



POLICE DEPARTMENT

October 26, 2017

Honorable Bill de Blasio  
Mayor of the City of New York  
City Hall  
New York, NY 10007

Honorable Melissa Mark-Viverito  
Speaker  
The New York City Council  
250 Broadway, 18<sup>th</sup> Floor  
New York, NY 10007

Honorable Mark G. Peters  
Commissioner  
Department of Investigation  
80 Maiden Lane  
New York, NY 10038

Honorable Philip K. Eure  
Inspector General  
Office of the Inspector General  
For the NYPD  
80 Maiden Lane  
New York, NY 10038

Dear Mayor de Blasio, Speaker Mark-Viverito, Commissioner Peters and Inspector General Eure:

Pursuant to Local Law 70 and the New York City Charter, the New York City Police Department (“NYPD” or the “Department”) hereby submits its response to the July 28, 2017 report of the Office of the Inspector General for the NYPD (“OIG”) entitled “When Undocumented Immigrants Are Crime Victims: An Assessment of NYPD’s Handling of U Visa Certification Requests” (the “Report”).

## **I. INTRODUCTION.**

The NYPD seeks to forge trusting, productive and sustained relationships with the many and varied communities that it serves, including the distinct immigrant communities throughout the City of New York. As Police Commissioner James P. O’Neill has stated, “we strive to have everyone trust their local government when they need help, report crimes, or require key public services. It is critical that everyone who comes into contact with the NYPD, regardless of their immigration status, be able to identify themselves or seek assistance without hesitation, anxiety or fear. It is part of our larger mission to forge public trust with all the communities we serve...It is our city’s resolve to remain a safe and welcoming place for all immigrants. And it is incumbent upon the men and women of the NYPD to maintain the trust and confidence of all who depend on the services of our Police Department for their safety.”<sup>1</sup>

The NYPD has implemented a variety of measures to accomplish this goal. Since its inception, the NYPD’s Community Affairs Bureau has engaged in sustained community outreach including in areas heavily populated by immigrants and, as a result, developed longstanding and productive relationships in those communities. In particular, their Immigration Outreach Unit provides presentations on Police Department policies, programs and services affecting immigrant communities. The Department’s Deputy Commissioner of Collaborative Policing routinely serves as an executive level liaison for community-based organizations and advocates, including immigrant advocacy groups, and works to implement changes in Department policy and procedure that are responsive to their needs and interests.

Operationally, the NYPD has several designated units that investigate and apprehend individuals who commit crimes that frequently target immigrants, particularly women and children.<sup>2</sup> They include, but

---

<sup>1</sup> Police Commissioner’s Message About Immigration-Related Policies, NYPD email to all Members of the Service. (February 22, 2017).

<sup>2</sup> As noted in the U Visa Law Enforcement Certification Resource Guide published by the United States Department of Homeland Security (“the federal guidelines”) available at <https://www.dhs.gov/publication/u-visa-law-enforcement-certification-resource-guide>, “[i]mmigrants, especially women and children, can be particularly vulnerable to crimes like human trafficking, domestic violence, sexual assault and other abuse due to a variety of factors. These include, but are not limited to, language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.” Federal guidelines at 4. Although U visas were initially created with a focus on victims who are immigrant women or children, the Department considers certifications for immigrant victims regardless of age or gender identification.

are not limited to, the Department's Domestic Violence Unit, the Special Victim's Division,<sup>3</sup> the Hate Crime Task Force,<sup>4</sup> and the Human Trafficking Unit.<sup>5</sup> In addition, in October 2016, the NYPD partnered with Safe Horizon, the city's largest and most comprehensive victim services provider, to launch the Crime Victim Assistance Program ("CVAP"), which embeds these advocates in every NYPD precinct throughout the city. Currently, these advocates, who provide support, information and linkage to public services, including services for the city's immigrant population, are operating in fifty-five precincts, with a projected expansion to all precincts and police service areas ("PSAs") by the summer of 2018.

The NYPD's sensitivity and commitment to New York's immigrant population is further demonstrated by its longstanding policy<sup>6</sup> directing all NYPD personnel to refrain from inquiring about a person's immigration status except in limited and carefully circumscribed instances in order to encourage crime victims, witnesses or others to readily seek police assistance when needed. The Department's Neighborhood Policing strives to serve immigrant communities by connecting the residents and businesses of those communities with officers who patrol those areas. In addition to contact made through regular patrols, Neighborhood Coordination Officers ("NCOs") and Sector Officers convene and preside over monthly Community Council meetings, meet community residents and business owners, and have one-on-one conversations to discuss concerns, including questions regarding NYPD immigration policies. NCOs also host quarterly Neighborhood Safety Meetings with elected officials to address community concerns, including issues regarding the City's immigration-related policies.

---

<sup>3</sup> The Special Victims Division ("SVD") investigates crimes involving sexual assault and cases of alleged child abuse. SVD works in partnership with victim advocates and other city agencies, such as the Administration for Children's Services.

<sup>4</sup> The Hate Crime Task Force, a sub-unit within SVD, investigates crimes determined to have been motivated in whole or substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person.

<sup>5</sup> The Human Trafficking Unit combats citywide human trafficking by investigating, identifying and rescuing victims of all types of trafficking, such as sex and labor trafficking.

<sup>6</sup> Patrol Guide Section 212-66 implements Mayor's Executive Order No. 34 of 2003 as amended by Mayor's Executive Order No. 41 of 2003, which reaffirms the City's policy of providing essential services to all residents regardless of immigration status. This City policy dates back to 1989. *See* Mayor's Executive Order No. 124 of 1989.

In 2000, with the passage of the Victims of Trafficking and Violence Protection Act,<sup>7</sup> the federal government provided an opportunity for local law enforcement to obtain the cooperation of crime victims in the investigation and prosecution of certain designated offenses while supporting their application to secure temporary legal status. Specifically, the statute permits local law enforcement agencies to voluntarily participate in the process by which an individual applies for a U visa. A U visa is a federal immigration benefit that provides eligible crime victims with nonimmigrant status in order to temporarily remain in the United States while continuing to assist law enforcement. The local agency operates as a certifying agency, attesting to an individual's assistance in the investigation of certain specified offenses as part of that person's application to the federal government for a U visa. With their existing resources, local law enforcement agencies have the discretion to establish certification procedures or practices. Thus, those that choose to take on this function do so voluntarily and without receiving any financial support from the federal government. For the past decade, the Department has designated resources to process, review and approve hundreds of applications for certification each year while absorbing all attendant costs.<sup>8</sup>

In the face of the NYPD's broadly demonstrated and sustained commitment to working closely and effectively with the City's immigrant communities, OIG nevertheless finds that the Department "hinders applicants who may otherwise qualify" for U visa certification by operating a certification program that varies from guidelines contained in the U Visa Law Enforcement Certification Resource Guide published by the United States Department of Homeland Security ("the federal guidelines"). OIG also asserts that the NYPD certification program lacks transparency and is not sufficiently publicized.

In fact, as OIG concedes, NYPD's approval rate for certification applications was 82% in 2016, hardly indicative of the Department's hindering applicants from gaining certification. Furthermore, as outlined in greater detail below, NYPD's certification program is entirely consistent with the federal guidelines, which explicitly grant local law enforcement agencies sole authority on the policies and

---

<sup>7</sup> Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

<sup>8</sup> For the years 2016, 2015 and 2014, the NYPD received and processed 713, 580, and 501 requests, respectively.

procedures they adopt to process applications.<sup>9</sup> These guidelines also encourage the very practice of evaluating applications that NYPD follows — a case-by-case discretionary review. Moreover, because the federal guidelines and the NYPD’s Patrol Guide provision that specifically addresses and outlines its U Visa certification program<sup>10</sup> are both publicly available, there is no lack of transparency about NYPD’s process in certifying applicants. Finally, the NYPD maintains readily accessible public information about its U visa certification program, translatable into 103 different languages on its website, <http://www1.nyc.gov/site/nypd/services/victim-services/u-visa-certification.page>.

