



April 20, 2015

BY EMAIL AND FIRST CLASS MAIL

Sheriff Donny Youngblood
Kern County Sheriff's Office
1350 Norris Road
Bakersfield, CA 93308-2231
sheriff@kernsheriff.com

Re: Kern County Sheriff's Department U-visa Certification Policy and Practices

Dear Sheriff Youngblood:

As National Crime Victims' Rights Week begins, we write to express our deep concern about Kern County Sheriff's Department's treatment of immigrant victims of crimes. In particular, the Department's general policy to not sign U-visa certifications harms victims of crimes and frustrates law enforcement's ability to investigate and prosecute crimes, perpetuating a cycle of violence. When a bipartisan Congress enacted the Victims of Trafficking and Violence Protection Act ("TVPA") in 2000, the law that created the U-visa, it did so precisely to address this problem that now persists in Kern County – victims of crimes were unable to come forward to report crimes or assist law enforcement investigations for fear that they would be deported.

By generally refusing to sign U-visa certifications, the Sheriff's Department disregards federal law. The TVPA permits law enforcement to exercise its discretion on a case-by-case basis whether to sign a certification, but Congress did not intend for agencies to ignore the law entirely. The Sheriff's Department's refusal to extend the protections of the law to Kern County penalizes resident crime victims while awarding criminals, making the entire community less safe.

The Sheriff's Department's Policy is at Odds with the Law and Interferes with the Role of the Federal Government in Immigration Matters.

Led by Republican Congressman Christopher H. Smith of New Jersey, Congress created the U-visa with the explicit goals of "strengthen[ing] the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes . . . committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interest of the United States."¹ As Congress recognized in creating the U-visa, *victims are more likely to report crimes and cooperate with law enforcement if doing so does not result in their deportation.*²

¹ Victims of Trafficking and Violence Protection Act § 1513(a)(2)(A) (2000) (codified at 8 U.S.C. § 1101 (2000)).

² DEP'T OF HOMELAND SECURITY, U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE FOR FEDERAL STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, at 2, http://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf.

Since its inception, the TVPA has proved tremendously effective in assisting law enforcement by building trust and increasing cooperation between law enforcement and immigrant communities. Law enforcement officials across the country have testified to how the U-visa assists law enforcement and enhances public safety by encouraging immigrants to report crimes and ensuring that perpetrators are brought to justice.³ As Senator Patrick Leahy stated, the U-visa has served as “a powerful law enforcement tool, providing critical protection for victims of domestic violence, sexual assault and other violent crimes, and ensuring that dangerous offenders are taken off our streets. The U-visa program has proven enormously successful, leading to the prosecution of thousands of violent offenders.”⁴

To address the needs of law enforcement, Congress did two important things in creating the U-visa.

First, Congress created the requirement that a crime victim obtain a law enforcement certification before he or she can apply for the U-visa. The purpose of this certification requirement is plainly to ensure that the crime victim has come forward, reported the crime to law enforcement, and is cooperating with law enforcement by providing information about the crime.

Accordingly, by signing the certification form (I-918 Supplement B), the law enforcement agency states that (1) the applicant has been a victim of a qualifying crime (2) the applicant possesses information about the crime, and (3) the applicant “has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity.”⁵ Law enforcement’s role is limited to certifying that these factual circumstances exist. Federal regulations and the Department of Homeland Security (“DHS”) instruct that a law enforcement agency may sign the certification as soon as it “detects” that the qualifying crime occurred – it is not a requirement that the agency be investigating or prosecuting the crime.⁶ A victim is considered helpful if “since the initiation of cooperation, the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.”⁷

Second, Congress provided that the visa would be temporary, lasting for 4 years – sufficient time for any investigation and/or prosecution.⁸ After 3 years, a U-visa recipient can apply to adjust

³ Women’s Advocacy Project at American University Washington College of Law, *The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials* (Dec. 3, 2013), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2013-trainings/february-15-2013-collaborating-with-le/Importance-U-visa-Crime-Fighting-Tool.pdf>.

