UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROSAURA AQUINO-MARTINEZ,
and ESTEBAN COLUNGA-GARCIA,

Plaintiffs,

v. Case No. 2:23-cv-01037-SPC-NPM

DIRECTOR, NEBRASKA SERVICE CENTER, U. S. CITIZENSHIP AND IMMIGRATION SERVICES,

Defendant.
_____/

BRIEF OF AMICI CURIAE AMERICAN IMMIGRATION LAWYERS ASSOCIATION, ASISTA IMMIGRATION ASSISTANCE, AND THE IMMIGRATION CENTER FOR WOMEN AND CHILDREN

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The American Immigration Lawyers Association ("AILA"), ASISTA Immigration Assistance ("ASISTA"), and the Immigration Center for Women and Children ("ICWC"), respectfully submit this amicus curiae brief in support of Plaintiffs Rosaura Aquino-Martinez ("Ms. Aquino-Martinez") and Esteban Colunga-Garcia. Amici offer the legislative and regulatory background underlying the categories of qualifying criminal activities and the regulatory scheme behind assessing whether a given criminal activity qualifies a petitioner to receive U nonimmigrant status.

INTEREST OF AMICI CURIAE

AILA is a national non-profit association with more than 16,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality and naturalization; and to facilitate the administration of justice and elevate the standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters. AILA's members practice regularly before the Department of Homeland Security ("DHS"), immigration courts and the Board of Immigration Appeals, as well as before federal courts.

ASISTA is a national network of attorneys and advocates working at the

intersection of immigration and gender-based violence. The organization provides technical assistance, policy advocacy, and engages in litigation. ASISTA worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes, which were incorporated in the 1994 Violence Against Women Act (VAWA), as amended, and associated regulations and interim agency rulemaking. ASISTA also trains and provides technical support to local law enforcement officials, civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono, and private attorneys working with immigrant crime survivors. ASISTA has previously filed amicus briefs in cases before the U.S. Supreme Court, federal courts of appeals, the Board of Immigration Appeals, and the Administrative Appeals Office ("AAO").

ICWC is a non-profit legal aid organization providing affordable immigration services to underrepresented populations in California and Nevada. Since ICWC was founded in 2004, it has served more than 70,000 vulnerable immigrants. ICWC maintains a growing caseload of over 2,000 survivors of criminal activity for whom they have helped apply for U nonimmigrant status. ICWC maintains a national database for over 1,000 U visa advocates, including a section with up-to-date contact information and practice pointers for the hundreds of law enforcement officials who certify U nonimmigrant status cases.

The database connects U nonimmigrant advocates and law enforcement agencies which leads to enhanced community safety and protection for immigrants who disproportionately fall victim to crime. ICWC attorneys provide local and national trainings on the U visa practice to advocates and community-based organizations. ICWC therefore has an interest in consistent adjudication of U visa applications regardless of the qualifying criminal activity; inconsistency in adjudications can make it difficult for ICWC to advise law enforcement, hospitals, and other nonprofit and government agencies in their outreach to the immigrant community and referrals for service. The inconsistent manner of adjudications negatively impacts ICWC's work on behalf of vulnerable crime victims, who are reluctant to expose themselves to federal government attention without confidence that they will be granted U nonimmigrant status.

ARGUMENT

I. The statute and regulations require a broad reading of "qualifying criminal activity."

Congress created the U visa in 2000 with the intent to assist survivors of certain criminal activity in the United States while facilitating their cooperation with law enforcement through the promise of protection from deportation and the provision of status. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 1513(a), 114 Stat. 1464, 1533 (2000). The statute defines qualifying criminal activity through a non-exhaustive list of activities that may

violate federal, state, or local law. 8 U.S.C. § 1101(a)(15)(U)(iii). It also includes "any similar activity" as well as the attempt, conspiracy, or solicitation to commit any of the mentioned crimes. *Id*. Congress was clear in its intent to provide a broad scope of protection.

