CITY OF BLOOMINGTON SPECIAL SESSION COUNCIL MEETING JULY 9, 2018

AGENDA

SPECIAL MEETING AGENDA
OF THE CITY COUNCIL
CITY HALL COUNCIL CHAMBERS
109 EAST OLIVE STREET, BLOOMINGTON, IL 61701
MONDAY, JULY 9, 2018; 5:30 P.M.

1. Call to Order

2. Roll Call of Attendance

3. Public Comment

4. Consideration of approving the minutes of the Special Meeting of June 11, 2018. *(Recommend the reading of the minutes be dispensed and approved as printed.)*

5. Consideration and action on an Ordinance recognizing the Importance of the Immigrant Community in the City of Bloomington, as requested by Mayor Tari Renner. *(Recommend the Ordinance recognizing the Importance of the Immigrant Community in the City of Bloomington be approved, and the Mayor and City Clerk authorized to execute the Ordinance.) (Presentation by Jeff Jurgens, Corporation Counsel, and Tari Renner, Mayor, 10 minutes, City Council discussion, 30 minutes.)*

6. Adjourn *(Approximately 6:40 p.m.)*

SPECIAL SESSION MEETING
AGENDA ITEM NO. 4

FOR COUNCIL: July 9, 2018

SUBJECT: Consideration of approving the minutes of the Special Meeting of June 11, 2018.

RECOMMENDATION/MOTION: The reading of the minutes be dispensed and approved as printed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The Special City Council Meeting Minutes have been reviewed and certified as correct and complete by the City Clerk.

In accordance with the Open Meetings Act, Council Proceedings are made available for public inspection and posted to the City's web site within ten (10) days after Council approval.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: N/A

FINANCIAL IMPACT: N/A

Respectfully submitted for Council consideration.

Prepared by: Cherry L. Lawson, C.M.C., City Clerk

Recommended by:

Steve Rasmussen
Interim City Manager

Attachments:

- June 11, 2018 Special Session Meeting Minutes

SPECIAL SESSION CITY COUNCIL MEETING
City Hall - Fishbowl Conference Room
109 East Olive Street, Bloomington, IL 61701
Monday, June 11, 2018; 5:30 PM

1. Call to Order

The Council convened in Special Session in the City Hall Fishbowl Conference Room, at 5:30 p.m., Monday, June 11, 2018. The meeting was called to order by Mayor Renner.

2. Roll Call

Mayor Renner directed City Clerk, Cherry Lawson to call the roll and the following members of Council answered present:

Aldermen Joni Painter, Diane Hauman, Mboka Mwilambwe, Scott Black (Arrived: 5:35 PM), Jamie Mathy, Kim Bray, Karen Schmidt, David Sage (Arrived: 5:31 PM), Amelia Buragas and Mayor Tari Renner.

Staff present: Jeffrey Jurgens, Corporation Counsel; Cherry Lawson, City Clerk; Nicole Albertson, Human Resource Director; and Joellen Earl, GovHR.

3. Public Comment

There were no comments offered.

4. Consideration of approving the minutes of the Special Meeting of June 4, 2018 and the Special Meeting of May 29, 2018. *(Recommend the reading of the minutes be dispensed and approved as printed.)*

Motion by Alderman Painter, second by Alderman Bray to approve the minutes as presented.

Ayes: Aldermen, Painter, Mathy, Buragas, Schmidt, Mwilambwe, Hauman and Bray.

Nays: None

Motion carried.

5. Closed Session

A. Claims Settlement – Per Section 2(c)(12) of 5 ILCS 120/2 (10 minutes)

B. Personnel – Section 2(c)(1) of 5 ILCS 120/2 (60 minutes)

Motion by Alderman Hauman second by Alderman Painter to enter into Closed Session Meeting per Section 2(c) (12) of 5 ILCS120, and 2(c) (2) of 5 ILCS 120/2.

Ayes: Aldermen, Painter, Mathy, Schmidt, Buragas, Mwilambwe, Hauman and Bray.

Nays: None

Motion carried.

6. Adjourn Closed Session

Mayor Renner asked for a motion to adjourn the Closed Session Meeting.

Motion by Alderman Hauman seconded by Alderman Painter to adjourn the Closed Session Meeting and return to Open Session.

Motion Carried (Viva Voce).

7. Return to Open Session

Mayor Renner asked for a motion to return to the Open Session Meeting.

Motion by Alderman Schmidt seconded by Alderman Mathy to return to the Open Session Meeting.

Motion Carried (Viva Voce).

8. Adjourn *(Approximately 6:40 p.m.)*

Mayor Renner asked for a motion to adjourn the Meeting.

Motion by Alderman Bray seconded by Alderman Painter to adjourn. Time: 6:56 PM.

Ayes: Aldermen, Painter, Bray, Sage, Schmidt, Black, Mwilambwe, Buragas, Hauman and Mathy.

Nays: None

Motion carried.

CITY OF BLOOMINGTON **ATTEST**

Tari Renner, Mayor Cherry L. Lawson, City Clerk

SPECIAL SESSION MEETING
AGENDA ITEM NO. 5

FOR COUNCIL: July 9, 2018

SUBJECT: Consideration and action on an Ordinance recognizing the Importance of the Immigrant Community in the City of Bloomington, as requested by Mayor Tari Renner.

RECOMMENDATION/MOTION: The Ordinance recognizing the Importance of the Immigrant Community in the City of Bloomington be approved, and the Mayor and City Clerk authorized to execute the Ordinance.

STRATEGIC PLAN LINK: Goal 4 – Strong Neighborhoods

STRATEGIC PLAN SIGNIFICANCE: Objective: a: Residents feeling safe in their homes and neighborhoods

BACKGROUND: On July 3, 2018, Mayor Tari Renner called a special meeting to be held for the object and purpose of discussing and acting on an Ordinance Recognizing the Importance of the Immigrant Community in the City of Bloomington. This follows discussion of a similar ordinance in December of 2017 by the City Council and many months of community action groups calling for the City to address various immigration issues.

The proposed ordinance incorporates language from the Trust Act, including that the City's Police Department will not detain individuals solely on the basis of an immigration detainer or non-judicial immigration warrant or stop, arrest, search, detain a person solely based on the individual's citizenship status. *See* 5 ILCS 805/15(a) & (b). The Trust Act, as well as the Ordinance, also specifically provide that it does not apply when the police are presented with a valid and enforceable warrant and that nothing shall prohibit communications with federal agencies. *See* 5 ILCS 805/15(c).

The proposed ordinance also incorporates the City's current practices, including that the Police Department does not, as part of its routine practice, inquire regarding the citizenship status of individuals and instead responds to criminal activity without prejudice. There is also a continued emphasis on U Visas and the Police Department's cooperation with this program so that undocumented individuals that are the victim of a crime can report same under various federal protections.

The United States Code, 8 U.S.C.A. § 1373, provides that states and local governments may not "prohibit, or in any way restrict," their personnel from sharing (sending, requesting, receiving, maintaining, etc.) with federal immigration agencies information regarding the citizenship or immigration status, lawful or unlawful, of any individual. Accordingly, the proposed ordinance is clear that City officials and employees are free to exchange immigration and citizenship status

information with federal agencies, like ICE, and may further communicate and cooperate with ICE on criminal matters and criminal investigations. The ordinance does, however, add a new protocol that any work on civil immigration issues with federal agencies, except for the sharing of information under § 1373, must first be approved by the Police Chief, or his designee, in accordance with a written policy to be approved by the Police Chief.

One of the underlying calls for such an ordinance is to ensure people feel safe reporting crimes. Without doubt the Police Department wants any victim of a crime, regardless of their immigration status, to feel safe and secure in reporting crimes. The Police Department acts without prejudice in defending persons against crimes and has worked tirelessly to develop a Community Policing program to build relationships with all populations within the community. This includes responding to requests from the immigrant communities to defend them against all crimes, as well as assisting individuals with limited language proficiency and providing assistance under a Federal law that allows undocumented individuals to report certain crimes. This is known as U nonimmigrant status (also known as a U visa) and is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or having previously assisted law enforcement and allows them to temporarily remain in the United States and, if certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status.

City staff believes the proposed ordinance is written in a way that does not violate any laws, that shows support for the immigrant community, that further encourages the reporting of crimes, and that will not interfere with or inhibit public safety.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: N/A

FINANCIAL IMPACT: N/A

COMMUNITY DEVELOPMENT IMPACT: N/A

FUTURE OPERATIONAL COST ASSOCIATED WITH NEW FACILITY CONSTRUCTION: N/A

Respectfully submitted for Council consideration.

Prepared by: Jeffrey R. Jurgens, Corporation Counsel

Recommended by:

Tari Renner
Mayor

Attachments:

- An Ordinance Recognizing the Importance of the Immigrant Community in the City of Bloomington
- Illinois Trust Act (P.A. 100-463)

- Attorney General - Guidance to Law Enforcement: Authority Under Illinois & Federal Law to Engage in Immigration Enforcement
- U Visa Law Enforcement Certification Resource Guide
- The United States Code, 8 U.S.C.A. § 1373

ORDINANCE NO. 2018 – ____

AN ORDINANCE RECOGNIZING THE IMPORTANCE OF THE IMMIGRANT COMMUNITY IN THE CITY OF BLOOMINGTON

WHEREAS, the City of Bloomington ("City") is a home-rule municipality operating in McLean County, Illinois; and

WHEREAS, the City is a diverse community and stands by the famous and proud proclamation on the Statute of Liberty: Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!; and

WHEREAS, the diversity of the City helps make it the Jewel of the Midwest and adds to the cultural, social and economic engines of the community; and

WHEREAS, the creation of a welcoming community occurs when all parts of a community come together to enable all citizens to actively engage and when the City is committed to working with community advocates, policy experts, and legal advocates to defend the human rights of immigrants; and

WHEREAS, the provision of municipal benefits, services, and opportunities is not contingent on matters related to citizenship or immigration status unless required by state or federal law, or court order; and

WHEREAS, the City does not discriminate against any person based upon the person's actual or perceived citizenship or immigration status or the actual or perceived citizenship or immigration status of the person's family member; and

WHEREAS, the Bloomington Police Department responds to requests from immigrant communities to defend them against all crimes, including hate crimes, to assist people with limited language proficiency and to connect immigrants with social services; and

WHEREAS, on August 28, 2017, the Illinois Trust Act took effect, the provisions of which are followed by the Bloomington Police Department, to help establish reasonable, constitutional limits on local police interaction with ICE enforcement, and to help foster trust between local police and immigrant communities; and

WHEREAS, the Bloomington Police Department has worked tirelessly to develop a Community Policing program to build relationships with all populations within the community and help set the foundation for a safer and stronger community; and

WHEREAS, the City, along with its Police Department, acts without prejudice in defending persons against crimes; and

WHEREAS, it is the policy of the City to process in a timely manner certification requests by victims of a qualifying criminal activity; and

WHEREAS, the Mayor and Bloomington City Council desire to set forth a policy of openness and inclusion and approve this Ordinance in support of the City's strong and vibrant immigrant community;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bloomington, County of McLean, State of Illinois that:

Section 1. The City is committed to being a welcoming community where all our residents feel welcome, safe, and able to fully participate in, and contribute to, our City's economic and social life. The City Council urges all residents of Bloomington to do their part in reaching out and welcoming all those who live in and visit our great city.

