

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

## **I. Purpose**

The purpose of this policy is to endorse the use of the U visa as a crime-fighting tool for law enforcement agencies to better serve immigrant victims of crime that they encounter in their communities. Law enforcement can better serve this vulnerable population by removing the fear of deportation that results in a lack of reporting violent crimes and cases of human trafficking to local law enforcement.<sup>1</sup> By signing U Visa Certifications or T Visa Declarations, law enforcement can encourage the reporting of such crimes and foster a positive relationship with the immigrant population in their communities. The U.S. Department of Homeland Security (DHS) is seeking the voluntary assistance of state and local law enforcement agencies in identifying immigrant crime victims and providing U Visa Certifications and T Visa Declarations.

## **II. Policy**

It is the policy of the National Sheriffs' Association (NSA) to serve immigrant victims of crime and human trafficking by signing U Visa Certifications and T Visa Declarations. This policy has been adopted in the interest of promoting officer, crime victim, and community safety by encouraging immigrant victims to come forward to report dangerous offenders within the community. In the process of serving immigrant victims through Certifications and Declarations, law enforcement agencies will strengthen ties to their local immigrant communities and promote safety within those communities.

### **1. Definitions- U Visa<sup>2</sup>**

**U Visa Status:** The U visa is a form of immigration relief, provided by DHS, available to immigrant victims of certain qualifying criminal activities that have helped, are helping, or are likely to help law enforcement and government officials in the detection, investigation, prosecution, conviction and/or sentencing of the offender. If granted by DHS, 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 three (3)

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<sup>1</sup> See generally Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, 3 (2015) [hereinafter "*DHS Law Enforcement Resource Guide*"] (stating that "Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims' lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to provide victims of a crime a greater sense of security that also makes it easier for them to assist [law enforcement officials] with [their] law enforcement and prosecutorial efforts.")

<sup>2</sup> For a more extensive list of definitions of U visa terminology, including detailed definitions of the terms included in this section, please refer to Appendix A in the attached supplemental discussion paper. For a more detailed discussion of the U visa and the role of law enforcement in signing certifications, please refer to Appendix E "U Visa Toolkit for Law Enforcement Agencies and Prosecutors," developed with funding from the Office on Violence Against Women and the Bureau of Justice Assistance at the U.S. Department of Justice (hereinafter "U Visa Toolkit"). This toolkit is also available at: <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>

years, immigrant victims who have been helpful can apply to for lawful permanent residency if they can demonstrate need due for humanitarian, public interest, or family unity reasons.<sup>3</sup>

**U Visa Law Enforcement Certification:** A certifying official, usually the head of the law enforcement agency or a supervising officer designated by the head of the agency, confirms, on the U Visa Certification (Form I-918B “U Nonimmigrant Status Certification”) that:

- a qualifying criminal activity occurred,
- the victim had information concerning that criminal activity, and
- the victim was helpful, is being helpful, or will likely be helpful in the investigation, prosecution, and/or sentencing of the perpetrator.<sup>4</sup>

It is important to remember that:

- Signing a U Visa Certification does not grant legal immigration status to the immigrant victim; it is an evidentiary form that has to be included in the victim’s application.<sup>5</sup>
- Certifications are signed at the discretion of the law enforcement agency.
- The law enforcement agency is not held liable for the later actions of the immigrant victim after it signs a Certification. If the individual is later determined to not be a victim or subsequently refuses to help law enforcement, the law enforcement agency may withdraw previously signed Certifications at any time.<sup>6</sup>

The U Visa Certification is a required piece of evidence that must be submitted at part of the victim’s U visa application without which the case cannot be adjudicated.<sup>7</sup>

**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

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<sup>3</sup> See *DHS Law Enforcement Resource Guide* at 4 (“Congress, in the [Victims of Trafficking and Violence Prevention Act [VTVPA] of 2000], created the U nonimmigrant status program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but to also strengthen relations between law enforcement and immigrant communities.”)

<sup>4</sup> “Law enforcement, prosecutors, judges or government officials can certify a U visa based on past, present, or the likelihood of future helpfulness of a victim. A current investigation, the filing of charges, a prosecution or conviction is not required to sign the law enforcement certification. An instance may occur where the victim has reported criminal activity, but an arrest, prosecution, or conviction cannot take place due to evidentiary or other circumstances.” *Id.* at 7.

