IDOL POLICY MEMORANDUM

I. **SUBJECT:** **OBTAINING U-VISA'S IN INVESTIGATED CASES**

II. **PURPOSE:** To set forth the procedures for certifying, under limited circumstances, requests for a "U-Visa." Certification.[1]

III. **BACKGROUND:** Many undocumented crime victims do not cooperate with law enforcement out of fear that such contact could lead to deportation. In order to encourage these victims to report crimes and to cooperate with criminal investigations, Congress passed the federal Victims of Trafficking and Violence Protection Act of 2000. Under the Victims of Trafficking and Violence Protection Act of 2000, undocumented immigrant victims of serious crimes may obtain a "U-Visa" from the U.S. Citizenship and Immigration Services ("USCIS") which will grant them temporary legal status to remain in the United States and work authorization. The U-Visa was created with the express purpose of strengthening the ability of law enforcement agencies to detect, investigate and prosecute crimes committed against undocumented immigrants, while simultaneously offering protection to the victims. To obtain a U-Visa, victims must demonstrate to USCIS, via certification by a law enforcement agency, their willingness to cooperate in a qualifying investigation or prosecution.

It is the policy of the Illinois Department of Labor ("IDOL") not to inquire into the immigration status of complainants. However, IDOL recognizes that undocumented immigrant victims of labor-related criminal offenses may nevertheless be reluctant to assist in the investigation or prosecution of that criminal activity out of fear of deportation. Because IDOL enforces the Illinois Wage Payment Act ("IWPCA") and the Minimum Wage law (MWL), IDOL qualifies as a law enforcement agency that can submit certifications to the USCIS on behalf of certain undocumented complainants. There are, however, several factors which would need to be present before IDOL could submit a U-Visa certification. The purpose of this Policy Memorandum is to set forth the procedures which must be followed in responding to a request for a U-Visa certification.

[1] This Policy Memorandum may be applied to U-Visas created by future amendments to the Victims of Trafficking and Violence Protection Act.

IV. **PROCEDURES: These are the procedures to be followed if an IDOL employee receives a request from a Complainant for a U-Visa certification.**

A. The Director of IDOL may designate his or her authority to issue a U-Visa certification on behalf of IDOL to a designee[2].

B. A Complainant who believes he or she has been a victim of a qualifying criminal activity, and who is a party to an IDOL investigation that also concerns that alleged criminal activity, may submit a request for a U-Visa certification.

1. The request can be oral or written.

2. The request for a U-Visa certification must come from the Complainant or the Complainant's representative and must be submitted to an IDOL employee.

3. Mere information that a Complainant is or may be undocumented will not be considered a request for a U-Visa certification. In order for IDOL to consider completing a U-Visa certification, the Complainant or the Complainant's representative must specifically request a U-Visa certification from IDOL.

4. Under no circumstances should an IDOL employee inquire into the immigration status of a Complainant or give a Complainant advice about obtaining a U-Visa. This includes discussing with Complainant the possibility of obtaining a U-Visa from IDOL, unless initiated by Complainant or Complainant's representative.

5. The Complainant must submit an I-918 Supplement B, U Nonimmigrant Status Certification form, with Part I (Victim Information) filled in along with the Request. Complainants or their representatives are encouraged to fill in as much information as they can regarding the other parts of the form, but a I-918 Supplement B, U Nonimmigrant Status

[2] Upon delegation, the Director shall submit a letter to the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services certifying the U-Visa designee's certifying authority.

Certification form will not be rejected solely because only Part I is completed. A copy of the I-918 Supplement B, U Nonimmigrant Status Certification form is attached to this Policy Memorandum. IDOL will not consider a request for a U-Visa certification without the I-918 Supplement B, U Nonimmigrant Status Certification form. Additionally, IDOL will only consider certifying the I-918 Supplement B, U Nonimmigrant Status Certification form and will not substitute any other form for the I-918 Supplement B, U Nonimmigrant Status Certification form.

6. It is the obligation of the Complainant or his or her representative to obtain the I-918 Supplement B, U Nonimmigrant Status Certification form. Department employees are not responsible for obtaining an I-918 Supplement B, U Nonimmigrant Status Certificate form for the Complainant or for providing Complainant advice as to how the form can be completed, other than what is set forth in this policy. The Department may inform the Complainant or his or her representative that it does not provide the I-918 Supplement B, U Nonimmigrant Status Certification form, but that the form may be downloaded from the USCIS' website (USCIC.gov).

7. In order to expedite the processing of a U-Visa certification request, Complainants are also encouraged to provide a brief cover letter with the Complainant's name and the Department charge number, if known. However, the Department will not deny a request for a U-Visa certification solely because Complainant has not provided a cover letter.

