



Removals of Noncitizens with Denied, Revoked, or Pending U Visa Petitions

February 11, 2022

Fiscal Year 2020 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

February 11, 2022

I am pleased to present the following report, "Removals of Noncitizens with Denied, Revoked, or Pending U Visa Petitions," which has been prepared by U.S. Immigration and Customs Enforcement.

This report was compiled pursuant to direction in House Report 116-180, which accompanies the Fiscal Year 2020 Department of Homeland Security Appropriations Act (P.L. 116-93).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to the ICE Office of Congressional Relations at (202) 732-4200.

Sincerely,



Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement





Removals of Noncitizens with Denied, Revoked, or Pending U Visa Petitions

Table of Contents

I. Legislative Language.....	1
II. Background.....	2
III. ICE Enforcement Actions and U Visa Applicants.....	3
IV. Data Report.....	4
V. Conclusion.....	5
Appendix: Abbreviations.....	6

I. Legislative Language

This report was compiled in response to direction in House Report 116-180, which accompanies the Fiscal Year (FY) 2020 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-93, Div. D). House Report 116-180 states:

U Visas.—The Committee recognizes the value of the U visa program in protecting victims of violent crime and promoting public safety by enabling criminal investigations. The Committee directs ICE to provide a report within 90 days of the date of enactment of this Act on the number of individuals deported with a pending U visa application or when a U visa application had been denied.

II. Background

U.S. Immigration and Customs Enforcement (ICE) shares responsibility for administering and enforcing the Nation's immigration laws with other DHS Components, including U.S. Citizenship and Immigration Services (USCIS) and U.S. Customs and Border Protection. ICE Enforcement and Removal Operations (ERO) is responsible for the identification, arrest, and removal of noncitizens who present a danger to national security, or a threat to public safety, or who otherwise undermine border security and the integrity of the U.S. immigration system. An ICE removal is the confirmed movement of an inadmissible or removable noncitizen out of the United States who has received a final order of removal or deportation.¹ Final orders of removal typically are issued by an immigration judge who works for the U.S. Department of Justice Executive Office for Immigration Review.

U nonimmigrant status (the U visa) enables certain removable noncitizens who are victims of crime to assist law enforcement without fear of removal. The U visa is intended to strengthen the ability of local, state, and federal law enforcement agencies, including ICE Homeland Security Investigations (HSI), to detect, investigate, and prosecute cases of human trafficking, domestic violence, sexual exploitation, female genital mutilation, and other specified criminal activity, and to offer protection to victims of such offenses in keeping with the humanitarian interests of the United States. Local, state, and federal law enforcement are authorized to complete certifications for victims applying for a U visa; within ICE, HSI Special Agents in Charge and the Associate Director for the Office of Professional Responsibility (OPR) are delegated this certification authority.

As the primary agency responsible for adjudicating immigration benefits, USCIS manages the U visa program and is responsible for granting or denying petitions for U nonimmigrant status. The U visa provides an immigration benefit to certain victims of qualifying crimes in the United States who assist law enforcement in the investigation or prosecution of that crime. The U visa program strengthens the ability of law enforcement agencies to investigate and prosecute serious crimes; encourages victims to report crimes committed against them; and allows victims to pursue justice by participating in the investigation and prosecution of those crimes. The U visa program also provides critical protection to qualifying victims.²

¹ ICE removals include removals and returns in which noncitizens were turned over to ICE for removal efforts. This includes noncitizens who have received a final order of removal or deportation, as well as those who have been processed for expedited removal or voluntary return and who are turned over to ICE for detention.

² <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status>

III. ICE Enforcement Actions and U Visa Applicants

In 2019, ICE issued ICE Directive 11005.2: *Stay of Removal Requests and Removal Proceedings Involving U Nonimmigrant Status (U Visa) Petitioners*, which superseded the 2009 memorandum. ICE Directive 11005.2 set forth a new policy regarding requests for Stay of a Final Administrative Order of Deportation or Removal (stay) and the exercise of prosecutorial discretion to join motions to terminate removal proceedings involving U visa petitioners and their qualifying family members. Under the policy, noncitizens subject to pending removal proceedings or a final order of removal could petition for a U visa with USCIS, and those noncitizens subject to a final order of removal who had a pending U visa petition could request a stay from ICE, similar to any other noncitizen subject to a final order of removal.