In adjudicating the issue of whether a U visa petitioner is a victim of a qualifying criminal activity, U.S. Citizenship and Immigration Services ("USCIS") is bound to follow the statute and its implementing regulations at 8 C.F.R. § 214.14 (2007). *See* 8 U.S.C. § 1101(a)(15)(U)(iii); New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a & 299) (the "Interim Rule"). To assist in adjudication, the law requires petitioners to submit a law enforcement certification on Form I-918 Supplement B ("I-918B")[1]. 8 U.S.C. § 1184(p); 8 C.F.R. § 214.14(c)(2)(i). In the certification, the law enforcement entity selects the category of criminal activity of which the petitioner is a victim and lists any specific crimes under federal, state, or local law that were investigated or prosecuted. I-918B at 2 ("List the statutory citations for the criminal activity being investigated of prosecuted, or that was investigated or prosecuted."). At a granular level, USCIS is tasked with

[1] Available at https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf (last visited Oct. 25, 2024).

answering the question of whether the facts that gave rise to the law enforcement certification fit within a category of criminal activity in the enumerated list.

An analysis under the Interim Rule requires USCIS adjudicators to look beyond the specific crimes that were charged upon arrest or in court, and to review the underlying record in determining whether the petitioner was the victim of a criminal activity that fits within one of the categories of enumerated offenses. 72 Fed. Reg. at 53,018. Whether the perpetrator was prosecuted for the qualifying criminal activity, or a different crime, or not prosecuted at all is irrelevant. *Id*. ("For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity."); *see also id*. at 53,020 ("This rule does not require that the prosecution actually occur, since the statute only requires an alien victim to be helpful in the investigation or the prosecution of the criminal activity."); 8 C.F.R. § 214.14(a)(5) (requiring only that a qualifying criminal activity be "detect[ed] or investigate[ed]," not that it lead to prosecution, conviction, or sentencing). The Interim Rule makes plain that adjudicators should take this broad view, which accounts for the fact that the enumerated list sets forth "general *categories* of criminal activity" rather than specifically named crimes. 72 Fed. Reg. at 53,018. *See also* Department of Homeland Security, *U Visa Law*

Enforcement Resource Guide (2022)[2] at 4 (describing the enumerated criminal activities as "general categories, and not specific crimes or citations to a criminal code.")

The Interim Rule elucidates two nuances in the qualifying criminal activity list: (1) that the list is a set of "categories"; and (2) that the statutory "similar" language means that other criminal activity may be included in certain circumstances. Amici posit that USCIS is now applying only the "similar activity" analysis to crimes whose names do not precisely match one of the qualifying categories and failing to consider record evidence fully, especially facts that show that a qualifying criminal activity was detected. This erroneous analysis undermines the purpose of the law, as is illustrated by its application to the domestic violence context.

The statute includes "domestic violence" in its list of qualifying criminal activity. 8 U.S.C. § 1101(a)(15)(U)(iii). Interpreting the meaning of this term, USCIS has employed the "category" analysis, concluding that a wide variety of specific state and local crimes fit within the "domestic violence" category, from contempt of court to harassment, to assault, to attempted murder. In those cases, adjudicators look to the record underlying

[2] Available at https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf (last visited Oct. 24, 2024).

the certification to see whether, as a factual matter, the underlying facts show that the case involved domestic violence. USCIS appropriately recognizes eligibility in this context since "[t]he list of qualifying crimes represents the myriad types of *behavior* that can constitute domestic violence, sexual abuse, or trafficking, or are crimes of which vulnerable immigrants are often targeted as victims." 72 Fed. Reg. at 53,015 (emphasis added). *See also Matter of B-K-V-C,* ID# 12948 (AAO Feb. 22, 2016)[3] ("qualifying criminal activities ... are not listed as specific statutory violations but rather in more broad terms"; holding that where contempt of court was certified, petitioner was a victim of domestic violence).

