

LFC Requester:

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## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 1/30/25

Check all that apply:

Bill Number: SB177

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Antoinette Sedillo Lopez

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: U Visa Certification Act

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### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

Under federal law, noncitizen victims of certain serious crimes may, if they cooperate with law enforcement, receive a U Visa that authorizes four years of lawful presence within the United States. In order to obtain a U Visa, an applicant must obtain a certification from law enforcement. The U Visa Certification Act (Section 1) would require state law enforcement agencies to take action on applications for U Visa certifications and create an enforcement mechanism.

Section 2 of SB177 defines various terms.

Section 3 defines the circumstances under which a victim is eligible to obtain a U Visa certification.

Section 4 requires law enforcement agencies to process U Visa certification requests within 30 days, or 14 days if the victim is subject to removal proceedings. If an agency denies a certification request, it must provide a written explanation to the victim and permit an internal appeal of that decision. If the agency upholds a denial after an appeal, the victim may request the N.M. Department of Justice (NMDOJ) to review that decision.

Section 5 requires agencies to publish their procedures for obtaining a U Visa certification on their websites. It also requires agencies to record information relating to U Visa certification applications and make that information available upon request to the NMDOJ or Legislature.

Section 6 permits victims to petition district courts for relief if their request was denied and upheld on review, or if the NMDOJ denied their request. If the court finds that the petitioner is a victim, qualifies, and is eligible for a certification, the court shall complete the certification. The court may also award reasonable costs, attorney fees, and equitable relief.

**FISCAL IMPLICATIONS**

As noted below, SB177 presents administrative implications for the NMDOJ. The volume of U-Visa denials to be processed is unclear and, as such, the associated workload is unknown. Nevertheless, SB177 does not appropriate funds or otherwise account for resources necessary

(such as a filing fee) to address the workload.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

## **SIGNIFICANT ISSUES**

Congress has “broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394 (2012). When Congress enacts a detailed framework governing a particular area of immigration law, it “occupie[s] the field” and “foreclose[s] any state regulation in the area, even if it is parallel to federal standards.” *Id.* at 401. The federal government has enacted detailed standards governing the eligibility and application process for U Visas. See 8 C.F.R. § 214.14. Accordingly, federal regulation may have preempted SB177, even if the bill’s provisions are not inconsistent with federal law.

Certain terms defined by SB177 do not match their definitions under 8 C.F.R. § 214.14. For example, “victim” under SB177 means “a person directly and proximately harmed as a result of qualifying criminal activity and includes a spouse, a child under age twenty-one, a parent or a sibling under age eighteen of a person who is deceased due to murder or manslaughter or a person directly and proximately harmed as a result of qualifying criminal activity who is incompetent or incapacitated.” Although this generally tracks the definition of victim under § 214.14(14), it does not include the requirement that the incompetent or incapacitated person be “unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity,” *id.* (14)(i), and does not include the additional language under (14)(ii) governing victims of “witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy.” These inconsistencies could lead to greater preemption problems, and could create a situation where a person would be entitled to a certification under state law but would not qualify for a visa under federal law.

The enforcement mechanism under Section 6 is unclear. The enforcement action is described as a petition, but it is unclear whether it is intended to function as an appeal of agency action or a civil action. Accordingly, the procedural and substantive law that would apply is unclear. The burden and standard of proof are both undefined. It is unclear if the proceeding is intended to be adversarial, although this is suggested by the fact that a court may award attorneys fees.

## **PERFORMANCE IMPLICATIONS**

See below under Administrative Implications – the agency would have to perform additional tasks.

## **ADMINISTRATIVE IMPLICATIONS**

SB177 would require NMDOJ to perform various additional functions. First, it would have to set up an internal appeal process for U Visa certification denials. It would also have to publish information relating to U Visa certification applications on the website and compile information, including “(1) the number of requests for U visa certification received in a calendar year; (2) the dates on which the certifying entity received each request for U visa certification; (3) the number of requests for U visa certification that were approved and completed; (4) the number of requests for U visa certification that were denied; and (5) the number of completed U visa certifications

that were subsequently withdrawn.”

NMDOJ would also have to establish procedures for reviewing U Visa certification requests that were denied by other agencies. It would also have to defend itself against petitions in district court under Section 6.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

#### **TECHNICAL ISSUES**

Spelling error on p. 8 line 2: “calender” should read “calendar”

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

None.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

#### **AMENDMENTS**

To avoid definitional mismatches, SB177 could define terms like “victim” and “qualifying crime” to have the meaning given by 8 C.F.R. § 214.14.