DHS Immigration Relief for Victims

WARNING: This document is FOR OFFICIAL USE ONLY (FOUO) and is LAW ENFORCEMENT SENSITIVE. This information shall not be distributed beyond the original audience without prior authorization of the originator and validity of the information is only assured on the date of presentation (August 2012).
Topics

• Blue Campaign/DHS/ICE/USCIS
• Trafficking 101
• Victim Characteristics and Challenges
• Continued Presence
• T Visa
• U Visa
• Withdrawing/Disavowing Certification
• Frequently Asked U Questions
• Criminal Case Considerations
• Contact Information
Key DHS Offices to Know

• Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), Victim Assistance
  – Works with ICE agents investigating victim cases to ensure a victim-centered response

• ICE Law Enforcement Parole Unit (LEPU)
  – Processes requests for Continued Presence

• U.S. Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC)
  – Processes T and U visas
Blue Campaign

• DHS-wide initiative to combat human trafficking
• Added 4th “P” to the TVPA
  – Prevention, Protection, Prosecution & Partnership
• Outreach to the public, law enforcement, non-profit organizations, NGOs and international governments to assist in the identification and proper reporting of trafficking crimes
• For more information:
  www.dhs.gov/humantrafficking
  BlueCampaign@dhs.gov
  www.facebook.com/bluecampaign
Blue Campaign Training for Law Enforcement

- Federal Law Enforcement Training Center (FLETC) developed a free web-based human trafficking training course on how to recognize human trafficking encountered during routine duties, how to protect victims, and how to initiate human trafficking investigations.

- How to obtain it:
  - Visit the FLETC Electronic Learning Portal for law enforcement officials with an account with the Regional Information Sharing Systems (RISS), a secure intranet that facilitates law enforcement communications and information sharing nationwide.
  - Or, this training is available on a stand-alone CD Rom capable of being loaded on individual law enforcement learning management systems.

- Contact scott.santoro@hq.dhs.gov or (202) 612-1718 for more information.
Human Trafficking

• Human Trafficking is rooted in exploitation, not travel. Crime is against a person.

  ▪ Forced Labor (sweatshops, agriculture, manufacturing, construction, restaurants, hotels)
  ▪ Commercial Sex (brothels, massage parlors, street, bars, night clubs, private houses, escort agencies)
  ▪ Domestic servitude
  ▪ Street begging
Common Challenges for Law Enforcement

• Denies that they are a victim
• Is fearful of what will happen to them
• Is fearful of law enforcement
• Is distracted, concerned about their own needs (or family’s needs) or concerns
• Has fears around safety and privacy, especially if interview is in front of others
• Has unmet medical needs, including nutrition or lack of sleep
• Protects the perpetrator(s)
Impact on Victims: Force, Fraud and Coercion:

- Threat of exposure
- Use and threat of reprisals against loved ones
- Debt bondage
- Isolation
- Use and threat of violence
- Traumatic bonding/Stockholm Syndrome

Immigration relief can help law enforcement counter these forms of control
Explaining Immigration Relief to the Victim

• Many victims may not understand what is happening

• Fear and confusion around collection of immigration related documentation

• Take the time to explain that they are not in trouble, they are not a criminal, but that this is the process to get them access to legal status, a work permit and other assistance
Continued Presence

Short Term Immigration Relief for Human Trafficking Victims
Continued Presence (CP)

A tool for law enforcement that provides short term immigration relief, typically for one year with possibility to extend

Requested by law enforcement agents early in the investigation- creates an opportunity to stabilize a foreign victim who is undocumented and also supports the continued investigation

Victims are not required to cooperate in order to be eligible

For all known victims associated with the investigation that are potential witnesses, not only those that are ultimately selected as witnesses

Case does not have to be accepted for prosecution

Can be revoked at any time
Eligibility

1. Any foreign national victim of human trafficking identified by LE as a potential witness
   (state and local investigations must meet the federal definition)

OR

2. Any trafficking victim who previously received CP for a criminal investigation and is now pursuing civil action
Benefits of CP

• Employment authorization document

• Access to public benefits if cooperating with law enforcement (minors are not required to cooperate to receive benefits)

• Significant Public Benefit parole may be available for family members

• Fiscal Year 2011 – 324 CP requests and 355 extensions

• Countries with the highest number of victims in 2011: Thailand, Philippines, Mexico
State and Local Law Enforcement Investigations

• State and local law enforcement can request CP be issued for the victim, but you have to be sponsored by federal law enforcement.

