

May 24, 2021

Delivered via email

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security

Dear Secretary Mayorkas:

We are a national group of law enforcement officers and prosecutors who have extensive experience and expertise on U visa certification and the benefits of the U visa program in promoting our ability to detect, investigate and prosecute crimes in our communities. Many of us serve as faculty, instructors and subject matter experts training and providing technical assistance, help, and support to other law enforcement officials and prosecutors so that they can use the U visa more effectively as a crime fighting tool in their jurisdictions. We are experienced in working with immigrant victims of domestic violence, sexual assault, stalking, human trafficking, and child and elder abuse. In our work we have seen how the U visa program improves our agencies' ability to detect, investigate, prosecute, convict and sentence perpetrators which enhances victim and community safety and also is improving law enforcement officer safety.¹

Several of us have been involved, as faculty in providing in-person training and webinars to over 6,500 law enforcement officials, prosecutors, and their agencies' staff in virtually every state and the District of Columbia. The U.S. Department of Justice, Office on Violence Against Women (OVW), and Bureau of Justice Assistance programs supported us with grants for these trainings and the direct technical assistance we have provided for years on U visa certification and best practices for working with immigrant crime victims to law enforcement and prosecution officials across the country.

We write to you regarding the U visa program and steps we believe that the U.S. Department of Homeland Security (DHS) should take that will improve the effectiveness of the U visa program, an important tool that helps us serve and protect victims and significantly strengthens our ability to hold offenders accountable. These steps include:

- Deportation Protection Early After Filing: The effectiveness of the U visa as a crime fighting tool is undermined when immigrant crime victims have to wait for almost 5 years (59 months)² for their case to be adjudicated before they receive protection from deportation through deferred action. During this long waiting period the immigrant victims in our criminal investigations and prosecutions are highly vulnerable to witness intimidation making it difficult to fully and safely participate in our criminal investigations and prosecutions.³ Law enforcement and prosecutors

¹ Stacy Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, POLICE CHIEF, Apr. 2018, 34, https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims (Reporting on a case in which an immigrant victim who received a U visa certification later learned that undercover officers had been identified by gang members and reported information that saved the officer's lives).

² See USCIS Processing Times at <https://egov.uscis.gov/processing-times/> for processing times for I-918 Petition for U Nonimmigrant Status adjudicated at the Vermont or Nebraska Service Centers

³ Leslye E. Orloff, J.D., Haley Iesha Magwood, J.D.; Yasmin Campos-Mendez, M.S.W, and Giselle A. Hass, Psy.D., *Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status 49-54*(April 12, 2021) <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-full-report> (After deferred action and work authorization victims experienced a 74% reduction in immigration-related abuse; 78% less threats to cut off victim from children;

would benefit greatly if the DHS were to provide deferred action early in the case ideally within 6 months, which would provide more predictability for us and for the immigrant victims to whom our agencies have provided U visa certifications.

- Early Access to Work Authorization: Commonly our agencies provide U visa certifications to immigrant victims who are economically dependent on their abusive family members, intimate partners, employers, or human traffickers. A key reason why the U visa program is effective is the fact that it provides legal work authorization to immigrant victims. However, having to wait up to 5 years for work authorization traps immigrant victims in abusive homes and workplaces where they are continually subject to ongoing abuse. Accelerating access to work authorization for U visa applicants will greatly assist in our criminal investigations because once immigrant victims obtain employment authorization they gain the economic independence⁴ they need to be able leave abusive homes, workplaces, and flee human traffickers.⁵
- Rescind the 2019 U Visa Law Enforcement Resource Guide: DHS should immediately rescind the “*U Visa Law Enforcement Resource Guide*” issued by USCIS in August of 2019 that purports to cancel and supersede the resource guide issued by the Department of Homeland Security in November of 2015 “*U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies.*” The 2015 DHS Guide’s continuing effect should be confirmed and the USCIS 2019 Guide should be rescinded. The 2019 guide has contains information that is inconsistent with the U visa statute, regulations, and legislative history. For law enforcement agencies the 2019 guide discourages certification, fails to address helpfulness in detection, conviction or sentencing, encourages application of statutes of limitations that are not imposed by the U visa statute, and has resulted in fewer law enforcement agencies willing to certify U visas or certifying fewer numbers of cases.⁶