<sup>5</sup> “USCIS has the sole authority to grant or deny a U visa. The certification does not guarantee that the U visa petition will be approved by USCIS.” *Id.* at 8.

<sup>6</sup> For instructions on how to withdraw a previously signed Certification, please see Section V, “Procedure: Encountering Immigrant Victims of Crime (U Visa).”

<sup>7</sup> “Without a completed and signed U visa certification, the victim will not qualify for a U visa, as it is a required part of the application, and there is no exception to this requirement. However, by signing a U visa certification, the certifying agency, official, or Judge is not sponsoring or endorsing the victim for a V visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. USCIS determines the victim’s credibility and whether to approve the petition based on the totality of the evidence and circumstances of each case.” *DHS Law Enforcement Resource Guide* at 6.

criminal law.” The statute also includes the attempt, conspiracy, or solicitation to commit any of the crimes listed below:

<ul style="list-style-type: none"> <li>• Rape</li> <li>• Torture</li> <li>• Trafficking</li> <li>• Incest</li> <li>• Domestic Violence</li> <li>• Sexual Assault</li> <li>• Abusive Sexual Contact</li> <li>• Prostitution</li> <li>• Sexual Exploitation</li> <li>• Stalking</li> </ul>	<ul style="list-style-type: none"> <li>• Female Genital Mutilation</li> <li>• Being Held Hostage</li> <li>• Peonage</li> <li>• Involuntary Servitude</li> <li>• Slave Trade</li> <li>• Kidnapping</li> <li>• Abduction</li> <li>• Unlawful Criminal Restraint</li> <li>• False Imprisonment</li> <li>• Blackmail</li> </ul>	<ul style="list-style-type: none"> <li>• Extortion</li> <li>• Manslaughter</li> <li>• Murder</li> <li>• Felonious Assault</li> <li>• Witness Tampering</li> <li>• Obstruction of Justice</li> <li>• Perjury</li> <li>• Fraud in Foreign Labor Contracting<sup>8</sup></li> <li>• Other Similar Activity</li> </ul>
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## 2. **Definitions- T Visa/Continued Presence**<sup>9</sup>

**T Visa Status:** The T visa is an immigration benefit available from DHS for immigrant victims of severe forms of human sex and labor trafficking who comply with reasonable requests for assistance from law enforcement in the investigation or prosecution of human trafficking offenders. If granted a T visa by DHS, an immigrant victim is required to continue to comply with reasonable requests for cooperation from law enforcement, if requested. A T visa is valid for four (4) years. After three (3) years, the immigrant victim can apply to DHS for lawful permanent residency.<sup>10</sup>

### **Severe form of trafficking**

The term “severe forms of trafficking in persons” 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 not attained 18 years of age; or
- (B) the 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.”<sup>11</sup>

<sup>8</sup> As defined in 18 U.S.C. § 1351 (2013).

<sup>9</sup> For a more extensive list of definitions of T visa terminology, including detailed definitions of the terms included in this section, please refer to Appendix B.

<sup>10</sup> See *DHS Law Enforcement Resource Guide* at 9 (“Congress, in the VTVPA, created the T nonimmigrant status (“T visa”) program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.”)

<sup>11</sup> Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013).

The Federal Criminal Code includes crimes of human trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, and sex trafficking of children or by force, fraud, or coercion that state and local law enforcement should be familiar with.<sup>12</sup>

**T Visa Law Enforcement Declaration:** A certifying official, usually the supervising officer responsible for the investigation or prosecution of the trafficking offense, 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”).

- Unlike the U visa, an immigrant applying for a T visa is **not required** to obtain a signed Declaration from law enforcement. However, since Declarations provide a key piece of evidence supporting their application, victims may request Declarations from law enforcement.<sup>13</sup>
- Signing a T Visa Declaration does not grant the immigrant victim legal immigration status; the Declaration is one piece of evidence in the victim’s application.<sup>14</sup>
- Declarations are signed at the discretion of the law enforcement agency.
- The law enforcement agency is not held liable for the later actions of the immigrant victim after it signs a Declaration. If the individual is later determined to not be a victim or subsequently has unreasonably refused to cooperate with reasonable requests for assistance from law enforcement, the law enforcement agency may withdraw previously signed Declarations at any time.<sup>15</sup>

**Continued Presence:** Continued presence is the first form of immigration relief available to a victim of human trafficking who is undocumented. Continued presence is a 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.

