

Discussion Paper for Model Policy for Working with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations

I. INTRODUCTION

This discussion paper is a supplement to the “Model Policy for Working with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications & T Visa Declarations.” The purpose of this paper is to provide a more detailed explanation of the purpose of U and T visas and continued presence, the importance of signing Certifications and Declarations for victim/officer/community safety, and supporting the U.S. Department of Homeland Security’s (DHS) efforts to offer protection to immigrant crime victims. The discussion paper also includes helpful appendices, which define U and T visa terminology and provide screening, outreach, and investigatory tools for officers that encounter immigrant victims of crime.

II. PURPOSE

In 2000, Congress created the U visa under the Violence Against Women Act (VAWA), which allowed immigrant victims of certain qualifying criminal activities access to immigration relief by giving discretionary authority to state, local, and federal law enforcement officers to sign Certifications for U visa applications. Under the 2000 Victims of Trafficking and Violence Protection Act (TVPA), a T visa and continued presence are available to help immigrant victims of severe forms of human trafficking. In addition to providing immigration relief, Congress intended that the Certification/Declaration process for both visas would be a tool that builds relationships between law enforcement officials and crime victims in immigrant communities.

The T and U visa and continued presence offer help to vulnerable immigrant victims who come forward, report criminal activities, and are helpful in the detection, investigation, prosecution, conviction, and/or sentencing of a violent offender. Domestic violence, sexual assault and human trafficking constitute at least 75% of the U visa cases filed nationally.¹ Congress sought to remove threats of deportation as a tool perpetrators use to keep victims from reporting crime and assisting law enforcement while at the same time encouraging the development of a mutually beneficial relationship between law enforcement and the communities they protect. This relationship benefits the immigrant victim, improves law enforcement officer safety, and promotes safety in the community at large.

As such, the purpose of this policy is to:

- establish guidelines for law enforcement officers and supervisors who receive and review requests for U Visa Certifications and T Visa Declarations;
- clarify victims’ eligibility requirements for Certification/Declaration;
- inform state and local law enforcement officials involved in investigation and/or prosecution of human trafficking cases how to gain the assistance of federal DHS officials in obtaining

¹ LESLYE E. ORLOFF & PAIGE E. FELDMAN, NATIONAL SURVEY ON TYPES OF CRIMINAL ACTIVITIES EXPERIENCED BY U-VISA RECIPIENTS (November 29, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/National-Survey-on-Types-of-Criminal-Activities-Updated2011.pdf>

continued presence allowing trafficking victims to remain in the United States and assist in criminal investigations and prosecutions of human traffickers;

- benefit both law enforcement and vulnerable communities, for example, by preventing crime in the interest of protecting victims and promoting officer safety; and
- promote a trusting relationship between immigrant communities and law enforcement.

III. POLICY

- It is the policy of the National Sheriff's Association (NSA) to assist immigrant crime victims by signing U Visa Certifications, if they have been helpful, are being helpful, or are likely to be helpful in the detection, investigation, prosecution, conviction and/or sentencing of a perpetrator of a qualifying criminal activity.
- It is the policy of the NSA to assist immigrant victims of human trafficking by signing T Visa Declarations if they are victims of severe forms of trafficking and cooperate with law enforcement in the investigation or prosecution of human traffickers to "facilitate reporting of crimes...to regularize the status of cooperating individuals during investigations and prosecutions...this...will...strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases."²
- It is the policy of the NSA to encourage state and local law enforcement officials to collaborate with DHS in its efforts to offer access to legal immigration status and protection from deportation of immigrant crime victims and witnesses by implementing U Visa Certification and T Visa Declaration practices, policies and protocols.
- It is the policy of NSA to encourage the development of relationships with DHS and federal law enforcement officials that help state and local law enforcement enlist the assistance of DHS and federal law enforcement officials in obtaining grants of continued presence for immigrant trafficking victims assisting in state and local investigations and prosecutions of human traffickers.

² Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 §§ 1513(a)(1) & (2) (2000) (codified at 8 U.S.C. 1184) (hereinafter "VAWA 2000")

(a) FINDINGS.—Congress finds that—

(1) The goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

(2) Providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control; and

(3) There are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES.—The purposes of this title are—

(1) To remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and

(2) To offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes.

This policy has been adopted in the interest of promoting officer safety, improving community safety, and protecting immigrant crime victims. Domestic violence offenders not only pose a threat within the home, they also pose a threat to the community and to law enforcement officers involved in holding and bringing domestic violence offenders to justice. For example, research currently being conducted is finding that 75% of offenders responsible for deaths of law enforcement officers have histories of being domestic violence offenders.³ Additionally, perpetrators of mass shootings are often also domestic violence perpetrators. Therefore, the signing of Certifications and Declarations not only provides an opportunity for the victim to feel comfortable enough to report criminal activities, but also creates a relationship between the community and law enforcement that allows officers to respond accordingly to dangerous offenders that pose a potential threat to officers and the community. Although participation in the Certification/Declaration and the continued presence process is at the discretion of the law enforcement agency, it is also the policy of the NSA that law enforcement agencies participate in order to facilitate much needed collaboration between local law enforcement agencies and their federal counterparts in the identification and screening of immigrant victims of violent criminal activities and human trafficking.⁴

Finally, it is the policy of the NSA that investigating officers distribute to immigrant victims outreach materials developed by DHS describing immigration relief for crime victims⁵ and provide immigrant victims with information about local or national immigrant victim services or resources that support immigrant victims⁶ in a manner that maintains the safety of the victim.

IV. BACKGROUND/DISCUSSION

The relationship between law enforcement and immigrant communities is often a strained one. Immigrant communities may mistrust or fear law enforcement based on their experience with the law enforcement officials in their native country, due to cultural differences or because immigrants have not historically been provided language access assistance from law enforcement. This mistrust leads to a lack of reporting of crimes and makes many undocumented immigrants vulnerable to criminal activities. With this background in mind, Congress' intent in creating the U and T visas was to strengthen local law enforcement's ability to detect, investigate, prosecute, convict and sentence criminal offenders that pose significant threats to both the community and to the officers themselves and to develop a relationship between law enforcement and the local immigrant population. As first responders, it is important for law enforcement to develop a trusting relationship with the local immigrant population so that they increase their ability to detect/prevent and investigate violent crimes in their community.⁷ This trusting relationship is "central to overall public safety."⁸ In addition to a

³ Research conducted by Officer Michael LaRiviere, U-Visa Law Enforcement Expert; *see generally* Department of Homeland Security, "Blue Campaign: Law Enforcement Discussion of Immigration Relief" Roll Call Videos for Law Enforcement on U Visa Certification and T Visa Endorsement, April 2013, available at: <http://niwap.org/training/DHS-roll-call/>

⁴ Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief: Roll Call Videos for Law Enforcement on U Visa Certification and T Visa Endorsement* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

⁵ For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C. Please note that this brochure is available in several languages. These are available at: <http://library.niwap.org/wp-content/uploads/2015/CULT-Bro-DHSEnglishImmOptionsVictimsofCrime.pdf>

⁶ To identify local programs with experience serving immigrant crime victims, please refer to NIWAP's directory of local service providers, available at <http://www.niwap.org/directory/>

⁷ For a more detailed discussion of the role of law enforcement in the U Visa Certification process, please refer to Appendix E, "U Visa Toolkit for Law Enforcement and Prosecutors" (hereinafter "U Visa Toolkit"). The toolkit was developed with funding from the U.S. Department of Justice, Bureau of Justice Assistance and Office on Violence Against Women and includes sample forms, sample outreach flyers, a frequently asked questions section, a flowchart that shows the Certification process as it pertains to law enforcement and other resources. The toolkit is also available at: <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>

⁸ *See* FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (May 2015), available at: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (Recommendation 1.9: Law enforcement agencies should build relationships based on trust with immigrant communities).

lack of trust, it is important to recognize and understand that a significant number of immigrants who are victims of crime do not report those criminal activities to law enforcement officials due to:

- Threat of physical harm to self and/or children;
- Threat of deportation;
- Threat of losing custody of children;
- Threat of losing employment; and/or
- Fear of being ostracized by family and/or community (particularly when the crimes are domestic violence, incest, child abuse, elder abuse, rape or sexual assault).

