



***U Visa Law Enforcement Guide: What's Changed?***

*Updated August 15, 2019*

On July 31, 2019, U.S. Citizenship and Immigration Services (USCIS) published a new [U Visa Law Enforcement Resource Guide](#), which contains new revisions regarding the role of law enforcement agencies (LEAs) in the U Visa certification process.<sup>i</sup> On August 2, 2019, Immigration and Customs Enforcement (ICE) posted a [fact sheet](#) on their website addressing the policy change for deciding stays of removal requests for U Visa petitions. The recent changes to the U Visa Law Enforcement Resource Guide are discussed below:

1. **What is the U Visa Law Enforcement Guide?** The U Visa Law Enforcement Guide provides law enforcement officials with information about U visa requirements, the law enforcement certification process, and answers to frequently asked questions from LEAs to support investigations and prosecutions involving qualified immigrant victims of crime. The previous resource guide had been a useful resource for advocates to engage LEAs about the U visa program so that they could learn more about its requirements and procedures.
2. **What has changed?** The new Updated Guide contains various recommendations that encourage LEAs to limit their issuance of U visa certifications for eligible victims. These changes include:
  - Reinforcing the ability of LEAs to use discretion to refuse to issue U visa certifications, which are necessary for U visa eligibility;
  - Recommending LEAs to conduct their own “discretionary background checks” on those seeking U visa certifications, and that they share their findings with USCIS even though USCIS is the agency responsible for conducting background checks on U visa applicants<sup>ii</sup>;
  - Allows LEAs to impose time limitations on certification issuance, and to consider how much time has passed since the crime took place, even though this factor is unrelated to U eligibility<sup>iii</sup>;
  - Emphasizes LEAs ability to withdraw or disavow certifications at any time “if they later discover information regarding the victim, crime, or certification that your agency believes USCIS should be aware of.”<sup>iv</sup>

***ICE Fact Sheet on Revision of Stay of Removal Request Reviews for U Visa Petitioners (ICE Directive 11005.2)***

The new ICE [fact sheet](#) relates to the implementation of ICE Directive 11005.2, which revises prior 2009 guidance on adjudicating stay of removal requests for U petitioners to allow ICE to use its discretion when determining whether to grant a stay of removal request based on the totality of circumstances.<sup>v</sup>

3. **What has changed?** Previously, under ICE Directive 11005.1, ICE was required to request a *prima facie* determination from USCIS before deciding whether to grant a stay of removal to a U visa petitioner. Now, under ICE Directive 11005.2, “ICE officers and attorneys will review the totality of the circumstances, including any favorable or adverse factors, and any federal

interest(s) implicated and decide whether a Stay of Removal or terminating of proceedings is appropriate.” *See ICE Directive 11005.2.*

4. **How will these changes potentially affect crime victims who have applied for a U visa?** Because ICE may now exclusively decide whether to grant or deny a stay of removal, U visa applicants who are in removal proceedings are at risk of being ordered removed before they are deemed eligible for a U visa.
5. **Where can I find more resources?** More information can also be found on the [DHS](#), [USCIS](#), [ICE](#) or [CLINIC](#) websites.

***The goal of this document is to provide general information regarding the new U Visa Law Enforcement Resource Guide and is not meant to act as a substitute to legal advice from an attorney.***

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<sup>i</sup> 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 prosecutions of criminal activity. The U visa provides eligible victims with nonimmigrant status in order to temporarily remain in the U.S. while assisting law enforcement. If certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status.

<sup>ii</sup> *See e.g. U visa Law Enforcement Resource Guide* at pages 2, 3, 4, 11,12, and 14.

<sup>iii</sup> *Id.* at 11.

<sup>iv</sup> *See e.g. U visa Law Enforcement Resource Guide* at 3, 4, 9, 14.

<sup>v</sup> A “stay of removal” is a temporary postponement, which prevents the Department of Homeland Security DHS from carrying out an order of removal. There are several forms of relief from removal that an alien may attempt to use during this process. In some cases, a stay of removal may be automatic, while in others, it may be discretionary. *See* <https://immigration.findlaw.com/deportation-removal/delaying-deportation-removal-stay-proceedings.html>