mental and physical), and the age and maturity of the applicant."<sup>20</sup>

We strongly support HD1's bill text for Section 5 of this bill on the "Determination of Helpfulness" and urge this legislative committee to delete Section 5 in HD2 and replace it with HD1's original language (see interlineation at the end of this testimony). In making the requested change it is important that drafters keep the last sentence of HD2's see Page 7 lines 11-16 with one minor amendment changing "crime" to "criminal activity" which is the term the U visa federal statute uses.

The first part of HD2 page 7 lines 1-11 contain bill text that is legally incorrect. If the goal of the edit was to remove the shall language used in HD1 and replacing it with a rebuttable presumption that can be accomplished in a manner that is legally correct and consistent with federal law, regulations, and policies governing the U and T visa programs. The HD2 language is legally incorrect in the following ways:

1. It deletes the exception that exists in federal law that victims can obtain certification, approval of their U visa case and green cards in U visa cases when they can show that their refusal to cooperate or provide information was not unreasonable in light of the totality of the circumstances in their case.
2. It omits the clarifying language that recognizes that all U visa victims will have had to provide some helpfulness to one of the certifying officials or entities to get certification. The HD2 language blurs the distinction between initial helpfulness and ongoing cooperation required by U visa regulations with the exception for victims whose inability to cooperate is not unreasonable.
3. It wrongly assumes that all requests for cooperation will come from law enforcement officials. That is not correct this request can come from prosecutors, child protective services, a state labor agency or other certifier.

NIWAP supports making a minor amendment to the language in §5 HD1 to change the shall language to a rebuttable presumption. This can be done without making Hawaii's state law inconsistent with federal law and depriving victims in Hawaii for the federally created exception for victims who cannot safely or cannot for trauma recovery or health reasons continue providing cooperation with law enforcement, prosecutors, or other certifying officials. The §5 HD1 language with the rebuttable presumption amendment NIWAP can support because it is consistent with the federal statute and regulations requirements for and will promote consistency and access to U and T visa certifications in Hawaii. By considering a victim helpful, "if since, the initiation of helpfulness, the individual has not unreasonably refused to cooperate or

---

<sup>20</sup> T Visa and U Visa Adjustment to Lawful Permanent Residency Regulations (December 12, 2008)  
<https://niwaplibrary.wcl.american.edu/pubs/federal-register-status-adjustment/>.

unreasonably failed to provide information and assistance reasonably requested by a certifying entity or was otherwise exempt from compliance” is fully consistent with both the U visa and T visa statutes and regulations and all DHS policies and publication issued by DHS. It also follows both the letter and the spirit of the law as Congress intended it to be implemented. Congress understood when it created the U and T visa programs that victims of domestic violence, sexual assault, child abuse, and human trafficking in particular who turn to the courts for help and/or who report the victimization they suffered to law enforcement, prosecutors, child and adult protective services and other government agencies with the power to investigate would be subjected to retaliation and witness intimidation by perpetrators. Allowing victims access to U and T visa certification and U and T visas if their non-cooperation at was not unreasonable or was caused by trauma provided flexibility that recognized the dangers to victims of cooperation. This bill recognizes that once the victim has initiated helpfulness, the victim can refuse to cooperate and still have been helpful for purposes of certification if the victim’s refusal was not unreasonable. The amendment as currently written requires that certifiers take into account the “totality of the circumstances” as laid out in the federal law<sup>21</sup>.

Also, we want to note that it is important in the draft of the statute to always use the full list of the types of helpfulness that the proposed language includes in many places in the statute. To be consistent with federal law each time it is relevant in the Hawaii statute consistently include the full list of the alternative ways that U visa victims can offer helpfulness in the *detection, investigation, prosecution, conviction, or sentencing* of a qualifying criminal activity. We have included a proposed draft reflecting this recommendation<sup>22</sup>.

## **V. No Statute of Limitations**

We strongly support the language in Section 6 of the Hawaii statute to clarify that there is no statute of limitations for when a qualifying criminal activity occurred relative to the request for certification or filing of the victim’s U or T visa application. Understanding the dynamics of the domestic violence, child abuse, sexual assault, stalking, human trafficking and many other criminal activities included in the statute, the power and coercive control that perpetrators of these crimes have over victims, the impact that the trauma of victimization on a victim’s ability to come forward and seek help, and the time it takes to connect victims with the justice system, Congress chose not to impose any statute of limitations for when a qualifying criminal activity occurred relative to the request for certification or the filing of the U or T visa application. As an example, on average, it takes a victim of domestic violence seven times to leave before being able to separate from their abusers for good<sup>23</sup>. These situations are further complicated by other

---

<sup>21</sup> 8 C.F.R. Section 245.24(a)(5): Refusal to Provide Assistance in Criminal Investigation or Prosecution (“(5) Refusal to Provide Assistance in a Criminal Investigation or Prosecution is the refusal by the alien to provide assistance to a law enforcement agency or official that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status. The Attorney General will determine whether the alien’s refusal was unreasonable under the totality of the circumstances based on all available affirmative evidence. The Attorney General may take into account such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe traumatization (both mental and physical), and the age and maturity of the applicant.”)

<sup>22</sup> See, Exhibit E, Interlineated HB 1838 H.D.1 Proposed Amendments.

<sup>23</sup> National Domestic Violence Hotline, <https://www.thehotline.org/resources/get-help-50-obstacles-to-leaving/>

factors that include but are not limited to: children in common, ongoing threats and intimidation, immigration-related abuse, and cultural pressures.<sup>24</sup>

It can take a long time before the crime is reported or the victim is able to break the cycle of abuse, walk away from an abusive home or workplace, and muster the courage to report the abuse and crime victimization they suffered. Social science data shows<sup>25</sup> when victims get the U Visa certification or when they file their cases and by the time, they get their work authorization in filed cases their corporation with the justice system increases exponentially. This includes a 114% increase in trust of law enforcement, a 36% increase in reporting future crimes and a greater than 60% increase in willingness to seek civil protection orders against perpetrators and custody of children. In the statutory confirmation of federal U and T visa law that there is no statute of limitations for U and T visa certification purposes Hawaii will follow the states of California, Colorado, Maryland and Nevada.

## **VI. Written Explanation for Denial of Certification and Recertification Requests**

We strongly support the language in this Bill in Section 4 that requires that certifying officials provide a written explanation in support of the denial. The written explanation of the grounds of denial of certification helps fulfill due process for victims by ensuring transparency while also enabling certifying agencies to monitor consistent adherence to the Hawaii law and federal U and T visa statutes, regulations, policies and guidelines. With the amendments to HD2 NIWAP is requesting that judges be added back into the statute as certifiers when judges deny certifications they and all other certifiers will be required to provide a written denial. In adopting language in the statute requiring a written explanation of the reasons the certifying agency is denying the certification Hawaii will make its statute consistent with the following states, California, Colorado, Delaware, Illinois, Massachusetts, Maryland, Oregon and Virginia.

NIWAP also strongly supports the language in this section governing the ability to have certification requests re-evaluated by the certifying agency and the fact that this includes the ability to submit additional evidence. It is also very important that this section provides timelines for re-evaluation requests. We also wanted to note that since this bill will not be applying the judicial review provisions to denials of certifications by judges, this re-evaluation provision would be helpful as a form of review opportunity that would apply to judicial certifications.

---

<sup>24</sup> Inderjit K Basra, Tatum Kenney, Shandra Forrest-Bank, Lisa K. Zottarelli & Chitra Raghavan (24 Oct 2023): Predatory Helpfulness: An Empirical Framework to Identify Fraudulent Tactics Used by Pimps to Recruit and Commercially Sexually Exploit Young Girls and Women, *Journal of Human Trafficking*, <https://doi.org/10.1080/23322705.2023.2259263>; See also, National Council of Juvenile and Family Court Judges, Revised Chapter Four: Families and Children Model Code on Domestic Violence and Family Violence (December 30, 2022) <https://ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>

<sup>25</sup> Executive Summary – Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status (June 8, 2021) <https://niwaplibrary.wcl.american.edu/pubs/executive-summary-final/> (U visa victims with work authorization are 114% more likely to trust police; 36% more willing to report future crimes, greater use of the family courts with increased rates of seeking protection orders (67%) and custody (64%); and 22% bring other victims forward to seek help from law enforcement, prosecutors, and courts.)

