

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS**

**In the Matter of:**

**Respondent.**

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) **File No. A**  
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) **AMICUS INVITATION NO. 16-03-17**  
) **(& Certificate of Service)**  
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**REQUEST TO APPEAR AS *AMICUS CURIAE***

**REQUEST TO APPEAR AND STATEMENTS OF INTEREST**

The American Immigration Council, the American Immigration Lawyers Association, the Asian Pacific Institute on Gender-Based Violence, ASSISTA Legal Assistance, the Catholic Legal Immigration Network, Inc., Futures without Violence, the National Alliance to End Sexual Violence, National Coalition Against Domestic Violence, the National Latin@ Network for Healthy Families and Communities, the National Network to End Domestic Violence, and Tahirih Justice Center respectfully request permission to submit the following brief as *amici curiae* in response to the Board's Amicus Invitation No. 16-03-17. *Amici* have extensive knowledge and experience in the area of U nonimmigrant status and the Violence Against Women Act and believe their input will assist the Board with resolution of the numerous issues it identified in its amicus request. Amici have responded to all six of the Board's questions. This brief is timely submitted, in accord with the Board's April 16, 2016 letter granting an extension until May 9, 2016.

The American Immigration Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration

of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants.

The American Immigration Lawyers Association (AILA) is a national association with more than 14,000 members, 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; to cultivate the jurisprudence of the immigration laws; 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 and Executive Office for Immigration Review, as well as before the United States District Courts, Courts of Appeals, and Supreme Court. AILA members work regularly with crime victims who qualify for immigration benefits based on their cooperation with law enforcement agencies in the investigation and prosecution of cases of domestic violence, sexual assault, human trafficking, and other crimes.

The Asian Pacific Institute on Gender-Based Violence (formerly, Asian & Pacific Islander Institute on Domestic Violence) is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander communities. The Institute serves a national network of advocates and community-based service programs that work with Asian and Pacific Islander survivors, and is a leader on providing analysis on critical issues facing victims in the Asian and Pacific Islander communities. The Institute leads by promoting culturally relevant intervention and prevention, expert consultation, technical assistance and training; conducting and disseminating critical research; and informing public policy. The Asian Pacific Institute's vision of gender democracy

drives its mission to strengthen advocacy, change systems, and prevent gender violence through community transformation.

ASISTA Immigration Assistance (ASISTA) co-founded the National Network to End Violence Against Immigrant Women, which worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault and other crimes. Such routes were prescribed in the 1994 Violence Against Women Act (VAWA) and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security personnel charged with implementing these laws, most notably United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and the Department of Homeland Security's (DHS) Office on 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. ASISTA has previously filed amicus briefs on immigrant crime survivor issues with the Board, with federal courts of appeal, and with the Supreme Court.

The Catholic Legal Immigration Network, Inc. (CLINIC) promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of more than 275 Catholic and community legal immigration organizations in 47 states, the District of Columbia, and Puerto Rico. Its major programs include advocacy, the BIA Pro Bono Project, the Center for Citizenship and Immigrant Communities, Religious Immigration Services, and Training and Legal Support. We are one of the four co-founders of the CARA Family Detention Pro Bono Representation Project.

Futures Without Violence (FUTURES) is a national nonprofit organization that has worked for over thirty years to prevent and end violence against women and children around the world. FUTURES mobilizes concerned individuals; children's, women's rights and civil rights groups; allied professionals; and other social justice organizations to end violence through public education/prevention campaigns, public policy reform, training and technical assistance, and programming designed to support better outcomes for women and children experiencing or exposed to violence. FUTURES joins with *amici* in supporting the interpretation of the Violence Against Women Act (VAWA) to minimize barriers for all U nonimmigrant status victims of violent crime and sexual violence to obtain lawful permanent status in the United States. Fear of removal from the United States by government authorities often creates a barrier that prevents immigrant victims of crime from reporting violent crimes perpetrated against them as well as participating in the criminal investigation and prosecution of criminal activity. Perpetrators of intimate partner violence and other violent crime often use the threat of deportation to frighten and control noncitizen victims to prevent them from reporting crimes to law enforcement. FUTURES has a long-standing interest in and commitment to supporting the rights of victims of crime regardless of immigration, citizenship or residency status. The path to lawful permanent residency for all U nonimmigrant survivors, including those granted status within the United States, ensures victims have access to the courts if they continue to be victimized by the perpetrator after they have been granted status, allows victims to continuously participate in the prosecution of the perpetrator, and supports victims and their families by allowing families to remain together safely in the United States.

The National Alliance to End Sexual Violence (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end

sexual violence and support survivors. The local rape crisis centers in our network see every day the widespread and devastating impacts of sexual assault upon survivors, including immigrant survivors, and provide the frontline response in their communities advocating for victims, spreading awareness and prevention messages, and coordinating with criminal justice and other professionals who respond to these crimes. U-visas are an important tool to ensure survivors are able to come forward and help law enforcement investigate the serious crime of sexual assault.

The National Coalition Against Domestic Violence (“NCADV”) is a Colorado not-for-profit organization incorporated in 1978 ([www.ncadv.org](http://www.ncadv.org)). The vision of NCADV is to create a culture where domestic violence is not tolerated; and where society empowers victims and survivors, and holds abusers accountable. NCADV’s mission is to be the voice of victims and survivors. NCADV is the catalyst for changing society to have zero tolerance for domestic violence. NCADV does this by effecting public policy, increasing understanding of the impact of domestic violence, and providing programs and education that drive that change.

The National Latin@ Network for Healthy Families and Communities, a project of Casa de Esperanza, builds bridges and connections among research, practice and policy to advance effective responses to eliminate domestic violence and to promote healthy relationships within Latin@ families and communities. As a Latin@ organization, immigration relief for victims of domestic violence, in particular, the protections afforded by the U visa, offers critical support for Latin@ victims and their families.

The National Network to End Domestic Violence (NNEDV) is a non-profit membership and advocacy organization dedicated to ending domestic violence through legal, legislative, and policy initiatives. The leading voice for domestic violence victims and their advocates, NNEDV comprises a network of 56 state and territorial coalitions against domestic violence representing

over 2,000 local organizations that provide shelter, advocacy, and counseling and legal services to victims and survivors of domestic violence and their families. Working with federal, state, and local policy makers and domestic violence advocates throughout the nation, NNEDV helps identify and promote policies and best practices to advance victim safety. NNEDV was instrumental in promoting Congressional enactment and eventual implementation of the Violence Against Women Act of 1994 and subsequent reauthorizations. NNEDV's broad expertise in the nature and dynamics of domestic violence and its impact on victims, inform its position on the needs of immigrant survivors, and the ways in which immigration status is used as a means of perpetrating domestic violence, sexual assault, and stalking.

