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DOI RELEASES REPORT ON NYPD'S HANDLING OF U VISA CERTIFICATION PROGRAM FOR UNDOCUMENTED CRIME VICTIMS

The New York City Department of Investigation ("DOI") issued a Report today detailing its analysis of the Police Department's ("NYPD") U visa certification program. The U visa, also known as U nonimmigrant status, is a special visa granted to undocumented immigrants who are victims of crimes and who help law enforcement investigate and prosecute those crimes. A U visa provides undocumented crime victims with a pathway to legal permanent resident status, employment authorization, and other benefits. Although the U visa is provided by the federal government, a law enforcement agency like NYPD must first certify that the applicant was helpful in the investigation of a qualifying crime. Law enforcement agencies, like DOI, regularly rely on victim cooperation to identify suspects, investigate illegal activity, and prosecute criminals. The U visa program encourages members of this vulnerable community to bring perpetrators to justice, while helping to build community trust with the police. In light of recent federal policy shifts in immigration enforcement that have amplified fear in this community, the public safety value of the U visa program has taken added importance. In the past several years, NYPD has taken steps to improve its handling of the U visa process, as well as other actions to protect this community. The Report found NYPD has made positive changes to the administrative management of the U visa program, but needs to strengthen certain aspects of the certification process. A copy of the Report with recommendations is attached to this release and can be found at the following link: http://www1.nyc.gov/site/doi/newsroom/public-reports.page

DOI Commissioner Mark G. Peters said, "Victim cooperation is critical to all law enforcement work. In the current environment, where the immigrant community has been the target of fear mongering and attacks, all of us in local law enforcement have been working to ensure that immigrants – documented or undocumented – are protected and feel safe stepping forward to report crimes. Strengthening NYPD's U visa program helps New York City achieve that goal."

DOI's Inspector General for the NYPD Philip K. Eure said, "For undocumented people who are victims of crimes, fear of deportation often stands in the way of cooperation with law enforcement – a fact their abusers readily exploit. This Report demonstrates that NYPD's U visa program has taken steps to improve and needs to go further, specifically strengthening its internal standards when reviewing these certifications. By making the NYPD's U visa program more consistent and transparent, the Department can help protect immigrant communities and make the City safer."

more

The number of certification requests made to NYPD has increased more than seven-fold in the last six years – from 87 in 2011 to 713 in 2016 – and NYPD receives the highest number of requests of any certifying City agency. DOI reviewed a random sample of more than 80% of applications denied by NYPD in 2015. DOI determined NYPD has taken numerous steps to improve its U visa policies and protect the immigrant community. In 2016, for instance, NYPD made adjustments to its administrative processing of U visa certification requests, including fixed timeframes for handling requests and new protocols governing appeals. However, DOI also found that several issues require additional attention.

The report makes 10 recommendations in the areas of discretionary standards for certification, transparency, public information, and training. Recommendations include:

- NYPD should develop concrete, written standards on how to conduct an assessment of an applicant's criminal background and on the types of criteria that warrant denial of the certification request.
- NYPD can do more to assess applicants who have a reasonable basis for not cooperating with an investigation. Specifically, NYPD should take affirmative steps to contact both the NYPD personnel who investigated the underlying incident and the party requesting the certification, and such steps should be documented.
- NYPD should create and publish its complete standards for certification eligibility.
- NYPD should develop written materials regarding the U visa program for dissemination at precincts and other locations where victims may encounter police.
- NYPD should develop informational training on U visas for specialized NYPD units that frequently encounter immigrant communities.

The New York City Department of Investigation (DOI) is one of the oldest law-enforcement agencies in the country and is New York City's corruption watchdog. DOI investigations may involve any agency, officer, elected official, or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively, through systemic investigations that lead to high-impact arrests, preventive internal controls, and operational reforms that improve the way the City runs. Bribery and Corruption are a Trap. Don't Get Caught Up. Report It at 212-3-NYC-DOI. Learn more at www.nyc.gov/doi.

DOI's Office of the Inspector General for the NYPD (OIG-NYPD) is an oversight office charged with investigating, reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs, and practices of the New York City Police Department (NYPD). The goals of OIG-NYPD are to enhance the effectiveness of the police department, increase public safety, protect civil liberties and civil rights, and increase the public's confidence in the police force, thus building stronger police-community relations. OIG-NYPD is part of the New York City Department of Investigation and is independent of the NYPD. Inspector General Eure reports to DOI Commissioner Peters.

New York City Department of Investigation's
Office of the Inspector General for the NYPD

When Undocumented Immigrants Are Crime Victims:
An Assessment of NYPD's Handling of
U Visa Certification Requests

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I. EXECUTIVE SUMMARY

Victim cooperation is essential to good police work. Law enforcement agencies, including the Department of Investigation (DOI), rely on victim cooperation to identify suspects, investigate illegal activity, and prosecute criminals. For undocumented people who are victims of crimes, however, fear of deportation can stand in the way of cooperation—a fact their abusers readily exploit.

In recognition of this concern, the federal government established the U nonimmigrant status (U visa), a special visa provided to undocumented victims of certain qualifying crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation and prosecution of the crime committed against them.[1] Given the fear and uncertainty felt by immigrant victims of crimes, the public safety value to New York City as a whole of the U visa program is significant. This is especially so in light of recent federal policy shifts in immigration enforcement that have amplified this fear and thus serve to hinder legitimate law enforcement activities.

Notwithstanding the benefits of the program, an undocumented individual's decision to seek a U visa from the federal government is a serious personal matter that involves weighing several factors. The very act of applying exposes the applicant's immigration status. Given

[1] *See* Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in various sections of the U.S.C.); Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U) (2017). *See also Victims of Criminal Activity: U Nonimmigrant status*, USCIS, https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status (last visited July 17, 2017). In addition to putting the U visa recipient on the path to legal permanent residence, recipients of U visas are eligible for employment in the U.S., can apply for public benefits, and may ultimately be eligible for legal permanent resident status. Once granted, U nonimmigrant status is valid for four years, with extensions available in limited circumstances.

these risks and the particular vulnerabilities of this community, local government agencies involved in the U visa program must follow procedures and practices that are fair, consistent, and transparent.

To obtain a U visa from the federal government, undocumented victims of crime must obtain a certification form from local law enforcement certifying that: (1) the crime committed against them is within the federal government's list of qualifying crimes; and (2) the victim was helpful to local law enforcement in investigating and/or prosecuting the crime.[2] The decision to certify is at the discretion of the certifying agency, though the federal government has publicized guidelines to assist the review. Without this certification, undocumented victims cannot receive U visa status from the federal government.

The New York City Police Department (NYPD) is one of several NYC agencies that provide U visa certifications.[3] In the past, legal service providers and victims' advocates have raised concerns about NYPD's certification practices. Over the past three years, NYPD has met with these stakeholders and made several improvements to the certification process. They included the creation of an appeals process and a standardized method of communicating certification denials. In May 2016, NYPD adopted new rules regarding the U visa certification process, issued Interim Order 79 on November 11, 2016, to memorialize changes and existing

[2] Applicants for U visas are required to submit Form I-918, Supplement B (U Nonimmigrant Status Certification) with their application. The form is located at https://www.uscis.gov/i-918.
[3] In NYC, the local agencies that provide U visa certifications include NYPD, the five District Attorney Offices, the Administration for Children's Services, the NYC Law Department, and the NYC Commission on Human Rights.

practices, and recently updated the Department's U visa webpage.[4,5] These latest adjustments included establishing fixed timeframes for the handling of U visa requests and new protocols governing appeals. Local organizations noted the changes as positive developments. These changes are beneficial and make clear the Department's ongoing commitment to improving the U visa program. However, they largely focus on the administrative handling of certification requests. The changes do not address certain issues related to NYPD's substantive review of certification requests and whether the Department is appropriately and consistently using its discretion when denying requests.

For these reasons, DOI's Office of the Inspector General for the NYPD (OIG-NYPD) investigated NYPD's role in the U visa certification process and assessed whether further improvements are necessary. This review included legal research on the program, consultations with experts, meetings with organizations that assist immigrant victims, discussions with law enforcement agencies that provide U visa certifications, interviews with various NYPD personnel, and a substantive analysis of U visa certification requests denied by NYPD.

