

# U Visa Updates: New U Visa Law Enforcement Resource Guide and ICE Stay of Removal Policy for U Visa Petitioners

Last Updated

Both USCIS and ICE have taken recent actions that may significantly impact certain U visa petitioners. On July 31, 2019, USCIS announced the release of a new [U Visa Law Enforcement Resource Guide](#), which includes new and troubling content about the role of law enforcement agencies, or LEAs, in the certification process. On Aug. 2, 2019, a [new fact sheet](#) was posted on the ICE website about a change in policy for deciding on stays of removal for U petitioners. Both of these developments are described in more detail below.

## U Visa Law Enforcement Resource Guide

The newly released [U Visa Law Enforcement Resource Guide](#) revises much of the guidance to law enforcement contained in the prior resource guide in ways that discourage law enforcement support for crime victims by

creating more barriers to issuance of law enforcement certifications. These unwelcome revisions in the new resource guide include:

- An emphasis on the ability of LEAs to refuse to issue certifications, with seven different references to the discretion of LEAs to not complete the law enforcement certification form, which is essential for U visa eligibility;
- Repeated recommendations that LEAs may undertake background checks of the crime victim as part of the assessment of whether to complete a certification, a function that USCIS already undertakes for all U petitioners, including derivatives;
- Repeated references to imposing time limits on certification issuance, including consideration about how much time has passed since the crime took place, even though this factor is unrelated to U eligibility;
- An encouragement to withdraw a submitted certification if the LEA later discovers information regarding the victim, crime, or certification that it believes USCIS should be aware of, and
- Gratuitous text discouraging the completion of certification where the crime victim has a serious criminal record, a consideration that is not related to eligibility for a law enforcement certification.

Unfortunately, as a result of these and other revisions to the resource guide, it may no longer serve as a useful tool for advocates to use in their outreach to LEAs. Instead, the revised resource guide is likely to pose new obstacles to obtaining certifications from LEAs who receive this manual through contact with USCIS.

## **ICE Fact Sheet on Revision of Stay of Removal Request Reviews for U Visa Petitioners**

This [new ICE fact sheet](#) relates to the implementation of ICE Directive 11005.2, which revises 2009 guidance on adjudicating stay of removal requests for U petitioners. Under the revised guidance:

- ICE is no longer required to seek a prima facie determination from USCIS before deciding on whether to grant a stay of removal to a petitioner for a U visa.
- Determinations on requests for stays of removal or for termination of proceedings will be decided exclusively by ICE based on the "totality of circumstances," including any favorable or adverse factors and any "federal interest(s) implicated."
- The assistance provided by a U visa petitioner to law enforcement is considered a significant favorable factor, but is not dispositive of the outcome of a stay of removal request.
- U petitioners and derivative beneficiaries who are on

the wait list with deferred action will not be removed unless a new basis of removal has developed since placement on the wait list or USCIS has terminated deferred action.

- ICE may join in a motion to terminate proceedings for persons granted U status and those placed on the wait list.
- Convictions for crimes related to a U petitioner's victimization will generally not be considered an adverse factor.
- The fact that a petitioner can continue to pursue a U visa adjudication from outside the United States is not a reason for ICE to deny a Stay of Removal request without additional factors.
- If ICE grants a U status petitioner's request for a stay of removal, the determination will extend to derivative beneficiaries.

CLINIC will monitor the impact of these new developments and welcomes feedback from our affiliates on how the new resource guide is impacting on obtaining law enforcement certifications or requests for stays of removal. Please raise individual case questions and experiences through the [Ask the Experts webform](#) on the CLINIC website.