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February 16, 2021

Samantha Deshommnes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Service
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529-2140

RE: "Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for U Nonimmigrant Status"
DHS Docket No: USCIS-2010-0004; OMB Control Number 1615-0104
Submitted via www.regulations.gov

Dear Ms. Deshommnes:

On behalf of ASISTA, I submit this comment in response to "Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for U Nonimmigrant Status" initially published in the Federal Register on September 18, 2020¹ (hereinafter "proposed rule") and then reopened on January 14, 2021 for a 30 day period for comment.²

¹ U.S. Citizenship and Immigration Service. "Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for U Nonimmigrant Status" 85 FR 58381 (September 18, 2020), available at

<https://www.federalregister.gov/documents/2020/09/18/2020-20559/agency-information-collection-activities-extension-without-change-of-a-currently-approved-collection>

² U.S. Citizenship and Immigration Service. "Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for U Nonimmigrant Status" (January 14, 2021), available at

<https://www.federalregister.gov/documents/2021/01/14/2021-00642/agency-information-collection-activities-extension-without-change-of-a-currently-approved-collection?>

The mission of our agency is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes. We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors and submit this comment based on our guiding principles and our extensive experience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JC' with a long, sweeping horizontal stroke extending to the right.

Amy Cheung
Senior Legal Counsel
ASISTA

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I. FORM I-918, Petition for U Nonimmigrant Status

Document ID: USCIS-2010-0004-0066

Tracking Number: kjw-ebf1-qod9

A. Part 1. Information About You (Page 2), Item 9:

Current proposed language:

Gender Male Female

Comment:

We ask USCIS to amend the gender field on all I-918 forms in a way that is more inclusive to individuals who do not identify their gender in binary terms. We recommend providing an open text box rather than “male” and “female” checkboxes.

Further, on April 10, 2012, U.S. Citizenship and Immigration Services issued Policy Memorandum, “Adjudication of Immigration Benefits for Transgender Individuals; Addition of Adjudicator’s Field Manual (AFM) Subchapter 10.22 and Revisions to AFM Subchapter 21.3 (AFM Update AD12-02).” This memo states that the purpose of documents, such as the employment authorization document, is to record the applicant’s identity and immigration status. Through this memo, USCIS has agreed to issue documents reflecting the applicant’s identified gender if the individual presents documentation recognizing the new gender. This approach is further cemented through the January 19, 2017 USCIS Policy Memorandum, “Revision of Adjudicator’s Field Manual Subchapter 10.22 - Change of Gender Designation on Documents Issued by U.S. Citizenship and Immigration Services.” ASISTA commends USCIS for taking steps to recognize that transgender individuals must have immigration documentation that matches their gender and suggests that that approach be reflected in these instructions.

B. Part 2. Additional Information About You (Page 2):

Current proposed language:

Answering “Yes” to the following questions below requires explanations and supporting documentation. Attach relevant documents in support of your claims that you are a victim of criminal activity listed in the Immigration and Nationality Act (INA) section 101(a)(15)(U)(iii). You must attach a personal narrative statement describing the criminal activity of which you are a victim. If you are only petitioning for U derivative status for qualifying family members subsequent to your (the principal petitioner) initial filing, you are not required to submit evidence supporting the original petition with the new Form I-918.

Comment:

This instruction is confusing and misleading for petitioners and their representatives. If a principal petitioner is petitioning for a qualifying family member subsequent to their initial filing, the petitioner is not required to submit a new Form I-918 at all.³ This sentence is confusing because it mistakenly indicates that filing a new Form I-918 is required when filing a Form I-918 Supplement A subsequent to the initial petition. In reality, the filing of a new Form I-918 with the subsequently-filed Form I-918 Supplement A is not required and would likely result in the creation of a new case number for the new Form I-918. We recommend deleting the last sentence of the paragraph above.

Suggested language:

Answering “Yes” to the following questions below requires explanations and supporting documentation. Attach relevant documents in support of your claims that you are a victim of criminal activity listed in the Immigration and Nationality Act (INA) section 101(a)(15)(U)(iii). You must attach a personal narrative statement describing the criminal activity of which you are a victim. ~~If you are only petitioning for U derivative status for qualifying family members subsequent to your (the principal petitioner) initial filing, you are not required to submit evidence supporting the original petition with the new Form I-918.~~

C. Part 3. Processing Information (page 6), Item 25

Current language:

Have you EVER been a J nonimmigrant exchange visitor who was subject to the 2-year foreign residence requirement and not yet complied with that requirement or obtained a waiver of such?