It is clear that NYPD has taken numerous steps to work with, protect, and gain the trust of the undocumented immigrant community and has stepped up these efforts in the present climate. This investigation, however, found certain issues that should be remedied:

[4] N.Y.C., R.C.N.Y. tit. 38, § 22 (2017). *See* NEW YORK POLICE DEPARTMENT – NOTICE OF ADOPTION (2016), NYC.GOV, http://www1.nyc.gov/assets/nypd/downloads/pdf/domestic_violence/requesting-certifications-for-u-nonimmigrant-status--u-certifications-may-2016.pdf (last visited July 17, 2017).
[5] Interim Order 79 "Revision to Patrol Guide 212-111, "'U' Visa Certification." A copy of Interim Order 79, which was incorporated into the Patrol Guide effective November 30, 2016, is attached as Appendix A.

- **NYPD's Internal Standards and Procedures for U Visa Certification Hinder Applicants Who May Otherwise Qualify.** Although the approval or denial of a certification form is at the discretion of NYPD, it should exercise that discretion consistent with the federal government's guidelines. Certain NYPD practices are not consistent with those guidelines, resulting in NYPD denying certification requests of applicants who may have otherwise qualified.
- **NYPD's Certification Process for U Visas Lacks Transparency.** OIG-NYPD's investigation revealed that NYPD does not sufficiently disclose the process by which it assesses applications, its reasons for denials, and contact information for the officers who review and certify requests. NYPD's review of certification requests occurs on a case-by-case basis without the benefit of uniform written criteria or guidance.
- **NYPD Does Not Sufficiently Disseminate Public Information About U Visas.** Although NYPD devotes a section of its website to information and resources concerning the U visa program, NYPD could improve how it publicly disseminates information about the program offline.

In light of these and other findings, DOI recommends that NYPD make several changes to further refine and strengthen the Department's U visa certification program. The recommendations in this Report include the following:

- When conducting criminal background checks on applicants, NYPD should use concrete, uniform standards regarding the types of criminal histories that would result in a denied certification request. The New York City Detainer Law is one potential source of

guidance for the types of crimes that trigger public safety issues in the immigration context. If NYPD is prepared to deny a certification request based on an applicant's criminal history, NYPD's internal records should include a narrative rationale explaining why the individual is an ongoing threat to the community, where such rationale is not immediately apparent (i.e., where the crime is not on a list of specific crimes that would result in denial for public safety reasons).

- Applicants have a duty to be helpful to law enforcement, but federal guidelines state that a certification may be granted if the applicant had a reasonable basis for refusing to cooperate. If NYPD's investigative file states that the applicant was not cooperative but the applicant's certification request suggests the applicant had a reasonable basis, NYPD should take affirmative steps to contact both the NYPD personnel who investigated the underlying incident and the party requesting the certification in order to assess whether the applicant's refusal was reasonable. Such steps should be documented.
- NYPD should provide a written rationale in its internal file when concluding that the applicant was not a victim of a qualifying crime.
- NYPD should narrow its practice of referring certifications to prosecutors. In cases where the applicant was a victim of a crime and an arrest was made, NYPD should determine whether the criminal prosecution is complete or still open. If the criminal case is still open, NYPD should continue its practice of not evaluating but instead referring the matter to the prosecutor. If the criminal case has closed, NYPD should evaluate the certification request and not refer it to the prosecutor.

- NYPD should publish its complete standards for certification eligibility, should develop additional, multi-lingual U visa resources which can be posted online and in NYPD facilities, and should publish contact information for its reviewers/certifying officials.

On February 23, 2017, NYPD Commissioner James P. O'Neill reiterated New York City's determination to remain a safe and welcoming place for all immigrants. NYPD's willingness to make changes to its U visa program in 2016 is consistent with this commitment. Indeed, DOI did not encounter anything in its investigation to suggest ill intent towards undocumented victims of crimes. In the current environment, however, every possible step must be taken to ensure that immigrants are kept safe and feel that they can come forward to report crimes to local police. Strengthening NYPD's U visa program can help achieve that goal.

II. METHODOLOGY

In addition to legal and policy research on U visas, OIG-NYPD interviewed representatives of 16 non-profit organizations in New York City that provide immigrant communities crime victim services and legal assistance. OIG-NYPD staff also spoke with representatives of all five New York City District Attorney Offices (DA), the Administration for Children's Services (ACS), the NYC Commission on Human Rights (CCHR), the New York City Law Department, the Mayor's Office of Immigrant Affairs, the Mayor's Office to Combat Domestic Violence, and the Mayor's Office for Criminal Justice.

At NYPD, OIG-NYPD staff attended public hearings and met with personnel who currently review (or formerly reviewed) certification requests, handle appeals, and interact with immigrant communities. OIG-NYPD also interviewed representatives of police departments around the U.S. with high numbers of U visa certifications.

In early 2016, OIG-NYPD requested data from NYPD and other certifying agencies. From those certification requests that NYPD denied in 2015, OIG-NYPD requested complete case files for a random sample of 91 applications.[6] This review was limited to denied certifications because federal law prohibits certifying agencies from releasing records relating to approved cases.[7] OIG-NYPD acknowledges that a review of both denied and approved applications, if legally permissible, would have been preferable.

* NYC Department of Investigation Commissioner Mark G. Peters and Inspector General for the NYPD Philip K. Eure thank the staff of OIG-NYPD for their efforts in helping to produce this Report, especially Asim Rehman, General Counsel; Hassan Naveed, Director of Outreach; David Rozen, Assistant Counsel; Betty Diop, Policy Analyst; and Justin Ramos, Confidential Investigator; as well as other current and former staff. Our gratitude is also extended to the New York City Police Department for its cooperation during the preparation of this Report.

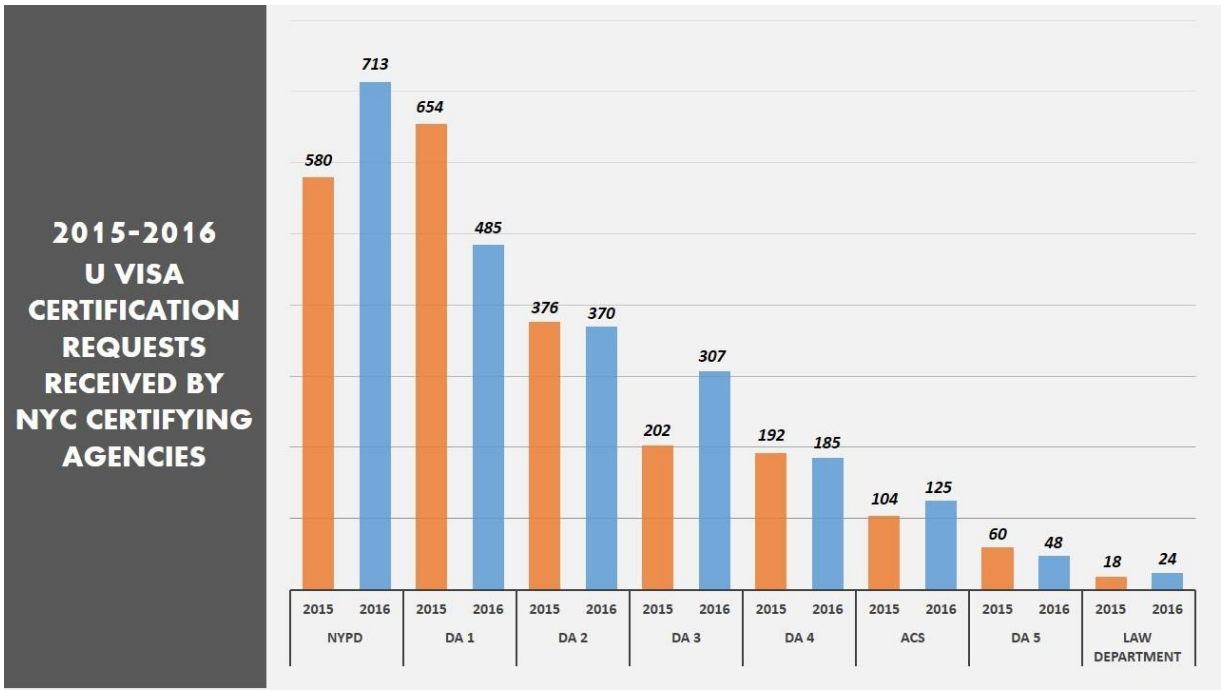
[6] NYPD's Domestic Violence Unit reported to OIG-NYPD that it denied 219 applications for U Visas in 2015. NYPD's Legal Bureau, the unit responsible for appeals, later advised that the number of cases that had been denied in 2015 was actually 110, on account of denials that had subsequently been reversed on appeal and the reversal of 61 applications that had been initially denied on "Statute of Limitations" grounds. OIG-NYPD determined that a randomly-selected sample of 91 out of 110 cases would be representative of the total population within a 95% confidence interval.