Tahirih Justice Center is a national, non-profit organization that provides holistic legal services to immigrant women and children who have suffered sexual and domestic violence. Tahirih has subject-matter expertise in the impact of sexual and domestic violence on immigrant women and children and in the range of immigration remedies available to them, including U nonimmigrant status

## **ARGUMENT**

### **I. Does the present respondent remain in valid U nonimmigrant status at this time?**

***Amici* has insufficient information to determine whether the Respondent currently holds U nonimmigrant status.**

*Amici* maintain that without further facts we cannot make any representation regarding the Respondent's U nonimmigrant status. Generally, an individual may maintain U nonimmigrant status unless and until the petition is revoked by U.S. Citizenship and Immigration Services (hereinafter "USCIS"). 8 CFR § 214.14(h). Revocation of U status may be automatic if the beneficiary of the petition notifies USCIS that he or she will not *apply for admission* and therefore the petition will not be used. 8 CFR § 214.14(h)(1) [Emphasis added]. Additionally,

USCIS may revoke an approved U nonimmigrant petition following notice of an intent to revoke. The regulations at 8 CFR § 214.14 (h)(2) provide a limited list of circumstances in which USCIS may issue a notice of intent to revoke and the notice must contain the grounds for such revocation. When a U nonimmigrant receives a revocation, he or she may submit rebuttal evidence within 30 days of the date of the notice. 8 CFR § 214.14(h)(2)(ii). Upon consideration of all relevant evidence, USCIS will issue a decision to either maintain or revoke status. This decision may be appealed to the Administrative Appeals Office (hereinafter "AAO") within 30 days after the date of the notice of revocation. 8 CFR § 214.14(h)(3). The effect of a U nonimmigrant petition revocation is termination of status. 8 CFR § 214.14(h)(4).

The fact that an individual is in removal proceedings or has a prior removal order does not preclude petitioning for--or receiving--U visa relief. 8 CFR § 214.14(c). Furthermore, section § 237(d) of the Immigration and Nationality Act (hereinafter "INA" or "Act") instructs that if an application for U or T nonimmigrant status sets forth a prima facie case for approval, the Secretary may grant the noncitizen an administrative stay of a final order of removal under section INA § 241(c)(2) until the application for nonimmigrant status under such subparagraph (T) or (U) is approved, or there is a final administrative denial of the application for such nonimmigrant status after the exhaustion of administrative appeals. INA § 237(d)(1). Thus without knowing more regarding the posture of the Respondent's case, *Amici* are uncertain as to Respondent's current immigration status.

**II. In light of the definition of "admission" at section 101(a)(13)(A) of the Act, can a person granted U nonimmigrant status from within the United States properly be considered to be "in and admitted to the United States" within the meaning of section 237(a) of the Act? In responding to this question, please discuss the Board's decisions in *Matter of Agour*, 26 I&N Dec. 566 (BIA 2015); *Matter of Fajardo Espinoza*, 26 I&N Dec. 603 (BIA 2015); *Matter of V-X*, 26 I&N Dec. 147 (BIA 2013); and *Matter of Reza*, 25 I&N Dec. 296 (BIA 2010).**

**In light of the definition of “admission” at section 101(a)(13)(A) of the Act, a person granted U nonimmigrant status from within the United States can be properly considered to be “in and admitted to the United States” within the meaning of section 237(a) of the Act.**

**A. Congress made clear its intent that applicants who receive U nonimmigrant status from within the U.S. are “admitted.”**

Section 101(a)(13)(A) of the INA defines the terms “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” INA § 101(a)(13)(A). This seemingly unambiguous statutory language has been the subject of growing case law, as the Board of Immigration Appeals (“Board” or “BIA”) and federal circuit courts continue to determine how to apply the term “admitted” to a broad range of immigration contexts. The Board has confirmed that it will give effect to the plain meaning of section 101(a)(13)(A) when possible. *See Matter of Agour*, 26 I&N Dec. 566, 570-571 (BIA 2015). Nevertheless, the Board has acknowledged that the terms “admitted” and “admission” appear in different contexts in the Act. *Id.* at 571. In response to this complex statutory framework, the BIA and federal courts have held that the statutory definition of “admitted” and “admission” is not applicable in certain limited circumstances where other statutory text so indicates or where necessary to avoid absurd results. In *Fajardo Espinoza*, the Board confirmed that “[i]n certain circumstances, we have determined that the statutory scheme as a whole requires that the otherwise clear and unambiguous definition of the terms “admitted” and “admission” in section 101(a)(13)(A) must yield, specifically where absurd or bizarre results would otherwise ensue.” *Matter of Fajardo Espinoza*, 26 I&N Dec. 603, 606 (BIA 2015). In line with this case law, *Amici* submit that the statutory provisions related to U nonimmigrants make clear that individuals who receive U nonimmigrant status within the U.S. are “admitted” within the purposes of sections 237(a) and 245 of the Act, and that any other interpretation would produce absurd results.



- i. Similar to the context of adjustment of status, a grant of U nonimmigrant status within the U.S. should render an applicant “admitted to” the United States.*
- a. In light of *Matter of Agour*, the Board should broadly apply the term “admission” to U nonimmigrants based on the context provided by INA § 101(a)(13), congressional intent, and underlying policy interests.**

In *Matter of Agour*, 26 I&N Dec. 566 (BIA 2015), the Board held that adjustment of status constitutes an “admission” for purposes of establishing eligibility for a waiver under INA § 237(a)(1)(H). In reaching this conclusion, the Board’s inquiry exceeded the plain meaning of § 101(a)(13)(A) to include an examination of this provision in the context of the full statute, relevant case law, and legislative intent. *Id.* at 571. With regard to congressional intent, the Board specifically pointed to evidence in the conference report for the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter “IIRIRA”) indicating that Congress intended § 101(a)(13)(A) to replace the definition of “entry” with “admission” and “admitted,” not to serve as the exhaustive definition for those terms. *Id.* at 572. The Board went on to find that the plain language of §§ 101(a)(13)(B) (specifying that parolees and crewman are not “admitted”), 101(a)(13)(C) (confirming that LPRs should not be regarded as “seeking admission” unless certain criteria are met), 101(a)(20) (defining “lawfully admitted for permanent residence” as including both an entry into the United States with an immigrant visa and adjustment of status) and 245(a)-(b) (describing adjustment of status as an “admission” for permanent residence) all support treating adjustment of status as a lawful admission or substantial equivalent. *Id.* at 573. Finally, the Board noted that construing the language of § 237(a)(1)(H) regarding “admission” to include adjustment of status was in keeping with humanitarian interests and policy interests in preventing the separation of families. *Id.* at 578.

