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UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
ADMINISTRATIVE APPEALS OFFICE
WASHINGTON, D.C. 20529-2090

In the Matter of

A-M-C,

Petitioner.

A [redacted]
I–290B Receipt: EAC [redacted]
I–918 Receipt: EAC [redacted]

BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER

Amici curiae Her Justice, ASISTA Immigration Assistance ("ASISTA") and the Immigrant Center for Women and Children ("ICWC") (together, "*Amici*"), by and through their attorneys Debevoise & Plimpton LLP, hereby submit this brief in support of Petitioner's appeal in the above-captioned matter to assist the review by the Administrative Appeals Office ("AAO") of the United States Citizen and Immigration Services ("USCIS"). The Acting Director of the Vermont Service Center (the "Acting Director") incorrectly interpreted key terms of the applicable statute and regulations in denying Petitioner's Form I–918 seeking a "U" nonimmigrant classification as a victim of a qualifying crime pursuant to Sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the "Act"). *See* 8 U.S.C. §§ 1101(a)(15)(U), 1184(p); 8 C.F.R. § 214.14. For the reasons that follow, as well as those advanced in Petitioner's

brief, the AAO should reverse the Acting Director's determination and grant Petitioner a U nonimmigrant classification.

INTEREST OF THE AMICI

Since 1993, Her Justice has been dedicated to making quality legal representation accessible to low-income women in New York City in family, matrimonial and immigration matters. Her Justice recruits and mentors volunteer attorneys from New York City's law firms to stand side-by-side with women who cannot afford to pay for a lawyer, giving them a real chance to obtain legal protections that transform their lives. Her Justice's immigration practice focuses on representing immigrant survivors of gender-based violence pursuing relief under the Violence Against Women Act (VAWA), including U nonimmigrant status. Her Justice has appeared before Courts of Appeals and the United States Supreme Court in numerous cases as *amicus*.

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) and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security (DHS) personnel charged with implementing these laws, most notably Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE), and DHS's Office for Civil Rights and Civil Liberties. 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

ICWC is a non-profit legal aid organization providing affordable immigration services to underrepresented populations in California. ICWC has offices in Los Angeles, Oakland, San Diego, and San Francisco. Since ICWC was founded in 2004, it has served more than 30,000

vulnerable immigrants. ICWC helps an average of 1,000 victims of crimes apply for U nonimmigrant status each year. It works extensively with over 100 law enforcement officials in support of their efforts to make the best use of U nonimmigrant status to make their communities safe from the violent crimes that most impact immigrant victims. Inconsistency in adjudications has made 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. This inconsistency has also impacted ICWC's work on behalf of vulnerable crime victims who are reluctant to expose themselves to Immigration Service attention without confidence that they will be granted U nonimmigrant status.

Amici have an interest in ensuring that USCIS complies with all applicable laws and regulations, and in encouraging the proper interpretation of laws and regulations that promote the rights, safety and well-being of crime victims.

PRELIMINARY STATEMENT

The Acting Director's excessively narrow interpretations of "victim" in 8 U.S.C. § 1101(a)(15)(U)(i)(I) and "direct and proximate harm" in 8 C.F.R. § 214.14 are inconsistent with the plain text of those provisions, the principles underlying USCIS's promulgation of Section 214.14, settled law interpreting similar terms in analogous statutes, and authoritative guidelines cited by USCIS itself. Because the Acting Director's erroneous application of these terms increases the risk that some individuals may fear the consequences of assisting law enforcement, and serious crimes against vulnerable populations will therefore go unpunished, *Amici* urge the AAO to reverse the decision below.

APPLICABLE LAW AND REGULATIONS

As relevant here, an applicant may be granted nonimmigrant status under Section 101(a)(15)(U) of the Act if it is determined that:

> (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of [qualifying] criminal activity . . . ;
>
> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
>
> (III) the alien . . . has been helpful . . . to a Federal, State, or local law enforcement official, to a . . . prosecutor, . . . or to other Federal, State, or local authorities investigating or prosecuting [qualifying] criminal activity . . . ; and
>
> (IV) the [qualifying] criminal activity . . . violated the laws of the United States or occurred in the United States . . . .

