



Office of
Immigrant Affairs
Nisha Agarwal
Commissioner

September 13, 2017

Testimony of Acting Commissioner Bitta Mostofi

NYC Mayor's Office of Immigrant Affairs

Before a hearing of the New York City Council Committee on Immigration:

“Oversight: Best Practices for NYC Agencies, Courts, and Law Enforcement Authorized to
Certify Immigrant Victims for U and T Visas”

Thank you to Chair Menchaca and the members of the Committee on Immigration. My name is Bitta Mostofi and I am the Acting Commissioner of the Mayor's Office of Immigrant Affairs.

In my testimony today on behalf of the Administration, I will describe the work we have done to improve the City's U and T visa law enforcement certification processes, and the measures we have undertaken across City agencies to expand public education about these programs. I also have with me my colleagues from the other agencies involved in this area to address questions specific to their agencies' work.

Since 2014, the City has taken a number of steps to strengthen the U and T visa law enforcement certification process. These efforts followed the Mayor's pledge, in his "One New York, Rising Together" platform, to address concerns about U visa certifications and T visa declarations by City agencies. The Mayor pledged to work with the agencies to improve and speed up their certification processes.

The number of requests from immigrants for certifications has climbed significantly over the past several years—a trend attributable not to increased crime but instead to increased awareness about this option for victims. The number of approvals has also increased dramatically, with this year on pace to be over 50% higher than 2014 levels.

The importance of this work has been reinforced in the current moment, when changes in federal immigration enforcement policies and priorities threaten to undermine immigrants' trust in and willingness to interact with local law enforcement. The U and T visa programs are crucial tools in local law enforcement and investigative agencies' ability to secure the cooperation and testimony of immigrant victims of crime.

Interagency Collaboration and Improved Processes

In 2014, Administration officials created an interagency working group to spur agencies' collaboration on best practices, outreach, and public education, while also working together to ensure that the program integrity of agencies' certification procedures is maintained. The working group is convened by the Mayor's Office of Immigrant Affairs (MOIA), the Mayor's Office of Criminal Justice (MOCJ), and the Mayor's Office to Combat Domestic Violence (OCDV), and includes the City's certifying agencies—the New York City Police Department (NYPD), the Administration for Children's Services (ACS), the Commission on Human Rights, and the Law Department Family Court Division—as well as the five local District Attorneys' offices.



The certification process at the NYPD, the City agency that receives the largest volume of certification requests, has seen significant changes over the past several years. These changes reflect the NYPD's commitment to engendering cooperation between police and the immigrant community. Police Commissioner James P. O'Neill has stated, "It is incumbent upon the men and women of the NYPD to maintain the trust and confidence of all who depend on the services of our police department for their safety."

In 2014, the NYPD increased the number of authorized certifying officials, permitting the department to process a far larger number of requests. The NYPD further made major reforms to its procedures for accepting and evaluating certification requests via formal notice-and-comment rulemaking; its U visa certification rule was promulgated in 2016, and the T visa rule in 2017. Among other things, these rules set guidelines for the department's processing of requests and established an appeals process within the agency's Legal Bureau to adjudicate challenges to denials. The NYPD also ceased its prior practice of denying certification requests in cases where the alleged crime occurred outside of the statute of limitations for prosecution, and performed a review of all such denials, resulting in the department deciding to reverse prior denials in some instances.

ACS' certification program is an important aspect of the agency's commitment to enhancing the safety of children in homes that are free from domestic violence. ACS' program supports the ability of non-abusive parents to protect themselves and their children, and helps families access needed benefits and services. To this end, ACS has made improvements to its processes in the past few years. In June 2014, ACS adopted new internal guidance on U visa certifications, including guidelines for the agency's certifying officials to ensure effective processing. In 2016, ACS issued its first T visa declaration, and has worked to ensure that the legal and advocacy community is aware of the T visa option as well.

The Law Department Family Court Division, which represents the government in certain juvenile justice matters, has generally seen lower numbers of requests and therefore lower numbers of certifications performed. However, the Law Department has seen a consistent, measurable increase in both requests and certifications over the past several years.

The Commission on Human Rights began accepting U visa certification and T visa declaration requests in February 2016, becoming the first local anti-discrimination agency in a major U.S. city to perform this function. The Commission's work in this area is therefore quite new, but has already been greeted with praise by legal service providers and others.

In addition to the work across these four certifying agencies, the Administration's interagency working group has also allowed the City agencies the opportunity to develop more extensive

collaboration with the five District Attorneys' offices on outreach and public education about the availability of U and T visas.

Certification Data

The City's certifying agencies have greatly expanded their U and T visa certification capacity and approvals over the past several years. Citywide, we went from 636 requests and 317 certifications in 2014, to 700 requests and 399 certifications in 2015, to 875 requests and 521 certifications in 2016, with 776 requests and about 347 certifications over the first eight months or so of 2017 so far. These facts bear out the successes that the Administration has been able to accomplish in this area.

Public Education

Outreach and public education have continued to be major areas of focus of the interagency working group and its member agencies, and there has been a wide range of awareness-raising activities since 2014.

Among the most powerful public education measures was the creation of a centralized New York City government website, with standardized information about how to request U visa certifications and T visa declarations from each certifying agency and each DA's office. This has enabled MOIA staff and others to direct attorneys, social workers, advocates, and crime victims themselves to one resource that provides comprehensible information about how to proceed. Before we created this website, there simply was no centralized tool to help immigrants and their advocates find the information they need on this issue.

OCDV and MOIA jointly produced public education materials specifically aimed at sharing information with victims of crime. The two agencies' commissioners also published a joint op/ed earlier this year, in part in response to elevated fears in the immigrant community about hate crimes and about immigration enforcement.

OCDV performs regular educational trainings at its Family Justice Centers, in every borough, about immigration remedies for victims of domestic violence and trafficking.

MOIA staff have shared information in a range of settings, including at community-based Know Your Rights events and at town hall events hosted by elected officials and others, as well as through public events as part of the annual Immigrant Heritage Week. MOIA, OCDV, and

MOCJ have also convened advocates who work on immigrants' rights and domestic violence issues to learn about the groups' concerns and the population's needs.

The NYPD has taken a very active role in conducting outreach and public education about U and T visas and their certification process. For example, in April of this year, the NYPD and MOIA held a joint Continuing Legal Education program to educate attorneys in the private immigration bar about these issues. Additionally, NYPD personnel have met with service providers and advocates through the Borough Sexual Assault Task Forces, which are organized by the District Attorneys and are comprised of service providers and advocates, to reiterate the Department's policies and provide information on U and T visas.

Federal Advocacy

The Administration has advocated for improvements to the U and T visa programs where we have seen opportunities for them to better serve our immigrant residents and their families.

In 2014, Commissioner Agarwal wrote to USCIS to advocate for broadening the definition of "certifying official" to permit appointment of non-managerial staff, arguing that such a change would provide law enforcement agencies with flexibility to authorize certifications by additional members of their staff whose duties may not include supervisory functions. USCIS has yet to adopt this proposal. While we maintain that this change should be adopted, the City's certifying agencies (in particular the NYPD) have nevertheless expanded their certifying officials to broaden access as much as possible under the federal regulations.

In 2016, Commissioner Agarwal, along with the USCIS Ombudsman, advocated with USCIS in favor of a policy to grant parole to U visa applicants and their derivatives who reside overseas. USCIS adopted this policy late last year, but President Trump's January 25 executive order on border security called for strict limits on federal immigration agencies' parole authority, indicating an apparent end to the U visa parole policy.

In addition, MOIA continues to be in touch with USCIS on issues relating to U and T visas, and remains in touch with advocates and elected officials on these issues in order to identify opportunities for positive change or other necessary advocacy.

Conclusion

The Administration has made significant changes across the City agencies to ensure that accurate information about U and T visas is shared with members of the community and practitioners.



**Office of
Immigrant Affairs**
Nisha Agarwal
Commissioner

These changes have also been aimed at ensuring that the certifying agencies' protocols and practices produce effective, prompt, and fair determinations.

The interagency working group continues to discuss a range of issues related to U and T visas and share best practices, and is monitoring changes in federal immigration policy that could affect U and T visa processes. In addition, the working group members will continue to collect and compile data to be reported publicly by MOIA. This Committee and the full Council have recognized the importance of this aspect of our work in your passage of Introduction 1566-A just last week.

The Administration—through this interagency working group and other means—will continue its efforts across the agencies to build and protect trust between immigrants and local law enforcement, including through public education and the U and T visa certification process.

New York City Council Hearing on U-Visa
Testimony by Raquel E. Batista, Esq.,
Community Lawyering Fellow

CUNY School of Law Community Legal Resource Center works in collaboration with Voces Latina, Queens Legal Services and a number of pro bono law firms in representing both documented and undocumented immigrant women in their VAWA, U and T Visa applications.

In October 2000, Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act and the Battered Immigrant Women's Protection Act.ⁱ Undocumented victims of crimes may apply for a U visa if they meet the criteria set forth which include collaborating with law enforcement agencies to investigate and prosecute the criminal activity.

In the direct application of obtaining a U visa, state and local agencies must approve the certification in order for the victim to move forward with their immigration application. In the seventeen years since the creation of the U visa, there has been no uniform guidance on the certification process and it has been left up to the certifying agencies to make the final determination.

Now, with the new Presidential administrationⁱⁱ, it is unclear if any changes will be made to the U visa. However, because of mounting fears in immigrant communities and the growing possibility of detention and deportation, immigrant and in this case immigrant women who are suffering at the hand of domestic violence may be reporting these crimes less and consequentially unable to build their case for obtaining a U visa.

In addition, many community and legal organizations are finding that in New York City, the certification process for U visa has slowed down tremendously raising concerns over the process and potential denial of hundreds of certifications. The long wait times – 3 months or longer – are also causing tremendous stress on the survivors of crimes and domestic violence which is unnecessary and unduly burdensome on the victims and their families.

Current State of U Visas Approval in New York City

New York City certifying agencies each have their own guidelines on how to request and their own process of certification. There are no clear timelines as to when an applicant expects a decision on their certification. Once a decision is denied, there is also no clear avenue to have their application reconsidered.

The certifying agencies in New York City are the following:

- **New York City District Attorney**
- **New York City Law Department, Office of Corporation Counsel**
- **New York City Administration for Children Services (ACS)**
- **New York City Police Department (NYPD)**
- **New York City Commission on Human Rights**

NYPD Report on U visas

On July 28, 2017, the New York Police Department released a report on the assessment of the NYPD's handling of U Visa Certification Requests. The report details the number of certifications requested 2015 and 2016 by all of the certifying agencies with the exception of the NYC Human Rights Commission which only started certifying in 2015. Of note, as stated above the District Attorney offices do not currently report on their numbers

however in this report there is table which gives the data on 5 district attorney offices but does not indicate the corresponding boroughs.

New York City Agencies Public Reports on U Visasⁱⁱⁱ

In a review of the websites of all NYC district attorneys (Bronx, Brooklyn, Manhattan, Queens and State Island), there was no reports on the number of certification requests, approvals and denials of U visas. The Manhattan District Attorney's Office website contained one report from 2016 on Domestic Violence issues where U visas were only mentioned once.^{iv}

The Manhattan District Attorney's Office website did state the following, "Similarly, victims reported that the U Visa application process was cumbersome and overly contingent on individual law enforcement members who might delay signing off on applications. Members expressed concern over the lack of training for government employees in general on cultural humility and awareness of the diverse immigrant makeup throughout the City."^v

California Model –SB 674: Immigrant Victims of Crime Equity Act 2016^{vi}

In January 2016, the state of California enacted Immigrant Victims of Crime Equity Act which requires state and local certifying authorities to respond to requests within 90 days. It also created the presumption of helpfulness, meaning that unless there is evidence to the contrary, the assumption is that immigrants applying for the visa were helpful in the investigation.

In a recent USA today news report, community groups and legal experts have stated that the implementation of the Immigrant Victims of Crime Equity Act has increased transparency, more cooperation between victims and law enforcement, improved overall police/community relations and most importantly has preserved the right of undocumented victims to pursue their rights and benefits.^{vii}

Recommendations to New York State and City Elected / Public Officials

- Guidance from the New York State Attorney General on the U Visa Certification Process
- Joint State and City Taskforce on U Visas which includes community and legal organizations
- Immediate Update and Report on the Approvals, Denials and Criteria Used by All Certifying Agencies for the last three fiscal years.
- City and / or State Legislation addressing the following issues
 - Reasonable U Visa Certification Determination Timeline for Certifying Agencies
 - Favorable Uniform Criteria / Presumption for Certification
 - Public Annual Quantitative and Qualitative Reporting on the U Visa Certification Request and Process

ⁱ <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

ⁱⁱ Id.

ⁱⁱⁱ <https://www1.nyc.gov/site/immigrants/help/legal-services/crime-victims.page>

^{iv} http://manhattanda.org/sites/default/files/Domestic%20Violence%20Initiative%20Report%20October%202016_0.pdf

^v Id. page 128

^{vi} http://www.asistahelp.org/documents/resources/sb_674_fact_sheet_ILRC_copy_82D9E389F4A33.pdf

^{vii} <https://www.usatoday.com/story/news/nation-now/2017/02/08/u-visa-immigrant-police-relationship/97666590/>



**CITY BAR
JUSTICE
CENTER**

**TESTIMONY OF SUZANNE TOMATORE, ESQ.
CO-DIRECTOR, IMMIGRANT JUSTICE PROJECT
CITY BAR JUSTICE CENTER**

**NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION**

**Best Practices for NYC Agencies, Courts, & Law Enforcement Authorized to
Certify Immigrant Victims for U and T Visas**

**Council Chambers – City Hall
Carlos Menchaca, Chairperson**

September 13, 2017

My name is Suzanne Tomatore and I am a co-director of the Immigrant Justice Project at the City Bar Justice Center. The City Bar Justice Center (“Justice Center”) is the non-profit, legal services arm of the New York City Bar Association. Our mission is to address the justice gap and we draw upon our relationship with the New York City Bar to leverage pro bono legal services. Annually we provide legal education, information and advice, brief services, and direct legal representation to more than 20,000 low-income and vulnerable New Yorkers - from all five boroughs of New York City - who would otherwise be unable to access the legal services they need. Our clients include immigrants, battered women, veterans, LGBTQ, homeless families, seniors, cancer patients and survivors, consumers filing for bankruptcy, homeowners facing foreclosure, struggling small businesses, and others.