In contrast, if USCIS had insisted on using a "similar" framework to adjudicate petitions based on incidents of domestic violence that were formally pursued only as contempt of court or harassment, the petitioners would have been denied relief, contrary to Congressional intent. When facts are ignored, harassment, contempt of court, and a simple assault inflicted by a family or household member rarely have sufficient elements in common with a qualifying criminal activity for them to satisfy USCIS's narrow version of the

[3] Available at https://www.uscis.gov/sites/default/files/err/D14%20-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2016/FEB222016_01D14101.pdf (last visited Oct. 25, 2024). The AAO is not independent of USCIS and is bound by the policies and legal interpretations of its parent agency. USCIS, *Administrative Appeals Office Practice Manual* § 1.2 (2018). Its decisions also generally are issued in unpublished, nonprecedential letters to the applicant. *Id*. § 3.15(a).

"similar" analysis. Yet excluding victims of these criminal activities, perpetrated by a household member, would thwart Congress's intent to protect survivors of domestic violence.

USCIS committed such an error in adjudicating Ms. Aquino-Martinez's petition. It failed to recognize her felonious assault victimization based on law enforcement's formal pursuit of only a robbery charge, and examined only the similarity between the elements of felony assault and robbery in Florida, instead of also the facts of the event. It missed that the crime falls within the category of felonious assault activity.

Interpretation of the list of qualifying criminal activities as categories of crimes rather than the specific names of crimes best reflects the plain meaning of the statute, Congressional intent underlying U visa legislation. This interpretation is consistent with longstanding USCIS treatment of many petitioners who are victims of domestic violence crimes but it is not peculiar to this category. The agency must apply the same analytical framework to all U visa crime categories under consideration in the instant case, including felonious assault.

II. USCIS must review facts in the record to protect petitioners who were victims of qualifying criminal activity that was detected, investigated, or prosecuted.

Under the proper analytical framework, USCIS must review all

submitted evidence to determine whether a qualifying criminal activity was detected, investigated, or prosecuted. 8 C.F.R. § 214.14(a)(5); 8 C.F.R. § 214.14(c)(4) ("USCIS shall conduct de novo review of all evidence submitted in connection with Form I-918."). The Interim Rule therefore directs adjudicators to look *broadly* at the conduct underlying criminal charges, because "qualifying criminal activity may occur during the commission of a non-qualifying criminal activity." 72 Fed. Reg. at 53,015. Importantly, a prosecutor can charge an entirely different crime, but if the investigation uncovers facts to show that the victim was also victim of a qualifying crime, it is appropriate to certify that crime, and for USCIS to consider the petitioner eligible for U nonimmigrant status nonetheless. *Id.; see Matter of E-O-L-P-*, ID# 378994 (AAO Nov. 22, 2017)[4] (petitioner was victim of qualifying crime where robbery was charged but investigative record shows that felonious assault was detected); *see also Redacted Decision* (AAO Dec. 2, 2011)[5] ("[B]ecause the regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS the discretion to determine the evidentiary value of a Form 1-918 Supplement B, we can look to other parts of the law enforcement certification to determine whether a

[4] Available at https://www.uscis.gov/sites/default/files/err/D14%20-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2017/NOV222017_02D14101.pdf (last visited Oct. 25, 2025).
[5] Available at https://www.uscis.gov/sites/default/files/err/D14%20-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2011/Dec022011_01D14101.pdf

certifying agency investigated or prosecuted qualifying criminal activity.").

Congressional intent supports adjudication based on the underlying facts of the criminal activity rather than being bound by the elements of the specific indicted crime, for example. *First,* the conference report on the proposed U visa legislation affirmed that the purpose of the U visa was to "strengthen the ability of law enforcement agencies to *detect, investigate, and prosecute."* H.R. Conf. Rep. 106- 939, at 72 (2000) (emphasis added). Congress always intended that qualifying criminal activity would include any activity that law enforcement detects, investigates, or prosecutes. Congress never intended to include only conduct charged upon arrest, or conversely only charges that were ultimately prosecuted.

