



FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

ISSUES AT A GLANCE

U Visa Best Practices for Prosecutors

*Fair and Just Prosecution (FJP) brings together elected district attorneys¹ as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" briefs provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.**

SUMMARY

This FJP "Issues at a Glance" brief provides an overview of best practices for prosecutors who are considering certifying and proactively supporting U visa petitions. U visas grant temporary legal status to qualifying survivors of crime who can be helpful to law enforcement. They are an important and valued tool available to prosecutors and law enforcement for building trust with the immigrant community and ensuring the cooperation of witnesses and victims.

A bipartisan Congress established "U nonimmigrant status" (commonly referred to as the "U visa") in 2000 as part of the Violence Against Women Act (VAWA) – within the Victims of Trafficking and Violence Protection Act of 2000 – with a dual purpose to (1) enhance law enforcement's ability to detect crimes and protect public safety, and to (2) provide humanitarian

**Thanks to the many people who contributed to this "Issues at a Glance" brief, including current and past members of FJP's team who provided guidance, input, research, and assistance: Estela Dimas, Sofia Espinoza, Monica Fuhrmann, Liz Komar, Miriam Krinsky, Rosemary Nidiry, and Laila Robbins. FJP is also grateful to Rose Cahn, Anita Gupta, Alison Kamhi, and H. Marissa Montes for their invaluable comments, insights, and input.*

¹ The terms "district attorney," "DA," or "elected prosecutor" are used generally to refer to any chief local prosecutor, including State's Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.

"We now work in an atmosphere of fear and intimidation that discourages victims and witnesses, both documented and undocumented, from coming forward to report crimes."

— KINGS COUNTY (BROOKLYN, NY) DISTRICT ATTORNEY ERIC GONZALEZ

relief to survivors of serious crime. Immigrants, and more specifically noncitizens, may fear apprehension by immigration authorities. As such, they may be less likely to contact law enforcement after a crime occurs or to assist in the investigation or prosecution of a crime. Undocumented immigrants are therefore particularly vulnerable to crime, and as former King County (Seattle, WA) Prosecuting Attorney Dan Satterberg explains, some people who commit crimes “are adept at preying on the most vulnerable and marginalized in our community.”² In the context of fear of law enforcement in immigrant communities, U visa certification is a critical means of strengthening fraught relationships between these groups, and showing vulnerable members of the community that they can safely report crimes and assist in investigations.

This issue brief aims to provide background on the purpose of U visas, dispel common myths about them, and encourage district attorneys to implement fair and effective U visa certification policies in their offices to enhance public safety and community trust.

BACKGROUND AND DISCUSSION

Statutory Background

In 2000, Congress created the U visa to encourage noncitizens to report crimes and participate in law enforcement investigations. The program, administered by United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), grants legal status (“nonimmigrant status”) to qualifying victims of crime who are “helpful” to law enforcement.

Specifically, a person is eligible for a U visa if all of the following apply:³

1. They are the victim⁴ of a qualifying criminal activity;⁵
2. They suffered “substantial physical or mental abuse as a result of having been a victim”⁶ of that criminal activity;
3. They possess “information concerning [the] criminal activity”;⁷
4. The criminal activity occurred in the United States or violated United States law;
5. The person “has been helpful, is being helpful, or is likely to be helpful”⁸ to law enforcement, prosecutors, judges, or to other federal, state, or local authorities “in the detection,

² Satterberg, D. (2017), *Crackdown on Immigrants Undermines Public Safety*, Seattle Times, <http://www.seattletimes.com/opinion/crackdown-on-immigrants-undermines-public-safety/>.

³ Immigration and Nationality Act (INA), 101(a)(15)(U); 8 U.S. Code (U.S.C.) 1101(a)(15)(U).

⁴ Under U visa regulations, “victim” can include direct, indirect, and bystander victims of crime. For more information, see Department of Homeland Security (2022), *U Visa Law Enforcement Resource Guide*, 7, https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf.