I would like to thank Carlos Menchaca and the staff and the Committee on Immigration including Daniel Dromm for drawing attention to the important issue of human trafficking and immigrant crime victimization in general. New York City has shown great strides on these issues but there are a few areas where policies should be refined and expanded, particularly in increasing access to information about this immigration relief and how to obtain a certification from law enforcement or city agencies with authorization to sign certifications.

The Immigrant Women & Children Project, now one of the initiatives under the Justice Center's Immigrant Justice Project, was founded in 1996 to provide legal services to immigrant survivors of domestic violence. I became director of the Project in 2001 and in 2002 expanded it to also serve immigrant survivors of violent crimes, including sexual assault, child abuse, hate crimes and human trafficking. IWC was one of the first legal services providers in New York City to create a program specifically to serve survivors of both labor and sex trafficking. Our clients are diverse and global: last year we served people of all genders from almost 50 different countries and our work is supported and enhanced by the pro bono efforts of New York City law firms and we appreciate the longstanding support of the New York City Council's Immigrant Opportunities Initiative.

In addition to my work with the Justice Center, I was Co-Chair of the Freedom Network from 2012 to 2014 and until recently, I was a founding board member. The Freedom Network is a national network of more than 40 organizations and individual experts who provide services to survivors of human trafficking. This connection has given me a national perspective on many of the immigration issues facing NYC. I am a member of the Brooklyn District Attorney's Task Force on Human Trafficking as well as a founding member of New York City VAWA Advocates, a group of non-profit attorneys who collectively have represented thousands of immigrant crime victims. I have served on several committees of the City Bar Association, including, Domestic Violence, Immigration and Nationality Law, and the Council on Children.

The federal Trafficking Victims Protection Act, which became law in 2000 and has been amended and reauthorized several times, allows for enhanced criminal prosecutions and civil relief, including special immigration status for survivors of trafficking and other crime victims who cooperate with law enforcement. In 2007, New York State passed its own human trafficking law, which has been expanded several times, and currently all 50 states have some form of law on human trafficking.

U nonimmigrant status, or "U visa", for victims of various mostly violent crimes, requires a certification from law enforcement or agencies that have investigative authority over criminal acts. [m] T nonimmigrant status or "T visa" is for survivors of human trafficking. For a T visa, a certification from law enforcement is optional. The New York City certifying agencies include the New York City Police Department (NYPD), Administration for Children's Services, the Commission on Human Rights, and the District Attorney's offices. Judges are also able to certify. These city agencies have shown great leadership providing access to and information about these forms of immigration relief, but there is more work to be done.

Our recommendations below to the City Council and New York City agencies on increasing access to U & T status is based on our experience representing hundreds of clients:

1. Increase information about and awareness of both U and T visas through a public awareness campaign. Many of our clients seek legal services many years after they become eligible for a U or a T visa because they had no knowledge that such relief exists. A social

media, print media and radio/TV campaign by the City is needed. While various campaigns have existed specifically for human trafficking, I am not aware of any campaign for the U visa for immigrant survivors of crimes. A campaign like this would be very timely and useful as the federal government has begun to end temporary programs that have benefitted some immigrants, including DACA and Temporary Protected Status (TPS). Many of those who benefitted from these programs may also be eligible for a T or a U status and should be made aware of these options now.

2. Require that U & T visa information be posted in public spaces, police precincts and online at www.NYC.gov, and be available to 311 operators. Crime victims should be provided with a general brochure about their rights, such as access to victim compensation, legal services, as well as eligibility for U or T visa benefits. A brochure can be provided to crime victims through police precincts and hospitals. Information should be made available in languages that are most commonly spoken by New Yorkers.

3. Train all frontline NYPD staff so that at the precinct level officers will know how to direct inquiries from the public about T status and how to obtain it. Ask all City agencies with law enforcement responsibilities to train their intake staff annually on T and U eligibility status and their certification process. This group of agencies includes the Administration for Children's Services, Commission on Human Rights, and others.

4. Emphasize in postings and trainings that requests for U or T certification may be made at any time, regardless of when the crime occurred. There is no statute of limitations on a T nonimmigrant status application and USCIS has approved T nonimmigrant status for applicants who were crime victims many years ago.

5. The process to request a U or T certification¹ from city agencies should be clear, transparent and publicly available to both pro se individuals and those who are represented by counsel. Certifiers should send confirmation of a request with a clear timeline and what the process is for an appeal if necessary. Certifiers should have sufficient resources to respond to requests in a timely fashion.

Thank you for your time today and your interest on this important and timely issue. I appreciate the opportunity to provide this testimony and am available for questions. I can be reached at stomatore@nycbar.org or at (212) 382-6717.

¹ Law enforcement certifications are available on form I-914B for T status and I-918B for U status. Forms are available at www.uscis.gov. Guidance for filling out these forms for law enforcement is available at <https://www.dhs.gov/publication/u-visa-law-enforcement-certification-resource-guide>, last visited 9/12/17.

**WRITTEN TESTIMONY OF
THE IMMIGRATION AND NATIONALITY LAW COMMITTEE
OF THE NEW YORK CITY BAR ASSOCIATION**

**NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION HEARING
“OVERSIGHT – BEST PRACTICES FOR NYC AGENCIES, COURTS,
AND LAW ENFORCEMENT AUTHORIZED TO CERTIFY
IMMIGRANT VICTIMS FOR U AND T VISAS”**

September 13, 2017

My name is Deborah Lee. I am a member of the Immigration and Nationality Law Committee (“Committee”) of the New York City Bar Association (“City Bar”). I am also a Senior Staff Attorney with Sanctuary for Families’ Immigration Intervention Project and work at the New York City Family Justice Center in Brooklyn. With over 24,000 members, the City Bar has a longstanding mission to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and advocate for access to justice in support of a fair society. Our Committee represents a cross-section of the immigration legal community, and we base this testimony on our expertise and experience counseling our immigrant clients who have been victims of crimes and trafficking.

The City Bar and its Committee have long advocated to increase access to quality counsel for anyone in need, including immigrants who have been impacted by crimes, domestic violence, and labor and sex trafficking. Our Committee hosts Continuing Legal Education trainings on critical issues impacting immigrants, conducts legal clinics, publishes policy statements, and testifies before the City Council in order to highlight the need for quality legal assistance for vulnerable immigrants in our community. Most recently, we called for increased enforcement against “notarios” who seek to defraud immigrants¹ and publicly applauded the City’s refusal to cooperate with requests by federal immigration officials seeking to detain and deport individuals who pose no threat to public safety.²

¹ Testimony on the Unauthorized Practice of Immigration Law in New York City, Nov. 17, 2016, http://s3.amazonaws.com/documents.nycbar.org/files/UnauthorizedPracticeImmigrationLaw_Immigration_Testimony_FINAL_11.17.16.pdf.

² Testimony regarding the Impact of New Immigration Enforcement Tactics on Access to Justice and Services, March 15, 2017, http://s3.amazonaws.com/documents.nycbar.org/files/201792-NewImmigrationEnforcementEffects_Testimony_FINAL_3.15.17.pdf.

The City Bar and its Committee commend the City Council for holding this hearing today to examine best practices for New York City agencies, courts, and law enforcement to certify immigrant victims to apply for U and T nonimmigrant status (“U and T visas”) with federal immigration authorities. U and T visas provide critical protection and legal status to immigrant victims of serious crimes and trafficking, so that they can continue to be available to assist law enforcement, hold perpetrators of crimes accountable, and heal from the devastation of the crimes they have suffered.

We support statements made by the City Council highlighting the importance of protecting immigrants in our community and providing them with safety. We congratulate the City Council on its passage of legislation last week to expand the duties of the Mayor’s Office of Immigrant Affairs and to create an interagency task force on immigrant affairs. We also endorse the testimony that is being given today by the Immigrant Justice Project of the City Bar Justice Center, the non-profit, legal services arm of the City Bar.

Immigrant victims of crimes and trafficking often are reluctant to cooperate with New York City agencies, courts, and law enforcement in their investigations and prosecutions, for fear that local government entities would assist federal immigration authorities in having the immigrant victim herself deported. However, these crime and trafficking victims provide critical information to agencies seeking to investigate and prosecute criminals and traffickers in our community. It is in the interest of our entire community’s public safety, as well as in the interest of justice, to do whatever we can to ensure the cooperation of any victim of crime or trafficking, regardless of their immigration status.

In response, this City has taken bold steps to protect immigrant crime victims. In 2003, the City signed into local law Executive Order 41, which allows for all victims of crimes in New York City to seek police protection without fear that the New York Police Department will turn that crime victim or witness over to federal immigration authorities. Innovative pilot diversion court programs in Queens and Midtown Manhattan laid the groundwork for the 2013 creation of Human Trafficking Intervention Courts throughout this state, creating life-saving counseling, social services, and immigration legal services interventions for sex trafficking victims. And, over the past ten years, New York City agencies, courts, and law enforcement have independently created their own procedures to protect immigrant crime and trafficking victims by certifying them as victims eligible to apply for U and T visas.

In our current political climate, immigrants are more vulnerable than ever. Last week’s decision by the Trump Administration to rescind Deferred Action for Childhood Arrivals (DACA) early next year highlights how vulnerable non-citizens’ rights and protections are to political whims. With so few avenues to permanent status available under federal immigration law, it is imperative that local and state governments do everything in their power to assist individuals who are eligible for relief in obtaining the evidence they need to submit an application. U and T visa applications, while adjudicated by USCIS, require a law enforcement certification which most frequently is completed by local or state police, district attorneys, courts or agency personnel. We hope that the City Council will take an active role in ensuring that law enforcement personnel coordinate their efforts, streamline the law enforcement certification process, and publicize the agencies and courts that are empowered to complete U and T certifications.

Given this, we encourage the City to re-double its support of immigrants by providing more accessibility to U and T visa certifications for immigrant victims of crimes and trafficking. First, the City should encourage more public awareness about immigrant victims' eligibility for U and T visa certifications. Additionally, it should help develop more transparent procedures citywide for New York City agencies, courts, and law enforcement. We are hopeful that the new inter-agency task force headed by MOIA will coordinate U and T visa certifications and establish standard processes across agencies.

Knowledge empowers immigrants and those advocating on their behalf. Immigrant victims of crimes and trafficking need to know what U and T visas are, so they can learn if they are eligible to receive certifications from local NYC government agencies and law enforcement, and they need to know how to apply for these certifications. Attorneys, both those in the non-profit legal services community as well as those in the private sector, need to know how to advocate for their clients' eligibility for U and T visa certifications. There needs to be clear procedures - including appeal procedures and standards - that are publicly available for all members of our community by each NYC government agency, court, and law enforcement entity capable of certifying immigrant crime and trafficking victims on how to apply for U and T visas.

For our City to continue its tremendous commitment to immigrants and immigrant victims of crimes and trafficking, it must provide them with real and effective access to U and T visa certifications so that they have greater access to permanent immigration relief options.

**Testimony submitted to the New York City Council
Committee on Immigration**

Wednesday, September 13, 2017, 10:00 a.m.

**Legal
Services NYC**

**Re: Oversight – Best Practices for NYC Agencies, Courts and Law Enforcement
Authorized to Certify Immigrant Victims for U and T Visas**

Thank you for this opportunity to testify regarding best practices relating to U and T certifications. My name is Terry Lawson. I am the Director of the Family and Immigration Unit of Bronx Legal Services, an office of Legal Services NYC. Legal Services NYC is the largest provider of free civil legal services in the country, with offices in all five boroughs serving over 90,000 New Yorkers annually. I also co-lead the Bronx Immigration Partnership, a network of over twenty organizations and agencies working together to create a coordinated safety net of legal and social services for Bronx residents.

I would like to highlight some of the best practices we have observed of New York City agencies currently handling U and T certification requests, and to encourage all NYC certifiers to adopt similar practices. It should be as easy for a *pro se* person to seek a U or T certification as it is for a lawyer. New Yorkers become easy prey for notarios and other bad actors who charge thousands of dollars for certifications that people could get on their own, if they had access to the right information. These best practices put people without a lawyer on the same footing as those with legal representation.

Legal Services NYC
40 Worth Street, Suite 606, New York, NY 10013
Phone: 646-442-3600 Fax: 646-442-3601 www.LegalServicesNYC.org
Raun J. Rasmussen, Executive Director
Susan J. Kohlman, Board Chair

LSC

First, each NYC certifier should provide clear descriptions of their certification procedures on their offices' websites and in public locations, and that information should be translated into multiple languages.

Second, each NYC certifier should adopt a reasonable timeframe for adjudication of certification requests (ideally 30 days) and should include an appeals process for denied requests.

Third, all denied requests should provide detailed information about why the request was denied, to allow the requestor an opportunity to respond appropriately, and should lay out the appeals process in that notification. The description of the appeals process should be provided in the language of the requestor.

Fourth, NYC agencies should allow the submission of certification requests by U.S. mail and email, should acknowledge when a request has been received, and should create follow-up procedures that allow requestors to be in touch, via email and phone, with the office responsible for signing the certification.

Fifth, certifiers should mail certification responses to the requestor, unless the requestor asks for the opportunity to pick up the certificate in person.

Sixth, agencies should sign certifications, even when a case is pending, based on the cooperation that has already been provided. Given how long it takes for some cases to be adjudicated or investigations to be concluded, due to a lack of resources, there should be no requirement that a case or investigation be concluded before a certification can be signed.

In addition to these best practices, we encourage the City Council, MOIA, and the new Interagency Taskforce on Immigrant Affairs, to work with New York City agencies that have not made their certification procedures public, or which have not yet developed U and T certification procedures. Some of these agencies include the NYC Department of Education, the Civilian Complaint Review Board, Internal Affairs, the Department of Corrections, and the NYC Law Department.

Thank you for your attention for your interest in this matter. We are happy to provide this Committee and the Council with any additional information it requires.

