

## U and T Visa Certifications and Certification Reporting Requirements In California<sup>1</sup>

By Courtney Veneri and Leslye E. Orloff

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### 1) WHAT ARE THE U AND T VISAS AND WHAT IS CERTIFICATION?

The U and T visas are forms of immigration relief for immigrants within the United States who are not lawful permanent residents or naturalized citizens and who are victims of certain listed crimes. The U and T visas help both immigrant crime victims who do not have legal immigration status as well as those who have legal immigration status but who do not have a path to or have not received lawful permanent residency (e.g., student, work, diplomatic, religious visa holders, Temporary Protected Status (TPS) recipients, and their dependent family members).

Under U.S. immigration laws, government agencies with criminal, civil or administrative investigative authority who are responsible for the detection, investigation, prosecution, conviction or sentencing in a case involving a U or T visa covered criminal activity are authorized to sign U and T visa certifications.

In order to apply for a U visa, the immigrant victim must obtain a certification documenting the victim's helpfulness. T visa certifications from a certifying government agency, although they are not a mandatory under federal law, are beneficial for human trafficking victims applying for T visas. California treats the U and T visas identically with regard to certification and time line requirements.<sup>2</sup>

California has enacted two laws that govern how and within what periods of time California government agencies are required to respond to requests for U and T visa certifications. California Penal Code [679.10<sup>3</sup>](#) discusses government agency requirements regarding U visa certifications and California Penal Code [679.11<sup>4</sup>](#) governs T visa declarations. Both sections give expedited U and T visa certification timelines of 30 days, or 7 days if the immigrant crime victim applicant is facing removal proceedings.

In California, agencies *must* sign U visa certifications when:<sup>5</sup>

- 1) The victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a listed criminal activity.
  - o In order to file a U visa application, victims are required to include with their application a signed U visa certification from a government official.<sup>6</sup>

<sup>1</sup> For additional information including the text of relevant California statutes *see*, Courtney Veneri and Leslye E. Orloff, Bench Card: U and T Visa Certification Reporting Requirements in California (June 25, 2020) available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/CA-BENCH-CARD-U-T-Certification-Reporting-6.29.20.pdf>

<sup>2</sup> Cal. Penal Code §§ 679.10, 679.11 (2019).

<sup>3</sup> Cal. Penal Code § 679.10 (2019).

<sup>4</sup> Cal. Penal Code § 679.11 (2019).

<sup>5</sup> Cal. Penal Code § 679.10(g) (2019).

<sup>6</sup> 8 C.F.R. 214.14(c)(2)(i)

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4300 Nebraska Avenue NW C100 · Washington, D.C. 20016

(o) 202.274.4457 · [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu) · [wcl.american.edu/niwap](http://wcl.american.edu/niwap) · <http://library.niwap.org/>

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- 2) There is a rebuttable presumption of helpfulness unless a victim has failed to provide information that was reasonably requested.<sup>7</sup>
  - In determining whether a refusal is unreasonable, the totality of circumstances must be taken into account, including those specific to the victim such as fear or trauma.<sup>8</sup>

In order for DHS to grant a U visa to an immigrant victim applicant, the victim must additionally provide evidence that:<sup>9</sup>

- 1) They have been a victim of a U visa listed criminal activity;<sup>10</sup>
- 2) They have information about the criminal activity;
- 3) The criminal activity occurred in the United States or violated U.S. law;
- 4) The victim has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity; and
- 5) The victim is admissible to the U.S. or DHS, after conducting a background check,<sup>11</sup> decides to grant the victim a waiver of inadmissibility.<sup>12</sup>

In California, certifying agencies for the T visa declaration *must* sign when:<sup>13</sup>

- 1) the victim was or is a victim of a severe form of trafficking<sup>14 15</sup>
- 2) the victim has complied with reasonable requests from law enforcement in an investigation or prosecution of human trafficking. There is a rebuttable presumption of helpfulness unless a victim

<sup>7</sup> Cal. Penal Code § 679.10(h) (2019).