## **II. OVERVIEW OF THE U VISA APPLICATION AND CERTIFICATION PROGRAM.**

To apply for a U visa, a crime victim must be legally admissible to the United States,<sup>11</sup> demonstrate that he or she is a victim of a qualifying crime who suffered substantial physical or mental abuse as a result, and is likely to aid, is currently aiding or has aided law enforcement in the investigation or prosecution of the qualifying crime. While the decision to grant a U visa rests solely with the Department of Homeland Security’s (“DHS”) Citizenship and Immigration Services (“USCIS”), an applicant must obtain a written certification from the law enforcement agency that investigated the qualifying crime in order for the application to be complete. The certification verifies for USCIS that the applicant was a crime victim and was helpful to that agency.<sup>12</sup> USCIS Form I-918, Supplement B (the “certification”), is the form that law enforcement officials must complete on an applicant’s behalf. It documents whether a victim “had, has, or will have been helpful to the investigation or prosecution of [a] case.”<sup>13</sup>

To aid applicants and local law enforcement officials, USCIS has published a non-exhaustive list<sup>14</sup> of the types of crimes that qualify for a U visa. To be eligible for a U visa, an applicant must demonstrate

---

<sup>9</sup> See Federal guidelines at 21.

<sup>10</sup> Patrol Guide Section 212-111 entitled “U Visa Certification,” available at [http://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide2.pdf](http://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide2.pdf).

<sup>11</sup> According to USCIS, an applicant may be “inadmissible due to, for example, prior criminal history, immigration violations, or security concerns.” Federal guidelines at 5.

<sup>12</sup> The remaining prong of the analysis – whether a victim suffered the requisite substantial physical or mental abuse as a result of the criminal activity – is determined solely by USCIS. Federal guidelines at 24.

<sup>13</sup> *Id* at 5.

<sup>14</sup> <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status#Qualifying%20Criminal%20Activities>.

that he or she was a victim of one or more of these qualifying crimes or of a crime with elements that are substantially similar to the enumerated crimes. Qualifying crimes also include the crimes of attempt, conspiracy, or solicitation to commit one of the enumerated crimes.

The certification does not, however, confer any immigration benefit upon the applicant. Only USCIS has the authority to grant a U visa. Nationwide, USCIS grants only 10,000 U visas annually. In addition, USCIS receives an average of approximately 48,446 petitions annually. As of 2016, USCIS had a total of 150,604 petitions pending before it.<sup>15</sup> Given this backlog, and how relatively sparingly USCIS grants U visas, common sense dictates that only a fraction of the 82% of applicants that the NYPD certifies actually will obtain one. This stark reality undermines OIG's suggestion that the NYPD U Visa certification program is responsible for an otherwise qualified applicant's failure to obtain a U visa.

In reviewing a U visa application, USCIS evaluates the credibility of an applicant and determines whether the above criteria have been met.<sup>16</sup> USCIS does so on a case-by-case basis, examining the totality of the evidence provided by the applicant, including the law enforcement certification. The federal guidelines encourage certifying law enforcement agencies to similarly conduct their own case-by-case review of certification requests. Moreover, these guidelines do not mandate specific procedures or rules be instituted by the certifying agency other than to act consistently with applicable U.S. laws and regulations, the broad policies and procedures outlined in the federal guidelines and any internal policies of the certifying agency.<sup>17</sup>

### **III. THE NYPD U VISA CERTIFICATION PROGRAM.**

Since the NYPD voluntarily assumed the responsibility for processing U Visa applications, the process has noticeably evolved. Prior to OIG's examination of the NYPD's program, the NYPD conducted its own evaluation of its certification program along with the participation and assistance of various

---

<sup>15</sup>[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u\\_visastatistics\\_fy2017\\_qtr1.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2017_qtr1.pdf)

<sup>16</sup> Federal guidelines at 6.

<sup>17</sup> *Id.*

immigrant advocacy groups. As a result, over the past three and a half years, the NYPD implemented significant and innovative improvements designed to further enhance the program's fairness, efficiency, responsiveness and transparency. Notably, all of these improvements pre-dated OIG's involvement and input.

Among these self-initiated improvements were the promulgation of new Patrol Guide procedures along with New York City rules designed to make it easier to request a U visa certification from the Department. These changes now permit applicants to apply in their native language, provide them with an important clarification that the process is free of charge in order to combat the unscrupulous practices of some attorneys, and ensure the expeditious review of applications within 45 days for initial applications and 90 days for appeals. At the same time, NYPD devoted more personnel to processing applications. Whereas before U visas were processed by a single diligent Lieutenant, they are now reviewed by the Domestic Violence Investigations Unit ("DVIU") staff comprised of a Lieutenant, four Sergeants, four police officers, and two civilians who perform administrative duties. A corollary adjustment involved the addition of four NYPD executives as approved certifying officials for U Visa certifications.<sup>18</sup>

In addition, in 2015, the NYPD began utilizing a newly formulated denial letter<sup>19</sup> that clearly indicates the Department's basis for denying certification. At the same time, the Department also adopted a formal appeals process that allows applicants to contest NYPD's denials of certification. Applicants who wish to appeal an initial determination must provide a cover letter that clearly states the reason(s) for appeal, a copy of the original request and any supplemental information relevant to the certification or which rebuts the indicated basis for denial. It affords applicants a *de novo* review of their certification request by members of the NYPD Legal Bureau. A *de novo* review means that the initial Department determination is non-

---

<sup>18</sup> A certifying official is defined as "[t]he head of the certifying agency or any person in a supervisory role, who was specifically designated by the head of the certifying agency to issue a U Nonimmigrant Status Certification on behalf of that agency." See Form I-918 Supplement B. Prior to 2014, the Police Commissioner was the NYPD's sole certifying official.

<sup>19</sup> The denial letter articulates one or more reasons for denying certification. The reasons for denial include that the individual was not the direct or indirect victim, the criminal act is not a qualifying crime, lack of victim helpfulness, insufficient documentation, referral to another agency, and "other."

binding on the appellate reviewer who undertakes an entirely new evaluation on the merits and willingly accepts and considers additional information bearing on the application's suitability. Notably, the federal guidelines neither refer to an appeals process nor do they require one. To the NYPD's knowledge, this appeals process is the only one in the country.

While many of these changes were integrated into the Patrol Guide in 2016, the NYPD also further formalized these procedures through the City Administrative Procedure Act ("CAPA").<sup>20</sup> The CAPA process allowed the NYPD to benefit from the input and comments of the public, advocacy groups, and community stakeholders. On January 12, 2016, a public hearing was held to solicit feedback and the rules became effective on May 8, 2016.

The NYPD also revised its publicly available information thereby enhancing accessibility to the U visa certification program. In May 2017, the Department published on its website a description of its U Visa program as well as its application process. The Department also relocated its U visa certification office from One Police Plaza, which requires visitors to pass through several security checkpoints prior to admittance, to the DVIU located in the 7<sup>th</sup> Precinct.<sup>21</sup> This new location is more easily accessible to applicants and/or their representatives.

Not surprisingly, as a result of all of these improvements, the NYPD has seen a dramatic increase in the number of applications received<sup>22</sup> and approved.<sup>23</sup> This is even more remarkable given the self-imposed deadline of 45 days to complete a review. By capitalizing on the input received from the public and immigrant advocacy groups, the NYPD is confident that its present program is accessible, fair and

---

<sup>20</sup> R.C.N.Y. Title 38 § 22 (2017).