Comment:

Including this question is unnecessary, as U visa petitioners are not subject to the 2-year foreign residence requirement under INA § 212(e), and causes confusion for practitioners and petitioners. It also imposes an unnecessary burden on petitioners, who must provide an explanation for any failure to comply with the 2-year foreign residence requirement even though that requirement is irrelevant to their petition for U nonimmigrant status. We recommend removing Item 25 from Part 3.

³ See USCIS, Instructions for Petition for U Nonimmigrant Status and Supplement A, Petition for Qualifying Family Member of U-1 Recipient, OMB No. 1615-0104, available at <https://www.uscis.gov/sites/default/files/document/forms/i-918instr.pdf>, at pp. 13-14 (listing requirements for filing Form I-914 Supplement A).

II. FORM I-918A, Petition for Qualifying Family Member of U-1 Recipient

Document ID: USCIS-2010-0004-0067

Tracking Number: kjw-edu5-52ns

A. Part 3. Information About Your Qualifying Family Member (The Derivative) (Page 2), Item 12:

Current proposed language:

Gender Male Female

Comment:

We ask USCIS to amend the gender field on all I-918 forms in a way that is more inclusive to individuals who do not identify their gender in binary terms. We recommend providing an open text box rather than “male” and “female” checkboxes.

Further, on April 10, 2012, U.S. Citizenship and Immigration Services issued Policy Memorandum, “Adjudication of Immigration Benefits for Transgender Individuals; Addition of Adjudicator’s Field Manual (AFM) Subchapter 10.22 and Revisions to AFM Subchapter 21.3 (AFM Update AD12-02).” This memo states that the purpose of documents, such as the employment authorization document, is to record the applicant’s identity and immigration status. Through this memo, USCIS has agreed to issue documents reflecting the applicant’s identified gender if the individual presents documentation recognizing the new gender. This approach is further cemented through the January 19, 2017 USCIS Policy Memorandum, “Revision of Adjudicator’s Field Manual Subchapter 10.22 - Change of Gender Designation on Documents Issued by U.S. Citizenship and Immigration Services.” ASISTA commends USCIS for taking steps to recognize that transgender individuals must have immigration documentation that matches their gender and suggests that that approach be reflected in these instructions.

B. Part 5. Processing Information (Page 7), Item 25:

Current language:

Has your family member EVER been a J nonimmigrant exchange visitor who was subject to the 2-year foreign residence requirement and not yet complied with that requirement or obtained a waiver of such?

Comment:

Including this question is unnecessary, as U visa qualifying family members are not subject to the 2-year foreign residence requirement under INA § 212(e), and causes confusion for

practitioners, U-1 petitioners, and their qualifying family members. We recommend removing Item 25 from Form I-918 Supplement A.

C. Part 8. Qualifying Family Member’s Statement, Contact Information, Declaration, and Signature (Page 9), Item 6.a.:

Current language:

Qualifying Family Member’s Signature (sign in ink)

Comment:

It is unnecessary to require the qualifying family member’s signature on the Supplement A because the form is completed by the U-1 petitioner, who “owns” the form and files it to accord immigration benefits to the qualifying family member. This procedure mirrors that of the Form I-130, where the petitioner files the form on behalf of the beneficiary. In the I-130 scenario, the beneficiary does not need to sign the form because it is the petitioner who files it, not the beneficiary.⁴

In addition, the form instructions specify that only the victim may file the Supplement A on behalf of the qualifying family member.⁵ As the family member does not “own” the Supplement A, he or she should not be required to sign it. We recommend removing the entirety of Part 8 of Supplement A.