The Board’s analysis in *Matter of Agour* is instructive to an inquiry into whether an individual who has been granted U nonimmigrant status in the U.S. has been “admitted.” The

congressional intent demonstrated by the conference report for the IIRIRA remains equally applicable – while there is strong evidence that Congress intended to replace the term “entry” with “admission” as part of the IIRIRA, there is no evidence that Congress amended § 101(a)(13)(A) to specifically preclude a finding of admission for applicants who received nonimmigrant status while within the U.S. The plain meaning of relevant statutory language also supports a determination that U nonimmigrants have been “admitted” to the United States. Congress created the U nonimmigrant program in October 2000 with the passage of the Victims of Trafficking and Violence Protection Act. As Congress did not designate U nonimmigrants as parolees when drafting § 101(a)(15)(U), they are not precluded from being deemed “admitted” by § 101(a)(13)(B).

Moreover, § 245(m)(1) of the Act requires U nonimmigrants who are applying for adjustment of status to establish that they have been physically present in the United States for a continuous period of at least three years “since the date of admission as a nonimmigrant.” INA § 245(m)(1)(A). This same section authorizes the Department of Homeland Security (hereinafter “DHS”) to “adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U).” INA § 245(m)(1). *See* Section V and VI, *infra*. In passing this statutory language, which unequivocally requires proof of an “admission” before a U nonimmigrant may adjust status to lawful permanent resident, Congress made clear its intent for a grant of U nonimmigrant status to serve as an “admission” for purposes of adjustment of status. An alternative interpretation would render this section both internally inconsistent as well as create the absurd result of providing a pathway to lawful permanent residency only for those U nonimmigrants who were admitted at a port of entry. As the legislative history of the U visa provisions have never suggested that this far-reaching distinction

was intended by Congress, the plain meaning of § 245(m)(1) should prevail. The implementing regulations also support a finding that U nonimmigrants have been “admitted.” Section 245.24(b)(2)(i) of the Code of Federal Regulations states that an applicant for adjustment under INA § 245(m) must prove that he or she was “lawfully admitted to the United States as either a U-1, U-2, U-3, U-4, or U-5 nonimmigrant.” The term “admitted” was specifically used, again indicating that a grant of U nonimmigrant status was intended to be an admission.

Finally, similar to the Board’s analysis of the § 237(a)(1)(h) waiver in *Matter of Agour*, construing the statutory language on “admission” found in §§ 101(a)(13) and 245(m)(1) to include U nonimmigrants granted status in the United States is in keeping with humanitarian concerns and policy interests. In the U nonimmigrant context, not only does broadly interpreting “admission” serve to prevent the separation of families, it also serves to protect crime victims while strengthening the ability of law enforcement agents to investigate and prosecute crimes of domestic violence and sexual assault. These are some of our nation’s most pressing policy interests, and there is an incredibly strong incentive to interpret the Act in keeping with these objectives. As detailed below, through the creation of the U visa program, Congress intended to minimize barriers for crime victims to obtain lawful status in the United States. Failure to deem a grant of U nonimmigrant status an admission conflicts with this intent by constructing unnecessary barriers for U nonimmigrants to adjust their status pursuant to § INA 245. *See Part IV, infra.*

Finally, it would be absurd to allow U nonimmigrants who entered the United States with a U visa to adjust status pursuant to INA § 245 while denying that benefit to U nonimmigrants who obtained their status from within the United States, and who are arguably more likely to have acquired strong family ties and equities in the country. Many U nonimmigrants who

receive their status from within the United States have lived in the country for several years and are deeply integrated into their communities. It would also be absurd to subject them to a higher burden of proof in removal proceedings than those coming into the United States for the first time on a U visa.

**B. U Nonimmigrants are Similar to TPS and AOS Beneficiaries inasmuch as they Must Demonstrate their Admissibility or Seek a Waiver of Inadmissibility.**

The Sixth Circuit has held that a grant of Temporary Protected Status (hereinafter “TPS”) is an admission for purposes of INA § 245(a). *See Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013). The U.S. District Court for the Western District of Washington adopted the reasoning in *Flores v. USCIS*, finding that a noncitizen’s grant of TPS qualifies as an “inspection and admission” for purposes of adjustment of status. *Ramirez v Dougherty*, 23 F. Supp. 3d 1322 (W.D. Wash. 2014) (appeal pending, No. 14-35633(9th Cir.)); *see also Medina v. Beers*, 65 F. Supp. 3d 419 (E.D. PA. 2014) (following *Flores*); *Bonilla v. Johnson*, No. 14-4962, 2016 U.S. Dist. LEXIS 31968, \*8 (D. Minn. Mar. 3, 2016) (same); *Guerrero v. Johnson*, No. 151135, 2015 U.S. Dist. LEXIS 136322, \*11-12 (D. LA. Oct. 5, 2015) (agreeing with *Flores*); but *see Serrano v. U.S. Attorney Gen.*, 655 F.3d 1260 (11th Cir. 2011) (reaching the opposite conclusion).

These courts all recognize that there is statutory support for finding that a grant of TPS is an admission. INA § 244(f)(4) (“for purposes of adjustment of status under section 245 and change of status under section 248 the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.”). Similar to those granted U nonimmigrant status, a TPS beneficiary undergoes a process that specifically requires inadmissibility to be waived and is expressly accorded lawful status during the time that TPS status is in effect. *See* INA §§ 244(c)(2)(A); 244a(f)(4). Both programs involve an assessment of admissibility, accord an

actual immigration status to the individual, and provide protection from removal during the time such status is accorded. Moreover, and significantly, the courts that have found TPS to be an admission relied on the statutory language that mandated that the TPS recipient “be considered as being in, and maintaining, lawful status as a nonimmigrant.” Similarly, as discussed in more detail in Section III, there are numerous indications in the statutory provisions relating to U nonimmigrant status that demonstrate that a grant of that status is an admission. In light of this, holding that U nonimmigrant status was not an admission would produce conflicting—and nonsensical—results.

