

Congress of the United States
Washington, DC 20510

December 20, 2016

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

We write today regarding alleged fraudulent activity associated with the U nonimmigrant visa (U visa) program. We also want to express opposition to an apparent U.S. Citizenship and Immigration Services (USCIS) decision to implement a seemingly unlawful parole program for U visa petitioners living abroad.

The U visa program was originally created by the Victims of Trafficking and Violence Protection Act in 2000 to ensure that illegal alien victims of crimes could remain in the United States to assist with the investigation and prosecution of their perpetrator. However, this visa is being exploited by those wishing to defraud the system and avoid deportation. For example, in May of 2016, the U.S. Attorney for the Southern District of Mississippi announced the indictment of 11 individuals who were part of a conspiracy to submit fraudulent documents to USCIS in order to obtain U visas. Such fraudulent documents included falsified police reports containing forged law enforcement official signatures.¹ All 11 defendants entered guilty pleas in October of 2016.² Additionally, the same month, a special agent with U.S. Immigration and Customs Enforcement-Homeland Security Investigations (HSI) and an attorney were charged with bribery, conspiracy to defraud the U.S., and obstructing an official investigation by the Department of Homeland Security, Office of Inspector General (DHS OIG). The HSI special agent was charged after he misused his position to obtain numerous deferrals of deportation and other immigration benefits for non-citizen foreign nationals in return for over \$5,000 in cash payments, free legal services and other items of value from the attorney involved.³ According to

¹ "Nineteen Defendants Charged with Marriage and Visa Immigration Fraud," The United States Attorney's Office (May 19, 2016), available at <https://www.justice.gov/usao-sdms/pr/nineteen-defendants-charged-marriage-and-visa-immigration-fraud>.

² Bob Burks, "Former JPD Officer and 11 others plead guilty to Visa Immigration and Marriage Fraud" WDAM, available at <http://www.wdam.com/story/33479650/former-jpd-officer-and-11-others-plead-guilty-to-visa-immigration-and-marriage-fraud>

³ "Federal Agent and Local Attorney Charged with Bribery, Fraud and Obstruction of Justice," The United States Attorney's Office (Oct. 20, 2016), available at <https://www.justice.gov/usao-edmi/pr/federal-agent-and-local-attorney-charged-bribery-fraud-and-obstruction-justice>.

whistleblower reports to the Senate Judiciary Committee, instances of law enforcement officials improperly certifying U visa forms in exchange for cash and other bribes is a common occurrence.

U visas are capped at 10,000 annually for principal applicants.^[2] However, under an apparently unlawful USCIS policy, cases that would have otherwise been approved in the absence of the cap may receive “conditional approval” and a work authorization until U visas become available the following year.^[3] In some cases, despite no statutory authorization, the application itself may serve to halt deportation until it is adjudicated.^[4] Petitioners in foreign countries who apply for a U visa after the cap is exceeded, until now, remained abroad until their application was fully adjudicated. However, in August, USCIS announced its intent to implement a new “parole policy” under which eligible U visa petitioners who live abroad, along with their derivatives, can apply for parole and be admitted to the U.S. prior to adjudication.⁴ Such a policy has the potential to allow thousands of individuals the ability to wait for their adjudication results in the United States, during which time they could be granted work authorization and additional benefits.

According to the Immigration and Nationality Act (INA), parole should be granted on a **case-by-case discretionary basis** for urgent humanitarian reasons or significant public benefit, and is not intended for sweeping or blanket use.^[5] The new U visa blanket parole policy is yet another example of the Obama Administration’s complete disregard for Congress’ constitutionally mandated role in developing immigration policy. This policy ignores the authority of the legislative branch, and tramples on our system of checks and balances.

Although the U visa program can be an important tool in the investigation and prosecution of crimes, fraud and abuse of the program can lead to unjustified approvals leaving legitimate victims in the shadows. In light of the increasing accounts of U visa fraud, and the new parole policy that could allow thousands of petitioners free passage to the United States while their application is pending, please respond to the following questions and provide the requested information no later than January 2, 2016.