⁴ *Id.* at 2.

⁵ 8 C.F.R. § 214.14(c)(2); *see also* DEP’T OF HOMELAND SECURITY, *U Visa Law Enforcement Certification Resource Guide for Federal State, Local, Tribal and Territorial Law Enforcement*, at 6.

⁶ 8 C.F.R. § 214.14(a)(5) (defining “investigation or prosecution” broadly, providing that it encompasses “the detection or investigation of qualifying crime or criminal activity” as well as the “prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”); 214.14(b)(3) (listing certification requirements); 214.14(c)(2)(i) (describing content of an agency certification). *See also* 72 Fed. Reg. 53014, 53020 (explaining that USCIS defines “investigation or prosecution” broadly so as to include the detection of crime).

⁷ DEP’T OF HOMELAND SECURITY, *U Visa Law Enforcement Certification Resource Guide for Federal State, Local, Tribal and Territorial Law Enforcement*, at 12.

⁸ 8 C.F.R. 214.14(g)(1).



her status to that of a lawful permanent resident only if the noncitizen has not refused to continue to assist law enforcement.⁹

The law provides law enforcement the discretion to adopt policies and procedures and make case-by-case determinations with respect to U-visa certifications. However, to adopt a general policy to not certify U-visas at all, or otherwise cooperate with certification requests, abuses your discretion and is at odds with the purpose of the law. Unsurprisingly, it is also out of step with the certification practices of most law enforcement agencies nationwide.¹⁰

Moreover, a bipartisan Congress explicitly gave United States Citizenship and Immigration Service (“USCIS”) the role to determine who merits a U-visa, not local law enforcement.¹¹ Federal courts routinely hold that local law enforcement cannot take it upon themselves to enforce federal immigration law.¹² Yet, your recent statements regarding your position on U-visa certifications suggest that, more than assessing the criteria required for the certification, you have taken it upon yourself to determine whether someone actually merits receiving the visa, a determination reserved exclusively for the federal government. You stated that you will grant a U-visa certification only if a victim’s life was “really” put at risk by the crime and the applicant is cooperating with an ongoing investigation.¹³ In order to qualify for the U-visa, a victim must have suffered substantial physical or mental abuse as a result of the crime.¹⁴ However, this is a determination that only the federal government makes when it adjudicates visa applications; it is not a determination for law enforcement.¹⁵ And, as explained above, an ongoing investigation is not required.¹⁶ We encourage you to familiarize yourself with the purpose of the U-visa and your limited role as a certifier under federal law.

The Sheriff’s Department’s Refusal to Sign Certifications Jeopardizes Lives, Drives Victims of Crimes Further into the Shadows, and Makes the Community as a Whole Less Safe.

Our organizations have represented and assisted countless immigrant crime victims in Kern County over the years who were unable to apply for the U-visa because the Sheriff’s Department refused to certify them. These individuals suffered heinous crimes, ranging from human trafficking, to violent assault, to rape and sexual assault. Many of them not only met the legal standards for U-visa certification, but they met your own stated criteria – their lives were put at risk by the crime they suffered and they were cooperating with an ongoing investigation – but yet you refused to sign their certification forms, thereby preventing them from applying for a U-visa.

⁹ Immigration & Nationality Act § 245(m); 8 C.F.R. § 245.24; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICE, INSTRUCTIONS FOR I-485 SUPPLEMENT E, <http://www.uscis.gov/sites/default/files/files/form/i-485supe.pdf>.

¹⁰ Kate Linthicum, *Kern County Sheriff a Defiant California Maverick on Immigration*, LA TIMES (Apr. 9, 2015), <http://www.latimes.com/local/great-reads/la-me-c1-kern-sheriff-20150410-story.html#page=1>

¹¹ 8 U.S.C. § 1101(a)(15)(U).