Section 2. It shall be the policy of the City to abide by the Trust Act and the law enforcement officials of the City shall focus their efforts on the enforcement of local and state laws. In accordance with the Trust Act, the law enforcement officials of the City shall not: (1) detain or continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant; or (2) stop, arrest, search, detain, or continue to detain a person solely based on an individual's citizenship or immigration status. In further compliance with the Trust Act and federal law, the provision of this Section 2 shall not apply when the City's law enforcement officers are presented with a valid, enforceable federal warrant and nothing herein shall prohibit communications between federal agencies or officials and the City's law enforcement officers.

Section 3. To promote a welcoming and safe community, it shall further continue to be the practice of the City to: (1) respond to criminal activity without regard to the citizenship status of those involved; and (2) promote and encourage all individuals, regardless of their citizenship status, to report crimes. The Police Department shall remain focused on the enforcement of local and state laws and does not, as part of its routine practice, inquire regarding the citizenship status of those who either report crimes or commit crimes.

Section 4. As further encouragement of all individuals to report crimes, the Police Department, as well as any other investigatory agency within the City, shall consider certification requests related to an immigration benefit by any victim of a crime or their representative in a timely manner. In consideration of the certification request, the City will reference federal guidelines in determining the parameters of its discretion. The City shall promote the ability to file such requests and shall ensure its employees are properly trained and knowledgeable regarding the certification process and the importance of same.

Section 5. City officials and employees are free to exchange immigration and/or the citizen status information of individuals with federal agencies, including ICE, in accordance with 8 U.S.C. 1373, and the Police Department may otherwise continue to communicate with various federal agencies, including ICE, on criminal matters and criminal investigations as necessary. To remain focused on the enforcement of local and state criminal law, any additional cooperation or interactions with ICE on the enforcement of immigration matters, beyond the sharing/exchange of information as required by 8 U.S.C. 1373, shall be approved by the Chief of Police, or his designee, in accordance with a policy to be adopted by the Chief of Police.

Section 6. The City of Bloomington Police Department shall continue to receive training on the Illinois Trust Act and the provisions of this Ordinance, to include training on the risk of deportation even in cases where an individual is found not guilty of a crime.

Section 7. In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect. Nothing in this Ordinance is intended to limit any communication by the City or any official that is allowed by 8 U.S.C. 1373. If there is any conflict between the provisions of this Ordinance and the provisions of 8 U.S.C. 1373, then the provisions of that federal statute shall prevail. Nothing within this Ordinance shall create or form the basis of any liability on the part of the City, its officers, agents or employees.

Section 8. The City Clerk is hereby authorized to publish this ordinance in pamphlet form as provided by law.

Section 9. This ordinance shall be effective immediately after the date of its publication as required by law.

Section 10. This ordinance is passed and approved pursuant to the home rule authority granted Article VII, Section 6 of the 1970 Illinois Constitution.

ADOPTED this 9th day of July 2018

APPROVED this _____ day of July 2018

CITY OF BLOOMINGTON: **ATTEST:**

_____ _____

Tari Renner, Mayor Cherry Lawson, City Clerk

AN ACT concerning government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois TRUST Act.

Section 5. Legislative Purpose. Recognizing that State law does not currently grant State or local law enforcement the authority to enforce federal civil immigration laws, it is the intent of the General Assembly that nothing in this Act shall be construed to authorize any law enforcement agency or law enforcement official to enforce federal civil immigration law. This Act shall not be construed to prohibit or restrict any entity from sending to, or receiving from, the United States Department of Homeland Security or other federal, State, or local government entity information regarding the citizenship or immigration status of any individual under Sections 1373 and 1644 of Title 8 of the United States Code. Further, nothing in this Act shall prevent a law enforcement officer from contacting another law enforcement agency for the purposes of clarifying or confirming the nature and status of possible offenses in a record provided by the National Crime Information Center, or detaining someone based on a notification in the Law Enforcement Agencies Data Administrative System unless it is

clear that request is based on a non-judicial immigration warrant.

Section 10. Definitions. In this Act:

"Immigration detainer" means a document issued by an immigration agent that is not approved or ordered by a judge and requests a law enforcement agency or law enforcement official to provide notice of release or maintain custody of a person, including a detainer issued under Section 1226 or 1357 of Title 8 of the United States Code or Section 236.1 or 287.7 of Title 8 of the Code of Federal Regulations.

"Law enforcement agency" means an agency of the State or of a unit of local government charged with enforcement of State, county, or municipal laws or with managing custody of detained persons in the State.

"Law enforcement official" means any individual with the power to arrest or detain individuals, including law enforcement officers, county corrections officer, and others employed or designated by a law enforcement agency.

"Non-judicial immigration warrant" means a Form I-200 or I-205 administrative warrant or any other immigration warrant or request that is not approved or ordered by a judge, including administrative warrants entered into the Federal Bureau of Investigation's National Crime Information Center database.

Section 15. Prohibition on enforcing federal civil immigration laws.

(a) A law enforcement agency or law enforcement official shall not detain or continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant.

(b) A law enforcement agency or law enforcement official shall not stop, arrest, search, detain, or continue to detain a person solely based on an individual's citizenship or immigration status.

(c) This Section 15 does not apply if a law enforcement agency or law enforcement official is presented with a valid, enforceable federal warrant. Nothing in this Section 15 prohibits communication between federal agencies or officials and law enforcement agencies or officials.

(d) A law enforcement agency or law enforcement official acting in good faith in compliance with this Section who releases a person subject to an immigration detainer or non-judicial immigration warrant shall have immunity from any civil or criminal liability that might otherwise occur as a result of making the release, with the exception of willful or wanton misconduct.

Section 20. Law enforcement training. By January 1, 2018, every law enforcement agency shall provide guidance to its law

enforcement officials on compliance with Section 15 of this Act.

Section 99. Effective date. This Act takes effect upon becoming law.

Guidance to Law Enforcement:
Authority Under Illinois and Federal Law to Engage in Immigration Enforcement

September 13, 2017

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL

Over the past several months, officials at both the federal and state level have implemented changes to immigration enforcement policies and laws. On January 25, 2017, President Donald Trump issued an Executive Order entitled "Enhancing Public Safety in the Interior of the United States."[1] Further, on August 28, 2017, Illinois enacted the Illinois Trust Act, a statewide law that clarifies and limits the authority of state and local officers to enforce federal civil immigration law or cooperate with federal immigration authorities.[2]

This guidance is intended to provide a summary of the President's Executive Order and describe the new Illinois Trust Act. Based on the Executive Order and the Trust Act, this guidance will explain the limitations on the authority of local and state law enforcement to enforce federal immigration law. It also will provide guidance to municipalities and law enforcement about how the Executive Order and the Trust Act may affect any existing policies.

Illinois law enforcement agencies and officers[3] are dedicated to protecting the communities they serve. Promoting public safety requires the assistance and cooperation of the community so that law enforcement has the ability to gather the information necessary to solve and deter crime. Law enforcement has long recognized that a strong relationship with the community encourages individuals who have been victims of or witnesses to a crime to cooperate with the police. The trust of residents is crucial to ensure that they report crimes, provide witness statements, cooperate with law enforcement and feel comfortable seeking help when they are concerned for their safety.

Building this trust is particularly crucial in immigrant communities where residents may be reluctant to engage with local police departments if they are fearful that such contact could result in deportation for themselves, their family or their neighbors. This is true of not only undocumented individuals who may be concerned about their own immigration status, but also citizens who may be worried about their parents, their children or other members of their family who immigrated to the United States.

Police officers will be hindered in maintaining public safety if violent crimes go unreported or witnesses withhold information.[4] For the safety of the community and to effectively carry out their responsibilities, law enforcement have an interest in making sure that their policies and conduct do not create barriers that discourage or prevent cooperation from the immigrant community and their families.

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[1] Executive Order 13768 of January 25, 2017, 82 Fed. Reg. 8799 (Jan. 30, 2017).
[2] Illinois Trust Act, Ill. Public Act 100-0463 (2017).
[3] Throughout this guidance, "Illinois law enforcement" is used to describe state, county, and local law enforcement agencies in Illinois such as municipal police departments, county sheriffs' offices, Illinois State Police and other non-federal law enforcement authorities, including campus police departments of public and private higher education institutions.
[4] *See* James Queally, *Latinos Are Reporting Fewer Sexual Assaults amid a Climate of Fear in Immigrant Communities, LAPD Says*, LOS ANGELES TIMES (Mar. 21, 2017), http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html.

Executive Summary

Federal and state law – including the newly enacted Illinois Trust Act – limit the authority of Illinois law enforcement agencies to engage in immigration enforcement activities. All law enforcement agencies and officers must be aware of and stay within these limitations when conducting law enforcement activities. This guidance provides an overview of relevant federal and state law and may be a useful resource to Illinois law enforcement agencies. In summary, based on constitutional protections, federal and state statutes, and policy considerations, Illinois law enforcement officers and agencies:

- Shall not stop, search, or arrest any individual on the sole basis that the individual is undocumented; arrests may be made only when Illinois law enforcement has an arrest warrant or probable cause to believe that a criminal offense has been committed;

- Are in violation of state law and constitutional protections if they detain an individual pursuant to an ICE detainer beyond his or her normal custody release date;

- Are not required to participate in immigration enforcement activities and shall treat a request from federal immigration authorities for access to detention facilities or individuals held by local authorities as a request, rather than an obligation;

- Are not required to inquire or collect information about individuals' immigration or citizenship status;

- Should consider whether any internal policies regarding sharing immigration status information with federal immigration authorities will promote trust and confidentiality in their communities;

- Should consider requiring all officers to identify the jurisdiction they represent when engaging with community members or knocking on doors to encourage transparency and cooperation and to avoid any concern or confusion about whether the officers work for federal immigration authorities.