Viewing both TPS and U nonimmigrant status as involving an “admission” is also in line with *Matter of Agour* and other cases that have held that an adjustment of status is an admission. In all three situations, there are clear indicators that Congress intended for the grant of status to be an admission.

**C. U Nonimmigrant Status is distinguishable from a grant of benefits under the Family Unity Program, which is only available to aliens within the United States and which does not require the applicant to establish admissibility.**

In *Matter of Fajardo Espinoza*, 26 I&N Dec. 603 (BIA 2015) the BIA reaffirmed its holding in *Matter of Reza*, 25 I&N Dec. 296 (BIA 2010) that a grant of Family Unity Program (hereinafter “FUP”) benefits does not constitute an “admission” for purposes of establishing eligibility for lawful permanent resident (hereinafter “LPR”) cancellation of removal under INA 240A(a)(2). The Board’s decision, to which the Circuit subsequently deferred (*see Median Nunez v. Lynch*, 788 F. 3d 1103 (9th Cir. 2015)), was premised on statutory grounds. Specifically, it found that the statutory definition of the term “admission” must apply because there was no indication of a different congressional intent and because no absurd results would occur.

Moreover, family unity is distinct from nonimmigrant U status in other ways. A grant of Family Unity benefits is only available to applicants who are within the U.S. *See* AFM 24.4(d)(2). In contrast, a U nonimmigrant may have been admitted into status at the border or within the country. In addition, applicants for Family Unity benefits do not have to seek a waiver of inadmissibility, and as such, may not be eligible for admission to the United States at the time they apply for these benefits. As discussed above, U visa applicants, like applicants for TPS and adjustment of status, must establish their admissibility to the United States before status will be conferred on them.

**D. U Nonimmigrant Status is distinguishable from a grant of asylum, which is only available to aliens within the United States and which does not require the applicant to establish admissibility.**

In *Matter of V-X-*, the BIA held that a grant of asylum status does not constitute an admission. *Matter of V-X-*, 26 I&N Dec. 147, 150-52 (BIA 2013). The respondent in that specific case was granted asylum within the U.S. after being “paroled” into the country. Parole is not an admission. INA §§ 101(a)(13)(B); 212(d)(5); see also *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005). Moreover, an applicant for asylum, unlike a U visa applicant, is not required to establish admissibility or to seek a waiver of inadmissibility in order to be approved for asylee status. As such, the decision in *Matter of V-X-* can be reconciled with the determination that a grant of U nonimmigrant status constitutes an admission.

**III. Was the Immigration Judge correct in ruling that a grant of U nonimmigrant status from within the United States must be an “admission,” otherwise such grantees would be disqualified from adjustment of status by section 245(m)(1)(A) of the Act, which limits adjustment to (U) nonimmigrants who have been physically present in the United States for a continuous period of at least 3 years “since the date of admission as a nonimmigrant”?**

**A. The statutory and regulatory provisions relating to U nonimmigrant status, when read in context and as a whole, demonstrate that a grant of U nonimmigrant status from within the United States is an admission.**

The Immigration Judge was correct in concluding that the grant of U nonimmigrant status from within the United States is an “admission.” When read together, the statutory provisions relating to U nonimmigrant status and adjustment—including but not limited to INA § 245(m)(1)(A)—demonstrate that a grant of such status constitutes an admission. Through these interrelated provisions, Congress made clear that it intended that all noncitizens who were granted U nonimmigrant status were admitted regardless of whether they were granted that status from within the United States or outside of it. Consequently, these provisions represent an instance in which Congress used the term “admission” in a manner other than as it is defined in INA 101(a)(13). *See* Question I, above. The regulations are in accord, demonstrating that DHS and USCIS agree that this is Congress’ intent and, accordingly, have interpreted these provisions in this way.

There are three primary statutory provisions addressing U nonimmigrant status: INA §§ 101(a)(15)(U), 214(p), and 245(m). These provisions must be read in concert; a basic rule of statutory interpretation is that the “language and design of the statute as a whole” must be considered. *Matter of C—W—L—*, 24 I. & N. Dec. 346, 348 (BIA 2007) (citing *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)). Moreover, all parts of the statute must be given effect. *Id.* (citing *Kungys v. United States*, 485 U.S. 759 (1988)). “A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” *Matter of Villarreal-Zuniga*, 23 I&N Dec. 886, 889 (BIA 2006) (quoting *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assoc.*, 484 U.S. 365, 371 (1988)).

INA § 101(a)(15)(U) defines the U nonimmigrant classification by identifying certain general eligibility requirements. This section also makes clear, however, that the determination

of U visa eligibility is “subject to” INA § 214(p). Section 214, entitled “*Admission of nonimmigrants*” (emphasis added), includes both a general provision relating to all nonimmigrant categories (§ 214(a)), as well as subsequent subparts relating to specific nonimmigrant categories, including subsection (p) pertaining to the U nonimmigrant classification. Consistent with the title of § 214, the general provision in § 214(a) states, without restriction, that “[t]he *admission* to the United States of *any alien as a nonimmigrant* shall be for such time and under such conditions as the Attorney General may by regulations prescribe.” (Emphasis added). The title of a statute or a section “can aid in resolving an ambiguity in the legislation’s text.” *INS v. National Center for Immigrants’ Rights*, 502 U.S. 183 (1991) (citations omitted) (finding that the “text’s generic reference to ‘employment’ should be read as a reference to the ‘unauthorized employment’ identified in the paragraph’s title”). Here, the title is consistent with the text; both make clear that nonimmigrants are “admitted” into that status. *See Matter of Briones*, 24 I&N Dec. 355, 366 (BIA 2007) (finding that its interpretation of the relevant provision “springs from the statutory language taken in context and is amply supported by both the title of the statute and its legislative history”).

Nothing in § 214 (p) exempts U nonimmigrants from § 214(a)’s dictates. To the contrary, § 214(p) is consistent with § 214(a). It makes clear that two groups are eligible for U nonimmigrant status: both those “issued visas” and those “otherwise provided status as nonimmigrants under [INA § 101(a)(15)(U)].” INA § 214(p)(2)(A). This latter category clearly is intended to cover those who are granted U nonimmigrant status from within the United States and thus not in need of a visa. Because § 214(p) does not exempt U nonimmigrants from the general provisions of § 214(a) and because it includes both those issued U visas and those



granted U nonimmigrant status from within the United States, the latter category must be found to have been “admitted” in accord with § 214(a).