<sup>21</sup> From 2009 to 2015, the NYPD's Domestic Violence Unit ("DVU") in 1 Police Plaza served as the intake center and processing unit for all U visa certification requests. In 2016, in order to expedite the review of U visa certifications, devote additional staff to the review of requests, and to reduce security burdens imposed on applicants, the NYPD shifted the review responsibility to the Domestic Violence Investigations Unit ("DVIU"), located within the 7<sup>th</sup> Precinct. Requests may be mailed or delivered to 1 Police Plaza or the 7<sup>th</sup> Precinct.

<sup>22</sup> A total of 713 certification requests were received and processed in 2016 along with 60 appeals.

<sup>23</sup> As previously noted, the NYPD's approval rate for 2016 was found by OIG to be 82%, up from 74 % in 2015.



expedient. As OIG concedes, NYPD's efforts have been "beneficial and make clear the Department's ongoing commitment to improving the U visa process."<sup>24</sup>

Yet despite this demonstrable success, OIG criticizes the NYPD's changes as merely "administrative" in nature and claims that the NYPD needs to revise its "substantive" review of certification requests. In reality, the appropriate substantive review process is clearly articulated in the federal guidelines and federal law, to which the NYPD adheres. The adoption of additional "substantive" amendments to the process, particularly those posed by OIG, are neither required nor suggested by those guidelines, and, as illustrated in more detail below, may produce inconsistent and unfair results. Given that NYPD's review process is entirely consistent with the federal guidelines, was developed with public and advocate input, and succeeds in the prompt review and approval of the vast majority of certification requests, there is little reason for the NYPD to substantially diverge from its current and carefully improved practice. Today, the NYPD's enhanced and revised process is faster, fairer, and completely transparent. Nevertheless, as outlined in greater detail below, the NYPD has recently added additional measures to provide an even more efficient and transparent service to the undocumented members of the immigrant community.

#### **IV. THE FEDERAL GUIDELINES AND NYPD'S STANDARDS FOR EVALUATION OF A U VISA CERTIFICATION REQUEST.**

To submit an application to the NYPD for U Visa certification, an individual completes USCIS Form I-918, Supplement B and submits it along with any supporting documents to the Domestic Violence Unit at One Police Plaza.<sup>25</sup> Most applicants seek out attorneys or advocates to assist them in completing and submitting the application and to coordinate with the Department on their behalf as the process unfolds. Once a complete application is received, it is assigned to a member of the DVIU who has been trained on the NYPD's review procedures as well as the federal guidelines.

---

<sup>24</sup> OIG Report at 3.

<sup>25</sup> The full mailing address is: One Police Plaza, Room 1312-0 New York, New York 10038.

The NYPD evaluates U visa certification requests using a case-by-case analysis that focuses on the unique circumstances of each individual applicant and the specific case in which they were involved. It allows the reviewer to maintain sensitivity and flexibility while, at the same time, apply the clear standards set forth in the federal guidelines and NYPD policy. In this sense, the NYPD conducts an individualized review rather than resorting to a less thoughtful and more rigid outcome based on predetermined criteria. As a general rule, the default position of NYPD reviewers is to certify the applicant unless the individual clearly fails to meet the written standards set forth in federal law, the federal guidelines and NYPD's internal procedures. The NYPD's certification practice in this regard is entirely consistent with the best practices articulated in the federal guidelines as well as the practice of USCIS, which also conducts the same type of case by case review in determining who will be granted a U visa.

**1. Whether the Applicant Was the Victim of a Qualifying Crime.**

The federal guidelines and relevant statute contain a list of qualifying crimes.<sup>26</sup> This list, in effect, serves as the objective criteria by which the NYPD determines this prong of the certification evaluation.

They are as follows:

- |  |   |                               |
|--|---|-------------------------------|
| · Abduction                                    | · Murder  | · Torture                     |
| · Abusive Sexual Contact                       | · Obstruction of Justice                            | · Trafficking                 |
| · Attempt to Commit Any of the Named Crimes    | · Kidnapping  | · Witness Tampering           |
| · Being Held Hostage                           | · Manslaughter                                      | · Unlawful Criminal Restraint |
| · Blackmail                                    | · Murder  | · Related Criminal Activities |
| · Conspiracy to Commit Any of the Named Crimes | · Manslaughter                                      |                               |
| · Domestic Violence                            | · Obstruction of Justice                            |                               |
| · Extortion                                    | · Peonage   |                               |
| · False Imprisonment                           | · Perjury   |                               |
| · Felonious Assault                            | · Prostitution                                      |                               |
| · Female Genital Mutilation                    | · Rape  |                               |
| · Fraud in Foreign Labor Contracting           | · Sexual Assault                                    |                               |
| · Incest                                       | · Sexual Exploitation                               |                               |
| · Involuntary Servitude                        | · Slave Trade                                       |                               |
| · Kidnapping                                   | · Solicitation to Commit any<br>of the Named Crimes |                               |
| · Manslaughter                                 | · Stalking  |                               |

---

<sup>26</sup> Federal Guidelines at 7.

All NYPD personnel are trained in crime classification and are familiar with the elements of these as well as other crimes. Beyond reviewing U visa requests, crime recognition and classification is a necessary fundamental skill in policing. Thus, DVIU personnel who review U visa certification requests are practiced at recognizing when the facts presented by a given request amount to a qualifying crime. Indeed, DVIU personnel have further enhanced skills in this area as they conduct qualifying crime evaluations on a daily basis. Moreover, such determinations are always subject to supervisory review.

Given that the analysis is fairly straightforward and will always be the same for each case — whether the facts presented by the application satisfy the elements of the enumerated crimes — there is no need for U visa certification reviewers to provide, as OIG suggests, “a written rationale” that explains “what steps NYPD took to assess the case or how the NYPD concluded that the case did not involve a qualifying crime.” Put another way, there is no mystery as to what type of evaluation NYPD is conducting and how it is done. Moreover, to the extent that an applicant and/or his or her attorney are convinced that the applicant was the victim of a qualifying crime, they should utilize the certification application to substantiate this conclusion. In addition, if they are convinced that the reviewer made an incorrect application of the facts to the law, the NYPD offers a *de novo* appeal. Such appeals are uniformly conducted by senior and experienced attorneys in the Department’s Legal Bureau. Thus, there are a number of safeguards presently in place to ensure the correct result.

To determine the relevant facts, the NYPD reviewers examine all available supporting documentation from the applicant, including copies of NYPD complaint and investigative reports, the applicant’s written submission detailing the circumstances of the crime, medical records, affidavits and/or photographs documenting injuries, and any other relevant materials. In addition, the reviewers also utilize NYPD’s resources to access all relevant Departmental records that bear on the question at issue even when such records were not or could not be accessed by the applicant. This includes, but is not limited to, complaint reports, arrest reports, investigative reports, photographs, video, and complaint follow-up reports. Where the applicant’s submitted material fails to present facts establishing a qualifying crime but the reviewer is able to discern them from NYPD records, the reviewer will deem this requirement met. The

inverse is also true. If the reviewer examines the applicant's submissions but NYPD records fail to corroborate them or contradict them, the reviewer cannot reliably determine that a qualifying crime has occurred.

