



ADVISORY COMMISSION ON POLICING

January 14, 2025

The Honorable Kate Stewart, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear President Stewart and Members of the County Council:

Pursuant to the charter of the Advisory Commission on Policing (ACP), this letter provides the ACP's advice regarding Expedited Bill 26-24E, Police - U visa Law Enforcement Certification Policy.^[1]

We welcome Expedited Bill 26-24 in general but believe MCPD should be allowed to reject applications based on crimes committed outside its jurisdiction except under the limited circumstances allowed by state law.^[2]

The expedited bill would require that any policy directive regarding MCPD's U visa "certification of helpfulness," or Form I-198B, "not be more stringent than the criteria required under federal immigration law; and must not be inconsistent or conflict with the standards and regulations under federal law." Removing unnecessary administrative requirements to MCPD's limited role in the U visa process would contribute to advancing the County's goals for public safety and for racial equity and social justice. It would also encourage law enforcement agencies to better serve immigrant crime victims and to prosecute crimes committed against aliens.^[3]

MCPD's current policy has four requirements for "certifications of usefulness" that are more restrictive than required under federal law, but they are not inconsistent with the law.^[4] This is because Congress granted broad discretion to law enforcement agencies regarding whether and how to complete these certifications, consistent with policy, as well as local and state law. Indeed, many law enforcement agencies across the country choose to not accept any requests for certification of usefulness or have requirements that are more stringent than MCPD's.^[5]

We recommend that the expedited bill allow MCPD to reject "usefulness certification" requests based on crimes committed outside Montgomery County except under the circumstances allowed by Maryland Code Criminal Procedure § 2-102 and MCPD FC No.: 514, dated December 4, 2018. As currently written, the expedited bill would require MCPD to remove its first requirement: that requests for usefulness

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certification be based on a crime committed in Montgomery County. Although the Department of Homeland Security (DHS) “U Visa Law Enforcement Resource Guide” notes that there is no such requirement in the law, the wording suggests that this was meant to allow for rare exceptions, such as joint investigations, mutual aid agreements, emergencies, etc.^[6] Removing this MCPD requirement entirely could invite requests that would be better handled by law enforcement agencies in other jurisdictions, that MCPD has no ability to verify, and that it is, therefore, unable to certify. This would provide no benefit to the county, but it could overload MCPD’s staff and cause unnecessary delays or backlogs in the certification process.

MCPD’s second requirement establishes time limits for accepting requests for certification of helpfulness. These time limits are more stringent than federal regulations, which “do not set a specific statute of limitations for [certification of helpfulness]. The key is the victim’s helpfulness, not the timing of the helpfulness.”^[7] Moreover, this requirement dates to a time when the department’s documentation was based almost entirely on paper, which made it labor intensive and difficult to verify key elements in old cases. Since then, MCPD has greatly improved its automated data capabilities.

MCPD’s third requirement is that the request be based on a crime investigated by its officers, which is also more stringent than federal immigration law requires. According to the U Visa Law Enforcement Resource Guide, “[c]harges do not have to be filed, nor does an investigation or prosecution need to be open or completed at the time a certification is signed. For example, a victim may establish eligibility for a U visa if the certifying agency detected the qualifying crime based on the information provided by the victim.”^[8] Moreover, actual MCPD practice is to take a broad interpretation of the term “investigation,” and in cases the initial investigation of the officer at the scene is deemed sufficient.

The fourth MCPD requirement, that “the case has not yet been prosecuted,” is also more stringent than required by federal immigration law, which recognizes an alien may apply for a U visa at different stages of the investigation or prosecution.^[9] This requirement is unnecessary, as, pursuant to a memorandum of understanding, MCPD does not handle requests for “certification of helpfulness” in cases where there has been an arrest, let alone a prosecution. If received by MCPD, those requests are forwarded to the State’s Attorney’s Office or the United States Attorney for the District of Maryland.

In addition, current MCPD policy does not mention the possibility of accepting requests for “certificates of usefulness” from persons who witnessed a qualifying crime, have “suffered substantial physical or mental abuse,” have information that is helpful to law enforcement, and cooperate with the police. Therefore, we recommend that MCPD amend its policy to explicitly allow applications from those individuals who were not the intended victim of the crime but would otherwise qualify for a U visa under federal immigration law.

Finally, the removal of these unnecessary administrative requirements could reasonably be expected to result in an increase in the requests for “certifications of helpfulness” MCPD receives and, therefore, in the resources needed by the department to process these requests in a timely and efficient manner. But it is difficult to predict the magnitude of such an increase. Over time, jurisdictions have seen a shift from most requests pertaining to crimes that were several years old to mostly requests based on crimes that occurred within the past few months.^[10] This would suggest that the pool of

likely applicants based on crimes that took place over 10 years ago has shrunk significantly already. Also, increases in applications could be attenuated by perceptions of the incoming federal administration, as new U visa applications dropped significantly during the years 2018, 2019, and 2020.^[11]

Sincerely,

Rev. Brian Bellamy, Chair
On behalf of the
Advisory Commission on Policing

Cc: County Council
Council Chiefs of Staff
Police Chief Marc Yamada

^[1] Staff Report on Expedited Bill 26-24, Police – U visa Law Enforcement Certification Policy, November 14, 2024.

^[2] <https://www.montgomerycountymd.gov/pol/Resources/Files/PDF/Directives/0500/FC%200514%20Limited%20Jurisdiction%2C%20In%20Maryland%2C%20Outside%20Montgomery%20County.pdf> and <https://codes.findlaw.com/md/criminal-procedure/md-code-crim-proc-sect-2-102/>

^[3] ICAP Declaration, “Support for Education and Awareness on U Visa Certifications and T Visa Declarations,” 2018. <https://www.theiacp.org/resources/resolution/support-for-education-and-awareness-on-u-visa-certifications-and-t-visa>

^[4] <https://www.montgomerycountymd.gov/pol/Resources/Files/family-visa/UVisaPolicy.pdf>

^[5] UNC School of Law Immigration/Human Rights Policy Clinic, “The Political Geography of the U Visa: Eligibility as a Matter of Locale”, 2019. <https://law.unc.edu/wp-content/uploads/2019/10/uvisafullreport.pdf>

^[6] Page 13, DHS, U Visa Law Enforcement Resource Guide, 2022, downloaded December 11, 2024. https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf

^[7] Page 8, USCIS U Visa Law Enforcement Resource Guide.

^[8] Page 13, USCIS, U Visa Law Enforcement Resource Guide

^[9] Page 13, USCIS, U Visa Law Enforcement Resource Guide

^[10] Police Executive Research Forum, “U Visas and the Role of Local Police in Preventing and Investigating Crimes Against Immigrants,” in Subject to Debate, Vol. 31, No. 2, June-August 2017. https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2017/debate_2017_j_unaug.pdf

^[11] USCIS, Number of Form I-918, Petition for U Nonimmigrant Status, January 2023. https://www.uscis.gov/sites/default/files/document/data/I918_FY23_Q1.pdf