⁵ The statute includes a “non-exclusive” list of qualifying criminal activities. INA § 101(a)(15)(U)(iii); 8 U.S.C. 1101(a)(15)(U)(iii); 72 Fed. Reg. 53,014, 53,018. The enumerated list of qualifying crimes is: “Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Felonious Assault, Female Genital Mutilation, Fraud in Foreign Labor Contracting, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Stalking, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint.” This also includes criminal offenses that are “substantially similar” to this list and includes attempt, conspiracy, or solicitation to commit the enumerated criminal offenses. Department of Homeland Security (2022), *U Visa Law Enforcement Resource Guide*, 4-5, https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf.

⁶ 8 U.S.C. 1101(a)(15)(U).

⁷ *Id.*

⁸ *Id.*

- investigation, or prosecution of the qualifying criminal activity of which they were a victim”;⁹ and,
6. They are “admissible to the United States based on a review of his or her criminal history, immigration violations, and other factors.”¹⁰

Certifying agencies, such as DA offices, attest to the fact that criteria 1, 3, 4, and 5 are met, but USCIS determines what rises to the level of “substantial” physical or mental abuse and the admissibility of the applicant (these two qualifying factors are italicized above). USCIS also makes the ultimate determination of whether someone qualifies for a U visa.

This temporary status lasts up to four years; after three years, a U visa recipient may become eligible to apply for an adjustment of status to lawful permanent resident. USCIS grants a maximum of 10,000 U visas each year, resulting in a current wait time of at least six years (and up to a dozen or more years) for an individual to receive a decision and relief, if granted.¹¹ Congress vested USCIS with sole jurisdiction to determine an applicant’s eligibility for a U visa by reviewing the U visa application, law enforcement certification, immigration eligibility, and other “credible evidence relevant to the petition.”¹²

U Visas and Federal Immigration Enforcement Policies

Immigration enforcement policies have eroded trust between immigrant communities and law enforcement and led to less reporting of crime among these communities. Although the federal government has exclusive power to regulate immigration, state and local law enforcement have increasingly been drawn into immigration enforcement since the 1990s, with deleterious effects on trust between law enforcement and immigrant communities.¹³ A 2012 study examining shifting perceptions of law enforcement in the Latino community following an increase in police involved immigration enforcement found that “70 percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime,” and nearly half of Latinos surveyed reported they are less likely to report a crime or contact police if they have been the victim of a crime because they are afraid police will inquire into their immigration status or the immigration status of people they know.¹⁴

More recently, as federal immigration enforcement efforts intensified under the Trump administration, there were reports of apprehensions of immigrants by Immigration and Customs

⁹ *Id.*; Department of Homeland Security (2022), *U Visa Law Enforcement Resource Guide*, 8, https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf. (“In determining whether the victim is, has been, or will be helpful, USCIS considers the facts of each case, including: [t]he level of assistance that law enforcement requests of the victim; [t]he victim’s responsiveness to law enforcement for assistance; and [t]he victim’s individual circumstances (such as age/maturity, trauma, etc.).”)

¹⁰ Department of Homeland Security (2022), *U Visa Law Enforcement Resource Guide*, 4, https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf.

¹¹ United States Citizenship and Immigration Services (2020), *U Visa Filing Trends*, https://www.uscis.gov/sites/default/files/document/reports/Mini_U_Report-Filing_Trends_508.pdf.

¹² 8 U.S.C. 1154(a)(1)(J).

¹³ Theodore, N. (2013), *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Department of Urban Planning and Policy, University of Illinois at Chicago, 1, https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

¹⁴ *Id.* at i.