Section 101(a)(15)(U) applies to various serious crimes, including rape, torture, trafficking, domestic violence, sexual assault, abusive sexual contact, sexual exploitation, stalking, female genital mutilation, holding a person hostage, kidnapping, abduction, unlawful criminal restraint, false imprisonment, manslaughter, murder, felonious assault, witness tampering, and obstruction of justice, as well as "any similar activity in violation of Federal, State, or local criminal law" and any "attempt, conspiracy, or solicitation to commit" any enumerated crime. *Id*. § 1101(a)(15)(U)(iii). All too often, such crimes plague immigrant victims. Granting nonimmigrant status under Section 101(a)(15)(U) provides important protection for these persons and promotes substantial law enforcement interests by encouraging them to participate in the investigatory process without fear of immigration consequences.

It is undisputed that Petitioner possessed information concerning qualifying criminal activity, helped local prosecutors and law enforcement officials investigating qualifying criminal activity, and that the qualifying criminal activity occurred in the United States. *See* USCIS Decision dated December 8, 2017 ("Op.") at 3. The remaining criterion challenged on appeal –

and the issue that the Acting Director incorrectly decided – is whether Petitioner meets the definition of "victim" under Section 101(a)(15)(U)(i)(I). The Acting Director concluded that Petitioner "w[as] not the direct victim of the murder as [she] w[as] not a bystander and did not suffer the direct and proximate harm of the qualifying criminal activity." Op. at 4. The primary issue on appeal is whether the Acting Director incorrectly concluded that Petitioner was not a "direct victim" within the meaning of Section 101(a)(15)(U)(i)(I).

Pursuant to interim regulations interpreting Section 101(a)(15)(U) promulgated by USCIS, a "victim" within the meaning of Section 101(a)(15)(U)(i)(I) "generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity." 8 C.F.R. § 214.14 ("Section 214.14"). The preamble to these regulations, which provides context for this definition, states in relevant part:

> To formulate th[is] general definition, USCIS drew from established definitions of "victim." Federal statutory provisions consistently define "victim" as one who has suffered direct harm or who is directly and proximately harmed as a result of the commission of a crime. The Department of Justice's . . . Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) adopts a similar definition of the term "victim." The AG Guidelines serve to guide federal investigative, prosecutorial, and correctional agencies in the treatment of crime victims and, therefore, were viewed by USCIS as an informative resource in the development of this rule's definition of victim.

U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53014 (Sept. 17, 2007) (internal citations omitted). The preamble recognizes that the term "victim" can apply to more than one individual depending on the circumstances of a case. Indeed, the preamble cites *United States v. Terry*, 142 F.3d 702 (4th Cir. 1998), involving the application of the U.S. Sentencing Guidelines to a defendant convicted of involuntary manslaughter, which observed that "the term 'victim' standing alone is ambiguous" and rejected both a narrow limitation to only "the person killed, not a family member" as well as a broad inclusion of "anyone adversely affected by [the]

homicide." *Id*. at 710–11. Thus, in order to clarify the meaning of the term "victim" in the context of Section 101(a)(15)(U), USCIS looked to additional sources of authority.

First, USCIS considered the definition of "victim" in other federal statutes. The preamble references Sections 3663(a)(2) and 3771(e) of Title 18 of the United States Code as containing "established definitions of 'victim'" consistent with the meaning USCIS intended in Section 214.14. *See U Nonimmigrant Status Interim Rule,* 72 Fed. Reg. 53014 (Sept. 17, 2007). Section 3663(a)(2), enacted as part of the Victim and Witness Protection Act of 1982 (the "VWPA"), defines a "victim" as "a person directly and proximately harmed as a result of the commission of an offense . . . ." 18 U.S.C. § 3663(a)(2). Congress has stated that the "directly and proximately harmed" language in the VWPA, which also appears in Section 214.14, was "intend[ed] . . . to mean . . . those instances where a named, identifiable victim suffers a physical injury or pecuniary loss directly and proximately caused by the course of conduct" committed by a criminal defendant. S. Rep. No. 104–179, at 19 (1996), 1996 U.S.C.C.A.N. 924, 932 (Conference Committee Report). Similarly, Section 3771(e), enacted as part of the Crime Victims' Rights Act (the "CVRA") in 2004, defines a "victim" as "a person directly and proximately harmed as a result of the commission" of a particular offense. 18 U.S.C. § 3771(e).