[7] *See* 8 CFR 214.14 (e) (Certifying agencies are not permitted to release "any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status," but agencies can release records relating to denied requests).

III. BY THE NUMBERS - U VISA CERTIFICATION IN NEW YORK CITY

To put NYPD's U visa certification role in context, the number of certification requests made to NYPD has increased more than seven-fold in the last six years, from 87 in 2011 to 713 in 2016. When compared to all NYC certifying agencies, NYPD received the highest number of requests, as depicted in Figure 1.

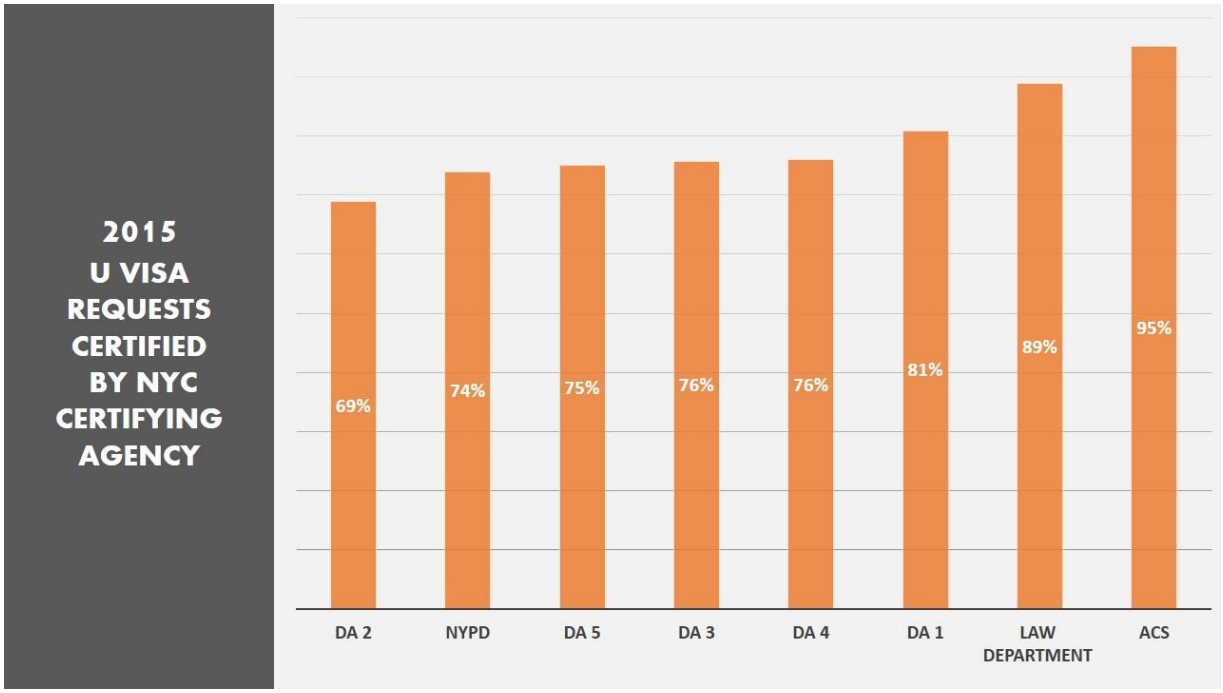
Figure 1[8]



[8] CCHR is not represented on Figure 1 because it only began certifying in 2015 and the 2015-2016 figures are relatively low.

Although NYPD receives a relatively high volume of requests, its certification rate is on par with other NYC certifying agencies. As noted in Figure 2, in 2015, NYPD's certification rate was 74 percent. In 2016, NYPD's certification rate increased to 82 percent.[9] Comparative 2016 certification rates for other agencies were not available at the time OIG-NYPD's investigation was complete.

Figure 2[10]



[9] The 2015 and 2016 NYPD certification rates have been adjusted for appeals (i.e., the rate accounts for requests that were initially denied but then certified by NYPD on appeal).
[10] "Certified" means that the agency provided a certified Form I-918. The NYPD data does not include "referral" cases where NYPD neither approved nor denied certification requests but instead simply instructed the applicant to apply to the relevant District Attorney's Office. CCHR data are not represented on this table given its relatively new status as a certifying agency in 2015.

IV. ANALYSIS AND FINDINGS

OIG-NYPD's investigation included a review of NYPD's U visa certification program and a comprehensive analysis of 91 requests denied in 2015. The investigation resulted in the following findings.

A. NYPD's Internal Standards and Procedures for U Visa Certification Hinder Applicants Who May Qualify for U Visas

Although the decision to certify is at the discretion of the agency, the use of such discretion has consequences: the decision not to certify eliminates a victim's opportunity to apply for a U visa from the federal government.[11] The U.S. Citizenship and Immigration Services (USCIS) states that each certifying agency should exercise its discretion consistent with the policies and procedures outlined in the *U and T Visa Law Enforcement Resource Guide.*[12] When exercising such discretion, NYPD should consider not only the language of the USCIS guidelines but also the spirit of the U visa program.

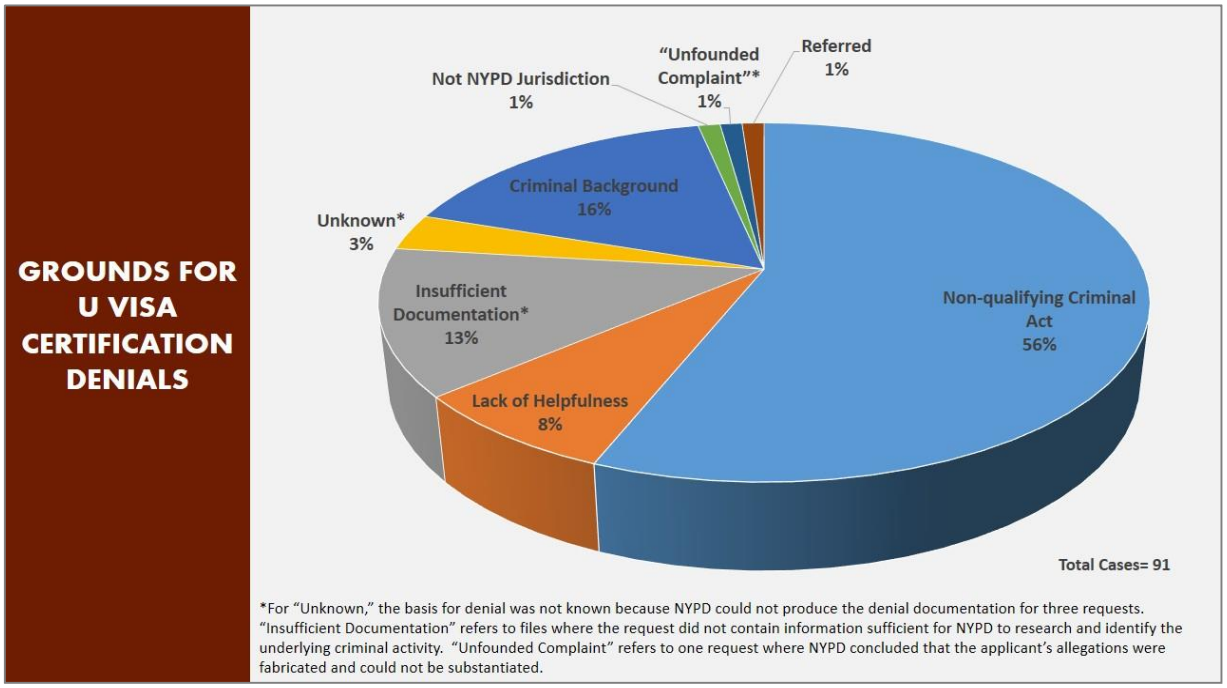
Part of ensuring that NYPD appropriately and consistently exercises its discretion is making sure that the Department has sound practices and procedures. Aside from Interim Order 79 and the federal guidelines, NYPD provides no uniform written guidance to staff on how to substantively review and evaluate U visa certification requests. OIG-NYPD's investigation revealed that certain NYPD practices for certification requests resulted in the denial or return of

[11] *See* U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, DHS.GOV, https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (last visited July 17, 2017) at 17.
[12] *Id.* at 6.

certifications for applicants who may have otherwise been eligible. Although the 2015 cases OIG-NYPD reviewed were decided before NYPD adopted the 2016 Rule and Interim Order 79, the language of these new rules primarily concerns NYPD's administrative process and does not sufficiently resolve the observations made in this Report.