Perpetrators often threaten to report their victims to immigration authorities in order to secure the victim's deportation. Violent offenders trump the criminal justice system by using the threat of deportation to stop victims from reporting crimes that were perpetrated against them to law enforcement. When the fear of deportation, witness tampering, and exploitation is reduced, it is more likely that immigrants will come forward to report crimes. The prospect of attaining legal immigration status and access to work authorization are powerful tools that counteract perpetrator threats, reduce victim fears, and, in turn, increase the probability that immigrant crime victims will come forward and report crimes perpetrated against them, many of which pose a threat to the community. By providing U Visa Certifications or T Visa Declarations and by seeking continued presence, law enforcement officials are able to enhance their ability to fight crimes by fostering trust and the development of relationships that encourage immigrant victims to feel comfortable in coming forward to report crimes.

U.S. immigration laws contain special VAWA Confidentiality and Victim Safety provisions. They provide three types of protection to immigrant victims of violence, including battered immigrants and immigrant victims of sexual assault, trafficking and other U-visa-listed criminal activities.

Specifically, VAWA Confidentiality consists of:

- Non-Disclosure Provisions: Protects the confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim in order to prevent abusers, traffickers, and crime perpetrators from using the information to harm the victim, undermine her immigration case or locate her.
- Prohibited Source Limitations: Stops immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family, to take an adverse action regarding initiation of an immigration enforcement action, or making an adverse ruling in the victim's immigration case or as to the victim's admissibility or deportability. These protections apply without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief.
- Immigration Enforcement Limitations: Prohibits enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse if the victim is appearing in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking. If any part of an enforcement action took place at any of these

locations, DHS must disclose this fact to the immigration judge and the judge can dismiss the removal action against the victim when VAWA confidentiality provisions have been violated.

- Prohibited Enforcement at Sensitive Locations: In addition to VAWA Confidentiality, DHS prohibits its enforcement officials from conducting immigration enforcement actions at the following locations: schools, places of worship, funerals and religious activities.

Signing Certifications or Declarations creates a means to reduce crimes and presents the opportunity to build trust and work closely with members of the local immigrant community to:

- Detect and prevent crimes and/or trafficking;
- Promote community and officer safety; and
- Hold offenders accountable.

It should be noted that signing a Certification or Declaration does not automatically confer immigration status nor does it guarantee it.⁹ The application for a U or T visa must be reviewed by DHS and DHS will either grant or deny the application. Law enforcement does not determine eligibility for receiving a U or T visa; it only determines eligibility for Certifications or Declarations, which serve as evidence in a U or T visa application.

The certifying official and the law enforcement agency are not liable for the future acts of a victim, should they choose to sign a Certification or Declaration.¹⁰ If an individual is later determined to not be a victim or subsequently unreasonably refuses to provide assistance that has been reasonably requested by law enforcement, the law enforcement agency may withdraw its previously signed Certifications/Declarations in writing at any time.¹¹

Congress and DHS regulations have structured the U Visa Certification and T Visa Declaration so that they fit within the routine activities of law enforcement. They can be completed simultaneously with incident reports. Since Certifications and Declarations are based upon incident reports and the information that law enforcement agencies routinely collect as they proceed with a criminal investigation, signing Certifications or Declarations does not add additional burden on law enforcement agencies.