Second, USCIS described the Attorney General Guidelines for Victim and Witness Assistance promulgated by the Department of Justice (the "AG Guidelines") as "an informative resource in the development of this rule's definition of victim." *U Nonimmigrant Status Interim Rule,* 72 Fed. Reg. 53014 (Sept. 17, 2007).[1] Like the definitions set forth in the federal statutes discussed above, the AG Guidelines provide that a person qualifies as a "victim" if he or she has suffered "direct and proximate harm." Ex. A at 8. The AG Guidelines further explain that in

[1] For convenience, a copy of the AG Guidelines is appended hereto as Exhibit A.

order to be "direct," a harm "must generally be a '*but for' consequence* of the conduct that constitutes the crime," and the "proximate" prong "requires that the alleged harm must have been a *reasonably foreseeable result*" of the relevant criminal conduct. *Id*. at 8–9 (emphasis added). The AG Guidelines recognize that "[d]etermining whether a person meets the harm element of the legal definition of victim . . . requires a fact-specific analysis of both the nature of the harm allegedly suffered by the person and the crime that is alleged to have caused the harm." *Id*. at 8.

USCIS's reliance on these authorities as providing "established definitions of 'victim'" and being "informative . . . in the development of . . . [Section 214.14]'s definition of victim" shows that the definition of "victim" for purposes of Section 101(a)(15)(U) is consistent with well-settled law governing the interpretation of the term "victim" in other federal statutes. This observation is reinforced by the bedrock principle that Congress is presumed to know and import settled meanings assigned to terms used in statutes. *See, e.g*., *Abuelhawa v. United States*, 556 U.S. 816, 821 (2009) (observing that courts "presume legislatures act with case law in mind" and that when Congress enacts statutes "it [is] familiar with the traditional judicial limitation on applying terms" used in those statutes); *Morissette v. United States*, 342 U.S. 246, 263 (1952) ("[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word . . . ."). Thus, whether a person is a "victim" for purposes of Section 101(a)(15)(U) should be determined in a manner consistent with the way in which status as a "victim" is determined under other similar statutes (including those statutes that UCIS itself cited when promulgating Section 214.14).

Settled legal principles establish that whether a person is "directly and proximately harmed" by criminal conduct depends on whether it was foreseeable that the criminal conduct

could cause the harm that ultimately occurred. *See, e.g.*, *United States v. Sharp*, 463 F. Supp. 2d 556, 565 (E.D. Va. 2006) (stating that "[f]oreseeability is at the heart of proximate harm" and "the closer the relationship between the actions of the defendant and the harm sustained, the more likely that proximate harm exists"). Direct and proximate harm is shown where "the defendant created the circumstances under which [a] harm or loss occurred." *United States v. Spinney*, 795 F.2d 1410, 1417 (9th Cir. 1986); *see also United States v. Hackett,* 311 F.3d 989, 992–93 (9th Cir. 2002) (finding direct and proximate harm to an insurance company by conduct attributable to a defendant who aided and abetted the manufacture of drugs when insured property was damaged by a fire started by the defendant's co-defendant during drug manufacturing); *United States v. Keith*, 754 F.2d 1388, 1393 (9th Cir. 1985), *cert. denied*, 474 U.S. 829 (1985) (finding that harm in the form of lost wages incurred after the victim quit her job in response to a threat from the defendant's mother was directly and proximately caused by the defendant's assault of the victim).

ARGUMENT

As explained more fully below, the Acting Director's interpretation of "victim" in Section 101(a)(15)(U) and the phrase "direct and proximate harm" in Section 214.14 is inconsistent with the plain text of Section 101(a)(15)(U), the principles underlying Section 214.14, jurisprudence interpreting similar terms in analogous statutes, and the AG Guidelines invoked by USCIS in promulgating Section 214.14. Because the Acting Director's interpretation is unsupported and erroneous, the AAO should reverse his determination.

