

Forum Analysis on OIG's U-Visa Report

A [report](#) from the Department of Homeland Security's (DHS), Office of Inspector General (OIG), issued on January 6, 2022 raised concerns with USCIS's management of the U-visa program and questioned whether the program is fulfilling its intended purpose.

The OIG report resulted from an audit examining how USCIS managed the U-visa program and whether its adjudication process was adequate. OIG's audit raised five main concerns:

- 1) USCIS approved petitioners with forged, unauthorized, altered, or suspicious certifications,
- 2) USCIS did not track fraud referrals,
- 3) USCIS did not establish performance metrics or track critical program data,
- 4) USCIS did not manage its significant backlog, and
- 5) USCIS identified but did not address longstanding issues.

In addition, OIG collected feedback from a subset of law enforcement agencies, many of which did not find the U-visa program to be helpful or a worthwhile use of time and resources.

Because many law enforcement agencies have found the U-visa program [to be a valuable and effective tool](#) to investigate crime and to foster positive police-community relationships with immigrant communities, the OIG report raises significant questions. Clearly, the report identifies valid concerns about USCIS's oversight and management of the U-visa program. It is essential that USCIS take steps to address those concerns to ensure it achieves its intended purpose. However, aspects of the report, including its assertions on the prevalence of fraud and the contention that the majority of surveyed law enforcement entities found the program to be unhelpful, seem unlikely and at odds with the longstanding experience of other law enforcement agencies who have utilized the U-visa process. Accordingly, this analysis examines the OIG's report in more detail, including the methodology it used in gathering feedback from police departments, sheriffs' offices, and prosecutors.

I. Background

[U-nonimmigrant status](#) (U-visa) grants temporary legal status to victims of certain crimes who have suffered mental or physical abuse and aid in the investigation or prosecution of crimes. U-visas are available to immigrants who do not have permanent immigration status in the U.S. who are victims of qualifying crimes, including domestic abuse.

A. Overview of U-Visas

Congress created U-visas through the [Victims of Trafficking and Violence Prevention Act of 2000](#), Pub. L. No. 106-386 (Oct. 28, 2000). In creating the U-visa, Congress explicitly stated, "The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other [qualifying¹] crimes committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens." Further, Congress stated that, "Creating a new nonimmigrant visa classification will facilitate

¹ 8 U.S.C. § 1101 (a)(15)(U)(iii).

the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.” The U-visa was created with the intent to enable law enforcement (and other investigatory agencies) to detect, investigate, and prosecute particularly egregious crimes perpetrated against immigrant victims, to encourage immigrant victims to come forward, report crimes, and work with law enforcement without fear of deportation, and to offer protection through temporary lawful status to immigrant crime victims. The United States Citizenship and Immigration Services (USCIS) is responsible for managing the [U-visa program](#).

B. Methodology of OIG Report

In conducting its report, OIG utilized a sample of U-visa cases and analyzed how they were handled. The results of the audit came from OIG obtaining a universe of 56,576 U-visa petitions granted, waitlisted, or denied between June 1, 2017 and June 1, 2019.² A 90% confidence level, a 5% sampling error, and a 50% population proportion was used to select a statistical sample of 271 U-visa petitions from the universe. The report further notes that the 271 files included 110 granted U-visas or waitlisted derivative petitioners, so OIG also obtained and reviewed the 110 associated principal files for a total of 381 paper files. OIG contacted the 172 law enforcement agencies associated with the statistical sample and obtained copies of 83 [Supplemental B forms](#) for comparison to USCIS records. If the law enforcement agency did not have a copy of the form, OIG asked it to validate whether the signature was that of an authorized signer. OIG reported concerns over 10 potentially fraudulent signatures, unauthorized signatures, and/or alternations to the form.