## **VII. Confidentiality of Information**

Under the Bill's Section 7 each certifying entity shall keep confidential the immigration status and personal identifying information of any victim requesting U or T visa certification. The bill language contains exceptions when required by federal law or court order or upon written consent of the victim. We strongly support this provision and recommend adding language similar to the language included in Section 9 of the bill discussing judicial review. It is important that any waivers of that confidentiality protections contained in this section be implemented in a manner that is consistent with the way waivers of confidentiality are handled under the Violence Against Victim Act's (VAWA's) Confidentiality protections.<sup>26</sup> VAWA Confidentiality protections apply to all victims seeking U and T visa protection and include all victims seeking U and T visa certifications, which is the first step in the U visa application and a helpful step in the T visa application process.<sup>27</sup> We support this as it makes the laws consistent with VAWA Confidentiality, which ensures privacy and safety of immigrant victims at the same time balancing Constitutional protections provided defendants in criminal prosecutions.<sup>28</sup>

This bill provision recognizes the importance of confidentiality protections for victims of domestic violence, child abuse, stalking, sexual assault and human trafficking and the harms that can occur for victims, their children, and family members should perpetrators learn that the victim is in the process of taking steps to obtain a U visa. This statutory requirement ensures that perpetrators do not have access to or knowledge of the certifications unless in a criminal case based on the facts of the case the perpetrator has articulated a sufficient basis for the information and a prosecutor or judge have determined that the certification itself and any documents accompanying the certification are constitutionally required to be turned over to the offender.<sup>29</sup> . In doing this Hawaii will follow the states of California, Colorado, Illinois, Maine, Maryland, Nebraska, Oregon, Virginia, Utah and Washington.

## **VIII. Language Access Protocol**

We strongly support including statutory language in the bill that require certifying agencies to develop protocols to assist petitioners who have limited English proficiency. This provision for language access will help breaking down barriers to access the justice system for those with limited English proficiency. This will also ensure accurate communication and efficient processing of U visa certification requests while empowering victims to fully participate in the certification process. In making, this change Hawaii will be following the states of Maryland, Minnesota, Nebraska, Nevada and Washington.

---

<sup>26</sup> 8 U.S.C. § 1367(b)(4).

<sup>27</sup> Implementation of section 1367 Information Provisions Instruction (May 28, 2019) at 3 [https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-information-provisions-instruction-002-02-001\\_0\\_0-2019/](https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-information-provisions-instruction-002-02-001_0_0-2019/)

<sup>28</sup> Implementation of section 1367 Information Provisions Instruction (May 28, 2019) at 8 [https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-information-provisions-instruction-002-02-001\\_0\\_0-2019/](https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-information-provisions-instruction-002-02-001_0_0-2019/)

<sup>29</sup> For national case law and further information when a U visa certification signed by a prosecutor or law enforcement and any accompanying information requesting the certification must be constitutionally provided to a defendant see, National Judicial Network Peer-to-Peer Sessions – Violence Against Women Act (VAWA) Confidentiality: Criminal and Family Case Discovery (October 1 & Nov. 12, 2024) <https://niwaplibrary.wcl.american.edu/njn-vawa-criminal-case-discovery-oct-1-2024/>.

## IX. Training For Certifying Officials and Certifying Entities

We are particularly supportive of the HB1838 H.D.2's requirements regarding training of certifiers on federal and state law requirements for U and T visa certifications. The training requirement should be implemented by Hawaii state government officials who have the most knowledge about U and T visa certification and best practices for serving survivors of domestic violence, sexual assault, stalking, dating violence, child abuse and human trafficking. These officials work for the Hawaii Attorney General's Office in the Grants and Planning Branch of the Crime Prevention and Justice Assistance Division and administer the Violence Against Women Act (VAWA) Formula Grant and the Victims of Crime Act (VOCA) Victim Assistance Formula Grant Programs. The VAWA and VOCA grant administrators have both the substantive expertise and the grant making expertise to administer the training that will be needed statewide for certifying officials. Hawaii's VAWA and VAWA administrators have been involved in funding and supporting trainings for law enforcement and prosecutors on both U and T visa certification and best practices for working with immigrant survivors in the past.

NIWAP strongly recommends that the bill contain language ensuring that the funding provided in this bill will only pay for trainings that employ *a curriculum on U and T visa certification that has already been developed and tested that is being used nationally*.<sup>30</sup> The funds in the bill would not be used to pay for development of a new curriculum. It would only cover costs of adaptation of an existing tested curriculum to include covering the provisions of Hawaii's new law. The law must require the use of existing, tested, and currently in use training curricula on U and T visa certification for law enforcement, prosecutors, judges and other government agency certifiers (PowerPoints, training materials, and handouts) that have already been developed with support from the Office on Violence Against Women (OVW) at the U.S. Department of Justice and the State Justice Institute (SJI). OVW and SJI have made investments for more than a decade in the development of a training curriculum, a national training faculty, and nationally distributed toolkits on U and T visa certification by law enforcement and prosecutors,<sup>31</sup> by judges and judicial officers,<sup>32</sup> and by adult protective services workers.<sup>33</sup> NIWAP has recently published a toolkit for child protective services workers on best practices for working with immigrant children, immigrant crime victims and immigrant families that includes U and T visa certification by CPS agencies.<sup>34</sup> This OVW and SJI supported training

---

<sup>30</sup> Recent examples of this training curricula and its associated materials can be found on the web pages for trainings for law enforcement and prosecutors recently delivered in Albuquerque, New Mexico November 2025 <https://niwaplibrary.wcl.american.edu/2025-albuquerque-training-for-law-enforcement-prosecutors-and-system-based-advocates/>; for trainings across the state of Maryland in 2025 <https://niwaplibrary.wcl.american.edu/2025-md-trainings/>; and a January 2025 training in the Twin Cities in Minnesota <https://niwaplibrary.wcl.american.edu/2026-minnesota-training/>. Recent training employing the judicial curriculum developed with support from OVW and SJI include: Statewide training for Oregon State judges at the October 2024 Judicial Conference <https://niwaplibrary.wcl.american.edu/bendjudges2024/>; 2023 Training for the Hawaii Judiciary funded by the Center for Court Innovation <https://niwaplibrary.wcl.american.edu/september-6-2023-honolulu-hawaii-training/>; and Virginia Supreme Court's 2024 Judicial Conference <https://niwaplibrary.wcl.american.edu/november-21-2024-virginia-beach-virginia-improving-access-to-justice-for-immigrant-victims-of-domestic-and-sexual-violence/>.

<sup>31</sup> U visa Certification and T visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors (August 30, 2021) <https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-toolkit-law-enforcement-prosecutor/>.

<sup>32</sup> U Visa Certification and T visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers (June 17, 2021) <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2/>.

<sup>33</sup> U Visa Certification and T Visa Declaration Toolkit for Adult Protective Services (APS) (October 19, 2023) <https://niwaplibrary.wcl.american.edu/pubs/aps-u-visa-toolkit/>.

<sup>34</sup> Child Protective Services Agency Toolkit: U Visa Certification, T Visa Declaration, Special Immigrant Juvenile Status and Violence Against Women Act Immigration Relief for Abused Immigrant Children (July 8, 2024) <https://niwaplibrary.wcl.american.edu/pubs/cps-toolkit/>. This toolkit has been most recently used to provide training for

curriculum has been approved for both continuing legal education credits and for professional development credits in a number of states across the country. OVW and SJI have also supported trainings across the county for law enforcement, prosecutors, and judges that employed interactive training curricula that are delivered by a team of law enforcement, prosecutors, judges and law professor faculty and this curriculum has been effective in training certifying officials on the U and T visa programs and certification nationally.

## **X. Conclusion**

NIWAP strongly supports this House Bill 1838 H.D.2 with amendments proposed in the interlineated text added at the end of this testimony, Exhibit E, incorporated herein by reference. However, we believe it will be a significant mistake that will lead to problems with the legislation, and in consistency in access to U and T visa certification across the state if the amendments requested here are not made regarding:

- Adding judges as U visa certifiers
- Returning to HD1 language regarding helpfulness with an amendment only to change the bill text to a rebuttable presumption rather than shall
- Ensuring that any training paid for under this bill for law enforcement, prosecutors, judges and other certifiers in the state is delivered using existing tested curriculum and faculty experienced delivering this training for certifiers across the country.

This legislation with these amendments will strengthen protections for victims of domestic violence, sexual assault, human trafficking, child abuse, stalking, and other U and T visa covered criminal activities and ensure greater access to U and T visa certification in Hawaii. This will enhance access to U visas and T visas stabilizing victims and helping them heal and will at the same time enhance the ability of law enforcement, prosecutors, judges and other government agencies to hold perpetrators accountable improving safety for all in Hawaii. Please do not hesitate to contact Leslye E. Orloff at NIWAP who would be happy to answer any questions Legislators or Legislative staff may have on related to this bill, this testimony, or the U and T visa programs. She can be reached at [Orloff@american.edu](mailto:Orloff@american.edu).

List of Exhibits – Since it was not possible to upload Exhibits on the portal, NIWAP is incorporating the following exhibits by reference into this testimony and includes the links to each publication below:

1. Exhibit A: U and T Visa Certification State Law Requirements: Review, Comparison, and Trends (August 20, 2025) <https://niwaplibrary.wcl.american.edu/pubs/u-and-t-visa-certification-state-law-requirements/>
2. Exhibit B: U Visa Certification: Ethical Considerations for Judicial Officers” (December 31, 2024) [https://niwaplibrary.wcl.american.edu/pubs/u\\_visas\\_ethics\\_article/](https://niwaplibrary.wcl.american.edu/pubs/u_visas_ethics_article/)

---

California Child Protective Services Agency leadership for 29 California counties at a training convened by Casey Family Programs in November of 2025; a webinar convened in January 2026 by the California Department of Social Services for county child protective services agency staff, attorneys, advocates and other programs working on child protective services agency cases in California; and for a statewide webinar in February 2026 convened by the Wisconsin Court Improvement Program for child protective services workers, judges and court staff across the state of Wisconsin.

