

January 22, 2014

Alejandro Mayorkas, Director
Department of Homeland Security
United States Customs and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: Final Rule on U Visa Certifications and Elimination of the Supervisor Requirement

Dear Mr. Mayorkas:

The undersigned Chiefs of police and Sheriffs represent a broad spectrum of local law enforcement departments across the United States that have significant experience working with and have developed effective interactions with immigrant crime victims. The U visa is an important crime-fighting tool for our departments that improves our ability to serve and protect the immigrant populations that reside in our communities.

We appreciate the fact that the U visa regulations allow us to sign U visa certifications or designate officials in our agencies to whom we can delegate U visa certification authority. However, the interim U visa regulations impose a limitation that all designated certifiers be supervisors. We request your assistance in ensuring that the final regulation provides us the authority as heads of our Departments to designate certifiers who are either supervisors, subject matter experts, or other department officials with the requisite training and experience without regard to the certifier's rank or title.

In proposing this expansion to the designation authority, we seek authority and flexibility as the heads of our agencies to designate the officials most appropriate to sign certifications in our local communities. Our goal is to improve our ability to serve and protect immigrant communities. Factors that we want to be fully able to consider in designating U visa certifiers include:

- Expertise on domestic violence, sexual assault,¹ child abuse, elder abuse, human trafficking, and working with other specialized victim populations;
- Completion of specialized training in connection with domestic violence, dating violence, stalking, sexual assault, working with Limited English Proficiency (LEP) individuals and/or immigrant populations;
- Documented experience of working with female victims, minor victims, trafficking victims, victims of gender-based crimes, elder abuse victims, reluctant victims, or victimless prosecutions;
- Documented experience of providing outreach to or work with community-based organizations that serve domestic abuse victims, sexual assault victims, human trafficking victims or immigrant/LEP populations;

¹ In our jurisdictions, and nationally, we recognize that domestic violence, sexual assault, and human trafficking account for approximately 70% of U visa cases.

- Good working relationships with immigrant populations in our communities;
- Geographic considerations, particularly, in smaller and rural jurisdictions so that we can facilitate access to the U visa certification process; and
- Language access to police services and assistance.

We have found that the supervisor requirement acts as a hindrance in our efforts to effectively serve vulnerable immigrant victims of crime because it takes away our authority to designate officers to be certifiers who work most closely with immigrant populations and/or who have significant expertise in investigating domestic and sexual violence crimes.

In the seven years prior to the issuance of the U visa interim rule, police chiefs and sheriffs had the ability to select any officers in the department that the Chief or Sheriff deemed qualified to certify based on the officer's relationship with immigrant communities and/or expertise on domestic or sexual violence cases, regardless of the officer's rank in the department. The interim rule limited police chiefs' and sheriffs' designation authority by requiring that only supervisors could be designated certifiers.

To better serve the immigrant populations in our communities, our departments have implemented outreach programs and community policing programs that build trust between our departments and the immigrant communities living in our jurisdictions. In our experience, building relationships through programs that provide services to victims in immigrant communities leads to more U visa certifications and language access for immigrant populations to police assistance.² Our goal has been to learn about linguistic and cultural barriers and sensitivities that may prevent victims from reporting crime to law enforcement. Officers who have cultivated relationships of trust with immigrant communities and immigrant crime victims in our departments often are the first responders to domestic violence or other crime calls in immigrant neighborhoods. The supervisor requirement contained in the interim U visa regulations prevents us in many instances from choosing the officers with the greatest experience and trust to sign U visa certifications because the officers were not in supervisor positions in our departments. Further, the officers closest to the criminal investigation and the victim are already involved in and are best able to assess victim credibility and helpfulness. Mandating that certifiers be supervisors imposes an additional level of work for our departments that undermines the usefulness of the U visa as an effective crime-fighting tool for our departments.