I. Immigration Enforcement Generally

Immigration is a matter of federal law.[5] Although some provisions of federal immigration statutes are criminal, deportation and removability are matters of civil law.[6] The role of Illinois law enforcement in enforcing the civil portions of immigration law is limited.[7]

a. Immigration enforcement activities.

Illinois enforcement officers are permitted to enforce federal civil immigration law only in those limited circumstances where state and federal law authorize them to do so. There are only two circumstances where Illinois enforcement has been permitted by *federal law* to engage in immigration enforcement:

- Illinois law enforcement is permitted to arrest and detain an individual who has already been convicted of a felony and was deported, but returned to or remained in the United States after that conviction.[8]

- Illinois law enforcement may enter into a formal working agreement with the Department of Homeland Security (known as a Section 287(g) agreement) to assist in the "investigation, apprehension, or detention of aliens in the United States."[9] Pursuant to federal law, a law enforcement agency may enter into any such agreement only to "the extent consistent with State and local law."[10] **To date, there are no existing 287(g) agreements in Illinois.[11]**

Even in those instances where federal law allows enforcement of immigration law, there is no express or inherent authority under Illinois law that permits Illinois law enforcement to enforce federal immigration law.[12] Further, as discussed below, Illinois law now expressly *prohibits*

[5] *Arizona v. United States*, 132 S. Ct. 2492, 2498-99 (2012).
[6] *See Gonzalez v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983) (discussing the distinction between criminal and civil federal immigration law).
[7] *Id.*
[8] 8 U.S.C. § 1252c.
[9] 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act).
[10] *Id.*
[11] This guidance is not intended to address Detention Services Intergovernmental Agreements, or any other contracts for the housing, safekeeping and subsistence of federal detainees, entered into between the U.S. Department of Justice and Illinois law enforcement agencies.
[12] *See People v. Lahr*, 147 Ill. 2d 379, 382 (Ill. 1992) (recognizing that the authority of local police officers to effectuate an arrest is dependent on the statutory authority given to them by the political body that created them); *Gonzalez v. City of Peoria*, 772 F.2d 468 (9th Cir. 1983) (requiring that state law grant local police the "affirmative authority to make arrests" under the specific provisions of the Immigration and Nationality Act that they sought to enforce).

Illinois law enforcement officials from engaging in certain actions to ensure that they do not enforce federal immigration law without proper legal authority.[13]

b. Immigration detainers and administrative warrants.

The Department of Homeland Security and ICE issue "Immigration Detainers" or "Hold Requests" when they have identified an individual in the custody of Illinois law enforcement who may be subject to a civil immigration removal proceeding.[14] An Immigration Detainer is a notice from federal authorities that an individual in the custody of Illinois law enforcement may be subject to civil immigration proceedings, and it asks Illinois law enforcement to detain the individual for up to 48 additional hours past his or her release date to allow federal authorities to assume custody.[15]

On March 24, 2017, ICE issued a new policy establishing that all detainer requests (Form I-247A) will be accompanied by one of two forms signed by an ICE immigration officer: either (1) Form I-200 (Warrant for Arrest of Alien) or (2) Form I-205 (Warrant of Removal/Deportation).[16] These forms are administrative warrants signed by ICE officers that authorize other ICE officers to detain an individual. They are not criminal warrants issued by a court and they do not constitute individualized probable cause that an individual has committed a criminal offense. Similarly, Illinois law enforcement is not authorized to arrest or detain an individual based on the previously issued Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) or Form I-247X (Request for Voluntary Transfer). Only federal officers have the authority to arrest an individual for violation of civil immigration law without a criminal warrant.[17] Even if the individual may be subject to removal because he or she was convicted of a criminal offense, the removal proceeding and determination (through an order of removal issued by a civil court) is a matter of civil immigration law.

c. Sharing information with federal immigration authorities.

Under federal law, no state or local law or policy may prohibit any government entity or official from sharing information about the immigration status of an individual with federal authorities.[18] As will be discussed further below, this federal law does not *require* Illinois law

[13] This guidance contains a review of federal and state law. It is recommended that Illinois law enforcement agencies further consult with any local ordinances that may cover the topics discussed herein.
[14] *See* 8 C.F.R. § 287.7; U.S. Immigration and Customs Enforcement, Policy No. 10074.2 "Issuance of Immigration Detainers by ICE Immigration Officers," (March 24, 2017), *available at* http://bit.ly/2q0QEJW.
[15] *See United States v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006).
[16] U.S. Immigration and Customs Enforcement, Policy No. 10074.2 "Issuance of Immigration Detainers by ICE Immigration Officers," (March 24, 2017), *available at* http://bit.ly/2q0QEJW.
[17] *Arizona*, 132 S. Ct. at 2505-06; 8 U.S.C. § 1357.
[18] 8 U.S.C. § 1373.

enforcement to share citizenship or immigration status information with federal authorities in any circumstance; all data sharing of this kind by Illinois law enforcement is completely voluntary.

II. Executive Order 13768 of January 25, 2017

Executive Order 13768 ("the Order") addresses those jurisdictions that have limited the ability of local law enforcement to share information about the citizenship and immigration status of individuals with federal immigration authorities.[19] Specifically, the Order authorizes the Attorney General of the United States and the Secretary of the Department of Homeland Security to "ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes."[20] Under the Order, the Secretary has the authority and discretion to designate a jurisdiction as a "sanctuary jurisdiction." The Order does not define "sanctuary jurisdictions," although a memo issued by U.S. Attorney General Jeff Sessions stated that "the term 'sanctuary jurisdiction' will refer only to jurisdictions that willfully refuse to comply with 8 U.S.C. 1373" by prohibiting law enforcement or other government employees from sharing information about individuals' immigration status with federal authorities.[21] The memo further clarified that the Order is only intended to affect grants from the Department of Justice and Department of Homeland Security that explicitly reference compliance with 8 U.S.C. § 1373 as a condition of the grant. However, on April 25, 2017, a federal court entered a preliminary injunction that applies nationally to the provision of the Executive Order that disqualifies "sanctuary jurisdictions" from receiving federal grants.[22] Therefore, the federal government currently may not enforce this particular provision against any jurisdiction.[23]

The Order also revokes the Obama Administration's priorities for enforcement, known as the Priority Enforcement Program (PEP), and revives an earlier program called Secure Communities. Under PEP, U.S. Immigration and Customs Enforcement (ICE) agents were directed to seek a transfer of an undocumented immigrant in the custody of state or local law enforcement only if the alien posed a demonstrable risk to national security or was convicted of specific criminal offenses.[24] Under the Secure Communities program reinstated by the Order, the Secretary of Homeland Security will prioritize removal of individuals who: have been convicted

[19] Executive Order 13768 of January 25, 2017, 82 Fed. Reg. 8799 (Jan. 30, 2017).
[20] *Id.* at 8801 (Sec. 9(a)).
[21] Memorandum from The Attorney General, "Implementation of Executive Order 13768 'Enhancing Public Safety in the Interior of the United States," May 22, 2017, *available at* https://www.justice.gov/opa/press-release/file/968146/download.
[22] *Cty. of Santa Clara v. Trump*, No. 17–cv–574, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017) (an order denying the federal government's motion to reconsider the preliminary injunction and to dismiss plaintiffs' claims was entered on July 20, 2017).
[23] *Id.*
[24] Memorandum from Jeh Johnson, Secretary of the U.S. Department of Homeland Security, "Secure Communities," Nov. 20, 2014, *available at* http://bit.ly/29oZZk5 (hereinafter "Memo from Jeh Johnson").

of any criminal offense; have been charged with any criminal offense; have committed acts which constitute a chargeable criminal offense; have engaged in fraud in connection with any matter before a governmental agency; have abused any program for the receipt of public benefits; are subject to a final order of removal; or pose a risk to public safety or national security.[25]

Illinois law enforcement should anticipate increased enforcement efforts by federal authorities under these broader priorities. This may include an increase in the number of ICE detainer requests issued to Illinois law enforcement following National Crime Information Center (NCIC) background checks for individuals in the custody of Illinois law enforcement. **However, these federal priorities do not create or expand any authority for Illinois law enforcement to enforce federal immigration law.**

III. The Illinois Trust Act, Effective August 28, 2017

The Illinois Trust Act expressly states that Illinois law "does not currently grant State or local law enforcement the authority to enforce federal civil immigration laws."[26] Specifically, the Trust Act prohibits Illinois law enforcement from (1) detaining or continuing to detain any individual *solely* on the basis of an immigration detainer or non-judicial immigration warrant, or (2) otherwise complying with an immigration detainer or non-judicial immigration warrant.[27] This means that an Illinois law enforcement agency cannot keep a person in its custody only because it received an immigration detainer or non-judicial immigration warrant. If the Illinois law enforcement agency does not have probable cause or a judicial warrant to continue to hold the person, it must release the person. Probable cause is *not* created by any request from federal immigration authorities. Consequently, Illinois law enforcement must deny any requests from federal immigration authorities – such as ICE or U.S. Customs and Border Protection (CBP) – for assistance to detain an individual solely on the basis of an immigration detainer or non-judicial immigration warrant.

Additionally, pursuant to the Trust Act, an Illinois law enforcement officer shall not stop, arrest, search, detain, or continue to detain a person *solely* based on his or her citizenship or immigration status.[28] Therefore, an officer who searches or arrests a person merely because the person is undocumented is committing an unlawful search or arrest.

The Trust Act makes clear that the above prohibitions do not apply if the Illinois law enforcement officer is presented with a valid, enforceable judicial warrant. An officer who releases

[25] 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017); *see also* Memorandum from John Kelly, Secretary of the U.S. Department of Homeland Security, "Enforcement of the Immigration Laws to Serve the National Interest," Feb. 20, 2017, *available at* http://bit.ly/2miirQd (hereinafter "Memo from John Kelly").
[26] Ill. Public Act 100-0463, § 5 (2017).
[27] *Id.* § 15(a).
[28] *Id.* § 15(b).

a person in accordance with the Trust Act is immune from any civil or criminal liability that could result from any acts committed by the person who was released, as long as the officer acted in good faith and did not commit willful or wanton misconduct.[29]

IV. Limited Authority of Illinois Law Enforcement to Enforce Federal Civil Immigration Law

Even if not explicitly prohibited by the Trust Act, local law enforcement's role in the enforcement of immigration law in Illinois is limited. Specifically, local law enforcement is not required to engage in immigration enforcement; has no authority to detain an individual pursuant to a federal administrative warrant; has no authority to detain an individual pursuant to an ICE detainer request; and is under no affirmative legal obligation to share any information about individuals in its custody with federal immigration authorities. **Importantly, local law enforcement officers cannot arrest an individual for a violation of a federal law without a warrant unless state law has granted them authority to do so.[30] Illinois law does not authorize Illinois law enforcement officers to arrest an individual for violating federal immigration law. Further, Illinois law now *prohibits* Illinois law enforcement from arresting a person solely based on his or her immigration status.**[31]

a. Federal law does not require Illinois law enforcement agencies to participate in enforcement of federal civil immigration law.

