
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1261 **Hearing Date:** June 27, 2023
Author: Santiago
Version: June 15, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crime: witnesses and informants*

HISTORY

Source: Los Angeles County District Attorney's Office

Prior Legislation: AB 2321 (Jones-Sawyer) Chapter 329, Stats.
AB 2426 (Reyes) Chapter 187, Stats. 2020
AB 917 (Reyes) Chapter 576, Stats. 2019
AB 2027 (Quirk) Chapter 749, Stats. 2016
SB 674 (DeLeon) Chapter 721, Stats. 2015

Support: AAPI Equity Alliance; Coalition to Abolish Slavery & Trafficking; County of Los Angeles Board of Supervisors; Immigrant Legal Resource Center; Los Angeles Center for Law and Justice; Public Counsel

Opposition: None known

Assembly Floor Vote: 66 - 0

PURPOSE

The purpose of this bill is to codify the procedures for a noncitizen qualified criminal informant to obtain certification from a certifying entity for purposes of obtaining an S-Visa.

Existing federal law allows a noncitizen who has been a victim of a crime to receive a U-visa if the Secretary of Homeland Security determines the following:

- a) The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity as described;
- b) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, possesses information concerning the criminal activity;
- c) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity as described;

- d) The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States; and,
- e) The criminal activity is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. (8 U.S.C. § 1101 (a)(15)(U).)

Existing federal law allows a noncitizen to receive a T-visa if the Secretary of Homeland Security determines the following:

- a) The person is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;
- b) The person is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- c) The person has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,
- d) The person would suffer extreme hardship involving unusual and severe harm if removed from the United States. (8 U.S.C. § 1101 (a)(15)(T).)
- e) Allows a noncitizen to receive an S-Visa if the Attorney General determines:
 - i. The person is in possession of critical reliable information concerning a criminal organization or enterprise;
 - ii. The person is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and,
 - iii. The Attorney General determines the person's presence in the country is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise. (8 U.S.C. § 1101 (a)(15)(S).)

Existing federal law allows a noncitizen to receive an S-Visa if the Secretary of State and the Attorney General jointly determine that:

- a) The person is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;
- b) The person is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;
- c) The person will be, or has been, placed in danger as a result of providing such information; and,
- d) The person is eligible to receive a reward under specified provisions of federal law. (8 U.S.C. § 1101 (a)(15)(S).)

Existing law requires certifying agencies, upon the request of a noncitizen victim of crime or their family member, or licensed attorney representing the victim, to certify victim helpfulness on the applicable form so that they may apply for a U-visa. (Penal Code § 679.10 (g).)

Existing law creates a rebuttable presumption that a noncitizen victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Penal Code § 679.10 (h).)

Existing law mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Penal Code § 679.10 (j).)

Existing law requires certifying agencies, upon the request of a noncitizen human-trafficking victim, their family member, or licensed attorney representing the victim, to certify victim helpfulness on the applicable form so that they may apply for a T-visa. (Penal Code, § 679.11 (f).)

Existing law creates a rebuttable presumption that a noncitizen human-trafficking victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Penal Code, § 679.11 (g).)

Existing law mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Penal Code § 679.11, (i).)

This bill authorizes a certifying entity to certify Form I-854 for a qualified criminal informant to obtain an S-Visa.

This bill requires the certifying official to fully complete and sign the Form I-854 certification and to include specific details regarding the qualified criminal informant's helpfulness, including the nature of the crime investigated or prosecuted and a detailed description of the qualified criminal informant's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

This bill provides that an informant's criminal history information, immigration history, gang membership, a belief that a declaration will not be approved by United States Citizenship and Immigration Services, the fact that a victim has an open case with another certifying entity, the extent of harm the victim suffered, the victim's inability to produce a crime report, nor the victim's cooperation refusal in a separate case are not grounds for a certifying entity to refuse to certify a Form I-854 certification.

This bill provides that a qualified informant does not have to be present in the United States for certification of a Form I-854.

This bill prohibits a certifying official from disclosing the immigration status of the qualified criminal informant for whom Form I-854 certification has been completed, except to comply with federal law or legal process, or if authorized by the informant.