I. THE ACTING DIRECTOR'S INTERPRETATION OF "VICTIM" UNDER SECTION 101(A)(15)(U) WAS ERRONEOUS AND CONTRARY TO LAW.

A. Neither Section 101(a)(15)(U) nor Section 214.14 Requires that a Victim Must Be Physically Present to Suffer Direct and Proximate Harm.

First, the Acting Director's decision is inconsistent with the plain text of Section 101(a)(15)(U) and Section 214.14, because nothing in either the statute or USCIS's interpreting regulation requires that a person "be physically present" in order to be directly and proximately harmed by criminal conduct. Op. at 3–4. The Acting Director's suggestion that Section 214.14's requirement to show "direct and proximate harm" mandates *geographical proximity* of a victim to the commission of a crime – for example, where a victim actually "witness[es] a violent crime" – is unsupported by any reasonable interpretation of the text of Section 101(a)(15)(U) and Section 214.14. *Id*. at 4. The term "proximate harm" is used in the regulation to measure causation, not geography.[2]

Further, the Acting Director's statement that Petitioner was "not the direct victim of the murder" of her daughter because "[t]he direct victim of the murder was the person murdered," *id*. at 3–4, ignores the more expansive text of Section 214.14 and makes no sense in light of the qualifying crimes defined by Congress in Section 101(a)(15)(U). First, this interpretation would mean that there is never a qualifying direct victim of the specified crime of murder, because the "person murdered" is no longer alive. Nothing in the statute or regulations suggests that this was the intended application of these provisions. In addition, Section 101(a)(15)(U)(iii) provides that

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[2] The physical location of a victim during a qualifying crime may be potentially relevant only when considering whether an applicant is a "bystander" victim. In such cases, USCIS "will exercise its discretion . . . to treat bystanders as victims where that bystander suffers an unusually direct injury a result of a qualifying crime." *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014 (Sept. 17, 2007). The requirement that a victim suffer "direct and proximate harm," however, is separate from – and unrelated to – any additional geographic proximity requirement that may attend "bystander" status.

qualifying crimes include "obstruction of justice" and "solicitation to commit" other crimes such as "witness tampering." 8 U.S.C. § 1101(a)(15)(U)(iii). The Acting Director's flawed interpretation of "direct and proximate harm" ignores that such qualifying crimes will not have victims who are the immediate object of the offense itself; for example, no alien will be the "direct victim" of an obstruction of justice or solicitation to commit witness tampering offense in the same manner that "the person murdered" is the "direct victim" of a murder, but Section 101(a)(15)(U) clearly contemplates that some aliens may be victims of those crimes.

The AAO should not sanction an interpretation of "direct and proximate harm" that eliminates the application of these provisions to qualifying crimes that Congress specifically identified in the statute. Such an interpretation is "manifestly contrary to the statute" passed by Congress. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984); *see also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (noting that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there"); *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991) (stating that courts "construe statutes, where possible, so as to avoid rendering superfluous any parts thereof"). This would be particularly unjustified where, as explained below, that interpretation also runs counter to the AG Guidelines and case law applying analogous statutory provisions.

The Acting Director's conclusion that "direct and proximate harm" requires any "direct victim" to be the immediate object of a criminal offense also ignores the context supplied by USCIS in promulgating Section 214.14. It is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Auto., Aerospace, Agric. Implement Workers of Am., Int'l*

Union, 523 U.S. 653, 657 (1998) (quoting *Deal v. United States*, 508 U.S. 129, 132 (1993)). In the preamble to Section 214.14, USCIS explained that "[t]o formulate the general definition, USCIS drew from established definitions of "victim," including from "[f]ederal statutory provisions [that] consistently define 'victim'" as one who has suffered direct harm *or* who is directly and proximately harmed as a result of the commission of a crime." *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014 (Sept. 17, 2007) (emphasis added). The Acting Director's interpretation, however, would limit categorization as a direct victim only to those who have suffered harm as the immediate object of a qualifying criminal offense. That narrow construction ignores the context supplied by USCIS, arbitrarily placing undue emphasis on a requirement of immediate harm absent from Section 101(a)(15)(U) and Section 214.14.