Figure 3 depicts the various reasons NYPD relied upon for denying U visa certification requests.

Figure 3



1. NYPD's Inquiry into the Criminal Histories of Victim Applicants Lacks Clarity and May Result in Denials of Potentially Qualified Applicants

Pursuant to federal guidelines, when reviewing a certification request, NYPD must assess (a) whether the crime committed against the applicant is a qualifying crime, and (b) whether the victim was helpful to local law enforcement in investigating and/or prosecuting the crime. Beyond these federally required elements, NYPD also conducts criminal background checks on all applicants who request certifications. Among the 91 cases OIG-NYPD reviewed, NYPD denied 15 requests (16%) based on the applicant's criminal history. Notably, Interim Order 79 contains no requirements or instructions regarding NYPD's criminal background checks. The federal government already conducts a full background check of applicants and does not request local law enforcement do the same. For example, the District Attorney Offices do not conduct a criminal background check when reviewing certification requests. NYPD, however, conducts these checks to ensure that it does not provide certifications to people it deems an ongoing threat to the community.[13]

NYPD's concerns are valid. The Department is uniquely placed to identify safety risks in New York City. OIG-NYPD, however, identified problems with how NYPD relies on such background checks. Specifically, NYPD does not have standard definitions or written guidance for what crimes would result in someone being considered an ongoing threat to the community.

[13] *See Id.* The federal government's background check includes an FBI fingerprint check, name and date of birth check, and a review of immigration inadmissibility issues, including security concerns and criminal inadmissibility.

Instead, NYPD relies on an unwritten standard that it applies with individualized discretion on a case-by-case-basis. This can lead to a lack of consistency.

While NYPD should have some discretion in assessing whether applicants present safety risks, NYPD's current approach leads to complications in practice. Unwritten procedures result in a lack of clarity regarding what criminal histories truly warrant denials. For example, when OIG-NYPD asked U visa certification request reviewers in NYPD's Domestic Violence Investigations Unit (DVIU) about the role of criminal background checks, OIG-NYPD was informed that NYPD does not have specific guidelines but that the Department does not want to sign off on "serious violent criminals" who could be a threat to the City. In contrast, NYPD lawyers clarified that the Department's review is not limited to serious violent criminals, but more broadly examines whether an individual is an ongoing threat to the community, and could result in a denial even if the individual is not suspected of committing a violent or serious crime. In NYPD's own words, the review of criminal background checks is to assess whether the individual is a "public safety risk," "an ongoing risk to the community," and/or "an ongoing threat to the community." Without further clarification, these standards evade definition, potentially resulting in NYPD's use of discretion to deny certifications in a way that is inconsistent and unfair.[14]

[14] Toward the end of this investigation, after DOI had shared a draft of this Report with NYPD, NYPD's legal staff informed DOI that, in addition to the public safety analysis, the Department would also deny a certification to any person with an open warrant regardless of the underlying offense. This eleventh-hour information is troubling for two reasons. First, it means that an open warrant for a minor offense – such as turnstile jumping – could be the basis for denying a certification. Second, the fact that NYPD Legal, at the end of the investigation, is coming forward with new criteria not raised by the line staff doing the work, demonstrates the inconsistency that comes from a failure to have express rules in writing.

A review of the cases illustrates how the lack of written criteria impacts NYPD's denial decisions. Of the 15 applicants who were denied due to background check results in 2015, at least half (eight) had arrests, summonses, or active warrants for non-violent offenses or had sealed cases. If, as NYPD has stated, the assessment of criminal histories is not punitive but is a forward-looking assessment of whether the applicant is an *ongoing* threat, then individuals with sealed matters should benefit from the presumption that they are not associated with criminal activity.[15] The non-sealed charges consisted of violations, C-summonses (typically issued for violations and low-level crimes), criminal trespass (misdemeanor), possession of stolen property (misdemeanor), and petit larceny (misdemeanor). For example, in one case an applicant was denied on account of summonses and a warrant associated with operating as an unlicensed vendor, none of which occurred within four years of the U visa certification request. Notably, the NYPD's U visa certification file contained no additional information explaining why this individual was a public safety risk.

Given these concerns, NYPD should have written guidelines about how to conduct an assessment of the applicant's criminal history and the types of criteria that would result in a

[15] Five of these eight cases included charges that were ultimately sealed. With respect to sealed cases, under NY Criminal Procedure Law, arrest or conviction records are sealed automatically after dismissal in favor of the defendant, for nearly all violations or vehicle and traffic law infractions, and in certain cases involving convictions for marijuana possession. See NY CPL §§160.50, 55, and 58. (Cases involving youthful offenders are also sealed under CPL §720.35, but the five cases either did not involve youth or involve applicants between the ages of 31 and 46 when they applied for the U visa). Under state law, a sealed case creates the presumption of innocence, in order to allow the individual to avoid any of the adverse consequences associated with being convicted of a "crime." *See e.g., Lino v City of New York*, 932 N.Y.S.2d 761 (N.Y. Sup. Ct. 2011) ("The purpose of the sealing statutes is to protect the rights of those against whom criminal charges were brought but which did not ultimately result in a conviction and 'to remove any 'stigma' flowing from an accusation of criminal conduct terminated in favor of the accused, thereby affording protection (i.e., the presumption of innocence) to such accused in the pursuit of employment, education, professional licensing and insurance opportunities.'") (internal citations omitted).

certification denial. NYPD's case-by-case approach should be guided by written criteria to ensure that decisions are made as consistently and fairly as possible. This need is underscored by the reality that the DVIU and other NYPD units undergo staff turnover and must regularly retrain their professionals. Adhering to a well-defined and written standard will ensure fairness while simultaneously promoting public safety and greater confidence in NYPD. Fairness not only requires that the standards be written, but that they clearly articulate the types of circumstances that create the "ongoing risk to the community." For example, consistency of the public safety purpose of the rule suggests that such criteria should generally not result in the denial of applicants whose criminal histories are limited to low-level offenses or open warrants for low-level offenses.

In developing such criteria, an obvious source of guidance on the types of crimes that trigger public safety concerns in an immigration context, would be the existing NYC Detainer Law, which outlines the circumstances under which NYPD and the Department of Corrections will honor a detainer request from U.S. Department of Homeland Security Immigration and Customs Enforcement (ICE). By identifying 170 offenses which are deemed "violent or serious crimes" and including individuals appearing on terror watch lists, the NYC Detainer Law effectively defines the City's standard for what constitutes a violent or serious crime when immigration issues are in play.[16] In this context – involving detention not certification – then NYPD Commissioner Bill Bratton acknowledged the significance of distinguishing between serious and non-serious crimes

[16] NYC Detainer Law, N.Y.C. Local Law No. 58 (2014), N.Y.C. Admin. Code §§ 9-131 of Chapter 1 of Title 9.

when the immigration consequences of undocumented individuals are at stake.[17] Although NYPD has the option to adopt different standards, this one has the merit of already existing in a related context.

Further, because NYPD uses a case-by-case approach that looks at all details, NYPD should document, in its internal U visa certification materials, the reasons why a particular criminal background check warranted denial, where the reason is not immediately apparent (i.e., where the crime is not on list of specific crimes that would result in denial for public safety reasons). Beyond simply noting that there is a negative criminal history, this rationale should include sufficient facts that would allow a supervisor or subsequent reviewer to understand why the individual is an ongoing threat to the community.[18]

NYPD has an obligation to keep the City safe and its public safety concerns should not be discounted. Nevertheless, the Department's assessments of criminal histories should be based on written criteria that will guide the assessment of whether the applicant poses an ongoing threat. OIG-NYPD defers to NYPD on developing such criteria, but will follow up to ensure that these criteria are developed and that they meets the requisite clarity.