In the alternative, even if USCIS decides to require a signature by the derivative, many qualifying family members of U-1 petitioners reside overseas, and some live in remote rural locations with limited mail delivery and phone, internet, and fax access. At the same time, the majority of U-1 petitioners and their counsel are based in the United States⁶. The geographic separation between qualifying family members and the principal petitioner and their counsel, coupled with the sometimes extreme logistical challenges of conveying documents back and forth from the United States, can cause exceptional difficulty in obtaining a signature from family members overseas. Applications for qualifying family members of T-1 petitioners, who share many similarities to U-1 petitioners, such as severe victimization in the United States, do not require that qualifying family members overseas sign the Form I-914 Supplement A. Rather, as

⁴ See USCIS, Form I-130, Petition for Alien Relative, OMB No. 1615-0012, available at <https://www.uscis.gov/sites/default/files/document/forms/i-130.pdf>

⁵ See USCIS, Instructions for Petition for U Nonimmigrant Status and Supplement A, Petition for Qualifying Family Member of U-1 Recipient, OMB No. 1615-0104, available at <https://www.uscis.gov/sites/default/files/document/forms/i-918instr.pdf>, at p. 1 (“You, the victim, [. . .] include your qualifying family members by filing Supplement A [. . .]”); p.2 (instructing principal petitioner to file for a qualifying family member); pp. 7-10 (describing how the principal petitioner must complete the Supplement A on behalf of the qualifying family member).

⁶ See USCIS, “U visa Demographics,” March 2020, available at https://www.uscis.gov/sites/default/files/document/reports/U_Visa_Report_-_Demographics.pdf (noting that 79% of U-1 petitioners require waiver of INA § 212(a)(6)(A)(i)).

the Supplement A is filed and completed by the T-1 applicant, only the T-1's signature is required.⁷ The signature requirement for U visa qualifying family members should not be more burdensome than that for T visa qualifying family members. Additionally, see Section III. B. of this document for comment regarding requirement for original signature. If USCIS maintains a derivative signature requirement, we recommend clarifying that only qualifying family members who are physically present in the United States must sign the Form I-918 Supplement A.

Suggested language (if USCIS maintains the derivative signature requirement):

Qualifying Family Member's Signature (your family member only if physically present in the United States) (sign in ink)

⁷ USCIS, Form I-914 Supplement A, Application for Family Member of T-1 Recipient, OMB 1615-0099, available at <https://www.uscis.gov/sites/default/files/document/forms/i-914supa.pdf>, at Part F., p.8.

III. Instructions for Petition for U Nonimmigrant Status and Supplement A Petition for Qualifying Family Member of U- 1 Recipient

Document ID: USCIS-2010-0004-0065

Tracking Number: kjw-eaql-g704

A. General Instructions: Signature (Page 3)

Current language:

Each petition must be properly signed in black or blue ink and filed. For all signatures on this petition, USCIS will not accept a stamped or typewritten name in place of a signature. If you are under 14 years of age, your parent or legal guardian may sign the petition on your behalf. A legal guardian may also sign for a mentally incompetent person.

Comment:

These instructions are unclear as to whether the principal petitioner's, interpreter's, and preparer's signatures must be original. By requiring that the signatures be signed in black or blue ink, the instructions imply that original signatures are required. However, the I-918 Local Standard Operating Procedures ("SOP"), Version 16, Effective May 7, 2020 and prior versions of the SOP allow for photocopied signatures. Permitting electronically reproduced signatures would also be consistent with the signature requirements for Form I-914 and the general USCIS policy on signature validity,⁸ and would reduce the burden for petitioners, interpreters, and preparers in obtaining original signatures. We recommend clarifying that electronic reproductions of original signed documents are acceptable.

Suggested language:

Each petition must be properly signed in black or blue ink and filed. For all signatures on this petition, USCIS will not accept a stamped or typewritten name in place of a signature. **An electronic reproduction (such as a scanned, faxed, or emailed copy) of the original signed document is acceptable.** If you are under 14 years of age, your parent or legal guardian may sign the petition on your behalf. A legal guardian may also sign for a mentally incompetent person.

⁸ See generally USCIS, Instructions for Application for T Nonimmigrant Status, OMB 1615-0099, available at <https://www.uscis.gov/sites/default/files/document/forms/i-914instr.pdf>; USCIS Policy Manual, Vol. 1, Chap.2, Part B, available at <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-2> (providing that "A signature is valid even if the original signature on the document is photocopied, scanned, faxed, or similarly reproduced").