B. The Acting Director's Interpretation of "Victim" Diverges from the Settled Interpretation of the Term in Analogous Statutes on Which the "U" Visa Regulations Explicitly Rely.

Second, the Acting Director's decision is at odds with established jurisprudence interpreting analogous statutes that employ the same definitions of "victim" and "direct and proximate harm." In particular, the CVRA and the VWPA – both of which are expressly cited by USCIS in the preamble to Section 214.14 – as well as the Mandatory Victim Restitution Act ("MVRA"), all define a "victim" as one who is "directly and proximately harmed" by criminal activity. 18 U.S.C. § 3771(e)(2)(A); 18 U.S.C. § 3663(a)(2); 18 U.S.C. § 3663A(a)(2). Courts have interpreted this term in similar ways under each framework, *see, e.g.*, *United States v. Credit Suisse AG*, 2014 WL 5026739 at *3 (E.D. Va. Sept. 29, 2014), and the standard under these statutes is identical to that articulated by the AG Guidelines. *See id.* at *4 (quoting *In re Fisher*, 640 F.3d 645, 648 (5th Cir. 2011).

Petitioner would clearly be within the scope of a "victim" as that term is interpreted in decisions applying these statutes. The evidence adduced by Petitioner concerning her extremely close relationship with her daughter, the prior adversarial relationship between Petitioner and the killer as a result of her efforts to protect her daughter and the especially brutal circumstances of the murder established that the harm Petitioner suffered was a direct, natural and foreseeable result of this qualifying criminal conduct. *See generally* Petitioner's Brief on Appeal ("Br.") at 6–8. Courts expressly recognize that "a party may qualify as a victim [under these statutes], even though it *may not have been the target of the crime*, as long as it suffers harm as a result of the crime's commission." *United States v. Giraldo-Serna*, 118 F. Supp. 3d 377, 383 (D.D.C. 2015) (quoting *In re Stewart*, 552 F.3d 1285, 1289 (11th Cir. 2008)) (emphasis added). The fact that there are "multiple links in the causal chain" does not preclude a finding that harm was proximately caused by criminal activity. *Sharp*, 463 F. Supp. at 564 (collecting cases). The Acting Director's conclusion that Petitioner was not directly and proximately harmed is inconsistent with these holdings under analogous statutory provisions. Thus, reversing the Acting Director's decision would preserve uniformity with interpretations of similar terms in other federal legislation that addresses the rights of crime victims.

C. The Acting Director's Decision Did Not Conform with the AG Guidelines Because It Failed to Meaningfully Evaluate the Particular Facts Underlying Petitioner's Claim.

Third, the Acting Director's decision contravened the AG Guidelines because it failed to engage in a "fact-specific analysis" to determine whether the qualifying criminal conduct at issue was a direct – or "but for" – and proximate cause of harm to Petitioner. Ex. A at 8-9. As courts interpreting other statutes concerning crime victims' rights have observed, assessing the sufficiency of harm in this context "encompasses . . . traditional 'but for' and proximate cause

analyses." *In re Rendon Galvis*, 564 F.3d 170, 175 (2d Cir. 2009) (citing *In re Antrobus*, 519 F.3d 1123, 1226 (10th Cir. 2008). These analyses require an individualized inquiry into the "dual requirements of cause in fact and foreseeability," *Fisher*, 640 F.3d at 648, and find that harm was proximately caused by criminal conduct when a victim demonstrates that the harm was directly and closely related to the criminal conduct. *Giraldo-Serna*, 118 F. Supp. 3d at 383; *see also United States v. Kones*, 77 F.3d 66, 70 (3d Cir. 1996) (interpreting the term "direct" to "require that the harm to the victim be closely related" to criminal conduct "rather than tangentially linked"); *United States v. Gamma Tech Indus., Inc.*, 265 F.3d 917, 928 (9th Cir. 2001) (finding that a company that suffered losses in connection with defendant's operation of a fraudulent kickback scheme qualified as a victim because inflation of prices was a "natural result" of kickback payments).