<sup>8</sup> Other factors in determining whether a refusal to help was unreasonable include: general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant. Aliens in U Nonimmigrant Status Adjusting Status Under Section 245(m) of the Act, 73 Fed. Reg. 75,547 (Dec. 12, 2008) (to be codified at 8 C.F.R. pt. 245.24(d)(8)).

<sup>9</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014 (Sept. 17, 2007). *See generally*, 8 C.F.R. 214.14 (2007) <http://niwaplibrary.wcl.american.edu/pubs/federal-register-new-classification-victims-criminal-activity-eligibility-u-nonimmigrant-status-interim-rule>.

<sup>10</sup> “[R]ape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting . . . ; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.” Immigration and Nationality Act, 8 U.S.C. § 1101(a)(14)(U)(iii).

<sup>11</sup> Katelyn Deibler & Leslye Orloff, *U Visa Timeline with Background Checks*, (Mar. 29, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline>.

<sup>12</sup> Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Interim Rule. 73 Fed. Reg. 75540, 75549 (2008). <http://niwaplibrary.wcl.american.edu/pubs/federal-register-status-adjustment>; 8 U.S.C. Section 245.24(b)(4); (b)(11); (h)(1)(v).

<sup>13</sup> Cal. Penal Code § 679.11(f). *See also*, *Expedited Certification Process for U Visa and T Visa Applicants Signed into Law*, Assembly Member Eloise Reyes District 27, (Oct. 11, 2019), <https://a47.asmdc.org/press-releases/20191011-expedited-certification-process-u-visa-and-t-visa-applicants-signed-law/>.

<sup>14</sup> Under federal law, severe forms of trafficking in persons means “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 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. 22 U.S.C. § 7102(11).

<sup>15</sup> Under [California law](#), human trafficking is “the deprivation or violation of the personal liberty of another person with the intent to obtain forced labor or services.” Cal. Penal Code § 236.1 (2012). Victims that experience trafficking under both the California and federal definitions are T visa-eligible, victims that experience trafficking only under the California definition are U visa-eligible.

has failed to provide information that was reasonably requested,<sup>16</sup> UNLESS the victim is unable to cooperate due to physical or psychological trauma or is under 18 years of age.<sup>17</sup>

A T visa declaration is not required for an immigrant to get a T visa; however, it provides helpful evidence in adjudication of the victim's T visa case.<sup>18</sup>

In order to be granted a T visa by DHS, an immigrant victim must also show:<sup>19</sup>

- 1) they are a victim of a severe form of trafficking
- 2) they are in the United States or at a port of entry due to trafficking<sup>20</sup>
- 3) they have complied with any reasonable request from law enforcement for assistance in investigating or prosecuting the trafficking crime
- 4) they would suffer extreme hardship (involving unusual or severe harm) if they were removed from the United States

## **2) WHAT ARE THE REPORTING REQUIREMENTS FOR U AND T VISA CERTIFYING ENTITIES IN CALIFORNIA?**

Pursuant to California Senate Bill No. 674,<sup>21</sup> any certifying entity that receives a request for a Form I-918 Supplement B (U visa) or a Form I-914 Supplement (T visa) certification must report annually on the:

- Number of victims that requested certifications,
- Number of certification forms that were signed, and
- Number of certification requests that were denied

These reports must comply with Article 6, Section 9795<sup>22</sup> of the Government Code which together with California Penal Code §§ 679.10(n)<sup>23</sup> and 679.11(m)<sup>24</sup> govern what must be included in the annual report, where reports are to be sent and how they are to be published.

## **3) WHAT MUST BE INCLUDED IN THE ANNUAL REPORT?<sup>25</sup>**

Each report must include a summary of its contents, not exceeding one page, a hyperlink to the website where the report can be downloaded and a phone number to call for a hard copy of the report. All state agencies must also post their reports on their website.