In addition, OIG surveyed a selection of law enforcement agencies on their views of the U-visa. OIG initially contacted the 172 law enforcement agencies that were associated with the statistical sample and 137 agencies responded to OIG’s inquiry. OIG then sent a seven-question survey to the 137 law enforcement agencies who had responded to OIG’s initial inquiry to ascertain their perspectives on the U-visa program and received responses from 57 of those agencies. Of the 57 responsive law enforcement agencies, 34 were police, 17 were attorneys, and 6 were sheriffs. The overwhelming majority of the agencies came from California and Texas. Law enforcement agencies from 22 states were included, but 28 states plus the District of Columbia and Puerto Rico were not included in the sample. There are approximately [18,000](#) law enforcement agencies in the United States including federal, state, county, and local agencies, most of whom could potentially sign Supplemental B forms for qualifying U-Visa applicants in their jurisdiction.

The report indicates that of the 57 responses received from law enforcement, 61% stated “that the program does not significantly improve their ability to investigate and solve crimes and 54% believe petitioners abuse the program.” Further, the report quotes unnamed agencies as saying, “the U visa program is not helpful because the requests are often for old or closed cases, and in some cases, ‘staged’ crimes,’ or ‘exaggerated injuries.” The report does not provide specific examples of these claims.

² To note, there were 62,990 U-visa petitions received by [USCIS](#) in FY2017 (Principals and eligible family members), 58,991 in FY2018, and 47,225 in FY2019.

II. Findings of the OIG Report

The report issued five central findings which are summarized below, including USCIS's response to the concerns. A further analysis regarding the concerns these findings raise will be addressed in Section III.

A. USCIS Approved Petitioners with Forged, Unauthorized, Altered, or Suspicious Certifications

OIG raised concerns that USCIS has not fully addressed the risk of fraud in the U-visa program. It stated that USCIS had approved U-visas with forged and unauthorized signatures from law enforcement agencies and had approved applications with suspected alterations, such as checking the box of a different crime than the one the certifier had selected. OIG stated that they referred 10 instances of potential forged, unauthorized, and/or altered supplemental B forms to DHS OIG Office of Investigations. There was not any discussion of the outcome of the investigation.

B. USCIS Did Not Track the Outcome of Fraud Referrals

OIG reported that while USCIS utilizes the Fraud Detection and National Security Directorate (FDNS) system, USCIS can only track the "number of fraud cases with a U visa related form attached, and whether the case was referred to another law enforcement agency." USCIS does not track the outcome of the fraud referrals to see if any referrals result in prosecution. OIG expressed concern that without knowing the outcome of these referrals, immigration service officers and law enforcement agencies may be discouraged or dissuaded from reporting suspected fraud. No examples of this occurring were provided. Additionally, no rationale was provided as to why tracking prosecution outcomes was more important than simply tracking potential fraud cases identified by FDNS.

In response, USCIS noted that "the outcomes of investigations, prosecutions, and fraud referrals is outside of USCIS' role in providing immigration benefits."

C. USCIS Did Not Establish Performance Metrics or Track Critical Program Data

OIG reported that "USCIS did not establish quantifiable and measurable performance goals to ensure the U visa program achieves its intended purpose. Additionally, USCIS did not properly track the number of U visas granted to ensure it complied with Federal laws and regulations."

USCIS acknowledged this concern and responded to OIG that it was implementing new technology and tracking systems for more robust accounting and reporting. The systems are expected to be in place by September 30, 2022.

D. USCIS Did Not Manage Its Significant Backlog

OIG reported that USCIS did not manage its ever-growing backlog of U-visa applications and stated that "eligible petitioners are not receiving protections such as deferred action and employment authorization" while their case is in the backlog. USCIS created the bona fide determination process and implemented it in June of 2021 in order to offer some protections for U-visa applicants while waiting for their cases to be adjudicated.

USCIS noted that the congressionally mandated U-visa cap limits its ability to address the backlog.

E. USCIS Identified, But Did Not Address Longstanding Issues

OIG noted that USCIS had not implemented prior recommendations for previous internal and external reviews that occurred at various times between 2012 and 2020. Specifically, OIG expressed concern that USCIS had not followed through on prior recommendations to “implement an electronic certification system, define ambiguous terminology, and better coordinate with certifying agencies.” OIG recommended that USCIS “implement additional controls that mitigate risks of fraudulent Supplement B forms, such as requiring certifying officials to submit forms directly to USCIS.”

