

**Congress of the United States**  
**Washington, DC 20515**

August 19, 2019

Ms. Cheryl Stanton  
Administrator  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Dear Administrator Stanton:

We write to express our deep concern with newly issued guidance that creates unnecessary hurdles for vulnerable immigrant workers seeking protections from human trafficking and other workplace abuses.

The Secretary of the Department of Labor (Department) has delegated authority to its Wage and Hour Division (WHD) to issue certifications that supplement petitions for U and T nonimmigrant visas given its authority as a federal law enforcement agency.<sup>[1]</sup> Victims who cooperate in the investigation or prosecution of certain crimes may be eligible for the temporary, non-immigrant U visa, while victims of severe trafficking, including labor trafficking, may be eligible for T visas. These visas, created under the bipartisan Victims of Trafficking and Violence Protection Act (TVPA) of 2000, fulfill two critical goals: providing protection to victims without legal status who may otherwise be reluctant to assist law enforcement for fear of deportation, and assisting law enforcement agencies investigate and prosecute serious crimes and trafficking.

Since 2010, the Department has issued protocols and guidelines for individuals seeking the U Visa Certification or T Visa Declaration Form.<sup>[2]</sup> The Department created a list of specific U visa crimes, in its guidance, that fall within the purview of its expertise, allowing individuals who have been crime victims at work to report these crimes to WHD to potentially seek the certification or declaration form to submit with their application to USCIS for a humanitarian visa. The Department's expertise in this area is crucial, as often workers report these work-related crimes to criminal law enforcement and are directed, instead, to file a complaint with a labor agency. Criminal law enforcement agencies rely on the expertise of the Department to best analyze such matters. To date, the Department's protocols and guidelines have been critical in ensuring that all cases are handled with the proper care and attention they deserve.

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<sup>[1]</sup> Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000); "US Labor Department to exercise authority to certify applications for U visas," US Department of Labor news release (Mar. 15, 2010), <https://www.dol.gov/newsroom/releases/opa/opa20100315>

<sup>[2]</sup> <https://www.dol.gov/newsroom/releases/opa/opa20100315>


On July 1, 2019, the WHD issued new guidance<sup>[3]</sup> that adds unnecessary and troublesome barriers for victims and their ability to access certifications in support of these critical visas. Specifically, under WHD's new guidance, the agency will refer cases involving potential trafficking and qualifying criminal activity (QCA) to criminal law enforcement and generally *require* that such criminal law enforcement agencies agree with WHD's assessment of potential crimes before WHD issues a certification.<sup>[4]</sup>


We are deeply concerned that these added hurdles will have the effect of silencing vulnerable immigrant workers.<sup>[5]</sup> All too often immigrant workers fear reporting workplace crimes due to threats of deportation from unscrupulous employers seeking to silence them. Conditioning certification on criminal law enforcement referral and approval will have a chilling effect on fearful workers who are already reluctant to come forward and speak publicly about crimes occurring in their workplaces. While WHD previously referred such cases to criminal law enforcement, this was not a pre-condition for the issuance of certifications, and thus the workers could move forward with submitting their visa petitions without having to await additional determinations from these criminal law enforcement agencies. Additionally, the new referral process announced in the guidance is likely to exacerbate the waiting time for visa applicants and discourage workers from seeking the assistance from the DOL altogether.

Given the Administration's anti-immigrant sentiment, we fear this shift in policy is merely an effort to undermine access to a critical protection for immigrant workers and will hamper the Department's ability to hold accountable traffickers and other employers engaging in criminal activity that the U visa is designed to address.

We urge you to withdraw this harmful guidance and instead work to protect vulnerable workers.

Sincerely,

  
\_\_\_\_\_  
Joaquin Castro  
Member of Congress

  
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Raúl M. Grijalva  
Member of Congress

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<sup>[3]</sup> Nancy J. Leppink, FIELD ASSISTANCE BULLETIN NO. 2011-1 U.S. Department of Labor Wage and Hour Division (WHD) FIELD ASSISTANCE BULLETIN NO. 2011-1 (2011), [https://www.dol.gov/whd/FieldBulletins/fab2011\\_1.htm](https://www.dol.gov/whd/FieldBulletins/fab2011_1.htm) (last visited Jul 11, 2019).

<sup>[4]</sup> Cheryl M. Stanton, FIELD ASSISTANCE BULLETIN No. 2011-1 Addendum 2 U.S. Department of Labor - Wage and Hour Division (WHD) - FIELD ASSISTANCE BULLETIN NO. 2011-1 - Addendum 2 (2019), [https://www.dol.gov/whd/FieldBulletins/fab2011\\_1-addendum2.htm](https://www.dol.gov/whd/FieldBulletins/fab2011_1-addendum2.htm) (last visited Jul 11, 2019). Page 2

<sup>[5]</sup> Isabela Dias, The Department of Labor Is Making It Harder for Trafficking Victims to Get Protection Pacific Standard (2019), <https://psmag.com/news/the-department-of-labor-is-making-it-harder-for-trafficking-victims-to-get-protection> (last visited Jul 11, 2019).



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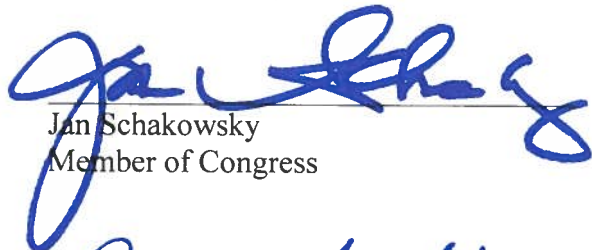
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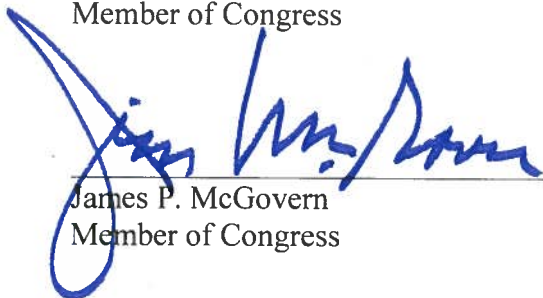
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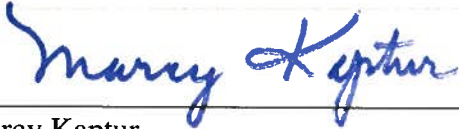
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