• Requesting agency prepares the majority of the CP package and submits the request for sponsorship to the relevant ICE or FBI field office in your jurisdiction.

• Federal law enforcement agency is responsible for submission to ICE LEPU.
LEA Responsibilities

1. Request CP *as soon as* you identify an eligible foreign national trafficking victim via federal law enforcement agency (HSI or FBI)

2. Monitor individual to ensure you know where they are

3. Provide quarterly reports to LEPU on individual

4. Immediately notify LEPU of any change in individual’s status
Travel outside the U.S.

- Individuals may **NOT** travel outside the United States with Continued Presence.

- If there is an exigent reason to do so, the LEA will coordinate the cancellation of their CP, including the collection of documents, and arrange for parole to re-enter the country.

- Upon their re-entry, the LEA may re-apply for CP.
Other Short Term Immigration Relief - Family Members

• Eligible family members include:
  – Victim is under 21: spouse, parent, child and/or unmarried sibling under 18
  – Victim is 21 and over: spouse or child
  – Parents or siblings of victim who are in present danger due to victim’s cooperation with the investigation

• Can be brought into the country through a Special Public Benefit Parole
  – Will be eligible for EAD
  – Will not be eligible for the social welfare benefits that the victim that is cooperating (or is a minor) is eligible for
T & U Visa
Long Term Relief for Human Trafficking Victims
&
Relief for Victims of Crimes
T& U visa Purpose and Overview

• Provides temporary status to aliens severely victimized by trafficking in persons or other qualifying criminal activity

• LEA tool

• Created to:
  – strengthen the ability of law enforcement to investigate and prosecute trafficking in persons crimes; and
  – facilitate the reporting of crimes by trafficked, exploited, victimized and abused aliens who may not be in lawful immigration status.

Don’t be afraid to ASK FOR HELP

Immigration relief is available for victims of human trafficking, domestic violence and other crimes
T& U visa Purpose and Overview

• T or U Status is granted with an approved Application for T Nonimmigrant Status (Form I-914) or Petition for U Nonimmigrant Status (Form I-918)

• USCIS has sole jurisdiction for the T or U visa adjudication

• Benefits:
  – Grants temporary status for up to 4 years
  – Allows temporary status for certain family members
  – Provides employment authorization (work permit)

• Annual Cap of 5,000 (never been met) for the T visa
• Annual Cap of 10,000 (meeting this year) for the U visa
T & U Visa Purpose and Overview

- Optional LEA Declaration for the T visa
  - Form I-914, Supplement B
  - Completed by law enforcement; provided to USCIS by the trafficking victim

- LEA Declaration Required for the U visa
  - Form I-918, Supplement B
  - Completed by law enforcement; provided to USCIS by the victim

- Green card:
  - T or U visa holders may apply for a “green card” after 3 years in T or U nonimmigrant status
Basic T Visa Requirements

• Victim of trafficking in persons

• Physically present in the United States on account of trafficking

• Compliance with any reasonable requests for assistance in the investigation or prosecution of acts of the trafficking (or was under the age of 18 at the time of the trafficking or suffers trauma)

• Demonstration of extreme hardship upon removal (separation of family, medical issues, economic issues)
T Visa I-914, Supplement B
Declaration of Law Enforcement (optional)

• Submitted with the application by the victim

• Should be completed entirely by the law enforcement agency

• If providing any additional documents with the declaration, law enforcement should indicate with a note of “see attachment” or “see addendum”
Basic U Visa Requirements

• Victim of a qualifying crime (occurred in U.S. or violated U.S. law)

• Possesses credible, relevant information about that crime

• Has been, is being or is likely to be helpful in an investigation or prosecution of that crime

• Suffered substantial physical or mental abuse based on that crime
Basic U Visa Requirements

• How are requirements established?
  – Form I-918B certification
  – Police reports
  – Other supporting evidence (court transcripts, medical and psychological reports, affidavits, news reports, etc).