This letter highlights why these changes are needed to support our ability to fight crime and bring offenders to justice in our communities. When Congress created the U visa the purpose of the U visa was to:

“strengthen the ability of law enforcement agencies to detect, investigate, and prosecutor cases of domestic violence, sexual assault, trafficking of aliens, and other crimes ...committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian

and 65% reduction in perpetrators using immigration status against the victim in custody cases). (Hereinafter Transforming Lives- Full Report)

⁴ *Id.* at 111-114 (After deferred action and work authorization U visa victims experience a 300% increase in jobs that pay at least minimum wage, a 542% increase in formal sector jobs that deduct taxes, 43% secure jobs with health insurance, sick leave and vacation benefits and 43% of victims (those working in the informal sector) pay taxes using tax ID); *Id.* at 128-131 (After deferred action and work authorization U visa victims experience a 226% increase in survivors taking ESL classes and 167% increase working to improve speaking English). *Id.* at 97-101 (After deferred action and work authorization among U visa victims 35% obtain GEDs and 38% pursue AAs and BAs).

⁵ Krisztina E. Szabo et al., Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants, NIWAP 31 (Feb. 12, 2014), https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12. (After work-authorization 64.3% of U visa victims were able to leave their abusive homes).

⁶ For a full analysis of the 2019 USCIS Guide *see*, Leslye E. Orloff, Analysis of USCIS 2019 U Visa Law Enforcement Resource Guide – Memo to DHS From NIWAP (September 29, 2019) <https://niwaplibrary.wcl.american.edu/pubs/niwap-letter-to-dhs-2019-u-visa-resource-guide> and USCIS U Visa Resource Guide 2019 – Annotated by NIWAP (August 10, 2019) <https://niwaplibrary.wcl.american.edu/pubs/annotated-uscis-u-visa-resource-guide>

interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.”⁷

The U visa program is a key component of the strategies our agencies employ to build relationships with immigrant communities and immigrant crime victims that we need to be successful in our criminal investigations and prosecutions. For law enforcement agencies U visa certification is an important component of our community policing efforts. Our prosecutions benefit significantly when immigrant victims are stable, safe, and less fearful.

In our experience, perpetrators of domestic violence, child abuse, sexual assault and human trafficking are actively involved in ongoing efforts to undermine our criminal investigations and prosecutions of cases involving immigrant victims through witness intimidation including particularly immigration related abuse. In order to prevent immigrant victims from cooperating in our criminal investigations and prosecutions, perpetrators threaten, intimidate and coerce victims by reporting or threatening to report immigrant victims to DHS to secure assistance of DHS enforcement officials who initiate enforcement actions, arrest, and/or detain immigrant crime victims.⁸ Victim’s fear of deportation adds to the abuser’s ability to further intimidate the victim and compel them to change their testimony and/or be unavailable for trial.⁹

By providing U visa victims swift access to deferred action and work authorization and rescinding the USCIS 2019 Resource Guide DHS will remove obstacles that impede our ability as law enforcement and prosecution officials to investigate and prosecute crimes of domestic violence, sexual assault, child abuse, elder abuse, human trafficking and other violent crimes occurring in our communities. The success of our criminal investigations and prosecutions depend heavily upon the safety and stability of crime victims and our ability to build trust with victims. A perpetrator’s ongoing threats and attempts to harm cooperating victims with future violence or by turning victims in to immigration enforcement officials will remain effective deterrents to victim cooperation unless our agencies have the tools we need to build trust despite the perpetrator’s actions.

⁷ § 1513(a)(2)(A), Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

⁸ Rafaela Rodrigues et al., Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey, NIWAP 114 (May 3, 2018),

<https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report> (Victims experienced perpetrator-initiated enforcement actions at rates of 25% for U visa victims and 38% for VAWA self-petitioners);

Krisztina E. Szabo et al., Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants, NIWAP 25-26 (Feb. 12, 2014), https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12. (Perpetrators initiated immigration enforcement actions against 27% of U visa victims and 27% of VAWA self-petitioners);

See also, Leslye E. Orloff, J.D., Haley Iesha Magwood, J.D.; Yasmin Campos-Mendez, M.S.W, and Giselle A. Hass, Psy.D., Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status 132-134 (April 12, 2021) <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-full-report>.