Relying on NYPD records is a sound approach because arrest, complaint and investigative reports, and complaint follow-up reports are reliable, contemporaneous sources of information. The entries made on these documents are designed to memorialize an official NYPD investigation and to serve as a basis for official action whether it be an arrest or the closing of an investigation. NYPD personnel who complete these records are carefully trained about the necessity for accurate, reliable and truthful entries. Notably, the information is recorded at or near the time that events occur, when details are fresh in the memory of those involved and before the victim or witness is seeking a benefit other than police response and arrest. Finally, unlike other documentation involved in the process, arrest and complaint reports are subject to internal quality control specifically designed to insure correct crime classification.<sup>27</sup>

Clearly, this procedure works and produces uniform, fair results. As OIG points out, in an analysis in which reasonable minds can differ and in which the federal government grants sole discretion to the NYPD, OIG disagreed with the NYPD's determination regarding the absence of a qualifying crime in only two of fifty-one cases OIG reviewed on this issue.<sup>28</sup>

In the first case, to support a determination that serious physical injury<sup>29</sup> had occurred, the applicant submitted a photograph depicting the applicant's face and a copy of an X-ray of a person's jaw. These submissions were not accompanied by any affidavits by treating medical personnel or certified medical records attesting to the medical interpretation and opinion as to what the photograph and X-ray revealed. Nor were there any such affidavits or certified records that supported a finding that the injury was a

---

<sup>27</sup> The Quality Assurance Division ("QAD") conducts semi-annual evaluations of all 98 commands and reviews approximately 60,000 complaint reports to ensure crime classifications are compliant with the Crime Complaint Reporting System Reference Guide and New York State Penal Law.

<sup>28</sup> OIG Report at 21.

<sup>29</sup> The Penal Law defines serious physical injury as physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. See Penal Law Section 10.00(1).

“physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”<sup>30</sup> Applicants routinely provide such affidavits and/or medical records with their requests, especially when the applicant is represented by counsel, as was this applicant. Assault as a felony, the qualifying crime, occurs only when the injury meets this specific definition.<sup>31</sup>

In the second case, the applicant provided his affidavit and a letter alleging that he had been extorted. Contemporaneous NYPD records, however, indicated that at the time of the incidents the applicant failed to articulate facts establishing extortion. Under the law, extortion requires that the taker of the property instill a fear that, if the property is not delivered, the taker will engage in conduct that will, among other things, “cause physical injury to some person in the future,” “cause damage to property” or “engage in conduct constituting a crime.”<sup>32</sup> Thus, in both cases, the NYPD’s determination that no qualifying crime occurred was both reasonable and supported by the reliable evidence.<sup>33</sup>

As the above examples also illustrate, there is no need for DVIU personnel to re-investigate the case, as suggested by OIG, by contacting and interviewing both the applicant and the assigned detectives. Reliable, contemporaneous information is readily available in official Department records. Indeed, such an unnecessary measure will only slow down the process and result in NYPD’s processing and granting fewer certifications each year. This is not to say, however, that the Department does not welcome and encourage the submission of detailed and reliable information from applicants on this issue and is committed to carefully reviewing and considering it when it accompanies a request.

---

<sup>30</sup> Penal Law Section 10.00(10) (definition of serious physical injury);

<sup>31</sup> Penal Law Sections 120.05(1) (Assault as a Class C Felony); 120.10 (Assault as a Class B Felony). On the other hand, Assault in the Third Degree, a misdemeanor and therefore not a qualifying crime, requires only physical injury. Penal Law Section 120.00.

<sup>32</sup> Penal Law Section 155.05(2)(e).

<sup>33</sup> The same analysis applies to most of the 8 cases in which OIG claims that they were unable to determine “whether NYPD’s assessment of the qualifying crime was correct.” In these cases NYPD records failed to contain contemporaneously articulated facts by the applicant at the time of the crime that supported the assertion that a qualifying crime occurred.

While OIG's report criticizes the NYPD for examining sealed arrest records in its certification process, they ignore and thus fail to appreciate how accessing such records often benefits applicants. For example, in 2017 to date, the NYPD has approved a total of 20 cases on appeal. In 12 of these cases, a District Attorney's Office ("DA's Office") referred the cases to the NYPD because the DA's Office was unable to evaluate the application due to the fact that the underlying criminal case (in which the applicant was the victim) was sealed pursuant to Criminal Procedure Law §160.50. Once the records are sealed under this statute, the NYPD cannot make them available "to any person or public or private agency" absent a court order.<sup>34</sup> The NYPD, nevertheless, readily agreed to process these twelve requests and granted certification to all 12 applicants.

Finally, as in other aspects of the certification review process, in considering whether an applicant was the victim of a qualifying crime, the NYPD routinely resolves close calls in the favor of the applicant and grants certification. For example, in cases where an applicant presents reliable evidence demonstrating that he or she was the victim of robbery (not a qualifying crime), but the facts contained in either the applicant's submissions or NYPD records also establish that the offender attempted to injure or did injure the victim during the course of the crime, DVIU personnel will consider this requirement satisfied by reasoning that a felonious assault (a qualifying crime), or an attempt to commit that crime, occurred. This determination is made even when Department records reflect only a robbery and not an assault charge, as the latter crime is often subsumed in the robbery charge.<sup>35</sup> Thus, the NYPD's practice of conducting a complete and in-depth legal analysis of the facts and circumstances of the underlying criminal conduct is designed to provide the applicant with the most fair and beneficial outcome possible.

---

<sup>34</sup> CPL § 160.50(1)(c).

<sup>35</sup> New York State Penal Law states that a person commits robbery when he or she forcibly steals property and when, in the course of the commission of the crime or of the immediate flight therefrom, he or she causes physical injury or serious physical injury to any person who is not a participant of the crime. Penal Law Sections 160.10; 160.15. Thus, DVIU's analysis, which takes into account that assault and attempted assault are elements of this theory of robbery, makes sense. In addition, in New York State, a person commits what the federal guidelines refer to as a "felonious assault" when in the course of and in furtherance of commission of a felony, he or another participant causes physical injury to a person other than a participant. See Penal Law Section 120.05(6). DVIU's analysis is also logical given this theory in New York's assault statute.

## **2. Whether the Applicant Presents a Threat to Public Safety.**

Once it is determined that an applicant was the victim of a qualifying crime, the NYPD conducts a comprehensive background check to determine whether the applicant poses a threat to public safety. Of course, ensuring the security of the City's residents is one of the Department's central missions. Indeed, under the New York City Charter, the Police Department is charged with, among other things, the duty "to preserve the public peace, prevent crime, [and] detect and arrest offenders."<sup>36</sup> Moreover, as OIG acknowledges, the "NYPD is uniquely placed to identify safety risks in New York City."<sup>37</sup> As such, NYPD procedures with respect to processing U visa certifications must remain consistent with and implement this overarching concern and will obviously differ from those of other City agencies who serve dramatically different functions.<sup>38</sup> By doing anything less, the Department would fail in its primary mission to maintain the safety and security of New York City. In sum, while USCIS may do their own such analysis at a later stage in the process, the NYPD does not outsource its responsibility for public safety to any other agency.

The NYPD's Intelligence Bureau is responsible for conducting the background checks on U visa applicants. These checks are used to determine if a prospective applicant is or has been suspected of, or otherwise engaged in, criminal behavior. The review includes a search of arrest records, summonses, complaints, domestic incident reports, NYPD Investigation Cards,<sup>39</sup> and warrants.

Background checks include a review of any existing sealed arrest records, as such information is often critical to the assessment. In its report, OIG misapprehends and misstates the significance of sealed records. Specifically, OIG claims that "individuals with sealed matters should benefit from the presumption that they are not associated with criminal activity."<sup>40</sup> It appears that the OIG has not contemplated the ramifications of such an approach. A large portion of the arrests that form the basis of these U Visa

---

<sup>36</sup> New York City Charter Chapter 18 § 435.

<sup>37</sup> OIG Report at 12.