[17] "We are continuing to work with our colleagues in the Administration and the City Council toward the shared goal of ensuring that undocumented immigrants who have not been convicted of serious or violent crimes are not needlessly exposed to additional civil immigration penalties because they were arrested. The signing of this legislation is a step in the right direction." *See* Police Commissioner William Bratton. Press Release, City Hall Press Office, Mayor Bill de Blasio Signs into Law Bills to Dramatically Reduce New York City's Cooperation with U.S. Immigration and Customs Enforcement Deportations (Nov. 14, 2014), http://www1.nyc.gov/office-of-the-mayor/news/520-14/mayor-bill-de-blasio-signs-law-bills-dramatically-reduce-new-york-city-s-cooperation-with#/0 (last visited July 17, 2017).

[18] None of the denials based on criminal history reviewed in this investigation involved applicants who had open prosecutions (post-arrest) when they applied for a U visa certification. If such case was to emerge, OIG-NYPD acknowledges that prosecutors may have concerns with NYPD drafting statements about whether an open criminal matter renders the individual a public safety risk.

2. NYPD's Agreement to Refer Requests To Prosecutors When an Arrest is Made Should be Narrowed, Going Forward, to Open Arrests

Of the 580 requests for certifications NYPD received in 2015, 158 (27%) were not granted on "referral" grounds. Although not expressly mentioned in Interim Order 79, a "referral" occurs when NYPD returns the request and informs the applicant that "[b]ased on information presented, another certifying agency should complete the form." Specifically, when a certification request is based on an incident where an arrest has already been made, NYPD will decline to handle it and will instruct the applicant to submit the certification request to the relevant DA's Office. NYPD explains that, because DAs are the offices responsible for prosecuting cases, and because the applicant's duty to be helpful is ongoing, the DAs are best suited to assess victim helpfulness.

On the one hand, the federal U visa guidelines state that NYPD can certify even if the case is now in the hands of the prosecutor. Even though the applicant's duty to be helpful continues after the case has progressed from NYPD to the prosecutor, the federal guidelines are clear that "[i]n cases where the police investigated the crime and prosecutors are now prosecuting the case, both police and prosecutors may sign a certification. The authority of the police to sign a certification does not end when the case is referred for prosecution."[19]

On the other hand, prosecutors have a legitimate and significant legal interest in being part of the certification process and NYPD has correctly deferred to them on this issue. For example, prosecutors in New York, under certain circumstances, may need to disclose to

[19] *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, *supra note 11*, at 15, 18-19. *See also* 72 Fed. Reg. §§ 53014, 53019 (Sept. 17 2007).

defense counsel that the victim in the case has received a certification. This duty may be easier to manage if the prosecutor, not NYPD, handles the certification request. Notably, these disclosure obligations cease once the criminal case is complete.

To balance these legal issues, NYPD, after consultation with the DA's offices, should limit referrals to those cases where an arrest has been made and there is an *open prosecution*. In cases where there has been an arrest but the underlying criminal matter has since closed – e.g., by dismissal, conviction, seal, or otherwise – NYPD should not refer the matter to prosecutors but should itself evaluate and adjudicate the certification request, consistent with the federal guidelines.[20]

B. NYPD Does Not Sufficiently Document its Findings Regarding Helpfulness and Qualifying Crimes, and Should Take Additional Investigative Steps when Assessing these Criteria

1. Applicant Helpfulness

USCIS instructs certifying officials to "document the helpfulness of the victim and whether the victim refused to be helpful at any time throughout the investigation or prosecution."[21] Per USCIS guidelines, "'Helpful' means the victim has been, is being, or is likely

[20] OIG-NYPD has consulted with the five DA's offices who have interposed no objections to NYPD certification in closed cases, though of course NYPD should discuss the matter directly with those prosecutors.
Police departments across the country take different approaches on this "referral" process. For instance, the Minneapolis Police Department grants requests for certification regardless of whether an arrest was made or a prosecution is underway, except in misdemeanor domestic assault cases. In those cases, the Minneapolis Police Department refers requests for certification to the City Attorney's Office. The Los Angeles Police Department likewise does not refer cases to prosecutorial agencies regardless of whether an arrest has taken place or a prosecution is pending. San Francisco, by contrast, does forward certification requests to the local prosecutor if charges have been filed in the underlying case.

[21] *See U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, *supra note 11*, at 8.

to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim."[22] Both federal guidelines and NYPD's Interim Order 79 note that *reasonable refusals* to be helpful should be taken into account, and Interim Order 79 notes that such determinations will be made on a case-by-case basis. As noted, the applicant's responsibility to be helpful is ongoing.

OIG-NYPD's analysis of 91 denied cases showed that NYPD denied seven applications (8%) on the grounds of helpfulness. NYPD informed OIG-NYPD that the Department's primary basis for determining whether a victim has assisted with an investigation is written notes of the officer or detective who originally investigated the case. OIG-NYPD's review found, however, that officer notes rarely provide context as to *why* the individual stopped speaking to the police. NYPD reported that if the victim's documentation mentions why the victim stopped cooperating, the reviewer may take this into consideration. When asked what additional steps are taken, however, NYPD representatives noted that they may review medical records and, if the case involves a domestic incident, NYPD may look for domestic incident reports to see whether there is a history of domestic violence. Otherwise, NYPD does not take additional steps to assess helpfulness or whether refusals to cooperate were reasonable, such as contacting victims or their representatives. This absence of a systematized procedure to assess reasonable refusals to cooperate is of significant concern because helpfulness is a major aspect of the U visa certification process.

[22] Id. at 7. *See also* 72 Fed. Reg. §§ 53014, 53019 (Sept. 17 2007).

To illustrate this point, NYPD denied a certification request of a sexual assault victim who lived in fear of a partner who abused her and used her immigration status against her. Although this victim had provided helpful information to the police, NYPD's investigative file notes that she ultimately did not want to move forward with the prosecution. NYPD denied her certification request on the basis of lack of helpfulness without taking further steps to determine whether her actions constituted a reasonable refusal.

NYPD's policy that the helpfulness analysis should be handled on a case-by-case basis is reasonable, but in situations where NYPD is prepared to deny due to a lack of helpfulness and either the police record or the applicant's request letter present evidence or claims suggesting that the applicant had a fair basis for stopping cooperation, NYPD should take further steps to assess the reasonableness of that refusal. Such further steps, which should be documented, include contacting investigating officers to assess why they noted the lack of cooperation and following up with the requesting party for more information. Likewise, to assist with this process, applicants should also provide as much information as possible regarding how they cooperated with the investigation and/or why they stopped cooperating. Such action does not require NYPD to reinvestigate the case but solely to resolve conflicting narratives regarding the victim's helpfulness.

2. Qualifying Crimes

U visas are available only where the applicant is a victim of a qualifying crime. The list of qualifying crimes under USCIS guidelines includes attempt, conspiracy, or solicitation to commit any of the listed crimes.[23] NYPD acknowledges that an offense can be a qualifying crime if it is substantially similar to the official USCIS list of qualifying crimes.

Of the 91 cases reviewed by OIG-NYPD, the largest share of denials—51 requests, or 56%—were made on the grounds that the original incident did not constitute a qualifying crime. Using a team of attorneys and former prosecutors, OIG-NYPD analyzed these denials to assess whether NYPD had reached an appropriate result.

In a majority of cases (41 of 51, or 80%), NYPD appropriately concluded that the criminal act at issue was not a qualifying criminal act.[24] In only two cases did OIG-NYPD disagree with NYPD's denial.[25] In an additional eight of the 51 cases (17%), NYPD's certification file left OIG-NYPD unable to determine whether NYPD's assessment of the qualifying crime was correct.

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[23] *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, *supra note 11*, at 7. According to USCIS, "substantially similar" typically refers to a crime detected, investigated or prosecuted by a qualified certifying official that contains the same key elements as a qualifying criminal activity. For example, a simple robbery would not typically be a qualifying criminal activity. However, if the statute cited for the detection, investigation, or prosecution is armed robbery, this may be a qualifying criminal activity. In most jurisdictions, armed robbery contains the elements of felonious assault as delineated in the federal criminal statutes. Therefore armed robbery may be 'substantially similar' to the qualifying crime of felonious assault."

[24] For example, OIG-NYPD reviewed several U visa certification requests where the application alleged assault and NYPD had a fair basis to conclude that the underlying crime was a misdemeanor assault and not a felonious assault. To qualify for a U visa, the assault must rise to the level of a felonious assault (or trigger some other qualifying crime, such as domestic violence, sexual assault, etc.).

