STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

July 20, 2018

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. Justyn Howard
Department of Finance
915 L Street
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01
Penal Code Section 679.10; Statutes 2015, Chapter 721 (SB 674)
City of Claremont, Claimant

Dear Ms. Chinn and Mr. Howard:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **August 10, 2018**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

[1] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Hearing

This matter is set for hearing on **Friday, September 28, 2018** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about September 14, 2018. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

ITEM _

TEST CLAIM

DRAFT PROPOSED DECISION

Penal Code Section 679.10

Statutes 2015, Chapter 721 (SB 674)

U Visa 918 Form, Victims of Crime: Nonimmigrant Status

17-TC-01

City of Claremont, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim alleges reimbursable state-mandated activities arising from Statutes 2015, chapter 721 (SB 674), which added section 679.10 to the Penal Code. The test claim statute requires local agencies, upon request of a victim of qualifying criminal activity seeking temporary immigration benefits under the federal U Visa program and willing to assist law enforcement with investigation or prosecution of the criminal activity, to complete and certify the federal Form I-918 Supplement B (U Nonimmigrant Status Certification) and to submit annual reports about the certifications to the Legislature.

Staff finds that Penal Code section 679, added by the test claim statute, imposes a state-mandated new program or higher level of service on local agencies. However, because there is no evidence in the record to support a finding of costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, staff recommends that the Commission on State Mandates (Commission) deny this Test Claim.

Procedural History

SB 674, Statutes 2015, chapter 721, was enacted on October 9, 2015. The City of Claremont (claimant) filed the Test Claim on March 6, 2018, alleging that it first incurred costs under the test claim statute in fiscal Year 2017-2018, after receiving the first request for U Visa certification under the new law on November 21, 2017.[1] The Department of Finance (Finance) filed comments on the Test Claim on April 16, 2018.[2] The claimant filed rebuttal comments on May 1, 2018.[3] Commission staff issued the Draft Proposed Decision on July 20, 2018[4].

[1] Exhibit A, Test Claim, pages 1, 3, 5-6; Exhibit A, Test Claim, pages 11-12.

[2] Exhibit B, Finance's Comments on the Test Claim.

[3] Exhibit C, Claimant's Rebuttal Comments.

[4] Exhibit D, Draft Proposed Decision.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statue or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution. In making its decisions, the Commission must strictly construe XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[5]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation:

Issue	Description	Staff Recommendation
Was the Test Claim timely filed pursuant to Government Code section 17551 and California Code of Regulations, title 2, section 1183.1?	Government Code section 17551(c) states: "test claims shall be filed not later than 12 months following the effective date of a statue or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." At the time of filing, Section 1183.1(c) of the Commission's regulations stated: "[f]or purposes of claiming based on the date of first incurring costs, 'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."	*The Test Claim was timely filed* – This Test Claim alleges costs were first incurred after the city received its first U Visa request after enactment of the test claim statute on November 21, 2017, in fiscal year 2017-2018. The Test Claim was filed on March 6, 2018. Accordingly, the Test Claim was filed within 12 months of first incurring costs, which is timely pursuant to the second prong of the Government Code section 17551(c).

[5] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue	Description	Staff Recommendation
Did the Test Claim meet the filing requirements of the Government Code by alleging that reimbursable state-mandated costs will exceed $1,000?	Finance argues that the claimant did not meet the test claim filing requirements since there is no evidence that the claimant incurred at least $1,000 in actual costs *before* filing the Test Claim pursuant to Government Code sections 17553(b)(1)(C) and 17564(a).[6] The Test Claim only provides an estimate of increased costs.[7] The claimant argues that the instructions for the test claim form require the claimant to include a statement of the "actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate" and that "actual and/or estimated costs resulting from the alleged mandate exceeds $1,000."[8] Thus, the claimant argues that it only has to show that it expects costs will exceed $1,000 in order to file a test claim.	*The Test Claim meets the test claim filing requirements of the Government Code –* In order for the Commission to take jurisdiction over a test claim, the claim must *allege* that reimbursable state-mandated costs will exceed $1,000. The allegations can be based on an estimate that costs to comply with the alleged mandated program will exceed $1,000. Government Code section 17564(a) states that no test claim or reimbursement claim shall be filed unless these claims exceed $1,000. Government Code section 17551, requires the Commission to hear and decide a test claim *alleging* that local agencies or school districts are entitled to reimbursement for costs mandated by the state, as required by article XIII B, section 6 of the California Constitution. Government Code section 17521 defines a "test claim" to mean "the first claim filed with the commission *alleging* that a particular statute or executive order imposes costs mandated by the state." Government Code section 17553(b)(1)(C) includes as a

[6] Exhibit B, Finance's Comments on the Test Claim, page 2.

[7] Exhibit B, Finance's Comments on the Test Claim, page 2.

[8] Exhibit C, Claimant's Rebuttal Comments, page 2.

Issue	Description	Staff Recommendation
		required element of a written narrative for a test claim filing, the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed. Evidence of actual increased costs in the record is required for the Commission to make a finding that the test claim statute imposes costs mandated by the state pursuant to Government Code section 17514. However, section 17553, when read with the filing requirements of section 17551(c), does not require a showing of actual increased costs in excess of $1,000 prior to filing. Government Code section 17551(c) requires the filing of a test claim "not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Under the first prong of section 17551(c), a test claim can be filed the day after the effective date of the statute, before costs are actually incurred, and be considered timely and complete. Here, the claimant has alleged that it first incurred increased costs under the test claim statute in fiscal year 2017-2018 and estimated that these costs will amount to $2,755 for that fiscal year, and $1,299 for the following 2018-2019 fiscal

Issue	Description	Staff Recommendation
		year. This exceeds the $1,000 minimum requirement for filing a test claim.
Does Penal Code section 679.10, as added by Statutes 2015, chapter 721 impose a reimbursable state-mandated program?	The test claim statute requires local agencies, upon request of a victim of qualifying criminal activity seeking temporary immigration benefits under the federal U Visa program and willing to assist law enforcement with the criminal investigation or prosecution, to complete and certify the federal Form I-918 Supplement B (U Nonimmigrant Status Certification) and to submit annual reports about the certifications to the Legislature.	*Deny – There is no evidence in the record of increased actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514* - Though the test claim statute mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, there is no evidence in the record to support a finding of increased actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514. The Test Claim contains detailed cost *estimates* to implement the mandated program, but there is no evidence of *actual* costs mandated by the state in the record.

Staff Analysis

A. The Commission Has Jurisdiction to Decide This Test Claim.

1. This Test Claim Was Timely Filed Pursuant to Government Code section 17551.

This Test Claim was filed on March 6, 2018, and alleges costs were first incurred after the city received its first U Visa request after the test claim statute was enacted on November 21, 2017, in fiscal year 2017-2018.[9] Accordingly, the fiscal year in which costs were first incurred, for purposes of the Commission's regulations, is fiscal year 2017-2018, and the claimant had until June 30 of fiscal year 2018-2019 to file its claim, based on the regulations in effect at that time.[10]

[9] Exhibit A, Test Claim, pages 11-12.

[10] California Code of Regulations, title 2, section 1183.1(c) (Register 2016, No. 38).

Therefore, the Test Claim was filed within 12 months of first incurring costs, which is timely pursuant to the second prong of the Government Code section 17551(c).

2. This Test Claim Meets the Filing Requirements of the Government Code by Alleging that Reimbursable State-Mandated Costs Will Exceed $1,000.

In order for the Commission to take jurisdiction over a test claim, the claim must *allege* that reimbursable state-mandated costs will exceed $1,000 in accordance with the Government Code sections 17564, 17551, 17521, and 17553(b)(1)(C). The allegations can be based on an estimate that costs to comply with the alleged mandated program will exceed $1,000. The claimant has alleged that it first incurred increased costs under the test claim statute in fiscal year 2017-2018 and estimated that these costs will amount to $2,755 for that fiscal year, and $1,299 for the following fiscal year (2018-2019). This exceeds the $1,000 minimum requirement for filing a test claim.