B. Specific Instructions for Supplement A, Petition for Qualifying Family Member of U-1 Recipient, Part 8: Qualifying Family Member's Statement, Contact Information, Declaration, and Signature (Page 9):

Current language:

Item Numbers 1.a-6.b. If your family member is in the United States, he or she must verify the accuracy of the information recorded on this supplement and must also complete this section of the supplement. He or she must select the appropriate box to indicate that he or she either read this supplement himself or herself or whether he or she had an interpreter assist him or her. If someone assisted him or her in completing the supplement, select the box indicating that he or she used a preparer. Further, he or she must sign and date the supplement and provide her or her daytime telephone number, mobile telephone number (if any), and email address (if any). Every supplement MUST contain the signature of the qualifying family member (or parent or legal guardian, if applicable). A stamped or typewritten name or a scanned, faxed, or emailed copy in place of an original signature is not acceptable. A legal guardian may sign for a mentally incompetent person. If the qualifying family member does not sign or date the supplement, USCIS may return Supplement A as incomplete.

Comment:

As noted *supra*, it is unnecessary to require the qualifying family member's signature on the Supplement A because the form is completed by the U-1 petitioner, who "owns" the form and files it to accord immigration benefits to the qualifying family member. This procedure mirrors that of the Form I-130, where the petitioner files the form on behalf of the beneficiary. In the I-130 scenario, the beneficiary does not need to sign the form because it is the petitioner who files it, not the beneficiary.

In addition, the form instructions specify that only the victim may file the Supplement A on behalf of the qualifying family member.⁹ As the family member does not "own" the Supplement A, he or she should not be required to sign it. We recommend removing the entirety of the instructions for Part 8 of Supplement A.

In the alternative, even if USCIS decides to require a signature by the derivative, the instructions are unclear as to whether qualifying family members who reside outside the United States must sign Form I-918 Supplement A. Based on the lack of clarity in the existing form instructions, Vermont Service Center ("VSC") altered its policy to begin requiring signatures for overseas

⁹ See USCIS, Instructions for Petition for U Nonimmigrant Status and Supplement A, Petition for Qualifying Family Member of U-1 Recipient, OMB No. 1615-0104, available at <https://www.uscis.gov/sites/default/files/document/forms/i-918instr.pdf>, at p. 1 ("You, the victim, [. . .] may include your qualifying family members by filing Supplement A [. . .]"); p.2 (instructing principal petitioner to file for a qualifying family member); pp. 7-10 (describing how the principal petitioner must complete the Supplement A on behalf of the qualifying family member).

qualifying family members in May 2020.¹⁰ According to anecdotal reports from ASISTA's members, the sudden and unannounced change in VSC's policy resulted in the rejection of numerous Form I-918 Supplement As for overseas derivatives. Since the change went into effect, many of ASISTA's members have reported waiting to file the Form I-918 Supplement A until they can obtain the qualifying family member's signatures, which may take weeks to months due to extreme logistical challenges in sending and receiving documents from the derivatives, many of whom reside in remote locations with limited mail delivery and access to email, fax, and scanning technology. These difficulties are further compounded by the requirement that the signatures be original, meaning that not only must the U-1 or their counsel physically mail the document to the qualifying family member, but the family member must then mail the document back to the United States after signing.

Obtaining any signature, much less an original one, is very burdensome for individuals residing overseas, and it is unclear why a derivative's signature must be original when the principal's may be photocopied.¹¹ The signature requirement for U visa qualifying family members should not be more burdensome than that for T visa qualifying family members, who are only required to sign their derivative petition (Form I-914 Supplement A) if physically present in the United States, see <https://www.uscis.gov/sites/default/files/document/forms/i-914supa.pdf>, nor should derivatives' signature requirements be more burdensome than that of principals. We recommend clarifying that only derivative family members who are physically present in the United States must sign the Form I-918 Supplement A and that photocopied or other electronically-reproduced signatures are acceptable.

Suggested language:

As explained above, we recommend the elimination of Part 8 of Supplement A and the corresponding instructions, as the qualifying family member's signature is unnecessary. In the event that USCIS decides to maintain the derivative signature requirement, we recommend the following language:

Part 8. Qualifying Family Member's Statement, Contact Information, Declaration, and Signature

Item Numbers 1.a-6.b. If your family member is in the United States, he or she must verify the accuracy of the information recorded on this supplement and must also complete this section of the supplement. He or she must select the appropriate box to indicate that he or she either read this supplement himself or herself or whether he or she had an interpreter assist him or her. If someone assisted him or her in completing the supplement, select the box indicating that he or she used a preparer. Further, he or she must sign and date the supplement and provide her or her daytime telephone number, mobile telephone number (if any), and email address (if any). Every supplement MUST contain the signature of the qualifying family member (or parent or legal guardian, if applicable). **If a family member who is physically present in the United States does not sign or date the application, then Form I-918, Supplement A, will be returned as**

¹⁰ See Form I-918, Local SOP, Version 16, Effective Date May 7, 2020.