[25] In one case, NYPD classified the event as an attempted robbery, but the facts also constitute felonious assault. Interim Order 79, *supra note 5*, addresses robbery directly, stating, "In the case of robbery, since the crime is not listed as a qualifying criminal activity, the Certification Office would consider whether the facts and circumstances of the robbery are similar to any of the listed criminal activities such as felonious assault."

In the second case, NYPD's incident paperwork identifies the event as "criminal mischief" and "lost property," but the full record also supports a classification of extortion.

These 10 cases underscore a broader issue: NYPD's certification files do not contain any document explaining what steps NYPD took to assess the case or how NYPD reached its conclusion about qualifying crimes. In short, there is no audit trail that would allow supervisors or examiners to ensure that denials are being made in a consistent and appropriate manner. Including a written rationale for the certification decision is particularly important in situations where the application provides information or allegations that articulate a qualifying crime (e.g., allegations that a weapon was used in the assault) but NYPD's incident records do not contain similar facts. In such situations, NYPD should also take steps to contact the applicant (or representative) and NYPD personnel who investigated the original incident to resolve any conflicts about what crime may have occurred. Likewise, applicants should strive to provide NYPD with as much detail concerning the qualifying crime as possible.

C. NYPD's Certification Process for U Visas Lacks Transparency

When denying a certification request, NYPD sends the applicant a form letter with one of several boxes checked off to indicate a general reason for the denial. Unlike other police departments, NYPD provides no further fact-specific explanation of why the application was denied (e.g., why the crime at issue does not meet the qualifying crime standards). Interim Order 79 is silent as to what level of detail NYPD should provide when denying a request. Fact-specific explanations for denied requests can assist applicants in deciding whether to appeal a decision and what additional information to present. This could have the additional benefit of making NYPD's appeal processing more efficient.

Further, the "Request a U visa Certification" page on the NYPD website instructs applicants to mail their requests to the NYPD Domestic Violence Unit (DVU).[26] NYPD provides the mailing address of the DVU, but no phone number or email address. Likewise, when a request is denied, NYPD provides a mailing address for appeals but no phone number or email address. On an *ad hoc* basis, NYPD has provided certain advocacy and legal groups with contact information to reach reviewers at the DVIU with status and process-related questions. This is a positive development, but NYPD should make its U visa contact information more publicly available, particularly since a large share of certification requests are submitted by applicants not represented by those advocacy groups. Indeed, other certifying agencies in NYC provide such contact information, and NYPD's website already provides an email address for the different but related T visa program.[27]

D. NYPD Does Not Sufficiently Disseminate Public Information About U Visas

Aside from its website, NYPD advised OIG-NYPD that the DVIU, which is housed within the 7th Precinct in Manhattan, has written materials on hand about U visas including a resource sheet that contains contact information for the team that handles requests. However, when OIG-NYPD testers visited the 7th Precinct on two separate occasions in February and March 2017 and made inquiries about publicly available flyers or paperwork concerning U visas,

[26] *See Request a U visa Certification*, http://www1.nyc.gov/site/nypd/services/victim-services/u-visa-request.page (last visited July 17, 2017).
[27] *See Request a T visa Certification*, http://www1.nyc.gov/site/nypd/services/victim-services/t-visa-request.page (last visited July 17 2017).

representatives of the DVIU stated that there was no such paperwork and on one instance referred investigators to a website address that did not work.

In visits to several other precincts, OIG-NYPD testers found no written information about U visas and encountered NYPD personnel who were unfamiliar with the program. By contrast, victims service providers who are not NYPD employees but who were present at one precinct did have information about U visas.[28] Aside from the NYPD website and third-party victims service providers on hand at certain precincts, OIG-NYPD could not find any additional public information provided by NYPD regarding U visas. Providing the public with greater information about the program will benefit both crime victims and NYPD. Such information should be provided in multiple languages.[29]

E. NYPD Personnel who Frequently Encounter Victims and Immigrant Communities Do Not Receive Special Training on U Visas

Under the Mayor's Executive Order 34, and as recently reaffirmed by Commissioner O'Neill, the Department is prohibited from "inquiring about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance."[30] NYPD has suggested in interviews with OIG-NYPD that providing U visa training to patrol officers may

[28] The Crime Victim Assistance Program, funded by NYPD and managed by Safe Horizon, places Crime Victim and Domestic Violence advocates in police precincts throughout NYC. They are currently in 26 precincts, and, by 2018, Safe Horizon plans to have advocates assigned to every police precinct.
[29] Almost a third of the cases reviewed appeared to involve applicants with limited English proficiency. Lawyers representing U visa applicants and others reported to OIG-NYPD situations in which victims were unable to file accurate criminal complaint reports due to language barriers. In such cases, victims either had no access to translators or spoke through unofficial translators such as family members or co-workers.
[30] Executive Order No. 34, dated May 13, 2003 at 2; Executive Order No. 31, dated September 17, 2003 at 2. See also Patrol Guide Procedure No. 212-66. *See also* Interim Order 79, *supra note 5*, at 2.

have the unintended consequence of officers discussing details regarding immigration status with crime victims. Likewise, NYPD understandably wants to avoid scenarios where an officer's reference to a U visa certification could be misread as a *quid pro quo* for witness cooperation.

Separate from the NYPD personnel who review certification requests, however, NYPD has several units that are in regular contact with immigrant communities and receive specialized training in working with victims. These personnel do not receive training on U visas, although they are in unique positions to inform crime victims of this program and disseminate U visa informational materials to the public. Providing these units with specialized training will allow them to respond to questions concerning U visas and to better provide generalized information to the public about U visas without needing to inquire about the status of individuals or discuss specific cases with individual victims.

V. RECOMMENDATIONS

Discretionary Standards for Certification

1. **NYPD should develop concrete, written standards on how to conduct an assessment of an applicant's criminal background and on the types of criteria that warrant denial of the certification request.** NYPD's case-by-case review should be guided by written criteria to ensure that denials based on criminal histories are fair and consistent.
2. **When denying a U visa certification request based on the applicant's criminal history, NYPD should articulate, in its internal file, the reasons why the criminal history presents an ongoing public safety concern and warrants denial**. Beyond simply noting that there is a negative criminal history, this rationale should include specific facts that would allow a supervisor or subsequent reviewer to understand why the individual poses an ongoing threat to the community. If the criminal history involves crimes that are on a list of specific crimes which would warrant a denial (Recommendation #1), such written rationale is not required.
3. **If NYPD's investigative file states that the applicant was not cooperative but the applicant certification request or other information in the investigative file suggests the applicant had a reasonable basis for not helping law enforcement, NYPD should assess whether the non-cooperation was reasonable by contacting both the NYPD personnel who investigated the incident and the party requesting the U visa certification.** In such situations, NYPD should not rely solely on the NYPD investigative file and NYPD should document the extra steps taken to assess reasonableness.

4. **NYPD should provide a written rationale in its internal file when concluding that the applicant was not a victim of a qualifying crime.** NYPD's U visa certification files do not contain any information explaining what steps NYPD took to assess the case or how NYPD concluded that the case did not involve a qualifying crime. Including a brief written rationale and documenting the investigative steps taken is particularly important in situations where the application alleges a qualifying crime but NYPD's contemporaneous incident records do not support the claim. In such situations, NYPD should also take steps to contact the applicant and NYPD personnel who investigated the original incident to resolve any conflicts about what occurred during the incident.
5. **If an arrest has been made on the underlying crime, NYPD should evaluate U visa certification requests if the criminal case has closed.** NYPD categorically declines to evaluate requests if the perpetrator has been arrested, instructing the applicant in such cases to seek certification from the prosecutor. NYPD should limit this practice to cases where the criminal case is currently open. In cases where an arrest has been made and the criminal case is closed, NYPD should, consistent with federal guidelines, review and evaluate such certification requests without further referral.

Transparency

6. **NYPD should create and publish its complete standards for certification eligibility.** While NYPD's administrative process is outlined in the 2016 Rule and Interim Order 79, NYPD lacks consistent written internal standards regarding its *substantive* assessment of helpfulness, qualifying crimes, and applicants' criminal backgrounds, available to both

NYPD and the public. Having written standards will help ensure fairness and consistency in the assessment of U visa certification requests and encourage requesting parties to submit more complete and informative requests.