Enforcement (ICE) at courthouses and by schools and hospitals, among other locations.¹⁵ These enforcement actions exacerbated the fear and distrust of law enforcement and endangered already fragile relationships between law enforcement and immigrant communities.¹⁶ Immigrant and law enforcement accounts revealed persons “terrified” to access the justice system – from reporting crimes, to filing for protective orders, to serving as witnesses – for fear of deportation.¹⁷ In one survey, a majority of prosecutors reported that domestic violence, sexual assault, and human trafficking cases were underreported and more difficult to investigate and/or prosecute as a result of increased immigration enforcement.¹⁸ A survey of advocates and legal service providers found that in 2017 “the number of cases their offices filed for immigrant crime survivors decreased 40 percent from 2016.”¹⁹

In addition to jeopardizing the safety of immigrant communities, distrust and a corresponding lack of cooperation with law enforcement implicate broader public safety concerns as well. A 2017 survey of law enforcement agencies found that 71% of respondents believed that when immigrant victims do not cooperate with law enforcement it affects the ability to hold violent perpetrators accountable; 64% of respondents found that it affects officer safety; and 69% reported that it affects community safety.²⁰

Other Trump Administration policies specifically limited access to U visas. In 2019, USCIS implemented the arbitrary “blank space policy,” which allowed officials to automatically reject applications if all spaces of the form were not completed, even when not relevant. For example, one rape survivor’s U visa application was rejected because her son did not have a middle name,

¹⁵ Neuman, S. and Burnett, J. (2017), *10-Year-Old Girl Is Detained By Border Patrol After Emergency Surgery*, NPR, <https://www.npr.org/sections/thetwo-way/2017/10/26/560149316/10-year-old-girl-is-detained-by-ice-officers-after-emergency-surgery>; Coleman, J. (2020), *ICE accused of targeting undocumented parents taking their kids to school: reports*, The Hill, <https://thehill.com/policy/national-security/department-of-homeland-security/485049-ice-accused-of-targeting>; Cantil-Sakauye, T.G. (2017), *Chief Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses*, <https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-immigration-enforcement-tactics-california-courthouses>; Carrega, C. (2017), *Brooklyn DA, New York AG Demand a Halt to ICE Raids Following Murder Case Witness’ Detainment*, New York Daily News, <https://www.nydailynews.com/new-york/brooklyn-da-new-york-ag-demand-halt-ice-raids-article-1.3381092>; See also Rocha, V. (2017), *After ICE Agents Appear at a Sacramento Church, Pastor Tries to Calm His Flock’s Deportation Fears*, Los Angeles Times, <http://www.latimes.com/local/lanow/la-me-ln-sacramento-church-ice-deportation-fears-20170519-htmlstory.html>.

¹⁶ See Durkin Richer, A. (2018), *Ex-judges to ICE: End immigration arrests at courthouses*, Associated Press, <https://apnews.com/e401e85400ee44ab9dd51ace042be399>.

¹⁷ Engelbrecht, C. (2018), *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, The New York Times, <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>; Medina, J. (2017), *Too Scared to Report Sexual Abuse. The Fear: Deportation*, The New York Times, <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>; The Fund for Modern Courts (2017), *Protecting the Administration of Justice in New York State: Impact of ICE Arrests on New Yorkers’ Access to State Courthouses*, 16-17, <http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf>; Satterberg, D. (2017), *Crackdown on Immigrants Undermines Public Safety*, Seattle Times, <http://www.seattletimes.com/opinion/crackdown-on-immigrants-undermines-public-safety/>.

¹⁸ The American Civil Liberties Union (2018), *Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system*, 2, <https://www.aclu.org/report/freezing-out-justice>.

¹⁹ *Id.*

²⁰ National Immigrant Women’s Advocacy Project (2018), *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*, American University Washington College of Law, 103, <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.

so that box was left blank.²¹ In addition, heightened vetting of U visa applications by USCIS during the Trump Administration resulted in the U visa program facing its biggest backlog in the program's history, and the program experienced a decline in applications – the first annual decline since 2007.²²

While the Biden Administration has changed a number of immigration enforcement policies, including prohibiting enforcement at courthouses (with limited exceptions), some carryover policies remain.²³ These policies, paired with the lasting erosion of immigrant communities' trust in the justice system, underscore the continued importance of adopting well-defined, transparent, and effective U visa policies.