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<sup>12</sup> See Appendix B, “Definitions of T Visa/Continued Presence Terminology” for the complete Federal Penal Code sections that define human trafficking.

<sup>13</sup> See *DHS Law Enforcement Resource Guide* at 3, 9-10 (providing that “[w]hile not required in the T visa context, the signed declaration provides valuable evidence of the victim’s cooperation.” Further stating that the “T visa declaration is not a required document for a T visa application, but USCIS gives significant weight to the declaration when reviewing the victim’s application.”)

<sup>14</sup> “[B]y signing a T visa declaration, the certifying agency, official or judge is not sponsoring or endorsing the victim for a T visa. USCIS considers the T visa declaration as one part of the evidence in a T visa application. USCIS also conducts a full background check and, in considering each T visa application and the applicant’s credibility, examines the totality of the evidence and circumstances of each case.” *Id.* at 11. “USCIS has the sole authority to grant or deny a T visa. The declaration does not guarantee that the T visa will be approved by USCIS.” *Id.* at 13.

<sup>15</sup> For instructions on how to withdraw a previously signed Declaration, please see Section VII, “Procedure: Encountering Immigrant Victims of Human Trafficking (T Visa).”

Continued presence also connects victims to services that provide support and stabilize the victim.

### **III. Criteria for U Visa Certifications**

#### **A. Before completing a Certification Form I-918B, the certifying official shall verify the following:**

##### **1. Eligibility- The applicant is:<sup>16</sup>**

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

##### **2. Assessing the Helpfulness of the Immigrant Victim**

- a. Law enforcement officials may complete U Visa Certifications once they are able to assess a victim's helpfulness. The entire investigation need not be completed prior to signing a Certification. The Certification signed by the law enforcement agency head or a designated supervisor confirms that the applicant has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity.
- b. If a U visa petitioner filed an incident report and is willing to assist – or has assisted or was helpful – with detection, investigation, prosecution, conviction, or sentencing of criminal activity, a Certification may be provided even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction.
- c. The law enforcement agency head or a designated supervisor may issue a Certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and is able to identify the victim of the criminal activity. The investigation need not be complete prior to issuing a Certification.

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<sup>16</sup> See U Visa Toolkit (Appendix E) at 8.

- d. Congress intended to allow victims to obtain U Visa Certifications at the very early stages of crime detection.
- e. To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance, if requested.
- f. Victims threatened by further acts of violence, may be able to prove to the DHS that their decision to not continue to provide assistance was not unreasonable and, therefore, remain eligible for a U visa.

## **B. Statute of Limitations**

1. A Certification can be issued any time after the criminal activity occurred. There are no time limits. Statutes of limitations are not a consideration when determining eligibility for Certification.<sup>17</sup>

## **IV. Procedure- Introduction**

This model policy recognizes that law enforcement agencies vary on policies and procedures regarding inquiring about the immigration status of victims, witnesses, and the general public. The following sample protocol has been created by combining policies from various jurisdictions that have U Visa Certification procedures in place. The following procedure provides a guide that can be adapted to be consistent with any other policies your law enforcement agency may have that facilitates your relationship with immigrant communities and your work with immigrant crime victims. If, during the normal course of investigative efforts, information is revealed that suggests that a person is an immigrant victim, officers should follow the investigative steps listed below.<sup>18</sup>

## **V. Procedure- Encountering Immigrant Victims of Crime (U Visa)**

### **A. Officer Responsibilities**

#### **1. At the scene of the crime**

- a. Conduct the preliminary investigation in accordance with agency policy and, in a safe manner, provide the victim with a DHS brochure

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<sup>17</sup> “There is no statute of limitations on signing the certification – one can be signed for a crime that happened many years ago or recently. A certification may also be submitted for a victim in a closed case. However, the victim must submit a recently signed certification with his or her U visa petition (signed within six months of submission), even if the crime certified did not recently occur.” *DHS Law Enforcement Resource Guide* at 7.