• USCIS makes the determination on all eligibility requirements

• Certification is required evidence but does not result in automatic approval of a case
U Visa Qualifying Criminal Activity

• Includes attempt to commit, conspiracy to commit or solicitation to commit any of crimes on the statutory list and other similar activity

• General crime categories

• USCIS will make the determination of whether criminal activity on certification is “qualifying” for visa purposes
## U Visa Qualifying Criminal Activity

<table>
<thead>
<tr>
<th>Abduction</th>
<th>Murder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abusive Sexual Contact</td>
<td>Obstruction of Justice</td>
</tr>
<tr>
<td>Blackmail</td>
<td>Peonage</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>Perjury</td>
</tr>
<tr>
<td>Extortion</td>
<td>Prostitution</td>
</tr>
<tr>
<td>False Imprisonment</td>
<td>Rape</td>
</tr>
<tr>
<td>Felonious Assault</td>
<td>Sexual Assault</td>
</tr>
<tr>
<td>Female Genital Mutilation</td>
<td>Sexual Exploitation</td>
</tr>
<tr>
<td>Hostage taking</td>
<td>Slave Trade</td>
</tr>
<tr>
<td>Incest</td>
<td>Torture</td>
</tr>
<tr>
<td>Involuntary Servitude</td>
<td>Trafficking</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>Unlawful Criminal Restraint</td>
</tr>
<tr>
<td>Manslaughter</td>
<td>Witness Tampering</td>
</tr>
</tbody>
</table>
U Visa Possesses Information

• USCIS regulation requires that the alien have knowledge of the details concerning the criminal activity

• The alien must possess specific facts regarding the criminal activity that lead law enforcement to determine the alien has, is or is likely to provide assistance to the investigation or prosecution
U Visa Helpfulness

- The alien has been, is being or is likely to be helpful in the investigation or prosecution of the criminal activity.

- Alien has not, since the initiation of cooperation, refused or failed to provide information and assistance reasonably requested.

- *Ongoing* requirement of cooperation.
Who is a victim?

- Generally, it is the individual acted upon during the crime.
- Includes certain family members when the crime is murder/manslaughter.
- Includes parents as “indirect victims” when the victim is under the age of 21.
Incapacitated/incompetent Victim

• Alternatives to possessing information and providing helpfulness for victims who are incompetent or incapacitated:
  – Parent, guardian or next friend can provide helpfulness and possession of information
  – Victims under 16
  – Someone other than the victim meets the requirements of possessing information and providing helpfulness to law enforcement
I-918, Supplement B LEA Certification Required

• Provides USCIS with basic information about the claimed criminal activity
  – Does not grant any benefit

• Is required evidence

• Additional evidence needed to support an approval

• Submitted with the petition by the alien/victim

• Should be completed entirely by the law enforcement agency

• If providing any additional documents with the certification, law enforcement should indicate on the I-918, Supplement B, with a note of “see attachment” or “see addendum”
Supplement B Overview

• Who can sign?
  – Any Federal, State, or Local law enforcement office or agency that has the responsibility and authority for the detection, investigation, or prosecution. Includes agencies with criminal investigative jurisdiction in their respective areas of expertise, including but not limited to child and adult protective services, the Equal Employment Opportunity Commission and the Department of Labor.

• Is signing an I-914/I-918B mandatory?
  – No. It is signed at the discretion of the LEA based on their own local policies. Many agencies develop policies that are the most efficient for them depending on size, jurisdiction, frequency of requests, etc.
Certifying Official

• Who qualifies?

– The head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue T or U nonimmigrant status certifications on behalf of that agency; or

– A Federal, State or local judge.
Certifying Official

• Helpful (but not necessary) if each certification is accompanied by letter showing designation as signing official
  – Can also send a single letter to VSC on the LEA’s letterhead specifically designating signing officials
  – Helpful if the signature of both the agency head and signing official(s) on the letter

• VSC will send request to the alien for clarifying evidence if it does not appear the signing official meets the definition of certifying official.
• A conviction, prosecution, or arrest are not necessary for a victim to be eligible for possible immigration relief.

• If a defendant is acquitted or convicted for a different crime, the victim may still be eligible for immigration relief.