Additionally, § 214(a)(1) provides that a nonimmigrant’s “admission ... shall be for such time and under such conditions as the Attorney General may by regulation prescribe.” *See Matter of C—W—L—*, 24 I. & N. Dec. 346, 348 (BIA 2007) (“We also are bound by the implementing regulations that correspond to the relevant portions of the statute that control the issue presented here. *Matter of Ponce de Leon*, 21 I. & N. Dec. 154, 158 (BIA 1996; A.G., BIA 1997). These regulations have the force of law.”) The regulations adopted to implement § 214 confirm that individuals granted nonimmigrant status, including U nonimmigrant status, are “admitted.”

First, 8 C.F.R. § 214.1 is entitled “Requirements for admission, extension, and maintenance of status.” Subsection 214.1(a)(3)(i) sets out general requirements for individuals applying for “admission” to nonimmigrant status (or an extension of status previously granted), including the requirement that the individual demonstrate that she is not inadmissible and the presentation of certain documents. Additionally, at the time of “admission,” the individual must agree to depart the United States at the end of the authorized period of “admission.” 8 C.F.R. § 214.1(a)(3)(ii).

The regulatory requirements specific to U nonimmigrants found in 8 C.F.R. § 214.14 further demonstrate that a grant of U nonimmigrant status from within the United States is an admission. USCIS has sole jurisdiction over these petitions, which can be filed by individuals who are either in the United States or abroad. 8 C.F.R. § 214.14(c). For those who petition from within the United States, USCIS must include an I-94 Arrival-Departure Record indicating U

nonimmigrant status with any favorable decision. 214.14(c)(5)(i)(A). The I-94 is the form used by DHS for documenting when a person has been either admitted or paroled. *See* 8 C.F.R. § 1.4.

Additionally, § 214.14(i) states that nothing in § 214.14 prevents USCIS from instituting removal proceedings for conduct committed after “admission.” This would be an absurd result. *See* Question II, *supra*. Still another indicator that a grant of U nonimmigrant status from within the United States is an admission is found in § 214.14(f), entitled “Admission of qualifying family members.” This section explains that an individual who has petitioned for or been granted U nonimmigrant status may “petition for the admission” of a qualifying family member, regardless of whether that family member is within or outside of the United States.

Finally, as the Immigration Judge noted, a grant of U nonimmigrant status must be found to be an admission to give full meaning to INA § 245(m)(1). To be eligible to adjust to lawful permanent resident status, this section requires three years of continuous presence in the United States “since the date of admission” as a U nonimmigrant. Because all U nonimmigrants are eligible to adjust—not simply those who petitioned for a U nonimmigrant visa from abroad—this section is further confirmation that Congress viewed the grant of U nonimmigrant status as an admission. The regulations support this interpretation. To demonstrate eligibility for adjustment of status, a U nonimmigrant must show that she was “lawfully admitted” in U nonimmigrant status. 8 C.F.R. § 245.24(b)(2)(i). In the Supplementary Information to these interim regulations, the DHS and USCIS clarify that, to demonstrate admission in U nonimmigrant status, an adjustment applicant must submit either (1) a copy of the USCIS decision approving the U nonimmigrant petition and the Form I-94 Arrival/Departure Record that USCIS would have attached to the approval notice, or (2) the applicant’s passport with a U nonimmigrant visa along with a copy of the Form I-94 Arrival/Departure Record evidencing the applicant’s

admission into the United States in U nonimmigrant status. 73 Fed. Reg. 75540, 75548 (Dec. 12, 2008). Notably, the first set of documents corresponds to those that USCIS would provide a U nonimmigrant who petitioned from within the United States at the time that U status is granted, while the second set of documents includes those that a U nonimmigrant who petitioned for a U visa from abroad would have. 8 C.F.R. §§ 214.14(c)(5)(i)(A) and (B). Thus, the documents that USCIS provides when a U nonimmigrant petition filed within the United States is approved are the very documents that demonstrate “admission.”

In short, the statutory provisions relating to U nonimmigrant status, when read as a whole, demonstrate Congress’ intent that a grant of U nonimmigrant status from within the United States is an “admission.” Notably, USCIS—the agency with exclusive jurisdiction over both U nonimmigrant petitions and adjustment applications filed by U nonimmigrants—interprets the statute in this way, as evidenced in its regulations and actions.

**IV. Does the legislative or regulatory history of the U nonimmigrant program reflect that Congress or the Attorney General intends or understands the phrase “in and admitted to the United States” to include a grant of U nonimmigrant status from within the United States?**

Congress did not specifically address the question of admission in its discussion of the U visa and U adjustment, but the ameliorative intent of the U visa law and its context within other attempts to allow victims of crime to remain in the United States to adjust status support the government's implicit assumption that a grant of U nonimmigrant status to crime victims inside the United States is an admission.

**A. In Implementing the U Visa, the Government Assumes a U Grant is an Admission**

Legacy Immigration and Nationality Services (hereinafter “INS”) and USCIS apparently assumed those granted U status were “admitted” for purposes of later adjustment. Initially the government implemented the new law through guidance, *see e.g.*, Memorandum from Michael

D. Cronin, Acting Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service, Victims of Trafficking and Violence Protection Act of 2000 (hereinafter "VTVPA") Policy Memorandum #2 -- "T" and "U" Nonimmigrant Visas, HQINV 50/1 (Aug. 30, 2001) (*available at* [http://www.asistahelp.org/documents/resources/Policy\\_Memo\\_\\_Cronin\\_\\_83001\\_DFC4BA7F5E85D.pdf](http://www.asistahelp.org/documents/resources/Policy_Memo__Cronin__83001_DFC4BA7F5E85D.pdf)); Memorandum from William R. Yates, Associate Director of Operations, USCIS, Centralization of Interim Relief for U Nonimmigrant Status Applicants (Oct. 8, 2003)([https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2003/ucntrl100803.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2003/ucntrl100803.pdf)) (hereinafter "2003 Yates memorandum"); Memorandum from William R. Yates, Associate Director of Operations, USCIS, Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status Eligible Aliens in Removal Proceedings (May 6, 2004)([https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2004/uprcd050604.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/uprcd050604.pdf))(herinafter "2004 Yates memorandum"); Memorandum from Michael Aytes, Acting Associate Director, Domestic Operations, USCIS, Applications for U Nonimmigrant Status (Jan. 6, 2006)([https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2006/unonimms010606.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2006/unonimms010606.pdf))(hereinafter "2006 Aytes memorandum")

Immigration and Customs Enforcement (hereinafter "ICE") also issued memoranda recognizing the special protections Congress afforded U crime victims. Memorandum from Director John P. Torres, Office of Detention and Removal Operations and Director Marcy M. Forma, Office of Investigations, Interim Guidance Relating to Officer Procedure Following

Enactment of VAWA 2005 (Jan. 22, 2007)(<https://www.ice.gov/doclib/foia/prosecutorial-discretion/vawa2005.pdf>); Memorandum from David J. Venturella, Acting Director, Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants (Sept. 24, 2009)([https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/11005\\_1-hd-stay\\_requests\\_filed\\_by\\_u\\_visa\\_applicants.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_visa_applicants.pdf)); Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009)([https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/vincent\\_memo.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf)); Memorandum from John Morton, Director, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011)(<https://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>).