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<sup>16</sup> Cal. Penal Code § 679.11(g) (2019).

<sup>17</sup> 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa)-(cc).

<sup>18</sup> DHS, U and T Visa Law Enforcement Resource Guide 11 (2015).

<sup>19</sup> Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 81 Fed. Reg. 92,266 (Dec. 19, 2016) (to be codified at 8 C.F.R. pts. 212, 214, 245, 274a).

<sup>20</sup> Human trafficking victims need not have been trafficking into the U.S.; they may have arrived in the U.S. independently of their traffickers, and then after entry become a victim of human trafficking in the U.S. New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 67 Fed. Reg. 4784 (Jan. 31, 2002).

<sup>21</sup> Sen. Bill 674, 2015-2016 Reg. Sess. (Cal. 2015)

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=2015201605B674](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=2015201605B674)

<sup>22</sup> Cal. Gov't Code § 9795 (1996).

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=2.&title=2.&part=1.&chapter=7.&article=6](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=2.&part=1.&chapter=7.&article=6). (A copy of this code section is included in Appendix A)

<sup>23</sup> U Visa reports were due on or before January 1, 2017 and are due annually thereafter. *Report Section 679.10 of the Penal Code*, California Agency Reports (2016-2020), <https://agencyreports.ca.gov/node/32208>.

<sup>24</sup> T Visa reports were due on or before January 1, 2018 and are due annually thereafter. *Report Section 679.11 of the Penal Code*, California Agency Reports (2017-2020), <https://agencyreports.ca.gov/rep14762074976236>.

<sup>25</sup> Cal. Gov't Code § 9795 (1996).

#### 4) WHERE IS THE REPORT SENT?

The report must be sent to three statutorily required state agencies 1) the Secretary of the Senate, 2) the Chief Clerk of the Assembly, and 3) the Office of Legislative Counsel.

1) The California Secretary of State

The report must be mailed as a **printed copy** to the Secretary of the Senate, currently Erika Contreras, to the following address:

Secretary of the Senate, State Capitol, Room 3044 Sacramento, CA 95814

2) The Chief Clerk of the California Assembly

The report must be sent **electronically** to the Chief Clerk of the Assembly, currently Sue Parker to the following email address:

[amy.leach@asm.ca.gov](mailto:amy.leach@asm.ca.gov)

3) Office of Legislative Counsel

All reports submitted to Legislative Counsel must include a one page summary of the report's contents that is to be submitted along with the report on U visa and T visa certification required by California Penal Code §§ 679.10(n) and 679.11(m). The report and the summary page must be sent **either by mail or email** to the Legislative Counsel, pursuant to Article 2, Section 10242.5<sup>26</sup> at one of the addresses below:

Office of Legislative Counsel, Indexing Unit

925 L St., Suite 1105

Sacramento, CA 95814-3703

[agency.reports@lc.ca.gov](mailto:agency.reports@lc.ca.gov)

When reports are required to be sent by a state agency to the Office of Legislative Counsel, the agency must also provide an electronic copy of the report's summary page directly to each member of the appropriate house or houses of the Legislature, via the California State Legislature directory.<sup>27</sup>

The Legislature will annually publish an electronic list<sup>28 29</sup> of all the reports.

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<sup>26</sup> Cal. Gov't Code § 10242.5 (2013).

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=10242.5](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=10242.5)

<sup>27</sup> Find your district and legislator to send the report to via: [http://www.legislature.ca.gov/legislators\\_and\\_districts.html](http://www.legislature.ca.gov/legislators_and_districts.html).

<sup>28</sup> U Visa Reports, *Report Section 679.10 of the Penal Code*, California Agency Reports (2016-2020), <https://agencyreports.ca.gov/node/32208>.

<sup>29</sup> T Visa Reports, *Report Section 679.11 of the Penal Code*, California Agency Reports (2017-2020), <https://agencyreports.ca.gov/rep14762074976236>.