7. **NYPD's denial letters should articulate specific reasons for each denial, using the facts of the case to explain the decision.** Rather than rely on check-box categories, NYPD's denial letters should contain more fact-specific explanations as to why a certification request was denied so that applicants can readily understand the basis for denial. In addition to promoting transparency, providing additional detail will save NYPD time by reducing the volume of follow-up inquiries and making the appeals process more efficient.

Public Information

8. **NYPD should publish contact information for its reviewers and certifying officials.** As other agencies across New York City do, NYPD should publish a phone number and email address where applicants and representatives can contact NYPD's U visa certification team for information. Because NYPD already provides this contact information to a limited set of advocacy groups, the Department should expand its availability to the general public.

9. **NYPD should develop written materials regarding the U visa program for dissemination at precincts and other locations where victims may encounter police.** These U visa-specific materials (e.g., flyers, brochures, etc.) should be available in multiple languages for dissemination at precincts throughout the city. The materials should encompass information about U visas, NYPD's processes, and the Family Justice Centers, where victims currently receive information about legal assistance with filing U visa requests.

Training

10. **NYPD should develop informational training on U visas for specialized NYPD units that frequently encounter immigrant communities.** NYPD should provide such personnel with basic training on the U visa program. Such training would help these officers understand what the U visa program is, what role NYPD plays, how U visas benefit NYPD and victims, and how victims can apply for a certification from NYPD. DOI is not advocating that officers who receive the proposed training engage in conversations with victims about their immigration status. Rather, trained police personnel will be better equipped to discuss the program at Precinct Community Council meetings, provide written resources to community leaders, and educate the public at large about the U visa program without targeting specific individuals or inquiring about their status.

Appendix A

NYPD Interim Order 79

INTERIM ORDER

SUBJECT: REVISION TO PATROL GUIDE 212-111, " 'U' VISA CERTIFICATION"		
DATE ISSUED:	REFERENCE:	NUMBER:
11-30-16	* P.G. 212-111	79

1. The Department is committed to serving all communities in the City of New York, especially those vulnerable to victimization, and recognizes the value of completing certifications and supporting immigrant victims of crime who are helpful in investigations or prosecutions. To further the Department's efforts in this regard, there have been several changes to the U nonimmigrant status (U visa) certification practice. These changes have enhanced transparency and efficiency in the Department's process for reviewing requests while creating a review process for denied certifications.

2. Therefore, effective immediately, Patrol Guide 212-111, " 'U' Visa Certification" is **SUSPENDED** and the following new procedure entitled, "Request for U Nonimmigrant Status (U visa) Certification" will be complied with:

PURPOSE To review requests for U certifications (USCIS **Form I-918, Supplement B, U Nonimmigrant Status Certification**).

SCOPE The Victims of Trafficking and Violence Protection Act was enacted to encourage victims, regardless of legal immigration status to participate in law enforcement efforts to investigate and prosecute crime. This law created immigration protections including the U nonimmigrant status (known commonly as U status or U visa) for victims of certain serious crimes. To be eligible for a U visa, victims must satisfy several federal statutory requirements, which include submitting a completed law enforcement certification, USCIS **Form I-918, Supplement B, U Nonimmigrant Status Certification** to U.S. Citizenship and Immigration Services, the agency with sole authority to provide U nonimmigrant status (U visa).

USCIS considers certifications as primary, though not exclusive, evidence that an individual: 1) was a victim of a qualifying crime; 2) has knowledge of that crime; and 3) was, is, or is likely to be helpful in the law enforcement investigation or prosecution of the qualifying crime. Though victims seeking U visa must have a U certification to be considered, under the law, certifying agencies, including the Department, have discretion over whether to provide certification. Issuing a certification does not confer U nonimmigrant status (U visa) or any other federal immigration status to the victim. The Department does not have authority to assign or give any immigration status. Certifications are issued by the Department free of charge.

DEFINITIONS USCIS – U.S. Citizenship and Immigration Services (USCIS) is the federal component of the Department of Homeland Security (DHS) that has the sole authority to approve or deny (adjudicate) petitions for U nonimmigrant status (U visa).

APPLICANT – A victim of a qualifying crime who requests a U certification, or a person or organization who requests a U certification on behalf of a victim of a qualifying crime.

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DEFINITIONS (continued)

CERTIFYING OFFICIAL – Certifying officials are the only persons with authority to sign certifications for the Department. The Police Commissioner, as head of the Department, is a de facto certifying official. Under federal law, the Police Commissioner, in writing, may designate additional members of the Department, who are in a supervisory capacity, to sign certifications on behalf of the Department.

QUALIFYING CRIMINAL ACTIVITY – A qualifying criminal activity refers to the list of criminal activities that, under federal statute, are part of the criteria for U status.

U VISA CERTIFICATION – USCIS **Form I-918, Supplement B, U Nonimmigrant Status Certification**, a document that the Department may, at its discretion, complete free of charge for an eligible victim of a qualifying crime who is petitioning USCIS for U nonimmigrant status.

U NONIMMIGRANT STATUS (U VISA) – Temporary, four-year nonimmigrant status granted to victims of certain qualifying criminal activities, as designated by U.S. Citizenship and Immigration Services (USCIS).

PROCEDURE

When a person requests a U nonimmigrant status (U visa) certification (USCIS **Form I-918, Supplement B, U Nonimmigrant Status Certification**) from the Department:

MEMBER OF THE SERVICE

1. Inform member(s) of the public to visit the Department's internet website for directions on how to request certifications from the Department's U Visa Certification Office.

NOTE

The Department's U Visa Certification Office is the Chief of Department's Domestic Violence Unit. This office reviews all certification requests regardless of the qualifying criminal activity. Uniformed members of the service should be aware that members of the public may not be familiar with the word "certification," and may instead ask for a "U visa," "U status," or the "U." The Department does not give or assign any immigration status. Uniformed members of the service should follow step "1" of this procedure when asked about U status, U certifications, U visas, or any related colloquial terms for U nonimmigrant status. Uniformed members of the service should not directly collect, handle, or forward any documents related to a certification request from members of the public.

All members of the service must be aware of, and conform with, New York City's policy regarding immigrants as delineated in Patrol Guide 212-66, "Mayor's Executive Order Numbers 34 and 41, City Policy Concerning Confidential Information and Immigrant Access to City Services."

CHIEF OF DEPARTMENT, DOMESTIC VIOLENCE UNIT

2. Review all requests for U visa certification.
3. Review all available Department records within forty-five days of receiving request, to verify and make a determination on each of the following:

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NOTE *The Department may, when possible, make additional effort to review the request within the initial forty-five day period when the request names specific circumstances, including but not limited to, whether the victim is in immigration proceedings, as indicated in Title 38, Chapter 22 of the Rules of the City of New York, titled "Requesting Certifications for U Nonimmigrant Status (U Certifications)." These specific circumstances are not used as factors to determine whether to issue or deny a certification.*

CHIEF OF DEPARTMENT, DOMESTIC VIOLENCE UNIT (continued)

a. Identity of the Victim: Determine whether the victim named in the U visa certification request is a direct or indirect victim of a crime or criminal activity that the Department investigated. According to federal regulations, investigation refers to the detection or investigation of a qualifying crime or criminal activity. The victim must possess information about the criminal activity. This information is necessary to complete Part 1 of the U visa certification
b. Qualifying Criminal Activity: Determine whether the crime or criminal activity is a qualifying criminal activity under federal law. Include date(s) and location(s) of occurrence(s), citation for the state or federal statute implicated, and a description of the incident. This information is necessary to complete Part 3 of the U visa certification
c. Helpfulness of the Victim: Determine whether the victim was, is, or is likely to be helpful to the Department's investigation of the qualifying criminal activity. This information is necessary to complete Part 4 of the U visa certification
d. Family Members Implicated in Criminal Activity: Identify and determine whether any of the victim's family members are involved in the criminal activity. This information is necessary to complete Part 5 of the U visa certification.

NOTE *The certification has six parts. Agency information (Part 2) does not require verification or determination and the statements in certification (Part 6) depend on the verifications and determinations made in the four sections described in step "3" subdivisions "a through d." For further information, see ADDITIONAL DATA statement.*

4. Maintain and update a list of U visa certification requests received by the Department in the U Visa Certification Tracker. Include at minimum, the following:
   a. Victim's full name
   b. Date request received
   c. Complaint number
   d. Command where qualifying crime was reported
   e. Applicant name (note if applicant is the victim)
   f. Status of the request, and the final disposition (approved, denied, reason for denial, or referred to another agency)
   g. Date of final disposition.
5. Prepare recommendation on whether to complete the form and submit to a certifying official for review.

