[DATE]

[ADDRESSEE]

Re: Request for U-visa Certification

Dear Ms./Mr. _____:

You have inquired about the process for the Division of Labor Standards Enforcement (DLSE) to certify a petition for a U-visa from the U.S. Citizenship and Immigration Services (USCIS).

Petitions for U-visas are submitted to the USCIS on a Department of Homeland Security Form I-918. Along with the Form 1-918, the petitioner must also submit a certification form (Supplement B of Form I-918) signed by a federal, state, or local law enforcement agency, such as the DLSE.

In order to consider a certification request, the DLSE will need the following materials:

- **Written authorization** indicating that the DLSE may discuss information about the petitioner's case with a representative, if the request for certification is made by that representative on behalf of the petitioner. The representative's phone number and email address should be included.

- A copy of the **Supplement B to Form I-918**, with Parts 1 to 5 filled out as completely as possible. The petitioner should make sure to include the information set out below.

  - Agency information (Part 2 of Supplement B). The petitioner should indicate the Case Status and the DLSE Case Number (corresponding to an underlying claim or investigation before the DLSE). The petitioner should not fill in the name of the certifying official.

  - Criminal acts (Part 3 of Supplement B). The petitioner should mark the criminal acts of which the petitioner is a victim and provide as complete a description as possible of the qualifying criminal activity that occurred, including the petitioner's knowledge of any details concerning the criminal activity, and the date(s) of occurrence. The description should include a chronology of relevant events and parties involved. The statutory citation(s) for the qualifying crime(s) should be provided; the representative should also set out the basic elements of each crime and how the specific facts of the situation satisfy those basic elements. This information may be provided on an additional page.

To the extent not already fully conveyed as part of the information above, the petitioner should also set forth the nature of the DLSE's role in the petitioner's case (*e.g.*, the qualifying crime was perpetrated in the context of an employment relationship, in furtherance of, in conjunction with, or in relation to an alleged violation of a labor law that the DLSE has investigated, is investigating, or may investigate; the qualifying crime was committed at the workplace, or in relation to or at a DLSE proceeding). The petitioner should describe and include information about any California labor law violation(s) that were perpetrated against the petitioner; the involvement of any DLSE staff (*e.g.*, DLSE investigator, hearing officer, etc.); and the date(s) of any pertinent DLSE investigation or proceeding, if any.

- Criminal acts (Part 3 of Supplement B). Include any details and supporting documentation that the petitioner would like to share about any physical or mental injury or harm suffered by the petitioner as a result of having been a victim of the qualifying crime(s).

- Helpfulness of the victim (Part 4 of Supplement B). Provide a full statement of how the petitioner has been, is being, or is likely to be helpful in the DLSE's detection and/or investigation of the qualifying crime.

The petitioner may also submit any other relevant information that would assist the DLSE in evaluating the certification request, including reports, witness statements, or the petitioner's timeline for needing a response.

These materials should be mailed or emailed to:

Mary Ramirez
DLSE Headquarters
455 Golden Gate Ave., 9th Floor
San Francisco, CA 94102
mramirez@dir.ca.gov

If mailed, the contents should be enclosed in a sealed inner envelope with the notation "**CONFIDENTIAL: U-VISA CERTIFICATION REQUEST**" clearly written on it. The inner envelope should then be sealed inside an outer envelope addressed to the DLSE as set forth above. If emailed, the subject line of the email should state, "**CONFIDENTIAL: U-VISA CERTIFICATION REQUEST.**" The DLSE cannot guarantee the security or confidentiality of email transmissions.

Because additional information may be needed, these materials should be submitted as completely and early as possible. Certification requests will be evaluated on a case-by-case basis. The DLSE cannot provide legal or immigration advice.

The enclosed information sheet contains additional information about U-visas and the DLSE's role as a certifying agency.

Sincerely yours,

Industrial Relations Counsel

Encl.

Julie A. Su
California Labor Commissioner

U Visa Certification by the Division of Labor Standards Enforcement: Information for Immigrant Crime Victims

This fact sheet contains general information about U Visas, including the federal rules and regulations that apply to the DLSE as a certifying agency.

Background on the U Visa

The U Visa is a special type of visa issued by the U.S. Citizenship and Immigration Services (USCIS) of the federal Department of Homeland Security (DHS). USCIS may grant a U Visa to an immigrant victim of "qualifying criminal activity" who has suffered "substantial physical or mental abuse" and is willing to assist law enforcement or other government officials in the detection, investigation or prosecution of the criminal activity.[1] In order to petition USCIS for a U Visa, an immigrant victim ("petitioner") of a "qualifying crime" must submit a certification form from a federal, state, or local law enforcement agency along with his or her U Visa application.[2]