USCIS did not issue formal regulations until 2007. *See* 72 Fed Reg. 179 (Sept. 17, 2007). These interim regulations state the government's general approach:

USCIS has determined that the statutory framework for U nonimmigrant status permits alien victims of qualifying criminal activity to *apply for U nonimmigrant status classification from either inside or outside the United States*.

72 Fed Reg. 179 at 53021 (Sept. 17, 2007) (Supplementary Information). This emphasis on "U nonimmigrant status" permeates the regulations and implementing memoranda, with the grant of such status implicitly assumed to serve as an admission. For example, in the preface to the U adjustment regulations, USCIS explains:

Aliens who are victims of specified criminal activity, including trafficking, who assist government officials in investigating or prosecuting those crimes *may be admitted* to the United States under a "U" nonimmigrant classification or "U visa." (citations to U statute omitted).

73 Fed Reg 240 at 75541 (Dec. 12, 2008) (Supplementary Information) (emphasis supplied).

Describing the U adjustment regulations' eligibility requirements, USCIS states:

All applicants must submit a copy of the Form I-797, Notice of Action, granting U nonimmigrant status, with the attached Form I-94 Arrival/ Departure Record, or a

copy of the applicant's passport with a U nonimmigrant visa along with *a* copy of the Form I-94 Arrival/Departure Record *evidencing the applicant's admission into the United States in U nonimmigrant status*," (citing 8 CFR 245.24(d)).

73 Fed Reg. 240 at 75548, (Dec. 12, 2008) (Supplementary Information) (emphasis supplied).

As noted in Section III, above, when CIS grants U nonimmigrant status to those inside the United States, it provides an Arrival-Departure Record "indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status." 72 Fed Reg. 179 at 53028 (Sept. 17, 2007) (Supplementary Information) (citing new 8 C.F.R. §§ 214.14(c)(5)(i)(A) (principals) and 214.14(f)(6)(i) (derivatives)).

Confirming USCIS' equation of a U grant with an admission, the regulations provide that all approved U recipients may be subject to removal grounds. The government may institute "removal proceedings under section 240 of the Act, 8 U.S.C. § 1229(a), *for conduct committed after admission*, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts . . . , or after revocation of U nonimmigrant status." 8 C.F.R. § 214.14(i) (emphasis supplied). As the supplementary information notes, "[e]ach of these circumstances may give rise to *a ground of removability* under section 237(a) of the INA." 72 Fed Reg. 179 at 53031 (Sept. 17, 2007) (Supplementary Information) (emphasis supplied). Since only those admitted to the United States are subject to the deportability grounds (as opposed to the inadmissibility grounds), this reinforces the admission assumption.

To ensure it implemented the law as Congress intended, USCIS also assumed that time in interim relief counted towards time for adjustment, again an implicit assumption of admission. *Id.* (citing House H.R. Rep. No. 109-233, at 114 (2005)); *see also* 151 Cong. Rec. E2605, E2608 (statement of Representative John Conyers) and the 2006 Aytes memorandum. This broad interpretation of "status" for U recipients ensures that victims of crimes and their families may

accrue the time in status necessary to adjust. *See, e.g.* 8 C.F.R. § 214.14(g)(2)(i) (extending status for derivatives who were not originally granted the same amount of time as the principal because they could not timely enter the United States); 72 Fed Reg. 179 at 53031 (Sept. 17, 2007) (Supplementary Information) ("[t]he reason for this provision is so that the derivative is able to attain at least three years in U nonimmigrant status. Such period of time in U nonimmigrant status is necessary before the alien may apply to adjust status to that of a lawful permanent resident . "). *See also* U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Extension of U Nonimmigrant Status for Derivative Family Members Using the Application to Extend/Change Nonimmigrant Status (Form I-539) Revisions to Adjudicator's Field Manual (AFM), New Chapter 39.1(g)(2)(i)(AFM Update AD10-08), PM-602-0001 (June 22, 2010) (<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/April/exten.status-tandu-nonimmigrants.pdf>)(extensions for derivatives); U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Extension of Status for T and U Nonimmigrants; Revisions to *Adjudicator's Field Manual (AFM)* Chapter 39.1(g)(3) and Chapter 39.2(g)(3)(AFM update AD11-28), PM-602-0032.1 (April 19, 2011) (<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/April/exten.status-tandu-nonimmigrants.pdf>) (extensions for principals).

**B. Congressional Goals and the Context of the U Visa Support CIS' Admission Assumption**

Congress created the U visa in 2000 (1) to create a new nonimmigrant visa category that will facilitate crime reporting by those not in lawful immigration status, comporting with the "humanitarian interests of the United States," and (2) to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute crimes against noncitizens,

encouraging them to "better serve immigrant crime victims." VAWA 2000, Pub. L. No. 106-386 § 1513(a)(2), 114 Stat. 1464, 1533-34 (Oct. 28, 2000), at § 1513(a)(2). The U visa is intended to provide (a) a tool for law enforcement to work effectively with immigrant crime survivors who fear removal and (b) humanitarian relief to those whom law enforcement certifies have been helpful. *See* INA §§ 101(a)(15)(U)(i)(III) and 214(p)(1); 8 C.F.R. § 214.14(c)(2)(i)(certification requirement).

As USCIS noted when it promulgated the interim regulations,

Congress created the new U classification to curtail criminal activity, protect victims of crimes committed against them in the United States, and encourage victims to fully participate in the investigation of the crimes and the prosecution of the perpetrators. . . Many immigrant crime victims fear coming forward to assist law enforcement until this rule is effective. Thus, continued delay of this rule further exposes victims of these crimes to danger, and leaves their legal status in an indeterminate state. Moreover, the delay prevents law enforcement agencies from receiving the benefits of the BIWPA and continues to expose the U.S. to security risks and other effects of human trafficking.