This bill provides that a certifying entity may only withdraw the certification if the qualified criminal informant refuses to provide information and assistance when reasonably required.

This bill defines a "certifying entity" as any of the following: a state or local law enforcement agency; a prosecutor; a judge; any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity; and, agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Civil Rights Department, and the Department of Industrial Relations.

This bill defines a "certifying official" as any of the following: the head of the certifying entity; a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-854 certifications on behalf of that agency; a judge; or any other certifying official defined under specified federal regulations.

This bill defines "qualified criminal informant" as an individual who meets the following requirements:

- a) The informant must have reliable information about an important aspect of a crime or pending commission of a crime;
- b) The informant must be willing to share that information with United States law enforcement officials or become a witness in court; and,
- c) The informant's presence in the United States is important and leads to the successful investigation or prosecution of that crime.

This bill provides that for the purposes of rebutting the presumption that a victim has been helpful the refusal for cooperation cannot be used if the victim reasonably asserts they were unaware of a request for cooperation.

This bill provides that if a certifying entity does not certify a Form I-918 Supplement B certification, they shall provide a written explanation for the denial in writing with specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate.

This bill specifies that apprehension of the suspect who committed the qualifying crime is not required for the victim to request and obtain the Form I-914, or Form I-918, Supplement B certification.

This bill provides that a victim who submits a Form I-918 Supplement B to a certifying entity does not have to be present in the United States at the time of submitting the certification or filing a petition.

This bill allows certifying entities to certify a Form I-918, or Form I-914, Supplement B certification, not only for direct victims, but also "indirect victims," and "bystander or witness victims," as defined.

COMMENTS

1. Need for This Bill

According to the author:

AB 1261 would solidify pathways for justice and relief for California's most vulnerable residents by codifying the procedures for S visas and clarifying the procedures for U and T visas, aligning the California Penal Code with existing federal law. Fear of detection, deportation, dismissal, or humiliation often prevent undocumented crime victims or witnesses of crime from seeking assistance from law enforcement agencies. This bill would seek to mitigate said fears by highlighting and clarifying how the undocumented community can protect their status and presence in the State while also seeking justice and relief by cooperating with law enforcement. Federal comprehensive immigration reform may not occur for many years, but AB 1261 is a step in the right direction towards ensuring public safety and justice for all.

2. S-Visas

The S-Visa program is for noncitizen criminal informants/witnesses who have reliable information about a criminal/terrorist organization and cooperate with law enforcement. Only law enforcement agencies can initiate S-Visas. Law enforcement agencies use Form I-854A to request an S visa for a noncitizen witness/criminal informant. After a noncitizen informant has fulfilled their obligation (cooperation), law enforcement agencies can use Form I-854B to authorize an S-visa holder to apply for an adjustment in status to become a lawful permanent resident. (<https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-an-informant-s-nonimmigrant> [as of April 4, 2023].)

To be eligible for an S-Visa, the noncitizen must, among other things, possess critical reliable information concerning a criminal organization or enterprise, or a terrorist organization or operation, and must have supplied, or be willing to supply, that information to law enforcement authorities. (8 U.S.C. § 1101 (a)(15)(S).) The two most common types of S-Visas are the S5-Visa and the S6-Visa. The S5-Visa may be granted to a foreign national who has been determined by the Attorney General to possess critical and reliable information concerning a criminal organization or enterprise and who provides that information to federal or state law enforcement or a federal or state court. In contrast, the S6-Visa classification may be granted to a noncitizen who the Attorney General and Secretary of State have determined possesses critical and reliable information concerning terrorism and who is willing to supply, or has supplied, information to *federal* law enforcement authorities or to a *federal* court.

This bill would codify procedures in state law allowing law enforcement agencies to certify a Form I-854 certification for a qualified criminal informant to obtain an S-Visa and provide requirements that certifying entities and officials must adhere to in the process.

3. T-Visas

"The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes

and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, created the T nonimmigrant status ("T-visa") program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities." (See *U and T Visa Law Enforcement Resource Guide*, Department of Homeland Security, p. 9, <https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf>.)