⁹ Giselle Hass, et.al., Battered Immigrants and U.S. Citizen Spouses 3-4 (April 24, 2006)

<https://niwaplibrary.wcl.american.edu/pubs/battered-immigrants-u-s-citizen-spouses>; Leslye E. Orloff, et. al., U Visa Victims and Lawful Permanent Residency 5 (Sept. 6, 2012) (70% continued cooperation and 29% victims were willing to cooperate if their criminal case went forward) <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12>; Krisztina E. Szabo, et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NIWAP, (Feb. 12, 2014) pg. 29-30,

https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12 (73% cooperated with active criminal investigations and prosecutions); Leslye E. Orloff, et. al., Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status 146 (April 12, 2021) <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-full-report>.

For more than a decade our law enforcement and prosecution agencies have found that the U and T visa programs are effective tools that provide immigrant victims the safety and stability they need to build trust and work with us to hold offenders accountable through successful criminal investigations and prosecutions.¹⁰ In support, the International Association of Chiefs of Police (IACP) aptly stated “IACP recognizes that U Visa Certifications and T Visa Declarations are important crime fighting tools offering significant potential benefits to law enforcement agencies in fulfilling their mission to keep their communities safe.”¹¹ We have found that although victims receive some protection from deportation through VAWA confidentiality after filing their U visa case, once immigrant victims gain formal protection from deportation based on deferred action and receive work authorization, victims have less fear, are more able to cooperate with us, report more future crimes,¹² and are more stable making them better witnesses in our cases.¹³

U visa certification is a tool that supports us, as law enforcement agencies and prosecutors, in reducing violent crime and combating victimization. The benefits our agencies gain from the U visa program can extend beyond our ability to solve the individual criminal case for which our agencies provided certification.¹⁴ Research on the U visa program has found that once immigrant victims receive protection from deportation and work authorization there is a 114% increase in the willingness of U visa and VAWA self-petitioner victims to trust the police¹⁵ and 36% come forward and file police reports regarding future crimes.¹⁶

Providing immigrant victims with early access to protection from deportation and work authorization furthers the dual goals articulated by Congress when it created the U visa program: to create a useful tool for law enforcement and prosecutors working with immigrant population, and to help noncitizen crime victims safely access our criminal justice system.

Thank you for your attention to this critical matter.

Sincerely,

¹⁰ International Association of Chiefs of Police (IACP), Support for Education and Awareness on U visa Certifications and T Visa Declarations (Sponsored by: Victim Services Committee, Police Investigative Operations Committee, Forensic Science Committee; VSC.18.t2018) (Nov. 2018). <https://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>

¹¹ *Id.* at 1.

¹² *Id.* at 1 (IACP realized that encouraging immigrant crime victims to report criminal activity translated into early detection of crimes and overall better reporting of crimes, which consequently enhances not only public safety but officer safety as well).

¹³ Leslye E. Orloff, et. al., Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status 146 (April 12, 2021) <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-full-report>.

¹⁴ Law enforcement officials and prosecutors are finding that once victims come forward and benefit from the U visa program, victims’ help to law enforcement can often go beyond that victim’s individual case. Victims who have filed U visa cases and have been granted U visas often assist law enforcement and prosecutors in prosecuting other crimes committed by their perpetrators. See Corrin Chow et al., Stories from the Field: The Crime Fighting Effectiveness of the U Visa, NIWAP (Aug. 27, 2020), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-crime-fighting-stories>. See also, NIWAP, Report The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials - Views from Around the Country (Dec. 2, 2012) <https://niwaplibrary.wcl.american.edu/pubs/uvisa-crime-fighting-tool>.

¹⁵ Leslye E. Orloff, J.D., Haley Iesha Magwood, J.D.; Yasmin Campos-Mendez, M.S.W, and Giselle A. Hass, Psy.D., Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status 132-134 (April 12, 2021) <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-full-report>

¹⁶ *Id.* at 60, 61, 65. Krisztina E. Szabo et al., Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants, NIWAP 29 (Feb. 12, 2014), https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12. (Finding that after filing VAWA self-petitioners also file police reports at a rate of 36% for future crimes).

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