No. 19-

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

, ET AL.,
Petitioners,

v.

WILLIAM P. BARR,
Attorney General of the United States,
Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF IMMIGRATION APPEALS
Agency No. Axxx-xxx-xxx/xxx

OPPOSED MOTION FOR LEAVE TO FILE OUT-OF-TIME BRIEF FOR AMICI CURIAE AND BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER
(Not Detained)

Submitted By:

Lillian Saldinger Axelrod
Siskind Susser PC
1028 Oakhaven Rd
Memphis TN 38119
(901) 682 6455
Laxelrod@visalaw.com

OPPOSED MOTION FOR LEAVE TO FILE OUT-OF-TIME BRIEF OF AMICI CURIAE

Proposed Amici respectfully move for leave to file the accompanying brief as Amici Curiae in support of petitioner out-of-time.

Amici are all organizations that work with immigrant survivors of crimes and are particularly concerned with the intersection of immigration and violence against women in the United States. Some Amici were involved in creating the U visa, and all work together to identify and address emerging barriers to safety and justice for immigrant survivors of domestic and sexual violence. In this brief, Amici endeavor to address issues raised by the pleadings without making redundant arguments, as well as offering a unique perspective on the issues raised by this case.

Amici became aware of this litigation late in its development, but began securing the resources necessary to provide this brief as soon as Amici became aware of the case. Amici hope this Court agrees that the perspective that Amici provides justifies accepting our late-filed brief. Amici respectfully move for leave to file the out-of-time accompanying brief in support of petitioner, urging this Court to grant the Petitioner's request.

Counsel for Amici reached out to Sheri Glaser, government's counsel, regarding our intention to file this Motion and the attached Brief. Ms. Glaser opposes amici's motion and will be filing written opposition with this Court.

Dated: February 11, 2020

Respectfully submitted,

s/Laura Flores Bachman

Laura Flores Bachman
ASISTA Immigration Assistance
P.O. Box 12
Suffield, CT 06078
860-758-0733
laura@asistahelp.org

s/Lillian Saldinger Axelrod

Lillian Saldinger Axelrod
Siskind Susser PC
1028 Oakhaven Rd.
Memphis, TN 38119
(901) 682 6455
Laxelrod@visalaw.com

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Amici Curiae submit the following corporate disclosure statement:

Amici curiae are nonprofit corporations and/or programs of nonprofit corporations and have no other corporate parents. They are not publicly traded.

s/Lillian Saldinger Axelrod

Lillian Saldinger Axelrod
Siskind Susser PC
1028 Oakhaven Rd
Memphis TN 38119
(901) 682 6455
Laxelrod@visalaw.com

TABLE OF CONTENTS

MOTION FOR LEAVE TO FILE OUT-OF-TIME BRIEF OF AMICI CURIAE i

CORPORATE DISCLOSURE STATEMENT..... iii

TABLE OF AUTHORITIES vi

BRIEF OF AMICI CURIAE..... 1

INTEREST OF AMICI CURIAE 1

INTRODUCTION..... 6

SUMMARY OF ARGUMENT 7

ARGUMENT 8

I. Congress Created the U Visa to Encourage Reporting by Those Who Fear Deportation If They Access Our Criminal System…….…….8

A. DHS Adopted Regulations and Policies to Avoid U Visa Crime Survivor Removal……..……..….. 12

B. The BIA Articulated Its Own Prima Facie Protection for U Visa Applicants in Proceedings……14

i. The BIA Uses Motions to Reopen to Ensure the Integrity of Sanchez- Sosa..... 16

ii. The U Visa Backlog Strengthens the Need for Sanchez-Sosa…….18

C. The BIA and IJs have authority to administratively close removal proceedings……..20

II. The BIA Should Protect Immigrant Crime Survivors, Not Deport Them...……21

A. Protecting Survivors Against Deportation Encourages Crime Reporting……...….23

i. Abuse and Violence Follow the Victim Home…….23

ii. Allowing for the Removal of U Visa Applicants Harms Innocent Children.……..……...….25

iii. Survivors Are Already Discouraged from Reporting…….26

B. The Fear of Deportation is Harming Law Enforcement Efforts to Keep Us All Safe…….27

CONCLUSION…….. 29

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS…….……..31

CERTIFICATE OF SERVICE…….32

TABLE OF AUTHORITIES

Administrative Cases

Matter of Alvarado-Turcio,
A201-109-166 2 (BIA Aug 17, 2017), (available at https://www.scribd.com/document/360077591/Edgar-MarceloAlvarado-Turcio-A201-109-166-BIA-Aug-17-2017) ……19