Terry Lawson,
Director, Family and Immigration Unit,
Bronx Legal Services (Legal Services NYC)

Testimony of Amanda Doroshow

Her Justice

Best Practices for NYC Agencies, Courts, and Law Enforcement Authorized to Certify
Immigrant Victims for U and T visas.

Wednesday, September 13, 2017 at 10:00 A.M.
City Hall, New York, NY

My name is Amanda Doroshow and I am a staff attorney at Her Justice, a non-profit organization that uses a "pro bono first" approach to deliver legal services. We partner with New York's finest law firms to deliver free, quality legal services to low-income New Yorkers who identify as women in the areas of family, matrimonial and immigration law. Last fiscal year Her Justice assisted over 3,000 individuals with their legal matters.

One of the immigration remedies that we pursue most frequently for our clients is U Nonimmigrant Status (or "U Visas). We also have a small number of clients who have pursued immigration relief as victims of sex or labor trafficking ("T Visas").

We appreciate the opportunity to speak with the City Council today about best practices relating to the issuance of U or T certifications by New York City agencies, law enforcement and courts. The issuance of a U or T certification is the first hurdle that undocumented immigrants must surmount on the path to lawful immigration status through a U or T Visa¹. The U Visa is a critically important option for undocumented immigrants--especially now that federal immigration policy prioritizes the deportation of all undocumented immigrants and the Deferred Action for Childhood Arrivals ("DACA") program no longer exists.

Public Transparency and Accountability

We applaud the New York Police Department (NYPD) for following the City Administrative Procedures Act (CAPA) to publicly promulgate the rules and process related to the issuance of U/ T certifications. This process, which requires a public hearing and opportunity for New Yorkers to review and comment on the process, should be utilized by all New York City agencies that have the authority to issue certifications. The process for U/T certification issuance for all agencies should incorporate the basic ingredients of due process including but not limited to: a written process for issuance of certifications, an articulated standard for how certification requests will be reviewed (adhering to Federal regulations, as discussed below), a reasonable time frame in which such requests will be reviewed, the names of those within the agency who are designated to issue certifications, a designated contact person at the agency (whose contact information should be made public), and the issuance of written denials with an articulated basis for the denial and an appeals process.

Agencies cannot rely on the CAPA process as a "one-off" public engagement event on this issue. The process for issuing U/T certifications, and any changes made to that process, should be made permanently

¹ Note that while a U certification is an absolute pre-requisite for an individual to apply for U Nonimmigrant Status, a T certification is not always necessary to obtain T Nonimmigrant Status, although it is very helpful.

accessible and available to the public via the agency's website. The rules, time frame and process for initial certifications and appeals should be written in understandable English (not technical jargon) and should be translated in the most widely used languages in New York City.

Public engagement with the agency is important to provide feedback about the agency's processes and hold the agency accountable for its stated goals and purpose. There should also be periodic "stakeholder meetings" with the public, including immigration advocates, to discuss the efficacy and efficiency of the agency's U/T certification processes.

Timely Adjudications of Certification Requests and Opportunity to Request Expedited Processing

Many U certification requests from City agencies currently take 6 to 18 months to process. These delays are excessive given the current climate of immigration enforcement in which the lives of undocumented New Yorkers who are crime victims are at serious risk of upheaval and devastation. These individuals are very likely to have already experienced severe trauma as a result of their past victimization. The vast majority of clients that Her Justice works with are victims of crimes such as intimate partner violence, sexual assault, and child abuse/ neglect. Many of these individuals suffer from post-traumatic stress disorder, depression, anxiety, and a host of other mental health issues as a result of their victimization. Our clients have established strong ties to their families and communities in New York City and would suffer immensely if removed to their home countries. Additionally, many of our clients would not have access to the essential support and resources they currently receive if forced to return to their home country. U/T Visas provide the only legal mechanism by which many of our clients will be able to stay in the United States. Some of our clients are in removal proceedings or already have removal orders from an immigration judge, which places them at an even higher risk of immediate removal. Additionally, some of our clients are mothers to undocumented children who may soon turn 21, which would result in a lost opportunity to be a derivative on their mother's U/T visa petition, leaving them without any potential path to lawful status. Delays in the issuance U/T certifications result in grave harm to our clients.

These delays can be even longer, up to two years or more, when an individual is involved in the criminal legal system. This delay is largely due to the NYPD practice of refusing to certify when the suspect has been arrested. When a suspect has been arrested, NYPD routinely refuses to consider signing a U certification, even though it still clearly has the power and authority to certify based on a victim's cooperation in the police investigation. Instead, NYPD routinely denies the U certification request and refers the requester to the relevant district attorney's office. District attorneys often refuse to certify when a criminal case is pending, and criminal cases often take two years or more to resolve. A two year delay is too long to wait for a U certification and puts many people at risk of harm. By the time the criminal case has resolved, the victim may already be detained by immigration, may be facing deportation or have been deported from the U.S. It is a best practice for NYPD to sign U certification requests even when the suspect has been arrested.

Nothing precludes the NYPD from issuing a certification in these instances.² Cooperation in the detection of the crime is all that is needed for the NYPD to certify and there is no requirement that the investigation be completed before a certification can be issued. Indeed, several police departments around the country

² See *U-vis Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, https://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf.

issue U certifications when there has been an arrest even when the victim does not want to participate in the criminal prosecution³.

Long delays in the issuance of U/T certifications make our clients more vulnerable to exploitation to unscrupulous immigration advocates. Some clients with long-pending certification requests have told us that they have hired attorneys or non-attorneys who falsely promise to “expedite” these requests and clients have paid vast amounts of money to do so. It is critical to implement the best practice for all U/T certifications to be adjudicated within a reasonable time frame (30 days). It is also a best practice for NYPD to certify U/T certification requests even when there is a pending criminal case being prosecuted by the District Attorney.

We also recommend that there be a process to request expedited processing when appropriate, including when a person is in removal proceedings or when a child is about to turn 21. All New York City agencies with the authority to issue certifications should provide the option of requesting expedited processing, along with written expedite request criteria, so that individuals are aware of how and when they can request expedited processing of their certification request.

Training and Adherence to the Correct Legal Standard

The U.S. Citizenship and Immigration Services (USCIS) engages in a complex analysis of all of the legal requirements that individuals must meet to qualify for a U/T visa. The U certification only pertains to the very first requirement that the applicant was a victim of and was “helpful” to law enforcement in the investigation or prosecution of a qualifying crime. The element of helpfulness is just one of many other elements that an applicant has the burden of proving in order to receive this type of immigration relief. For example, the applicant must prove that they suffered substantial harm and that they are “admissible” into the U.S. under the Immigration and Nationality Act (INA). The standard for “admissibility” is a very stringent standard in which USCIS conducts “biometrics” (including fingerprints) for each applicant in order to do a background check. The “admissibility” test includes an analysis of all of the applicant’s criminal convictions, as well as any history of substance abuse, involvement in gang activity, past immigration law violations and many other criteria. In providing a U/T certification the certifying city agency is solely attesting to the element of helpfulness and acknowledging that the client was helpful to the agency in the investigation and prosecution of the crime. The city agency is not attesting to the applicant’s overall eligibility for the U/T visa. The agency considering a U certification request should limit itself to the “helpfulness” standard.

It is outside the purview of the city agency to assess an applicant’s eligibility for a U/T visa beyond the helpfulness standard. Furthermore, issuances of U/T certifications should never be tied to a person’s criminal background. USCIS does extensive criminal background checks before approving a U/T visa and applicants are subject to such scrutiny until they are a naturalized U.S. citizen. It is a best practice for city

³ See Subject to Debate: A Newsletter from the Police Executive Research Forum (PERF), Highlights from PERF’s Annual Meeting in Las Vegas, Vol. 31, No. 2 | June–August 2017, page 7 (referring to the San Francisco Police Department): “For example, if a domestic violence victim does not want to testify in court, Sergeant Flores will still certify a U Visa-related request, knowing that this is a common occurrence for this type of crime and that the victim may decide to testify later. Simply filing a police report is enough to be considered “helpful,” because it alerts the department to an abuser.” Available at: http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2017/debate_2017_junaug.pdf

agencies to adhere to the “helpfulness” standard, and not look beyond that standard, when considering a U/T certification request.

Allocation of Resources

All of the above resources, procedures, and trainings require additional funding for city agencies to work on certifications. Therefore, we ask that additional resources be allocated so that city agencies can smoothly and effectively work on U/T visa certifications to help protect New York City’s undocumented immigrant community.

Testimony of

**Shani Adess, Senior Supervising Attorney & Project Director,
Project RISE**

New York Legal Assistance Group

**Oversight: Best Practices for NYC Agencies, Courts, and Law
Enforcement Authorized to Certify Immigration Victims for U and
T Visas**

**Committee on Immigration
Carlos Menchaca, Chair**

New York City Council

September 13, 2017

Thank you for the opportunity to testify before you today regarding the best practices for NYC Agencies, Courts, and Law Enforcement Authorized to Certify Immigrant Victims for U and T visas. My name is Shani Adess, and I am a supervisor in New York Legal Assistance Group's Matrimonial and Family Law Unit ("FLU"). NYLAG provides free legal services to New York's most vulnerable populations in various civil legal matters, including comprehensive direct civil legal services to immigrant survivors of domestic violence, child abuse, child neglect, and trafficking.

My testimony today will focus on focus on the need for 1) written, publicized policies detailing the procedures and processes for requesting certifications from all city agencies, 2) implementing practices that will enable requestors who are denied certifications an opportunity to appeal such denials, and 3) delineating a method to request an expedited review in urgent cases. Training certifiers who are reviewing cases will help to streamline processes, and ensure cases are adjudicated in accordance with the relevant law. Collaboration with local immigrant legal service providers will help ensure that best practices are used when creating these new policies and trainings.

Background on U Visas

Congress recognized, in creating U nonimmigrant status, more commonly referred to as the "U visa," the interest our government has in encouraging law enforcement to engage with immigrant communities, in part to strengthen their ability to investigate and prosecute certain crimes, including domestic and sexual violence. Recognizing the obstacles that existed, and further recognizing the public good that individuals serve when they come forward to report criminal activity, Congress created a pathway to permanent residency for certain crime victims. *See* BIWPA, § 1513(a)(2)(A); New Classification for Victims of Criminal Activity; Eligibility

for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (codified at 8 C.F.R. pt. 103, 212, 214, 248, 274a, and 299).

The U visa serves multiple public interests. First, it has strengthened the ability of law enforcement to investigate and prosecute criminal activity by providing protections to undocumented victims and witnesses who might have otherwise been hesitant to come forward for fear of deportation. This makes individuals, families, and our city more safe, ensuring that perpetrators are identified and prosecuted and not able to continue to cause harm to others, and by providing victims and their families with access to protection and services.

Upon obtaining employment authorization, and eventually permanent status if eligible, a U visa recipient is able to access higher earning jobs, higher education, and public resources if necessary, fostering the ability and safety of them and their families’ stability, and safety, while allowing them to continue to contribute to our community, city, and state.

U Certifications, Best Practices & Current Issues

The U visa remains a relatively new form of relief, created in 2000, with the first U visas issued in 2009. City agencies, law enforcement, District Attorney’s offices and our courts have had to rapidly create procedures to evaluate the consistently increasing number of U certification requests each year. Many agencies, working with legal service advocates, have revised these procedures over time. Still some issues remain. Some of the biggest issues are: the inconsistent policies and practices among agencies, leading to vastly different wait times and, at times, even different results for otherwise similarly situated clients; the lack of public dissemination of information regarding U visa relief and the process to request certification, inhibiting the ability of people who don’t currently have a legal service attorney to obtain certifications and access to relief; and the need for training of certifiers on the guidelines for issuing U certifications.

In order to ensure that all individuals who are eligible are able to request U visa relief, each certifying agency in NYC should have a clear, written policy, regarding the procedure to request a U certification that is publically available and easy to access. Crime victims should be able to obtain information regarding their possible eligibility for U visas, even if they don't currently have an attorney representing them. A pro se individual should be able to navigate each agency's procedures just as a represented individual could, but without written policies in easily accessible locations, this is impossible.

1. Written, Public Procedures

NYLAG has repeatedly seen clients with police reports from nearly two decades ago, ACS cases from a decade ago, and criminal and family court matters just as aged, who were never advised on the proper procedures for U certification. For example, we assisted a survivor of domestic violence who cooperated with the NYPD and District Attorney in 2009. She came to us eight years later for an immigration consultation. Had she applied in 2009 for a U visa, she would be a permanent resident today. Instead, due to long wait lists for U visa applications, she is still awaiting employment authorization. Other clients have come to us who may have been eligible for relief, but we were unable to obtain certifications because their files had been lost or destroyed after so much time, so their cooperation cannot be verified.

Publicizing U visa relief and certification request policies is essential to ensure crime victims are not forced to overcome even more obstacles just to seek the protection this law was meant to provide. Transparency regarding agency policies and practices will also ensure that a qualifying crime victim has the same opportunity to receive a certification

from one agency as another, and will increase access to immigration relief to many eligible New Yorkers.

Each agencies' policies should address: 1) the process for requesting a certification, 2) processing times for certification requests, 3) an appeals process in the case of a denial, 4) a method for which to request expedited review for urgent cases, and 5) a designated person or place to contact if there is an issue with the implementation of these written policies.

For the purposes of oral testimony- I am going to focus on the need for an appeals process, and a method for expedited review

2. Process to Request

Currently, each agency has its own separate procedure for requesting a signed U certification. For example, the NYPD and ACS require a request, by mail and email respectively, with an explanation of eligibility including supporting evidence, while each District Attorney's office follows their own procedure, with greatly different timelines on replies, and the Family Courts have a memorandum on policies for request which was only circulated internally. Local legal service providers collaborate to keep an informal updated list of agencies' certification procedures, but procedures and points of contact change frequently, making it hard to create a formalized version. Further anyone outside this small legal community would find it near impossible to ascertain the differing procedures from one agency to another.

