



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**Sophie Dalsimer - Immigration Attorney**

***BROOKLYN DEFENDER SERVICES***

**Presented before**

**The New York City Council Committee on Immigration**

**Oversight Hearing on**

**Best Practices for NYC Agencies, Courts, and Law Enforcement Authorized to  
Certify Immigrant Victims for U and T Visas**

**September 13, 2017**

**I. Introduction**

My name is Sophie Dalsimer. I am a practicing immigration attorney with a mental health specialization at Brooklyn Defender Services (BDS) on the New York Immigrant Family Unity Project (NYIFUP) team. BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for 40,000 clients in Brooklyn every year.

I thank the City Council for the opportunity to testify about the NYPD U Visa certification process. I have chosen to focus my remarks on NYPD policy surrounding U visa certification because that is the city agency from which BDS most frequently requests certification.

Since our immigration practice began more than eight years ago, BDS has counseled, advised or represented more than 7,500 immigrant clients. In 2016 alone, we handled more than 1500 immigration matters across a full spectrum of services. We defend

detained clients facing deportation, clients identified through our criminal and family defense dockets, and clients referred from our community partners or who connected with us through community outreach clinics.

New York City can and should do more to protect our immigrant community members from increasing immigration enforcement efforts at the federal level. Many of our clients have been victims of crimes and are eligible for U Visas. Yet despite recent changes to the NYPD process for certification of U Visas and T Visas, the NYPD continues to delay decisions in certification and to deny certification because of a client's criminal history. In short, these policies harm immigrant New Yorkers and their families and communities and should be reformed.

## **II. Client Stories**

The following stories illustrate the critical need for timely processing of U Visa certifications by the NYPD, regardless of a person's criminal history. The names are pseudonyms to protect the identity of our clients.

### ***Ms. Archer***

Ms. Archer is a 45-year-old mother from Jamaica raising two daughters in the Canarsie neighborhood of Brooklyn. In the early 2000s, Ms. Archer lived with a partner who repeatedly physically and emotionally abused her. Ms. Archer endured this abuse without realizing that she could seek help from law enforcement. Her abuser threatened her that if she went to the police, she would be deported. It was not until Ms. Archer finally confided in a close friend that she came to understand that she could seek help from law enforcement without fear of deportation and separation from her young children. The next time her partner became violent, Ms. Archer ran out of the home with her daughter and went straight to her local precinct. She provided a full report to police who noted Ms. Archer's physical injuries. The fear of law enforcement was enough to cause her abuser to flee and he was never apprehended even though Ms. Archer continued to inform police every time he attempted to make contact with her. Eventually, Ms. Archer learned that her abuser was back in Jamaica and retaliating against her family there, including burning down her sister's home. He threatened to kill Ms. Archer if she ever returned to Jamaica. As a single mother and survivor of a domestic violence who is also illiterate, Ms. Archer struggled to provide for her family. She made the mistake of engaging in shoplifting and was arrested on four occasions, leading to two convictions and two disorderly conduct violations. Ms. Archer deeply regrets her actions.

In late September 2016, NYIFUP requested U Visa certification from the NYPD on behalf of Ms. Archer, who was detained in immigration custody and facing deportation to Jamaica. The request was denied in December 2016, citing "significant criminal

history” as the basis for denial. An appeal was filed in February 2017 with additional supporting documentation. The appeal was denied in late May 2017, this time referencing “extensive criminal history.”

Ultimately, Ms. Archer was able to avoid deportation based on the threats from her former abusive partner who continues to reside in Jamaica. Ms. Archer is now home with her daughters in Brooklyn and is for the first time connected with a literacy program and counseling for domestic violence survivors. However, for survivors of domestic violence who were never married to their abusers, such as Ms. Archer, a U visa is the only path to lawful permanent resident status based on their abuser. In this case, Ms. Archer was able to remain in the United States, but she does not have the permanent status like that which she might have obtained through a U visa.

### ***Mr. Hernandez***

Mr. Hernandez fled violence in his native El Salvador and came to the U.S. at age 16. In 2011, he was brutally assaulted outside a restaurant in East Elmhurst, Queens. His attackers beat him with a steel bat. He woke up in the hospital after undergoing emergency surgery to relieve pressure from blood clotting around his brain. While hospitalized he received occupational and physical therapy, wore a protective helmet and had another surgery to replace fractured bone in his skull with a metal plate.

Mr. Hernandez cooperated with law enforcement following his assault by speaking with NYPD detectives, viewing photo arrays of suspects, and riding along with officers in an effort to identify the assailants. Following his assault, Mr. Hernandez also developed epilepsy and experienced chronic pain and cognitive decline. He described no longer feeling like the same person, becoming slower and easily confused.

It was during this time period, subsequent to his victimization and hospitalization, that Mr. Hernandez was arrested twice and convicted of possession of stolen property and unauthorized use of a vehicle, both non-violent misdemeanor offenses. He has little recollection of the circumstances that led to his arrests due to his brain injury. Mr. Hernandez was transferred from criminal custody to immigration custody and was assigned a NYIFUP attorney in August 2016.