USCIS responded that it has sufficient controls in place to mitigate fraud and does not have statutory authority to require law enforcement certifies to send the certification directly to USCIS.

III. Concerns about the OIG Report

A. The Reliance on the 57 Survey Responses Was Flawed

OIG’s reliance on a small subsample of 57 survey responses was fundamentally flawed. Reliance on this small, unrepresentative data set raises significant concerns about law enforcement agencies’ opinions of the efficacy of the U-visa program cited in the OIG report.

1. The 57 Survey Responses Were Not a Representative Sample

The sample of 57 law enforcement agencies that responded to OIG’s survey is too small, non-random, and unrepresentative. While the survey respondents offered interesting anecdotal feedback, the information provided by the 57 self-selecting law enforcement agencies who chose to respond to the survey is of limited statistical worth.

The sample is hardly representative of a national program that extends to all U.S. states and territories and has more than [268,699](#) pending applications. Additionally, the 57 law enforcement agencies who completed the survey questions are a minority (41.6%) of the 137 responding law enforcement agencies who initially responded to OIG. And the 137 who initially responded are a subset of the 172 law enforcement agencies surveyed by OIG –a small sample to begin with.

In addition, it is unclear whether OIG received positive feedback on the U-visa program in the 57 responses. The OIG report did not include full responses to the seven-question questionnaire, nor did it highlight survey responses that had a more positive view of the U-visa program. Positive responses could be instructive as countervailing anecdotal feedback demonstrating support for the program.

2. Other Law Enforcement Agencies Have Offered a Positive View of U-Visas

The reported findings, while limited in sample size, are contrary to various other reports about the usefulness and benefits of the U-visa program to the law enforcement community in terms of identifying, investigating, and prosecuting crimes, building positive police relationships with immigrant communities, and providing protection for victims of qualifying crimes. Members of the Law Enforcement Immigration Task Force ([LEITF](#)), comprised of more than 130 law

enforcement leaders from across the U.S., have consistently argued that the U-visa program [helps keep communities safe and builds trust among immigrant residents](#). While 130 law enforcement agencies also are not representative of all law enforcement, they provide a useful viewpoint which stands in stark contrast to the agencies highlighted in the OIG report.

Prior to the OIG report, the usefulness of the U-visa program had been well-established. For example, the Police Executive Research Forum (PERF) [has suggested](#) that “Law enforcement agencies should consider the benefits of using U visa related certifications as an investigative and community policing tool to improve the delivery of police services to all crime victims.”

Illustrating these benefits, PERF has featured the success of the San Francisco Police Department’s “proactive U Visa program” and has “report[ed] significant benefits from utilizing U Visa-related certifications, not only as a law enforcement tool to help build cases against criminal offenders, but also as a mechanism to build trust with the community.” In addition, Commissioner for U.S. Customs and Border Protection Chris Magnus, a former police chief and LEITF member, has [previously praised](#) the U-visa program, stating that it “ha[s] been essential to persuade undocumented immigrants to report crimes without fear of being deported.” Similarly, retired [Police Chief Mark Prosser](#) of Storm Lake, Iowa sought to conduct community outreach programs that included education about U-visas to further community trust.

3. Failure to Consider Non-State and Local Law Enforcement Certifiers

The OIG report exclusively focuses on law enforcement and does not include any U-visa certifications signed by other eligible agencies such as local, state, or federal prosecutors’ offices, federal investigators (such as FBI, HSI, or DOL), or other investigatory agencies (such as state Child or Adult Protective Services or DOLs). The report does not assess if the U-visa program is helpful to these actors, all of whom can potentially sign U-visa certifications. Some criminal or illegal activity may bypass local or state law enforcement all together, such as labor trafficking cases. Inquiries to a larger scope and diversity of certifying agencies would be beneficial to truly understand how the U-visa program benefits and impacts all eligible agencies.