Second, Congress purposefully included the conjugated terms for "investigate" and "prosecute" in 8 U.S.C. § 1101(a)(15)(U)(i), which provides protection a noncitizen who

> has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities *investigating or prosecuting criminal activity* described in clause (iii)

8 U.S.C.§ 1101(a)(15)(U)(i)(III) (emphasis added). Federal regulations also adopt a fact-based analysis, which add the word "detect" from the committee report to "investigating or prosecuting." 8 C.F.R. § 214.14(a)(5) ("The term 'investigation

or prosecution,' as used in section 101(a)(15)(U)(i) of the Act, also includes the 'detection' of a qualifying crime or criminal activity."). These choices further evince an intent for a victim to qualify for a U visa based on what law enforcement factually found them to have suffered, regardless of formal investigatory or prosecutorial developments.

Other agency guidance on the proper adjudication of petitions for U nonimmigrant status makes it clear that qualifying criminal conduct does not need to have been charged or prosecuted. For example, DHS counsels law enforcement that:

> Charges do not have to be filed, nor does an investigation or prosecution need to be open or completed at the time a certification is signed. For example, a victim may establish eligibility for a U visa if the certifying agency *detected* the qualifying crime based on the information provided by the victim.

U Visa Law Enforcement Guide at 13 (emphasis added).

In many decisions, the AAO has followed this guidance, making factual inquiries and looking beyond the elements of the charged crimes. *See, e.g., Redacted Decision* (AAO Dec. 2, 2011) (because petitioner was kidnapped, and kidnapping is a qualifying crime that was investigated during the course of the sexual assault investigation, petitioner established that he was a victim of a qualifying crime); *Matter of B-K-V-C-*, ID# 12948 (AAO Feb. 22, 2016) ("The Petitioner has demonstrated that the certified crime was one related to

domestic violence, which is qualifying criminal activity under section 10l(a)(l5)(U)(iii) of the Act."); *Redacted Decision* (AAO Dec. 8, 2014)[6] (finding that "[a]lthough the [Revised Code of Washington] provides for a general definition of harassment, the certifying official investigated the criminal activity as a domestic violence offense based upon the petitioner's relationship to the perpetrator, with the offense being harassment" and holding that petitioner was the victim of a qualifying crime.). Presented with similar facts to Ms. Aquino-Martinez's application, in *E-O-L-P-*, the AAO determined that the petitioner was properly the victim of "felonious assault" where he was "cut/stabbed" and "hit/assaulted" despite the crimes certified and prosecuted being robbery and burglary. *Matter of E-O-L-P-*, ID# 378994 (AAO Nov. 22, 2017). The AAO reached this conclusion by looking at the record, and crediting the certification based on the facts of what happened rather than relying only upon the crime charged. *Id.*

In many recent instances, however, USCIS has failed to apply this framework when analyzing whether a petitioner is the victim of a non-domestic violence qualifying criminal activity. Instead, in some cases, USCIS has erroneously employed a formulaic analysis, asking only if a formally

[6] Available at https://www.uscis.gov/sites/default/files/err/D14%20-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2014/DEC082014_02D14101.pdf (last visited Oct. 25, 2024).

charged crime was "similar" to a qualifying crime, in its elements alone, and ignoring the underlying facts of the case. *See, e.g.*, *Matter of F-C-C-*, ID# 10638 (AAO Sept. 12, 2016)[7] ("The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question."); *Matter of A-G-S-*, ID# 16515 (AAO May 26, 2016)[8]; *Matter of G-H-*, ID# 6452067 (AAO Nov. 21, 2017).[9] USCIS applied this flawed approach in Ms. Aquino-Martinez's case. Amici contend that this improper analysis violates the statute and the Congressional intent underlying the law.