"The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier." (*U and T Visa Law Enforcement Resource Guide, supra*, at pp. 9-10.)

To be eligible for a T-Visa, the noncitizen victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form of trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. (*U and T Visa Law Enforcement Resource Guide, supra*, at p. 9.)

Although declaration is not required for the application, the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-visa application. (*U and T Visa Law Enforcement Resource Guide, supra*, at pp. 10-11.)

This bill would clarify that an applicant for a T-Visa can request certification by the certifying entity while outside the United States, and that the suspect need not be apprehended for the person to apply. This bill would further provide that law enforcement cannot refuse to complete the corresponding form because of: the victim's criminal history information; immigration history; gang membership; the certifying official believes that the Department of Homeland Security will not approve the application; the victim has an open case with another certifying entity; the certifying entity believes the victim is eligible for relief under another provision of law; the victim's inability to produce a crime report; or, the victim's refusal to cooperate in another case.. This bill would also require a written explanation when a certifying official denies a Form I-914 certification. Finally, this bill would expand the application procedures not only for direct victims, but also for indirect, and bystander/witness victims.

4. U-Visas

In October 2000, Congress, as part of the reauthorization of the Violence Against Women Act, created the U-Visa to provide noncitizen crime victims an avenue to obtain lawful immigration status and thus encourage cooperation with law enforcement by noncitizen victims of crimes other than human trafficking. In order to qualify for a U-Visa: the applicant must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying activity; the applicant must possess information concerning such criminal activity; the applicant must be helpful, have been helpful, or likely to be helpful in the investigation or prosecution of a crime; and the criminal activity must have occurred in the U.S. or violated the state or federal law of the United States.

In order to apply for a U-Visa, the qualified noncitizen victim must obtain a certification of a helpfulness from a law enforcement official, prosecutor, judge or federal or state agency authorized to detect investigate or prosecute any of the criminal activities listed in the U-Visa statute. This certification form is called Form I-918.

This bill would make the same changes described above that are being made to T-Visas also apply to U-Visas.

5. Argument in Support

The AAPI Equity Alliance supports this bill stating:

Anti-Immigrant crime is increasing at alarming rates in California. According to the California Department of Justice's (DOJ) 2021 report on hate crimes, "hate crime events" reported to law enforcement "increased 32.6% from 1,330 in 2020 to 1,763 in 2021," and "hate crime offense increased 42.1% from 1,563 in 2020 to 2,221 in 2021." Specifically, the DOJ found that "[v]iolent [hate] crime offenses increased 47.4% from 1,088 in 2020 to 1,604 in 2021."

In addition to the startling increase in hate crimes, many immigrant communities were also impacted by anti-immigrant policies put in place by the federal government. Reports of United States Customs and Immigration agents making arrests of undocumented immigrants in California courthouses caused a "chilling effect" on undocumented person's willingness to come to court and testify.

This "chilling effect" became so great that Chief Justice Tani Cantil-Sakauye wrote a letter to then-United States Attorney General Jeff Sessions and Homeland Security Secretary John Kelly expressing concern about immigration agents staking out California courthouses. In her letter Chief Justice Cantil-Sakauye stated:

When an individual's immigration status is publicly aired in our courthouses, some officers of the courts are chilling the participation by undocumented immigrants by conveying to them that their participation in our courts may lead to their deportation. All Californians need to have safe access to our courts. When our residents feel apprehension or fear when participating in our system of justice, our collective public safety is undermined.

The U, T, and S Visa certifications are critical means of strengthening relationships between law enforcement and our immigrant communities, and show vulnerable members of the community that they can safely report crimes and assist in investigations. By helping ensure that undocumented community members feel protected by law enforcement, these programs can increase the likelihood immigrants will turn to law enforcement after a crime has occurred.

AB 1261 enhances collective public safety by providing clear definitions of the different types of victims eligible to receive visas under these programs and clear guidance to law enforcement/ prosecutors on the requirements and factors that are not required for a U, T, or S Visa to be issued.

-- END --