U Visas and Their Impact on Promoting Public Safety

Across the country, U visas have become important tools for law enforcement in fostering community trust, administering justice, and protecting public safety.²⁴ By helping ensure that undocumented community members feel protected by law enforcement, U visas can strengthen fraught relationships between law enforcement and immigrant communities and increase the likelihood immigrants will turn to law enforcement after a crime has occurred. Former Attorneys General Mark Shurtleff (Utah) and Doug Gansler (Maryland) explained that U visas are vital in allowing marginalized members of the community to feel safe reporting crimes to law enforcement, such as in domestic abuse cases: "For many of these women, immigration status is one more weapon that abusers use to intimidate them."²⁵

²¹ American Immigration Lawyers Association (2020), *AILA Policy Brief: USCIS's "No Blank Space" Policy Leads to Capricious Rejections of Benefits Requests*, <https://www.aila.org/advo-media/aila-policy-briefs/uscis-no-blank-space#:~:text=AILA%20%2D%20AILA%20Policy%20Brief%3A%20USCIS%E2%80%99s,Capricious%20Rejections%20of%20Benefits%20Requests>; Da Silva, C. (2020), *Guatemalan Rape Survivor Had U-Visa Request Rejected Because She Didn't Fill Out Details Like Her Son's Middle Name: Report*, Newsweek, <https://www.newsweek.com/guatemalan-rape-survivor-u-visa-application-denied-due-blank-areas-form-1487339>. After litigation and a settlement agreement, USCIS ended the blank space policy. USCIS (2021), *USCIS Reaches Settlement Agreement in "No Blank Space Rejection Policy" Case*, <https://www.uscis.gov/newsroom/news-releases/uscis-reaches-settlement-agreement-in-no-blank-space-rejection-policy-case>.

²² Kanno-Youngs, Z. (2019), *Trump's Immigration Crackdown Has Blunted Police Efforts to Be Tough on Crime*, The New York Times, <https://www.nytimes.com/2019/05/14/us/politics/trumps-immigration-visa-crime.html>.

²³ American Immigration Council (2021), *Tracking the Biden Agenda on Immigration Enforcement*, <https://www.americanimmigrationcouncil.org/research/tracking-biden-agenda-immigration-enforcement>; Mayorkas, A. (2021), *Termination of the Migrant Protection Protocols Program*, Department of Homeland Security, https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf?mc_cid=304aa47fd7&mc_eid=a289e13bc1.

²⁴ National Immigrant Women's Advocacy Project (2012), *The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials – Views from Around the Country*, American University Washington College of Law, <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Qref-UVisaCrimeFightingTool-12.03.12.pdf>.

²⁵ Shurtleff, M. and Gansler, D. (2012), *Protect Immigrant Women*, Politico, <https://www.politico.com/story/2012/09/weakening-violence-against-women-act-betrays-immigrant-victims-081048>.

"For many of these women, immigration status is one more weapon that abusers use to intimidate them."

— FORMER ATTORNEYS GENERAL DOUG GANSLER (MARYLAND) AND MARK SHURTLEFF (UTAH)

Surveys of justice system actors confirm that effective U visa certification policies can build trust with immigrant communities and contribute to public safety. Law enforcement officials report that in addition to the U visa program's "immediate practical benefits of ensuring that victims are able to assist with investigations," there are also longer term benefits, like building confidence among immigrant communities that "going to law enforcement will help rather than hurt them."²⁶ Another survey of justice system actors found that when police, prosecutors, and courts adopted practices and policies that resulted in U visa certification and other forms of immigration assistance, they reported "seeing increases in the willingness of [immigrant] crime victims to turn to these agencies and courts for help."²⁷

The implications of the U visa protections for public safety are profound – increased reporting of crimes and cooperation in their investigation and prosecution enhances public safety across all communities. As Senator Patrick Leahy (D-VT) explained, the program has been "a powerful law enforcement tool, providing critical protection for victims of domestic violence, sexual assault and other violent crimes, and ensuring that dangerous offenders are taken off our streets. The U visa program has proven enormously successful, leading to the prosecution of thousands of violent offenders."²⁸