3. Timeline to evaluate cases

Processing times for responses to certification requests vastly differ. Some agencies respond within two weeks. The NYPD has created a policy that they will respond within 45 days. ACS does not set forth a timeline, but currently responses are taking over 6 months. Without an

estimated timeline for review, clients who may be able to seek certifications from multiple agencies are not able determine which agency is their best option to receive a timely certification. Advocates are left waiting, without any information as to the status of the request, for sometimes as long as eight months. Without set timeframes, advocates are unable to follow up on cases with agencies that are outside the normal processing times for review.

The impact of having to wait these extra months is substantial. Only 10,000 principle U visa applications are approved each year. They are evaluated in the order they are received. Once deemed eligible, a person is placed on a waitlist, which is currently 97,746 persons long.

The agencies who issue U certifications are often under-resourced, so expanding the agencies permitted to issue certifications, to include the Department of Education, the Department of Corrections, and the Civil Complaint Review Board, for example, would help ease this burden slightly.

4. Appeals

Each agency should have an appeals process if an initial request for certification is denied. At this time, only one agency, the NYPD, has a method to appeal a denial of a U certification request.

The NYPD established an appeals process in 2016 after speaking with advocates in the legal services community. After this process was established, 48 cases that were previously denied on appeal in 2015 were then approved on appeal. Without an appeals process, there would have been no way to remedy these 48 incorrect denials. That means these 48 people, and countless others who submitted requests at other agencies with no recourse to appeal, would have had to continue living undocumented, despite being likely eligible for a green card one day had they only obtained this certification.

In order for the appeals process to be effective, a clear basis for any denial of a U certification request must be provided to the requestor. This rarely, if ever, happens. For example, the NYPD, while listing a basis for the denial, often just checks a box without any further information regarding what made them determine it should be denied due to negative criminal history of requestor, a troubling basis our colleagues in this field have testified about at length, or that it was a non-qualifying criminal act, or the client wasn't in fact helpful. This overbroad checklist does not provide enough information to determine if an appeal is warranted.

For example, lack of helpfulness is not necessarily a bar to a certification, as both federal guidelines and NYPD policies direct that "reasonable refusal" to be helpful should be taken into account. Other times, after receiving denials for the criminal activity not being a qualifying crime, we have been able to unearth evidence a police report was not been filled out correctly or translated. NYLAG has had a number of clients who clearly wrote in Spanish on the second page of the Domestic Incident Report reports such as "He hit me", "He punched me" "He has threatened to kill me" but as this was not translated to English, it was classified as a "verbal dispute." As attorneys, we were able to assess because we understand how to read DIR's, how to determine if the crime has been classified correctly, and we can understand the difference in the explanations in English versus Spanish. Not everyone has access to the same resources. While the NYPD has done more than many agencies in establishing an appeals process, failure to issue denials that clearly state the basis for the denial is just as troubling as not having an established appeals process at all.

5. Method expedited review

For most requests, a thirty day processing time is reasonable, but for certain cases where there is imminent risk of deportation or an opportunity to be released from

detention and reunified with family, thirty days may be too long to prevent irreparable harm. While many agencies have ad-hoc or informal mechanisms to request expedited review for urgent cases, few agencies have developed a public, clear process to submit these requests.

NYLAG represented a mother of three United States Citizen children, who was a survivor of severe domestic violence at the hands of the father of her children. ACS investigated the violence, and our client cooperated fully. Our client had a final deportation order from decades ago, when she was a minor, and had been reporting to supervision with an immigration officer since being arrested, and then cleared of charges, in 2014. Two months ago, she was told to pack her bags and bring her children with her in October for her next check in, as she would be deported. NYLAG was able to coordinate with ACS to expedite the U certificate request, so that proof of filing would exist before she had to return to immigration enforcement. Without this, she, and perhaps her USC children, would have almost certainly been deported.

Due to the current immigration environment, immigrants are being detained in increasing frequency, and those with prior orders of removal or who have been present for less than two years are at risk of imminent removal. Others, still, may remain in detention unless they can prove to a Judge or ICE that there are positive discretionary reasons for their release, for example, a pathway to lawful permanent residency. A U certification is significant proof of this. At times, we may have only 48 hours to obtain and submit such proof to prevent a deportation of a person who has a right to seek permanent status here, who has suffered in our country and who has bravely come forward to assist law enforcement, who often have developed deep ties in their communities, with family

members and supportive services all here in the United States. Having one person deported who had a right to a U visa, quite simply, is too many for the public good to which they have contributed and the human cost the deportation causes.

6. Training

Often the people reviewing certification requests are not specially trained on the clearly detailed parameters of eligibility, the intent behind the U visa, and their role in the larger process of a person who is seeking immigration relief. This may resolve outstanding questions as to what they are actually certifying: simply that this person was a victim of qualifying criminal activity, and that they cooperated in the investigation *or* prosecution of that criminal activity, and what the certification is used for: simply the aforementioned fact, not the person's good moral character, whether they suffered the substantial harm required by statute. It is within immigration officials' purview to determine whether the person merits a U visa and immigration relief within the United States.¹

Directed trainings, in coordination with advocates from different crime victim and immigrant service agencies in New York City, is the only way to ensure that certification requests are processed in line with legal guidelines, and that all people who are victims of qualifying criminal activity, and who cooperate in the investigation or prosecution of that criminal activity, are able to obtain a certification, petition for a U Visa, and obtain a pathway to employment authorization and permanent status in the United States.

Conclusion

¹ For example, NYPD still refuses to issue a certification if a victim only cooperated with their investigation, but did not continue to cooperate in the criminal prosecution. Especially in cases of domestic violence, trafficking, or child abuse, there are many serious safety concerns that may exist that may serve as an obstacle to continued, active, cooperation in direct eyesight of the perpetrator. This reluctance does not negate their assistance in the investigation of the criminal activity by NYPD, and the statutes and regulations do not require the victim of crime to be helpful in both the investigation and prosecution, but rather requires cooperation in the investigation *OR* prosecution of a crime. INA § 101(a)(15)(U)(i)(III).

With increasingly anti-immigrant policies and statements from our executive branch and federal immigration agencies, immigrant communities are becoming fearful of coming forward and seeking assistance and protection from legal systems. It is even more important now that our local government, city officials, and law enforcement agencies come forward with a clear, affirmative message: that they continue to protect all New Yorkers, regardless of their immigration status.

In doing so, we have a unique opportunity to 1) increase access to protection through the U and T certification process, through community engagement, education, and clearly published written procedures, 2) ensure that each agency has adequate policies in place to evaluate cases in a timely fashion, provide detailed information in the case of any denial that clearly delineates the basis for that denial, implement an appeals process, and have a method for expediting requests in urgent situations, and 3) implement best practices to ensure that our mutual goals for enforcing public safety and providing protection to undocumented immigrant victims of crimes who have cooperated with law enforcement, city agencies, and courts, continue to be met.

Thank you for the opportunity to testify today. We look forward to working with the City Council and the Administration to improve the U and T certification processes in New York City.



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Sophie Dalsimer - Immigration Attorney

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Immigration

Oversight Hearing on

**Best Practices for NYC Agencies, Courts, and Law Enforcement Authorized to
Certify Immigrant Victims for U and T Visas**

September 13, 2017

I. Introduction

My name is Sophie Dalsimer. I am a practicing immigration attorney at Brooklyn Defender Services (BDS) on the New York Immigrant Family Unity Project (NYIFUP) team. BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for 40,000 clients in Brooklyn every year.

I thank the City Council for the opportunity to testify about the NYPD U Visa certification process. I have chosen to focus my remarks on NYPD policy surrounding U visa certification because that is the city agency from which BDS most frequently requests certification.

Since our immigration practice began more than eight years ago, BDS has counseled, advised or represented more than 7,500 immigrant clients. In 2016 alone, we handled more than 1500 immigration matters across a full spectrum of services. We defend

detained clients facing deportation, clients identified through our criminal and family defense dockets, and clients referred from our community partners or who connected with us through community outreach clinics.

New York City can and should do more to protect our immigrant community members from increasing immigration enforcement efforts at the federal level. Many of our clients have been victims of crimes and are eligible for U visas. Yet despite recent changes to the NYPD process for certification of U visas, the NYPD continues to delay decisions in certification and to deny certification because of a client's criminal history. In short, these policies harm immigrant New Yorkers and their families and communities and should be reformed.

II. Client Stories

The following stories illustrate the critical need for timely processing of U Visa certifications by the NYPD, regardless of a person's criminal history. The names are pseudonyms to protect the identity of our clients.

Ms. Archer

Ms. Archer is a 45-year-old mother from Jamaica raising two daughters in the Canarsie neighborhood of Brooklyn. In the early 2000s, Ms. Archer lived with a partner who repeatedly physically and emotionally abused her. Ms. Archer endured this abuse without realizing that she could seek help from law enforcement. Her abuser threatened her that if she went to the police, she would be deported. It was not until Ms. Archer finally confided in a close friend that she came to understand that she could seek help from law enforcement without fear of deportation and separation from her young children. The next time her partner became violent, Ms. Archer ran out of the home with her daughter and went straight to her local precinct. She provided a full report to police who noted Ms. Archer's physical injuries. The fear of law enforcement was enough to cause her abuser to flee and he was never apprehended although Ms. Archer continued to inform police every time he attempted to make contact with her. Eventually, Ms. Archer learned that her abuser was back in Jamaica and retaliating against her family there, including burning down her sister's home. He threatened to kill Ms. Archer if she ever returned to Jamaica. As a single mother and survivor of a domestic violence who is also illiterate, Ms. Archer struggled to provide for her family. She made the mistake of engaging in shoplifting and was arrested on four occasions, leading to two convictions and two disorderly conduct violations. Ms. Archer deeply regrets her actions.

In late September 2016, NYIFUP requested U Visa certification from the NYPD on behalf of Ms. Archer, who was detained. The request was denied in December 2016, citing "significant criminal history" as the basis for denial. An appeal was filed in

February 2017 with additional supporting documentation. The appeal was denied in late May 2017, this time referencing “extensive criminal history.”

Ultimately, Ms. Archer won relief from removal based on the threats from her former abusive partner who currently resides in Jamaica. She is now home with her daughters in Brooklyn and is for the first time connected with a literacy program and counseling for domestic violence survivors. Winning her immigration case provides her with protection from deportation and a work permit, but no permanent status like that which she might have obtained through a U visa.

Mr. Hernandez

Mr. Hernandez fled violence in his native El Salvador and came to the U.S. at age 16. In 2011, he was brutally assaulted outside a restaurant in East Elmhurst, Queens. His attackers beat him with a steel bat. He woke up in the hospital after undergoing emergency surgery to relieve pressure from blood clotting around his brain. While hospitalized he received occupational and physical therapy, wore a protective helmet and had another surgery to replace fractured bone in his skull with a metal plate.

Mr. Hernandez cooperated with law enforcement following his assault by speaking with NYPD detectives, viewing photo arrays of suspects, and riding along with officers in an effort to identify the assailants. Following his assault, Mr. Hernandez also developed epilepsy and experienced chronic pain and cognitive decline. He described no longer feeling like the same person, becoming slower and easily confused.

It was during this time period that Mr. Hernandez was arrested twice and convicted of possession of stolen property and unauthorized use of a vehicle, both non-violent misdemeanor offenses. He has little recollection of the circumstances that led to his arrests. Mr. Hernandez was transferred from criminal custody to immigration custody and met his NYIFUP attorney in August 2016.

After gathering relevant records, NYIFUP filed a request for U certification with NYPD on behalf of Mr. Hernandez in mid-October 2016. In late December 2016, NYPD denied Mr. Hernandez’s request citing “extensive criminal history” as the basis for the denial. An appeal was filed in late January 2017. A decision on the appeal was not reached until late July 2017, over 6 months later, when NYPD agreed to certify a U visa for Mr. Hernandez.

Mr. Hernandez remains detained and is fighting removal to El Salvador where he fears he will die without access to his anti-seizure medications.

III. Expediting NYPD Responses for Detained Immigrants

In 2016 the NYPD adopted new regulations on “Requesting Certifications for U Nonimmigrant Status (U Certification). These regulations require NYPD to respond to requests for certification within 45 days and respond to appeals to certification decisions within 90 days.

Prior to the passage of this rule, we often would go months and months without receiving a response from NYPD about our requests for certification. This created a great deal of uncertainty in the process for all parties involved, including the courts, judges, attorneys and immigrants. Since the passage of the rule, we have seen NYPD comply with the initial request for certification in a timely manner, but our appeals linger for months before a response.

Expedited responses are particularly critical for our clients detained by Immigration and Customs Enforcement (ICE). Immigration detainees generally appear before an immigration judge every 6-8 weeks. Judges expect to hear regular updates from attorneys about the status of the client’s case. The court process will run much more efficiently if we can inform judges that we have requested a U visa certification and that the NYPD will respond within a specific time period. Additionally, judges are likely to release a detainee on bond once they receive a U visa certification from a law enforcement agency. The Department can play an important role in limiting unnecessary and harmful detention by responding promptly to requests for certification and appeals from detained immigrants, in particular.

Recommendations:

- a. *NYPD should create a streamlined process for immigration detainees that would allow their cases to take priority over other person’s requesting certification.*

Petitioners to the Department should submit in their letter requesting certification whether they are (a) a detained immigrant in removal proceedings, (b) a non-detained immigrant in removal proceedings, or (c) a person making an affirmative application to U.S. Citizenship and Immigration Services (USCIS) (i.e. a person not currently facing deportation). This would allow the Department to allocate resources in the most efficient manner possible.

- b. *NYPD should provide on its website a contact phone number and email address for a point person at the Department on this issue.*

This lack of information makes it nearly impossible for attorneys and immigration court personnel to inquire about the status of an immigrant’s u-visa request for certification. As noted above, this would be enormously helpful to backlogged immigration courts (who could schedule court dates for after the date when the NYPD expects to respond to the request) and

immigrants themselves who are making difficult decisions about whether or not to continue fighting deportation.

Reasons for Denials

While the NYPD now issues denial letters with a checkbox for reasons for denials, we still have little to no information about why our clients are being denied U visas.

In both Ms. Archer and Mr. Hernandez's cases, we were given no further indication in either the initial denial or the appeal as to why their specific criminal history warranted a denial. In order to successfully advocate on behalf of our clients, we need the NYPD to articulate whether it was the gravity of the convictions, the quantity of convictions, the recentness of conviction, or the level of assistance that the petitioner provided in the case in which they assisted the NYPD.