<sup>18</sup> It is important to note that while “victims may approach [law enforcement officials] to request that [they] certify their cooperation,” on their own, considering the fact that “these signed statements are such critical pieces of U and T visa applications” and require cooperation, law enforcement officials may “also encounter victims who are afraid or reluctant to cooperate in a criminal investigation because they lack a lawful immigration status, and who are not aware that they may qualify for a U or T visa.” *DHS Law Enforcement Guide* at 3.

that contains information about the U visa<sup>19</sup> and a list of local victim services/resources.<sup>20</sup>

- b. Collect any relevant evidence, such as photographs of the location and of injuries, statements from the victim and witnesses, etc.
- c. Officers who encounter persons who are limited English proficient (LEP) should attempt to identify the LEP individual's primary language through use of a language identification card and obtain the help of an interpreter to understand and communicate with the LEP person.<sup>21</sup> In exigent circumstances, personnel should use the most reliable temporary person available to interpret only until the exigency (e.g. securing the crime scene, locating weapons, locating a fleeing suspect, and identifying injuries) has passed.
- d. Officers should explain the possibility of obtaining a U visa to the victim and provide the victim a copy of the DHS crime victim brochure. This can be done either at the scene or at a later interview.
  1. Do NOT promise the issuance of a U visa.
  2. Do NOT attempt to determine the victim's eligibility for a U visa.
- e. Conduct a more thorough interview away from the scene of the incident at a neutral location, such as the law enforcement agency's station/department.

## 2. Interview

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<sup>19</sup> For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C.

<sup>20</sup> To identify local programs with experience serving immigrant crime victims, please refer to the directory available at <http://www.niwap.org/directory/>

<sup>21</sup> Office of Justice Programs, *U.S. Department of Justice, Model Directive: Limited English Proficiency Guidelines 1,3*, available at: [http://www.ojp.usdoj.gov/about/ocr/pdfs/lep\\_sample.pdf](http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf)

(Recognizing the importance of effective and accurate communication between law enforcement officials and the community that they serve).

Language barriers can impede effective and accurate communication in a variety of ways. Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from accessing and/or understanding important rights, obligations, and services, or from communicating accurately and effectively in difficult situations. Hampered communication with LEP victims, witnesses, alleged perpetrators, and community members can present the Department with safety, evidentiary, and ethical challenges. Ensuring maximum communication ability between law enforcement and all segments of the community serves the interests of both...Using family, friends, or bystanders to interpret could result in breach of confidentiality, a conflict of interest, or an inadequate interpretation...personnel should not use minor children to provide interpreter services.

- a. Obtain the help of an interpreter to understand and communicate with the LEP crime witness during the interview.<sup>22</sup>
- b. Ask questions that will help determine whether the individual was a victim of a qualifying criminal activity.
- c. Explain the role of law enforcement in the victim's U visa application process.
  1. The victim requires a Certification from law enforcement that he/she was helpful, is helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, or sentencing. This Certification does **NOT** guarantee that the victim will receive a U visa.
  2. The Certification is a required piece of evidence that confirms to DHS that the applicant is a victim of a qualifying crime and verifies helpfulness.
  3. The victim must file his/her application with DHS and DHS alone will make the final determination regarding the victim's eligibility to receive a U visa. The law enforcement agency will provide the victim with the signed Certification. The law enforcement agency **cannot** file the Certification with DHS for the victim.
  4. The victim has a duty to remain helpful to law enforcement and those who unreasonably refuse to provide reasonably requested assistance after receiving a U visa may have their U visa revoked by DHS. Law enforcement may report to DHS any unreasonable refusals for assistance by the victim.

### **3. Post-Interview**

- a. The interviewing officer(s) will provide the certifying/supervising officer delegated with the authority to sign Certifications with information obtained during the interview as well as other evidence collected.

### **B. Supervisor/Certifying Officer Responsibility**

1. Prior to completing a Certification for a U visa application, the certifying official shall have verified the following:

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<sup>22</sup> Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines*, available at: [http://www.ojp.usdoj.gov/about/ocr/pdfs/lep\\_sample.pdf](http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf) ("Crime witness interviews: These scenarios potentially involve statements with evidentiary value upon which a witness may be impeached in court. As such accuracy is a priority...miscommunication during ...crime witness interviews may have a substantial impact on the evidence presented in any related criminal prosecution.")