C. If the Complainant or the Complainant's representative makes a request for a U-Visa certification and submits an I-918 Supplement B, U Nonimmigrant Status Certification form, the IDOL employee receiving the request must notify his or her immediate supervisor as soon as possible. The immediate supervisor will forward the request to the Director or his or her U-Visa designee as soon as possible.

1. The IDOL employee should keep the request for a U-Visa certification and the I-918 Supplement B, U-Nonimmigrant Status Certification form confidential. Copies of the I-918 Supplement B, U-Nonimmigrant Status Certification form or any other documents relating to Complainant's request for a U-Visa Certification should not be kept in the Department's investigation file.

2. After the IDOL employee forwards the request for a U-Visa certification to his or her supervisor, any inquiry into the status of the U-Visa certification request by Complainant should be referred to the Director or his or her U-Visa designee.

D. Upon notification that a Complainant has requested a U-Visa certification from IDOL, the Director or his or her designee shall determine if a U-Visa certification is appropriate. A factual inquiry should be conducted to determine if a U-Visa certification is appropriate. This inquiry may include discussing with the IDOL staff person assigned to the case the Complainant's participation in the IDOL investigation. A U-Visa certification is appropriate if:

1. IDOL has jurisdiction to investigate the charge of discrimination under the laws it enforces.

2. IDOL is conducting an ongoing investigation into the Complainant's charge.

3. The Complainant is either cooperating or willing to cooperate in IDOL's investigation of the charge of discrimination.

4. The factual allegations asserted by Complainant in his or her charge, if proven, would also make the Complainant a victim of one of the offenses listed in the U-Visa statute. These offenses include:

   (a) Rape

   (b) Torture

   (c) Trafficking

   (d) Incest

(e) Domestic violence

(f) Sexual assault

(g) Abusive sexual contact

(h) Prostitution

(i) Sexual exploitation

(j) Female genital mutilation

(k) Being held hostage

(l) Peonage

(m) Involuntary Servitude

(n) Slave trade

(o) Kidnapping

(p) Abduction

(r) Unlawful criminal restraint

(s) False Imprisonment

(t) Blackmail

(u) Extortion

(v) Manslaughter

(w) Murder

(x) Felonious assault

(y) Witness tampering

(z) Obstruction of justice

(aa) Perjury

(bb) Attempt, conspiracy, or solicitation to commit any of the above mentioned crimes

5. There is no requirement that the crime be charged or prosecuted.

E. If the Director or his or her U-Visa designee determines that the Complainant meets all the requirements listed herein, the Director or his or her designee may complete the certification form (USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification) for the Complainant's submission to the USCIS.

1. The Director or his or her U-Visa designee shall complete the I-918 Supplement B, U Nonimmigrant Status Certification form, including:

   (a) Agency Information (Part 2)

   (b) Criminal acts and details of the crime (Part 3)

   (c) The helpfulness of the Complainant (Part 4)

   (d) Family members implicated in criminal activity (Part 5)

2. The Director or his or her U-Visa designee shall sign the certification form (Part 6).

3. IDOL shall return the completed I-918 Supplement B, U Nonimmigrant Status Certification form to the Complainant or his or her representative for submission to the USCIS.

   (a) The signing of the I-918 Supplement B, U Nonimmigrant Status Certification form does not indicate the IDOL's sponsorship for the Complainant.

   (b) IDOL reserves the right to notify the USCIS if the Complainant fails to meet his or her ongoing responsibility to cooperate with IDOL.

4. In order to protect eligible victims from deportation, the Director or his or her U-Visa designee shall issue or deny a certification as soon as possible, but no later than thirty (30) days from the date the request was received, unless impractical to do so.

5. The role of IDOL in the U-Visa process is to certify that the Complainant is cooperating in the IDOL investigation, not to determine the applicant's eligibility for a U-Visa or whether

the applicant has sufficient harm to merit a U-Visa. USCIS will adjudicate the U-Visa petition.

F. If the Director or his or her U-Visa designee determines that the Complainant does not meet all the requirements listed herein, the Director or his or her U-Visa designee will notify the Complainant or his or her representative in writing of the Department's decision to reject the request for a U-Visa certification.

1. The written notice will explain the reason for the rejection of the request for a U-Visa certification.

2. The Department will return the certification form (USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification) to Complainant or his or her representative with the written notice.

3. If Complainant is able to remedy the basis for the rejection of the request for a U-Visa certification, Complainant or his or her representative may resubmit the request for a U-Visa certification.

4. If the Director or his or her U-Visa Designee determines that Part I of the certification form (USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification) is incomplete, the Director or his or her U-Visa designee may contact the Complainant or his or her representative to obtain the missing information.