⁹ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (October 22, 2011), available at:

http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

¹⁰ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (October 22, 2011), available at:

http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

¹¹ Send the applicant's name, date of birth, A-file number (if available), and the reason for the Certification or Declaration's withdrawal to:

U.S. Citizenship and Immigration Services/Vermont Service Center
Attn: T/U Visa Unit
75 Lower Welden Street
St. Albans, VT 05479-0001

See also Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4-5*, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf; see also Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX A: DEFINITIONS OF U VISA TERMINOLOGY

U Visa Status¹²: The U visa is an immigration benefit that is available to immigrant victims of certain qualifying criminal activities that have helped, are helping, or are likely to help law enforcement and other government officials in the detection, investigation, prosecution, conviction and/or sentencing of the offender. If granted, the U visa provides the victim with temporary immigration status so that they can remain in the United States. The U visa is valid for four (4) years and requires the victim to continue to help law enforcement, if requested. After four (4) years, immigrant victims who have been helpful can apply for lawful permanent residency if they can demonstrate need due for humanitarian, public interest, or family unity reasons.

U Visa Certification refers to Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner was a victim of a qualifying criminal activity, has knowledge of that criminal activity, and has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction and/or sentencing of the qualifying criminal activity of which he or she is a victim.¹³ The Certification does not guarantee that the victim will receive a U visa and it does not grant immigration status. It is, however, a required piece of evidence that must be included in the victim’s application.¹⁴

Certifying Agency: government officials and entities, including Federal, State, or local law enforcement agencies, prosecutor, judge, or other state or federal government agency that have responsibility for the detection, investigation or prosecution, conviction and sentencing of the perpetrator(s) of the qualifying criminal activities.¹⁵ This can include, but is not limited to, child and adult protective services agency staff, state labor agencies, the Equal Employment Opportunity Commission, the U.S. Department of Labor, the FBI, and ATF officers.

Certifying Official: Certifications can be signed by the head of the certifying agency, or any person(s) in supervisory role(s) that has been specifically designated by the head of the certifying agency to sign U Visa Certifications on behalf of that agency, or a Federal, State, or local judge.¹⁶

Criteria for U Visa Certifications: Certification Forms (Form I-918B for U visas), can be completed when the law enforcement agency has determined that the applicant was a victim of a qualifying criminal activity and that the applicant was helpful, is helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the offender. The certifying official determines whether the victim meets the criteria required for the Certification only. Whether a victim will be awarded a U visa is determined only by DHS and requires that the victim meet additional elements of proof in addition to submitting a Certification. The criteria for U Visa Certifications are discussed in detail in Section III “Criteria: U Visa Certifications” in the Model Policy.

¹² 8 C.F.R. § 214.14

¹³ 8 C.F.R. 214.14(a)(5) & (12) (definition of U Visa Certification and helpfulness requirement), 8 C.F.R. 214.14(b)(2) (victim must establish that he or she has knowledge of details about the qualifying criminal activity that will aid law enforcement in the detection, investigation, prosecution, and/or sentencing of the criminal offender); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4*, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf

¹⁴ 8 C.F.R. § 214.14(c)(2)(i); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 6*, available at:

http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf; Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and Other Criminal Activities 1* (October 22, 2011), available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

¹⁵ 8 C.F.R. § 214.14(a)(2).

¹⁶ 8 C.F.R. § 214.14(a)(3)(i) & (ii).