The Need for Clarity Regarding U Visa Certification

For USCIS to consider a U visa application, a law enforcement official, prosecutor, judge, or other federal, state, or local authority must certify the application (I-918 Supplement B). The certification attests that an applicant has been a victim of a qualifying crime, has information about the crime, and "has been helpful, is being helpful, or is likely to be helpful" to law enforcement, prosecutors, judges, or to other federal, state, or local authorities in "investigating or prosecuting [the] criminal activity."²⁹ While this certification does not confer legal status to an applicant, a "U visa petition will be denied without this certification."³⁰ The certification process serves to attest that qualifying facts exist, not to adjudicate the merits of an application.

Studies³¹ analyzing law enforcement rationales for declining to certify have found vast misconceptions about the statutory requirements for certification – and in some cases, a misunderstanding about the purpose of certification (that is, conflating certification, which is simply an attestation as to qualifying facts and falls under local law enforcement's purview, with the adjudication on the

²⁶ Human Rights Watch (2018), *Immigrant Crime Fighters: How the U Visa Program Makes US Communities Safer*, 14-15, https://www.hrw.org/sites/default/files/report_pdf/us0718_web.pdf.

²⁷ National Immigrant Women's Advocacy Project, *supra* note 20 at 101.

²⁸ Leahy, P. (2012), *Comment of Senator Patrick Leahy On The Success Of The U Visa Program To Protect Victims Of Domestic Violence And Sexual Assault*, <https://www.leahy.senate.gov/press/u-visa-program-release>.

²⁹ The applicant "has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause." 8 U.S.C. 1101(a)(15)(U).

³⁰ Department of Homeland Security (2017), *U Visa Immigration Relief for Victims of Certain Crimes: An Overview for Law Enforcement*, <https://www.dhs.gov/sites/default/files/publications/U-Visa-Immigration-Relief-for-Victims-of-Certain-Crimes.pdf>.

³¹ See Lee, N. et al. (2013), *Department of Homeland Security Policy Answers to Law Enforcement Reasons for Not Certifying*, American University Washington College of Law, <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Qref-DHSAnswersforLawEnforcementNotCertifying-09.27.13.pdf>; Abreu, J. et al. (2019), *The Political Geography of the U Visa: Eligibility as a Matter of Locale*, UNC School of Law Immigration/Human Rights Policy Clinic, <https://law.unc.edu/wp-content/uploads/2019/10/uvisafullreport.pdf>.

merits of the U visa petitions, which is USCIS's domain). Common misguided justifications for denying certification are listed below, accompanied by language from DHS' relevant clarifying guidance that refute these concerns:³²

- *Not currently prosecuting crime/prosecution was not successful*: "A current investigation, the filing of charges, a prosecution, or a conviction are not required to sign the law enforcement certification."³³
- *Certifying agency does not want to confer legal status*: Completing the certification form "does not automatically guarantee eligibility for a U visa."³⁴ In addition, certifying agencies are "not responsible for determining whether a person is eligible for an immigration status; this is the responsibility of USCIS."³⁵
- *Certifying agency believes applicant is not eligible for a U visa/believes application will not be successful*: USCIS – and not the certifying agency – makes eligibility determinations for U visas.³⁶ "In determining a victim's eligibility, USCIS will carefully examine all the evidence provided in a U visa petition," including the certification form and other evidence submitted.³⁷
- *Crime happened too long ago*: "Federal U visa regulations do not set a specific statute of limitations for signing the Form I-918B. The key is the victim's helpfulness, not the timing of the helpfulness."³⁸
- *Current location of the victim*: "Victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply when outside of the country."³⁹
- *Prior criminal record*: "The fact that a victim has a criminal history does not automatically preclude approval of a U visa petition."⁴⁰

Prosecutors who fail to certify U visas for eligible applicants based on these misguided rationales harm their communities in multiple ways: people that Congress has deemed eligible for immigration relief may be deported, the family members and dependents of those individuals

³² For a more comprehensive breakdown of rationale, see Lee, N. et al. *supra* note 31.