The federal government cannot require Illinois law enforcement to enforce federal law.[32] Any requests by the federal government to participate in immigration enforcement activities must be viewed as requests for voluntary cooperation. As a result, Illinois law enforcement agencies bear the responsibility for the consequences of their decision to comply with such a request.[33] Further, any authorization from the federal government for Illinois law enforcement to enforce federal law is only effective if it is accompanied by authority under state law or is not prohibited

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[29] *Id.* § 15(d).

[30] *Arizona v. United States*, 132 S. Ct. 2492, 2509-10 (2012) ("Authority of state officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of state law") (citing *United States v. Di Re*, 332 U.S. 581, 589 (1948)). *See also Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017) (finding no authority in Massachusetts common or statutory law that authorizes arrests for federal civil immigration violations and holding that court officers do not have the authority to detain an individual solely on the basis of a civil immigration detainer); Immigration and Naturalization Act, 8 U.S.C. § 1252c (authorizing State and local law enforcement officials to arrest and detain an alien who is illegally present and has been previously convicted of a felony "to the extent permitted by relevant State and local law").

[31] 725 ILCS 5/107-2 (describing the circumstances for arrest by law enforcement).

[32] *Printz v. United States*, 521 U.S. 898, 923-24 (1997) (finding that the 10th Amendment prohibits the federal government from compelling the States to enact or administer a federal regulatory program).

[33] *See Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 801-803 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (finding that county was liable for unlawful detention pursuant to ICE detainer).

by the Trust Act or other state law.[34] Accordingly, any requests from federal immigration authorities for access to individuals held by Illinois authorities should be viewed as requests, rather than obligations.[35]

As discussed above, federal law permits – but does not require – only two circumstances where Illinois law enforcement may enforce federal immigration law: (1) pursuant to a 287(g) agreement;[36] or (2) when an individual has returned to the United States after being convicted of a felony and deported.[37] **Jurisdictions should understand that Illinois law has not authorized Illinois law enforcement to engage in enforcement of federal civil immigration law and that they may face civil liability for doing so.**

b. Illinois law enforcement has no authority to arrest an individual solely based on information that the individual is undocumented.

Generally, law enforcement officers cannot arrest an individual for violation of a state or federal law without a warrant unless state law has granted them authority to do so.[38] Illinois law permits arrest by Illinois law enforcement only if the officer has an arrest warrant, has reasonable grounds to believe a warrant has been issued or has reasonable grounds to believe that the individual is committing or has committed a criminal offense.[39]

Being unlawfully present in the United States is not a criminal offense, and thus unlawful presence alone does not establish probable cause to find that an individual has committed an offense under Illinois law.[40] The fact that a person may be subject to deportation is not a lawful reason for arrest or detention without a court order, even if the person is subject to a deportation order based on the commission of a criminal offense.[41] Further, as discussed above, Illinois law now prohibits the arrest of a person solely based on the person's citizenship or immigration status.

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[34] *Arizona*, 132 S. Ct. at 2509-10.
[35] *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014); *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F.3d 435, 438 (6th Cir. 2013); *Liranzo v. United States*, 690 F.3d 78, 82 (2d Cir. 2012); *United States v. Uribe–Rios*, 558 F.3d 347, 350 n. 1 (4th Cir. 2009); *United States v. Female Juvenile, A.F.S.*, 377 F.3d 27, 35 (1st Cir. 2004); *Giddings v. Chandler*, 979 F.2d 1104, 1105 n.3 (5th Cir. 1992).
[36] 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act).
[37] 8 U.S.C. § 1252c.
[38] *Miller v. United States*, 357 U.S. 301, 305 (1958) (noting that the lawfulness of a warrantless arrest for violation of federal law by state peace officers is "to be determined by reference to state law").
[39] 725 ILCS 5/107-2.
[40] *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) ("If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.").
[41] *Id.; see also Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) ("The [INA] does not authorize federal officials to command state or local officials to detain suspected aliens subject to removal."); *Morales v. Chadbourne*, 793 F.3d 208, 217-18 (1st Cir. 2015) (new seizures as a result of an ICE detainer must be supported by probable cause).

Thus, without an arrest warrant issued by a judge, Illinois law bars Illinois law enforcement from arresting an individual on the sole basis that the person is unlawfully present in the United States.[42] This is true even if an officer is aware that ICE has issued an administrative warrant for an individual. **Therefore, Illinois officers do not have legal authority to arrest or detain an individual based solely on the individual's immigration status and are in violation of Illinois law if they do so.**

c. Illinois law enforcement shall not arrest an individual solely based on an ICE administrative warrant.

Federal law does not authorize Illinois law enforcement officers to arrest an individual pursuant to an ICE administrative warrant and Illinois law now prohibits arrest by an Illinois law enforcement officer solely based on an ICE administrative warrant.[43] ICE administrative warrants are prepared by ICE employees, but are not approved or reviewed by a judge.[44] By themselves, ICE administrative warrants do not suggest that an individual has committed a criminal offense, nor do they constitute probable cause that a criminal offense has been committed.[45] Furthermore, administrative warrants issued by ICE authorize only U.S. Department of Homeland Security (DHS) or ICE agents to arrest the individual, not Illinois law enforcement. **Thus, any arrest by Illinois law enforcement solely based on an administrative warrant issued by ICE is not an arrest pursuant to a criminal warrant or a finding of probable cause and violates Illinois law.**[46]

d. Illinois law enforcement shall not detain an individual pursuant only to a federal immigration detainer request.

Federal courts have concluded that ICE detainers are requests, and state and local law enforcement are not required to honor the requests. In fact, law enforcement agencies may be open to liability if they comply with such requests because ICE detainers do not establish individualized probable cause that would be sufficient justification for local law enforcement to detain an individual.[47] Furthermore, any detention of an individual after his or her normal release date is

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[42] *Arizona*, 132 S. Ct. at 2505.
[43] *See United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009) (discussing the sheriff's lack of authority to enforce an ICE administrative warrant).
[44] 8 U.S.C. § 1357; *see also U.S. v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006) (describing the process to obtain an ICE administrative warrant).
[45] *El Badrawi v. Dept. of Homeland Security*, 579 F. Supp. 2d 249, 276 (D. Conn. 2008); *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009).
[46] Illinois law authorizes peace officers to arrest an individual only when a warrant has been issued for a criminal offense – not a civil offense. 725 ILCS 5/107-2.
[47] *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d. Cir. 2014); *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. September 30, 2016) (holding that ICE's practice of issuing detainers without individualized determination of probable cause was unlawful).

considered a new arrest and must be based on probable cause that a crime has been committed.[48] As discussed above, unlawful presence in the United States alone does not constitute probable cause and is not a criminal offense.[49]

An Illinois law enforcement agency is in violation of the Trust Act if it detains an individual beyond his or her normal release date based only on an ICE detainer request.[50] Further, an Illinois law enforcement agency must take actions to ensure it does not violate the Illinois and federal constitutional protections against unreasonable searches and seizures.[51] **Any detention of an individual without a judicial warrant – including prolonging an initial detention – must be supported by probable cause that an individual committed a criminal offense, which is not satisfied by the existence of an ICE administrative warrant.**[52]

e. Illinois law enforcement is permitted, but not required, to share information with federal immigration authorities.

Federal officials may request information from Illinois law enforcement agencies about individuals in their custody in order to enforce federal civil immigration laws.[53] This information may include names of individuals in custody, normal release dates, court dates, home address or other identifying information. Illinois law enforcement is not required to respond to these information requests.[54] Similarly, Illinois law enforcement agencies are not required to inquire about an individual's citizenship or immigration status or to collect this information.[55]

While Illinois law enforcement and other government agencies are not prohibited from sharing or receiving citizenship information,[56] they are not required to do so.[57] Moreover, law enforcement policies and practices to share information about individuals in their custody may deter individuals from reporting information about a crime or appearing as a witness

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[48] Ill. Const. 1970, art. I, § 6; U.S. Const., amend. IV.
[49] *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012).
[50] *Santos v. Frederick Cnty. Bd. Of Comm'rs*, 725 F.3d 451, 464-65 (4th Cir. 2013); *see also Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 801-803 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d. Cir. 2014) (finding that county was liable for unlawful detention pursuant to ICE detainer).
[51] *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016).
[52] *Santos*, 725 F.3d at 464-65; *see also Villars*, 45 F.Supp.3d at 801-03; *Galarza*, 745 F.3d at 645; *see also People v. Hyland*, 2012 IL App (1st) 110966 (finding that investigative alert was not sufficient to support probable cause for arrest).
[53] 8 U.S.C. § 1373.
[54] *Id.; see also Arizona v. United States*, 132 S. Ct. 2492, 2508 (2012) (noting that Congress has "*encouraged* the sharing of information about possible immigration violations").
[55] Law enforcement should be aware that all fingerprint information submitted to the FBI for criminal background checks will be provided to ICE for comparison to its records.
[56] *See* Ill. Public Act 100-0463, § 15(c) (2017).
[57] *See Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that 10th Amendment prohibits the federal government from commandeering state employees to administer federal scheme).

if these individuals are concerned that their information will be shared with ICE or other federal authorities.[58] Accordingly, such policies and practices may diminish the relationship between Illinois law enforcement and immigrant communities. Therefore, agencies should carefully consider the impact of sharing information with federal authorities on the community's perceptions of trust and confidentiality.

[58] *See City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999) (discussing police department interests in confidentiality of information).

U Visa Law Enforcement Certification Resource Guide

for Federal, State, Local, Tribal and Territorial Law Enforcement

U Visa Resource Guide

Table of Contents

Introduction

The Department of Homeland Security (DHS) provides this guidance to federal, state, local, tribal and territorial law enforcement officers. This public guidance primarily concerns law enforcement certifications for U nonimmigrant status, also known as U visas. The U visa is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity. The law enforcement certification USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B) is a required element for U visa eligibility. Included in this resource is information about U visa requirements, the certification process, best practices, frequently asked questions from law enforcement agencies, and contact information for DHS personnel on U visa issues.

U Visa Basics

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000[1], passed with bipartisan support in Congress, encourages victims to report crimes and contribute to investigations and prosecutions regardless of immigration status, and supports law enforcement efforts to investigate and prosecute crimes committed against immigrant victims.