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DESIGNATED CERTIFYING OFFICIAL	6.	Review recommendations and make final decision on the U visa certification: a. Approved b. Denied; OR c. Requires more than forty-five days for a complete review.
		APPROVED CERTIFICATIONS
CHIEF OF DEPARTMENT, DOMESTIC VIOLENCE UNIT	7.	Notify applicant on **OFFICIAL LETTERHEAD (PD158-151)** of approval of U visa certification. a. Provide instructions for retrieving certification. Additional notification via phone or other means is permissible.
		DENIED CERTIFICATIONS
CHIEF OF DEPARTMENT, DOMESTIC VIOLENCE UNIT	8.	Notify applicant on **OFFICIAL LETTERHEAD** of denial of U visa certification, include: a. Basis for denial b. Instructions for appealing denial.
		CERTIFICATION DETERMINATIONS LONGER THAN FORTY-FIVE DAYS
CHIEF OF DEPARTMENT, DOMESTIC VIOLENCE UNIT	9.	Inform applicant on **OFFICIAL LETTERHEAD** that the request requires more time for a complete determination. a. Provide a reasonable estimate of when the determination will be completed.
	10.	Make an entry in the U Visa Certification Tracker. a. Indicate date response was sent and estimated completion date.
NOTE		*Every effort will be made to make determinations within forty-five days from when the Domestic Violence Unit received the request, and others requiring more research should be determined within ninety days. In exceptional cases, where a request requires additional time, the applicant will be notified of the circumstances and every effort will be made to resolve the delay and expedite the determination.*
		IF A DENIAL IS APPEALED
DEPARTMENT ATTORNEY, LEGAL BUREAU	11.	Review all written requests for appeal.
	12.	Review all submitted materials, as well as, all available Department records within ninety days of receiving the request for appeal, to make a determination on each of the criteria referred to in step "3" subdivisions "a through d" of this procedure.

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NOTE		*When the request names specific circumstances, which might include whether the victim is in immigration proceedings, as indicated in Title 38, Chapter 22 of the Rules of the City of New York, titled, "Requesting Certifications for U Nonimmigrant Status (U Certifications)," the Department may, when possible, make additional effort to review the request within the initial forty-five day period. These specific circumstances are not used as factors to determine whether to issue or deny a certification.*
DEPARTMENT ATTORNEY, LEGAL BUREAU (continued)	13.	Maintain and update a list of appeal requests received for U visa certification in the U Visa Certification Appeals Tracker. Include at minimum, the following: a. Victim's full name b. Date appeal request received c. Complaint number d. Command where qualifying crime occurred e. Applicant name (note if applicant is the victim) f. Status of the request, and the final disposition (approved, denied, reason for denial, or referred to another agency) g. Date of final disposition.
	14.	Prepare legal opinion on whether to complete the form and submit to a certifying official for review.
DESIGNATED CERTIFYING OFFICIAL, LEGAL BUREAU	15.	Review appeal recommendations and make final decision on the U visa certification appeals request: a. Rejected and the initial denial upheld, OR b Granted and the Department will issue a U visa certification, OR c. Request requires more than ninety days to review.
DEPARTMENT ATTORNEY, LEGAL BUREAU	16.	Notify applicant on **OFFICIAL LETTERHEAD** of appeal approval or denial.
		APPEALS DETERMINATIONS REQUIRING MORE THAN NINETY DAYS
DEPARTMENT ATTORNEY, LEGAL BUREAU	17.	Send applicant a written response on **OFFICIAL LETTERHEAD** stating that the request requires more time for a complete review. a. Provide a reasonable estimate of when the determination will be made.
	18.	Make an entry in U Visa Certification Appeals Tracker. a. Indicate date response was sent and estimated completion date.
NOTE		*Every effort will be made to make final appeals determinations within ninety days from when the Legal Bureau received the request. In exceptional cases, where a request requires additional time, the applicant will be notified of the circumstances and every effort will be made to resolve the delay and expedite the determination.*

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ADDITIONAL DATA

The Department's designated U Visa Certification Office (Chief of Department's Domestic Violence Unit) is the only entity with the authority to receive and review requests for certification, including any documents related to the request. The office reviews each request and makes a determination on a case-by-case basis. Requesting a certification from the Department does not guarantee that the applicant will receive it. A completed U visa certification does not assign legal immigration status. The Department does not have authority to assign or give any immigration status.

A certification is one of several eligibility requirements for a victim who is petitioning USCIS for U status. Therefore, a victim has to provide USCIS more information and provide more evidence than what the Department would need to review the certification request. For example, a victim pursuing U nonimmigrant status (U visa) will have to demonstrate to USCIS that he/she experienced substantial harm physical or mental abuse because of the qualifying criminal activity. When reviewing certifications, the Department does not require evidence of substantial harm, nor does it assess whether substantial harm occurred.

The Department's review of certifications focuses on completing the six parts of the certification (Victim Information, Agency Information, Criminal Acts, Helpfulness of the Victim, Family Members Implicated in Criminal Activity, and Certification). To determine whether the Department can complete all six parts of the form, the U Visa Certification Office must review Department records and the written request. The office may review any supplemental documentation provided by the applicant. Supplemental documents may include medical records or copies of Department records, but are not required.

CRITERIA FOR REVIEWING CERTIFICATION REQUESTS:

Identity of the Victim (Victim Information)

Direct or Indirect Victim: Direct victim is the individual who was the target of the criminal activity. Under federal law, certain indirect victims may apply for U nonimmigrant status (U visa), and therefore must request a U certification. Indirect victims typically are in the following categories:

a. *In the case of murder, manslaughter, incompetent or incapacitated victims (which include children under 21 years of age), indirect victims include spouses and children under 21 years of age at the time of filing*
b. *If the victim of the criminal activity is under 21 years of age at the time the qualifying criminal activity occurred, indirect victims include parents and unmarried siblings under 18 years of age at the time of the qualifying criminal activity.*

Possess Information: Under federal law, the victim must possess information about the criminal activity. 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 and provide the required assistance (help) on behalf of the victim. Federal law defines "next friend" as a person who acts in the best interests of a foreign national who is under sixteen or incompetent or incapacitated. The "next friend" may appear in court on behalf of the victim, but cannot be either a party to a legal proceeding involving the victim nor a court appointed guardian. A "next friend" also does not qualify for U nonimmigrant status (U visa) or any immigration benefit simply by acting as a "next friend" for the victim.

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ADDITIONAL DATA (continued)	*Qualifying Criminal Activity (Criminal Acts): The criminal activity must be one of, or similar to, the listed activities on the certification form that was investigated by the Department. The criminal activity does not have to be the crime that was ultimately charged. For example, if a victim was trafficked and raped but ultimately the rape alone was charged, the Department's Certification Office could select trafficking and rape as the qualifying criminal activities. In the case of robbery, since the crime is not listed as a qualifying criminal activity, the Certification Office would consider whether the facts and circumstances of the robbery are similar to any of the listed criminal activities such as felonious assault.* *The Department has the discretion to provide certifications regardless of whether the perpetrator of the crime is no longer in the jurisdiction or prosecution is unlikely, provided the victim meets all criteria for the certification. For example, a victim of a felonious assault who is attacked from behind and cannot identify the perpetrator could be eligible for a certification as long as the other criteria are met.* *Helpfulness: Under federal law, once the victim begins to be helpful there is an ongoing responsibility to continue to be helpful when the Department asks and may not unreasonably refuse to be helpful. While there may be specific factual circumstances where a victim reasonably refuses to be helpful, that determination is made on a case-by-case basis.* *The Department of Homeland Security (DHS) has created a U and T Visa Law Enforcement Resource Guide that has information on U visa certifications, including frequently asked questions, which is available at www.dhs.gov.*
RELATED PROCEDURES	*Mayor's Executive Order Numbers 34 and 41, City Policy Concerning Confidential Information and Immigrant Access to City Services (P.G. 212-66)*
FORMS AND REPORTS	***OFFICIAL LETTERHEAD (PD158-151)*** ***Form I-918, Supplement B, U Nonimmigrant Status Certification (USCIS)***

3. Upon publication, this Interim Order has been incorporated into the On-Line Patrol Guide.

4. Any provisions of the Department Manual or any other Department directive in conflict with the contents of this Order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

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