For example, the Brooklyn, New York’s District Attorney’s Immigration Affairs Unit office publicly states on their website that they signed approximately [200](#) U-visa certification requests in 2018. Their website [states](#), “when victims do come forward, the DA’s Office has succeeded in holding accountable those who prey on vulnerable immigrant New Yorkers.” Additionally, several states recognize the importance of having District Attorneys be available for U-visa (and T-visa) certifications to eligible victims and have [codified](#) procedures for requesting certifications and timelines in which the offices should respond.

B. OIG Overlooked Congress’s Central Role in the Operation of the U-Visa Program

The OIG report minimized Congress’s role in the operation of the U-visa program, and how the legislative design of the program has led to several of the concerns OIG highlighted. Accordingly, in attributing blame to USCIS for Congress’s failure to lift the statutory cap on U-visas, ignoring congressional intent on the coverage of older crimes, and the absence of legislative authority to directly accept certifications from law enforcement agencies, many of OIG’s criticisms are off-base.

1. Minimizing the Role of the Congressionally Mandated U-Visa Annual Cap

The report concluded that USCIS did not properly manage the enormous backlog of pending U-visas. The report stated, “We do not consider the cap the sole reason for the backlog. Rather, USCIS did not implement recommendations from previous internal U visa program reviews. These internal reviews recommended USCIS could reduce the backlog with actions to: clarify waitlist and adjudication processes; clarify eligibility requirements; mitigate fraud risks; and strategically improve how it updates processing U visas and related petition to improve program integrity and reduce backlog.” The fact remains that, by statute, Congress only permits 10,000 principal U-visas to be issued each year. At the end of the first quarter of FY2021, there were 160,611 principal petitions pending and 108,088 derivative petitions pending for a total 268,699 pending cases. With the cap in place, USCIS’s ability and options to reduce this potentially decades-long backlog are limited.

Recently, in an effort to address the ever-increasing backlog, USCIS created the [bona fide determination process](#) in June of 2021 which allows USCIS to conduct initial reviews of U nonimmigrant status petitions more efficiently and provides eligible applicants with work permits and deferred action while they wait for a final decision on their case in the backlog. USCIS is not able to approve more cases than Congress allows it to.

Congress has the ability to increase this number or to re-allocate available visas from other categories such as from the T-visa, which has never reached its statutory annual cap of 5,000. Increasing the number of available U-visas per fiscal year to address the backlog concerns would be an important first step.

Facing this growing U-visa backlog, various legislative proposals have been introduced to raise or terminate the cap. Representatives Jimmy Panetta (D-California) and Pramila Jayapal (D-Washington) introduced the [Immigrant Witness and Victim Protection Act](#) in 2019 to “lift arbitrary caps on the number of “U” visas available for undocumented immigrant witnesses and victims of violent crimes who cooperate with law enforcement.” In February of 2021, Representative Linda Sanchez (D-California) and Senator Bob Menendez (D-New Jersey) introduced the [U.S. Citizenship Act of 2021](#), a comprehensive immigration reform bill that included a provision raising the annual U-visa cap from 10,000 to [30,000](#). Despite the efforts of advocates and lawmakers, legislative proposals to raise the annual U-visa cap have not yet succeeded, and the cap remains at 10,000 per year.

2. Ignoring Congressional Intent on Older Crimes

The OIG report raises concerns that the U-visa program is not helpful because many of the U-certification requests that law enforcement receive are for old or closed crimes. But congressional intent behind the U-visa was not for it to solely be beneficial to investigating current cases for law enforcement. Congress specified that a victim may be eligible for a U-visa when she “has been, is being, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity.”³

A general rule of statutory interpretation is that statutes should be interpreted using the ordinary meaning of the language in the statute. This broad language includes no requirement that investigations cover recent crimes or that the cooperation leads to convictions. As USCIS notes in its response to the report, “the inclusion of past, present, and future tenses

³ 8 U.S.C. § 1101(a)(15)(U)(i)(III).

demonstrates Congress’s intent to provide for eligibility based on any period of assistance in any investigation or prosecution, including closed cases.”