³³ Department of Homeland Security (2022), *U Visa Law Enforcement Resource Guide*, iii, https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf.

³⁴ *Id.* at 3.

³⁵ *Id.* at 10.

³⁶ *Id.* at 2.

³⁷ *Id.* at 3.

³⁸ *Id.* at 8.

³⁹ *Id.* at 13.

⁴⁰ *Id.* at 15.

"There's a chilling effect on people being willing to be witnesses or come forth as victims.... So as a prosecutor, and working with law enforcement, it's really critical that we build that trust so people feel it's safe to talk to the police and the prosecutor."

— FORMER INGHAM COUNTY (LANSING, MI) PROSECUTING ATTORNEY CAROL SIEMON

can face both emotional and economic hardship, and other immigrants may be deterred from future cooperation with investigations, placing the entire community at risk.

RECOMMENDATIONS

DAs should examine their U visa policies in order to ensure that they are sufficient to strengthen trust between immigrant communities and law enforcement and promote public safety. If they have no policy, DAs should fill this void and embrace practices that address the recommendations set forth below. They should also encourage their law enforcement partner agencies to do the same.

1. **Adopt a public, well-defined, and transparent policy for certification. Provide the policy and/or key information to victims, applicants, and legal service providers. Key elements of the policy should include the following:**
 - **Adopt a presumption of helpfulness.** So long as no evidence exists that a victim refused or failed to provide information or assistance reasonably requested by law enforcement, certification should be freely provided.⁴¹ If a person has failed to provide information or assistance, consider any compelling circumstances that may have prevented the person from doing so.
 - **Do not implement a cut-off date for seeking certification.** Do not require applicants to seek certification within a specific and limited period of time related to when a crime occurred or when a crime report was filed.⁴²
 - **Provide certification for crimes that are substantially similar to the enumerated qualifying crimes under the statute.** This includes attempt, conspiracy, or solicitation to commit any of the qualifying crimes under the statute.
 - **Do not limit certification to only direct victims of crime.** Indirect and bystander victims of crime also qualify for U visas.⁴³
 - **Implement a requirement that all certification requests be responded to within 30 days of receipt by the DA's office (or seven days if the applicant is in removal proceedings) given the time-sensitive nature of immigration proceedings.**
 - **Communicate with applicants for certification in a timely manner.** A survey that asked service providers about certification agencies found that “[e]ffective and timely

⁴¹ See, for instance, Savit, E. (2021), *Policy Directive 2021-12: Policy Regarding Immigration and Immigration-Adjacent Issues*, 9, <https://www.washtenaw.org/DocumentCenter/View/19692/Immigration-Policy>.

⁴² There is no statute of limitations contained in federal U visa regulations. See Department of Homeland Security (2022), *U Visa Law Enforcement Resource Guide*, 8, https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf.

⁴³ *Id.* at 7.

“Trust is built from relationships with the community, which are predicated on interactions that are grounded in understanding and a sense of mutual respect and safety.”

— FORT BEND COUNTY (TX) DISTRICT ATTORNEY BRIAN MIDDLETON

communication and transparent processes often lead to strong working relationships between agencies and victims.”⁴⁴