The U visa is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or

[1] (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

who are likely to be helpful in the investigation or prosecution of criminal activity. The U visa provides eligible victims with nonimmigrant status in order to temporarily remain in the United States (U.S.) while assisting law enforcement. If certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status. Congress capped the number of available U visas to 10,000 per fiscal year.

Immigrants, especially women and children, can be particularly vulnerable to crimes like human trafficking, domestic violence, sexual assault, and other abuse due to a variety of factors. These include, but are not limited to, language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Congress recognized that victims who do not have legal status may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States. The VTVPA was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country. Congress also sought to encourage law enforcement officials to serve immigrant crime victims.[2]

If an individual believes he or she may qualify for a U visa, then that individual or his or her representative will complete the USCIS Form I-918, Petition for U Nonimmigrant Status (Form I-918), and submit it to U.S. Citizenship and Immigration Services (USCIS) with all relevant documentation, including Form I-918B, the U visa law enforcement certification. Given the complexity of U visa petitions, petitioners often work with a legal representative or victim advocate.

What Is a U Visa Certification and Which Agencies Can Certify?

USCIS Form I-918, Supplement B is the U visa certification document that a law enforcement agency can complete for a victim who is petitioning USCIS for a U visa. USCIS is the federal component of DHS with the responsibility to determine whether immigration benefits and immigration status should be granted or denied. Form I-918B is a required piece of evidence to confirm to USCIS that a qualifying crime has occurred and that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of criminal activity.

Form I-918B and its instructions are available on the USCIS website at www.uscis.gov with the Form I-918 for the U visa. In order to be eligible for a U visa, the victim must submit a law enforcement certification completed by a certifying agency. Certifying agencies include all authorities responsible for the investigation, prosecution, conviction or sentencing of the qualifying criminal activity, including but not limited to:

- Federal, State and Local law enforcement agencies;
- Federal, State and Local prosecutors' offices;

[2] VTVPA, Pub.L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533-34 (2000). *See also* New Classification for Victims of Criminal Activity; Eligibility for ''U'' Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007) (amending 8 C.F.R. §§ 103, 212, 214, 248, 274a and 299).

- Federal, State and Local Judges;
- Federal, State, and Local Family Protective Services;
- Equal Employment Opportunity Commission;
- Federal and State Departments of Labor; and
- Other investigative agencies.

The law enforcement certification, Form-918B, is a required piece of evidence to confirm that a qualifying crime has occurred and that that the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation or prosecution of criminal activity. Although a law enforcement certification is a required part of a victim's petition for a U visa, law enforcement officers cannot be compelled to complete a certification. Whether a certifying law enforcement agency signs a certification is at the discretion of that law enforcement agency and the policies and procedures it has established regarding U visa certifications. The law enforcement certification validates the role the victim had, has, or will have in being helpful to the investigation or prosecution of the case; therefore, it is important that the law enforcement agency complete certifications on a case-by-case basis. Without a completed U visa certification, the victim will not be eligible for a U visa.

What Constitutes a Qualifying Crime?

• Abduction • Abusive Sexual Contact • Blackmail • Domestic Violence • Extortion • False Imprisonment • Felonious Assault • Female Genital Mutilation • Felonious Assault • Being Held Hostage	• Incest • Involuntary Servitude • Kidnapping • Manslaughter • Murder • Obstruction of Justice • Peonage • Perjury • Prostitution • Rape	• Sexual Assault • Sexual Exploitation • Slave Trade • Torture • Trafficking • Witness Tampering • Unlawful Criminal Restraint • Other Related Crimes*† *****Includes any similar activity where the elements of the crime are substantially similar. †Also includes attempt, conspiracy, or solicitation to commit any of the above, and other related, crimes.

What Does "Helpful" In the Investigation or Prosecution Mean?

Helpfulness means the victim was, is, or is likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. This includes being helpful and providing assistance when reasonably requested. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after

reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement remains even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted may have the visa revoked by USCIS. Law enforcement agencies should contact and inform USCIS of the victim's unreasonable refusal to provide assistance in the investigation or prosecution should this occur.

A current investigation, the filing of charges, a prosecution or conviction are not required to sign the law enforcement certification. Many instances may occur where the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials. There is no statute of limitations on signing the law enforcement certification. A law enforcement certification can even be submitted for a victim in a closed case.

USCIS Review of U Visa Law Enforcement Certifications

USCIS is the federal component of DHS responsible for approving and denying immigration benefits and status, including the U visa. Federal, State and local law enforcement agencies **do not** grant or guarantee a U visa or any other immigration status by signing a U visa certification (Form I-918B). Only USCIS may grant or deny a U visa after a full review of the petition to determine whether all the eligibility requirements have been met and a thorough background investigation. An individual may be eligible for a U visa if:

- He/she is the victim of qualifying criminal activity.
- He/she has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- He/she has information about the criminal activity. If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on the individual's behalf.
- He/she was helpful, is being helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime. If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on behalf of the individual.
- The crime occurred in the United States or violated U.S. laws
- He/she is admissible to the United States. If not admissible, an individual may apply for a waiver on a Form I-192, Application for Advance Permission to Enter as a Non-Immigrant.

By signing a law enforcement certification, the law enforcement agency is stating that a qualifying criminal activity occurred, that the victim had information concerning the criminal activity, and that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying crime. In addition, law enforcement may report information about any harm sustained by the victim that law enforcement has knowledge of or observed.

While a U visa petition will not be granted without the required law enforcement certification, the fact that a certification has been signed does not automatically grant the victim a U visa. The certification is only one of the required pieces of evidence needed to be eligible for a U visa.

For all U visa petitioners, USCIS conducts a thorough background investigation which includes a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS will also review the petitioners' immigration records to assess whether any inadmissibility issues exist, such as the petitioner's criminal history, immigration violations, or security concerns. Any evidence that law enforcement and immigration authorities possess may be used when determining eligibility for a U visa. This evidence includes, but is not limited to, the person's criminal history, immigration records, and other background information. USCIS may contact the certifying law enforcement agency if there are any issues or questions arise during the adjudication based on information provided in the law enforcement certification.

Benefits of the U Visa to the Recipient

If found eligible and a petition is approved, a U visa recipient receives nonimmigrant status to live and work in the United States for no longer than 4 years. Qualified recipients may apply to adjust status to become a lawful permanent resident (green card) after three years of continuous presence in the U.S. while having a U visa. The petitioner will have to meet other eligibility requirements for a green card as well, including the ongoing duty to cooperate with law enforcement and not unreasonably refuse to assist with the investigation or prosecution of the qualifying crime. Additionally, certain immediate family members of U visa recipients may also be eligible to live and work in the United States as derivative U visa recipients based on their relationship with the principal recipient. These family members include:

- Unmarried children under the age of 21 of principal U visa recipients;
- Spouses of principal U visa recipients;
- Parents of principal U visa recipients under age 21; and
- Unmarried siblings under 18 years old of principal U visa recipients under age 21.

U Visa Certification Form (Form I-918B)

Tips for Filling Out the Form I-918B

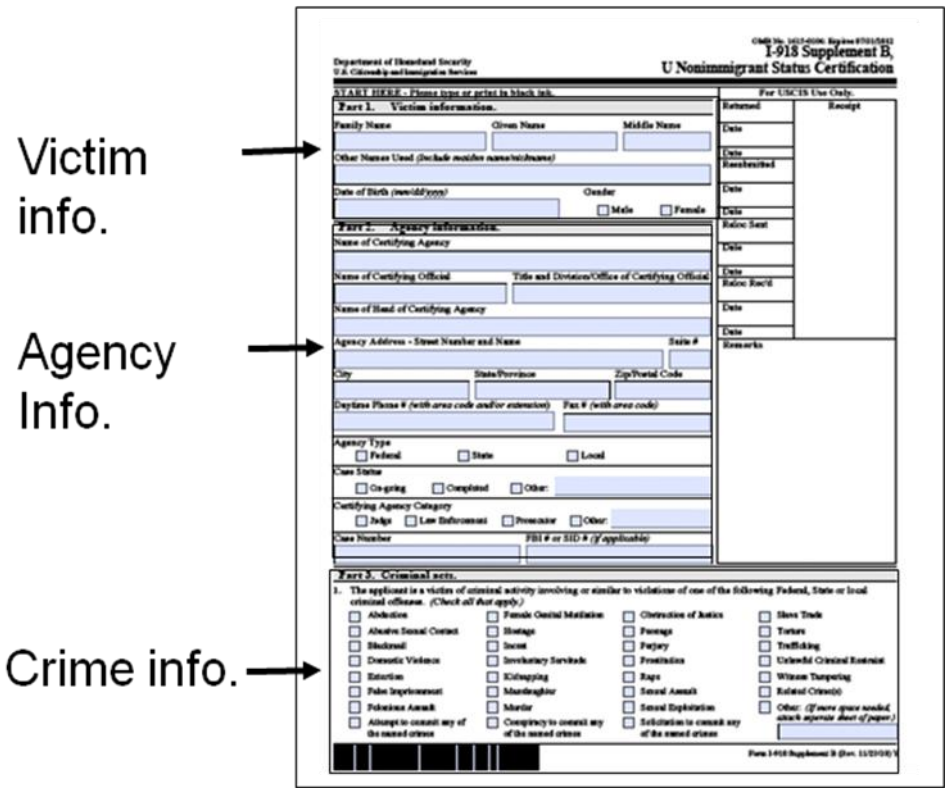
The U visa certification can be initiated by the law enforcement agency itself or by the crime victim. If initiated by the crime victim, this is usually done with the assistance of an advocate or an attorney. By signing a certification, the law enforcement agency attests that the information is true and correct to the best of the certifying official's knowledge. The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications. An agency's decision to sign a certification is completely discretionary and under the authority of that agency. Neither DHS nor any other federal agency have the authority to request or demand that any law enforcement agency sign the certification. There is also no legal obligation to

complete and sign Form I-918B. However, without a certification signed by law enforcement, the individual will not be eligible to be granted a U visa.

By signing a certification, the law enforcement agency attests that the information is true and correct to the best of the certifying official's knowledge. The law enforcement certification essentially states to USCIS that:

- The petitioner was a victim of a qualifying crime;
- The petitioner has specific knowledge and details of crime; and
- The petitioner has been, is being, or is likely to be helpful to law enforcement in the detection, investigation, or prosecution of the qualifying crime.