Qualifying Criminal Activity is defined by statute to be “activity involving one or more of the following or any similar activity in violation of federal, state, or local criminal law.”¹⁷ The statute also includes the attempt, conspiracy, or solicitation to commit any of the criminal activities listed below:

Abduction	Incest	Sexual assault
Abusive sexual contact	Involuntary servitude	Sexual exploitation
Being held hostage	Kidnapping	Slave trade
Blackmail	Manslaughter	Stalking
Domestic violence	Murder	Trafficking
Extortion	Obstruction of justice	Torture
False imprisonment	Peonage	Unlawful criminal restraint
Female genital mutilation	Perjury	Witness tampering
Felonious assault	Prostitution	Other similar criminal activity
Fraud in foreign labor contracting	Rape	

Similar Activity: since the qualifying criminal activities list consists of general categories of criminal activity, any similar activity to the activities listed may be a qualifying criminal activity. The nature and elements of both criminal activities should be comparable.¹⁸

Helpfulness means assisting law enforcement or other state or federal authorities in the detection, investigation, prosecution, conviction or sentencing related to the qualifying criminal activity of which he or she is a victim. DHS is excluding from eligibility those victims who, after initial cooperation, refuse to provide continuing assistance when reasonably requested.¹⁹ An immigrant victim has an ongoing responsibility to provide assistance reasonably requested by law enforcement while in U visa status and in order to qualify for permanent resident status.²⁰ An exception to the helpfulness requirement applies to victims under 16 years of age.²¹ There is also an exception for immigrant crime victims who can demonstrate to DHS that their failure to provide ongoing cooperation with reasonable requests for assistance from law enforcement was not unreasonable. The following are a few common examples of when a victim’s lack of helpfulness is **not** unreasonable:

- When perpetrators, through coercion and/or threats, make the victim unavailable for trial;
- When a victim reasonably fears for her safety or her children’s safety;

¹⁷ 8 C.F.R. § 214.14(a)(9). See also Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4*, available at:

http://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf

¹⁸ 8 C.F.R. § 214.14(a)(9). See also Toolkit, *supra* note 5, at 7 for more discussion on this non-exclusive list of qualifying crimes and more information on “similar activity”:

[The U visa] statute lists domestic violence as a U-visa-qualifying crime. However, most state statutes do not specific domestic violence as a crime, but instead list crimes that constitute domestic violence [or arise out of domestic violence incidents], such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, stalking, child abuse, elder abuse, or malicious property damage. Even though these crimes are not specifically enumerated in the U-visa [statute], they are incorporated within the qualifying crime of domestic violence for U-visa purposes.

¹⁹ 8 C.F.R. § 214.14(b)(3).

²⁰ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal activities 2* (October 22, 2011), available at:

http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

²¹ 8 C.F.R. § 214.14(b)(3) (if the victim is under the age of 16 or was under the age of 16 when “an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the [victim] may provide the required assistance.”)

- When perpetrators actively limit the victim’s ability to leave the house, travel or movement, precluding her participation in investigative interviews or appearing to testify at trial;
- When perpetrators use threats of deportation and calls report victims to DHS for immigration enforcement to convince victims not to continue cooperation with law enforcement or prosecutors;
- When perpetrators threaten victims that their continued cooperation with law enforcement and/or prosecutors will result in the perpetrator ensuring that the victim will lose contact with, access to or custody of her children; or
- When a victim fears retaliation from the perpetrator if he/she testifies at trial.

Direct Victim is a victim who is directly and proximately harmed by qualifying criminal activity.²²

Indirect Victim may file for U visa status (and request a U Visa Certification) if he or she is:

- A victim of a qualified criminal activity that took place in the United States or its territories or occurred outside the United States but violates U.S. extraterritorial law; or
- The parent or under 18-year-old unmarried sibling of a citizen or immigrant crime victim who is a child under the age of 21; or
- The spouse or under 21-year-old child of a victim who incompetent or incapacitated or who is deceased because of murder or manslaughter; or
- The parents or unmarried under-18-year-old siblings of an under 21-year-old citizen or immigrant victim who is incompetent or incapacitated or who is deceased because of murder or manslaughter.²³

Liability: The law enforcement agency will sign Certifications at its own discretion. There is no penalty or liability for certifying or not certifying a victim on an I-918B Certification Form. The certifying official and the law enforcement agency are not liable for the future acts of a victim should they choose to sign a Certification for that victim.²⁴ If an individual is later determined to not be a victim or subsequently unreasonably refuses to help the law enforcement agency, the agency may withdraw previously signed Certifications at any time.²⁵

²² 8 C.F.R. § 214.14(a)(14).