Recommendation:

- c. NYPD should not deny U visa certifications based on a person's criminal history.*

It is more appropriate and efficient to allow the Department of Homeland Security to determine when denial of a U visa is appropriate based on the applicant's criminal record, rather than refusing to issue law enforcement certifications due to criminal convictions.

The instructions for the law enforcement certification (Form I-918, Supplement B) state: "You should use Form I-918, Supplement B, to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that activity." The law enforcement certification form does not request information concerning the applicant's criminal record, and the instructions do not request that the certifying agency consider the applicant's criminal record when determining whether to issue a certification.

This is likely because a U visa applicant's criminal record, if one exists, will always be carefully scrutinized by the Department of Homeland Security, U.S. Citizenship and Immigration Services, before a decision is made about whether to grant a U visa. As part of the U visa application, the applicant is required to disclose all arrests and submit documentation proving the outcome of each arrest. U visa applications are routinely denied due to the applicants' failure to submit all required criminal documentation, or due to the nature and/or extent of the applicant's criminal record.

For these reasons, we encourage the Council to urge the NYPD not to deny certification requests based on the applicant's criminal record.

Conclusion

The legacy of broken windows policing is that low-income people of color in certain New York City neighborhoods are disproportionately targeted by police for arrest for conduct that would not result in criminal convictions for others. Frustratingly, our clients who are victims and who worked with law enforcement to report and investigate crimes are being denied U Visas because of their criminal histories. At the same time that the Council is funding NYIFUP to defend detained people facing deportation, the NYPD is effectively precluding people with even minimal criminal records from even applying for this critical form of relief with the Department of Homeland Security.

We call upon the City Council to work with immigrant communities, service providers and other stakeholders to urge the NYPD to change this policy so that New Yorkers who are the victims of crime can apply for the U visas for which they are eligible under federal law.

If you have any questions about my testimony, please feel free to reach out to me at 718-254-0700 ext. 315 or sdalsimer@bds.org.

New York Chapter
American Immigration Lawyers Association



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**Written Testimony of the New York Chapter of the American Immigration Lawyers Association (AILA) Before the New York City Council, Committee on Immigration
“OVERSIGHT – BEST PRACTICES FOR NYC AGENCIES, COURTS, AND LAW ENFORCEMENT AUTHORIZED TO CERTIFY IMMIGRANT VICTIMS FOR U AND T VISAS”
September 13, 2017**

The American Immigration Lawyer’s Association, the national association of immigration attorneys, was established in New York City in 1946 to, amongst other goals, promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. Our approximately 1,625 members in New York City represent the great majority of attorneys practicing immigration law. We have drawn upon their expertise in drafting this testimony.

We thank City Council for holding today’s hearing to examine best practices for New York City law enforcement agencies to certify immigrant victims to apply for U and T nonimmigrant status (“also known as U and T visas”) with federal immigration authorities.

U Nonimmigrant status and T Nonimmigrant Status were created by federal authorities with two equally important purposes: first, to strengthen the ability of law enforcement to detect, investigate, and prosecute cases of domestic violence, sexual assault, felonious assault, human trafficking and other serious criminal activities, and second, to protect immigrant victims of such

criminal activities.¹ In creating these immigration remedies, federal lawmakers recognized that a victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of crimes, and that victims who fear deportation are unlikely to participate or cooperate in investigative efforts. U and T Nonimmigrant status work to dismantle that fear of deportation and encourage victims to report crime and participate in the various stages of investigation and prosecution. In effect, these forms of immigration relief serve to foster increased trust between law enforcement agencies and the immigrant population they serve.²

To ease victim's fears of deportation, both U and T nonimmigrant status provide a noncitizen and certain of their family members, including their spouses and children under 21, parents and siblings,³ the ability to safely remain in the United States and obtain work authorization. And although, because there are relatively few U and T visas issued every year,⁴ U and T applicants may be waiting for years for adjudication of their application,⁵ the mere filing of a U or T application may serve as the basis for a noncitizen to request release from immigration detention,⁶ a continuance of removal proceedings,⁷ and, in New York State, it will even allow a victim to obtain access to publicly-funded healthcare.⁸

¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007) (citing Battered Immigrant Women Protection Act (BIWPA) § 1513(a)(2)(A)).

² Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a) (OCT. 28, 2000).

³ See INA 101(a)(15)(U)(ii) and INA 101(a)(15)(T)(ii).

⁴ The law provides for a maximum of 10,000 U and 5,000 T visas to be issued per year. See INA 214(o)(2) and 214(p)(2).

⁵ Current processing times for both types of application *available at*: <https://egov.uscis.gov/cris/processTimesDisplayInit.do;jsessionid=bacXD1OC9RCyFagQNRyeu> (last visited 09/12/2017)

⁶ See David J. Venturella, acting Director, memorandum: "Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants" U.S. Immigration and Customs Enforcement, September 24, 2009. See also Peter S. Vincent memorandum: "Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or With Final Orders of Deportation or Removal", September 25, 2009.

⁷ Id. See also *Matter of Sanchez Sosa*, et al., 25 I&N Dec. 807 (BIA 2012).

⁸ See NYC Guide to Health Insurance for Immigrants, *available at*: <https://www1.nyc.gov/assets/ochia/downloads/pdf/guide-to-health-insurance-for-immigrants.pdf> (last visited 09/12/2017)

In addition, unlike other temporary forms of immigration status, U and T nonimmigrant status grants applicants a potential path to U.S. citizenship. After accruing at least 3 years in U or T nonimmigrant status, or after the end of an investigation into trafficking, a U or T nonimmigrant may apply for Lawful Permanent Residence in the United States, and after 5 years of residence, apply for U.S. citizenship.

Both U and T applications require noncitizen applicants to establish that they were victims of either one of the approximately 29 U qualifying crimes⁹ or of a severe form of trafficking.¹⁰ In addition, T applicants must establish that they have complied with any reasonable request for assistance in the Federal, State or local investigation of acts of trafficking or in the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime.¹¹ T applicants **may** submit a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons with their application to demonstrate both of these elements, but may rely on alternate evidence.¹²

U applicants must instead establish to Federal immigration officials that they have been, are being, or are likely to be helpful to a Federal, State, or local law enforcement official, prosecutor, judge or local authorities investigating or prosecuting qualifying criminal activity.¹³ To that end, U applicants **must** submit a Form I-918 U Nonimmigrant Status Certification signed

⁹ Qualifying crimes are defined at INA 101(a)(15)(U): the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; 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 (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

¹⁰ The applicable definition of trafficking is that found in as defined in section 103 of the Trafficking Victims Protection Act of 2000.

¹¹ See INA 101(a)(15)(T)(i)(II)(aa)

¹² Available at: <https://www.uscis.gov/i-914>

¹³ INA 101(a)(15)(U)

by either a judge, the head of the law enforcement agency with which they cooperated, or a person specifically designated by the head of that agency, with their application to establish their helpfulness to law enforcement.¹⁴ An application for U nonimmigrant status submitted without a U certification will be either rejected or denied.

In signing certifications for U or T nonimmigrant status, law enforcement officials, judges or prosecutors do not confer any immigration status upon the victim; they only enable the victim to meet one of the eligibility requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Ultimately, the certification is a necessary, but partial portion of the application submitted to Federal immigration officials. Only the Department of Homeland Security has the discretion to grant or deny U visa status to the victim.

In determining whether to sign a U certification, law enforcement must believe that a victim was, is, or will be "helpful." For these purposes helpfulness means that the victim has been, is, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim, and that, since the initiation of cooperation, the victim has not **unreasonably refused** to cooperate or failed to provide information and assistance **reasonable requested** by law enforcement or prosecution in connection with a criminal investigation or prosecution.¹⁵ The victim's "helpfulness" may be past, current, or expected in recognition that Congress intended that a victim be able to apply for status at different stages of an investigation or prosecution.¹⁶ Law enforcement officials may therefore complete U visa

¹⁴ See INA 101(a)((15)(U)(i)(III)

¹⁵ 8 C.F.R.214.14(b)(3)

¹⁶ 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

certifications once they are able to assess a victim's helpfulness, and don't have to wait to the completion of an investigation or prosecution prior to signing a certification.

In addition, the definition of "investigation or prosecution" in the statute is interpreted broadly, and may include calling the police, seeking a protection order, or reporting abuse to a child protection hotline or writing a victim impact statement.¹⁷

Importantly, the law recognizes that in some cases it may be unsafe for a victim to fully cooperate with a law enforcement investigation or the prosecution of a perpetrator and allows for the victim to nevertheless be deemed helpful. For example, in cases in which a victim is too traumatized to cooperate or faces threats of retaliation, the law allows for victims to stop cooperating, and as long as their decision to stop cooperation is reasonable, the victim will still be eligible to obtain U certification and U nonimmigrant status.

Best practices in issuances of U Nonimmigrant Status Certifications allow for case-by-case adjudication of requests that takes into consideration the circumstances, including barriers to continued cooperation, faced by individual victims. If a victim has been helpful in detection or investigation of criminal activity, certifying agencies can and should issue a U visa certification even if the victim later found it too difficult to continue cooperating.

In New York City, U certifiers include local agencies as disparate as the Human Rights Commission, the Administration for Children's Services, and Corporation Counsel, and yet there exist possible certifiers, like the Civilian Complaint Review Board, and the Department of Corrections, that investigate qualifying crimes but do not currently have a policy or practice of issuing either U or T certifications. We would recommend that the City create a list of all

¹⁷ 72 Fed. Reg. 53,020; 8 C.F.R. § 214.14(a) (5).

possible certifiers, and encourage their issuance of publicly available certification policies. This would maximize New Yorker's access to these valuable forms of immigration relief.

In addition, in light of the value of a certification, all certifiers should create a process to make it possible for applicants for certification to appeal a denial of certification. Lastly, all certifiers should have designated signatories for both U and T certifications, trained and well-resourced staff in charge of the internal process of certification, and most importantly, any and all U and T certification policies should be flexible and err towards issuance and giving the noncitizen victim the opportunity to seek immigration relief before federal authorities.

Thank you.



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**Written Testimony of Sanctuary for Families (SFF) Before the New York City Council,
Committee on Immigration**

**"OVERSIGHT – BEST PRACTICES FOR NYC AGENCIES, COURTS, AND LAW ENFORCEMENT
AUTHORIZED TO CERTIFY IMMIGRANT VICTIMS FOR U AND T VISAS"**

September 13, 2017

Sanctuary for Families is the nation's largest immigration legal practice for domestic violence and trafficking victims. Since being established in 1984, we have served to educate and advocate on behalf of survivors of these and other types of gender-based violence. Over the last decade, we have been instrumental in working with City agencies and the Courts to create and standardize the issuance of U and T nonimmigrant status certifications. The availability of and accessibility to these certifications is of the utmost importance to our clients, as, on average, we file over 400 applications for U and T nonimmigrant status per year with federal authorities.

We thank City Council for holding this hearing today to examine best practices for New York City agencies, courts, and law enforcement to certify immigrant victims to apply for U and T Nonimmigrant status (also known as U and T visas) with federal immigration authorities. Grants of U and T Nonimmigrant Status serve to strengthen the ability of law enforcement to detect, investigate, and prosecute cases of domestic violence, sexual assault, incest, felonious assault, human trafficking and other serious criminal activities, as well as to protect immigrant victims of these criminal activities. In creating these immigration remedies, federal lawmakers recognized that a victim's cooperation, assistance, and safety are central to law enforcement's



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ability to detect, investigate and prosecute these hidden crimes, as victims who fear deportation are unlikely to participate or cooperate in investigative efforts.

U and T Nonimmigrant status were created with the express purpose of alleviating immigrant victim's fear of deportation and encouraging victims to report crime and participate in the various stages of investigation and prosecution. These forms of immigration relief were, in effect, expressly created to engender trust and cooperation between law enforcement agencies and the communities they serve.

Applicants for U and T nonimmigrant status must submit a complex application to federal immigration authorities, prove a number of legal elements, and submit to extensive background checks by the U.S. Department of Homeland Security to be granted relief. Amongst the facts they must establish are that they have been victims of either one of the approximately 29 U qualifying crimes or of a severe form of trafficking and that they have cooperated with law enforcement in relation to the investigation of that crime. But while T nonimmigrants can either submit a law enforcement certification to establish their cooperation or rely on alternate evidence to do so, U applicants must include a U nonimmigrant status certification signed by either a judge or a law enforcement agency or prosecutor with their application. Failure to do so will result in the rejection or denial of their application without any examination of its merits.

This is why it is of the utmost importance that all law enforcement certifiers in New York City be identified and encouraged to adopt clear U and T certification policies and protocols. Agencies like the Department of Corrections, the Civilian Complaint Review Board, the Department of Education and the New York City Department of Probation, which investigate qualifying criminal activity, but do not have protocols for certification, should be empowered to



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issue U and T certifications to victims that assist these agencies in keeping our City and its communities safe.

It is of utmost importance that these certification policies and protocols are generous and transparent. If we are serious about fighting crime and protecting all communities in our City, every possible measure should be taken to encourage the reporting of crime, and, in immigrant communities, this necessarily means ensuring that victims and witnesses can rely on being protected-to every possible degree- from deportation. Any New Yorker who has been helpful to a City Agency in the investigation of a qualifying crime should be able to easily-and promptly-obtain a signed certification.

By issuing U or T certifications law enforcement agencies confirm that the applicant was a victim of crime and was cooperative in their investigation or prosecution of such crime. The signing of a U or T nonimmigrant status certification in no way confers any immigration status on an applicant. The City must therefore eliminate existing policies that needlessly limit access to certifications, like those denying issuance of a U certification because of past contact with criminal authorities. Policies like this serve little purpose other than to prevent eligible New Yorkers from accessing immigration relief. Recently, a Sanctuary client, a victim of severe sex trafficking and other serious crimes, including domestic violence, who had cooperated extensively with authorities in the investigation of a violent assault, requested U certification from the New York City Police Department. The Agency denied her certification request based on her suspected "past criminal activity." Our client had no past criminal convictions, but despite efforts to receive more clarification about the denial, we received no response.