<sup>38</sup> For example, OIG's Report compares NYPD's practices with the practices of the District Attorneys' Offices, which serve a distinctly different function in the criminal justice system.

<sup>39</sup> An NYPD Investigation Card ("I-Card") may be prepared for a person who is a perpetrator, suspect or witness when an investigator seeks to be notified if that person comes into contact with the police.

<sup>40</sup> OIG Report at 14.

certification requests are sealed, and of those many are domestic violence related. If OIG's position is adopted by the NYPD, then in every case where an arrest is sealed, the arrestee will be viewed as presumed innocent. Consequently, the NYPD would not be able to certify any petition where the case was sealed, because, by OIG's measure, the criminal event should be deemed a "nullity." This could not possibly be what the OIG intends, but as if often the case, questionable recommendations lead to unforeseen consequences.

Criminal arrest records may be sealed for a variety of reasons, such as a plea bargain agreement between the defendant and the prosecution, a speedy trial violation, a court's determination that it lacks geographic or legal jurisdiction, a violation of the statute of limitations, the unanticipated death or withdrawal of cooperation by a material witness, or a variety of other reasons, none of which necessarily equate with a court's finding on the merits or a legal conclusion that the defendant "was not associated with criminal activity."<sup>41</sup> Ignoring this information would lead to an incomplete and, at times, incorrect assessment. The NYPD reviews its records to determine the nature of the criminal event and of the petitioner him/herself. This balanced approach benefits both the petitioners and the community at large.

Once results are received from the Intelligence Bureau, DVIU investigators interpret them. As a threshold matter, applicants with active warrants have, historically, had their certification requests denied on this basis.<sup>42</sup> This was so even if the warrant was for a relatively minor offense and not because the

---

<sup>41</sup> "[T]he ambit of the sealing requirement is broad and includes proceedings terminated by virtue of dismissals and vacatur, on grounds unrelated to guilt or innocence." Harper v. Angiolillo, 89 N.Y.2d 761, 766 (1997). Courts routinely hold that the 'ministerial' sealing of an arrest has no relevance as to whether or not the accused was innocent of the offense charged or whether there was probable cause to believe the offense was committed. *See Russo v. State of New York*, 672 F.2d 1014, 1021 (2d Cir. 1982) (noting that compliance with sealing statute indicated that the criminal proceeding had been dismissed but "would not establish a favorable termination"); Singleton v. New York, 632 F.2d 185, 193 (2d Cir.1980) (holding that the state sealing statute does not convert an adjournment in contemplation of dismissal (an "ACD") under Criminal Procedure Law § 170.55 into an acquittal or determination that the plaintiff was not guilty); Harris v. City of New York, 2017 U.S. Dist. LEXIS 1222 (E.D.N.Y. 2017) (Sealing of arrest record by the Court "is of no consequence" to whether the termination was not inconsistent with innocence). In short, OIG's claims that "individuals with sealed matters should benefit from the presumption that they are not associated with criminal activity" has been expressly rejected by both New York State's highest appellate court and by New York's federal appellate court.

<sup>42</sup> Contrary to the statement contained on Page 13, footnote 14 of the Report, the NYPD has considered open warrants a basis for denial of a U visa certification request since 2009. This was clearly articulated to OIG during its review.



warrant, standing alone, established a threat to public safety. Rather, the NYPD will not grant certification in furtherance of an immigration benefit if the applicant's status is, by definition, a fugitive. This is precisely what an active warrant represents – a judicial determination that the applicant failed to appear before the Court in response a criminal charge. As such, it demonstrates the applicant's failure to comply with a mandate of the Court. Under these circumstances, the NYPD will not assist an applicant in an effort to obtain an immigration benefit from the federal government until he or she resolves the matter. It should be noted, however, that under this past procedure, nothing prevented an applicant who was denied a certification request on this basis from re-applying once he or she appeared in court in response to the warrant. In such instances, the NYPD readily reviewed another application from the same applicant. Indeed, when applicants were denied certification on the basis of an open warrant for a minor offense, NYPD, pursuant to a subsequent inquiry by the applicant or their attorney, instructed the applicant to reapply once the warrant was resolved. In many instances, when such an applicant reapplied after the warrant was resolved and otherwise met the requirements under the Federal guidelines, the NYPD granted the certification request. In this manner, the process was entirely transparent.

Notwithstanding the transparency and fairness of this practice, NYPD continuously seeks to improve its U visa certification process. To that end, the Department has recently implemented a new procedure aimed at even further improvement of this aspect of the process. Now, applicants who are the subjects of an active warrants for minor summons-related offenses are given an opportunity to remedy the situation while their applications remain pending. If it is determined that an applicant has such a warrant, the NYPD notifies the applicant by letter. The letter provides the docket number of the summons, the relevant county and court, and the court's contact information so that the applicant can address the situation. Applicants are given 60 days from the date of the letter to notify the Department that the warrant has been vacated. During this 60 day period, DVIU will hold the application. If, within the 60 days, the applicant advises NYPD in writing that the warrant was resolved in court, processing of his or her application will resume. Thus, under this new procedure, the applicant is no longer required to prepare and submit a new application once the warrant is resolved. An applicant who does not meet the 60 day deadline will not,

however, be precluded from submitting a second application at a later date. An applicant whose background check reveals a warrant for an offense that is not summons-related does not qualify for this new procedure and must submit a new application if he or she succeeds in addressing the warrant.

Assuming that an applicant's history reveals no open warrants, or the applicant notifies the Department that a warrant has been resolved, DVIU staff then evaluates the information received from the Intelligence Bureau to determine whether the applicant poses a public safety risk. The entire criminal history is analyzed taking into account facts and circumstances unique to each individual. DVIU staff considers not just each entry in the criminal history, but views an applicant's history as a whole, taking into account the frequency, patterns and locations of arrests, the types and severity of charges brought, dispositions, underlying circumstances, tendencies toward violence or harassment of others, disregard for, theft or damage to property, and indications of fraud, untrustworthiness or untruthfulness. Any and all of these factors can be indicators of a public safety threat. Once again, NYPD's practice in this regard comports with the federal guidelines, which stress that "[a]n agency's decision to sign a certification is completely discretionary."<sup>43</sup>

It is important to note, however, that the mere fact that an applicant has a criminal conviction or criminal history will not automatically disqualify him or her from receiving certification. Indeed, the NYPD will provide certification to an applicant who has a criminal record but who does not pose a present risk to the public safety. For example, an applicant who has been convicted of a misdemeanor years prior to a request for certification will not be denied solely on this basis.

Despite this intelligent and individualized approach, OIG asserts that the 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 certification denial."<sup>44</sup> OIG claims that NYPD's public safety threat assessments produce inconsistent and unfair results and points to 15 sampled cases in support of this conclusion. With respect to the 15 cases cited within the Report, OIG, however, misunderstands the analysis

---

<sup>43</sup> *Id.*

<sup>44</sup> OIG Report at 14.

that led to the result. Although OIG states that “at least half (eight) had arrests, summonses, or active warrants for non-violent offenses or had sealed cases,”<sup>45</sup> the reality is the criminal histories of the applicants in eleven of the 15 cases revealed an open warrant or warrants. Thus, as explained in detail above, these eleven applicants failed the threshold test and were eliminated from consideration for certification until they addressed their warrant before the issuing Court. There was nothing inconsistent, unfair or unclear about these determinations. Under NYPD policy, all 11 applicants are free to re-apply once their warrants are resolved.