Government Code section 17551, requires the Commission to hear and decide a test claim *alleging* that local agencies or school districts are entitled to reimbursement for costs mandated by the state, as required by article XIII B, section 6 of the California Constitution.

Government Code section 17564(a) states that no test claim or reimbursement claim shall be filed unless these claims exceed $1,000.

Government Code section 17553(b)(1)(C) includes as a required element of a written narrative for a test claim filing, the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed. Evidence of actual increased costs in the record is required for the Commission to make a finding that the test claim statute imposes costs mandated by the state pursuant to Government Code section 17514.

However, section 17553, when read with the filing requirements of section 17551(c), does not require a showing of actual increased costs in excess of $1,000 prior to filing. Government Code section 17551(c) requires the filing of a test claim "not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Under the first prong of section 17551(c), a test claim can be filed the day after the effective date of the statute, before costs are actually incurred, and be considered timely and complete.

Here, the claimant has alleged that it first incurred increased costs under the test claim statute in fiscal year 2017-2018 and estimated that these costs will amount to $2,755 for that fiscal year, and $1,299 for the following 2018-2019 fiscal year. This exceeds the $1,000 minimum requirement for filing a test claim.

Therefore, this Test Claim meets the filing requirements of the Government Code.

B. Penal Code Section 679.10 Does Not Impose a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Because There Is No Evidence of Actual Increased Costs Mandated by the State in the Record.

Penal Code section 679.10, added by the test claim statute (Stats. 2015, ch. 721), mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution for "certifying officials" from the "certifying entities" of local agencies

within the meaning of the section 679.10(a), with the *exception* of the police/security departments of school districts and special districts, and judges, to perform the following new activities:

- The certifying official shall fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and "include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity" within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)
- A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(l).)

These activities are new, with respect to prior law, because prior to enactment of the test claim statute, local agencies had the authority, but were not required to certify the Form I-918 Supplement B, and the reporting requirement did not exist. In addition, the statute is uniquely imposed on government and provides a service to the public. The goal of the test claim statute "is to ensure the maximum amount of immigrant victims of crime in California have the opportunity to apply for the federal U-Visa when the immigrant was a victim of a qualifying crime and has been helpful or is likely to be helpful in the investigation or prosecution of that crime" and to create "equity in the granting of the certifications of victim helpfulness that are essential to the crime victim's U-Visa application filed with the USCIS."[11] Thus, the statute imposes a new program or higher level of service.

Reimbursement is not required under article XIII B, section 6, however, because there is no evidence in the record that the test claim statute results in increased actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514. In *County of Sonoma*, the court concluded that article XIII B, section 6 requires a showing of "increased actual expenditures," and that "when the Constitution uses 'costs' in the context of subvention of funds to reimburse for the 'costs of such program,' that some *actual cost* must be demonstrated...."[12] The Commission's finding of costs mandated by the state must be supported by substantial evidence in the record pursuant Government Code section 17559 and section 1187.5 of the Commission's regulations. In this case, the Test Claim states that costs were first incurred under this program after the city received the first U Visa request on November 21, 2017, after the effective date of the test claim statute, but no evidence of actual costs is provided in the record. Instead, the Test Claim contains detailed cost *estimates* to implement the mandated program, and assertions that costs will exceed $1,000 each fiscal year.

[11] Exhibit A, Test Claim, page 27 (Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of SB 674, as introduced February 27, 2015, page 6).

[12] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284, 1285.

Therefore, though the allegation of costs in excess of $1000 is sufficient for jurisdictional purposes, there is no substantial evidence in the record to support a finding of actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

Conclusion

Based on the forgoing analysis, staff finds that the test claim statute, Statutes 2015, chapter 721 does not impose a reimbursable state-mandated program on local agencies.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 679.10 Statutes 2015, chapter 721 (SB 674) Filed on March 6, 2018 City of Claremont, Claimant	Case No.: 17-TC-01 *U Visa 918 Form, Victims of Crime: Nonimmigrant Status* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 28, 2018*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 28, 2018. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	**Vote**
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

Summary of the Findings

This Test Claim alleges reimbursable state-mandated activities arising from Statutes 2015, chapter 721 (SB 674), which added section 679.10 to the Penal Code, effective January 1, 2016. The test claim statute requires local agencies, upon request made of a victim of qualifying criminal activity seeking temporary immigration benefits under the federal U Visa program and willing to assist law enforcement with investigation or prosecution of the criminal activity, to complete and certify the federal Form I-918 Supplement B (U Nonimmigrant Status Certification) and to submit annual reports about the certifications to the Legislature.

The Test Claim is timely filed pursuant to Government Code section 17551 and section 1183.1 of the Commission's regulations. A test claim must be filed not later than 12 months after the effective date of the statute or executive order, or within 12 months of the date when the costs are first incurred. At the time of filing, Commission regulations defined "within 12 months" for purposes of filing based on the date costs are first incurred to mean by the end of the fiscal year (June 30) following the fiscal year in which costs were first incurred. This Test Claim was filed March 6, 2018, based on alleged costs first incurred after first receiving a U Visa request on November 21, 2017, and is therefore timely.

The Test Claim also meets the filing requirements of the Government Code. In order for the Commission to take jurisdiction over a test claim, the claim must *allege* that reimbursable state-mandated costs will exceed $1,000 in accordance with the Government Code sections 17564, 17551, 17521, and 17553(b)(1)(C). The claimant has alleged that it first incurred increased costs under the test claim statute in fiscal year 2017-2018 and estimated that these costs will amount to $2,755 for that fiscal year, and $1,299 for the next, 2018-2019 fiscal year. This exceeds the $1,000 minimum requirement for filing a test claim.

The Commission further finds that that Penal Code section 679.10 added by the test claim statute (Stats. 2015, ch. 721) mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution for "certifying officials" from the "certifying entities" of local agencies within the meaning of the section 679.10(a), with the *exception* of the police/security departments of school districts and special districts, and judges, to perform the following new activities:

- The certifying official shall fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and "include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity" within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)
- A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(l).)

These activities are new, with respect to prior law, because prior to enactment of the test claim statute, local agencies had the authority, but were not required to certify the Form I-918 Supplement B, and the reporting requirement did not exist. In addition, the statute is uniquely imposed on government and provides a service to the public. The goal of the test claim statute "is to ensure the maximum amount of immigrant victims of crime in California have the opportunity to apply for the federal U Visa when the immigrant was a victim of a qualifying crime and has been helpful or is likely to be helpful in the investigation or prosecution of that crime" and to create "equity in the granting of the certifications of victim helpfulness that are essential to the crime victim's U Visa application filed with the USCIS."[13] Thus, the activities impose a new program or higher level of service.

The Commission, however, finds that reimbursement is not required under article XIII B, section 6 because there is no evidence in the record that the test claim statute results in increased actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514. In *County of Sonoma*, the court concluded that article XIII B, section 6 requires a showing of "increased actual expenditures," and that "when the Constitution uses 'costs' in the context of subvention of funds to reimburse for the 'costs of such program,' that some *actual cost* must be demonstrated...."[14] The Commission's finding of costs mandated by the state must be supported by substantial evidence in the record pursuant Government Code section 17559 and section 1187.5 of the Commission's regulations. In this case, the Test Claim states that costs were first incurred under this program in fiscal year 2017-2018, after first receiving a U Visa request on November 21, 2017, but no evidence of actual costs is included in the record. Instead, the Test Claim contains detailed cost *estimates* to implement the mandated program, and unsupported assertions that costs will exceed $1,000 each fiscal year.