• USCIS conducts full background checks on every applicant, including fingerprints, name/DOB, and immigration records.

• Law enforcement should notify ICE/USCIS of any known or suspected criminal activity associated to the victim.
Other Issues – I-914B and I-918B

• Sign in blue ink (or any color except black).

• USCIS needs the original signature of certifying official—no photocopies.

• USCIS has two separate fraud detection units to ensure petitions are legitimate.
Other Issues – I-914B and I-918B

• You may receive a follow-up request for a certification from the victim in the future to support a “green card” application.

• You may complete new I-914B/I-918B, provide a letter, or re-sign and newly date a copy of the previous I-914B/I-918B if you, as the LEA designated official, chooses to assist the alien again in this process.
Withdrawing or Disavowing Certification

- Certifying agency may withdraw or disavow the certification at any time.

- **Must notify Vermont Service Center** (email or send to VSC—see contact slide).

- Determination to withdraw or disavow **at the discretion of the certifying agency**.

- Law enforcement agency’s own policy will dictate what will trigger this action.
Withdrawning or Disavowing Certification

- Written notification should include
  - Agency’s name and contact information (if not included in the letterhead)
  - Name and DOB of the individual certified
  - Name of the individual who signed the certification and the date it was signed
  - Reason the agency is withdrawing/disavowing the certification
  - Signature and title of the official who is withdrawing/disavowing the certification
  - Attach a copy of the certification the agency signed (if a copy was retained by the agency)
Travel Outside the United States

• U Visa applicants – can travel without advanced parole as they can apply for a visa abroad. May trigger unlawful presence bars to readmission that will require a waiver.

• T Visa applicant – must be in U.S. prior to approval. Can travel abroad after approval but will require advance permission from USCIS to reenter. Adjudication of a T visa is predicated on a finding of extreme hardship if the alien were removed. Travel abroad may call this eligibility issue into question.
Criminal Case Considerations
Coordination

• Law Enforcement and Prosecution
  – Both investigating agencies and prosecuting agencies have authority to request CP or sign certifications for T or U

• Immigration Attorney/Advocate and Criminal Justice Agencies
  – Certification comes from either the investigating or prosecuting agency working the case
  – No reason not to provide LE certification if person is a victim of the qualifying crime
Discovery

• All documentation submitted for these forms of immigration relief are discoverable, so close coordination with the prosecutor is highly recommended.

• Timing the submission for CP, T and U
  – CP does not include personal statements
  – T and U includes personal statements from the victim
Defense Strategies related to Immigration Relief

1. Benefits = Testimony
   • **Maintain clear boundary** between LEA/Prosecutor and T or U visa applications
     – Provide referrals to immigration attorney/advocate
     – Request Continued Presence
     – Provide law enforcement certifications for T and U only, LE officials do not help fill out their application

2. Conflicting Victim Statements
   • Flip it against the trafficker – can be used to demonstrate coercive and controlling influence of trafficker
Beating the Defense at their Own Game

Both are very common tactics, especially in human trafficking investigations

- There are proven prosecutorial strategies to attack these in court

This is **NOT** a reason to delay or withhold immigration relief. Better to have a stable and secure victim who can be a strong witness. Trafficking prosecutions aren’t won without a strong victim/witness.
DHS Contact Information

**USCIS Vermont Service Center**
- LawEnforcement_UTVAWA.vsc@uscis.dhs.gov
- 802-527-4888 (hotline)
- USCIS—Vermont Service Center
  - ATTN: Crime Victims Unit
  - 75 Lower Welden Street
  - St. Albans, VT 05479

**ICE Victim Assistance**
- victimassistance.ice@dhs.gov
- ashley.garrett@dhs.gov
- 703-877-3226 (office)
- 202-520-6183 (blackberry)

**ICE Parole Unit**
- SPBP.LEPB@ice.dhs.gov
- 703-877-3200

**USCIS Policy**
- Scott.P.Whelan@uscis.dhs.gov
- 202-272-8137
- Lila.Y.Bohorquez@uscis.dhs.gov
- 202-272-8266

**DHS Blue Campaign**
- www.dhs.gov/humantrafficking
- BlueCampaign@dhs.gov