72 Fed Reg. 179 at 53032 (Sept. 17, 2007) (Supplementary Information).

*Amici* domestic violence and sexual assault organizations, many of which work closely with Congress and the federal government on ensuring VAWA legislation achieves its goals, wish to emphasize the importance of making access to justice swift and easy for immigrant survivors of crimes. The Board should recognize the ameliorative intent of providing protection for victims under VAWA. VAWA requires consideration of the importance of crime victims' access to the United States courts, criminal legal system, and victim services. Requiring that victims leave the United States for admission potentially jeopardizes their physical and psychological well-being by reducing access to protections available in the United States (i.e., enforcement of protection orders, access to court protection against future incidents of



victimization) and sending them to countries where the legal system and police may be unsympathetic to claims of victimization.

Interpreting the U nonimmigrant provisions as demonstrating that a grant of U status is an admission helps accomplish this end. *See Akhtar v. Burzynski*, 384 F.3d 1193, 1200 (9th Cir. 2004) (“ In determining congressional intent, we should adhere to []the general rule of construction that when the legislature enacts an ameliorative rule designed to forestall harsh results, the rule will be interpreted and applied in an ameliorative fashion.[] .... This rule applies with additional force in the immigration context, []where doubts are to be resolved in favor of the alien.[]”) (internal quotation marks and citations omitted). It enhances security for crime victims approved by USCIS while they are awaiting eligibility to file for lawful permanent residence and ensures they may stay in the United States to do so.

Indeed, at the time Congress created the U visa, it also altered the regular adjustment rules so all approved VAWA self-petitioners could adjust despite normal prohibitions at INA § 245. VAWA 2000, § 1506, adding exceptions to § 245(a) & (c); Statement of Sen. Abraham, 146 Cong. Rec. S10219 (daily ed. October 11, 2000)(“In this bill, we establish procedures under which a battered immigrant can take all the steps he or she needs to take to become a lawful permanent resident *without leaving this country*.”)(emphasis supplied). Thus, when Congress simultaneously created the special adjustment section for those in U nonimmigrant status section at INA § 245(m), it was well-aware of the problems crime survivors had faced absent an exception from § 245(a) & (c). These adjustment provisions, taken together, illustrate that Congress seeks a streamlined process for crime victims seeking secure status.

*Amici* respectfully suggest that the Board embrace the ameliorative intent of the law and adopt the assumption of admission. We respectfully suggest that, to effectuate the Congressional

goals underlying this law, the government should focus application of this assumption on ways it helps victims of crimes gain status as swiftly and easily as possible. Applying the assumption primarily to target U visa applicants for removal thwarts the goals of the law and turns the purpose of the assumption on its head. *Amici* therefore respectfully suggest that the Board consider the facts of this case in light of the overarching goals of the law and the INS, USCIS and ICE memoranda cited above, encouraging a presumption against removal. *See, e.g.*, 2003 Yates memo at 4 (“it is better to err on the side of caution than to remove a possible U nonimmigrant status applicant.”); 2004 Yates memo at 2 (ICE instructed to terminate removal proceedings once USCIS granted interim relief).

**V. How should the Board reconcile the text of section 245(m)(1) of the Act, which authorizes the DHS to “adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U),” with the text of 8 C.F.R. § 245.24(b)(2)(i), which states that an applicant for section 245(m) adjustment must prove that he/she was “lawfully admitted to the United States as either a U-1, U-2, U-3, U-4, or U-5 nonimmigrant”?**

As discussed in Question III, the several statutory provisions relating to U nonimmigrants demonstrate that all noncitizens granted U nonimmigrant status are “admitted” as such—whether they petition from within or without the United States and including both principals and derivative family members. INA § 245(m)(1) is consistent with this; it makes clear that noncitizens who were “admitted” under § 101(a)(15)(U) are eligible to adjust. In addition, § 245(m)(1) includes a parenthetical covering those who are “otherwise provided nonimmigrant status.” *Amici* submit that this parenthetical must pertain to individuals who change from a different nonimmigrant status to U nonimmigrant status pursuant to INA § 248. Such an interpretation gives meaning to the parenthetical phrase without conflicting with the numerous other statutory provisions which make clear that *all* who receive nonimmigrant status in the first instance have been admitted. *See Matter of Quilantan*, 25 I&N Dec. 285, 292 (BIA 2010)

(interpreting the definition of “admitted” in § 101(a)(13) in such a way that it would not render meaningless INA § 237(a)(1)(H)).

While an initial petition for nonimmigrant status is the primary means by which noncitizens gain this status, a change of status by someone in another nonimmigrant status to U nonimmigrant status also is possible. Congress clearly intended that such a change could take place. Subject to several exceptions, INA § 248(a) authorizes a noncitizen to change from one nonimmigrant classification to another provided that she is lawfully admitted as nonimmigrant, has continued to hold that status, and either is not inadmissible or is eligible for a waiver of inadmissibility. Notably, Congress specified that the four statutory exceptions to those permitted to change status “shall not apply to a change of nonimmigrant classification to that of a nonimmigrant under subparagraph (T) or (U) of section 1101(a)(15)” —thus specifically confirming that such a change is possible. INA § 248(b).

Interpreting the parenthetical as applying to those who change status carries out Congress’ intent that the entire universe of U nonimmigrants are eligible to adjust under § 245(m)(1), no matter how they obtained their nonimmigrant status. See Question IV, *supra*. The regulation implementing INA § 245(m)(1)—8 C.F.R. § 245.24(b)(2)(i)—must carry out this directive, and thus must be interpreted in a manner consistent with the statute. A conflicting or limiting interpretation would render it invalid, as regulations cannot restrict eligibility that Congress specifically authorized. *See, e.g., Bona v. Gonzales*, 425 F.3d 663, 668 (9th Cir. 2005) (“[W]e hold that because the ‘regulation redefines certain aliens as ineligible to apply for adjustment of status . . . whom a statute [ ] defines as eligible to apply[,]’ the regulation is invalid.”) (citation omitted); *Akhtar*, 384 F.3d at 1202 (invalidating the age-out provisions of a V nonimmigrant visa regulation because, as interpreted by the immigration agency, they were

“contrary to congressional intent and frustrated congressional purpose.”) (citations omitted); *Matter of Torres Garcia*, 23 I&N Dec. 866, 875 (BIA 2006) (noting that the Board cannot interpret a “regulation in a manner that is inconsistent with the plain language of the Act.”).