Therefore, there is no substantial evidence in the record to support a finding of the costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

Accordingly, based on this record, the Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2016	Penal Code Section 679.10 as added by Statutes 2015, chapter 721 (SB 674) becomes effective.
11/21/2017	The City of Claremont (claimant) alleges that it first incurred costs after the first U Visa request after the effective date of the test claim statute was submitted.
03/06/2018	The claimant filed the Test Claim.[15]

[13] Exhibit A, Test Claim, page 27 (Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of SB 674, as introduced February 27, 2015, page 6).

[14] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284, 1285.

[15] Exhibit A, Test Claim.

04/16/2018	The Department of Finance (Finance) filed comments on the Test Claim.[16]
05/01/2018	The claimant filed rebuttal comments.[17]
07/20/2018	Commission staff issued the Draft Proposed Decision.[18]

II. Background

This Test Claim addresses Statutes 2015, chapter 721 (SB 674), which added section 679.10 to the Penal Code, effective January 1, 2016. The test claim statute requires local agencies, upon requests made by victims of certain qualifying criminal activity, who are seeking temporary immigration benefits under the federal U Visa program, and are willing to assist law enforcement with the investigation or prosecution of the criminal activity, to complete and certify the federal Form I-918 Supplement B (U Nonimmigrant Status Certification) and to submit annual reports about the certifications to the Legislature.

A. Prior Federal Law Created the U Visa Program, and Gave Law Enforcement Agencies Authority to Complete Form I-918, Supplement B ("U Nonimmigrant Status Certification") at Their Discretion.

In October 2000, Congress created the U nonimmigrant status program, or U Visa, with the passage of the Victims of Trafficking and Violence Protection Act (VTVPA or the Act).[19] The federal U Visa regulations were adopted September 17, 2007, and became effective October 17, 2017.[20] The Act offers temporary legal status to alien victims of certain criminal activity if the victim has suffered substantial physical or mental abuse as a result of a qualifying criminal activity and is willing to assist law enforcement with the investigation or prosecution of the criminal activity.[21] The Act was created out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. The U Visa program encourages these victims to report crimes and assist in their prosecution by offering temporary legal status and work authorization in appropriate cases. The purpose of the Act is stated in section 1513(a) of the Act as follows:

> (A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate,

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[16] Exhibit B, Finance's Comments on the Test Claim.

[17] Exhibit C, Claimant's Rebuttal Comments.

[18] Exhibit D, Draft Proposed Decision.

[19] Public Law No. 106-386, Title V, section 1513(b) has been codified in 8 United State Code, sections 1101(a)(15)(T), 1101(a)(15)(U), 1184(o), 1184(p), 1255(l), 1255(m).

[20] 8 Code of Federal Regulations, parts 103, 212, 214, 248, 274a and 299.

[21] 8 United State Code, section 1101(a)(15)(U); *see also*, Exhibit X, U.S. Citizenship and Immigration Services (USCIS), "Victims of Criminal Activity: U Nonimmigrant Status," https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status, accessed July 10, 2018.

and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.[22]

In order to qualify for the U Visa, the victim must prove to the U.S. Citizenship and Immigration Services (USCIS), a component of the Department of Homeland Security (DHS), that he or she is (1) a victim of a qualifying criminal activity that occurred in the United States or its territories; (2) has suffered "substantial physical or mental abuse" as a result of the qualifying criminal activity; (3) possesses information about the criminal activity, and (4) has been deemed helpful in the investigation or prosecution of that criminal activity.[23] These eligibility factors are defined in federal regulations as follows:

Eligibility. An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:

(1) The alien suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

[22] Public Law No. 106-386, Title V, section 1513(a).

[23] 8 United State Code section 1101(a)(15)(U); 8 Code of Federal Regulations, section 214.14(b)(c); Exhibit X, "U and T Visa Law Enforcement Resource Guide," Department of Homeland Security, page 4.

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian, or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.[24]

"Qualifying crime or qualifying criminal activity" includes

> . . . one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term "any similar activity" refers to criminal offenses in which the nature and elements of the

[24] 8 Code of Federal Regulations section 212.14(b). "Next friend" is defined in 8 Code of Federal Regulations section 214.14(a)(7) as follows: "Next friend means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian."

> offenses are substantially similar to the statutorily enumerated list of criminal activities.[25]

A "victim of qualifying criminal activity" is defined as "an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity."[26]

In addition, federal law extends the definition of "victim" to include indirect victims when the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, as follows:

> The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.[27]

Section 214.14(a)(14)(ii) of the federal regulations further clarifies how one will be considered a victim of witness tampering, obstruction of justice, and perjury (crimes which are not directly against a person) for purposes of U Visa qualification:

> A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:
>
> (A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and
>
> (B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:
>
> (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
>
> (2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The U Visa may also be available to certain members of the victim's family if their assistance in the investigation or prosecution of qualified criminal activity is deemed necessary:

> [I]f the Attorney General considers it necessary to avoid extreme hardship to the spouse, the child, or, in the case of an alien child, the parent of the alien described in clause (i), the Attorney General may also grant status under this

[25] 8 Code of Federal Regulations, section 212.14(a)(9).

[26] 8 Code of Federal Regulations, 214.14(a)(14).

[27] 8 Code of Federal Regulations, 214.14(a)(14)(i).

> paragraph based upon certification of a government official listed in clause (i)(III) that an investigation or prosecution would be harmed without the assistance of the spouse, the child, or, in the case of an alien child, the parent of the alien[.][28]

The victim must file a petition and initial evidence with the USCIS in accordance with Form I-918 and the form's instructions. Federal regulations state that initial evidence must include the following:

- Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge: the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; and that the applicant meets the eligibility factors, including that the victim has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity.
- Any additional evidence that the petitioner wants USCIS to consider.
- A signed statement by the petitioner describing the facts of the victimization.[29]

Although the Supplement B is required for the victim to obtain a U Visa, DHS/USCIS Instructions make it clear that local certifying agencies have discretion whether to participate in the U Visa certification process. In pertinent part, the Instructions state:

> NOTE: The decision whether to complete Supplement B is at the discretion of the certifying agency. However, without a completed Supplement B, the petitioner will be ineligible for U nonimmigrant status.[30]

The courts have also held that the decision to certify the Supplement B is within the discretion of the agency.[31]

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[28] 8 United State Code, section 1101(a)(15)(U)(ii).

[29] 8 Code of Federal Regulations, 214.14(c)(2).

[30] Exhibit A, Test Claim, page 81 (Form I-918, Supplement B Instructions, page 1). *See also* Exhibit X, "U and T Visa Law Enforcement Resource Guide," Department of Homeland Security," page 4, stating that "[n]either DHS nor any other federal agency has the authority to require or demand that any agency or official sign the certification" and that "[t]here is also no legal obligation to complete and sign Form I-918B."

[31] *Orosco v. Napolitano* (5th Cir. 2010) 598 F.3d 222, 226, concluding that "the decision to issue a law enforcement [U Visa] certification is a discretionary one."

If the agency decides to provide certification to a victim who is requesting U Visa certification, the agency must first determine whether the victim was, is or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity. Only upon such a determination is the certifying official authorized to fill out Form I-918 Supplement B. According to DHS/USCIS Form I-918, Supplement B Instructions:

> If you, the certifying official, determine that this individual (also known as the petitioner and principal) was, is, or is likely to be helpful in the investigation or prosecution of the qualified criminal activity, you may complete Supplement B, U Nonimmigrant Status Certification. The petitioner must submit Supplement B to U.S. Citizenship and Immigration Cervices (USCIS) with his or her Form I-918.[32]

The Supplement B instructions further define being "helpful" as follows:

> Being "helpful" means assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. Petitioner victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested, will not meet the helpfulness requirement. The victim has an ongoing responsibility to be helpful, assuming there is an ongoing need for the victim's assistance.[33]

Supplement B includes six parts, with Parts 1 through 5 consisting of multiple subparts requesting information, as follows:

> Part 1. Victim Information
>
> Part 2. Agency Information
>
> Part 3. Criminal Acts
>
> Part 4. Helpfulness of the Victim
>
> Part 5. Family Members Culpable In Criminal Activity

Upon completion of five parts of Form I-918, the certifying official must complete the certification in Part 6, which states the following:

> I am the head of the agency listed in Part 2. or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in Part 1. is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the

[32] Exhibit A, Test Claim, page 81 (Form I-918, Supplement B Instructions, page 1).