²³ 8 C.F.R. § 214.14(a)(14)(i); *see also* Department of Homeland Security, U.S. Citizenship and Immigration Services, New Classifications for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status [72 FR 53014][FR 48-07] (citing 2005 Department of Justice Attorney General Guidelines definition of “indirect victim” to include certain family members of deceased or incompetent or incapacitated victims because the victim may not be able to sufficiently help law enforcement in investigation or prosecution, but family members may be able to), available at: <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-123038/0-0-0-133528/0-0-0-137708.html>

²⁴ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and Other Criminal Activities* 1 (October 22, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISQAforLawEnforcements.pdf>

²⁵ 8 C.F.R. § 214.14(h)(2)(i)(A) & (ii) (DHS may revoke U visa status if a certifying official revokes a signed Certification in writing); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement* 4-5, available at: <http://library.niwap.org/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf>; *see also* Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX B: DEFINITIONS OF T VISA/CONTINUED PRESENCE TERMINOLOGY

T Visa Status:²⁶ The T visa is an immigration benefit available to immigrant victims of severe forms of human trafficking who comply with reasonable requests for cooperation from law enforcement in the detection, investigation, prosecution and/or sentencing of human trafficking offenders. If granted T visa status, an immigrant victim is required to continually comply with reasonable requests for cooperation, if requested. After three (3) years, the immigrant victim can apply for adjustment to lawful permanent residency.

Continued Presence: temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. It allows a victim of human trafficking to continue to remain present in the United States because they are a victim and they are a potential witness in a human trafficking investigation. Continued presence is designed to be a tool for law enforcement to keep someone who is a victim and a potential witness in the United States who may not otherwise be able to stay in the United States legally. Continued presence also connects victims to services that provide support and stabilize the victim.

T Visa Law Enforcement Declaration:²⁷ A certifying officer, usually the head of the law enforcement agency or a supervising officer designated by the head of the agency, will confirm that the immigrant was a victim of a severe form of trafficking and complied with reasonable requests for cooperation by law enforcement in a T Visa Declaration (Form I-914B “Declaration of Law Enforcement Officer for Victim of Trafficking of Persons”).

Endorsing/Certifying Agency: Government officials and entities, including Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that have responsibility for the detection, investigation or prosecution, conviction and sentencing of the perpetrator(s) of the trafficking activity.

Endorsing/Certifying Official: The head of the certifying law enforcement agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue T Visa Declarations on behalf of that agency or a Federal, State, or local judge.

Criteria for a Declaration: based on whether the victim meets the statutory requirements listed in Declaration Form I-914B for T visas, which includes determining whether the applicant was a victim of a severe form of trafficking and has cooperated with any reasonable requests from Federal, state, or local law enforcement in the detection, investigation, prosecution, and/or sentencing of the trafficking offender. The endorsing official determines whether these factors have been met and must be verified by that official on Form I-914B. The endorsing official determines eligibility for the Declaration only; eligibility for the T visa itself is determined only by DHS because it confers legal status to the victim. The eligibility process for a T Visa Declaration is discussed in detail in Section VI (A)(1) “Criteria for T Visa Declarations” in the Model Policy.

²⁶ 8.C.F.R. § 214.11

²⁷ Form I-914B is titled “Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.” However, the terminology used by DHS refers to this process as Endorsements, Certifications and/or Declaration interchangeably. For the purposes of clarity, this model policy will use “Certifications” and “certifying” in the context of explaining the U visa process only. This model policy will use “endorsement” and “endorses” to refer to the T visa process and to any actions required to complete an I-914B Declaration form.