Under ICE Directive 11005.2, it was ICE policy to comply with applicable law governing U visas and to encourage victims of crime to work with law enforcement. Where a U visa petitioner's law enforcement certification is signed by HSI or OPR, ICE generally would grant a stay request filed by that noncitizen or join a motion to terminate removal proceedings, accordingly. In cases involving pending U visa petitioners and their qualifying family members for whom ICE did not sign the law enforcement certification, ICE ERO field office directors and Office of the Principal Legal Advisor attorneys considered the totality of the circumstances, including any favorable or adverse factors, and any federal interest(s) implicated when determining whether to grant or deny a stay or to join a motion to terminate removal proceedings. Assistance provided by a U visa petitioner to law enforcement, prosecutors, judges, or other officials in the detection, investigation, prosecution, conviction, or sentencing of criminal activity generally would be considered a significant favorable factor but was not necessarily dispositive.

A noncitizen with a pending U visa petition whose stay request was denied could be processed for removal absent any legal impediment to removal. Furthermore, it was ICE policy under Directive 11005.2 to respect USCIS's grant of deferred action to a U visa petitioner. Accordingly, ICE would not remove a U visa petitioner or qualifying family member whom USCIS had placed on the waiting list and had granted deferred action unless a new basis for removal had arisen since the date of the waiting list placement or since USCIS terminated deferred action.

Although the data in this report are from FY 2019, ICE continues to refine policy regarding the removal of U visa petitioners. In August of 2021, ICE issued a new policy— ICE Directive 11005.3: *Using a Victim-Centered Approach with Noncitizen Crime Victims*—which supersedes ICE Directive 11005.2 in its entirety. This directive sets enforcement policy for various victim-based immigration beneficiaries, which may include U visa beneficiaries. Specifically, the policy states that when a noncitizen has a pending U visa petition, absent exceptional circumstances, ICE will exercise discretion to defer decisions on civil immigration enforcement actions until USCIS grants deferred action based on a bona fide determination or a waiting list determination. Additionally, the policy limits the circumstances under which a noncitizen victim will be detained by ICE; requires pre-approval for enforcement actions against victims, absent exigent circumstances; and adds new tracking and training requirements.

IV. Data Report

Absent exceptional circumstances, ICE will refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits. In addition, when necessary and appropriate, ICE will coordinate with USCIS to seek expedited adjudication of victim-based immigration applications and petitions. ICE officers carefully consider all factors in a noncitizen's immigration case when determining whether to execute a final order of removal or when taking any other form of enforcement action, including any enforcement or removal action taken against those with known³ pending U visa petitions. It is important to note for purposes of the table below that a pending petition is one that has been filed with and remains undecided by USCIS. Thus, it may include petitions filed by individuals who are ineligible for U visas, who have not been victims of a qualifying criminal offense, or who otherwise are unlikely to receive a positive U visa grant. Where there is a known, pending U visa petition, ICE carefully considers the totality of the circumstances in deciding whether to grant a stay or to effectuate removal pending USCIS's adjudication of the petition, which may take numerous years to complete.

Removals of U Visa Petitioners in FY 2019⁴

Status of Petition	Removals
Total	712
Denied	213
Pending	498
Revoked	1

³ In some instances, a petitioner may have filed an application with USCIS, and the system may not reflect this information immediately.

⁴ FY 2019 ICE removal data are updated through April 25, 2020. Data are filtered from October 1, 2018, through September 30, 2019. USCIS provided data on U visa petitions received between February 20, 1967, and March 30, 2020. This data pull involves comparing data from two separate agencies (USCIS pending applications during FY 2019 and ICE removals of individuals who appear in the first data set) so it is not able to speak to whether the individual had a pending application at the time of the ICE removal.

V. Conclusion

ICE fully appreciates its obligations to enforce the Nation's immigration laws and to uphold public safety, and the enforcement actions that ICE employs are intended to accomplish this fairly and safely. ICE also is committed to carrying out its functions in a victim-centered manner that ensures that noncitizen victims are willing and able to contact law enforcement, to participate in investigations and prosecutions, to pursue justice, and to seek available benefits. ICE's new directive is a strong step to reach that end, and ICE will continue to work with USCIS on strengthening the U visa process.

Appendix: Abbreviations

Abbreviation	Definition
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
FY	Fiscal Year
HSI	ICE Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
OPR	Office of Professional Responsibility
U visa	U Nonimmigrant Status
USCIS	U.S. Citizenship and Immigration Services