[33] Exhibit A, Test Claim, page 84 (Form I-918, Supplement B Instructions, page 4).

investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.[34]

The Instructions also state that "if the certification is not signed by the head of the certifying agency, please attach evidence of the agency head's written designation of the certifying official for this specific purpose."[35]

The petitioner has the burden to demonstrate eligibility for a U Visa. USCIS is required to conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition.[36] After review, USCIS is required to issue a written decision approving or denying the petition and to notify the petitioner of the decision.[37] If found inadmissible, an individual may appeal the decision to the Administrative Appeals Office.[38] Individuals who receive U Visas can remain in the United States for up to four years, will receive employment authorization, and eventually may be able to adjust their status to permanent resident.[39]

B. Prior California State Law Extended Eligibility for State-Funded Social Services and Benefits to Noncitizen Victims of Serious Crimes Who Filed a Request for U Visa Relief with USCIS.

In 2006, the Legislature created Trafficking and Crime Victims Assistance Program (TCVAP), a state-supported program to provide assistance to U Visa applicants.[40] Under the program, qualifying noncitizen victims of serious crimes, defined to include "[i]ndividuals who have filed a formal application with the appropriate federal agency for status under Section 1101(a)(15)(U)(i) or (ii) of Title 8 of the United States Code," are eligible for benefits and social services equivalent to those available to refugees, including refugee cash assistance, Medi-Cal benefits, employment social service benefits, and benefits under the Healthy Families Program.[41] Eligibility for state-funded services is discontinued if the recipient's request for a U Visa has been finally administratively denied.[42]

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[34] Exhibit A, Test Claim, page 79 (Form I-918, Supplement B, page 4).

[35] Exhibit A, Test Claim, page 83 (Form I-918, Supplement B Instructions, page 3).

[36] 8 Code of Federal Regulations, 214.14(c)(4).

[37] 8 Code of Federal Regulations, 214.14(c)(5).

[38] 8 Code of Federal Regulations, 214.14(5)(ii).

[39] Exhibit X, "U and T Visa Law Enforcement Resource Guide," Department of Homeland Security, page 5.

[40] Statutes of 2006, chapter 672; Welfare and Institutions Code sections 14005.2, 13282, and 18945.

[41] Welfare and Institutions Code section 18945.

[42] Welfare and Institutions Code section 18945(a).

C. The Test Claim Statute Requires Local Agencies to Complete Form I-918, Supplement B ("U Nonimmigrant Status Certification") When the Victim of a Qualifying Criminal Activity Is Helpful, Has Been Helpful, or Is Likely To Be Helpful to the Detection, Investigation, or Prosecution of a Qualifying Criminal Activity.

The test claim statute, Statutes 2015, Chapter 721—the Immigrant Victims of Crime Equity Act, became effective on January 1, 2016, and adds to the California Penal Code a new section 679.10, for the first time requiring local agencies to complete U Visa certifications.

Section 679.10 requires certifying entities and officials of local agencies, as defined, to certify victim helpfulness on the Form I-918 Supplement B certification upon request of the victim or the victim's family when the victim was a victim of a qualifying criminal activity (defined consistent with federal law) and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. The statute creates a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. The statute also states that a current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official. The certification must be processed within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request. In addition, the statute requires a certifying entity that receives a request for a Form I-918 Supplemental B certification to report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Form B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. Section 679.10 reads:

> (a) For purposes of this section, a "certifying entity" is any of the following:
>
> (1) A state or local law enforcement agency.
>
> (2) A prosecutor.
>
> (3) A judge.
>
> (4) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity.
>
> (5) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations.
>
> (b) For purposes of this section, a "certifying official" is any of the following:
>
> (1) The head of the certifying entity.
>
> (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.

(3) A judge.

(4) Any other certifying official defined under Section 214.14 (a)(2) of Title 8 of the Code of Federal Regulations.

(c) "Qualifying criminal activity" means qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act which includes, but is not limited to, the following crimes:

(1) Rape.

(2) Torture.

(3) Human trafficking.

(4) Incest.

(5) Domestic violence.

(6) Sexual assault.

(7) Abusive sexual conduct.

(8) Prostitution.

(9) Sexual exploitation.

(10) Female genital mutilation.

(11) Being held hostage.

(12) Peonage.

(13) Perjury.

(14) Involuntary servitude.

(15) Slavery.

(16) Kidnaping.

(17) Abduction.

(18) Unlawful criminal restraint.

(19) False imprisonment.

(20) Blackmail.

(21) Extortion.

(22) Manslaughter.

(23) Murder.

(24) Felonious assault.

(25) Witness tampering.

(26) Obstruction of justice.

(27) Fraud in foreign labor contracting.

(28) Stalking.

(d) A "qualifying crime" includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.

(e) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.

(f) For purposes of determining helpfulness pursuant to subdivision (e), there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(g) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

(h) A certifying entity shall process an I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.

(i) A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.

(j) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

(k) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.

(l) A certifying entity that receives a request for a Form I-918 Supplemental B certification shall report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Form B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

The legislative history explains that before the test claim statute, local agencies were taking different procedural approaches to U Visa certifications, and that some agencies systematically denied certifications on the basis of political views on immigration matters.[43]

According to the bill author:

> The goal of SB 674 . . . is to ensure the maximum amount of immigrant victims of crime in California have the opportunity to apply for the federal U-Visa when the immigrant was a victim of a qualifying crime and has been helpful or is likely to be helpful in the investigation or prosecution of that crime. SB 674 creates equity in the granting of the certifications of victim helpfulness that are essential to the crime victim's U-Visa application filed with the USCIS.[44]

The legislative history also suggests that the test claim statute may result in the completion of more U Visa certifications as follows:

> This bill will potentially result in a greater number of Form I-918B certifications completed, enabling a greater number of victims to submit formal U Visa applications to USCIS for consideration. As a result, a greater number of victims and their family members may become eligible for state-funded TCVAP benefits.[45]

The analysis from the Assembly Committee on Appropriations also finds that the bill will create a reimbursable state-mandated program:

> Moderate local reimbursable state mandated costs in excess of $300,000 by establishing a time-frame for certifying entities to process Form I-918 Supplement B requests, and for local certifying entities to report annually to the Legislature.
>
> During a six-year period, annual certifications provided by the cities of Los Angeles and Oakland were 764 and 500, respectively. If the cost to provide the certification were $25, the reimbursable mandate to these two cities would be $31,600. There are 58 counties and 482 cities and each of them has at least one "agency" that qualifies as a certifying agency. It is reasonable to assume that the number of certifications statewide would be at least ten times those of the cities of Los Angeles and Oakland combined. The reporting requirement reimbursable costs will be minor.[46]

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[43] Exhibit A, Test Claim, page 31 (Senate Committee on Appropriations Analysis of SB 674 as introduced February 27, 2015 page 4); Exhibit A, Test Claim, page 21 (Assembly Committee on Appropriations Analysis of SB 674 as introduced February 27, 2015, page 2).

[44] Exhibit A, Test Claim, page 27 (Senate Rules Committee, Office of Senate Floor Analyses, 3rd reading analysis of SB 674 as introduced February 27, 2015, page 6).

[45] Exhibit A, Test Claim, page 30 (Senate Committee on Appropriations Analysis of SB 674 as introduced February 27, 2015, page 3).

[46] Exhibit A, Test Claim, page 20 (Assembly Committee on Appropriations Analysis of SB 674 as introduced February 27, 2015, page 1). Legislative determinations of whether a statute imposes a reimbursable state-mandated program, however, are not binding on the Commission.