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Our client should not have been denied a certification even if she had prior criminal convictions, and this unsettling outcome has only served to increase our client's vulnerability to further exploitation because of her continued lack of status. The certification process requires law enforcement only to verify victimization and cooperation. Incorporating additional requirements serves no good purpose and fails to recognize both the complexity of a victim's life, and an individual's ability to be rehabilitated from past criminal conduct.

Many of our clients, victims of domestic violence or human trafficking that we represent in successful immigration applications, have criminal arrest or conviction records that are directly related to their very victimization. It is common for trafficked persons to have prostitution arrests or convictions. Some of our clients have faced retaliatory charges, others have defended themselves against vicious attacks on their lives and hurt their abusers in the process, and then again, others have made past mistakes and later turned their lives around. Refusing these victims certification based on past suspected or proven criminal conduct fails to acknowledge those realities.

In their immigration applications our clients have to prove to the Department of Homeland Security why they should be granted relief and be afforded the opportunity to remain in the United States. That is the role reserved to Federal immigration authorities, which have access to each applicant's full criminal history along with her history of victimization and so are best equipped to make that decision. Law enforcement agencies in New York City should take all possible steps to ensure that victims are able to access to U and T certifications and so the possibility of gaining access to U and T Nonimmigrant Status.



Thank you.

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PUBLIC TESTIMONY

ON:

BEST PRACTICES FOR NYC AGENCIES, COURTS, AND LAW ENFORCEMENT AUTHORIZED
TO CERTIFY IMMIGRANT VICTIMS FOR U AND T VISAS

PRESENTED BEFORE:

THE COMMITTEE ON IMMIGRATION

PRESENTED BY:

ALINE GUE,

COMMUNITY DEVELOPMENT PROJECT

URBAN JUSTICE CENTER

Good morning, my name is Aline Gue and I am the Immigrants' Rights Paralegal at the Urban Justice Center's Community Development Project ("CDP"). CDP's mission is to strengthen the impact of grassroots organizations in New York City's low-income and other excluded communities. At any given time, our seven practice areas – Workers' Rights, Tenant's Rights, Immigrants' Rights, Consumer Justice, Research and Policy, Capacity Building, and Equitable Neighborhoods – work in close collaboration with 60 – 70 grassroots partners across the City. All of our practice areas dedicate significant resources to working with immigrant New Yorkers.

CDP appreciates the Committee providing this opportunity to share our reflections on best practices for U and T Visa certifying agencies. In light of the Trump administration's unprecedented expansion of enforcement and removal priorities, and the recent announcement to rescind Deferred Action for Childhood Arrivals, it is crucial to broaden the accessibility of existing immigration remedies by eliminating any unnecessary barriers to U and T Visa eligibility. My testimony today will focus on the need to protect immigrant tenants and workers victimized by abusive and exploitative landlords and employers.

Since the November 2016 presidential election, our Tenants' Rights and Workers' Rights units have seen a noticeable increase in the number of reports of immigrant tenants and workers experiencing abuse and exploitation at the hands of their landlords and employers. In the current political environment, unscrupulous landlords and employers are all too aware that a threat to call immigration authorities can be an effective tool in silencing an undocumented tenant or worker who seeks to assert their rights.

We applaud the New York City Commission on Human Rights for its leadership as the first anti-discrimination agency in a major U.S. city to provide U visa certifications to immigrant crime victims. One of very first batch of U visa certifications issued by the Commission was awarded to our client "Sophie" and a group of undocumented tenants in her rent-stabilized apartment building. In Sophie's case, her landlord hired agents to visit Sophie's home on a near-daily basis in an effort to intimidate her into accepting an unfair buy-out agreement with a purchase price well-below the apartment's true value. When Sophie refused to leave, the landlord hired a security firm whose agents threatened Sophie with deportation and possible arrest. At the same time, the landlord undertook renovations designed to make the building nearly uninhabitable, leaving Sophie and her neighbors without access to gas or hot water for weeks. With the help of our lawyers, Sophie and her neighbors bravely reported their landlord's actions to the NYC Commission on Human Rights. Soon after, staff from the Commission interviewed these tenants, showing great sensitivity to the traumatic impact that the landlord's actions had upon members of the group. The Commission was quick to issue U visa certifications to Sophie and her neighbors and all have since submitted U visa applications to USCIS. This is just one example of the critical role that the NYC Commission on Human Rights is playing in encouraging immigrant crime victims to come out of the shadows.

We believe the NYC Housing Preservation and Development, the Division of Housing and Community Renewal's Tenant Protection Unit, the Department of Health and Mental Hygiene and the Department of Buildings' Environmental Control Board are well-poised to certify in cases like Sophie's. These agencies investigate tactics that are often used by abusive landlords

including deliberate exposure to lead dust during construction, fraud, and stalking by building management staff.

At the State level, we would also be pleased to see the Attorney General's Office issue U visa certifications to qualifying crime victims to the greatest extent permitted by law. Because of its role in addressing violations of minimum wage, overtime and other basic labor laws critical to protecting low-wage immigrant workers, the AG's Office is extremely well-positioned to assist immigrant victims of workplace abuse and exploitation.

Lastly, we believe that public education efforts around tenant harassment and workplace crimes are critical to encouraging immigrant crime victims to come forward and seek the protection of law enforcement. We commend the Mayor's Office and the Commission on Human Rights for the success of their "You Have Rights" anti-discrimination campaign and hope that similar efforts will continue.

In our limited time here today, we have focused on issues relating to U visa certifications, however we wish to note the significant challenges that immigrant victims and survivors of human trafficking face when seeking T visa certifications from law enforcement at all levels of government. Chief among these challenges is a lack of knowledge among law enforcement about human trafficking and the T visa program. At any given time, our office represents a dozen or more survivors of human trafficking, many who choose to apply for T visa relief. In the vast majority of these cases, our clients are unable to obtain T visa certifications, despite having made good faith efforts to report their trafficking to law enforcement. We would welcome the Council's leadership in raising awareness among relevant City agencies about human trafficking, the T visa program and the ways in which certification benefits both individual survivors as well as the efforts of law enforcement.

Thank you for the opportunity to testify today.



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**NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION**

**OVERSIGHT – BEST PRACTICES FOR NYC AGENCIES, COURTS, AND LAW
ENFORCEMENT AUTHORIZED TO CERTIFY IMMIGRANT VICTIMS FOR U
AND T VISAS**

**TESTIMONY BY MARYANN THARAPPEL, ESQ.
SPECIAL PROJECTS DIRECTOR, IMMIGRANT AND REFUGEE SERVICES,
CATHOLIC CHARITIES COMMUNITY SERVICES,
ARCHDIOCESE OF NEW YORK**

SEPTEMBER 13, 2017

I. INTRODUCTION

Honorable Chairperson and committee members, my name is Maryann Tharappel and I am the Special Projects Director at the Immigrant and Refugee Services of Catholic Charities Community Services, Archdiocese of New York. For more than four decades, Catholic Charities Community Services (CCCS/Catholic Charities) has been committed to welcoming New York's immigrants—be they families seeking to reunify, children, refugees, the undocumented, or workers. This commitment is rooted in respect for the human dignity of each person and for the value he or she brings to our communities of work, of family, and of faith. We are honored to testify at today's hearing - alongside immigrant and refugee advocates and colleagues from other non-profits, coalitions, and city agencies – and before the New York City Committee on Immigration, whose commitment to preserving and protecting the rights of all New Yorkers, regardless of immigration status, we applaud. We thank you for inviting all of us here today.

II. THE WORK OF CATHOLIC CHARITIES

Catholic Charities serves all individuals in need, Catholic or non-Catholic, who reside in all five New York City boroughs and seven counties of the Lower Hudson Valley. Our strength is that our work is broad, diverse, and focused on responding to individual crises as well as addressing core needs that may lead to crises. Catholic Charities provides a comprehensive range of professional human services to immigrants, including: eviction prevention; case management to help people access benefits and resolve financial and family issues; emergency food; specialized assistance for the blind and visually impaired; after-school, drop-out prevention and employment programs for low-income, at-risk and/or court-involved youth; sports and recreational programs for children and youth; and

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supportive housing programs for adults with mental illness. Our services are provided in our community centers, parishes, regional offices, NYC public schools, NYCHA housing developments, HRA offices, and partnering community-based agencies. Each year, CCCS works with thousands of households to manage crises and to help families achieve long term stability in immigration status, income, housing, and nutrition. The issues our clients face are often multi-faceted and complex, and it frequently takes the cooperation of several agencies to arrive at lasting solutions.

Catholic Charities' Immigrant and Refugee Services responds to the needs of thousands of immigrants and refugees each year, through services in five principal areas: immigration legal services, unaccompanied minors programming, English as a Second Language (ESL/ESOL) and cultural learning at our International Center, refugee resettlement services, and general informational and referral services through the New York State New Americans Hotline and the National Children's Call Center, which, together, responded to over 50,000 calls for information during the last fiscal year.

III. THE U VISA CERTIFICATION PROCESS

In its role as legal advocate for New Yorkers, Catholic Charities has the opportunity to apply for U visas for hundreds of people each year. While we are one of many organizations that does this type of work, we are one of few that processes these applications on behalf of victims of crime who are not victims of domestic violence, and thus have a unique perspective on the experience of crime victims outside the domestic violence sphere. We request U visa certification from law enforcement and other agencies across the country, and will testify today to our experience with New York City Agencies.

As we have experience working with crime victims at every stage of the U visa process, we often come in contact with individuals within days of their victimization. We commend the New York Police Department (NYPD), the Administration for Children's Services (ACS), and other City Agencies for their commitment to the support of immigrant crime victims and for encouraging them to seek legal assistance from qualified non-profits.

As you all know, when a noncitizen is the victim of a certain crime and is cooperative with the investigation of that crime, s/he may be eligible for a U nonimmigrant visa. Crimes that qualify for U visas include rape, torture, trafficking, incest, stalking, domestic violence, sexual assault, abusive sexual contact, prostitution, extortion and sexual exploitation, among others. The list of qualifying crimes is not exclusive and includes similar criminal activity depending on the jurisdiction. One central requirement in the application for a U visa is the "Certification" from law enforcement or investigative agency that the victim is cooperating in the investigation and/or prosecution of the crime—a necessary component to a larger application packet. This Certification must be executed on a standard US Citizenship and Immigration Services ("USCIS") form, named "I-918 Supplement

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B.” Currently, the ACS, the NYPD, the City Law Department, HRA’s Adult Protective Services, and the NYC Commission on Human Rights certify cooperation in these investigations. When a request to the certifying agency is made, the agency conducts an internal review of the matter to decide whether the victim has been cooperative and whether to sign the certification.

Each agency has a different procedure for how to accept requests for certification. Often, an agency has one individual who collects the requests and specifies what information must accompany the request. Sometimes, the agency asks that the request be accompanied by a draft of the I-918 Supplement B, while others wish to draft the forms entirely themselves. Some agencies require a significant amount of supplemental evidence when making the request; others wish only to have identifying information included.

Once the agency has collected the required information and has reviewed internal files, it makes a decision on the request for certification. The decision is sometimes made very quickly (within days), but other times it takes several months to complete. In cases in which the agency has declined to issue the Certification, a denial letter sometimes explains the reasons for the refusal, but not always. If a request is refused, the agency usually offers an appeal process to provide the victim with a chance to address the reasons for the denial. If the agency agrees to issue the Certification, the victim and their advocates must file the entire application for U nonimmigrant status with USCIS within 180 days of the signature on the Certificate. If the Certificate is older than 6 months, a new one must be obtained. Issuance of U visas is statutorily limited to 10,000 per fiscal year, and USCIS currently has a backlog of several times that number of properly filed applications. Unfortunately, what this means is that a U visa application that is properly filed today will go to the end of the backlog, and a visa may not be available until 2024.

IV. RECOMMENDATIONS

Earlier this year, an attorney at Catholic Charities was able to receive a U visa Certification from the New York County District Attorney’s Office in just a few days. Their immediate response to our request enabled us to halt the deportation of a man who has lived in New York City since 1993, is married to a U.S. Citizen, and is the proud father of a young woman who is graduating with a nursing degree next year. Because the Manhattan District Attorney’s Office has a single point of contact for collecting requests for U visa Certification and a streamlined process for deciding whether to certify, we were able to promptly obtain the Certification and present it to Immigration and Customs Enforcement (ICE) just days before they were to deport our client.

In this case, having a streamlined, accessible and responsive U visa certification process made the difference between immediate deportation – probably preceded by detention – and a path to achieving legal status through a U visa application. We encourage all City agencies to build a process

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that mirrors this: offering a single point of contact, a streamlined process with well-publicized requirements, and the capacity to consider both appeals and requests to expedite. We know that not all requests for U visa Certification will be as dramatic as this one, but an easy to follow and uniform procedure will benefit immigrant victims, their advocates and certifying city agencies.

The City of New York, with its commitment to the immigrant community, is without question the national leader in providing assistance to immigrant victims of crime. We thank all City agencies for their transparency and their approachability. Today, we would like to offer several specific suggestions as to how City agencies can improve their response to the unique needs of immigrant crime victims.

1. **NYPD must consider Certifications when District Attorney's Offices refuse to.** In our experience, the NYPD has refused to issue Certifications in cases in which an arrest has been sent to the District Attorney's office. Recently, District Attorney's Offices have been refusing to issue Certifications in cases that have been sealed after conviction. In such cases where the victims cooperated in the investigation, we request that the NYPD revisit their policy of refusing to issue Certifications. Would NYPD consider accepting these requests on a case-by-case basis, and accompanied with letters from the District Attorney's Office indicating their reason for not certifying?
2. **Certifying agencies must publish an identifiable point of contact and a streamlined certification process that provides for expedited requests and appeals.** As mentioned before, the procedures for requesting U visa Certification vary widely from agency to agency. Often, we are aware of who the "Certifying Official" at an agency is, but that individual is not the person who collects requests. City agencies that issue U visa Certifications must designate a single point of public contact to collect requests. Contact information should be publicly available on agency websites.