3. Exhibit C: USCIS U Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and other Government Agencies (2022) <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022/>
4. Exhibit D: USCIS T Visa Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and other Government Agencies (2021) <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide/>
5. Exhibit E: Interlineated HB 1838 H.D.1 Proposed Amendments (contained in the following pages).

---

---

# A BILL FOR AN ACT

RELATING TO VISAS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that U nonimmigrant  
2 status (U visa) and T nonimmigrant status (T visa) are  
3 crimefighting tools created by the United States Congress to  
4 enhance access to justice and humanitarian relief for noncitizen  
5 victims of crime. Both U and T visas provide a nonimmigrant  
6 temporary status that allows noncitizen survivors of crime to  
7 stay in the United States, obtain employment authorization,  
8 apply for lawful permanent resident status, and help certain  
9 family members obtain immigration status.

10           The U visa is intended to protect survivors of certain  
11 crimes who have courageously reported the crime or assisted in  
12 the criminal investigation or prosecution. For an immigrant  
13 survivor of crime to qualify for U nonimmigrant status, a  
14 certifying entity, such as a law enforcement agency, prosecutor,  
15 judge, or other government agency authorized under federal law  
16 to sign U visa certifications, must complete Form I-918,  
17 Supplement B, attesting to the survivor's assistance in the



1 detection, investigation, ~~or~~ <sup>conviction or sentencing</sup> prosecution, of the crime, and the  
2 certification is an essential prerequisite to the filing of a  
3 petition to the United States Citizenship and Immigration  
4 Services (USCIS) for U nonimmigrant status.

5 The T visa provides similar relief to victims of severe  
6 forms of human trafficking who assist in the detection,  
7 investigation, or prosecution of trafficking crimes. For a  
8 noncitizen survivor of trafficking to qualify for T nonimmigrant  
9 status, a T visa certification on Form I-914, Supplement B,  
10 signed by a law enforcement agency, prosecutor, judge, or other  
11 government agency authorized under federal law to sign T visa  
12 certifications, is an optional and primary form of evidence  
13 submitted to USCIS to demonstrate the survivor's victimization  
14 and cooperation.

15 The legislature further finds that law enforcement  
16 agencies, prosecutors, judges, and other state and county  
17 entities authorized to sign U and T visa certifications under  
18 federal law are not mandated by federal law to complete or sign  
19 Form I-918, Supplement B, or Form I-914, Supplement B, on behalf  
20 of victims, even if the petitioners are assisting in the  
21 detection, investigation, prosecution, conviction, or sentencing



1 of the case and qualify for U or T nonimmigrant status, and that  
2 some entities are resistant to certifying victim helpfulness due  
3 to a lack of understanding about the U or T nonimmigrant  
4 application process or a lack of resources, among other reasons.  
5 Absent uniform standards for U and T visa certifications,  
6 noncitizen victims statewide face inconsistent access to  
7 justice.

8 Therefore, the purpose of this Act is to:

- 9 (1) Establish uniform statewide requirements for policies  
10 and processes for the issuance of U and T visa  
11 certifications for noncitizen victims of crime that  
12 are consistent with federal laws and regulations  
13 governing U and T visas;
- 14 (2) Require each state and county certifying entity to  
15 adopt a policy and process for the issuance of U and T  
16 visa certifications, consistent with uniform statewide  
17 requirements; and
- 18 (3) Appropriate funds for the department of the attorney  
19 general to provide training to certifying entities and  
20 certifying officials on all federal and state  
21 requirements for U and T visa certifications.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 IMMIGRATION STATUS; U VISAS; T VISAS

6 § -1 Definitions. As used in this chapter, unless the  
7 context clearly requires otherwise:

8 "Certifying entity" means any state or county entity that  
9 is authorized under federal law <sup>and regulations + policies</sup> to issue U or T visa  
10 certifications, ~~excluding state courts.~~

replace with § 1. from HDI attached A

11 "Certifying official" means:

- 12 (1) The head of a certifying entity;
- 13 (2) A person employed in a supervisory role specifically  
14 designated by the head of a certifying entity to  
15 respond to requests for U or T visa certifications; or
- 16 (3) A state or county prosecutor; or  
17 (4) A state judge ~~or judicial officer.~~

18 "Qualifying criminal activity" and "qualifying crime" have  
19 the same meaning as qualifying criminal activity pursuant to  
20 title 8 United States Code section 1101(a)(15)(U)(iii).

21 "T visa" means the type of nonimmigrant visa defined in  
title 8 United States Code section 1101(a)(15)(T).

# Attachment A From HD1

§ -1 Definitions. . As used in this chapter, unless the context clearly requires otherwise:

\* "Certifying entity" means any state or county law enforcement agency, the department of the attorney general, the child welfare services branch of the department of human services, the adult protective and community services branch of the department of human services, a state court, county prosecuting agency, or other entity that has criminal, civil, or administrative authority to detect, investigate, ~~or prosecute~~ <sup>convict, or sentence</sup> criminal activities within its respective purview and that is authorized under federal law to issue U or T visa certifications.

"Certifying official" means:

- (1) The head of a certifying entity;
- (2) A person employed in a supervisory role specifically designated by the head of a certifying entity to respond to requests for U or T visa certifications;
- (3) A state or county prosecutor; or
- \* (4) A state judge, ~~or other judicial officer~~.

"Qualifying criminal activity" and "qualifying crime" have the same meaning as qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Immigration and Nationality Act.

"T visa" means the type of nonimmigrant visa, defined in section 101(a)(15)(T) of the Immigration and Nationality Act.

"U or T visa certification" means the certification of a form as required by federal immigration law for a U visa or considered by federal immigration authorities for a T visa.

"U visa" means the type of nonimmigrant visa, defined in section 101(a)(15)(U) of the Immigration and Nationality Act.

1 "U or T visa certification" means a written certification  
2 or declaration executed on a form prescribed by federal  
3 immigration authorities that is required for a U visa or  
4 considered by federal immigration authorities for a T visa.

5 "U visa" means the type of nonimmigrant visa defined in  
6 title 8 United States Code section 1101(a)(15)(U).

7 § -2 **Written policy and process.** Each certifying entity  
8 shall adopt a written policy and process to assist individuals  
9 in obtaining U or T visa certification, as applicable,  
10 consistent with the requirements of this chapter. The policy  
11 shall be made publicly available and shall include procedures  
12 for victims or their representatives to request U or T visa  
13 certification. Each certifying entity shall designate at least  
14 one certifying official to review and respond to U and T visa  
15 certification requests.

16 § -3 **Time period for response.** The certifying official  
17 shall either complete the U or T visa certification or deny the  
18 request for U or T visa certification within forty-five calendar  
19 days of receiving the request. If the noncitizen victim  
20 requesting certification is in federal removal, exclusion, or  
21 deportation proceedings or is subject to a final order of



1 removal, exclusion, or deportation, or if a qualifying family  
2 member of the victim will become ineligible for U or T  
3 nonimmigrant status or benefits by virtue of age within one  
4 hundred twenty days, the certifying official shall either  
5 complete the U or T visa certification or deny the request for U  
6 or T visa certification within fourteen calendar days of  
7 receiving the request.

8       § -4 **Notice of denial; requirements.** If a certifying  
9 official denies a requested U or T visa certification, the  
10 certifying entity shall provide the requester with a written  
11 notification of the denial and the reasons for the denial within  
12 the same time periods as those set forth in section -3 for  
13 responses to requests for U or T visa certification. The  
14 written notification of denial shall also include a statement  
15 that the requester may request a re-evaluation by the certifying  
16 entity and submit new or additional evidence satisfying the  
17 requirements for certification within forty-five calendar days  
18 upon receipt of the denial. Upon receipt of a request for re-  
19 evaluation and any new or additional evidence, the certifying  
20 entity shall accept and consider the request and shall respond  
21 within the same time periods as those set forth in



1 section -3. No requester shall be required to seek re-  
2 evaluation before filing an action seeking judicial review in  
3 the circuit court pursuant to section -9.

*Edits needed  
narrower than  
federal statute.*

4 § -5 Determination of helpfulness. For purposes of  
5 determining helpfulness for a request for U or T visa

*see edits  
attached*

6 certification, there is a rebuttable presumption that a victim *is*  
7 ~~shall be considered helpful if, since the initiation of~~  
8 ~~is helpful, has been helpful, or is likely to be helpful to the~~  
9 ~~helpfulness, The individual has not unreasonably refused~~  
10 ~~investigation or prosecution of that qualifying criminal~~  
11 ~~to cooperate or unreasonably failed~~  
12 ~~activity if the victim has not refused or failed to provide~~

13 information and assistance reasonably requested by law  
14 *or other certifying entity.*  
15 enforcement. The existence of a current investigation, the

16 filing of charges, the apprehension of a suspect who committed  
17 the qualifying *criminal activity*  
18 ~~crime~~, or a prosecution or conviction of a  
19 suspect who committed the qualifying criminal activity shall not  
20 be required for a certifying official to certify victim  
helpfulness.