After gathering relevant records, the NYIFUP attorney filed a request for U certification with NYPD on behalf of Mr. Hernandez in mid-October 2016. In late December 2016, NYPD denied Mr. Hernandez’s request citing “extensive criminal history” as the basis for the denial. An appeal was filed in late January 2017. A decision on the appeal was not reached until late July 2017, over 6 months later, when NYPD agreed to certify a U visa for Mr. Hernandez.

Mr. Hernandez remains detained and is fighting removal to El Salvador where he fears he will die without access to his anti-seizure medications. The delay in the NYPD's issuing of a U certification has contributed to his lengthy time in immigration detention

### **III. Expediting NYPD Responses for Detained Immigrants**

In 2016 the NYPD adopted new regulations on "Requesting Certifications for U Nonimmigrant Status (U Certification). These regulations require NYPD to respond to requests for certification within 45 days and respond to appeals to certification decisions within 90 days.

Prior to the passage of this rule, we often would go months and months without receiving a response from NYPD about our requests for certification. This created a great deal of uncertainty in the process for all parties involved, including the courts, judges, attorneys and immigrants. Since the passage of the rule, we have seen NYPD comply with the initial request for certification in a timely manner, but our appeals linger for months before a response.

Expedited responses are particularly critical for our clients detained by Immigration and Customs Enforcement (ICE). Immigration detainees generally appear before an immigration judge every 6-8 weeks. Judges expect to hear regular updates from attorneys about the status of the client's case. The court process will run much more efficiently if we can inform judges that we have requested a U visa certification and that the NYPD will respond within a specific time period. Additionally, judges are likely to release a detainee on bond once they receive a U visa certification from a law enforcement agency. The Department can play an important role in limiting unnecessary and harmful detention by responding promptly to requests for certification and appeals from detained immigrants, in particular.

#### **Recommendations:**

- a. *NYPD should create a streamlined process for immigration detainees that would allow their cases to take priority over other person's requesting certification.*

Petitioners to the Department should submit in their letter requesting certification whether they are (a) a detained immigrant in removal proceedings, (b) a non-detained immigrant in removal proceedings, or (c) a person making an affirmative application to U.S. Citizenship and Immigration Services (USCIS) (i.e. a person not currently facing deportation). This would allow the Department to allocate resources in the most efficient manner possible.

- b. *NYPD should provide on its website a contact phone number and email address for a point person at the Department on this issue.*

This lack of information makes it nearly impossible for attorneys and immigration court personnel to inquire about the status of an immigrant's u-visa request for certification. As noted above, this would be enormously helpful to backlogged immigration courts (who could schedule court dates for after the date when the NYPD expects to respond to the request) and immigrants themselves who are making difficult decisions about whether or not to continue fighting deportation.

### **Reasons for Denials**

While the NYPD now issues denial letters with a checkbox for reasons for denials, we still have little to no information about why our clients are being denied U visas.

In both Ms. Archer and Mr. Hernandez's cases, we were given no further indication in either the initial denial or the appeal as to why their specific criminal history warranted a denial. It would be helpful for the NYPD to articulate whether it was the gravity of the convictions, the quantity of convictions, the recentness of conviction, or the level of assistance that the petitioner provided in the case in which they assisted the NYPD.

### **Recommendation:**

- c. *NYPD should not deny U visa certifications based on a person's criminal history.*

It is more appropriate and efficient to allow the Department of Homeland Security to determine when denial of a U visa is appropriate based on the applicant's criminal record, rather than refusing to issue law enforcement certifications due to criminal convictions.

The instructions for the law enforcement certification (Form I-918, Supplement B) state: "You should use Form I-918, Supplement B, to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that activity." The law enforcement certification form does not request information concerning the applicant's criminal record, and the instructions do not request that the certifying agency consider the applicant's criminal record when determining whether to issue a certification.

This is likely because a U visa applicant's criminal record, if one exists, will always be carefully scrutinized by the Department of Homeland Security, U.S. Citizenship and Immigration Services, before a decision is made about whether to grant a U visa. As part of the U visa application, the applicant is required to disclose all arrests and submit documentation proving the outcome of each arrest. U visa applications are routinely

denied due to the applicants' failure to submit all required criminal documentation, or due to the nature and/or extent of the applicant's criminal record.

For these reasons, we encourage the Council to urge the NYPD not to deny certification requests based on the applicant's criminal record.

## **Conclusion**

The legacy of broken windows policing is that low-income people of color in certain New York City neighborhoods are disproportionately targeted by police for arrest for conduct that would not result in criminal convictions for others. Frustratingly, our clients who are victims and who worked with law enforcement to report and investigate crimes are being denied U Visas because of their criminal histories. At the same time that the Council is funding NYIFUP to defend detained people facing deportation, the NYPD is effectively precluding people with even minimal criminal records from even applying for this critical form of relief with the Department of Homeland Security.

We call upon the City Council to work with immigrant communities, service providers and other stakeholders to urge the NYPD to change this policy so that New Yorkers who are the victims of crime can apply for the U visas for which they are eligible under federal law.

If you have any questions about my testimony, please feel free to reach out to me at 718-254-0700 ext. 315 or [sdalsimer@bds.org](mailto:sdalsimer@bds.org).