In the remaining 4 cases, the NYPD considered, among other information in the applicants’ criminal histories, sealed arrest records. As explained above, such information is relevant because it provides valuable context regarding the severity of an individual’s criminal activities, the propensity to commit crime and, therefore, whether the applicant poses a public safety concern. For example, in one of the cases reviewed by OIG, the applicant had seven total arrests, only one of which was not sealed. The sealed charges, which spanned eight years, included several violent felonies, some of which involved the use of a weapon. Ignoring this information and concluding that this individual represents no threat to the public’s safety requires the NYPD to ignore a clear and obvious pattern of ongoing criminal arrests, some of which involved violence and none of which warrants a presumption of innocence. This would lead to a particularly questionable and skewed result.

Despite its concession that the NYPD is uniquely qualified to assess threats to public safety and that NYPD “has the option to adopt different standards,”<sup>46</sup> OIG advocates replacing NYPD’s individualized and comprehensive assessment with far too narrow and limited criteria that would, if adopted, result in incorrect results. OIG proposes ignoring sealed arrests and developing criteria based only on the commission of “serious and violent” crimes listed in Section 14-154 of the New York City Administrative Code. Yet this statute was designed to address very different and limited circumstances, namely those specific instances in which the NYPD may hold an individual who is in their custody for further action by

---

<sup>45</sup> *Id.*

<sup>46</sup> OIG Report at 16.

U.S. Immigration and Customs Enforcement. The designated crimes in this statute were never meant to represent the entire universe of criminal activity supporting a valid determination that an individual poses a public safety threat. Indeed, the statute omits offenses involving cybercrimes, schemes to defraud, driving while intoxicated, harassment, forcible sexual touching, sexual abuse of a minor and sexual misconduct, all of which are clearly relevant to such a determination. Nor was this legislation intended to substitute for, or in any way limit, the NYPD's judgment on how to protect the public from threats to their safety. Rather, the crimes listed in this statute simply represent a legislative judgment as to when the NYPD should cooperate with federal immigration authorities and further hold a person in its custody.<sup>47</sup> In this sense, the NYPD does not view it as an "obvious source" to utilize in deciding who may pose a threat to safety.

To be sure, NYPD's assessment in this context takes into account whether the applicant has committed a serious violent crime or is on a terror watch list. But it goes beyond those narrow criteria to include, for example, whether the individual caused intentional damage to or destruction of property, stole someone's livelihood, sexually abused a child or engaged in a campaign of harassment against someone. The NYPD takes into account that certain non-violent criminal behavior can also be quite serious. Under OIG's narrow criteria, however, such conduct does not pose a safety risk.

Finally, there is no need for DVIU personnel to provide a written rationale for determining why an applicant poses a public safety threat so that a supervisor or a subsequent reviewer can "understand why the individual is an ongoing threat to the community."<sup>48</sup> The objective factual basis for that determination is the information provided by the Intelligence Bureau. In determining why an applicant was denied a certification based on this ground, a reviewing supervisor has access to this data as well and can easily understand why that determination was made. Requiring DVIU to provide a written rationale — which would simply repeat the factual information already summarized by the Intelligence Bureau — would be a

---

<sup>47</sup> In its report, OIG attempts to utilize a statement by then Police Commissioner William Bratton in support of their position that only serious and violent crimes should be used to evaluate whether an individual is a public safety risk. *See* OIG Report at 16, Fn 17. Of course, Police Commissioner Bratton's statement was offered in a very different and limited context having nothing to do with U Visa certification or the manner in which the NYPD conducts a public safety risk assessment.

<sup>48</sup> OIG Report at 16.

questionable use of valuable resources and would severely slow down the certification process thereby resulting in the review and approval of fewer certifications.

### **3. Whether an Applicant Has Provided Ongoing Helpfulness.**

Once DVIU investigators determine that an applicant has been the victim of a qualifying crime and that he or she is not a public safety concern, they must evaluate whether the applicant was helpful in the investigation of a qualifying crime. USCIS has defined the term helpfulness to mean that “the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim.”<sup>49</sup> An applicant’s helpfulness cannot, however, be fleeting or superficial. Rather, it is an “ongoing responsibility” that certainly extends throughout a police investigation.<sup>50</sup> Indeed, the federal guidelines make clear that the ongoing responsibility extends even beyond the granting of a U Visa by USCIS.<sup>51</sup> It should be noted that, in practice, NYPD’s analysis of the helpfulness requirement assumes that an applicant was helpful unless clear documentation establishes otherwise. This analysis applies at both the initial evaluation by DVIU and at the appellate level of review.

Because of the ongoing nature of the applicant’s responsibility to be helpful, the NYPD recognizes that, in some situations, it may not be in the best position to assess whether the applicant fulfilled his or her responsibility in this regard. For example, in most situations in which an arrest is made, the NYPD partners with one of the local prosecutor’s offices and provides the prosecution with the names and identities of victims. The assigned prosecutors develop their own working relationship with victims and because it routinely take months or even years for a case to be resolved in court, often spend far more time interacting with, and making requests for assistance of, these individuals.<sup>52</sup> Therefore, logic dictates that these

---

<sup>49</sup> Federal Guidelines at 7.

<sup>50</sup> *Id.*

<sup>51</sup> According to the federal guidelines, applicants have a “duty to remain helpful to law enforcement . . . even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the visa revoked by USCIS.” *Id.*

<sup>52</sup> This is not to say that the District Attorneys’ Office will necessarily wait until a case is concluded before granting certification. Certifications are routinely granted during the pendency of a case.

prosecutors are in the best and most informed position to assess whether an individual provided ongoing helpfulness and, if not, whether a withdrawal of cooperation was reasonable.

In addition, this referral arrangement insures that the prosecutor's office will meet their legal disclosure obligations in the underlying case and thereby preserve the integrity of the prosecution. Under both state and federal law, a prosecutor is legally obligated to disclose to the defense that a witness received a benefit in connection with his or her testimony. As a legal matter, a witness's receipt of a U visa certification is considered such a benefit.<sup>53</sup>

Thus, when the NYPD receives a request for a U Visa certification from an applicant who was a victim in a case in which an arrest was made, the NYPD instructs the applicant to submit his or her application to the relevant prosecutor's office. This referral process was adopted with the full cooperation and agreement of the District Attorney's offices throughout the City. In this way, the NYPD insures that the application will be reviewed by the most informed law enforcement officials and that USCIS will receive the most accurate and complete information regarding the applicant's helpfulness.<sup>54</sup> Recently, the NYPD amended its denial letter to include more specific guidance to applicants about the referral procedure. Now, the applicant is informed to which of the five District Attorney's offices the NYPD is referring him or her, as well as the telephone number of that office's Immigrant Affairs Unit. To avoid any confusion, the NYPD's letter now also clearly explains that the applicant must resubmit the application to the District Attorneys' office.

In its Report, OIG suggests that the NYPD should refrain from referring cases to prosecutors' offices in this manner and instead "should limit referrals to those cases where an arrest has been made and there is an open prosecution."<sup>55</sup> In the same breath, however, OIG recognizes that "prosecutors have a

---

<sup>53</sup> See *Giglio v. United States*, 405 U.S. 150 (1972). See also *People v. Novoa*, 70 N.Y.2d 490 (1987).

<sup>54</sup> NYPD also refers certification applicants to other jurisdictions when applicants erroneously submit their certification requests to the NYPD. When referring a case to another certifying agency, NYPD returns the applicant's certification request with a letter informing the applicant to resubmit their application to the appropriate agency.