§ -6 No additional or more restrictive requirements; no  
statute of limitations. (a) No certifying entity shall impose  
requirements for U or T visa certification that are additional  
to or more restrictive than those under federal law.



## Attachment B From HD1

certification within forty-five calendar days upon receipt of the denial. Upon receipt of a request for re-evaluation and any new or additional evidence, the certifying entity shall accept and consider the request and shall respond within the same time periods as those set forth in section -3. No requester shall be required to exhaust an administrative remedy for re-evaluation before filing an action seeking judicial review or other equitable relief in the circuit court pursuant to section -9.

§ -5 **Determination of helpfulness.** For purposes of determining helpfulness for a request for U or T visa certification, <sup>there is a rebuttable presumption that</sup> an individual shall be considered helpful if, since the initiation of helpfulness, the individual has not unreasonably refused to cooperate or unreasonably failed to provide information and assistance reasonably requested by a certifying entity or was otherwise exempt from compliance. ^

§ -6 **No additional or more restrictive requirements; no statute of limitations.** (a) No certifying entity shall impose requirements for U or T visa certification that are additional to or more restrictive than those under federal law. The existence of a current investigation, the filing of charges, the apprehension of a suspect who committed the qualifying <sup>criminal activity or</sup> ~~crime~~, or a prosecution or conviction of a suspect who committed the qualifying criminal activity shall not be required for a certifying official to certify victim helpfulness.

(b) There shall be no statute of limitations regarding when a qualifying criminal activity occurred relative to the request for certification of victim helpfulness. No request for certification of victim helpfulness shall be denied solely based

1 (b) There shall be no statute of limitations regarding  
 2 when a qualifying criminal activity occurred relative to the  
 3 request for certification of victim helpfulness. No request for  
 4 certification of victim helpfulness shall be denied solely based  
 5 on the length of time that has passed since the crime occurred  
 6 or because a case was closed or suspended.

7 § -7 **Confidentiality of information.** Each certifying  
 8 entity shall keep confidential the immigration status and  
 9 personal identifying information of any victim who requests U or  
 10 T visa certification. Such information shall not be disclosed  
 11 except as required by federal law or court order, or upon the  
 12 written consent of the victim consistent with the requirements  
 13 and objectives of title 8 United States Code section 1367 and  
 14 title 34 United States Code section 12291(b)(2).

15 § -8 **Language access protocols.** Each certifying entity  
 16 shall implement language access protocols to ensure that a  
 17 victim with limited English proficiency is able to request and  
 18 obtain U or T visa certification.

19 § -9 **Judicial review.** (a) If a certifying entity or  
 20 certifying official fails to respond within the applicable time  
 21 periods set forth in section -3 or denies a requested U or T

*New subsection (a)*  
 (a) The provisions of this subsection apply to all certifying entities + certifying officials except judges and judicial officers.  
 on judicial review

1 visa certification, the requester may seek judicial review by  
2 filing an action in the circuit court within ninety days of the  
3 denial or expiration of the statutory timeframe for response.

4 Any petition for judicial review filed pursuant to this  
5 subsection may be filed with a motion to seal the petition, the  
6 record of all hearings and all other pleadings and papers filed,  
7 and orders entered in connection with the petition. The court  
8 may temporarily seal the petition and all related records while  
9 it considers a motion to seal. The petition and related records  
10 shall be kept under seal unless otherwise ordered by the court  
11 after considering the requirements and objectives of title 8  
12 United States Code section 1367 and title 34 United States Code  
13 section 12291(b)(2).

14 (b) Upon the filing of an action pursuant to subsection  
15 (a), the court shall review the U or T visa certification  
16 request de novo. If the court finds that the petitioner was a  
17 victim of qualifying criminal activity and has complied with the  
18 requirements for U or T visa certification and that the  
19 certification was wrongfully withheld or denied, the court may  
20 execute the certification as a certifying official or direct the



1 certifying entity or certifying official to complete the  
2 certification.

3 (c) In any action brought under this section, the court  
4 shall award reasonable attorney's fees and costs to the  
5 petitioner if the petitioner prevails.

6 § -10 Reports; certifying entities; department of the  
7 attorney general. (a) Each certifying entity shall maintain a  
8 record of all requests for U and T visa certifications.  
9 Beginning July 1, 2027, each certifying entity shall submit an  
10 annual report to the department of the attorney general  
11 detailing for the prior calendar year:

- 12 (1) The number of U and T visa certification requests  
13 received;
- 14 (2) The number of U and T visa certification forms signed;
- 15 (3) The number of U and T visa certification requests  
16 denied;
- 17 (4) The reasons for any denials of U and T visa  
18 certification requests;
- 19 (5) The average length of time taken to process  
20 certification requests; and



1 (6) The number of cases in which expedited processing was  
2 requested and the outcomes of those cases.

3 (b) The department of the attorney general shall:

4 (1) Aggregate the information in the reports submitted by  
5 the certifying entities pursuant to subsection (a);  
6 and

7 (2) No later than twenty days prior to the convening of  
8 each regular session, beginning with the regular  
9 session of 2028, submit a report to the legislature,  
10 which may include statistics, an overview of training  
11 programs and participation levels in each county, and  
12 any recommendations to improve the effectiveness or  
13 implementation of this chapter.

14 § -11 Training; department of the attorney general. (a)

15 The department of the attorney general shall provide training to  
16 all certifying entities and certifying officials on the federal  
17 and state requirements for U or T visa certification.

18 (b) The department of the attorney general shall ensure  
19 that the training is eligible for continuing legal education  
20 credits for attorneys and professional development credits for



1 law enforcement officers. The training shall be made available  
2 to all certifying entities and certifying officials."

3 SECTION 3. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$ or so  
5 much thereof as may be necessary for fiscal year 2026-2027 for  
6 the department of the attorney general to provide training to  
7 certifying entities and certifying officials on all federal and  
8 state requirements for U and T visa certifications.

9 The sum appropriated shall be expended by the department of  
10 the attorney general for the purposes of this Act.

11 SECTION 4. This Act shall take effect on July 1, 3000.

*This training shall use <sup>existing</sup> curricula developed with support from The office on Violence Against Women at The US Department of Justice and The state Justice Institute that is used nationally to train law enforcement, prosecutors and judges on U and T visa certification; adapted to cover the requirements of this law.*



**Report Title:**

AG; U and T Visa Certification; Uniform Statewide Requirements; State and County Certifying Entities and Officials; Policies and Processes; Training; Appropriation

**Description:**

Establishes uniform statewide requirements for policies and processes for the issuance of U and T visa certifications for noncitizen victims of crime that are consistent with federal laws and regulations governing U and T visas. Requires each state and county certifying entity to adopt a policy and process for the issuance of U and T visa certifications, consistent with those statewide requirements. Appropriates funds for the Department of the Attorney General to provide training to certifying entities and certifying officials on all federal and state requirements for U and T visa certifications. Effective 7/1/3000. (HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**EXECUTIVE DIRECTOR**

Eric Cohen

March 26, 2026

San Francisco

Washington, D.C.

San Antonio

Houston

ilrc@ilrc.org

www.ilrc.org



Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

I am the Legal Program Director at the Immigrant Legal Resource Center (ILRC). The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. Through our close ties with the community, we have a profound awareness of the hurdles faced by qualified immigrant survivors of crime in filing immigration applications.

At the ILRC, I lead the ILRC's Immigrant Survivors Team and conduct frequent in-person and webinar trainings nationally on U visas, naturalization and citizenship, family-based immigration, and FOIA requests. I also provide technical assistance through the ILRC's Attorney of the Day program on a wide range of immigration issues, including U visas, T visas, VAWA, immigration options for youth, consequences of criminal convictions for immigration purposes, removal defense strategy, and eligibility for other forms of immigration relief, including family-based immigration, DACA, cancellation of removal, asylum, and naturalization.

I am writing to encourage Hawai'i to pass HB 1838. This bill is critical to enhance access to pathways for immigration relief, especially at a time when so many other avenues are narrowing. U nonimmigrant status and T nonimmigrant status are tools created by Congress to improve public safety as well as provide humanitarian relief and stability for noncitizen survivors.

HB 1838 strengthens statewide practices for U and T visa certifications consistent with federal law and aligns with many states around the country which have also enacted state laws, including California where I am based. HB 1838 establishes uniform, transparent, and accountable policies and procedures statewide for law enforcement, prosecutors, courts, and other certifying agencies when responding to U and T visa certification requests.

In particular, HB 1838 has the following key provisions that reflect best practices nationally and will help create uniform and equitable access for immigrant survivors of crime: requiring state

and county certifying entities to adopt written policies and procedures and make them publicly accessible; designation of at least one certifying official in each certifying entity; reasonable timelines for responses ; required written explanations for denials; judicial review for certification delays or denials; training for certifying; and reporting requirements.

However, I urge the Committee to reinstate language from HB1838, HD1 recognizing state courts and judges as U and T visa certifiers. Such language would be consistent with federal law as well as current practice. Specifically listing state courts and judges as certifiers will clarify the important role that these entities can play in enabling access for survivors of crime to immigration relief.