D. On October 28, 2015, the California Department of Justice Issued an Information Bulletin to Law Enforcement Agencies Regarding the Test Claim Statute.

On October 28, 2015, California Department of Justice issued an Information Bulletin to all California State and Local Law Enforcement Agencies on "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime." The bulletin states that:

> California's Immigrant Victims of Crime Equity Act (Senate Bill 674), which takes effect on January 1, 2016, requires state and local law enforcement agencies, prosecutors, and other officials to certify the helpfulness of victims of qualifying crimes on a federal U Nonimmigrant Status Certification (Form I-918 Supplement B), also known as a "U visa certification." **Unlike federal law, which provides certifying state and local agencies and officials with discretion in determining whether to complete the certification, California's new law mandates that state and local agencies and officials submit certifications when certain conditions are met.**[47]

The bulletin further explains that:

> This new law, Penal Code section 679.10, mandates that certain state and local agencies and officials complete U visa certifications, upon request, for immigrant crime victims who have been helpful, are being helpful, or are likely to be helpful in the detection, investigation, or prosecution of specified qualifying crimes.
>
> Significantly, under the Act:
>
> - There is a rebuttable presumption that an immigrant 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.
> - A certifying official may withdraw a previously granted certification only if the victim refuses to provide information and assistance when reasonably requested.
>
> In addition, a certifying official must fully complete and sign the U visa certification and include "specific details about the nature of the crime investigated or prosecuted and a detailed description about the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity."
>
> The Act also requires certifying entities to complete the certification within 90 days of the request, except in cases where the applicant is in immigration removal

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(*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; Gov. Code, § 17552 [stating that Government Code section 17500 et seq., provides the sole and exclusive procedure to claim reimbursement of state-mandated costs].)

[47] Exhibit X, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 1 [Emphasis in original].

proceedings, in which case the certification must be completed within 14 days of the request

The Act applies to the following California state and local entities and officials:

- State and local law enforcement agencies;
- Prosecutors;
- Judges;
- Agencies with criminal detection or investigative jurisdiction in their respective areas of expertise, including but not limited to child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations; and
- Any other authority responsible for the detection or investigation or prosecution of a qualifying crime or criminal activity.

Additional provisions of the Act include:

- Certifying agencies are prohibited from disclosing the immigrant status of a victim or person requesting a U visa certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the certification.
- A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the certification from a certifying official.
- Certifying agencies that receive certification requests must report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied.[48]

In the Questions and Answers section, the Bulletin explains that:

> Eligibility for U visas is governed by the VTVPA and determined by USCIS. Under those federal provisions, individuals without authorized immigrant status are eligible to apply for a U visa if they: (1) are victims of specified qualifying crimes, (2) have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity, (3) have specific knowledge and details of a qualifying crime committed within the United States, and (4) are currently assisting, have previously assisted, or are likely to be helpful in the detection, investigation, or prosecution of the qualifying crime.

[48] Exhibit X, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, pages 2-3.

> Victims may apply for a U visa even if they are no longer in the United States. Individuals presently in removal proceedings or with final orders of removal can also apply. Moreover, a parent without authorized immigrant status can petition for their own U visa as an "indirect victim" of the qualifying crime, if their child is: (1) under 21 years of age, (2) the victim of a qualifying crime, and (3) incompetent or incapacitated such that she or he is unable to provide law enforcement with adequate assistance in the investigation or prosecution of the crime. (An immigrant parent can petition for a U visa regardless of his/her child's citizenship status or whether his/her child died as the victim of murder or manslaughter.)[49]

The Bulletin further clarifies that:

> California's Immigrant Victims of Crime Equity Act makes clear that a current investigation, the filing of charges, and a prosecution or conviction are not required to sign the law enforcement certification. Many situations exist where an immigrant victim reports a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. For example, the perpetrator may have fled the jurisdiction, cannot be identified, or has been deported by federal law enforcement officials. In addition, neither a plea agreement nor a dismissal of a criminal case affects a victim's eligibility. Furthermore, a law enforcement certification is valid regardless of whether the crime that is eventually prosecuted is different from the crime that was investigated, as long as the individual is a victim of a qualifying crime and meets the other requirements for U visa eligibility.
>
> There is no statute of limitations that bars immigrant crime victims from applying for a U visa. Law enforcement can sign a certification at any time, and it can be submitted for a victim in an investigation or case that is already closed.[50]

In conclusion, the Bulletin states:

> [T]he Attorney General encourages all agencies and officials subject to California's new law to immediately establish and implement a U visa certification policy and protocol that is consistent with California law and the guidance provided in this law enforcement bulletin.[51]

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[49] Exhibit X, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 3.

[50] Exhibit X, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 4.

[51] Exhibit X, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 4.

III. Positions of the Parties

A. City of Claremont

The claimant's March 6, 2018 Test Claim alleges that the addition of Penal Code section 679.10 resulted in reimbursable increased costs mandated by the state. The claimant alleges new activities for the City of Claremont Police Department as quoted below:

> One-time costs:
>
> 1) Updating Department Policies and Procedures to address new statutory requirements
>
> 2) Training staff on new requirements
>
> On-going activities:
>
> 1) Training new staff assigned to this duty on mandated program requirements
>
> 2) For all requests, research the original crime(s) the victim was involved to determine whether new law criteria are met and certification can be granted and to determine "victim's helpfulness". This includes obtaining prior criminal records, reports, and history, determining helpfulness and potential helpfulness of the victim; determining if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
>
> *(Detailed research and review of crime history/reports is now required for each case to determine the victim's helpfulness and potential helpfulness.*
>
> *Before this law was added, the city would only have to determine the status of the case: if the case was found to be adjudicated, closed or is outside the statute of limitations, the City would find the victim's assistance was no longer needed and the UVISA application would be denied. Almost all requests could be denied just by determining whether the case was being or likely to be adjudicated which would typically take 5-10 minutes.*
>
> *Because of the new requirements, estimate additional time to research each per case would usually take an extra 20-30 mins per case)*
>
> 3) Fully complete, sign and certify the application (I-918 Form) including Supplement B for ALL requested I-918 applications. This must include a detailed description of the victim's helpfulness or likely helpfulness to the detection, investigation, or prosecution of the criminal activity.
>
> Time for completion of Supplement B is now 90 days of request or 14 days of request if noncitizen is in removal proceedings.

Full completion of application, Supplement B, and certification *is now required for ALL cases. In the past, almost all requests could be denied with a simple signature and full completion of forms was not required. Estimate additional time per case = 10-20 mins per case)*

4) Supervisor review and approval of the detailed description of victim's helpfulness narrative. *Estimate additional time at 5-10 minutes per case)*

5) Prepare and submit annual reports to the Legislature specifying total number of requests for UVISA certifications, the number approved and denied. *Estimated at 15-20 minutes per year)*[52]

The claimant also alleges increased costs for the following existing activities that are "modified by the mandate":

1) Review the UVISA request.
(Estimated additional 5-10 minutes per request)

2) Supervisor review and approval of the "complete" UVISA paperwork
(Estimated additional 5-10 minutes per case.) In the past, denied cases did not require completion of all the forms, therefore additional time is required to review these additional requests and completed forms.

3) Transmit results to involved parties and legal representatives.
(Estimated additional approximately 5 minutes per case)

4) File, log, and close case
(Estimate additional 5-10 minutes per case).[53]

The claimant alleges that after passage of the test claim statute it received its first U Visa certification request on November 21, 2017, and that the estimated increased costs for 2017-2018 fiscal year will amount to $2,755. During fiscal year 2018-2019, the total costs are estimated at $1,299.[54]

On May 1, 2018, the claimant submitted rebuttal comments in response to Finance's argument that the Test Claim did not meet the cost threshold of $1,000 in actual costs mandated by the state and should be rejected.[55] The claimant asserts that it has correctly satisfied the requirements for submitting its Test Claim. According to the claimant, "[t]he City only has to

[52] Exhibit A, Test Claim, page 4-5 [Emphasis in original].