If a law enforcement agency signs a Form I-918B, the certification must be returned to the victim (or the victim's attorney, representative, etc.). The law enforcement agency does not need to send the signed certification separately to USCIS. The victim is required to send the original signed certification form along with his or her complete U visa petition to USCIS. If the law enforcement official is providing additional documents (e.g., a copy of the police report, additional statements, photos, etc.) along with the certification, law enforcement should indicate on Form I-918B a note of "see attachment" or "see addendum". Question 5 of Part 4 on Form I-918B, the certifying official may document the helpfulness of the victim and if that victim refused to be helpful at any time throughout the investigation/prosecution at the point. The certification form must contain an original signature and should be signed in a color of ink other than black for verification purposes. Photocopies, faxes, or scans of the certification form cannot be accepted by USCIS as an official certification.



Date, location and other crime info.

Part 3. Criminal acts. (Continued)

2. Provide the date(s) on which the criminal activity occurred.
Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy)

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States? ☐ Yes ☐ No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? ☐ Yes ☐ No

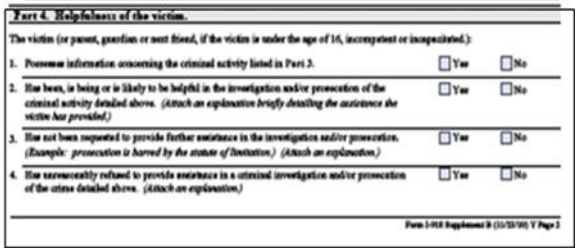
b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

c. Where did the criminal activity occur?

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Helpfulness statement



Part 4. Helpfulness of the victim.

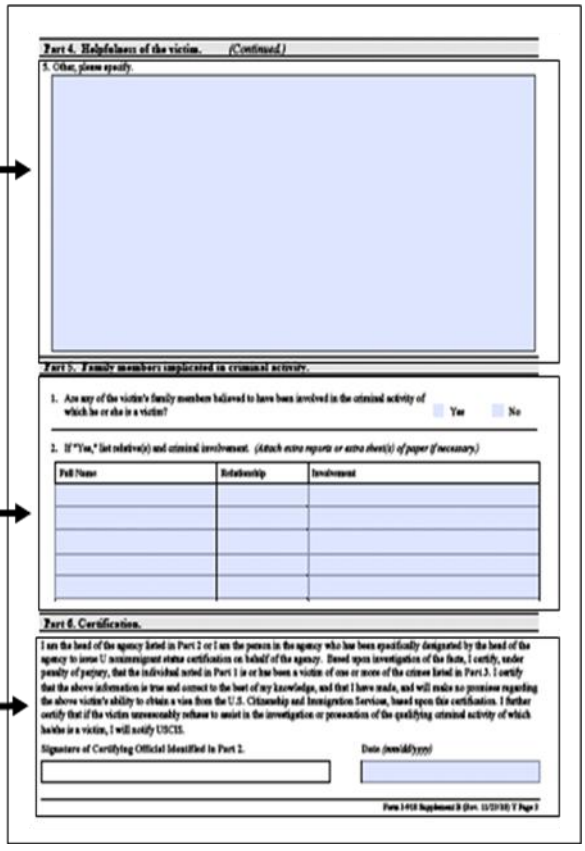
The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated):

1. Possesses information concerning the criminal activity listed in Part 3. ☐ Yes ☐ No
2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)* ☐ Yes ☐ No
3. Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.)* *(Attach an explanation.)* ☐ Yes ☐ No
4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. *(Attach an explanation.)* ☐ Yes ☐ No

Additional helpfulness info.

Culpable family members

Certification



Part 4. Helpfulness of the victim. (Continued)

5. Other, please specify.

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	Involvement

Part 6. Certification.

I am the head of the agency listed in Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed in Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2. Date (mm/dd/yyyy)

Best Practices in U Visa Certifications (Form I-918B)

Across the United States, law enforcement agencies have taken different procedural approaches to U visa certifications. DHS does not endorse or recommend any particular practice, as the certifying agency has the sole authority on the policies and procedures it will use in signing law enforcement certifications. Some examples of how various law enforcement agencies educate their officers about U visa certifications and how they designate a certifier or certifiers in their agencies include:

- Department policy or general order on the process and use of the U visa certification written and distributed;
- A Letter or Memorandum designating a process and authority to certify has been sent from the Chief to the Lieutenant(s) or supervisor(s) in charge of certifying U visas;
- Chief designates the head of the Victim-Witness Assistance Program as the certifier;
- Teletype message or similar written notification sent out from the Chief to the entire department explaining the purpose of the U visa, the certification process, and who is/are designated as the certifier(s); and
- The Investigations Bureau Chief, assigned as certifier, delegates an officer or supervisor to review requests made by both law enforcement officers and the community and makes a recommendation on the certification to the Bureau Chief.

Frequently Asked Questions

What do I do with a completed certification?
Once the law enforcement official completes and signs Form I-918B, the original should be given to the victim or the victim's legal representative or victim advocate, so that he or she can add the certification to the original U visa petition packet before submission to USCIS.

Please also note that only a law enforcement official may complete and sign the Form I-918B. The victim, victim's attorney, or advocate may not sign the Form I-918B.

If I certify a petition, does the victim automatically get a U visa or lawful immigration status?
No. There are many additional eligibility requirements that USCIS evaluates based on a victim's U visa petition, including whether the victim suffered "substantial physical or mental abuse." Moreover, upon receiving a U visa petition, including Form I-918B, USCIS will conduct a full review of the petition and a thorough background check of the petitioner before approving or denying the petition. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds. A victim may be found inadmissible if they do not meet required criteria in the Immigration and Nationality Act to gain admission or legal status in the U.S. Generally, USCIS does not initiate removal proceedings. However, if there are serious inadmissibility issues, such as security related concerns, multiple or violent criminal arrests, or multiple immigration violations, USCIS may find the victim to be inadmissible and may also initiate removal proceedings. If USCIS finds the victim

to be inadmissible after a removal proceeding was stayed or terminated to pursue the U visa application, the proceedings may be reinitiated or DHS may file a new Notice to Appear (NTA) for that individual.

If USCIS needs further information, evidence, or clarification of an issue, USCIS officers may request additional evidence from the petitioner. USCIS may also contact the certifying law enforcement agency for further information if necessary.

Which law enforcement agencies are eligible to make certifications?
A federal, state, local law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the investigation or prosecution of a qualifying crime or criminal activity is eligible to sign Form I-918B. This includes agencies with criminal investigative jurisdiction in their respective areas of expertise, including but not limited to child and adult protective services, the Equal Employment Opportunity Commission, and Federal and State Departments of Labor.

Who in the law enforcement agency can sign Form I-918B?
A certifying official(s) can sign Form I-918B. The U visa regulation defines a certifying official as: "[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency." 8 C.F.R. § 214.14(a)(3).

Although not required with each certification, it is helpful to include a letter showing the designation of the signing official(s). The letter would be signed by the agency head and would reflect that person with a particular rank or title within the agency is to be the signing official(s).

If my law enforcement agency has a Memorandum of Understanding (MOU) with DHS under the 287(g) program, are we still able to sign U visa certifications?
Yes, Form I-918B can be signed regardless of such an MOU with DHS. DHS encourages all jurisdictions to implement U visa certification practices and policies.

What if the victim or witness in my case has been detained or ordered removed for an immigration violation?
Individuals currently in removal proceedings or with final orders of removal may still apply for a U visa. Absent special circumstances or aggravating factors, it is against U.S. Immigration and Customs Enforcement (ICE) policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. To avoid deterring individuals from reporting crimes, ICE has issued guidance to remind ICE officers, special agents, and attorneys to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to victims of domestic violence, human trafficking, or other serious crimes, and witnesses involved in pending criminal investigations or prosecutions.

If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact their local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Chief Counsel to make ICE aware of the situation. Specifically with regard to a lodged detainer, the law enforcement official may notify the ICE Law Enforcement Support Center at (802) 872-6020, if the individual may be the victim of a crime, or if the officials want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness.

Will a certifying law enforcement agency be liable for any future conduct of someone who is granted a U visa? What if I signed a certification for someone who later commits a crime?
A certifying law enforcement agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or to whom DHS granted a U visa. The U visa certification simply states that the person was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the investigation or prosecution of that crime. The certification does not guarantee the future conduct of the victim or grant a U visa. USCIS is the only agency that can grant a U visa.

If a victim is granted a U visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues.

If a law enforcement agency later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency wishes to withdraw the certification, the law enforcement agency should contact USCIS.

If an investigation or case is closed, can law enforcement still complete Form I-918B? Is there a statute of limitations?
Yes, law enforcement can still complete Form I-918B for an investigation or case that is closed. There is no statute of limitations regarding the time frame in which the crime must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful *in the past* to investigate or prosecute a crime. A crime victim could be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial whether or not the prosecution resulted in a conviction. The petitioner must still meet all the eligibility requirements for a U visa to be approved.

Can I complete a U visa certification for a victim who is no longer in the United States?
Yes. While the crime must have occurred in the United States, its territories, or possessions, or have violated U.S. law, victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply from outside the United States.

Who determines if the "substantial physical or mental abuse" requirement has been met?

USCIS will make the determination as to whether the victim has met the "substantial physical or mental" standard on a case-by-case basis during its adjudication of the U visa petition. Certifying law enforcement agencies do not make this determination. Certifying agencies may, however, provide any information the agency deems relevant regarding injuries or abuse on Form I-918B. The U visa certification signed by law enforcement states that the person was a victim of a qualifying crime, possessed information relating to the crime, and was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of that crime. Question 6 of Part 3 on Form I-918B asks that law enforcement provide information about any injuries the law enforcement agency knows about or has documented. While this provides some of the evidence USCIS will use to make the substantial physical or mental abuse determination, the U visa petitioner has the burden of proving the substantial physical or emotional abuse.

USCIS adjudication officers receive extensive training in statutory and regulatory requirements in determining whether a victim has suffered substantial physical or mental abuse. Factors that USCIS uses to make this determination are: the nature of the injury inflicted; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.

The existence of one or more of the factors does not automatically signify that the abuse suffered was substantial. The victim will have to provide evidence to USCIS showing that the victim meets the standard of substantial physical or mental abuse.

Can I still certify if the perpetrator is no longer in the jurisdiction or prosecution is unlikely for some reason?

Yes. There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to be eligible to apply for a U visa. Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another agency in another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations. The petitioner will still have to meet the helpfulness requirement by reasonably assisting the certifying law enforcement agency, and will also have to meet all other eligibility requirements in order to qualify for a U visa.

Does the victim have to testify to be eligible for certification?

As mentioned above, there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U visa. While there is no requirement for the victim to testify at a trial to be eligible for a U visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with law enforcement. If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed Form I-918B.