Thank you for your consideration,

Alison Kamhi



*Cade Watanabe, Financial Secretary-Treasurer*

*Gemma G. Weinstein, President*

*Eric W. Gill, Senior Vice-President*

March 26, 2026

**LATE**

Senate Committee on Judiciary  
Sen. Karl Rhoads, Chair  
Sen. Mike Gabbard, Vice Chair

### **Testimony in Support of HB 1838**

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

UNITE HERE Local 5 represents over 10,000 working people in the hotel, food service and health care industries across Hawaii. We are in support of HB 1838, which will set up standardized procedures for non-citizen crime victims to apply for U and T visa status. This will allow them to avoid deportation as local law enforcement finds and prosecutes perpetrators. It would be very helpful to have standardized procedures to ensure the same level of protection is provided to everyone experiencing these difficult situations.

Thank you.

**HB-1838-HD-2**

Submitted on: 3/25/2026 5:08:33 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>       |
|---------------------|---------------------|---------------------------|----------------------|
| amy agbayani        | Individual          | Support                   | Remotely Via<br>Zoom |

Comments:

I respectfully urge you to pass this bill as it will benefit U/T visa applicants as well as law enforcement agencies to have standardized procedures.

Mahalo for your support.

Amy Agbayani

COMMITTEE ON JUDICIARY  
Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair



HEARING:

Friday, March 27, 2026 at 10:00 am  
Conference Room 016 & Videoconference

TESTIMONY IN **SUPPORT** OF HB 1838, HD2 - RELATING TO VISAS.

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

My name is Christine Andrews and I am a long-term resident of Wailuku, Maui. I am also an attorney licensed in the state of Hawaii for over 25 years and a founding coalition member of El Pueblo en Acción (EPA) Maui – The People in Action Maui. I am writing today in **strong support of HB1838, HD2, with comments**. House Bill 1838, Relating to Visas, which establishes uniform statewide requirements for policies and processes for the issuance of U and T visa certifications for noncitizen victims of crime that are consistent with federal laws and regulations governing U and T visas; requires each state and county certifying entity to adopt a policy and process for the issuance of U and T visa certifications, consistent with those statewide requirements; and appropriates funds for the Department of the Attorney General to provide training to certifying entities and certifying officials on all federal and state requirements for U and T visa certifications.

Under federal law, U and T visa certifications are discretionary. Unfortunately, inconsistent or unclear local policies and practices for issuing these certifications can delay or derail a victim's U or T visa. U and T visa certifications are often the decisive factor in whether a survivor can obtain safety, stability, and lawful presence. Attorneys and legal staff must navigate different expectations and procedures from one agency to another, and survivors bear the costs in time, uncertainty, and exposure to continued violence or exploitation.

On Maui, where many visa applicants are also wildfire survivors, the stress of the wildfires has contributed to conditions of increased domestic violence and exploitation. Delays in the processing of U & T visa certifications by law enforcement agencies have the unintended consequence of compounding trauma. Victims of domestic violence and trafficking are especially vulnerable; they must weigh the risk of reaching out for help when they do not know how or if a certifying agency will respond. Uneven processes and uncertain use of discretion around U and T visa certifications effectively retraumatize people who have already suffered serious harm and discourage them from cooperating with law enforcement, undermining community safety for everyone.

I want to share a personal story from my experience as an EPA Maui volunteer. I was called to a small business on Maui, where an employee was in a private area inside while federal agents were outside waiting to take the person into detention. The employee was lawfully present in the U.S. as the spouse of a citizen, but due to domestic violence in the marriage, the immigration process had changed. I witnessed a legally-present victim of domestic violence who was unable to navigate the immigration consequences of their abuse expeditiously be taken into ICE custody while their shocked employer and fellow employees watched crying.

House Bill 1838, HD2 can help avoid this kind of tragedy, where a victim of domestic violence is detained or deported because the system does not protect them in a timely manner. Creating uniform statewide requirements and requiring every state and county certifying entity to adopt clear policies and processes that are supported by training from the Department of the Attorney General is an important step forward in supporting crime victims. I support the preservation of judicial review provided by HB 1838, HD2 and the clarification that victims are not required to seek re-evaluation by a certifying entity before pursuing judicial review. As I have witnessed, delays have consequences and accountability is necessary.

I respectfully request that the Committee amend HB 1838, HD2 to reinstate the language from HB1838, HD1 that recognized state courts and judges as U and T visa certifiers as they are explicitly authorized under federal law to issue certifications. As I have witnessed in the domestic violence situation, state courts, especially family courts, may be the only certifying option. Victims of domestic violence may be afraid to press criminal charges against their abusers, or may be in front of the family court seeking a restraining order, so the courts are an

important forum for victims of domestic abuse that has nothing to do with law enforcement. My experience is that state courts are in many ways the more appropriate certifier for certain categories of crime victims.

Thinking again of the experience of victims of domestic violence, where they may be afraid to press charges against their abuser, or where they may change their mind under pressure from their abuser and later have a difficult time testifying or otherwise cooperating out of fear, I also respectfully request some minor changes to the language in section 5 to ensure that victims are able to obtain the protections of certification, even if they ultimately are unable to fully cooperate out of reasonable fear of their abuser, a situation that is very common in domestic violence or even sexual assault. I support the suggested language for Section 5 proposed by The Legal Clinic. I also support the recommendations of The Legal Clinic as to amendments regarding judicial review and attorney's fees.

Thank you for considering the requested amendments. **I strongly support HB 1838, HD2 with requested amendments** as it removes a major barrier for immigrant victims of crime seeking U and T visas and promotes consistency, transparency, and timely access to life-saving protections. Our communities' safety should not depend on whether a victim happens to live in a county with a well-developed U and T visa policy; statewide standards ensure that all survivors in Hawai'i can seek protection and cooperate with law enforcement without fear. I respectfully request that you stand with Hawai'i's immigrant crime victims and **vote in support of HB 1838, HD2.**

Mahalo for supporting our most vulnerable community members,

Christine Andrews, J.D.  
Wailuku, Maui

**Judge Rosemary Collins (Retired)**  
**11050 Covington Place**  
**Belvidere, Illinois 61008**

Testimony of Judge Rosemary Collins (Ret.)  
In Support of Including Judicial U and T Visa Certification in  
HB1838, HD2

My name is Honorable Rosemary Collins. I was an elected Circuit Court Judge in the Seventeenth Judicial Circuit in Illinois and am now retired. I served on the bench for almost 30 years. During that time, I was the presiding judge of our domestic violence division, family division, and also carried a full-time felony caseload. I have adjudicated cases in almost every type of courtroom and case type in our court system, and I particularly have extensive experience in domestic violence and family law cases. Our courts and my jurisdiction were chosen to serve as a Mentor Court by the U.S. Department of Justice, Office on Violence Against Women, for the innovative work we did in the domestic violence/family court area. Mentor Courts train judges and court staff across the country on best practices for adjudication of civil protection order cases and other domestic violence related family law cases.

As part of my leadership responsibilities at my Court, I sought to enhance judges' and court staff's knowledge about the U and T visa programs and the specific role Congress created, authorizing state court judges sitting in a wide range of family, civil, and criminal court cases to sign U and T visa certifications under federal law. Although many judges believe they have no role to play in immigration cases, in fact, Congress carved out a specific role for state court judges when they directly named judges in the statute as U visa certifiers. It is an important role and one that state judges need training on, since U and T visa certification is not an area of the law that state courts normally address in the course of our training as state court judges. It is important that state court judges understand that the statute designating us as certifiers for U and T visas is an important tool that increases access to justice and trust in our judicial system for immigrant survivors, their families, and immigrant communities.

State court judges have contact with victims of crime and abuse in a wide range of family and civil court cases in which the victims have never come into contact with the criminal court system. These areas include civil protection orders, divorce, custody, and child abuse cases in which the victims provide the judge with essential testimony and information about crime victimization, abuse, and child maltreatment that was never reported to any law enforcement officers, and prosecutors were never involved. When victims provide state court judges with information about victimization and abuse, this testimony helps courts make determinations in the best interests of children and issue orders designed to protect victims, remedy past victimization, and deter future ongoing incidents of abuse and crime victimization. When there is domestic abuse, protection order cases in particular provide an important opportunity for survivors to get court orders from state court judges that grant victims the relief they are entitled to under the law, without having to involve the police department.

Many survivors are reluctant to involve the police because they come from countries where the police are very hostile to women and children. Some of them are very afraid that our

court system will not protect them, and others are afraid they will face unknown consequences if they do involve the court system. We often see part of the pattern of domestic violence abusers using threats of deportation and other forms of immigration related abuse to keep immigrant victims from seeking help from state courts. Abusers tell victims that if they go to court for help, they will be deported and will never see their children again.