In recognition of the fact that immigrant crime victims might not have legal status and thus may be reluctant to step forward and report criminal activity, Congress created the U Visa in order to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute crimes that target immigrants, and to protect immigrant victims of such crimes. The U Visa extends critical protections to immigrant crime victims by providing temporary lawful status as a "U nonimmigrant" for up to four years, work authorization, an opportunity to adjust to lawful permanent resident status after three years of continuous physical presence in the United States from the date of admission as a U nonimmigrant, and derivative benefits for qualifying family members.[3]

In the course of enforcing state labor laws, the DLSE is often the first and only agency of the state to encounter and uncover criminal conduct perpetrated against California's most vulnerable workers. A DLSE investigation, for example, may reveal working conditions indicating that immigrant workers have been illegally trafficked into the country and held against their will to perform forced, unpaid labor for an employer; or, in an illicit attempt to intimidate a worker into dropping a claim filed with the DLSE for unpaid wages, an employer may threaten the worker with deportation. Without the possibility of a U Visa, immigrant workers who fear adverse immigration consequences if they step forward to report a crime may instead risk ongoing exploitation, and unscrupulous employers will remain undeterred from committing crimes as part of their abusive labor practices. An immigrant worker's ability to obtain a U Visa not only helps level the playing field for law-abiding employers, but also reinforces the fundamental principle under California law that labor protections apply regardless of immigration status. The DLSE therefore deems U Visa certification in appropriate cases as integral to its core mission to ensure robust enforcement of labor laws – a charge which would be undermined if immigrant workers victimized by an unlawful employer's criminal conduct are not afforded necessary protections that enable them to assist in the detection and investigation of such conduct.

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1 *See* 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14(b).
2 *See* 8 C.F.R. § 214.14(c)(2)(i).
3 *See* 8 U.S.C. § 1184(p)(3), (p)(6); 8 U.S.C. § 1255(m)(1); 8 C.F.R. § 214.14(c)(7), (f).

U Visa Certification

USCIS has issued an Interim Rule ("New Classification for Victims of Criminal Activity: Eligibility for 'U' Nonimmigrant Status") that governs the petition and certification procedures for U Visas.[4] Individuals applying to USCIS for a U Visa must submit a certification (Supplement B of Form I-918) from a federal, state, or local law enforcement official that affirms the following:

- The petitioner has been a victim of qualifying criminal activity;
- The petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; and
- The petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity.[5]

The DLSE's decision to provide a certification is discretionary and made on a case-by-case basis. A certification by the DLSE is not a determination of the petitioner's eligibility for a U Visa and does not confer lawful status on the petitioner. USCIS, not the DLSE, issues U Visas and determines whether U Visa eligibility requirements are met (including whether the certification is sufficient and whether the petitioner has demonstrated substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity).

Qualifying Criminal Activity

"Qualifying criminal activity" includes **any of the following categories of offenses, in violation of federal, state or local criminal law**: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury;[6] fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the foregoing crimes.[7] This non-exclusive list of "general categories" of criminal activity "represents the myriad types of behavior that can constitute domestic violence, sexual abuse, or trafficking, or are crimes of which vulnerable immigrants are often targeted as victims."[8] "Any similar activity" (*i.e.*, where the nature and elements of the criminal offense are substantially similar to any of the activities listed) may constitute a qualifying crime for U Visa purposes.[9] Furthermore, USCIS has noted that qualifying criminal activity may occur during the commission of non-qualifying criminal activity.[10]

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4 *See* 72 Fed. Reg. 53014-53042 (Sept. 17, 2007).

5 *See* 8 C.F.R. § 214.14(c)(2)(i). Though Supplement B also requests that the certifying agency provide a description of any known or documented injury to the petitioner, it is the petitioner who carries the burden of proving the nature and extent of harm from the criminal activity.

6 With respect to the crimes of witness tampering, obstruction of justice, or perjury, a petitioner may be considered a victim of one of these crimes if the petitioner has been directly and proximately harmed by the perpetrator of the crime and there are "reasonable grounds to conclude that the perpetrator committed [such a crime]... at least in principal part, as a means: (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or (2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system." 8 C.F.R. § 214.14 (a)(14)(ii); 72 Fed. Reg. 53017 (Sept. 17, 2007). Moreover, USCIS has clarified that the crimes of witness tampering, obstruction of justice, or perjury do not have to be committed in relation to another qualifying crime listed in the statute but may instead qualify "independently" from the other qualifying crimes. *See* 72 Fed. Reg. 53017 (Sept. 17, 2007).

7 *See* 8 U.S.C. § 1101(a)(15)(U)(iii)); 8 C.F.R. § 214.14(a)(9). In 2013, stalking and fraud in foreign labor contracting were added as qualifying crimes by Congress. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 §§ 801, 1222 (March 7, 2013).

8 72 Fed. Reg. 53015, 53018 (Sept. 17, 2007).