Can a victim's petition still be approved if the defendant is acquitted or accepted a plea to a lesser charge, or if the case was dismissed?

Yes. As mentioned above, a conviction is not required for someone to be eligible for a U visa. Plea agreements and dismissals do not negatively impact the victim's eligibility. As long as the victim has been helpful in the investigation or prosecution of the qualifying criminal activity and meets all other eligibility requirements, the victim may petition for a U visa.

If the victim unreasonably refuses to assist the investigation or prosecution and harms the criminal case, that will negatively impact the victim's ability to receive an approval. The certifying law enforcement agency should notify USCIS if the victim has unreasonably refused to cooperate in the investigation or prosecution of the crime.

What constitutes "helpfulness" or "enough cooperation"?
USCIS regulation requires that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of the criminal activity. This means that since the initiation of cooperation, the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
USCIS will not provide a U visa to those petitioners who, after initially cooperating with law enforcement, refuse to provide continuing assistance when reasonably requested. USCIS also will not approve the petitions of those who are culpable for the qualifying criminal activity.

What if the victim stops cooperating after I sign his/her certification?
At its discretion, a certifying agency may withdraw or disavow a Form I-918B at any time if a victim stops cooperating. To do so, the certifying agency must notify the USCIS Vermont Service Center in writing (see below).

Written notification regarding withdrawal or disavowal should include:

- The agency's name and contact information (if not included in the letterhead);
- The name and date of birth of the individual certified;
- The name of the individual who signed the certification and the date it was signed;
- The reason the agency is withdrawing/disavowing the certification including information describing how the victim's refusal to cooperate in the case is unreasonable;
- The signature and title of the official who is withdrawing/ disavowing the certification; and
- A copy of the certification the agency signed (if a copy was retained by the agency).

The letter should be either scanned and emailed to the Vermont Service Center at LawEnforcement_UTVAWA.vsc@uscis.dhs.gov, or mailed to:

USCIS—Vermont Service Center
ATTN: Division 6
75 Lower Welden Street
St. Albans, VT 05479

If one crime is initially investigated but a different crime is eventually prosecuted, does that have an impact on the certification?

A law enforcement certification is valid regardless of whether the initial crime being investigated is different from the crime that is eventually prosecuted. As long as the person is a victim of a qualifying criminal activity, that person may be eligible for a U visa. Examples include:

- An initial investigation of rape eventually leads to a charge and prosecution of sexual assault. Both rape and sexual assault are qualifying crimes.

- An initial investigation of embezzlement leads to a charge and prosecution of extortion. While embezzlement is not a qualifying crime, the investigation eventually led to a charge of extortion, which is a qualifying crime. If the person assisting in the investigation or prosecution is a victim of extortion, that person may qualify for a U visa.

- In the process of investigating drug trafficking allegations, police determine that the drug trafficker's wife is a victim of domestic violence. The victim reported the domestic abuse. The state brings a prosecution against the husband for drug offenses but not domestic violence crimes. The wife is cooperating in the drug prosecution. Law enforcement may complete a Form I-918B certification for reporting the domestic abuse case that is not being prosecuted.

Form I-918B certifications may also be submitted for crimes similar to the list of qualifying criminal offenses. An investigation or prosecution into a charge of video voyeurism may fall under the qualifying crime of sexual exploitation. This may be determined by state or local criminal law and the facts and evidence in that specific case. Please note that while video voyeurism is not specifically listed as a qualifying crime, it may be considered a type of sexual exploitation, which is a qualifying crime. The victim would need to show how these crimes are related and present this evidence to USCIS, along with Form I-918B certification form signed by a certifying law enforcement agency.

If the victim is a child, why would a non-citizen parent ask for a certification stating that the parent was the victim?

In many cases where a child is the victim of a crime, the child may not be able to provide law enforcement with adequate assistance. This may be due to the child's age or trauma suffered, among various other reasons. Parents of a child victim play a crucial role in detecting and reporting crimes, providing information and assisting law enforcement in the investigation or prosecution of the crime committed against the child. Recognizing this, an alien parent can apply to be recognized as an "indirect victim" if the principal victim is a child under 21 years of age and is incompetent or incapacitated to provide assistance to law enforcement in the investigation or prosecution of the crime committed against the child or if the child is deceased due to murder or manslaughter. The immigration status of the child victim is not relevant to this determination; Form I-918B can be submitted for an alien parent whether or not the child is a U.S. citizen or a non-citizen.

The parent(s), in order to qualify as an "indirect victim", must meet the remaining eligibility requirements for a U visa to receive an approval. Therefore, the "indirect victim" parents must have information about the crime, and must be helpful to law enforcement in the investigation or

prosecution of the crime and the crime must have occurred in the United States or violated U.S. law. The parents will also be subject to the standard background checks (FBI fingerprint and name/DOB check) and immigration records review as well. .

What constitutes "possesses information"?
To be eligible for a U visa, the victim of the crime must possess credible and reliable information establishing that the victim has knowledge of the details of the criminal activity or events leading up to the criminal activity, including specific facts about the crime/victimization leading law enforcement to determine that the victim has assisted, is assisting, or is likely to provide assistance in the investigation or prosecution of the crime.

If the victim was under 16 years of age or incompetent or incapacitated at the time the qualifying crime occurred, a parent, guardian, or next friend may possess the information. A "next friend" is defined as a person who appears in a lawsuit to act for the benefit of an alien who is under 16 or incompetent or incapacitated. The next friend is someone dedicated to the best interests of the individual who cannot appear on his or her own behalf because of inaccessibility, mental incompetence, or other disability. A next friend cannot be a party to a legal proceeding involving the victim and cannot be a court appointed guardian. A next friend also does not qualify for a U visa or any immigration benefit simply by acting as a next friend for the victim, but he or she may possess information about the criminal activity and may provide the required assistance.

Will USCIS approve a victim with a criminal history?
USCIS may deny a U visa petition for a variety of reasons including if the victim's criminal history warrants such a decision. Denials may occur in cases where a victim has multiple arrests, convictions, or has a serious or violent criminal arrest record. USCIS will also deny a petition if the victim was complicit or culpable in the qualifying criminal activity of which he or she claims the victimization occurred. USCIS conducts background and security checks (FBI fingerprint check, name/DOB check, check of immigration records) on U visa petitioners and reviews all available information concerning arrests, immigration violations, and security issues before making a final decision.

The fact that a victim has a criminal history does not automatically preclude approval of U status. USCIS has broad authority to waive most inadmissibility issues, including criminal issues. Each U visa petition is evaluated on a case-by-case basis.

If law enforcement believes USCIS should know something particular about a victim's criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim's criminal history with that law enforcement agency or his or her involvement in the crime.

What are the safeguards for protecting the U visa program against fraud?
Congress and USCIS recognize that law enforcement agencies that investigate and prosecute the qualifying criminal activities are in the best position to determine if a qualifying crime has taken place. If, in the normal course of duties, a law enforcement agency has determined that a qualifying crime

has taken place, the victim possessed information related to the crime, and the victim has been helpful, law enforcement may sign the U visa certification. Whether a law enforcement agency signs the certification is under the authority of the agency conducting the investigation or prosecution. The law enforcement certification also acts as a check against fraud and abuse, as the certification is required in order to be eligible for a U visa.

USCIS takes fraud and abuse of the U visa program seriously. If USCIS suspects fraud in a U visa petition, USCIS may request further evidence from the petitioner and may also reach out to the law enforcement agency for further information. USCIS also has a dedicated unit whose sole purpose is to target and identify fraudulent immigration applications. The Fraud Detection and National Security (FDNS) unit of USCIS conducts investigations of cases that appear fraudulent and works with other Federal, State, and local law enforcement agencies when fraud or abuse is discovered.

As an additional check against fraud, a U visa recipient cannot obtain a green card unless the victim proves that he or she cooperated, when requested, with law enforcement or prosecutors. In order to obtain a green card, if the U visa victim did not cooperate, he or she must prove to DHS' satisfaction that his or her refusal to cooperate was not unreasonable.

Where can my agency get additional training on U visa certifications?
Law enforcement agencies may request additional training and information by emailing USCIS at: T-U-VAWATraining@dhs.gov.

Other Forms of Relief for Victims

Federal law provides additional options to assist law enforcement with providing immigration status to victims and witnesses of crime that may or may not be eligible for the U visa. The following are some of these resources:

T Visa
The T nonimmigrant status (or T visa) provides immigration protection to victims of severe forms of trafficking in persons who comply with reasonable requests for assistance from law enforcement in the investigation or prosecution of human trafficking cases. The T nonimmigrant visa allows victims to remain in the United States to assist in the investigation or prosecution of human traffickers. Unlike the U visa, the T visa does not require a law enforcement certification. Once T nonimmigrant status is granted, a victim can apply for permanent residence after three years. A petitioner for a T visa must send a completed petition (Form I-914) to USCIS. A signed I-914 Supplement B may be submitted with the petition to verify that he or she has complied with any reasonable request by law enforcement in the investigation or prosecution of the trafficking crime, but is not required. The certification is one of the pieces of evidence that USCIS will consider to grant or deny a T visa.

VAWA
Recognizing that immigrant victims of domestic violence may remain in an abusive relationship because his or her immigration status is often tied to the abuser, the Violence Against Women Act

(VAWA) in 1994 created a self-petitioning process that removes control from the abuser and allows the victim to submit his or her own petition for permanent residence without the abuser's knowledge or consent. Those eligible for VAWA relief include the abused spouse or former spouse of a U.S. citizen or Lawful Permanent Resident, the abused child of a U.S. citizen or Lawful Permanent Resident, or the abused parent of a U.S. citizen. VAWA immigration relief applies equally to women and men. To file for VAWA immigration relief the self-petitioner must send a completed Form I-360 along with corroborating evidence to USCIS. A law enforcement certification is not needed in these cases.

Continued Presence

Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. Federal law enforcement officials are authorized to submit a CP application, which should be initiated upon identification of a victim of human trafficking. CP allows victims of human trafficking to remain in the United States during an ongoing investigation into human trafficking-related crimes committed against them. CP is initially granted for one year and may be renewed in one-year increments. Recipients of CP also receive work authorization. CP is authorized by ICE Homeland Security Investigations (HSI) Law Enforcement Parole Unit and can only be sponsored by a federal law enforcement agent.

State, local, tribal and territorial law enforcement officials who would like to request CP for human trafficking victims are encouraged to work with the local HSI office in their area. In addition, Victim Assistance Coordinators can assist law enforcement officials in obtaining referrals to non-governmental victim services providers who can offer a variety of services to assist crime victims, such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job skills training, and case management.