As with many battered women in the U.S., many battered immigrants are looking for help from the courts to stop the abuse, but do not want their abusers arrested. Civil protection orders were specifically designed to provide a means for victims to obtain court orders from the family and civil courts that protect victims and their children from further abuse. By signing U and T visa certifications and providing victims information about U and T visas, which were specifically created to protect victims, judges can protect children and victims in our communities. Research has found that when judges sign U and T visa certifications and issue Special Immigrant Juvenile Status findings, even in times of increased fear of immigration enforcement, battered immigrants continue to increasingly turn to the courts to obtain civil protection orders.<sup>1</sup>

For these reasons, it is extremely important that domestic violence civil protection order judges be trained so that they are ready for when a U or T visa certification request comes across their desk. State court judges need to know: how to handle the request for certification, what the proper procedures are, what is the correct law that applies, what their role is in certifying, and when and how state court judges can ethically sign U and T visa certifications.<sup>2</sup>

Over the years, the types of state protection orders available to protect victims from future harm and remedy past abuse have become law in states across the country.<sup>3</sup> Illinois has five (5) different types of protection orders/injunctions: domestic violence, stalking, sexual assault, elder abuse, and extreme risk – gun violence protection orders. Hawaii has three (3) different types of civil protection orders: domestic violence, anti-harassment, and extreme risk – gun violence. Each of these protection orders and injunctions are available to victims in civil or family court proceedings. Gun violence protection orders are very important state court orders. We know they are important orders because we see so many cases of mass gun violence where the shooters' first justice system involvement was as a domestic violence case. Just this month, the Pawtucket, Rhode Island, shooting at the hockey rink was a case in which the shooter killed his ex-wife and son before he opened fire at the hockey rink. We know how important it is for people who know that somebody has a gun and how dangerous that person is to be able to access the courts for protection and provide information about the guns and the danger to the court. When judges learn about this danger and issue court orders, both the victim and the public may be better protected from harm.

---

<sup>1</sup> Nawal H. Ammar, Leslye E. Orloff, and Amanda Couture-Carron, Immigrant Victims of Interpersonal Violence and Protection Orders, Chapter Eight in Civil Court Responses to Intimate Partner Violence and Abuse (2020) <https://niwaplibrary.wcl.american.edu/pubs/immigrant-victims-and-protection-orders-2020/>.

<sup>2</sup> Hon. Rosemary Collins (Ret.); Hon. Lora Livingston (Ret.), Hon. Chanpone Sinlapasi, Hon. Ramona Gonzalez (Ret.), Leslye E. Orloff and Rafaela Rodrigues, U Visa Certification: Ethical Considerations for Judicial Officers (December 31, 2024) <https://niwaplibrary.wcl.american.edu/pubs/u visa ethics article/>.

<sup>3</sup> Nupur Chandna and Leslye E. Orloff, Types of Civil Protection Orders (CPOs) Available By State – Chart (December 31, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ht-cpo-state-chart/>.

State court judges are presented on a regular basis with cases involving immigrant crime victims and immigrant children in a wide range of family and juvenile court proceedings. Many times, in divorce and custody cases when a judge is applying state law to make the best interest of the child's determination and when have case assigned to them, they often find out there is domestic violence. Sometimes it is not even recognized by the survivors because they have been living with a pattern of domestic violence so long that they consider it perhaps "normal". It is important for judges who hear divorce and custody cases to understand how there are immigration protections for children and their non abusive parents under the U visa program and the judge can provide the victim with a U or T visa certification. This is in addition to and separate from the court orders state court judges must issue for children to be able to file applications for Special Immigrant Juvenile Status. For state court judges hearing child welfare cases, it is also very important to understand how our role as a state court judge interacts with both U and T visa certifications.

In workplace violence cases brought in civil proceedings seeking damages to remedy employment discrimination and harassment, judges often learn of sexual assaults occurring in the workplace environment. When the victim provides information to the court in testimony, pleadings, or other evidence showing that sexual assaults were occurring, that enables the judge to issue U visa certification based on sexual assault and a T visa certification for sex and/or labor trafficking depending on the facts of the case. There are many civil cases that are brought against human traffickers by victims including protection orders, tort actions, employment actions, or criminal cases that may trigger the availability of a U or T visa judicial certification. Judges sitting in many types of non-criminal proceedings need training on the U and T visa programs and judicial certifications because immigration is a complicated area of the law.

Judges are reluctant to do something unless they know they are following the law. Judicial officers do not want to be advocates, but judges care about access to justice and want to be able to make sure the law is available to those who need the law's protections. This is why training on U and T visa certification is critical because it gives judges the legal framework under which we can operate, making sure that access to justice is open to everyone. Courts are legally designated to issue U or T visa certification to a victim whose information provided to the court the judge credits.

I have been doing U visa certification training for state court judges for 15 years and I have found that the information on U and T visa certification is training that is well received by judges and judicial officers. It opens an area to judges that they did not realize existed before. Before I started getting involved in this area of the law, I also did not realize that state court judges had a statutorily authorized role created by Congress in any type of immigration case. I sought training, which was very helpful to me because I wanted to follow the law with regard to certification. When I became the U visa certifier for our family and domestic violence courts, that training became critical in the performance of my duties.

Since then, I brought U visa certification training for judges to my jurisdiction, I became a founding and steering committee member of the State Justice Institute funded National Judicial Network: A Forum on Human Trafficking and Immigration in State Courts, and I have become part of a national training team of judges and have trained judges in states across the country,

including Hawaii. Since 2022, I have served as faculty for approximately 10 judicial trainings in Hawaii that included 3 trainings for Hawaii judges on judicial U and T visa certifications.

From my experience as a judge hearing family, civil, and criminal cases; as an expert judicial trainer; and as a U visa certifier; I understand the importance of HB1838, HD1. I hope you will take the steps needed to ensure that the final bill passed by the Hawaii legislature follows the lead of California, Colorado, Nebraska, Nevada, Oregon, Utah, and Washington explicitly listing judges as U and T visa certifiers in the state statute, just as judges are listed among the full range of authorized certifiers in the federal statute 8 U.S.C. Section 1101(a)(15)(U)(i)(III). Equally importantly, I commend you for including in HB1838, HD1, requiring, using tested existing curricula, and funding training of all government agencies that are authorized to sign U and T visa certifications, including judges. The certification and training requirements included in this bill will enhance protection for immigrant survivors of domestic violence, child abuse, sexual assault, stalking, human trafficking, and other U visa listed crimes across the state of Hawaii. This will increase access to justice and the courts for immigrant survivors and their children and will simultaneously improve offender accountability and thereby community safety.

**HB-1838-HD-2**

Submitted on: 3/23/2026 6:52:40 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Younghee Overly     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Thank you for this opportunity to support HB1838 which would set standard procedures for U&T visas.

Younghee Overly, a member of Indivisible Hawaii

**HB-1838-HD-2**

Submitted on: 3/23/2026 7:37:33 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Cory Harden         | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Aloha legislators,

Please support this bill to set up standardized procedures for non-citizen crime victims to apply for U and T visa status, so they can avoid deportation while assisting local law enforcement to find and prosecute perpetrators. This will help get perpetrators off our streets. Standardization is needed since procedures now vary across agencies and islands.

mahalo,  
Cory Harden, Hilo  
member, Indivisible

**HB-1838-HD-2**

Submitted on: 3/23/2026 7:56:57 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Lois Langham        | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Gun violence has increased to the point where, if we aren't personally, directly affected by it, it's just another day. It is too easy, done sometimes without thought and there needs to be more deterrent, more consequence for those who make the choice to use a gun.

**HB-1838-HD-2**

Submitted on: 3/23/2026 9:32:21 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Jesse Hutchison     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Thank you!

**HB-1838-HD-2**

Submitted on: 3/23/2026 10:09:04 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Aimee E McCullough  | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I am writing in strong support of HB1838 HD2 both personally and as a member of the Indivisible Hawaii Statewide Network (IHSN). This Bill would add a new Chapter to the Hawaii Revised Statutes setting standardized procedures for applying for U and T visa status for noncitizen victims of crime. These visas were established by Congress to protect noncitizen victims of human trafficking or other crimes to avoid deportation by immigration authorities while assisting local law enforcement to find and prosecute the perpetrators.

**HB-1838-HD-2**

Submitted on: 3/23/2026 10:35:14 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Tim Huycke          | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I support HB1838.

**HB-1838-HD-2**

Submitted on: 3/24/2026 3:47:58 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| David Cuthbert      | Individual          | Support                   | Written Testimony Only |

Comments:

I am writing in strong support of HB1838 HD2 both personally and as a member of the Indivisible Hawaii Statewide Network (IHSN). This Bill would add a new Chapter to the Hawaii Revised Statutes setting standardized procedures for applying for U and T visa status for noncitizen victims of crime. These visas were established by Congress to protect noncitizen victims of human trafficking or other crimes to avoid deportation by immigration authorities while assisting local law enforcement to find and prosecute the perpetrators.

Everyone in the community is harmed when serious crimes are not reported to the authorities or prosecuted. Noncitizen residents may be afraid to report crimes or assist in investigation and prosecution if they face deportation by coming forward. These special visa categories are intended to protect victims who come forward to assist law enforcement from immigration proceedings.

The application for these visas must be filed with federal authorities by local law enforcement and prosecuting agencies. Since the application is a discretionary process there are significant differences in filing across Hawaii's agencies and islands. This bill is an important step toward providing support for noncitizens who have been victimized, and a step toward more effective prosecution of human traffickers and criminals.