It would also be very helpful for advocates to understand each agency's certification process and requirements for initial certification requests, file requests (for example, from ACS), expedited requests (such as the one described above for a client about to be deported), and appeals process.

ACS has long been a partner to Catholic Charities and other agencies that work with victims of crime. We thank them for their constant help in these cases. In order to further this cooperation, the process for advocates and attorneys to obtain files on behalf of clients with active ACS investigations should be simplified and there should be a way to expedite certain requests. ACS records are crucial evidence in the U visa process, but sometimes it takes months to obtain these records.

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A clear appeals process is also important. For example, in one instance, the NYPD denied our initial request for a Certification, citing the victim's "significant criminal history." We followed the designated appeal process and discovered that this individual's "significant criminal history" was an outstanding summons that he was unaware of. The issue was straightened out and the NYPD issued the U visa Certification. It is important, therefore, that each certifying city agency lays out all of its certification procedures clearly and comprehensively.

Finally, there should be a regularly updated, central repository with information about each city agency's certification process.

- 3. Certifying agencies must complete the I-918 Supplement B Form in its entirety.** In February 2017, USCIS updated their I-918 Supplement B Form. On page 1, question 7, of that form, it asks about the status of the case investigated and asks whether the case is "Ongoing, Completed, or 'Other'." In our experience, NYPD does not answer that question. In previous conversation with NYPD, they have indicated that USCIS has informed them that they need not answer that question, but we would request that NYPD do their best to answer every question on the form to avoid problems in the future. As cases filed now will not be adjudicated for several years, a policy now in place may well be forgotten by the time these cases are adjudicated.

V. CONCLUSION

In this national climate of fear, we imagine that the NYPD and other certifying agencies have seen a downturn in numbers of reports of criminal activity from noncitizens. We would like to encourage those agencies to continue to publicize their commitment not to collect and not to forward to Federal Law Enforcement information about the immigration status of crime victims and witnesses. We know that noncitizens are more hesitant than ever to report crimes, or to have any involvement with law enforcement of any kind. As an advocacy organization, our promise that victims can report without fear of their information being passed along to Federal Law Enforcement only goes so far to reassure the community. We believe that hearing this same commitment from local law enforcement can go far to encourage reporting by victims in need of assistance.

In closing, we thank the New York City Council for always looking for ways to improve services for the immigrant community and for its vision, leadership, and commitment to protect all newcomers, immigrants, and refugees who have made this city a better home for all of us.

Thank you.

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TESTIMONY

New York City Council Committee on Immigration

**Best Practices for New York City Agencies, Courts and Law
Enforcement Authorized to Certify Immigrant Victims for U
and T Visas**

September 12, 2017
New York, New York

The Legal Aid Society
199 Water Street
New York, NY 10038

Presented by: Hannah Shapiro, Staff Attorney, Email: hrshapiro@legal-aid.org, Tel. (718) 422-2861

ORGANIZATIONAL INFORMATION

Founded in 1876, the Legal Aid Society (Society) is the nation's oldest and largest non-profit legal services organization dedicated to providing high quality representation to low-income New Yorkers. The Society is an indispensable part of the legal, social and economic fabric of New York City- passionately advocating for low-income individuals across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform. The Society's unique value is in its ability to go beyond any one case to create more equitable outcomes for individuals, and broader, more powerful systemic changes for the City as a whole. Through a network of borough, neighborhood and courthouse-based offices in 27 locations in New York City, more than 2000 attorneys, paralegal case handlers, support staff as well as a robust volunteer *Pro Bono* program, we provide comprehensive legal services in fulfillment of our mission to ensure that no New Yorker be denied access to justice because of poverty. Through three major areas - Civil, Criminal and Juvenile Rights - the Society handles approximately 300,000 cases a year in city, state and federal courts.

The Society's nationally recognized City-wide Immigration Law Unit consists of over 53 staff including an Attorney-in-Charge, Deputy Attorney-in-Charge, supervising attorneys, paralegal case handlers and social workers. The Immigration Law Unit specializes in the intersection of immigration law and criminal law, recognizing that entanglements with the criminal justice system serve as one of the primary vehicles used to unjustly target non-citizens for deportation. Our staff provides representation to non-citizens in removal proceedings before the New York immigration courts as well as those who are locally detained by the immigration authorities. The Immigration Law Unit's experienced staff also represents immigrants before the United States Citizenship and Immigration Services (USCIS), the Board of Immigration Appeals (BIA), in federal courts and on appeals. We regularly conduct outreach in immigrant communities, at immigration detention centers and train service providers from community-based organizations, State and local agencies and legislative staff.

Our City-Wide Domestic Violence Immigration Practice housed in our Family Law Unit specializes in immigration remedies for survivors of domestic violence and human trafficking, often working collaboratively with family law colleagues who provide concurrent representation on custody, orders of protection, child support, divorce and other economic justice matters for these vulnerable populations. Because U nonimmigrant status is often the only form of immigration relief for non-citizen domestic violence survivors, our DV Immigration Practice has been integrally involved in the development of citywide protocols with the Administration for Children's Services (ACS), the New York City Police Department (NYPD) and the New York State Family Courts since the implementation of the federal U visa regulations in 2007. The Domestic Violence Immigration Practice works in close collaboration with our Criminal Defense Practice's Exploitation Intervention Project - the first public defender project of its kind within the United States aimed at identifying and advocating for survivors of human trafficking entangled in the criminal justice system.

BACKGROUND

U nonimmigrant status, more colloquially referred to as the "U visa," is an important humanitarian federal immigration remedy available to certain non-citizen crime victims and their families. It is often our clients only viable form of immigration relief. A U certification, signed by law enforcement (broadly defined), is required in order to apply for U nonimmigrant status. Congress created the U statutory framework to strengthen law enforcement's ability to encourage immigrant crime victims to report their victimization, regardless of immigration status. It is therefore a critical tool for enhancing public safety and crime victim protection and remains underutilized.

To date, the largest agency U certifiers in New York City are the Administration for Children's Services (ACS) and the New York City Police Department (NYPD). Both agencies have established and publicly available U and T certification protocols in place. The New York City Commission on Human Rights also instituted a U and T

certification policy in 2016. However, many other city agencies/departments that could provide U and T certifications either currently do not do so or have not established a formal protocol. Examples of these agencies include the Civilian Complaint Review Board (CCRB), Internal Affairs for the NYPD, the Department of Corrections, and the City's Law Department to name a few. The City should review all potential local certifiers and encourage them to develop certification protocols as soon as possible.

A. CERTIFICATION DETERMINATIONS SHOULD ONLY EVALUATE HELPFULNESS AND QUALIFYING CRIMINAL ACTIVITY

As a City that takes great pride in promoting and protecting its vibrant immigrant communities, we have a compelling interest in maximizing the issuance of U certifications for the benefit of as many immigrant New Yorkers as are eligible - especially in this era of heightened immigration enforcement. The federal government only requires that certifying agencies evaluate whether the individual requesting certification was a victim of a qualifying crime and if so, whether that individual has been or will be helpful to the investigation or prosecution of the qualifying crime.¹ Local certifying agencies should adhere solely to the permissible criteria when making U certification determinations in order to fulfill the goal of providing as many New Yorkers as possible the opportunity to apply for these benefits and defend against deportation. Certifiers should refrain from using additional evaluation criteria such as a statute of limitations, criminal background checks or considering whether the investigation is ongoing when deciding whether or not to issue a U certification.

B. CRIMINAL BACKGROUND SHOULD NOT BE CONSIDERED WHEN MAKING U CERTIFICATION DETERMINATIONS

A crime victim's own criminal history should not function as a barrier to the issuance of a U certification. People's lives are often quite complex and nuanced.

¹ See 8 U.S.C. § 1101(a)(15)(U)(i)(III).

Congress recognized as much when it created these forms of immigration relief and established an incredibly broad waiver for U and T applicants.

We should strive for equity in our certification determinations across all city agencies. By strictly adhering to the federally prescribed criteria when making U certification decisions, New York City agencies can prevent crime victims from being treated differently solely by virtue of which agency they reported to and assisted. Incorporating additional discretionary criteria such as criminal background checks in U certification determinations allows certifiers to function as gatekeepers for crime victims who are otherwise both eligible for U certification and ultimately for U nonimmigrant status.

Use of background checks in U certification determinations has the practical effect of unfairly denying U certifications to crime victims who are otherwise eligible based on amorphous and malleable “public safety” considerations. It empowers a certifier to unjustly decide who deserves to apply for U nonimmigrant status even if they were helpful in the investigation or prosecution of a qualifying crime. This is particularly problematic since it is not uncommon for domestic violence and trafficking survivors to have entanglements with the criminal justice system due to a history of violence, abuse and poverty. Domestic violence and trafficking survivors provide the most obvious example as they often have a range of offenses such as drug crimes, prostitution and grand larceny stemming from their victimization.

Besides the New York City Police Department (NYPD), no other city or state certifier (including the borough District Attorney’s offices) conducts criminal background checks as part of its certification process. Criminal background checks conducted by the NYPD happen “behind the scenes,” and lack transparency as to the criteria used to deny a request on criminal history grounds. Background checks are not even listed as a part of NYPD’s U certification protocol even though they are an integral component of their certification process.

The NYPD has been utilizing background checks since the genesis of its U certification program despite consistent objection from immigration legal service providers who recognize that survivors with criminal histories are not precluded from applying and benefitting from the U visa. The net effect is that advocates for crime victims with criminal backgrounds often elect not to apply for U certifications from the NYPD where there is another possible certifier due the likelihood that it will be denied and given the limited resources agencies have for making multiple certification requests to different certifiers. Many of our clients with criminal histories who have been able to obtain certifications from other certifiers such as a District Attorney's office or ACS have successfully obtained U nonimmigrant status, gone on to become lawful permanent residents and reunite with their families.

Where the NYPD is the only possible certifying agency for a survivor with a criminal history, advocates find themselves in a unique and tough situation, often having to contextualize their client's criminal histories to the NYPD, present evidence of positive equities and provide what is often highly personal, sensitive or confidential information to try to obtain the certification. Advocates do not face this process with any other certifier and only USCIS requires this additional information for the purposes of adjudicating an application for a U waiver. It is wholly inappropriate to have advocates go back and forth with the NYPD on an initial request and appeal essentially on the issue of whether the client is worthy of certification given their criminal background when this issue will be duly addressed by USCIS. The crux of any debate should be confined solely to whether or not a qualifying crime was committed and whether the individual was helpful in that case.

Equity in our City certification policies is also a racial, economic and social justice issue because of the disproportionate representation of low-income people of color and LGBTQI identified individuals within the criminal justice system as well as the immigration enforcement apparatus. Our goal must be to ensure our certification policies are just and accessible particularly to those most vulnerable and marginalized

in our City. Criminal background checks in certification decisions do not advance this goal. We applaud the City Council's successful effort to protect due process for all non-citizen detained New Yorkers in removal proceedings by restoring funding for legal representation through the New York Family Immigrant Unity Project (NYFIUP) to all immigrants, regardless of the severity of their criminal histories. We need the City Council to help make our policies towards immigrant New Yorkers consistent on this point by ensuring that criminal background checks be eliminated from the NYPD's U certification process. Allowing criminal background checks to continue hinders some of those very same clients the Council sought to protect in its NYFIUP funding restoration from obtaining the U certifications they need to prevent their deportations.

C. AGENCIES SHOULD PROVIDE U CERTIFICATIONS REGARDLESS OF WHETHER THE ALLEGED PERPETRATOR HAS BEEN ARRESTED AND THERE IS A PENDING PROSECUTION

Nothing in the federal regulations precludes certifying agencies from certifying while a criminal case is pending. Agencies that do not issue certifications until an investigation or prosecution is complete do so at their discretion. The decision to wait to issue a certification until the completion of an investigation has unintended and detrimental consequences for crime victims. A good example is the NYPD's policy of generally refusing to certify in cases where there has been an arrest and referral to the district attorney for a prosecution. This policy places an undue burden on crime victims who face long prosecution wait times. For example, the Bronx and Richmond County District Attorney's offices routinely prefer to certify at the end of a prosecution except in extremely limited circumstances. Any delay in obtaining U visa status precludes the crime victim from personally accessing many public benefits needed to stabilize their lives. For DV and trafficking survivors in particular, these benefits are critical in preventing homelessness, increasing economic stability, and breaking the cycle of violence.

D. ALL CERTIFICATION PROTOCOLS SHOULD BE PUBLICLY AVAILABLE AND STRIVE FOR THE UTMOST TRANSPARENCY

U and T certification protocols and decision-making criteria should be made publicly available and transparent. Individuals and their counsel should not have to guess what criteria will be used to net a positive certification decision nor should agencies utilize criteria that are not publicly listed in their protocols when making their determinations. Protocols should be made available on agency websites as well as www.nyc.gov as part of a broader effort towards increasing public awareness of New York City's commitment to these important immigration benefits. Public information about an agency's certification protocol should include the name(s) of the certifying official(s), how to submit a request for a U or T certification, a direct contact and/or an electronic mailbox for follow-up inquiries, and delineate an appeals process for denied certification requests. This information should be made available in multiple languages when possible.

E. ALL CERTIFICATION PROTOCOLS SHOULD DELINEATE A REASONABLE TIME FRAME FOR CERTIFICATION ISSUANCE AND PROVIDE AN EXPEDITED REVIEW PROCESS FOR CASES WITH EXIGENT CIRCUMSTANCES

Timely certification is essential for crime victims particularly as a pending U or T application not only makes them less vulnerable to deportation but also provides them with the opportunity to seek stabilizing services such as Medicaid. Due to the annual cap of 10,000 U visa grants, there is a significant backlog of pending U visa applications making the ability to "get in line" for U visa adjudication more important than ever. As one example, crime victims cannot usually reunite with their qualifying family members living abroad until the full four-year U visa is granted. A person applying for U nonimmigrant status today is not likely to receive that four-year U visa for more than

a decade, although they may be provisionally approved for work authorization in approximately three years as of today.

Currently, the NYPD is the only local certifying agency that has a specified time frame for the issuance of certifications. The NYPD aims to issue a decision within 45 days of the initial request and proactively informs applicants of any circumstances that will result in a delay. To its credit, the NYPD has largely been adhering to its publicly stated times frames.