- a. The non-citizen was or is a victim of a qualifying criminal activity<sup>23</sup>, as noted in the definitions section above, that took place in the United States or its territories or occurred outside the United States, but violates U.S. extraterritorial law; or
  - b. The non-citizen is 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
  - c. The non-citizen is the spouse or under 21-year-old child of a victim who is incompetent or incapacitated, or who is deceased because of murder or manslaughter; or
  - d. The non-citizen is a parent or an unmarried under 18-year-old sibling of an under 21-year-old citizen or immigrant victim who is incompetent or incapacitated, or who is deceased because of murder or manslaughter.
2. The certifying official shall establish if the victim has been, is being, or is likely to be helpful to detection, investigation, prosecution, conviction, or sentencing.
  3. When a Certification is based on a prior investigation or a criminal case that has been closed or suspended, or when a statute of limitations has passed, the Certification shall be completed when the criteria described in B1 and B2 are met.
  4. No request for Certification will be accepted unless it is made on the proper Form I-918, Supplement B.
  5. Certification requests will be signed by the head of the law enforcement agency or each supervisor designated to sign Certifications.
  6. Once the Certification is completed, the certifying officer will return it to the victim or the victim's representative so that it can be included with the victim's U visa application.<sup>24</sup> The law enforcement agency **cannot** send the signed Certification to DHS; this is the victim's or his/her representative's responsibility.

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<sup>23</sup> "While Form I-918B asks the law enforcement official to provide information about the injury to the victim, the certifying official is not required to assess whether the victim suffered substantial physical or mental abuse as a result of the criminal activity. This is a requirement that the U visa petitioner must establish to the satisfaction of USCIS." *DHS Law Enforcement Resource Guide* at 6.

<sup>24</sup> Law enforcement officials should be "prompt in providing the signed certification to the victim or the victim's attorney or representative. USCIS must receive the U visa petition, which includes the Form I-918B, within six (6) months of the date the Form I-918B was signed." *Id.* at 8.

7. If the victim unreasonably refuses to provide assistance reasonably requested by law enforcement after receiving his/her U visa, the law enforcement agency may withdraw its Certification by notifying DHS in writing.
  - a. Send the agency name, Certification date, name of certifier, petitioner's name, date of birth, and the reason for the Certification'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

## **VI. Criteria for T Visa Declarations**

### **A. Before completing a T Visa Declaration (Form I-914B), the certifying official shall verify the following:**

#### **1. Eligibility- the applicant is:**

- a. A victim of a severe form of trafficking and
- b. The victim is under the age of 18; or
- c. The victim complied with any reasonable requests from Federal, State, or local law enforcement in the investigation or prosecution of the trafficking crime of which he/she was a victim.

### **B. Assessing the cooperation of the immigrant victim of human trafficking**

1. Law enforcement officials may complete T Visa Declarations for a trafficking victim under the age of 18 once they access that the child has been a victim of a severe form of trafficking.
2. Law enforcement officials may complete T Visa Declarations once they are able to assess whether the victim has responded to a reasonable request for assistance. The entire investigation need not be completed prior to signing a Declaration. The signed Declaration confirms that the immigrant was a victim of a severe form of trafficking and cooperated with reasonable requests from law enforcement in the investigation or prosecution of a trafficking offender.
3. If a T visa applicant filed an incident report and is willing to cooperate with law enforcement, a Declaration may be signed even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction.

4. After obtaining a signed Declaration, the victim has an ongoing responsibility to cooperate with reasonable requests of assistance by law enforcement.

5. Reasonableness of the request depends on:

- a. Totality of the circumstances, taking into account general law enforcement and prosecutorial practices,
- b. The nature of the victimization,
- c. Specific circumstances of the victim (consider fear, severe physical and mental trauma, and age/maturity of the victim).<sup>25</sup>

## **VII. Procedure- Encountering Immigrant Victims of Human Trafficking (T Visa)**

### **A. Officer Responsibilities**

#### **a. At the scene of the crime**

- i. Conduct a preliminary investigation in accordance with law enforcement agency policy and provide the victim with information about the T visa<sup>26</sup> and other local victim services/resources.<sup>27</sup>
- ii. Collect any relevant evidence, such as witness statements, photographs of the location or any injuries, etc.
- iii. Officers who encounter persons who are limited English proficient (LEP) should attempt to identify the LEP individual's primary language through use of a language identification care and obtain the help of an interpreter to understand and communicate with the LEP person.<sup>28</sup> In exigent circumstances, personnel should use the most

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<sup>25</sup> "In determining "reasonableness" of the request, USCIS will consider certain factors such as, general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims." *Id.* at 12.