¹¹ See *id.*

incomplete. An electronic reproduction (such as a scanned, faxed, or emailed copy) of the original signed document is acceptable.

~~A stamped or typewritten name or a scanned, faxed, or emailed copy in place of an original signature is not acceptable. A legal guardian may sign for a mentally incompetent person. If the qualifying family member does not sign or date the supplement, USCIS may return Supplement A as incomplete.~~

C. General Requirements (Page 10):

Current language:

1. Supplement B. You **must** submit an original, properly and timely executed Supplement B certification with your Form I-918.

Comment:

Although these form instructions require the submission of an original Supplement B, the Form I-918 Local SOP¹² and prior versions allow for the submission of a photocopied signature page. The inconsistency between the form instructions and the SOP creates confusion for USCIS mailroom contractors, U visa petitioners, and their representatives, and inconsistency in processing. In addition, requiring an original document imposes an unnecessary burden on law enforcement certifiers, as well as the United States Postal Service (“USPS”), which has well-documented backlogs, budget crises, and struggles in timely delivering mail.¹³ Delays in receiving the original signed Supplement B result in filing delays for petitioners, which can lead to significant additional delay in stabilizing their immigration status and recovering from their U visa victimization due to USCIS’s ever-growing backlog of U visa petitions.¹⁴

¹² Version 16, Effective date May 7, 2020.

¹³ See Quinn Kleinfelter, “There’s No End In Sight’: Mail Delivery Delays Continue Across The Country,” NPR.org, Jan. 22, 2021, available at <https://www.npr.org/2021/01/22/959273022/theres-no-end-in-sight-mail-delivery-delays-continue-across-the-country>, (last accessed Feb. 15, 2021); USPS, “Quarterly Performance for Single-Piece First Class Mail,” Quarter 1, FY2021, available at <https://about.usps.com/what/performance/service-performance/fy2021-q1-single-piece-first-class-mail-quarterly-performance.pdf> (showing 54.6% of three-five day first class mail delivered on time); Statement of Postmaster General and Chief Executive Officer Louis DeJoy before the Senate Committee on Homeland Security and Governmental Affairs, Hearing Examining the Finances and Operations of the United States Postal Service During COVID-19 and Upcoming Elections, U.S. Senate, Aug. 21, 2020, available at <https://about.usps.com/newsroom/testimony-speeches/082120-pmg-statement.htm>.

¹⁴ USCIS, Number of Form I 918, Petition for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, Fiscal Years 2009-2020, available at https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2020_qtr4.pdf (showing 161,708 pending U-1 petitions as of FY2020, Q4).

Permitting electronically reproduced signatures would be consistent with the general USCIS policy on signature validity,¹⁵ and would reduce the burden for law enforcement certifiers, petitioners, their representatives, and USPS. We recommend amending the instructions to allow electronic reproductions of the original signature page.

Suggested language:

1. Supplement B. You **must** submit an original, properly and timely executed Supplement B certification with your Form I-918. **An electronic reproduction of the original signed document is acceptable.**

D. Processing Information (Page 15):

Current language:

Initial Processing. Once USCIS accepts your Form I-918 or Supplement A, we will check it for completeness. If you do not completely fill out this petition or supplement, you will not establish a basis for your eligibility and USCIS may reject or deny your Form I-918 or Supplement A.

Comment:

In December 2019, USCIS suddenly began rejecting Form I-918s where petitioners had purportedly left answer fields blank or did not use specific terminology to indicate that a field or question was inapplicable.¹⁶ This policy represented a drastic shift from USCIS's prior practice of accepting Form I-918s even where irrelevant answer fields had been left blank.¹⁷ The suddenness of the shift, coupled with the total lack of notice provided to petitioners and representatives and the absence of clear indications of which fields were considered mandatory versus optional, resulted in the rejection of 98% of Form I-918s filed between December 30, 2019 and January 17, 2020 and nearly 12,000 of those filed between January and July 2020.¹⁸

¹⁵ See USCIS Policy Manual, Vol. 1, Chap.2, Part B, available at <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-2> (providing that "A signature is valid even if the original signature on the document is photocopied, scanned, faxed, or similarly reproduced").