Ideally, all certifying agencies should codify protocols where initial determinations are to be made at most within 30 days of the certification request. Currently, the Administration for Children’s Services has seen a surge in U certification requests resulting in a six month or longer backlog on certification decisions. Realizing that the ability to adhere to reasonable time frames is dependent on the volume of requests as well as agency resources, the City Council should ensure that additional funding and personnel be made available where necessary to meet the goal of issuing timely certification decisions.

An expedited certification request process should be codified and made publicly available in all City certification protocols. Individuals who are detained and/or in removal proceedings or at imminent risk of removal require shorter certification adjudication time frames in order to properly defend their cases. Similarly, individuals with qualifying family members who could lose the opportunity to benefit from the U or T visa benefit by virtue of their age need to be prioritized for expedited adjudication. The NYPD and ACS already have such policies in place.

F. ALL CERTIFICATION PROTOCOLS SHOULD INCLUDE A TIMELY APPEALS PROCESS

The importance of an appeals process in all certification protocols cannot be over-emphasized. An appeals process is essential to ensuring that there is a procedural

safeguard against improperly denied certification requests. Therefore, certification denials should clearly articulate the reason(s) for the denial in a manner that enables individuals and their counsel to determine whether an appeal is warranted, and to formulate a response. Each agency should issue a denial letter or form that goes beyond simple check boxes to explain why they believe the individual requesting certification did not meet the certification criteria. So, for example, if an agency declines to certify because it alleges that the victim has not been helpful, it should state why the victim was not helpful with the particular facts at issue. If the denial is purportedly for lack of a qualifying crime, it should state why the agency believes no qualifying crime was investigated or prosecuted. Because an appeal can significantly lengthen the waiting times for a certification decision, agencies should adjudicate appeals within 30 days of receiving them.

G. CITY AGENCIES SHOULD OFFER VARIOUS METHODS FOR REQUESTING AND RECEIVING U CERTIFICATIONS

Certifiers should offer various methods for making U certification requests by permitting them to be made either via regular mail or electronic delivery. All certifying agencies should establish an electronic mailbox for request submissions and follow-up inquiries. Agencies should not require that certifications be picked up in-person as this can be quite onerous for advocates without adequate support staff but make in-person pick-up an option for cases with exigent circumstances. Any agency that currently has an in-person pickup requirement should begin mailing certifications once completed. Family court judges, the District Attorney's offices and ACS have historically mailed certifications to advocates without issue.

H. FRONT-LINE STAFF AT CITY AGENCIES SHOULD RECEIVE PROPER TRAINING ABOUT U CERTIFICATION ISSUANCE

It is unclear what training front-line staff and appeal adjudicators receive in order to efficiently and effectively make U or T certification decisions. Each possible

New York City certifier should establish regular training for all staff members directly working on certification issuance. Additionally, all staff at City agencies should receive an overview of these forms of relief in order to help optimize immigrant communities' willingness to participate in investigations and to be able to steer them to legal services, as appropriate.

CONCLUSION

The Society emphasizes the importance of ensuring that all City agency U certification protocols are transparent, efficient, and most importantly consistent and equitable. This will safeguard immigrant New Yorkers, including those with criminal backgrounds, from being unjustly denied the opportunity to seek U and T nonimmigrant status. Thank you for the opportunity to testify on this important issue. We welcome any questions you may have.

NEW YORK CITY COUNCIL FISCAL YEAR FY17

Hearing before the Immigration Committee

Chairman: Honorable Carlos Menchaca

**Testimony Regarding: Oversight - Best Practices for NYC Agencies, Courts, and Law Enforcement
Authorized to Certify Immigrant Victims for U and T visas.**

Presented by:

Urban Justice Center – Domestic Violence Project

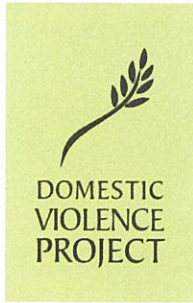
Joy Ziegeweid, Esq. – Supervising Immigration Attorney

September 13, 2017

Contact: Madeline Garcia Bigelow

Associate Director

646.602.5610



40 Rector, 9th, New York, New York 10006

September 13, 2017

New York City Council
Committee on Immigration
250 Broadway
New York, New York

Re: Oversight - Best Practices for NYC Agencies, Courts, and Law Enforcement Authorized to Certify Immigrant Victims for U and T visas.

Dear Esteemed Members of the Committee:

My name is Joy Ziegeweid. I am the supervising immigration attorney at the Urban Justice Center Domestic Violence Project (“DVP”). Thank you on behalf of my colleagues and our clients for this opportunity to appear and speak before you today. We are grateful for the Council’s support of the organizations that work with the immigrant community to improve life in our city for all New Yorkers. The Council’s support allows the Urban Justice Center’s Domestic Violence Project to continue to provide meaningful services and support to survivors of domestic abuse and human trafficking and empower the most vulnerable members of our communities to live free from violence.

At DVP, we consider domestic violence in any type of intimate partner relationship, regardless of gender identity or sexual orientation, to be a human rights violation. Since our founding in 2003, our project has provided *legal advocacy, direct representation, case management, financial empowerment, safety planning and crisis counseling* to survivors of domestic violence. Our efforts have proved successful: we are able to reach approximately 1,600 survivors a year, of whom over 40% are non-citizens. The impact on one individual can change the trajectory of multiple lives: in reality, we are delivering service to the family unit and the community.

In the course of our work with non-citizen survivors of violence, we frequently encounter clients who may be eligible for U or T nonimmigrant status. We advocate with city agencies on their behalf to

try to obtain law enforcement certifications that will allow them to apply for U or T visas. We are grateful that many city agencies with jurisdiction to investigate criminal activity do sign U and T certifications, and we have several recommendations for further improving the process of U and T certification so that all eligible survivors in New York City are able to apply for lawful immigration status.

Establishing clear, straightforward processes that are accessible both to attorneys and to pro se requestors is essential to ensuring that immigrant victims of crime are not further preyed upon by notarios, fraudsters, or unethical lawyers. Far too often we encounter clients who have paid huge sums of money to someone promising to get them a U visa certification. I recently met with a domestic violence victim, a woman barely making ends meet trying to support her children, who had paid \$1300 to someone falsely claiming to be an attorney so that he would request a U certification for her. He made the request to law enforcement but when she could not pay the additional sum he demanded, he did not follow up on the request. The woman, now our client, had lost hundreds of dollars to a fraudulent service provider, but she still had no idea how the U visa process actually worked.

At the heart of our recommendations is a belief that there should be consistency across agencies in the process for requesting a U or T certification, so that the process is as easy for a pro se requestor as it is for someone with a lawyer, and so that unscrupulous lawyers and notarios are unable to use an opaque or complicated U and T certification process as a means of bilking vulnerable crime victims out of hard-earned money.

We strongly recommend that each City agency with authority to sign certifications for U and T nonimmigrant status establish a clear and transparent process for receiving and adjudicating certification requests. At a minimum, such a policy should include the following elements:

- **Agencies should accept certification requests by email in addition to regular mail.** Email provides the fastest, most efficient and cost-effective way to submit and track a request. Related to that, agencies should designate an email box for certification requests and follow-ups, which will ensure consistency in receipt of certification requests. Each agency should appoint clear points of contact within the agency who are authorized to address concerns arising in the U and T certification process.
- **Agencies should set forth clear timeframes for adjudication and for appeals so that survivors do not remain indefinitely in limbo.** Applying for lawful immigration status is a crucial component of survivors' ability to stabilize and rebuild their lives. As others have testified today, timeliness is essential in adjudicating requests for U and T certifications.
- Once certifications are approved, **agencies should mail signed certifications to the immigrant or her attorney,** rather than requiring that the certifications be picked up in person, thus conserving the limited resources of legal services providers and minimizing time off from work for immigrants.
- **Finally, post certification procedures online.** Others have testified today about the need for a public awareness campaign about these forms of immigration relief. In addition to a campaign with general information about the T and U visas, clear and consistent information about certification procedures should be posted on the website of every city agency that signs U and T certifications and information about all agencies should be centralized on a city website, for example, that of the Mayor's Office of Immigrant Affairs.

In closing, we are appreciative of the City Council's continued work in fighting for the rights, safety, and security of immigrant New Yorkers.

We look forward to continuing to work with you on developing best practices for serving victims of crime and human trafficking.

Sincerely,



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WOMANKIND

FORMERLY NEW YORK ASIAN WOMEN'S CENTER

32 Broadway, 10th Floor New York, NY 10004

T 212.732.0054 F 212.587.5731

Good afternoon, Chairperson Menchaca and distinguished members of the committee. My name is Yanfei Shen and I am the Legal Services Manager at Womankind, formerly the New York Asian Women's Center. Thank you for the opportunity to speak today.

Womankind provides model, culturally matched direct services to survivors of domestic and sexual violence, human trafficking, and elder abuse in 18 distinct Asian languages citywide. Our legal program was created in 2011 and provides immigration legal assistance and representation. By helping immigrants obtain status and work authorization, we help to break the control of their abusers and exploiters.

Our legal department has worked with the District Attorney's Offices and the NYPD on U Visa certifications. While most of our requests have resulted in certifications, some have not. While some of the refusals to certify were understandable, others were unilateral and unfair to victims. The District Attorney's Offices have primarily relied on their file notes to make certification determinations, which are often scant and devoid of contextual information. In one instance, a certification was denied because the notes simply said: "Not cooperative – refused to testify." No information was provided as to whether and how the victim was requested to testify. In that instance, the victim – who was monolingual – informed us that she was never asked to testify; she was simply told that if her husband did not confess, there would be a trial. Given her inability to speak English, it is possible that something was lost in translation. But the DA's Office refused to consider any information contrary to the scant file notes. And even though the husband *did* confess and a final order of protection was issued – such that the victim's testimony was not even necessary – the Office still refused to issue a certification. The victim had fully cooperated to the extent that her cooperation was *actually* needed, yet the Office deemed her cooperation to be insufficient.

We would like to offer two suggestions for best practices for the DA's Offices: (1) On the issue of cooperation, ADAs should provide detailed information as to what kind of cooperation was requested, how it was requested, and how it was refused; and (2) Offices should certify so long as the cooperation sufficiently assisted the ADA in prosecuting the case.

Our legal department has worked less with the NYPD on U visa certifications. The primary reason is that the NYPD generally refuses to certify when a criminal has been arrested and a case has been commenced by the DA's Offices. This is extremely unfair to victims, as they essentially get no credit for the full assistance they had provided to the NYPD. Ironically, we have had more success in getting certifications where the criminal was *not* arrested than when he or she was arrested. This practice unfairly penalizes victims who want their abusers or exploiters to be arrested, but are afraid to face them in court. Our suggestion for best practices for the NYPD, therefore, is to issue certifications so long as the victim had cooperated in the investigation. The NYPD should not shirk its obligations to victims by punting the certification responsibility to the DA's Offices.

We hope these suggestions will be considered by this Committee and adopted by the respective law enforcement agencies. Thank you for the opportunity to speak today.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/13/2017

(PLEASE PRINT)

Name: RAQUEL BARSTAD

Address: _____

I represent: CUNY LAW SCHOOL

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

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in favor in opposition

Date: 9/13/17

(PLEASE PRINT)

Name: Deputy Commissioner Susan Herman

Address: Police Plaza

I represent: NYPD

Address: _____

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THE CITY OF NEW YORK

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(PLEASE PRINT)

Name: Sophie Dalsimer

Address: 177 Livingston St 7th Floor

I represent: Brooklyn Defender Services

Address: Brooklyn NY 11201

Please complete this card and return to the Sergeant-at-Arms

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I intend to appear and speak on Int. No. _____ Res. No. _____

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(PLEASE PRINT)

Name: Suzanne Tomatore
Address: on 42 W 44th St. NY NY 10036
I represent: City Bar Justice Center
Address: 42 W 44th St.

**THE COUNCIL
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I intend to appear and speak on Int. No. _____ Res. No. _____ *Committee on Immigration on U+T visa*

in favor in opposition

Date: 9/13/2017

(PLEASE PRINT)

Name: Aline Gue
Address: 3
I represent: Urban Justice Center
Address: 123 William Street, 16th FL New York, NY 10038

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Name: Maryann Tharappel
Address: 80 Maiden Lane, 13th Fl., NY, NY 10038
I represent: Catholic Charities Community Services, NY
Address: 80 Maiden Lane, 13th Fl., NY, NY 10038

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(PLEASE PRINT)

Name: Bitta Mostofi, Acting Commissioner

Address: _____

I represent: MOIA

Address: _____

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THE CITY OF NEW YORK**

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Name: Carmen Maria Rey

Address: Set

I represent: Sanctuary for Families

Address: NY, NY

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in favor in opposition

Date: 9-13-17

(PLEASE PRINT)

Name: Hannah Shapiro

Address: 111 Livingston St Brooklyn, NY

I represent: The Legal Aid Society

Address: 199 Water Street NY, NY

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jennifer Durkin

Address: _____

I represent: American Immigration Lawyers

Address: Association (AILA) - NY Chapter

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 9/13/2017

(PLEASE PRINT)

Name: Amanda Doroshow

Address: _____

I represent: Her Justice

Address: 100 Broadway, 10th Fl NY, NY 11106

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 9/13/17

(PLEASE PRINT)

Name: Shani Adess

Address: NYLAG, 7 Hanover Sq. 18th Fl, NY, NY 10004

I represent: New York Legal Assistance Group

Address: 7 Hanover Square, 18th Fl, NY, NY 10004

Please complete this card and return to the Sergeant-at-Arms

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Terry Lawson, Bronx Legal Services
Address: 349 E 149 St 10th Fl, Bronx, NY 10451

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/13/17

(PLEASE PRINT)

Name: Joy Ziegewid
Address: 40 Rector St, 9th Fl NY NY 10006

I represent: Urban Justice Center Domestic Violence Project

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/13/17

(PLEASE PRINT)

Name: Deborah Lee

Address: _____

I represent: New York City Bar Association

Address: _____

Please complete this card and return to the Sergeant-at-Arms