This makes sense from a public policy standpoint. Such cooperation still yields worthwhile benefits. U-visas derived from old or closed cases serve the public interest because they improve police-community relationships and provide valuable intelligence to law enforcement. Even if a crime is old, it still may be prosecutable, particularly violent offenses that have long or nonexistent statutes of limitations. Further, intelligence on crimes that cannot be prosecuted can still be valuable to law enforcement, helping them identify higher-risk areas and obtain useful information on criminal behavior relevant to future cases and investigations.

3. Overlooking the USCIS’s Lack of Statutory Authority to Directly Accept U-Visa Certifications from Law Enforcement Agencies

In recommending that USCIS adopt new anti-fraud controls, OIG recommended that it, among other things, “require[e] certifying officials to submit forms directly to USCIS.” As USCIS noted in response, it lacks statutory authority to require law enforcement certifiers to send certifications directly to USCIS.

Rather, by regulation, the U-visa petitioner (the immigrant crime victim, or in very specific scenarios the victim’s parent) is legally responsible for submitting his or her U-visa application to USCIS: “An alien seeking U-1 nonimmigrant status must submit, Form I-918 Petition for U Nonimmigrant status, and initial evidence to USCIS.”⁴ Further, regulations governing U-visa petitions, require petitioners to file “Form I-918, Supplement B, ‘U Nonimmigrant Status Certification,’ signed by a certifying official within the six months immediately preceding the filing of Form I-918.”⁵ Given that the immigrant is responsible for submitting his or her own application, including a signed certification, it is clear that USCIS cannot instead mandate that law enforcement agencies submit the certification directly to USCIS.

4. Overlooking the USCIS’s Limited Statutory Authority to Disclose Case Outcomes to Law Enforcement

OIG’s concern about USCIS’s ability to track U-visa fraud case outcomes is also misplaced. The OIG report contends that by being unable to obtain updates on referred fraud cases, USCIS personnel and law enforcement agencies are discouraged from making referrals to [FDNS](#) about potential fraud. The report also suggests that this is a missed opportunity preventing USCIS from properly addressing fraud risks in the U-visa program. The report does not elaborate how the absence of such updates would discourage an actor from making fraud referrals or how it impacts fraud prevention on a systemic level.

USCIS has the statutory authority to use or disclose information relating to U-visa petitions to law enforcement solely for “a legitimate law enforcement purpose.”⁶ While USCIS has understood this language to limit its ability to receive updates on fraud cases referred to FDNS, OIG disagrees, arguing that fraud investigation does constitute a legitimate law enforcement purpose. However, since the cases in question have already been referred to FDNS for

⁴ 8 C.F.R. § 214.14(c)(1).

⁵ 8 C.F.R. § 214.14(c)(2)(i).

⁶ 8 C.F.R. § 214.14(e)(1)(ii).

investigation and follow-up, it is unclear that having USCIS track outcomes further mitigates the risk of fraud.

Conclusion:

U-visas foster better relations between immigrant communities and law enforcement, aid investigations, and protect immigrant victims of crimes. While the OIG report identifies problems in the U-visa program that can and should be addressed by, including the need for improvements in program management, U-visas provide significant value.

In lifting up feedback from a small and unrepresentative sample of law enforcement agencies responding to a survey, the OIG report unduly highlights critics of the overall program. A broader approach from a larger, more representative sample of law enforcement agencies (as well as certifiers from entities other than state and local police departments and sheriffs' offices) would better represent the full scope of the program.

In addition, the OIG report's recommendations fall short in considering the congressional role in shaping the U-visa program. By acknowledging the role Congress has played in limiting the effectiveness of the program – both by setting an unduly low statutory U-visa cap and failing to provide for the direct submission of certification documents to USCIS – the OIG report misses the mark.