¹⁶ Letter to Kenneth T. Cuccinelli, Senior Official Performing the Duties of the Director, Aug. 13, 2020, available at <https://asistahelp.org/wp-content/uploads/2020/08/Letter-to-USCIS-Blank-Space-Rejection-Policy-8.13.2020.pdf>.

¹⁷ Practice Advisory: "Insight into USCIS's Application of the 'No-Blanks' Policy to U-Visa Petitions," Nov. 20, 2020 (hereinafter No-Blanks Policy Insight), <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-advisory-insight-into-usciss-application>.

¹⁸ *Id.* at 2.

USCIS attempted to justify this policy on the basis that it was necessary to preserve the integrity of our immigration system.¹⁹ However, USCIS never explained how blank spaces in fields inapplicable to the petitioner caused demonstrable problems for USCIS or its evaluation of the merits of the claim. For years, USCIS has accepted forms with blank spaces for fields that did not apply to the petitioner. Moreover, there was no explanation of why any such problems are so significant as to warrant rejection of the entire petition. In fact, there is no evidence that USCIS's purpose in devising the "no-blanks" policy was anything but a pretext to dissuade immigrant crime victims from accessing the legal benefits for which they are eligible.

While USCIS has never explicitly addressed the legal justification for the no-blanks policy in the I-918 context, it has used a similar warning in the Form I-589 instructions that "If you file your application with missing information, we may return it to you as incomplete" to justify rejections of asylum applications.²⁰ It is likely that the no-blanks policy for U visa petitions was based on the almost-identical warning in the I-918 and Supplement A instructions that "If you do not completely fill out this petition or supplement, you will not establish a basis for your eligibility and USCIS may reject or deny your Form I-918 or Supplement A." Although USCIS has since paused implementation of the no-blanks policy pursuant to *Vangala v. USCIS*,²¹ we strongly recommend removing this provision from all forms related to U visa petitions to prevent USCIS from unfairly weaponizing the instruction against immigrant crime survivors in the future.

E. USCIS Forms and Information (Page 16):

Current language:

Instead of waiting in line for assistance at your local USCIS office, you can schedule an appointment online at www.uscis.gov. Select "Tools," then under "Self Service Tools," select "Appointments" and follow the screen prompts to set up your appointment. Once you finish scheduling the appointment, the system will generate an appointment notice for you

Comment:

¹⁹ See Catherine Rampell, *The Washington Post*, "The Trump administration's No-Blanks Policy Is the Latest Kafkaesque Plan Designed to Curb Immigration," Aug. 6, 2020, https://www.washingtonpost.com/opinions/the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/2020/08/06/42de75ca-d811-11ea-930e-d88518c57dcc_story.html.

²⁰ USCIS Ombudsman, *Ombudsman Alert: Recent Updates to USCIS Form Instructions*, Jan. 23, 2020, available at <https://www.dhs.gov/blog/2020/01/23/ombudsman-alert-recent-updates-uscis-form-instructions>.

²¹ 20 Civ. 08143 (N.D. Cal.); see generally "USCIS Updates Intake Policies and Halts Application of the Rejection policy in Response to *Vangala v. USCIS*" at 1, Jan. 14, 2021, <https://immigrationlitigation.org/wp-content/uploads/2021/01/Vangala-FAQ-and-Updated-USCIS-Guidance.pdf>.

USCIS no longer permits petitioners to set up appointments through the USCIS website.²² Instead, petitioners are instructed to call the USCIS Contact Center to request an appointment. Additionally, according to numerous reports from ASISTA's members, the USCIS Contact Center refuses to provide any information regarding individuals covered under 8 U.S.C. §1367, which includes U visa petitioners and their qualifying family members. Therefore, there is no mechanism by which U visa petitioners and their derivatives can obtain information about their case(s) from USCIS, except (1) through their attorney or representative; or (2) by submitting an inquiry in hardcopy to the relevant service center. We recommend updating the form instructions to reflect the elimination of the self-scheduling option for in-person appointments and providing instructions for obtaining information from USCIS for U visa petitioners.

²² See www.uscis.gov, "My Appointment," available at <https://my.uscis.gov/en/appointment/v2> (last accessed Feb. 15, 2021).