1. Please list all law enforcement agencies that have provided U visa certifications since 2009, and provide the number of certifications done each year by each agency.
 - a. What steps does USCIS take to verify that the certification is valid?

^[2] *U Visa Law Enforcement Certification Resource Guide* at 2, available at https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

^[3] *Id.* at 5.

^[4] Liz Klimas, “Could This Become a Popular Way Illegal Immigrants Try to Cheat the System to Stay in the United States?” *The Blaze*, available at <http://www.theblaze.com/stories/2014/11/12/fake-victims-how-illegal-immigrants-could-stage-crimes-to-obtain-a-special-visa-in-the-u-s/>.

⁵ U.S. Citizenship and Immigration Services Memorandum from Director Leon Rodriguez to Ombudsman Maria Odom, *Response to Recommendations of Parole for Eligible U Visa Principal and Derivative Petitioners Residing Abroad*, Aug. 18, 2016.

- b. What steps does USCIS take to ensure that the signature on the certification is in fact the signature of the law enforcement official named?
 - c. What steps do certifying law enforcement agencies take to verify the validity of an alien applicant's statement and limit fraud?
2. With which law enforcement entities has the Department discussed U visa standards in the last seven years? Please describe the content of such discussions.
3. Are U visa applications approved on a first come, first served basis, or does the agency issue visas to those most vulnerable or helpful to an investigation or prosecution? Please explain and provide any relevant written guidance provided to adjudicators. Has any consideration been given to issuing U visas in an alternative manner? If so, please explain.
4. Please provide the number of times for each of the past three fiscal years (FY 2014-2016) that a U visa application has been approved for a principal based on that principal being "likely to be helpful" to the investigation or prosecution as opposed to the principal actually aiding in the investigation or prosecution. Please provide the number of derivative U visas applied for based on the above criteria.
5. Please provide the number of pending U visa applications. Please also provide the number of derivatives included in such applications.
 - a. Of the number of principal applicants who have pending U visa applications, how many currently live abroad?
 - b. Of the number described in question (a), how many would be eligible for parole under the new USCIS parole policy?
6. How many cases of U visa fraud were identified from FY 2014 through October of FY 2016 and by which component in DHS was the fraud identified? Please provide the resolution of each case (i.e. referred to U.S. attorneys, referred for prosecution, prosecuted, acquitted, etc.)?
7. What percentage of cases in which a U visa applicant is assisting with a criminal investigation have resulted in an arrest? What percentage of cases have resulted in a successful prosecution? Please provide data for FY 2010-present.

8. How many derivative U visas were granted to family members of U visa recipients each year from FY 2014 through FY 2016? How many derivative U visas were applied for during this period?
9. What types of immigration benefits are available to U visa applicants while their applications are pending? Can they be granted 'deferred action' while they wait for approval of their applications?
10. Please describe in detail a U visa recipient's "ongoing responsibilities" with respect to a potential investigation or prosecution.
11. Has USCIS issued guidance to law enforcement entities ensuring their knowledge that a visa certification is discretionary and not a mandatory exercise? If so, please provide this guidance. If not, why not?
12. How many U visa recipients applied for extensions each year during FY 2010 – 2016? How many U visa extensions were granted during each of those fiscal years?
13. How many U visa grantees received employment authorization each year during FY 2010–2016?
14. Please provide any and all reports by Department of Homeland Security components outlining fraud in the U visa program from FY 2010- FY 2016.

Thank you in advance for your prompt responses in this important matter. Should you have any questions, please contact Katherine Nikas of the Senate Judiciary Committee staff at (202) 224-5225 or Andrea Loving of the House Judiciary Committee staff at (202) 225-3951.

Sincerely,



Bob Goodlatte
Chairman
House Committee on the Judiciary



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

cc: The Honorable Patrick J. Leahy
Ranking Member, Senate Judiciary Committee

The Honorable John Roth
Inspector General
Department of Homeland Security
Washington, D.C. 20528