Here, the Acting Director failed to conduct any inquiry contemplated by the AG Guidelines, which "were viewed by USCIS as an informative resource in the development of . . . [Section 214.14]'s definition of victim." *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014 (Sept. 17, 2007). Rather, the Acting Director merely stated, in a conclusory manner, that Petitioner was "not the direct victim of the murder" of her daughter because "[t]he direct victim of the murder was the person murdered," and thus the only "question is whether [she] can qualify as an indirect victim" under other narrow provisions of 8 C.F.R. § 214.14. Op. at 2–3. The Acting Director failed to assess whether the substantial evidence adduced on Petitioner's behalf showed that she was also a direct victim because her serious emotional and psychological injury was directly and proximately caused by the murder of her daughter. *See generally* Br. at 4–8.

This approach was inconsistent with the substantial body of settled jurisprudence addressing "direct and proximate" causation, which acknowledges that direct harm is not always

limited to a single immediate victim. *See, e.g.*, *Giraldo-Serna*, 118 F. Supp. 3d at 383 (noting that "a party may qualify as a victim, even though it may not have been the target of the crime, as long as it suffers harm as a result of the crime's commission"); *United States v. Battista*, 575 F.3d 226, 231 (2d Cir. 2009) (finding that a sports association was directly and proximately harmed as a "victim" of a gambling scheme, even though the orchestrator "did not defraud the NBA directly"); *United States v. Donaby*, 349 F.3d 1046, 1054 (7th Cir. 2003) (concluding that a police department was entitled to restitution as a "victim" of a bank robbery for damage to a department vehicle following the robbery). The Acting Director's decision ignores these principles and, thus, the "informative" framework set forth in the AG Guidelines.

II. BECAUSE PETITIONER IS A "VICTIM" WITHIN THE MEANING OF SECTION 101(A)(15)(U), THE ACTING DIRECTOR'S DECISION SHOULD BE REVERSED.

The record reflects that Petitioner has suffered "direct and proximate harm" from the commission of qualifying criminal activity within the meaning of Section 214.14. Specifically, she has offered evidence of substantial cognizable emotional harm suffered as a direct result of the brutal murder of her daughter. *See* Br. at 4–5. But for the violent death of her daughter, Petitioner would not have suffered this severe emotional trauma. *Id.* at 5. It is immaterial for this purpose that Petitioner's daughter was the immediate victim of that conduct, as nothing in Section 101(a)(15)(U) or Section 214.14 suggests that (*i*) there can be only *one* foreseeable victim of the crime of murder or (*ii*) only the immediate victim of a qualifying offense may be deemed directly and proximately harmed. Accordingly, Petitioner is a "victim" within the meaning of Section 101(a)(15)(U)(i)(I), and the Acting Director's erroneous decision should be reversed.

A. Reversing the Decision of the Acting Director Comports with Important Policies Underlying Section 101(a)(15)(U).

"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, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States." *U Nonimmigrant Status Interim Rule,* 72 Fed. Reg. 53014 (Sept. 17, 2007). It is incongruous to interpret "direct and proximate harm" more stringently here than in these other statutes, because both USCIS's regulation and the restitution statutes (*i*) are predicated on the same AG Guidelines; (*ii*) define rights of victims of crimes; and (*iii*) are intended to promote cooperation with and assistance to law enforcement. Reversing the Acting Director's decision would serve the important policies underlying Section 101(a)(15)(U).

The definition of a "victim" under Section 214.14 and other federal statutes provides law enforcement with more tools to incentivize cooperation by potential witnesses and to help compensate those who suffer harm as the result of serious crimes. The letter from the [redacted], AAO Doc. p. 18, submitted with Petitioner's Brief, demonstrates that Petitioner provided cooperation to that office in its investigation of her daughter's murder, which was "critical in determining not only the motives behind her daughters [sic] murder, but also to assist in understanding the dynamics of domestic violence and determining how to assist victims of domestic violence moving forward."