<sup>55</sup> OIG Report at 18.

legitimate and significant legal interest in being part of the certification process.”<sup>56</sup> OIG’s proposal that the NYPD assess ongoing helpfulness in cases handled by the District Attorney’s Offices is both illogical and potentially harmful to the applicant. In many such cases, the NYPD will have limited information from which to assess the applicant’s ongoing helpfulness and will be unable to document or certify that the applicant provided months or years of helpfulness to the prosecutors.<sup>57</sup> Moreover, if the applicant withdrew assistance to the prosecution, the NYPD may not be in a position to know why or whether that withdrawal was unreasonable.<sup>58</sup> In this sense, the NYPD’s referral system makes sense.<sup>59</sup>

OIG claims that NYPD records fail to sufficiently document the reasons underlying an applicant’s withdrawal of cooperation or assistance in a given case, and, as a result, the NYPD cannot accurately assess whether the applicant’s withdrawal was reasonable. Again, OIG suggests that DVIU personnel should undertake an investigation into the applicant’s withdrawal of helpfulness by interviewing the applicant and NYPD investigators who were assigned to the underlying case. For the reasons stated above, the NYPD is confident that reliance on documents in the NYPD case file, including the complaint follow-up reports regarding the applicant’s cooperation or lack thereof, is a sound practice. Because a victim or witness’s cooperation is a critical component in a successful investigation or prosecution, failure to cooperate or withdrawal of ongoing cooperation is an extremely important development and is routinely documented when it occurs.<sup>60</sup> Moreover, to the extent that the applicant possesses detailed information and insight into his or her motives for withdrawing cooperation, he or she should provide that information to the NYPD in

---

<sup>56</sup> OIG Report at 17.

<sup>57</sup> OIG claims that the city’s five District Attorneys’ Offices “have interposed no objections to NYPD certification in closed cases.” To be more precise, when contacted by the NYPD regarding OIG’s proposal, representatives from these Offices agreed with the NYPD that the prosecutors were in a better position to assess helpfulness of the victim in closed cases.

<sup>58</sup> The NYPD does not possess or have ready access to the files of the District Attorney’s Offices to the extent such information is documented therein.

<sup>59</sup> In the event that the prosecutor cannot process a request for certification because the District Attorney’s Office cannot locate their file or because the case has been sealed pursuant to state law, the NYPD will process the application.

<sup>60</sup> NYPD Special Victims Unit and Domestic Violence Unit investigators are especially sensitive to the needs and desires of victims. Indeed, if a victim of domestic violence or sexual assault wishes to terminate their cooperation with investigators at a particular moment in time, the investigation is often closed. It can be reopened, however, at later date should the victim decide to renew cooperation.

the request for certification. As noted earlier, the NYPD carefully reviews and considers all relevant information submitted by the applicant.

In its report, OIG points to seven of ninety-one cases in which NYPD denied certification for lack of helpfulness and claims that NYPD documents fail to provide relevant information as to why helpfulness was withdrawn. In these cases, however, NYPD records conclusively demonstrated that the applicant refused to cooperate by, among other things, failing to contact detectives despite numerous focused attempts to gain cooperation or affirmatively stating to the detectives that they wanted to take no part in the investigation or prosecution. In their applications, these individuals failed to credibly explain why they undertook such action. Based on the application and records, these applications therefore failed to meet the requirement of ongoing helpfulness and were correctly denied.

**V. FINAL DETERMINATIONS: APPROVALS AND DENIALS.**

Once the DVIU investigator assigned to the application completes his or her review and renders a decision, executive supervisors in the Domestic Violence Unit review the case. If the supervisors agree with the determination of the DVIU investigator that a certification should be granted, the certification is signed by the appropriate official and returned to DVIU. The applicant is then contacted and told that the certification is approved and available at the 7<sup>th</sup> Precinct's DVIU office.

In the event of a denial, NYPD provides the applicant with a denial letter indicating the rationale for the denial. This form letter includes different options, one or more of which may be checked. The reasons include: "Victim information" (the individual applying for certification is not the direct or indirect victim); "Criminal Acts" (the criminal act or acts are not qualifying crimes); "Helpfulness" (the victim did not assist in the detection, investigation, prosecution, or sentencing of qualifying criminal activity); "Referral" (another agency should complete the form); "Public Safety Concern" (information in the applicant's criminal history indicates that the applicant is a public safety concern); and "Insufficient Documentation." Recently, an additional option has been added: "Open Warrant." This option is utilized when an applicant's background check reveals a warrant for an offense that is not summons related. As



previously described, additional information about the warrant and court is included. For a summons-related warrant, the applicant receives a separate written notification explaining the previously described procedure of a 60-day grace period.

OIG's Report argues that NYPD's denial process lacks transparency because it does not provide a fact-specific explanation for why a particular request was denied and because contact information for reviewers at DVIU is not provided for follow-up questions by the applicant. As described above, the denial letter provides the applicant with one or more explanations that sufficiently apprises him or her of the basis for the denial. To the extent that the applicant disagrees with the reasons stated, the NYPD affords him or her an appeal in a process that is described in greater detail below. Given the sufficiently detailed letter and NYPD's unique appellate process, documenting the basis for the denial in more detail is unnecessary and would lead to the review and approval of fewer certifications and a slower overall process.

With respect to OIG's claim that the NYPD does not provide applicants with contact information of DVIU reviewers or of the appeals officer, OIG has understated the information that is currently available. Many advocacy organizations and attorneys have been provided with telephone numbers for DVIU staff. Additionally, DVU's mailing address is available to the public on the NYPD's website at <http://www1.nyc.gov/site/nypd/services/victim-services/u-visa-request.page>. Since 2016, DVIU staff have placed flyers that contain the unit's contact information and hours of operation at the publicly accessible front desk of the 7<sup>th</sup> Precinct. Similarly, the telephone number of the NYPD's Legal Bureau, which is responsible for U Visa appeals, is easily obtained from the Department's website.<sup>61</sup> The NYPD is also in the process of creating a unit email address for DVIU to which all DVIU personnel would have access in order to allow applicants and/or their representatives to direct questions via email.

---

<sup>61</sup> As the staff at DVIU and the Legal Bureau are tasked with various responsibilities, a particular reviewer may not always be in a position to receive and answer a telephone call. Thus, the DVIU Unit number and the Legal Bureau's general number are provided to ensure that all calls are answered and, if needed, information can be received and relayed to the reviewer handling a particular case.

## VI. U VISA APPEALS.

In 2015, the NYPD created a formal appeals process for U visa certification requests. As mentioned above, the appeal process serves as a *de novo* review of certification requests, allowing applicants to contest the NYPD's initial decision and allowing them to provide additional documentation that supports their application or corrects deficiencies. The appellate reviewer is an experienced attorney assigned to the Department's Legal Bureau. The Police Executive Research Forum recently recognized NYPD's appellate process as a "promising practice" that ensures the fairness of U visa process by "implement[ing] procedural justice procedures."<sup>62</sup>

If the appellate officer determines that the applicant's appeal has merit, a Legal Bureau supervisor reviews that determination and, if approved, the applicant receives a letter informing him or her that the initial determination was overruled and the request for certification has been granted. The certification is enclosed with this letter. If an appeal is denied, a letter is forwarded informing the applicant that the initial determination has been upheld and is now final. In 2015, NYPD upheld the initial denial determination in 57% of appeal cases and reversed it in 29%.<sup>63</sup> In 2016, NYPD upheld in 55% of the appeals and reversed 37% of them. A reversal is not tantamount to a finding that DVIU personnel erred in their initial evaluation. Rather, because the appeals process permits applicants to submit new and additional information to cure deficiencies, reversals are most often the product of a different analysis based on more complete information.

The NYPD's rules for processing U visa certification appeals requires the Department to complete its review within 90 days. However, these appeals are typically resolved in significantly less time. If an applicant appealing the NYPD's initial determination indicates they are involved in federal removal proceedings, the NYPD prioritizes and expedites that applicant's appeal. In sum, the NYPD's innovative appeals process helps to insure that all U visa certification determinations are fairly and timely decided.