Severe form of human trafficking means:

- “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has attained 18 years of age; or
- (B) recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”²⁸
- **Federal Penal Code Definition**
 - **§ 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor**²⁹
 - (a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.
 - (b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).
 - **§ 1591. Sex trafficking of children or by force, fraud, or coercion**³⁰
 - (a) Whoever knowingly—
 - (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
 - (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

Cooperation is determined by whether the applicant complied with reasonable requests for assistance from law enforcement in the investigation or prosecution of the acts of trafficking. Reasonableness of the request depends upon the “totality of the circumstances taking into account general law

²⁸ Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013); *see also* “Abuse or threatened abuse of law or legal process,” at §7102(1); “Coercion” at §7102(3); “Commercial sex act” at §7102(4); “Debt bondage” at §7102(5); “Involuntary servitude” at §7102(6); “Sex trafficking” at §7102(10).

²⁹ 18 U.S.C.A. §1590.

³⁰ 18 U.S.C.A. § 1591.

enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, traumatization (both mental and physical), and the age and maturity of young victims.”³¹

Liability: The law enforcement agency will decide to sign a Declaration at its own discretion. There is no penalty or liability for endorsing or not endorsing a victim on an I-914B Declaration Form. The certifying official and the law enforcement agency are not liable for the future acts of a victim should they choose to partake in the endorsement process.³² If an individual is later determined to not be a victim or subsequently refuses to cooperate, law enforcement may withdraw previously signed Declarations at any time.³³

³¹ 8 C.F.R. § 214.11(a).

³² Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal Activities* 1 (October 22, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISQAforLawEnforcements.pdf>

³³ Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement* 4-5, available at: <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>; see also Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

**APPENDIX C: U.S. Department of Homeland Security Brochure- Immigration Options for
Victims of Crime: Information for Law Enforcement, Healthcare Providers, and Others**

APPENDIX D: SAMPLE QUESTIONS FOR IDENTIFYING A TRAFFICKED/ENSLAVED PERSON

Developed by VIDA Legal Assistance (June 2011)

Recruitment

- Was the victim recruited by someone?
- What kind of job abroad was offered to the victim?
- How much money was promised to the victim and by whom?
- Did the victim sign a contract? What were the terms of the contract?
- Was the victim sold? By whom?

Migration

- Was the victim kidnapped or coerced into migration? How?
- How did the victim obtain documents?
- Which documents were obtained?
- How did the victim travel to the U.S.?
- Was a fee paid for organizing the victim's migration? By whom and to whom?

Arrival

- Did the victim have control over his/her identity documents?
- What happened to the victim's identification documents after arrival?
- Did the employer/trafficker use the victim's identity for another purpose?

Working conditions

- Was the victim placed into debt bondage? By whom?
- Were working conditions different than what the victims expected? How?
- Was the victim's movement restricted? How?
- Was the victim living and working at the same place?
- Was the victim chaperoned, guarded, incarcerated?
- Was the victim paid and at what rate?
- How many hours a day did the victim work? Time off? Allowed to rest if sick?
- Was the victim allowed to communicate with family members? Other workers? Make friends?
- Was the victim able to quit working for the employer and get a job somewhere else?

What strategies were used to coerce the victim? (One or all may apply.)

Physical Coercion

- Was the victim subjected to pinching, hitting, slapping, punching, kicking, shaking, etc?
- Was the victim subjected to sexual assault, rape, sexual harassment/abuse?
- Was the victim subjected to torture, beatings or other physical violence?
- Was the victim subjected to incarceration, imprisoned or physically isolated? How?
- Was the victim denied medical care, food, clothes and other basic necessities?
- Did the victim attempt to escape from her traffickers? Why?

Coercion, Force, and/or Fraud

- Was the victim placed into debt bondage?
- Was the victim subjected to threats of physical abuse, harm or retaliation?
- Were others abused in front of victim?
- Were the victim's family members threatened? How?
- Threats to report victim to authorities for deportation/jail?
- Was the victim verbally abused, humiliated or degraded?
- Did the victim ask their employer if they could leave? Why? Why not? What happened?