- **Designate a specific individual within the prosecutor’s office, whose contact information is accessible, to handle these applications.** Having a public point of contact makes the application process more accessible and streamlined for applicants. Consider having the victim-witness coordinator serve in this capacity.
 - **Provide an explanation when declining to certify.**
 - **Establish an internal review process for certification denials.** Ensure all denials are given supervisory review.
 - **Ensure that an appropriate interpreter is available to applicants and that the policy and/or key information is available in languages other than English.**
2. **Do not impose additional requirements beyond those statutorily enumerated.** The role of the certification agency is to affirm that qualifying facts exist in a given case; USCIS has the sole authority to adjudicate the merits of a petition. Policies that impose additional requirements for certification may improperly prevent eligible applicants from receiving U visas, are likely to chill immigrants’ willingness to report crimes, and undermine the ability of law enforcement to ensure public safety. In particular:
- DA offices should *not* consider the criminal history – or any prior immigration violations, or perceived gang involvement or association – of the applicant or assess whether an injury rises to the level of “substantial” in deciding whether to certify. Both of these factors will be independently assessed by USCIS.
 - DA offices should not require that a case be successfully prosecuted or that the person who committed the crime be apprehended for certification: the outcome of a case is not pertinent to U visa certification or eligibility. The progress of a case is dependent on many factors outside of a victim’s control. For some crimes, it can take significant time and multiple victims coming forward to build a case.
3. **Require staff to participate in training(s) about the U visa application process, purpose, and statutory requirements.** Trainings can help familiarize prosecutors with the U visa application process, requirements, and the statutory role of certifying agencies; contextualize the program’s purpose; and provide helpful guidance in crafting standardized U visa certification processes.
4. **Do not inquire about the immigration status of witnesses or victims, but ensure they understand that they may be eligible for a U visa by adopting a clear policy and sharing it with local immigration service providers, victim advocates, and other stakeholders.** Partner with local organizations, faith communities, and service providers who work with immigrant communities to help publicize information about the U visa program and allay

⁴⁴ Abreu, J. et al. *supra* note 31 at 44.

misconceptions about confidentiality and the role of law enforcement in the U visa process.⁴⁵ Similarly, support “know your rights” trainings in partnership with local organizations in immigrant communities.

5. Encourage local law enforcement partners and the bench (including family courts) to adopt similar policies for U visa certification.

CONCLUSION

Immigrant communities’ distrust of law enforcement chills access to justice and deters cooperation with law enforcement investigations, leaving immigrants in vulnerable situations and their rights unprotected. DAs should adopt reforms to improve their offices’ U visa certification processes to help strengthen trust between law enforcement and the immigrant communities they serve and to promote public safety for all members of the community.

RESOURCES

- Department of Homeland Security (2022), [U Visa Law Enforcement Resource Guide](#).
- Jean Abreu et al. (2019), [The Political Geography of the U Visa: Eligibility as a Matter of Locale](#), UNC School of Law Immigration/Human Rights Policy Clinic.
- Leslye E. Orloff et al. (2018), [U Visa Toolkit for Law Enforcement Agencies and Prosecutors](#), National Immigrant Women’s Advocacy Project, American University Washington College of Law.
- Judicial Council of California (2017), [Expert Guidance on Responding to U Visa and T Visa Certification Requests](#).
- Sally Kinoshita and Alison Kamhi (2017), [A Guide to Obtaining U Visa Certifications](#).

⁴⁵ For example, former Boulder DA Garnett said “he believes more cases are being reported since his office actively reached out to groups that work with immigrant communities, like El Comite de Longmont and El Centro Amistad in Boulder.” Meltzer, E. (2011), *Boulder DA Stan Garnett takes stand on crimes against immigrants*, Daily Camera, <https://www.dailycamera.com/2011/10/15/boulder-da-stan-garnett-takes-stand-on-crimes-against-immigrants/>; Similarly, “Benito Gaspar has been working for nearly two years to build trust between the city’s immigrants and the Palm Beach County Sheriff’s Office. By educating immigrants about crime prevention and encouraging them to report crimes, the sheriff’s office hopes to establish lines of communication in sections of Lake Worth that will lead to the arrests of more criminals.... Calls to Crime Stoppers from Lake Worth increased 25 percent last year compared with 2010, which the sheriff’s office attributes in part to Gaspar’s efforts.” Howard, W. (2012), *Lake Worth liaison builds trust between city’s immigrants, law officers*, Palm Beach Post, <https://www.palmbeachpost.com/story/news/2012/03/12/lake-worth-liaison-builds-trust/7266299007/>.

FOR MORE INFORMATION: Contact FJP at info@fairandjustprosecution.org