<sup>26</sup> 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>

<sup>27</sup> To locate programs with experience serving trafficking victims, please visit the following:

<http://freedomnetworkusa.org/membership/current-members/> and <http://www.niwap.org/directory/>

<sup>28</sup> Office of Justice Programs, *U.S. Department of Justice, Model Directive: Limited English Proficiency Guidelines* 1.3, available at: [http://www.ojp.usdoj.gov/about/ocr/pdfs/lep\\_sample.pdf](http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf)

(Recognizing the importance of effective and accurate communication between law enforcement officials and the community that they serve).

Language barriers can impede effective and accurate communication in a variety of ways. Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from accessing and/or understanding important rights, obligations, and services, or from communicating accurately and effectively in difficult situations. Hampered communication with LEP victims, witnesses, alleged perpetrators, and community members can present the Department with safety, evidentiary, and ethical challenges. Ensuring maximum communication ability between law enforcement and all segments of the community serves the interests of both...Using family, friends, or bystanders to interpret could result in

reliable temporary person available to interpret only until the exigency (e.g. securing the crime scene, locating weapons, locating a fleeing suspect, identifying injuries) has passed.

- iv. Officers should explain the possibility of obtaining a T visa to the victim, and provide the victim a copy of the DHS crime victim brochure. This can either be done at the scene or at a later interview.
  - 1. Do NOT promise the issuance of a T visa.
  - 2. Do NOT attempt to determine the victim's eligibility for a T visa.
- v. Conduct a more thorough interview away from the scene of the crime at a neutral location such as the law enforcement agency's station/department.

#### **b. Interview**

- i. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.<sup>29</sup>
- ii. If the officer suspects that the individual is a victim of trafficking, questions should be focused on obtaining information about the following: possible recruitment, circumstances of migration and arrival in the United States, working conditions, and whether there was any force, fraud, and/or coercion involved.<sup>30</sup>
- iii. Requesting Continued Presence: When state or local law enforcement officials identify a victim of human trafficking, they should coordinate with their federal law enforcement partners to submit an application for continued presence. Contact the local ICE office in your jurisdiction or an office of the Special Agents in Charge (SAC) <http://www.ice.gov/contact/inv/> to obtain a "Request for Continued Presence" ICE Form 73-031.
- iv. Explain the following to the victim regarding the Declaration that the agency can complete to assist the victim:

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breach of confidentiality, a conflict of interest, or an inadequate interpretation...personnel should not use minor children to provide interpreter services.

<sup>29</sup> Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines*, available at: [http://www.ojp.usdoj.gov/about/ocr/pdfs/lep\\_sample.pdf](http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf) ("Crime witness interviews: These scenarios potentially involve statements with evidentiary value upon which a witness may be impeached in court. As such accuracy is a priority...miscommunication during ...crime witness interviews may have a substantial impact on the evidence presented in any related criminal prosecution.")

<sup>30</sup> For examples of questions for each category, please refer to Appendix D "Sample Questions for Identifying a Trafficked/Enslaved Person."

1. The law enforcement Declaration is an optional piece of evidence that the victim may file with her T visa application to DHS.
2. Once the Declaration has been completed, it will be returned to the victim or his/her representative to be filed with the T visa application. The law enforcement agency **cannot** file the Declaration with DHS for the victim.

**c. Post-Interview**

- i. The interviewing officer(s) will provide the head of the law enforcement agency or supervising officer delegated with the authority to sign Declarations with information obtained during the interview as well as other evidence collected.

**B. Supervisor/Endorsing Officer Responsibilities**

- a. The supervising/endorsing officer must verify:
  - i. The victim was or is a victim of a severe form of trafficking, and
  - ii. The victim is under the age of 18; or
  - iii. The victim has complied with any reasonable requests for assistance in a trafficking investigation or prosecution.
- b. Once the Declaration is complete, return it to the victim or his/her representative for filing with the T visa application.
- c. If the victim unreasonably refuses to cooperate with reasonable requests to assist law enforcement after receiving his/her T visa, the law enforcement agency may withdraw its Declaration by notifying DHS in writing.
  - i. Send the agency name, Declaration date, name of officer who signed the Declaration, the petitioner's name, date of birth, and the reason for the 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