I urge you to Pass HB1838 HD2.

Thank you for the opportunity to testify on this Bill.

David Cuthbert, Pahoa

**HB-1838-HD-2**

Submitted on: 3/24/2026 6:37:30 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Kehaulani Coleman   | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Thank you

**HB-1838-HD-2**

Submitted on: 3/24/2026 7:13:26 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Jane Aquino         | Individual          | Support                   | Written Testimony Only |

Comments:

I am writing in strong support of HB1838 HD2 both personally and as a member of the Indivisible Hawaii Statewide Network (IHSN). This Bill would add a new Chapter to the Hawaii Revised Statutes setting standardized procedures for applying for U and T visa status for noncitizen victims of crime. These visas were established by Congress to protect noncitizen victims of human trafficking or other crimes to avoid deportation by immigration authorities while assisting local law enforcement to find and prosecute the perpetrators.

Everyone in the community is harmed when serious crimes are not reported to the authorities or prosecuted. Noncitizen residents may be afraid to report crimes or assist in investigation and prosecution if they face deportation by coming forward. These special visa categories are intended to protect victims who come forward to assist law enforcement from immigration proceedings.

The application for these visas must be filed with federal authorities by local law enforcement and prosecuting agencies. Since the application is a discretionary process there are significant differences in filing across Hawaii's agencies and islands. This bill is an important step toward providing support for noncitizens who have been victimized, and a step toward more effective prosecution of human traffickers and criminals.

I urge you to Pass HB1838 HD2.

Thank you for the opportunity to testify on this Bill.

Jane Aquino, Indivisible

**HB-1838-HD-2**

Submitted on: 3/24/2026 8:20:18 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Alex Dutcher        | Individual          | Support                   | Written Testimony Only |

Comments:

I am writing today in support of HB1838. This bill will create uniform rules for U and T visas for crime victims here in Hawai'i. I support this bill because it will require courts and other entities to adopt clear and consistent policies which will support survivors and enhance trust between immigrant communities and public safety officials. It will also reduce the current uncertainty surrounding the certification process, safely helping immigrant victims report crimes and cooperate with law enforcement. The bill will also require training and education of public officials which is critical to ensuring compliance with federal and state laws. When officials are competent and well-trained to understand their roles and responsibilities trust can be built between immigrant communities and such officials.

Mahalo for your time and consideration on this important matter.

Alex

**HB-1838-HD-2**

Submitted on: 3/24/2026 8:38:20 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| Submitted By  | Organization | Testifier Position | Testify                |
|---------------|--------------|--------------------|------------------------|
| Thaddeus Pham | Individual   | Support            | Written Testimony Only |

Comments:

Aloha Chair Rhoads, Vice Chair Gabbard, and JDC Committee members,

As a local resident concerned with safety and justice, I write in strong **support of HB1838 HD2**, which establishes uniform statewide requirements for policies and processes for the issuance of U and T visa certifications for noncitizen victims of crime and trafficking, requires each state and county certifying entity to adopt a compliant policy and process, and appropriates funds for the Department of the Attorney General to provide training to certifying entities and officials on all federal and state requirements.

Survivors of serious crimes and trafficking should not face a “zip code lottery” when seeking U or T visa certification. Right now, a survivor’s access to a federally authorized protection pathway depends on which county or agency they contact — not on the merits of their case. HB1838 HD2 fixes this by creating clear, uniform statewide standards so that every certifying entity in Hawai‘i follows the same requirements. When survivors trust that the process is fair, timely, and consistent, they are more likely to come forward — helping hold offenders accountable and making our communities safer.

Training is equally essential. Even well-intentioned certifying officials make errors without proper guidance on federal requirements, trauma-informed practices, and their own legal obligations. The AG training funded by this bill reduces improper denials, unnecessary delays, and inconsistent practices statewide. This is a public safety bill as much as an immigrant rights bill: U and T visas exist specifically because Congress recognized that survivors cannot cooperate with law enforcement if they fear deportation. HB1838 HD2 passed the House with strong support. The Senate Judiciary Committee can now advance it toward Ways and Means and final passage.

Please **PASS HB1838 HD2**.

Mahalo,

Thaddeus Pham

**HB-1838-HD-2**

Submitted on: 3/24/2026 9:19:32 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Nathan Leo Braulick | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Mahalo,

Nathan Leo Braulick

96826

**HB-1838-HD-2**

Submitted on: 3/24/2026 9:20:36 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Christian Marquez   | Individual          | Support                   | Written Testimony Only |

Comments:

**Dear Chair Karl Rhoads, Vice Chair Mike Gabbard, and members of the Committee on Judiciary,**

**My name is Christian Marquez, and I submit this testimony in support of HB1838 HD2, which establishes uniform statewide requirements for policies and processes for the issuance of U and T visa certifications for noncitizen victims of crime and trafficking, requires each state and county certifying entity to adopt a compliant policy and process, and appropriates funds for the Department of the Attorney General to provide training to certifying entities and officials on all federal and state requirements.**

**Survivors of serious crimes and trafficking should not face a “zip code lottery” when seeking U or T visa certification. Right now, a survivor’s access to a federally authorized protection pathway depends on which county or agency they contact — not on the merits of their case. HB1838 HD2 fixes this by creating clear, uniform statewide standards so that every certifying entity in Hawai‘i follows the same requirements. When survivors trust that the process is fair, timely, and consistent, they are more likely to come forward — helping hold offenders accountable and making our communities safer.**

**Training is equally essential. Even well-intentioned certifying officials make errors without proper guidance on federal requirements, trauma-informed practices, and their own legal obligations. The AG training funded by this bill reduces improper denials, unnecessary delays, and inconsistent practices statewide. This is a public safety bill as much as an immigrant rights bill: U and T visas exist specifically because Congress recognized that survivors cannot cooperate with law enforcement if they fear deportation. HB1838 HD2 passed the House with strong support. The Senate Judiciary Committee can now advance it toward Ways and Means and final passage.**

**For these reasons, I respectfully request that the Committee PASS HB1838 HD2.**

**Mahalo for the opportunity to provide testimony.**

**Christian Marquez**

**HB-1838-HD-2**

Submitted on: 3/24/2026 9:33:48 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Judith Mura         | Individual          | Support                   | Written Testimony<br>Only |

Comments:

STRONGLY SUPPORT HB1838 HD2

**HB-1838-HD-2**

Submitted on: 3/24/2026 9:48:10 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Brodie Lockard      | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I support this bill.

**HB-1838-HD-2**

Submitted on: 3/24/2026 9:55:44 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| James E Raymond     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Thank you. I am a member of Indivisible Windward.

**HB-1838-HD-2**

Submitted on: 3/24/2026 9:56:26 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Marcela Montalto    | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Establishing clear procedures for U and T visas strengthens protections for victims of crime and human trafficking while improving the efficiency and fairness of the immigration system. By standardizing how applications are handled, this bill helps ensure survivors can safely cooperate with law enforcement without fear of deportation, encourages reporting of serious crimes, and promotes justice and public safety in our communities.

**HB-1838-HD-2**

Submitted on: 3/24/2026 10:09:51 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Larry Smith         | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Aloha,

Please support this Bill,  
Larry Smith

Indivisible

HD 27

**HB-1838-HD-2**

Submitted on: 3/24/2026 12:13:08 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Jessica Kuzmier     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Aloha, I am writing in favor of HB1838 because I believe it will help protect noncitizens who are victims of crime. Mahalo for your consideration.

## Testimony of Jeremiah Brown In SUPPORT of HB1838 HD2

Committee on Judiciary

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

Hearing Date: March 27, 2026

Dear Chair Karl Rhoads, Vice Chair Mike Gabbard, and members of the Committee on Judiciary,

My name is Jeremiah Brown, and I am a concerned resident of Hawai'i. I am submitting this testimony in support of HB1838 HD2, a bill to establish uniform statewide policies and processes for U and T visa certifications for noncitizen survivors of crime here in Hawai'i.

I strongly support this bill because it will:

- Enhance access to justice and community trust.

By requiring that law enforcement agencies, prosecutors, courts, and other certifying entities adopt clear, consistent policies, this bill promotes fairness and transparency in the certification process. This gives survivors confidence that their cooperation will be supported, which in turn strengthens trust between immigrant communities and public safety officials.

- Improve public safety by encouraging victims to report crimes.

Research and best practices show that when victims feel safe coming forward, public safety outcomes improve for everyone. By reducing uncertainty and fear around the certification process, HB1838 helps immigrant victims report crimes and cooperate with law enforcement. This strengthens trust between immigrant communities and law enforcement and supports safer communities statewide.

- Ensure proper training and accountability for certifying officials.

The bill's training requirements for state and county certifying officials are critical to preventing improper denials and ensuring compliance with federal and state law. Well-trained officials are better equipped to understand their roles and responsibilities, protect sensitive populations, and uphold victims' rights. This is especially important for individuals who may otherwise avoid authorities due to fear or misinformation.

For these reasons, I respectfully ask the committee to support HB 1838 HD2. Mahalo for your time and consideration.