As chiefs of our departments, we can assess which officers in our departments are the best suited to be U visa certifiers. This can be based on the officers' experience interacting with immigrant populations or it can be based on experience as officers in specialized units. An officer that has significant experience in the domestic violence or sexual assault unit of our departments is, in our experience, better suited than a supervisor to sign certifications. In smaller communities and rural jurisdictions, supervisors may work in locations at great distance from the officer investigating the crime against the immigrant victim. This

² National Immigrant Women's Advocacy Project, American University, Washington College of Law, *Immigrant and Limited English Proficient Victims' Access to the Criminal Justice System: The Importance of Collaboration*, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/law-enforcement-and-the-u-visa/immigrant-and-limited-english-proficient-victims-access-to-the-criminal-justice-system-the-importance-of-collaboration>

results in geographic barriers that significantly undermine the effectiveness of the U visa in our criminal investigations. Understanding cultural dynamics and/or barriers experienced by immigrant crime victims contributes to accessing helpfulness. Supervisors may not have experience or expertise in working with immigrant communities or on family or sexual violence criminal investigations properly assess whether to sign certifications.

The supervisor requirement also goes beyond the language of the statute (8 U.S.C. § 1184(p)(1)(2006)), which requires “a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority with investigating criminal authority.” However, the regulation limits the authority to certify to those in a “supervisory role who ha[ve] been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency.” Since the statute is broader in its determination of who can sign certifications, we believe that a regulation permitting chiefs and heads of departments to choose those officers who have direct contact with immigrant victims and/or specialized knowledge of domestic violence and sexual assault within immigrant populations in the communities they serve comports with congressional intent behind the statutory definition. We strongly believe that Congress intended law enforcement agencies to integrate the certification process into their preexisting investigation protocols so that the certification could be completed in the most thorough and efficient way by taking into account the unique organizational structure, geography, procedures, and immigrant populations served by each department.

In addition, we believe that the supervisor requirement adds unnecessary bureaucracy and delay in both the certification process and the investigation of the incident itself. Officers who are directly involved in the investigation of the crime are currently required under the DHS interim rule to relay the information and evidence they have collected to a supervisor that may not be familiar with the case and/or the nuances of working with immigrant crime victims. This extra step adds delay in signing certifications can interfere with or impede our agencies criminal investigations and delays immigrant crime victim access to U visa protections. U visa certification promotes access to the U visa’s protections from deportation and work authorization that result in improved victim stability and protection from the perpetrator’s retaliation, providing crucial support to victims enabling them to cooperate in criminal investigations and improving the quality of their testimony in criminal cases.³

We hope that these factors and difficulties our departments are facing create a broader understanding of how the supervisor requirement has affected our ability to better serve our communities, particularly our ability to properly serve vulnerable immigrant populations. We trust that our insight is helpful and encourage you to provide the ability for heads of agencies to designate certifiers who are supervisors, subject-matter experts, or department officials with the requisite training and experience, when you issue the final rule.

We appreciate the opportunity to contribute to the process.

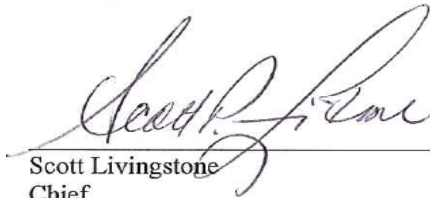
³ Leslye Orloff, Levi Wolberg, and Benish Anver, *U-Visa Victims and Lawful Permanent Residency* (September 6, 2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/education-financial-aid/U-Visas-and-Lawful-Permanent-Residency.pdf>

Thank you for your consideration.

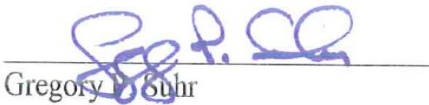
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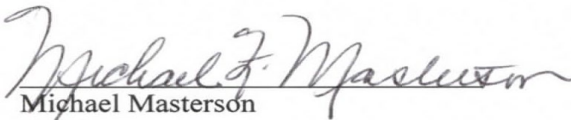
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