9 *See* 8 C.F.R. § 214.14(a)(9); 72 Fed. Reg. 53018 (Sept. 17, 2007) (commenting that "[t]he rule's definition of 'any similar activity' takes into account the wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list, while the nature and elements of both criminal activities are comparable").

10 *See* 72 Fed. Reg. 53018 (Sept. 17, 2007).

Basis for DLSE Certification

As a certifying agency, the DLSE must affirm that it has responsibility for the "detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity."[11] Certifying agencies include traditional law enforcement branches and other agencies that have criminal investigative jurisdiction in their respective areas of expertise.[12] Thus, USCIS has explicitly recognized the authority of the U.S. Department of Labor to act as a certifying agency.[13] The U.S. Department of Homeland Security has also specifically noted that "State Departments of Labor" may be certifying agencies.[14]

As the state agency charged with enforcing the California Labor Code, the DLSE exercises both civil and criminal investigative jurisdiction. The DLSE may certify petitions based on "qualifying criminal activity" that it **detects** and/or **investigates** in the course of its enforcement efforts. For example, qualifying crimes may be perpetrated by an employer in furtherance of, in conjunction with, or in relation to violations of the Labor Code, including wage theft[15] or other civil or criminal labor law abuses[16]; a qualifying crime may also be committed in relation to a DLSE proceeding or investigation of a Labor Code violation. When criminal conduct occurs in the context of an employment relationship and relates to a violation of the California Labor Code, the DLSE may exercise its authority to investigate the matter.

In order to certify a petition, the DLSE must also affirm that the petitioner "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the qualifying criminal activity. USCIS has commented that "Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation."[17] According to USCIS' broad definition of "investigation," this includes when a qualifying crime is first detected.[18] Moreover, actual criminal charges or prosecution of the qualifying criminal activity need not ensue for certification to be proper.[19] Any lack of prosecution does not detract from the petitioner's cooperation and assistance in detecting or investigating the crime, nor lessen the risk taken by the petitioner in reporting criminal activity (in fact, the risk may be even greater if the perpetrator is not prosecuted or convicted).

Accordingly, in line with the dual Congressional purpose behind creation of the U Visa (to encourage immigrant victims to report crimes, and to protect those who do), the DLSE's ability to certify petitions based on the detection or investigation of qualifying crimes aimed at exploiting immigrant workers serves an invaluable law enforcement goal. Certification does not depend upon the completion of any related DLSE investigation of labor law violations or resolution of an underlying wage or retaliation claim.

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11 *See* 8 C.F.R. 214.14(c)(2)(i); 8 C.F.R. 214.14(a)(5); 72 Fed. Reg. 53019-20 (Sept. 17, 2007). USCIS has defined the term "investigation or prosecution" broadly, to include the "detection" of a qualifying crime or criminal activity.

12 *See* 8 C.F.R. § 214.14(a)(2); 72 Fed. Reg. 53019 (Sept. 17, 2007).

13 *See* 72 Fed. Reg. 53019 (Sept. 17, 2007).

14 *See* "U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement," Department of Homeland Security, p.2-3, available at http://www.dhs.gov/u-visa-law-enforcement-certification-resource-guide#1.

15 California is one of a handful of states that criminalizes theft of labor, as specified in both the state Labor Code and Penal Code. *See, e.g.*, Cal. Lab. Code §§ 216, 1197.2, 1199; Cal. Penal Code §§ 487(a), 532(a).

16 Most violations of the California Labor Code result in not only civil but also criminal liability. For example, the contravention by any person of Labor Code provisions relating to wages, hours, and working conditions may result in criminal fines or imprisonment. *See, e.g.,* Cal. Lab. Code §§ 553, 1199. Moreover, the refusal to allow the DLSE free access to a place of labor or to furnish information requested by the DLSE is punishable as a misdemeanor. *See* Cal. Lab. Code § 90.

17 *See* 72 Fed. Reg. 53019 (Sept. 17, 2007).

18 *See* note 11, *supra.*

19 *See* 72 Fed. Reg. 53020 (Sept. 17, 2007) (noting that there is no "require[ment] that the prosecution [of the crime] actually occur, since the statute only requires an alien victim to be helpful in the investigation or the prosecution of the criminal activity"); 72 Fed. Reg. 53018 (Sept. 17, 2007) (stating that for various reasons, the perpetrator of a qualifying crime may not be charged or prosecuted for qualifying criminal activity but instead for non-qualifying criminal activity).

Confidentiality

The DLSE recognizes the highly sensitive and personal nature of the information provided by petitioners and views its obligation to protect confidential information with the utmost gravity. Under the law, the use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, or the Department of State for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved U Visa petition is prohibited, subject to certain limited exceptions.[20]

As a general matter, an individual worker's immigration status is irrelevant to the DLSE's enforcement of state labor laws. The DLSE does not make referrals to ICE or USCIS.

[20] *See* 8 C.F.R. § 214.14(e); 8 U.S.C. § 1367.