---

<sup>62</sup> "Subject to Debate," Police Executive Research Forum Newsletter, Vol. 31, No.2, June-August 2017, at P. 12.

<sup>63</sup> The remaining 14% of the cases were referred to another agency.

**VII. NYPD'S RESPONSES TO OIG'S RECOMMENDATIONS.**

**Recommendation 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.**

For the reasons noted above at pages 15-21, NYPD rejects this recommendation.

**Recommendation 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.**

For the reasons noted above at pages 18-21, the NYPD rejects this recommendation.

**Recommendation 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.**

For the reasons noted above at pages 21-24 of this response, NYPD rejects this recommendation. To be clear, the NYPD always assesses whether information provided by the applicant establishes a reasonable basis for withdrawing cooperation. If such a basis is determined, the certification will be granted based on the applicant's initial helpfulness. The NYPD encourages applicants to provide all relevant information regarding a withdrawal of cooperation including a reasonable basis for such withdrawal if one existed. The NYPD will not, however, conduct a new and separate investigation into this requirement.

**Recommendation 4: NYPD should provide a written rationale in its internal file when concluding that the applicant was not a victim of a qualifying crime.**

For the reasons noted above at page 10-14 of this response, NYPD rejects this recommendation.

**Recommendation 5: If an arrest has been made on the underlying crime, NYPD should evaluate U visa certification requests if the criminal case has closed.**

For the reasons noted above at page 21-22 of this response, NYPD rejects this recommendation.

**Recommendation 6: NYPD should create and publish its complete standards for certification eligibility.**

The NYPD's standards for certification eligibility are fully stated and explained in the federal guidelines and Patrol Guide Section 212-111. Both are publicly available documents. The NYPD considers this recommendation satisfied.

**Recommendation 7: NYPD's denial letters should articulate specific reasons for each denial, using the facts of the case to explain the decision.**

The NYPD considers this recommendation satisfied. As detailed above, the NYPD provides applicants with a letter of explanation that includes a specific reason for the denial of a certification. In addition, the NYPD recently amended its denial letter to include additional information helpful to the applicant. This amended letter will provide applicants with information pertaining to active warrants, such as the docket number of the warrant, the issuing court, and contact information that will allow applicants to inquire as to how to resolve the warrant. Additionally, the NYPD recently adopted a new procedure that will provide applicants who have warrants for minor summons related offenses with written notification and instructions. This letter provides the same information about warrants as noted above and informs the applicant that they have 60 days to resolve the warrant. The applicant is also apprised that if they succeed in resolving the warrant within the 60 day period and present proof of that result to DVIU, they need not re-apply because DVIU will hold their application during that time. If they fail to resolve the warrant within

that time frame, the application will be denied, but applicants retain the ability to re-apply once the warrant is vacated.

**Recommendation 8: NYPD should publish contact information for its reviewers and certifying officials.**

NYPD will not publish the contact information for the specific officers and investigators who process U visa certification requests and appeals as individual personnel assigned to these units can and do change. Currently, however, NYPD publishes the mailing address for the Domestic Violence Unit<sup>64</sup> and the telephone numbers for the 7<sup>th</sup> Precinct<sup>65</sup> and the Legal Bureau<sup>66</sup> on its website. These numbers serve as the best method to contact Department personnel who process U Visa certification applications. As previously mentioned, the NYPD is creating a unit email address for the DVIU and will publish it when it is implemented.

**Recommendation 9: NYPD should develop written materials regarding the U visa program for dissemination at precincts and other locations where victims may encounter police.**

The NYPD considers this recommendation satisfied. Information about the NYPD's U visa certification process is available in precincts under the NYPD and Safe Horizon CVAP program. As previously discussed, under the CVAP program, victim advocates at NYPD precincts serve as neutral third parties that discuss the needs of crime victims and provide victims, including undocumented immigrants, with information to address those needs. This includes information about the federal government's U visa program. Additionally, NYPD officers within the Immigrant Outreach Unit of the Community Affairs Bureau interact with crime victims and witnesses, including undocumented immigrants, and provide them contact information for various City agencies and third parties who are capable of advising victims of resources that may be available to address their needs. Finally, information about NYPD's certification

---

<sup>64</sup> Available at <http://www1.nyc.gov/site/nypd/services/victim-services/u-visa-request.page>.

<sup>65</sup> Available at <http://www1.nyc.gov/site/nypd/bureaus/patrol/precincts/7th-precinct.page>.

<sup>66</sup> Available at <http://www1.nyc.gov/site/nypd/bureaus/administrative/legal.page>.

program is also available on both the NYPD's as well as the Mayor's Office of Immigrant Affairs' websites. In the near future, the NYPD expects that a feature will be added to both websites that will permit that information to be downloaded in PDF format.

To avoid the appearance of impropriety, NYPD patrol officers and detectives do not routinely provide victims of crimes with information pertaining to the U visa certification program. NYPD shares the concerns of the District Attorney's offices in that an investigating officer's providing information about an available benefit to a crime victim when that benefit is linked to the victim's cooperation and/or testimony, may lead to the incorrect impression on the part of the victim or others that a *quid pro quo* exists. Put another way, this practice can create the false impression that the police and prosecution are promising to confer, or conferring a benefit upon, the victim in return for his or her testimony when, in fact, that is not the case. This has significant legal consequences for the prosecution of the underlying crime in that, among other things, it may serve to undermine the credibility or effectiveness of the victim's testimony.

**Recommendation 10: NYPD should develop informational training on U visas for specialized NYPD units that frequently encounter immigrant communities.**

NYPD considers this recommendation satisfied. All officers and investigators are aware of the Department's U visa certification program by virtue of the Patrol Guide Section 212-111. Additionally, the NYPD's Domestic Violence Unit (of which DVIU is a part) conducts training twice a year. During this training, DVIU and other members of DVU are provided with information about the Department's U visa certification program. The Patrol Guide provision and this training provide all NYPD personnel with information sufficient to direct victims of crime to the appropriate resources where they can obtain additional information about the program, as well as the rules governing U visa certification requests.<sup>67</sup> Community Affairs officers, NCOs, and Sector officers who attend Community Council meetings and Neighborhood Safety meetings are also sufficiently equipped to generally inform the public about the

---

<sup>67</sup> Patrol Guide Section 212-111 specifically directs all personnel to "[i]nform 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."

Department's immigration related policies and are capable of referring undocumented immigrants to victim advocate's offices and other City resources that are available as is the Immigrant Outreach Unit which provides presentations regarding the Department's policies, programs and services affecting immigrant communities. Providing more detailed information in training sessions raises the issue described above in response to Recommendation 9.

**VIII. CONCLUSION.**

As part of the NYPD's larger mission to forge trust with all the communities it serves, the Department has enacted policies and procedures to ensure that the City's immigrant population will seek necessary assistance and services from the police without hesitation or anxiety. Consistent with this goal, nearly a decade ago, the NYPD voluntarily assumed the responsibility of maintaining a U visa certification program. With the assistance and input of the public and advocacy groups, the NYPD steadily improved this program. Today, the NYPD's innovative certification process is highly efficient, eminently fair and completely transparent while maintaining full compliance with applicable federal law and guidelines. With an approval rate of 82%, the NYPD's present procedures ensure that all qualified undocumented immigrant crime victims are able to seek a U visa from USCIS. Through its U Visa process and other efforts, the NYPD looks forward to building an even stronger relationship of trust and confidence with the City's distinct immigrant communities as well as all communities throughout the City of New York.

Very truly yours,



Lawrence Byrne  
Deputy Commissioner Legal Matters