[53] Exhibit A, Test Claim, page 5 [Emphasis in original].

[54] Exhibit A, Test Claim, pages 6, 11-12.

[55] Exhibit C, Claimant's Rebuttal Comments.

show that they expect that their costs will exceed $1,000 in order to file a test claim," [56] because "the Test Claim instructions require the claimant to include a statement that 'actual ***or estimated*** increased costs that ***will be*** incurred by the claimant to implement the alleged mandate' and that 'actual and/or ***estimated*** costs resulting from the alleged mandate exceeds $1,000."[57] In addition, the claimant asserts that Government Code section 17564(a) is not applicable to test claim process, but only "relate[s] to . . .the Reimbursement Claiming process when actual cost claims are submitted to the State Controller's Office after Parameters and Guidelines and Claiming Instructions are released."[58] The claimant further states that one-time costs of updating policies and procedures and training staff on the new requirements are reimbursable activities because they constitute a "standard practice for law enforcement agencies and a reasonable method of implementing newly mandated statutes."[59] The claimant further asserts that if the Commission finds that the alleged one-time costs are not reimbursable, the City of Claremont's estimated ongoing costs for 2017- 2018 fiscal year would still exceed $1,000. These estimated ongoing costs, consisting of $708 of direct costs and $372 of corresponding indirect costs (85% ICRP), will amount to $1,080 in 2017- 2018 fiscal year.[60]

B. Department of Finance

Finance argues that the Test Claim does not meet the cost threshold of $1,000 and should be rejected.[61] Finance asserts that (1) the claimant did not incur at least $1,000 in actual costs before filing a claim, and (2) the claimant's estimated costs for fiscal year 2017-2018 do not meet the threshold of $1,000 because "most of the estimated 2017-18 costs . . . do not qualify for reimbursement under a plain reading of SB 674 because they are not required."[62] According to Finance, the following costs and activities are not required under a plain reading of the test claim statute: (1) costs for all one-time activities ($1,073), consisting of "costs for the Police Chief to review and approve new policies and procedures, for the Police Captain to research the new law and draft new policy, for the City Attorney to review and approve the new policies, and for the Police Lieutenant to review the new policies and training[,]" and (2) all indirect costs ($974).[63]

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of

[56] Exhibit C, Claimant's Rebuttal Comments, page 2.

[57] Exhibit C, Claimant's Rebuttal Comments, page 2 [Emphasis in original].

[58] Exhibit C, Claimant's Rebuttal Comments, page 2.

[59] Exhibit C, Claimant's Rebuttal Comments, pages 1-2.

[60] Exhibit C, Claimant's Rebuttal Comments, page 2.

[61] Exhibit B, Finance's Comments on the Test Claim, page 2.

[62] Exhibit B, Finance's Comments on the Test Claim, page 2.

[63] Exhibit B, Finance's Comments on the Test Claim, page 2.

> funds to reimburse such local government for the costs of such programs or increased level of service…

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[64] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[65]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[66]
2. The mandated activity constitutes a "program" that either:
   a. Carries out the governmental function of providing a service to the public; or
   b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[67]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[68]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[69]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[70] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[71] In making its decisions, the Commission must

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[64] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[65] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[66] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[67] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

[68] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

[69] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[70] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[71] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[72]

A. The Commission Has Jurisdiction to Decide This Test Claim.

1. This Test Claim Is Timely Filed Pursuant to Government Code Section 17551.

Government Code section 17551(c) provides that test claims "shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."[73] The Commission's regulations effective at the time this claim was filed provided that "[f]or purposes of claiming based on the date of first incurring costs, 'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[74]

The test claim statute became effective on January 1, 2016, and the Test Claim was filed on March 6, 2018, more than 26 months later. The claimant, however, alleges costs were first incurred after first receiving its first U Visa request after the effective date of the test claim statute on November 21, 2017.[75] Therefore, the fiscal year in which costs were first incurred, for purposes of the Commission's regulations, is fiscal year 2017-2018, and the claimant had until June 30 of the following fiscal year, 2018-2019, to file its claim. A March 6, 2018, filing is therefore timely pursuant to the second prong of the Government Code section 17551(c) and the Commission's regulations. Based on the filing date, the potential period of reimbursement for this Test Claim would begin July 1, 2016.[76]

2. This Test Claim Meets the Filing Requirements of the Government Code by Alleging that Reimbursable State-Mandated Costs Will Exceed $1,000.

Finance urges the Commission to reject the Test Claim because the claimant did not incur at least $1,000 in actual costs *before* filing a test claim pursuant to Government Code section 17564(a). Finance further states that Government Code section 17553(b)(1)(C) requires that a test claim show actual increased costs incurred during the fiscal year for which the claim was submitted. Finance argues that this Test Claim does not meet those requirements as follows:

> The City states the Police Department received its first U-Visa request in November 2017. Based on the Activity Cost Estimates table on page 4 of the test claim, it is unclear the Police Department incurred at least $1,000 in actual 2017-2018 costs. The Activity Cost Estimates table states the one-time and ongoing costs, totaling $2,755, are estimated.

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[72] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

[73] Government Code section 17551(c) (Stats. 2007, ch. 329).

[74] California Code of Regulations, title 2, section 1183.1(c) (Register 2016, No. 38).

[75] Exhibit A, Test Claim, pages 11-12.

[76] Government Code section 17557(e).

> Because the City states the Police Department has not incurred actual 2017-18 costs, the Commission should reject the test claim for not meeting the cost threshold.[77]

The claimant, in rebuttal comments, argues that the instructions to the Test Claim form require the claimant to include a statement of the "actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate" and that "actual and/or estimated costs resulting from the alleged mandate exceeds $1,000." Thus, the claimant argues that it only has to show that it expects costs will exceed $1,000 in order to file a test claim.[78]

The Commission finds that the Test Claim in this case meets the filing requirements and can be based on an estimate that costs to comply with the alleged mandated program will exceed $1,000. However, as explained below, a claimant is required as a matter of law to show, with evidence in the record, actual increased costs mandated by the state pursuant to Government Code section 17514 in order for reimbursement to be required under article XIII B, section 6 of the California Constitution.

The basic rules of statutory construction require that the words of a statute be given their common and ordinary meaning. The words must be read in context, keeping in mind the nature and obvious purpose of the statute.[79] If the words of the statute are clear, the Commission should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.[80] In this case, there is nothing in the language of Government Code sections 17564, 17551, 17553, or other relevant sections of the Government Code that requires local government to incur at least $1,000 in actual increased costs *prior* to filing a test claim.

Government Code section 17564(a) states the following:

> No *claim* shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars ($1,000).[81]

Government Code section 17551, the first section referenced in section 17564 above, requires the Commission to hear and decide a test claim *alleging* that local agencies or school districts are entitled to reimbursement for the costs mandated by the state, as required by article XIII B, section 6 of the California Constitution.

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[77] Exhibit B, Finance's Comments on Test Claim, page 2.

[78] Exhibit C, Claimant's Rebuttal Comments, page 2.

[79] *People v. Valencia* (2017) 3 Cal.5th 347, 357.

[80] *People v. Knowles* (1950) 35 Cal.2d 175, 183.

[81] Emphasis added. The Legislature established a minimum threshold of $200 for claims made by local governments in 1986. This minimum claim amount remained the same until 2002, when it was raised to $1,000. *See* Statutes of 2002, Chapter 1124 (SB 3000). The threshold has remained at $1,000 ever since.

Government Code section 17521 defines a "test claim" to mean "the first claim filed with the commission *alleging* that a particular statute or executive order imposes costs mandated by the state."