By failing to consider criminal activity that was detected or investigated, but not prosecuted, and by failing to focus on facts as well as elements, USCIS thwarts the ameliorative statutory scheme underlying U nonimmigrant status, which is intended to aid law enforcement and promote justice throughout immigrant communities in the United States. Moreover, when USCIS second guesses law enforcement's expertise on what crimes it detects or investigates, it negates the purpose behind the law enforcement certification and undermines law

[7] Available at https://www.uscis.gov/sites/default/files/err/D14%20-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2016/SEP122016_01D14101.pdf (last visited Oct. 25, 2024).
[8] Available at https://www.uscis.gov/sites/default/files/err/D14%20-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2016/MAY262016_02D14101.pdf (last visited Oct. 25, 2024).
[9] Available at https://www.uscis.gov/sites/default/files/err/D14%20-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2017/NOV212017_01D14101.pdf (last visited Oct. 25, 2024).

enforcement confidence in the U visa system. *See* 72 Fed. Reg. at 53,024 (explaining that the law enforcement certification form was developed because "USCIS determined that since the certifying agency is the primary point of contact between the petitioner and the criminal justice system, the certifying agency is in the best position to verify certain factual information.").

The U visa system is a crucial law enforcement tool that brings crime victims, who are fearful to access justice, out of the shadows. Since Congress intended the U visa to be a tool for law enforcement, and since it required an official certification from law enforcement for survivors to qualify for status, USCIS should give deference to that expertise and only rarely depart from its conclusions on victimization. *See* H.R. Conf. Rep. 106-939, at 72; 72 Fed. Reg. at 53,018 ("The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons").

III. Similar qualifying criminal activity must also be understood broadly

In creating the U nonimmigrant visa, Congress specifically provided that survivors of "any similar activity" to the enumerated criminal activities listed could qualify for protection. 8 U.S.C. § 1101(a)(15)(U)(iii). Federal regulations impermissibly narrow consideration of similar activity to "criminal offenses in

which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9) (emphasis added). In the wake of the U.S. Supreme Court's decision in *Loper Bright*, courts are not bound to defer to agency regulations and should apply the plain meaning of the statute. *Loper Bright Enters. v. Raimondo*, --- U.S. ----, 144 S. Ct. 2244, 2273 --- L.Ed.2d ---- (2024). ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority…."); *see also Silva-Hernandez v. U.S. Bureau of Citizenship & Immigr. Servs.*, 701 F.3d 356, 361 (11th Cir. 2012) ("When we construe a statute, we must begin, and often should end as well, with the language of the statute itself.").

In determining similarity, the nature and elements of a crime detected, investigated, or prosecuted by law enforcement should be compared to a qualifying criminal activity, as outlined *supra*. The nature of a crime involves an examination of the facts. A plain language understanding of "nature" includes "the inherent character or basic constitution … of a person or thing : essence."[10] The Interim Rule also counsels the adjudicator to examine the full range of facts:

> Evidence to further establish the *nature* of the abuse suffered may include such documentation as reports and affidavits from police, judges, other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel.

[10] https://www.merriam-webster.com/dictionary/nature (last visited Oct. 25, 2024).

72 Fed. Reg. at 53,024. Elements need not be precise matches, but instead are overlapping. Lesser included offenses will generally be similar to the original offense.

CONCLUSION

In adjudicating Ms. Aquino-Martinez's U visa application, USCIS strayed far from Congressional intent, the statute, and its own regulations. Amici respectfully contend that a fair review of the application demonstrates that Ms. Aquino-Martinez is precisely the kind of victim Congress intended to benefit from the U visa. This Court can provide critical guidance to USCIS by (1) clearly articulating the analytical distinction between the "category" and "similar" analyses; (2) highlighting the relevance of facts in the record in addition to elements; and (3) recognizing the expertise Congress assumed rests with law enforcement in determining what crimes it detects.

Submitted this 25th day of October, 2025

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