IV. Supplement B, U Nonimmigrant Status Certification

Document ID: USCIS-2010-0004-0069

Tracking Number: kjw-efm-ogtf

A. Part 1. Victim Information (Page 1), Item 5:

Current proposed language:

Gender Male Female

Comment:

We ask USCIS to amend the gender field on all I-918 forms in a way that is more inclusive to individuals who do not identify their gender in binary terms. We recommend providing an open text box rather than “male” and “female” checkboxes.

Further, on April 10, 2012, U.S. Citizenship and Immigration Services issued Policy Memorandum, “Adjudication of Immigration Benefits for Transgender Individuals; Addition of Adjudicator’s Field Manual (AFM) Subchapter 10.22 and Revisions to AFM Subchapter 21.3 (AFM Update AD12-02).” This memo states that the purpose of documents, such as the employment authorization document, is to record the applicant’s identity and immigration status. Through this memo, USCIS has agreed to issue documents reflecting the applicant’s identified gender if the individual presents documentation recognizing the new gender. This approach is further cemented through the January 19, 2017 USCIS Policy Memorandum, “Revision of Adjudicator’s Field Manual Subchapter 10.22 - Change of Gender Designation on Documents Issued by U.S. Citizenship and Immigration Services.” ASISTA commends USCIS for taking steps to recognize that transgender individuals must have immigration documentation that matches their gender and suggests that that approach be reflected in these instructions.

V. Instructions for Supplement B, U Nonimmigrant Status Certification

Document ID: USCIS-2010-0004-0068

Tracking Number: kjw-efff-91tp

A. General Instructions: How to Fill Out Supplement B, Item 4 (Page 2):

Current language:

4. Each Supplement B must be properly signed and filed. USCIS will not accept a photocopy of the signature page of the Supplement B or a typewritten name in place of a signature.

Comment:

As noted in Part III of this comment, the instructions state that the Form I-918 Supplement B must bear an original signature from the certifier, but the Form I-918 Local SOP, Version 16, Effective date May 7, 2020 and prior versions allow for the submission of a photocopied signature page. The inconsistency between the form instructions and the SOP creates confusion for USCIS mailroom contractors, U visa petitioners, and their representatives, and inconsistency in processing. In addition, requiring an original signature imposes an unnecessary burden on law enforcement certifiers, as well as the United States Postal Service (“USPS”), which has well-documented backlogs, budget crises, and struggles in timely delivering mail.²³ Delays in receiving the original signed Supplement B result in filing delays for petitioners, which can lead to significant additional delay in stabilizing their immigration status and recovering from their U visa victimization due to USCIS’s ever-growing backlog of U visa petitions.²⁴

Permitting electronically reproduced signatures would be consistent with the general USCIS policy on signature validity,²⁵ and would reduce the burden for law enforcement certifiers,

²³ See Quinn Kleinfelter, “There’s No End In Sight’: Mail Delivery Delays Continue Across The Country,” NPR.org, Jan. 22, 2021, available at <https://www.npr.org/2021/01/22/959273022/theres-no-end-in-sight-mail-delivery-delays-continue-across-the-country>, (last accessed Feb. 15, 2021); USPS, “Quarterly Performance for Single-Piece First Class Mail,” Quarter 1, FY2021, available at <https://about.usps.com/what/performance/service-performance/fy2021-q1-single-piece-first-class-mail-quarterly-performance.pdf> (showing 54.6% of three-five day first class mail delivered on time); Statement of Postmaster General and Chief Executive Officer Louis DeJoy before the Senate Committee on Homeland Security and Governmental Affairs, Hearing Examining the Finances and Operations of the United States Postal Service During COVID-19 and Upcoming Elections, U.S. Senate, Aug. 21, 2020, available at <https://about.usps.com/newsroom/testimony-speeches/082120-pmg-statement.htm>.

²⁴ USCIS, Number of Form I 918, Petition for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, Fiscal Years 2009-2020, available at https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2020_qtr4.pdf (showing 161,708 pending U-1 petitions as of FY2020, Q4).

²⁵ See USCIS Policy Manual, Vol. 1, Chap.2, Part B, available at <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-2> (providing that “A signature is valid even if the original signature on the document is photocopied, scanned, faxed, or similarly reproduced”).

petitioners, their representatives, and USPS. We recommend amending the instructions to allow electronic reproductions of the original signature page.

Suggested language:

4. Each Supplement B must be properly signed and filed. USCIS will not accept a stamped or typewritten name in place of a signature. An electronic reproduction (such as a scanned, faxed, or emailed copy) of the original signed document is acceptable.