

**SPECIAL DIRECTIVE 10-08**

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE   
Chief Deputy District Attorney

SUBJECT: **“U” Visa Certification**

DATE: November 9, 2010

**I. U Nonimmigrant Status Certification for Victims of Specified Violent Crimes**

In 2000, the United States Congress passed the Battered Immigrant Women Protection Act of 2000 which created a new “U nonimmigrant visa” (U Visa) category for alien victims of certain crimes, including domestic violence, sexual assault, and specified crimes of violence.<sup>1</sup> This act contains provisions which allow certain alien crime victims to apply for visas to remain in the United States for a period of up to three years with the possibility of receiving legal residency. In order to obtain such a visa, the alien must submit an application to the United States Customs and Immigration Service that includes a “certification” from a law enforcement agency that the applicant has been “helpful” in the investigation and/or prosecution of the qualifying crime(s). The Act is particularly aimed at combating crimes of which women and children are frequently victims although it is gender neutral in its application. An agency’s decision to provide a certification is entirely discretionary. Requests for certification may be denied to those whose circumstances bear little or no relation to the victims envisioned by the Act. The certification form itself is entitled “Form I-918 Supplement B, U Nonimmigrant Status Certification” (see attached). The form is to be filled out by the victim or their legal representative although assistance may be given. This Special Directive sets forth protocol and guidelines for the handling of alien victim certification requests.

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<sup>1</sup> The same year the United States Congress also passed the Victims of Trafficking and Violence Protection Act of 2000 which establishes a “T nonimmigrant visa classification” (T Visa) for victims of human trafficking. Most criminal prosecutions for this type of crime are handled federally. In the event that such a case is handled by our office, the procedure for certification is the same as that for a U Visa certification with the exception that the Director shall consult with the Head Deputy of the Organized Crime Division prior to issuing or denying a T Visa certification.

### **A. Assistance to Law Enforcement Required**

A U Visa application must contain a “certification” from law enforcement that the victim has been helpful in the investigation and/or prosecution of the crime and has not refused or failed to provide information or assistance that has been reasonably requested.<sup>2</sup> In order for our office to certify U Visa requests, the victim must have been helpful to the post-filing prosecution of the case.

### **B. Qualifying Crimes**

Qualifying criminal activity for U Visa certification includes a violation of state law which constitutes one of the following crimes: domestic violence; sexual assault; rape; torture; female genital mutilation; kidnapping; false imprisonment; extortion; human trafficking; prostitution; felonious assault; manslaughter; murder; witness tampering; obstruction of justice; perjury; or the attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes. An “indirect victim” may qualify where the actual victim of a crime is deceased or is incapacitated as a result of the crime and where there is “proximate harm” to the indirect victim as a result of the crime.<sup>3</sup>

### **C. Evidence to Be Considered**

Evidence to be considered in determining the extent of the victim’s helpfulness to law enforcement includes the recollection of involved deputy district attorneys and victim witness advocates, police reports, witness statements, transcripts, court documents, attorney notes in the District Attorney file, and the Disposition Report. Applicants for U Visa certifications should be asked to include as much of this evidence as possible with their request.

## **II. Los Angeles County District Attorney Policy Regarding U Visa Certification**

In order to promote uniformity in the processing of U Visa certification requests presented to the Office of the District Attorney, the following policy is established:

### **A. Designated Official**

The head of a certifying agency or a designee in a supervisory role is authorized to issue such certification. Bureau Directors are designated by the District Attorney as those authorized to issue U Visa certifications on behalf of the District Attorney for cases prosecuted within their respective Bureaus.

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<sup>2</sup> If the victim was under the age of 16 when the crime occurred, or if the victim was incapacitated and was unable to provide the required assistance to law enforcement, a parent, guardian or “next friend” of the victim may provide the required assistance.

<sup>3</sup> Indirect victims include the alien spouse, unmarried children under 21 years of age and, if the victim is under 21 years of age, parents and unmarried siblings under 18 years old. A Derivative U Visa classification for the spouse and children of a victim and the parent of a child victim is also available in cases where such applicants demonstrate extreme hardship to themselves in the absence of such relief.

