

(Proposed Model Policy)

Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations¹

I. Purpose

The purpose of this policy is to endorse the use of the U visa as a crime-fighting tool for police departments to better serve immigrant victims of crime that they encounter in their communities. Departments can better serve this vulnerable population by removing the fear of deportation that result in a lack of reporting violent crimes and cases of human trafficking to local law enforcement. By signing U Visa Certifications or T Visa Declarations, police departments encourage the reporting of such crimes and will be able to 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 this Department 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, 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, police departments will strengthen ties to their local immigrant communities and promote safety within those communities.

a. Definitions- U Visa²

U Visa Status: The U visa is an immigration benefit, provided by DHS, that is 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

¹ Copyright © The National Immigrant Women’s Advocacy Project, American University, Washington College of Law 2013. This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

² 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/reference/additional-materials/immigration/u-visa/tools/police-prosecutors>

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) 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.

U Visa Law Enforcement Certification: A certifying officer, usually the head of the department or a supervising officer designated by the head of the department, 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 .

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.
- Certifications are signed at the discretion of the department.
- The department 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 department may withdraw previously signed Certifications at any time.³

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.

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

<ul style="list-style-type: none"> • Rape • Torture • Trafficking • Incest • Domestic Violence • Sexual Assault • Abusive Sexual Contact • Prostitution 	<ul style="list-style-type: none"> • Female Genital Mutilation • Being Held Hostage • Peonage • Involuntary Servitude • Slave Trade • Kidnapping • Abduction 	<ul style="list-style-type: none"> • Extortion • Manslaughter • Murder • Felonious Assault • Witness Tampering • Obstruction of Justice • Perjury
---	---	--

³ For instructions on how to withdraw a previously signed Certification, please see Section V, “Procedure: Encountering Immigrant Victims of Crime (U Visa).”

<ul style="list-style-type: none"> • Sexual Exploitation • Stalking 	<ul style="list-style-type: none"> • Unlawful Criminal Restraint • False Imprisonment • Blackmail 	<ul style="list-style-type: none"> • Fraud in Foreign Labor Contracting⁴ • Other Similar Activity
---	--	--

b. Definitions- T Visa/Continued Presences

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.

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.”⁶

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.⁷

T Visa Law Enforcement Declaration: A certifying officer, 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.

⁴ As defined in 18 U.S.C. § 1351 (2013).

⁵ 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.

⁶ Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013).

⁷ See Appendix B, “Definitions of T Visa/Continued Presence Terminology” for the complete Federal Penal Code sections that define human trafficking.

- 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.
- Declarations are signed at the discretion of the department.
- The department 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 department may withdraw previously signed Declarations at any time.⁸

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. Continued presence also connects victims to services that provide support and stabilized 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:⁹

- 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 years old of a citizen or immigrant crime victim who is a child under the age of 21; or
- c. The spouse or child under-21-year-old 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-years 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.

⁸ For instructions on how to withdraw a previously signed Declaration, please see Section VII, “Procedure: Encountering Immigrant Victims of Human Trafficking (T Visa).”

⁹ See U Visa Toolkit (Appendix E) at 8.

B. Assessing the Helpfulness of the Immigrant Victim

1. 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 Chief 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.
2. If a U visa petitioner filed a police 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.
3. The Chief 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.
4. Congress intended to allow victims to obtain U Visa Certifications at the very early stages of crime detection.
5. To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance, if requested.
6. 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.

C. 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.

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 department may have that facilitates your department's 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.

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 the department policy and provide the victim with a DHS brochure that contains information about the U visa¹⁰ and a list of local victim services/resources.¹¹
- 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 care and obtain the help of an interpreter to understand and communicate with the LEP person.¹² 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, 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.

¹⁰ For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C.

¹¹ To identify local programs with experience serving immigrant crime victims, please refer to the directory available at <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

¹² 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

(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.

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 exploitation at a neutral location, such as the police station.

2. Interview

- a. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.¹³
- 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 department will provide the victim with a signed certification. The department 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

¹³ 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 ("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 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 officer shall have verified the following:
 - a. The non-citizen was or is a victim of a qualifying criminal activity, 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 officer 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 Chief 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. The law enforcement agency **cannot** send the signed certification to DHS; this is the victim's or his/her representative's responsibility.

7. If the victim unreasonably refuses to provide assistance reasonably requested by law enforcement after receiving his/her U visa, the department 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 of.

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 a police 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).

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 department policy and provide the victim with information about the T visa¹⁴ and other local victim services/resources.¹⁵
- 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.¹⁶ In

¹⁴ 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://niwaplibrary.wcl.american.edu/cultural-competency/multilingual-materials-for-victims/dhs-immigration-options-for-crime-victims>

¹⁵ To locate programs with experience serving trafficking victims are listed in the following resources: <http://freedomnetworkusa.org/membership/current-members/> and <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

¹⁶ 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

(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.

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, 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 police station.

b. Interview

- i. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.¹⁷
- 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.¹⁸
- 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:

¹⁷ 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 ("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.")

¹⁸ 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 department cannot file the Declaration with DHS for the victim.

c. Post-Interview

- i. The interviewing officer(s) will provide the certifying/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 department 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 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