¹² See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012); *Lozano v. City of Hazleton*, 724 F.3d 297, 315-16 (3d Cir. 2013), *cert denied*, 134 S. Ct. 1491 (2014) (local government cannot attempt to regulate admission into the United States).

¹³ Norma Gaspar, *Barreras a Solicitar la Visa “U”*, TELEMUNDO (Jan. 14, 2015), http://www.telemundo17-3.com/story/d/story/barreras-al-solicitar-la-visa-u-por-norma-gaspar/38668/U2PPzrM3_kGKKx_0Xk07LQ_

¹⁴ 8 U.S.C. 1101(a)(15)(U)(i)(I).

¹⁵ DEP’T OF HOMELAND SECURITY, *U Visa Law Enforcement Certification Resource Guide for Federal State, Local, Tribal and Territorial Law Enforcement*, at 10-11.

¹⁶ *Id.* at 4.



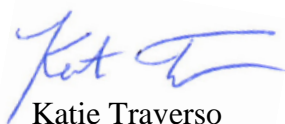
For example, **Sam**,¹⁷ an asylum seeker, fled threats to his life in India for the United States, only to face such threats here. One evening in Bakersfield he was robbed, brutally assaulted, and left unconscious on the side of a road. He suffered severe head trauma, including a concussion and a fracture to his cheekbone, requiring emergency room treatment. He immediately reported the crime, and a Sheriff's deputy visited him in the hospital. He answered all of the Sheriff's questions and cooperated fully. Despite being a victim of a qualifying crime (felonious assault), possessing details about it, and having been helpful to the investigation of the crime, you denied his U-visa certification. Sam was already pursuing an asylum claim at the time that the crime occurred, and as a result, was able to report the crime without fear of deportation.

Similarly, **Alfredo's** parents brought him to the U.S. when he was five years old. He attended school in Kern County and went onto Bakersfield College after high school. He is now in law school. When he was a young child, he was repeatedly sexually assaulted by a family member. He did not report the crime because he was a child and was fearful and ashamed. He also did not know that the U-visa was available. Eventually, the family member turned himself in to the Kern County Sheriff. A cooperated with the Sheriff's investigation, but his U-visa certification request was denied. When Alfredo graduates from law school, he hopes to help other victims of domestic violence in Kern County, but his options to do so are limited without a U-visa certification.

The cases of Sam and Alfredo are just two of the countless stories of Kern County crime victims who deserve U-visa protection, but cannot get it on account of your refusal to certify their cooperation. In these two cases, the victims were able to come forward and report the crimes, but in countless others, they are not. We urge you and your Department to revise your U-visa certification policies and practices to bring them in line with the standards set forth in the law. Until such time, you will continue to perpetrate an additional injustice on crime victims by failing to enable them to come forward and report crimes with the assurance that they will be protected. As a result, your Department will not be able to fight crime and respond to the public safety needs of *all* residents of Kern County.

We appreciate your attention to this important matter and look forward to hearing what steps your Department will take to address these problems.

Sincerely,



Katie Traverso
Legal Fellow
Jennie Pasquarella
Staff Attorney
ACLU of Southern California

¹⁷ Some names have been changed at the request of crime victims to protect their privacy.



Win Eaton
Gabriela Lopez Garcia
Eaton and Associates

Lorena Lara
Faith in Action Kern County

Kern Coalition for Citizenship

UFW Foundation

CC:

RoseMary Wahl, Kern County Undersheriff

Theresa A. Goldner, Kern County Counsel

Lisa Green, Kern County District Attorney

Mick Gleason, Kern County Supervisor, First District

Zac Scrivner, Kern County Supervisor, Second District

Mike Maggard, Kern County Supervisor, Third District

David Couch, Kern County Supervisor, Fourth District

Leticia Perez, Kern County Supervisor, Fifth District

Jonathan E. Crawford, United States Citizenship and Immigration Services (USCIS), Field Office
Director, Fresno Field Office

Office of Public Engagement, T-U-VAWA Training, USCIS

Senator Kevin de León, (D-Los Angeles)