## **B. Foundational Requirements**

A certification or endorsement will only be considered with regard to a case that has been filed by the Office of the District Attorney. Certification requests for cases which our Office has declined to prosecute shall be returned to the victim or requesting party with the instruction that the certification be submitted to the law enforcement agency that investigated the alleged crime. In the absence of extraordinary circumstances, it is the policy of this Office that a certification or endorsement for a U Visa application will only be considered following the conclusion of the criminal case.<sup>4</sup>

## **C. Receipt of U Visa Request by a Deputy District Attorney**

Upon receipt of a request for a U Visa certification for a completed case the deputy district attorney shall notify his or her head deputy or deputy-in-charge and forward that original request to their bureau director (director) with an accompanying memorandum.<sup>5</sup> The memorandum to the director, through the head deputy or deputy-in-charge, shall be prepared by a deputy district attorney who is familiar with the case. That memorandum shall include:

- 1) the applicant victim's role in the underlying facts of the case and the extent of any injury to the victim;
- 2) facts supporting the applicant's helpfulness, or lack thereof, to the prosecution during the pendency of the case;
- 3) the applicant's criminal history and/or gang membership;
- 4) the original charges filed;
- 5) the charges upon which the defendant was ultimately convicted;
- 6) the stage of the proceeding during which the conviction occurred; and
- 7) the sentence imposed.

The District Attorney file should be obtained and examined during the process of creating the memorandum to the Director. The Victim Witness Assistance Program should also be contacted to determine whether the victim was assigned an advocate as the advocate may be able to provide additional information regarding the victim's helpfulness.

There may be requests for U Visa certification where there is insufficient evidence available to determine whether a victim was helpful in a prosecution. As the certification of helpfulness is made under penalty of perjury, requests without sufficient evidence of helpfulness will be denied.

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<sup>4</sup>Extraordinary circumstances may include cases where the defendant has been declared incompetent for trial or multiple defendant cases where the case has been resolved as to a portion of the defendants and the remaining have warrants out for their arrest.

<sup>5</sup> If the case is still pending at the time of the certification request, the head deputy or deputy-in-charge shall notify their director via email that a U Visa certification request has been received. This email should contain the victim and defendant's names, the case number, and the stage of the proceedings. At the conclusion of the case, the memorandum shall be prepared and forwarded as set forth above.

#### **D. Receipt of U Visa Request by the Director**

U Visa certification requests are routinely sent to the Director by the victim or their legal representative. When a U Visa request is initially received by the Director, the Director will forward an inquiry to the Head Deputy or Deputy-in-Charge of the office where the prosecution took place. The Head Deputy or Deputy-in-Charge shall cause the appropriate deputy district attorney or filing deputy to obtain the District Attorney file and/or other necessary documentation and to prepare a memorandum to the Director through channels, as set forth above. Directors are required to maintain a log of all U Visa requests which includes the date received, the name of the victim and defendant, the case number and whether certification was granted or denied and on what date such action occurred.

#### **E. Discovery Obligations**

A request for U Visa certification by a victim or his/her representative during the pendency of the case is considered discoverable pursuant to Penal Code § 1054.1(e) and our constitutional obligations under *Brady v. Maryland* mandate that potentially exculpatory evidence be provided to the defense. In addition, in an abundance of caution, if the victim requesting U Visa certification in a current case was previously the victim of the same defendant in a prior case for which the victim also requested a U Visa certification, it is recommended that such information be disclosed to the defense.

Post-conviction certification requests do not need to be disclosed to the defense. A recent federal case, *United States v. Mills* (2009) 334 Fed.Appx. 946, affirms the proposition that the prosecution's failure to disclose the post-trial issuance of a Special Public Benefit Parole Visa to an informant who testified at trial is not a *Brady* violation and would not require a new trial because the document did not exist prior to trial. The federal court also held that even if the post-trial issuance of the visa could be considered *Brady* evidence, its impeachment value in that case was not material to the outcome of the trial.

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Attachment