Government Code section 17553(b)(1)(C) sets forth as a required element of a test claim narrative, the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed. Evidence of actual increased costs in the record is required for the Commission to make a finding that the test claim statute imposes costs mandated by the state pursuant to Government Code section 17514. However, section 17553, when read with the filing requirements of section 17551(c), does not require a showing of actual increased costs in excess of $1,000 prior to filing a test claim. Government Code section 17551(c) requires the filing of a test claim "not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Under the first prong of section 17551(c), a test claim can be filed the day after the effective date of the statute, before costs are actually incurred, and be considered timely and complete. Jurisdiction, however, does not depend on whether claimant has already actually incurred costs exceeding $1,000.

Thus, in order for the Commission to take jurisdiction over a test claim, the claim must *allege* that reimbursable state-mandated costs will exceed $1,000.

Here, the claimant has alleged that it first incurred increased costs to comply with the test claim statute in fiscal year 2017-2018 and estimated that these costs will amount to $2,755 for that fiscal year, and $1,299 for the next fiscal year (2018-2019). [82] This exceeds the $1,000 minimum requirement for filing a test claim.

Accordingly, the Commission finds that the Test Claim meets the filing requirements of the Government Code.

B. Penal Code Section 679.10 Does Not Impose a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Because There is No Evidence of Actual Increased Costs Mandated by the State.

As described below, the Commission finds that Penal Code section 679.10 added by the test claim statute (Stats. 2015, ch. 721) mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. However, there is no evidence of any increased actual costs mandated by the state in the record. Accordingly, based on this record, the Commission is required to deny this Test Claim.

1. Penal Code section 679.10 Imposes New State-Mandated Activities on Local Agencies When a Victim or the Victim's Family Member Requests Certification of "Victim Helpfulness" on the Federal Form I-918 Supplement B.

The plain language of Penal Code Section 679.10 requires local agencies, identified in section 679.10(a) as "certifying agencies" to certify "victim's helpfulness" on the Form I-918 Supplement B when requested by a victim or the victim's family member, if the victim was a victim of qualifying criminal activity and has not refused or failed to provide information and

[82] Exhibit A, Test Claim, page 6.

assistance reasonably requested by law enforcement, and to complete the certification within 90 days of the request or within 14 days of the request if the applicant is in immigration removal proceedings. Section 679.10 states in relevant part the following:

> (e) Upon the request of the victim or victim's family member, a certifying official from a certifying entity *shall certify victim helpfulness on the Form I-918 Supplement B certification*, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.
>
> (f) For purposes of determining helpfulness pursuant to subdivision (e), *there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity*, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
>
> (g) The certifying official *shall fully complete and sign the Form I-918 Supplement B certification* and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.
>
> (h) A certifying entity *shall process an I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.*
>
> (i) A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.
>
> (j) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance with reasonably requested.

The Commission finds that the activity to certify victim helpfulness on the Form I-918 Supplement B certification, as specified in the statute, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, is mandated by the State. With the word "shall" in subdivisions (e) and (g); the rebuttable presumption that a victim is helpful in subdivision (f); the provision that certification does not depend on whether there is current investigation, the filing of charges, a prosecution or conviction in subdivision (i); and the provision in subdivision (j) authorizing a certifying official to withdraw certification *only* when the victim refuses to provide assistance, leaves local agencies no choice but to provide the Form I-918 Supplement B certification upon request of the victim or the victim's family when the local agency has determined that the victim was a victim of qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity. Under these circumstances, the certifying official shall fully complete and sign the Form I-918 Supplement B certification and "include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's

helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity" within 90 days of the request or 14 days of the request if the victim is in removal proceedings. The Form I-918 Supplement B includes six parts, with Parts 1 through 5 consisting of multiple subparts requesting information as following:

Part 1. Victim Information

Part 2. Agency Information

Part 3. Criminal Acts

Part 4. Helpfulness of the Victim

Part 5. Family Members Culpable In Criminal Activity

Upon completion of the five parts of Form I-918, the certifying official must then complete the certification contained in Part 6 of Form I-918B, which states the following:

> I am the head of the agency listed in Part 2. or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in Part 1. is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.[83]

As explained in the Background, some local agencies, at their discretion, were completing and signing the Form I-918 Supplement B before the enactment of the test claim statute. The federal instructions for the form state that "[t]he decision whether to complete Supplement B is at the discretion of the certifying agency."[84] However, Government Code section 17565 states "[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Thus, the Commission finds that the activity to fully complete and sign the Form I-918 Supplement B certification, as specified in section 679.10, when the victim is a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, is a new state-mandated activity.

The test claim statute does not directly define "victim", however, the "victim" referenced in the test claim statute must be interpreted broadly to include the direct and indirect victims of the

[83] Exhibit A, Test Claim, page 79 (Form I-918, Supplement B, page 4).

[84] Exhibit A, Test Claim, page 81 (Form I-918, Supplement B Instructions, page 1).

qualifying crimes that are expressly covered under federal U Visa regulations.[85] As discussed earlier, the test claim statute directs certifying entities to "certify victim helpfulness . . . when the victim was *a victim of a qualifying criminal activity*."[86] It further defines "qualifying criminal activity" as "qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the federal Immigration and Nationality Act" and identifies a nonexclusive list of twenty eight covered criminal activities, including manslaughter, murder, witness tampering, obstruction of justice, and perjury.[87] Thus, the term "victim," when read in context with the whole statute shows that the Legislature intended to apply the test claim statute to the victims defined in federal law.[88]

Moreover, Welfare and Institutions Code section 18945, which was enacted in 2006 as part of the Trafficking and Crime Victims Assistance Program (TCVAP) to provide social service assistance to U Visa applicants, defines victims consistent with federal law as "[i]ndividuals who have filed a formal application with the appropriate federal agency for status under Section 1101(a)(15)(U)(i) or (ii) of Title 8 of the United States Code."[89] Under the rules of construction, when two provisions of two different statutes deal with the same subject matter and form part of the same subject matter, they should be interpreted in the same manner.[90]

Finally, this interpretation of "victim" is consistent with the California Department of Justice's Bulletin on the test claim statute, which clarifies that a U Visa victim includes indirect victims identified in federal law as follows:

> ***1. Who is eligible for a U visa?***
>
> [¶]
>
> Moreover, a parent without authorized immigrant status can petition for their own U visa as an "indirect victim" of the qualifying crime, if their child is: (1) under 21 years of age, (2) the victim of a qualifying crime, and (3) incompetent or incapacitated such that she or he is unable to provide law enforcement with adequate assistance in the investigation or prosecution of the crime. (An immigrant parent can petition for a U visa regardless of his/her child's citizenship status or whether his/her child died as the victim of murder or manslaughter.)[91]

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[85] 8 Code of Federal Regulations, 214.14(a)(14).

[86] Penal Code, section 679.10(e) (Emphasis added).

[87] Penal Code, section 679.10(c).

[88] *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 536, stating that the words of a statute must be read in the context of the whole statute.

[89] Welfare and Institutions Code section 18945 (Stats. 2006, ch. 672).

[90] *People v. Honig* (1996) 48 Cal.App.4th 289, 327.

[91] Exhibit X, California Department of Justice Information Bulletin No. DLE-2015-14, "New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," October 28, 2015, page 3.

Thus, the Commission finds that the test claim statute mandates local agencies to provide U Visa certifications to all victims as defined under federal law.

In addition, the plain language of section 679.10(l) requires local agencies that receive certification requests to report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied:

> (l) A certifying entity that receives a request for a Form I-918 Supplemental B certification *shall report to the Legislature*, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Form B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

This is a new reporting requirement mandated by the state.

These mandated activities are required of local agencies identified as "certifying entities." Section 679.10(a) states that:

> For purposes of this section, a "certifying entity" is any of the following:
>
> (1) A state or local law enforcement agency.
>
> (2) A prosecutor.
>
> (3) A judge.
>
> (4) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity.
>
> (5) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations.