Consequently, 8 C.F.R. § 245.24(b)(2)(i), which requires an applicant for § 245(m) adjustment to have been “lawfully admitted” as a U nonimmigrant, must be interpreted as requiring only that the applicant demonstrate that she was granted U nonimmigrant status. Not only is this consistent with § 245(m)(1), but it also parallels the interpretation of the similar statutory term “lawfully admitted for permanent residence.” INA § 101(a)(20). The Ninth Circuit has called this phrase a ‘term or art,’ and found that that it “encompasses all [lawful permanent residents], regardless of whether they obtained that status prior to or at the time they physically entered the United States or by adjusting their status while already living in the United States[.]” *Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1053, 1054 (9th Cir. 2011); *see also Lanier v. U.S. Attorney General*, 631 F.3d 1363, 1366 (11th Cir. 2011) (The term of art “lawfully admitted for permanent residence” as defined “describes a particular immigration status, without any regard for how or when that status is obtained.”).

In short, interpreting the regulation as referring to all who are granted U nonimmigrant status ensures that it is consistent with the statute. It also tracks the meaning of similar statutory language.

**VI. What is meant by § 245(m)(1)’s parenthetical language? In answering this question, please discuss whether similar asymmetries exist between the statutory and regulatory provisions governing the adjustment of status of (S), (T), and (V) nonimmigrants.**

As noted in answer to Question V, the only reasonable interpretation of the parenthetical language in § 245(m)(1) is that it refers to individuals who changed from another nonimmigrant

status to U nonimmigrant status under INA § 248. Nothing in the provisions related to (S), (T) and (V) nonimmigrants suggests that this interpretation is incorrect.

First, the (T) category is the one that is most similar to that of the U nonimmigrant category. Both offer a basis for gaining lawful status for individuals who have been victims of criminal activity. *See* INA §§ 101(a)(15)(T) (“victim of a severe form of trafficking in persons”) and (U) (“suffered substantial physical or mental abuse as a result of having been a victim of criminal activity”). Both also are granted for four year periods which may be extended, including extensions while the nonimmigrant’s adjustment application is pending. INA §§ 214(o)(7) and (p)(6). A change of status to either of these classifications is also exempted from the several statutory prohibitions on change of nonimmigrant status. INA § 248(b).

Consistent with these similarities, T nonimmigrants are the only one of the three nonimmigrant statuses in which the identical statutory language occurs, although not in a parenthetical. Specifically, INA § 214(o)(2) limits the “total number of aliens who may be issued visas *or otherwise provided nonimmigrant status* during any fiscal year under section 1101(a)(15)(T).” (Emphasis added). *See also* § 214(o)(7)(A) and (B) (repeating the same language). As is true for U nonimmigrant status, an individual in a different nonimmigrant status can change to T nonimmigrant status pursuant to INA § 248. In fact, as it did with U nonimmigrants, Congress exempted T nonimmigrants from the statutory exceptions to those eligible to change status. INA § 248(b). Thus, the phrase “or otherwise provided nonimmigrant status” serves precisely the same purpose with respect to T nonimmigrants as it does for U nonimmigrants.

In contrast, there is no requirement that an applicant for S nonimmigrant status have been a victim of a crime. Moreover, this nonimmigrant category is much more restricted than the

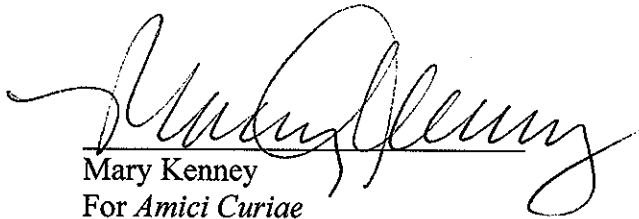
earlier two. The period of stay is only three years, and extensions are specifically prohibited. INA § 214(k)(2). Following a grant of this status, the nonimmigrant remains subject to continued and ongoing restrictions and reporting requirements—none of which are imposed upon U and T nonimmigrants. INA § 214(k)(3). S visas are extremely limited in number: only a total of 250 S visas are authorized annually, compared to 5,000 for T nonimmigrants (not including derivatives) and 10,000 for U nonimmigrants (not including derivatives). INA §§ 214(k)(1); (o)(2); (p)(2). Congress also chose to treat S nonimmigrants differently from T and U nonimmigrants with respect to change of status under INA § 248. See INA §§ 248(a)(1) (generally prohibiting S nonimmigrants from changing status) and 248(b) (excluding change of status to T and U status—but not S status—from the general prohibitions on change of status). These differences provide a plausible basis as to why Congress omitted the phrase from the adjustment provision for S nonimmigrants.

Finally, V nonimmigrants are unlike the others in that they adjust under the general provisions of INA § 245(a). See INA §§ 214(q)(B)(i)-(iii). Thus, there is no special adjustment provision within § 245 for this category of nonimmigrants, as there is for U, T, and S nonimmigrants. Instead, these “nonimmigrants” are actually beneficiaries of immigrant visa petitions; they are eligible for “nonimmigrant” status because of the long periods that they must wait, either for a decision on the immigrant petition, for an immigrant visa to become available, or to be provided an immigrant visa or adjustment of status. INA § 101(a)(15)(V). Because this group will adjust pursuant to immigrant visa petitions, there was no need for Congress to provide a special adjustment provision, and in turn, no need to consider language regarding who was to be included in such a provision.

## CONCLUSION

For all the reasons states, *Amici* urge the Board to hold that a grant of U status from within the United States is an admission.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

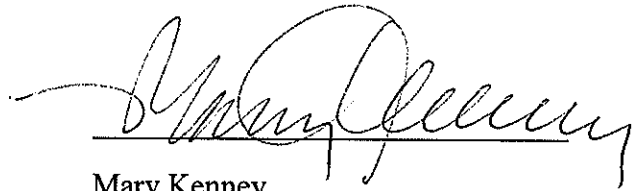
I hereby certify that a true copy of Amici's Brief was served upon respondent and upon the Department of Homeland Security by the following means:

X Mailed to Respondent and Department of Homeland Security's attorneys of record, first class, with all postage pre-paid, to:

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A handwritten signature in dark ink, appearing to read "Mary Kenney", is written over a horizontal line.

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