The Acting Director's unsupported narrow interpretation of "victim" and "direct and proximate harm" does not serve these policy goals, and in fact may frustrate efforts to investigate such crimes by artificially limiting the universe of persons encouraged to assist law enforcement. *See U Nonimmigrant Status Interim Rule,* 72 Fed. Reg. 53014 (Sept. 17, 2007) (noting that

"[a]lien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States"). The Acting Director's erroneous interpretations also place at increased risk immigrant victims of crimes who may fear the consequences of interacting with, and providing information to, law enforcement. These consequences run counter to the purpose of Section 101(a)(15)(U) and harm the interest of citizens and immigrants alike by increasing the risk that serious crimes will go unpunished.

B. Reversing the Decision of the Acting Director Will Not Result in an Unworkable Rule or a Deluge of Nonimmigrant Classifications Under Section 101(a)(15)(U).

Reversing the Acting Director's decision would not result in an unmanageable rule permitting all individuals impacted in any way by qualifying crimes to obtain nonimmigrant classification. Section 214.14's requirement that an applicant demonstrate a "direct and proximate" harm resulting from qualifying criminal activity meaningfully circumscribes the individuals capable of obtaining nonimmigrant classification under Section 101(a)(15)(U). In this case, Petitioner introduced evidence that (*i*) she had a very close relationship with her daughter, whom she saw daily; (*ii*) her suffering was exacerbated because she received a text message from her daughter shortly before she was murdered revealing that her daughter was distraught; (*iii*) she rushed to what she later learned was the scene of the crime at or near the time of her daughter's murder in an attempt to help her daughter; (*iv*) she attempted, but was unable, to locate her daughter in time to save her life; (*v*) her daughter's death was particularly gruesome and traumatic; (*vi*) her daughter's killer, who had a documented history of domestic abuse, had blamed Petitioner for trying to separate him from her daughter, and thus not only had a motive to harm Petitioner but had previously threatened to harm Petitioner; and (*vii*) the manner of her daughter's murder suggests that it may have been intended to cause Petitioner emotional harm.

See Br. at 6–8. These facts establish, in this case, that the grievous emotional and psychological harm to Petitioner was foreseeable to – and possibly even intended by – her daughter's murderer.

It does not follow, however, that all suffering by family members in other cases will be deemed similarly foreseeable. Because traditional notions of "direct and proximate harm" require a close causal connection between a victim, criminal conduct and resultant harm, reversing the Acting Director's decision will not eliminate reasonable and appropriate limitations on the application of these provisions. *See*, *e.g.*, *Rendon Galvis*, 564 F.3d at 175 (holding that a mother whose son was murdered was not a victim of the crime of conspiracy to import cocaine because the harm she suffered was not a direct result of the offense of conviction); *see also United States v. Schmidt*, 675 F.3d 1164, 1167 (8th Cir. 2012) (noting that the expenditure of funds by an insurer to compensate a victim is generally not recognized as direct or proximate harm).

Interpreting "direct and proximate harm" consistently with analogous statutory definitions and case law provides principled limits requiring a clear, defined and close relationship that would disqualify frivolous applications under Section 101(a)(15(U). Courts and agencies are fully capable of applying the law defining "direct and proximate harm" to ensure that the "the causal connection between . . . conduct and the [harm] is not too attenuated (either factually or temporally)." *United States v. Speakman*, 594 F.3d 1165, 1172 (5th Cir. 2010); *cf. Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 536 (1995) (noting that a "proximate causation" requirement "normally eliminates the bizarre"); *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Oregon*, 515 U.S. 687, 713 (1995) (O'Connor, J., concurring) ("Proximate causation depends to a great extent on considerations of the fairness of imposing liability for remote consequences."). In fact, ensuring that USCIS determinations are

consistent with the well-developed body of law concerning "direct and proximate harm" in related contexts may *reduce* administrative burdens by providing clear guidance to applicants and their attorneys, encouraging meritorious applications while eliminating those clearly outside the proper scope of Section 214.14. As such, reversing the Acting Director's decision would not frustrate legitimate agency safeguards.

CONCLUSION

For these reasons, as well as those advanced in Petitioner's brief, the AAO should reverse the Acting Director's determination and grant Petitioner a nonimmigrant classification as a victim of a qualifying crime pursuant to Sections 101(a)(15(U) and 214(p) of the Act.

Dated: April 23, 2018
New York, NY

Respectfully submitted,

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