Respectfully,

Jeremiah Brown  
Waialua, Oahu

**HB-1838-HD-2**

Submitted on: 3/24/2026 3:34:06 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Sophia Carmela cron | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha e members of the JDC:

I am writing in support of HB1838 HD2 relating to visas, for the following reasons:

Time period for response: Providing a time limit for officials to answer the request will set quantitative standards for efficiency. This will make the process more efficient so that applicants can receive an answer in a timely manner, mitigating risk for dangers that noncitizens may face due to undocumented status.

Language access protocols: Assisting immigrants with language interpretation will lower barriers that prevent non-english speakers from understanding their rights and resources. This tool will make it easier for people who are not fluent in English to obtain status.

As an immigrant myself, I am sympathetic with other immigrants who experience fear and uncertainty in their status and livelihoods in this country. It is important to stand united during these times and fight for each other. No human is worth less than another, and as a part of the Hawai'i community, it is our duty to use our voices to help our fellow kama'āina.

For these reasons, I respectfully urge the Committee to pass HB1838 HD2.

Mahalo for the opportunity to testify.

Sophia Carmela Cron

[scozaeta@gmail.com](mailto:scozaeta@gmail.com) | 808-647-5537

**HB-1838-HD-2**

Submitted on: 3/24/2026 9:27:12 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Keri Monteith       | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Please support this bill to ensure consistent policies for U and T visa certifications, requiring certifying entities (police, prosecutors) to adopt standardized procedures.

**HB-1838-HD-2**

Submitted on: 3/25/2026 10:13:28 PM

Testimony for JDC on 3/27/2026 10:00:00 AM

| Submitted By            | Organization | Testifier Position | Testify                |
|-------------------------|--------------|--------------------|------------------------|
| Ana Laura Flores-Garcia | Individual   | Support            | Written Testimony Only |

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair and members of the committee:

I am a Manoa resident submitting this testimony in **strong support of HB 1838 (HD2)**, which establishes uniform statewide policies and processes for U and T visa certifications for noncitizen survivors of crime in Hawai‘i.

In my ten years of experience working for the Mexican Consulate in Philadelphia and New York City, I witnessed firsthand how U and T visas can be life-changing tools for survivors of serious and often violent crimes. When survivors understand the process and trust that certifying agencies will treat them fairly and consistently, they are far more likely to come forward, report crimes, cooperate with investigations, and seek protection.

U and T visas are federally established mechanisms designed to support both public safety and survivor protection. However, their effectiveness depends heavily on consistent, transparent, and timely implementation at the state and local level. Currently, practices can vary significantly between agencies, which can create confusion, delays, and barriers for survivors seeking help.

Importantly, these visas are subject to strict annual national caps. For applicants in Hawai‘i to meaningfully benefit from these protections, certifications must be issued in a timely manner so survivors can access limited visa availability and avoid unnecessary delays that could jeopardize their eligibility for relief.

HB 1838 (HD2) addresses these challenges by promoting clear, uniform certification policies across Hawai‘i. Establishing consistent standards will help ensure that all survivors have equitable access to the certification process. This, in turn, strengthens trust between immigrant communities and law enforcement, supports more effective investigations and prosecutions, and enhances public safety for all.

I also respectfully urge the committee to ensure that courts are explicitly recognized and reinstated as certifying entities, consistent with current practice in Hawai‘i and with federal guidance nationwide. Courts play a critical role in many survivors’ cases and are well-positioned to make certification determinations where appropriate.

For these reasons, I respectfully urge the committee to support HB 1838 (HD2).

Mahalo for your time and consideration.

**LATE**

**HB-1838-HD-2**

Submitted on: 3/26/2026 10:35:43 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Gail Morrison       | Individual          | Support                   | Written Testimony Only |

Comments:

I am writing in strong support of HB1838 HD2 both personally and as a member of the Indivisible Hawaii Statewide Network (IHSN). This Bill would add a new Chapter to the Hawaii Revised Statutes setting standardized procedures for applying for U and T visa status for noncitizen victims of crime. These visas were established by Congress to protect noncitizen victims of human trafficking or other crimes to avoid deportation by immigration authorities while assisting local law enforcement to find and prosecute the perpetrators.

Everyone in the community is harmed when serious crimes are not reported to the authorities or prosecuted. Noncitizen residents may be afraid to report crimes or assist in investigation and prosecution if they face deportation by coming forward. These special visa categories are intended to protect victims who come forward to assist law enforcement from immigration proceedings.

The application for these visas must be filed with federal authorities by local law enforcement and prosecuting agencies. Since the application is a discretionary process there are significant differences in filing across Hawaii's agencies and islands. This bill is an important step toward providing support for noncitizens who have been victimized, and a step toward more effective prosecution of human traffickers and criminals.

I urge you to Pass HB1838 HD2.

Thank you for the opportunity to testify on this Bill.

Gail Morrison, Honolulu

**LATE**

**HB-1838-HD-2**

Submitted on: 3/26/2026 11:37:59 AM

Testimony for JDC on 3/27/2026 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Amy Wake            | Individual          | Support                   | Written Testimony<br>Only |

Comments:

My name is Rev. Amy Chieko Wake and I am the Pastor of Wesley United Methodist Church in Kahala. I am in favor of this bill because survivors of serious crimes and trafficking should not face a “zip code lottery” where their access to U or T visa certification depends on which county or agency they contact. Inconsistent, delayed, or improperly denied certifications fail survivors and undermine public safety. HB1838 HD2 creates a clear, consistent statewide standard — and funds the AG training needed to make it real.

Please help the most vulnerable of all immigrants and pass this bill.

Rev. Amy Wake

Wesley United Methodist Church

pastoramywake@gmail.com



COMMITTEE ON JUDICIARY  
Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

HEARING:  
Friday, March 27, 2026 at 10:00 am  
Conference Room 016 & Videoconference

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

My name is Veronica Mendoza, Founding Executive Director of Roots Reborn and a founding coalition member of El Pueblo en Acción (EPA) Maui - *The People in Action Maui*. Roots Reborn **strongly supports with comments HB 1838, HD2**, Relating to Visas, which establishes uniform statewide requirements for policies and processes for the issuance of U and T visa certifications for noncitizen victims of crime consistent with federal laws and regulations governing U and T visas, requires each certifying entity to adopt a policy and process for the issuance of U and T visa certifications, consistent with those statewide requirements, and appropriates funds to the Department of the Attorney General to provide training to certifying entities on all federal and state requirements for U and T visa certifications.

Roots Reborn is a grassroots, multicultural immigrant-justice and disaster-response organization serving migrant and immigrant communities on Maui and beyond. We operate the first Maui-based immigration legal aid program, providing pro bono services. We support community members with document replacement, complex immigration cases, and defense against policies that undermine immigrant rights, including for clients seeking U and T visas. U visas serve immigrant victims of qualifying crimes, and T visas serve victims of human trafficking; in both cases, a law enforcement or government-signed certification (Form I-918B for U visas or I-914B for T visas) confirming a victim's helpfulness in detecting, investigating, or prosecuting crime or trafficking is essential to their federal applications.

Under federal law, U and T visa certifications are discretionary, but in practice they are often the decisive factor in whether a survivor can obtain safety, stability, and lawful presence. We see daily how inconsistent or unclear local policies and ad hoc practices for issuing these certifications can delay or derail a victim's case. Attorneys and legal staff must navigate different expectations and procedures from one agency to another, and survivors bear the costs in time, uncertainty, and exposure to continued violence or exploitation.

For Maui clients, many of whom are also wildfire survivors, U and T visa certification delays compound trauma. Victims of domestic violence and trafficking are especially vulnerable; they must weigh the risk of reaching out for help when they do not know whether a certifying agency will respond promptly, at all, or according to any clear standard. Uneven processes and uncertain use of discretion around U and T visa certifications effectively retraumatize people who have already suffered serious harm and discourage them from cooperating with law enforcement, undermining community safety for everyone.

*Roots Reborn has successfully collaborated with the Maui Police Department to co-author MPD's current U-visa certification policy, which has been implemented and is working well in practice, giving us direct, practical insight into how effective policies can be designed and used on the ground. Roots Reborn **strongly supports the proposed amendments suggested by The Legal Clinic** to 1) reinstate language from HB1838, HD1 recognizing state courts and judges as U and T visa certifiers, consistent with federal law, 2) proposing amendments to section 5, 3) proposing to exempt court certifications from judicial review, and 4) to add language requiring a finding that certification was denied or withheld without factual or legal justification before attorney fees can be awarded to a prevailing petitioners.*

**HB 1838, HD2** is a practical, targeted solution that creates uniform statewide requirements and requires every state and county certifying entity to adopt clear policies and processes that are supported by training from the Department of the Attorney General. This bill removes a major barrier for immigrant victims of crime seeking U and T visas and promotes consistency, transparency, and timely access to life-saving protections. Our communities' safety should not depend on whether a victim happens to live in a county with a well-developed U and T visa policy; statewide standards ensure that all survivors in Hawai'i can seek protection and cooperate with law enforcement without fear.

Sinceramente,

A handwritten signature in black ink, appearing to read 'Veronica Mendoza'.

Veronica Mendoza

Maui Roots Reborn, *Founding Executive Director*