CP is an important tool for federal, state, and local law enforcement in their investigation of human trafficking-related crimes. Victims of human trafficking often play a central role in building a case against a trafficker. CP affords victims a legal means to temporarily live and work in the United States, providing them a sense of stability and protection. These conditions improve victim cooperation with law enforcement, which leads to more successful prosecutions and the potential to identify and rescue more victims. Although cooperation with law enforcement is not an eligibility criterion for CP, victims who are cooperating do receive eligibility for social service benefits through the Department of Health and Human Services Office of Refugee Resettlement. Victims may qualify for other forms of immigration benefits depending on their unique circumstances.

Significant Public Benefit Parole

Significant Public Benefit Parole (SPBP) may be utilized to bring an individual to serve as a witness, defendant, or cooperating source, and if necessary in extremely limited cases, the individual's immediate family members, into the United States for up to one year. It must be emphasized that SPBP will only be granted for the minimum period of time required to accomplish the requested purpose, e.g., if a trial is 3 months long, parole will be granted for 3 months. SPBP is a temporary measure used to allow an individual who is otherwise inadmissible to be present in the United States. SPBP does not

constitute a formal admission to the United States and confers only temporary authorization to be present in the United States without having been admitted. Employment authorization may be granted.

Deferred Action
Deferred Action (DA) is a discretionary decision-making authority that allows DHS to determine which cases merit the commitment of limited resources. It is exercised on a case-by-case basis that focus on the priorities of DHS, by targeting serious criminals and those who are a threat to public safety, and potentially deferring action on cases with a lower priority. There is no statutory definition of DA, but federal regulations provide a description: "[D]eferred action [is] "an act of administrative convenience to the government which gives some cases lower priority…." See 8 C.F.R. § 274a.12(c)(14). DHS officers, special agents, and attorneys consider every DA request individually to decide whether; based on the totality of the circumstances, a favorable grant of deferred action is appropriate. DA requests may, among other things, be based on humanitarian facts and a low-enforcement priority or may be based on an individual's status as an important witness in an investigation or prosecution. It does not provide a pathway to permanent residency.

DHS Contact Information

For more information about the U visa program and law enforcement certifications, please see:

U.S. Citizenship and Immigration Services
www.uscis.gov
www.uscis.gov/humantrafficking

To ask a question about a specific case or to rescind a signed certification:
LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. *Please note that this e-mail address is for law enforcement personnel only. Any e-mail sent by any person or entity that is not law enforcement to this specific e-mail address will not be answered.*

To request U visa training for your agency:
T-U-VAWATraining@dhs.gov

To ask specific policy questions about T and U visa certifications, call USCIS at (202) 272-1470.

Petitioners and their representatives may submit an inquiry regarding a specific case by emailing:
hotlinefollowupI918I914.vsc@dhs.gov

Citizenship and Immigration Services Ombudsman
To refer U visa petitioners who are experiencing problems that have not been able to be resolved through DHS customer assistance avenues:

www.dhs.gov/cisombudsman
Toll Free: (855) 882-8100
Phone: (202) 357-8100
Email: cisombudsman@dhs.gov

Immigration and Customs Enforcement
If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact their local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Principal Legal Advisor (OPLA) to make ICE aware of the situation.

To contact your local ICE ERO office, please see the list of contact information here:
http://www.ice.gov/contact/ero/

To contact your local ICE OPLA office, please see the list of contact information here:
http://www.ice.gov/contact/opla/

Specifically with regard to a lodged detainer, the law enforcement official should notify the ICE Law Enforcement Support Center:

www.ice.gov/contact/lesc/
Phone: (802) 872-6050
Email: ice.osltc@dhs.gov

LESC Computer Services Division
188 Harvest Lane
Williston, Vermont 05495

Office of Civil Rights and Civil Liberties
To refer individuals who would like to file a complaint concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security:

By mail or phone:
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528

Phone: (202) 401-1474
Toll Free: (866) 644-8360
TTY: (202) 401-0470
Toll Free TTY: (866) 644-8361
Fax: (202) 401-4708

E-mail: crcl@dhs.gov

Office for State and Local Law Enforcement
For information about DHS coordination with federal, state, local, territorial, and tribal law enforcement, please contact the DHS Headquarters Office for State and Local Law Enforcement.

Phone: (202) 282-9545

Email: oslle@hq.dhs.gov

More Federal Government Resources Available:
DHS Blue Campaign, which includes links to help locate local service providers with experience with immigrant victims of crime.
USCIS Victims of Criminal Activity: U Nonimmigrant Status
USCIS Questions and Answers: Victims of Criminal Activity, U Nonimmigrant Status
DHS Ombudsman Teleconference Recap: U Visas
October 2009 FBI Law Enforcement Bulletin: The U Visa
Immigration and Customs Enforcement Toolkit for Prosecutors

Subsec. (d)(1). Pub. L. 107–56, § 416(c)(1), inserted '', other approved educational institutions,'' after ''higher education'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 107–56, § 416(c)(2), inserted '', or other approved educational institution,'' after ''higher education''.

Subsec. (d)(2). Pub. L. 107–56, § 416(c)(3), inserted '', other approved educational institution,'' after ''higher education''.

Subsec. (e)(1), (2). Pub. L. 107–56, § 416(c)(3), which directed insertion of '', other approved educational institution,'' after ''higher education'' in pars. (1) and (2), could not be executed because the words ''higher education'' did not appear. See 2000 Amendment notes below.

Subsec. (h)(3). Pub. L. 107–56, § 416(c)(4), added par. (3).

2000—Subsec. (d)(1). Pub. L. 106–396, § 406(2), inserted ''institutions of higher education or exchange visitor programs'' after ''by'' in introductory provisions.

Subsec. (e)(1). Pub. L. 106–396, § 404(1), in introductory provisions, substituted ''the Attorney General'' for ''an approved institution of higher education and a designated exchange visitor program'' and ''a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.'' for ''the time—

''(A) when the alien first registers with the institution or program after entering the United States; or

''(B) in a case where a registration under subparagraph (A) does not exist, when the alien first commences activities in the United States with the institution or program.''

Subsec. (e)(2). Pub. L. 106–396, § 404(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''An approved institution of higher education and a designated exchange visitor program shall remit the fees collected under paragraph (1) to the Attorney General pursuant to a schedule established by the Attorney General.''

Subsec. (e)(3). Pub. L. 106–396, § 404(3), substituted ''alien who seeks'' for ''alien who has'' and ''who seeks to come'' for ''who has come''.

Subsec. (e)(4)(A). Pub. L. 106–553 inserted before period at end of second sentence '', except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $35'' without reference to amendment made by Pub. L. 106–396, § 404(4)(A). See below.

Pub. L. 106–396, § 404(4)(A), inserted before period at end of second sentence '', except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $40''. See amendment note above.

Subsec. (e)(4)(B). Pub. L. 106–396, § 404(4)(B), inserted at end ''Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.''

Subsec. (e)(5), (6). Pub. L. 106–396, § 404(5), added pars. (5) and (6).

Subsec. (g)(1). Pub. L. 106–396, § 405, amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Not later than 6 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

''(B) DEADLINE.—Such expansion shall be completed not later than 1 year after the date of the submission of the report referred to in subsection (f) of this section.''

Subsec. (h)(2)(A). Pub. L. 106–396, § 406(1), substituted ''Secretary of State'' for ''Director of the United States Information Agency''.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

FOREIGN STUDENT MONITORING PROGRAM

Pub. L. 107–56, title IV, § 416(a), (b), Oct. 26, 2001, 115 Stat. 354, provided that:

''(a) FULL IMPLEMENTATION AND EXPANSION OF FOREIGN STUDENT VISA MONITORING PROGRAM REQUIRED.—The Attorney General, in consultation with the Secretary of State, shall fully implement and expand the program established by section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)).

''(b) INTEGRATION WITH PORT OF ENTRY INFORMATION.—For each alien with respect to whom information is collected under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), the Attorney General, in consultation with the Secretary of State, shall include information on the date of entry and port of entry.''

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Pub. L. 104–208, div. C, title VI, § 642, Sept. 30, 1996, 110 Stat. 3009–707.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1374. Information regarding female genital mutilation

(a) Provision of information regarding female genital mutilation

The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:

(1) Information on the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.

(2) Information concerning potential legal consequences in the United States for (A) performing female genital mutilation, or (B) allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.

(b) Limitation

In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) of this section to aliens from such countries.

(c) "Female genital mutilation" defined

For purposes of this section, the term ''female genital mutilation'' means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.

(Pub. L. 104–208, div. C, title VI, § 644, Sept. 30, 1996, 110 Stat. 3009–708.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1375. Repealed. Pub. L. 109–162, title VIII, § 833(g), Jan. 5, 2006, 119 Stat. 3077

Section, Pub. L. 104–208, div. C, title VI, § 652, Sept. 30, 1996, 110 Stat. 3009–712, related to mail-order bride business.

§ 1375a. Domestic violence information and resources for immigrants and regulation of international marriage brokers

(a) Information for K nonimmigrants on legal rights and resources for immigrant victims of domestic violence

(1) In general

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall develop an information pamphlet, as described in paragraph (2), on legal rights and resources for immigrant victims of domestic violence and distribute and make such pamphlet available as described in paragraph (5). In preparing such materials, the Secretary of Homeland Security shall consult with nongovernmental organizations with expertise on the legal rights of immigrant victims of battery, extreme cruelty, sexual assault, and other crimes.

(2) Information pamphlet

The information pamphlet developed under paragraph (1) shall include information on the following:

(A) The K nonimmigrant visa application process and the marriage-based immigration process, including conditional residence and adjustment of status.

(B) The illegality of domestic violence, sexual assault, and child abuse in the United States and the dynamics of domestic violence.

(C) Domestic violence and sexual assault services in the United States, including the National Domestic Violence Hotline and the National Sexual Assault Hotline.

(D) The legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice, family law, and other matters, including access to protection orders.

(E) The obligations of parents to provide child support for children.

(F) Marriage fraud under United States immigration laws and the penalties for committing such fraud.

(G) A warning concerning the potential use of K nonimmigrant visas by United States citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes and an explanation that such acts may not have resulted in a criminal record for such a citizen.

(H) Notification of the requirement under subsection (d)(3)(A) of this section that international marriage brokers provide foreign national clients with background information gathered on United States clients from searches of Federal and State sex offender public registries and collected from United States clients regarding their marital history and domestic violence or other violent criminal history, but that such information may not be complete or accurate because the United States client may not have a criminal record or may not have truthfully reported their marital or criminal record.

(3) Summaries

The Secretary of Homeland Security, in consultation with the Attorney General and the