And a "certifying official" is the person required by the statute to certify the Form I-918 Supplement B certification. A "certifying official" is defined in section 679.10(b) as 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-918 Supplement B certifications on behalf of the agency; and a judge.

Thus, "certifying officials" from "certifying entities" include employees from the following local agency offices: district attorney offices, sheriff's departments, police departments, child protective services, and any other local agency authority that has the responsibility for the detection, investigation, or prosecution of a qualifying criminal activity. According to the Assembly Committee on Appropriations Analysis of SB 674, "[t]here are 58 counties and 482 cities and each of them has at least one "agency" that qualifies as a certifying agency.[92]

[92] Exhibit A, Test Claim, page 20 (Assembly Committee on Appropriations Analysis of SB 674, as introduced February 27, 2015, page 1).

However, it should be noted that while police/security departments of school districts or special districts might qualify as "certifying entities" and their employees may be "certifying officials" under the test claim statute, school districts and special districts are not be eligible for reimbursement for the costs incurred by their police/security departments. The Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (*POBRA*) held that "school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties" are not eligible to claim reimbursement under article XIII B, section 6 for these costs.[93]

Furthermore, costs incurred by "judges" are not eligible for reimbursement since the funding of all "court operations," including the salary of judges, are paid by the State under the Trial Court Funding program.[94]

Therefore, "certifying officials" from the "certifying entities" of local agencies within the meaning of the section 679.10(a), with the *exception* of the police/security departments of school districts and special districts, and judges, are mandated by the state to perform the following new activities:

- The certifying official shall fully complete and sign the Form I-918 Supplement B certification upon the request of the victim or the victim's family member, and "include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity" within 90 days of the request or 14 days of the request if the victim is in removal proceedings, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. (Pen. Code, § 679.10(a)-(j).)
- A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied. (Pen. Code, § 679.10(l).)

In addition, the claimant requests reimbursement for the one-time costs for training and updating policies and procedures, and for on-going training of new staff.[95] Although these activities may be reasonably necessary to comply with the mandate, they are not mandated by the plain language of the test claim statute.

2. <u>The Activities Mandated by the Test Claim Statute Constitute a New Program or Higher Level of Service.</u>

For the test claim statute to be subject to subvention pursuant to article XIII B, section 6 of the California Constitution, the activities mandated by the statute must constitute a new program or

[93] *Department of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, 1357.

[94] Government Code sections 70311, 77003.

[95] Exhibit A, Test Claim, pages 4, 6.

higher level of service. As indicated in the analysis above, the activities mandated by the state are new. In addition, the activities must "carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[96] The Supreme Court explained:

> The concern which prompted the inclusion of section 6 in article XIIIB was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIIIB explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." [citation omitted.] In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses.[97]

Here, the activities mandated by the test claim statute are unique to government, do not apply generally to all residents and entities of the state, and provide a service to the public. The purpose of the federal U Visa program is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute crimes against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.[98] The goal of the test claim statute "is to ensure the maximum amount of immigrant victims of crime in California have the opportunity to apply for the federal U-Visa when the immigrant was a victim of a qualifying crime and has been helpful or is likely to be helpful in the investigation or prosecution of that crime" and to create "equity in the granting of the certifications of victim helpfulness that are essential to the crime victim's U Visa application filed with the USCIS."[99]

Accordingly, the test claim statute imposes a new program or higher level of service.

3. There Is No Evidence of Actual Increased Costs Mandated by the State Within the Meaning of Government Code 17514, and Thus, Reimbursement Is Not Required Under Article XIII B, Section 6.

For the mandated activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they must result in local agencies incurring increased costs mandated by the state. Government Code section 17514 defines "costs mandated by the state" as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government

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[96] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[97] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57.

[98] Public Law No. 106-386, Title V, section 1513(a).

[99] Exhibit A, Test Claim, page 27 (Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of SB 674, as introduced February 27, 2015, page 6).

Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds $1,000. In addition, here, none of the exceptions in Government Code section 17556 apply to deny the claim.

However, the Commission cannot make a finding of increased costs mandated by the state without evidence in the record to support that finding. In *County of Sonoma*, the court concluded that article XIII B, section 6 requires a showing of "increased actual expenditures," and that "when the Constitution uses 'costs' in the context of subvention of funds to reimburse for the 'costs of such program,' that some *actual cost* must be demonstrated...."[100] Government Code section 17559 and section 1187.5 of the Commission's regulations require substantial evidence in the record to support a finding of actual increased costs mandated by the state. "[I]nstinct is insufficient to support a legal conclusion."[101]

The test claim statute became effective January 1, 2016. The claimant states that costs were first incurred under this program after the city received its first U Visa request after the effective date of the test claim statute on November 21, 2017 (fiscal year 2017-2018), but no evidence of actual costs is in the record. Instead, the Test Claim contains "detailed cost *estimates* required to implement the mandated program."[102] For the 2017-2018 fiscal year, the following costs are estimated:

1. One-time costs to research new law, and review and approve new policies and procedures, estimated at $1,073.01.
2. On-going costs to process U-Visa applications consisting of (1) salary and benefits of the Lieutenant for the time spent on *five* U-Visa applications (60 minutes per case) and to report to the Legislature (20 minutes annually), estimated at $708.09.
3. Indirect costs calculated jointly for the one-time and the on-going costs, as a percentage of salary and excluding benefits, together estimated at $974.[103]

For fiscal year 2018-2019, estimated costs are as follows:

1. On-going costs to process U-Visa applications consisting of (1) salary and benefits of the Lieutenant for the time spent on *six* U-Visa applications (60 minutes per case) and to report to the Legislature (20 minutes annually), estimated at $867.63.
2. Indirect costs calculated at 80% ICRP as a percentage of salary and excluding benefits, estimated at $431.[104]

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[100] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284, 1285.

[101] *Department of Finance v. Commission on State Mandates (POBRA)* 170 Cal.App.4th 1355, 1369.

[102] Exhibit A, Test Claim, page 5.

[103] Exhibit A, Test Claim, page 6.

[104] Exhibit A, Test Claim, page 6.

The claimant's Finance Director filed a declaration stating that "the cost estimates presented in the test claim are accurate."[105]

However, even assuming the claimant's time estimates are accurate or reasonable, there is no showing that the claimant has, or will ever receive five or six requests for a U Visa certification and incur at least $1,000 in actual costs in a fiscal year to comply with the new state-mandated activities.

In addition, there is a striking difference in estimates between the cost per U Visa request alleged by the claimant and the cost per U Visa request identified in the legislative history of the test claim statute.[106] The claimant estimates the costs of processing each U Visa certification request in fiscal year 2017-2018 at $198.56, including the Lieutenant's salary, benefits, and indirect costs. Legislative history, however, estimates costs of $25 per U Visa request for the cities of Los Angeles and Oakland.[107] While, these estimates are not binding, they highlight the problem of cost estimates made in the absence of substantial evidence of increased actual costs mandated by the state.

Based on the foregoing, the Commission finds that there is no evidence in the record that the test claim statute results in increased actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

V. Conclusion

Based on the foregoing analysis, the Commission denies this Test Claim and finds that the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

[105] Exhibit A, Test Claim, page 12.

[106] Exhibit A, Test Claim, page 20 (Assembly Committee on Appropriations Analysis of SB 674 as introduced February 27, 2015, page 1).

[107] Exhibit A, Test Claim, page 20 (Assembly Committee on Appropriations Analysis of SB 674 as introduced February 27, 2015, page 1).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 20, 2018, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued July 20, 2018**

  U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01
  Penal Code Section 679.10; Statutes 2015, Chapter 721 (SB 674)
  City of Claremont, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 20, 2018 at Sacramento, California.

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/15/18

Claim Number: 17-TC-01

Matter: U Visa 918 Form, Victims of Crime: Nonimmigrant status

Claimant: City of Claremont

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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