Matter of Castro-Tum, 27 I. & N. Dec. 271 (A.G. 2018) ……18, 20, 21

Matter of L-A-B-R, 27 I. & N. Dec. 405 (A.G. 2018) ……15

Matter of Mayen, 27 I.&N. Dec. 807 (BIA 2020) ……15

Matter of Peleayz,
2017 WL 7660455 3(BIA Oct. 24, 2017), (available at https://www.scribd.com/document/365695330/Augustine-Peleayz-A208-934-106-BIA) 16

Matter of Y-A-L-L-,
AXXX XXX 594 2 (BIA Oct. 29, 2015), (available at https://www.scribd.com/document/290079091/Y-A-L-L-AXXX-XXX-594-BIA-Oct-29-2015) ..……17

Matter of Sanchez-Sosa, 25 I.&N. Dec. 807 (BIA 2012) 14,15,16

Federal Cases

Ahmed v. Holder, 569 F.3d 1009 (9th Cir. 2009) ……19

Hernandez-Perez v. Whitaker, 911 F.3d 305 (6th Cir. 2018) …..……...20, 21

Malilia v. Holder, 632 F.3d 598 (9th Cir. 2011) …..…….19

Zuniga Romero v. Barr, 937 F.3d 282 (4th Cir. 2019) …...……..20, 21

Federal Statutes

8 U.S.C. § 1101(a)(15)(U)(i)……...7

8 U.S.C. § 1154(a)(1)……..9

8 U.S.C. § 1227(a)(2)(E) 23

8 U.S.C. § 1513(a)(1)(A) - (B)……..……..10

Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513,114 Stat. 1464 (Oct. 28, 2000) 7, 10

Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (Sept. 13, 1994) .....……...6, 9, 11

Federal Rules

Fed. R. App. P. 26.1 iii

Fed. R. App. P. 29(a)(5) 31

Fed. R. App. P. 32-1(a) 31

Fed. R. App. P. 32(a)(6) 31

Fed. R. App. P. 32(a)(5) 31

Fed. R. App. P. 32(f) 31

Federal Regulations

8 C.F.R. § 214.14(c)(1)(i) 12

8 C.F.R. § 214.14(c)(1)(ii) 12

8 C.F.R § 214.14(d)(2) 12

New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014 (Sept. 17, 2007).……..…7, 12-13

Other Authorities

146 Cong. Rec. H8094 (2000) 11

146 Cong. Rec. S8571 (2000) 11

146 Cong. Rec. S10185 (2000) 11

159 Cong. Rec. S497, 498 (2013) 11

Amy F. Kimpel, *Coordinating Community Reintegration Services for "Deportable Alien" Defendants: A Moral and Financial Imperative*, 70 Fla. L. Rev. 1019, 1021 (2018)...…….....…….26

Andrea Hazen. *Intimate Partner Violence Among Female Caregivers Of Children Reported For Child Maltreatment.* Child Abuse and Neglect, 301–319 (March 2004), https://doi.org/10.1016/j.chiabu.2003.09.016.....25

Carolyn R. Block, *Intimate Partner Homicide: Intimate Partner Homicide: How Can Practitioners Help an Abused Woman Lower Her Risk of Death?*, United States Dep't Of Just., 250 Nat'l Inst. of Just. (Nov. 2003), https://www.ncjrs.gov/pdffiles1/jr000250.pdf…….....24

Dan Lieberman, *MS13 Members: Trump Makes the Gang Stronger,* CNN (July 28, 2017), https://www.cnn.com/2017/07/28/us/ms-13-gang-long-island-trump/index.html…….....28

David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America,* Bepress Legal Series (May 18, 2006), https://law.bepress.com/cgi/viewcontent.cgi?article=6323&context=expresso……....23

Elly Yu, *A Northern Virginia Mother was a Victim of Domestic Violence. She was Deported*, Wamu 88.5 (Sept. 11, 2019) https://wamu.org/story/19/09/11/a-northern-virginia-mother-was-a-victim-of-domestic-violence-she-was- deported ……..21

Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visas) Applicants, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (Sept. 24, 2009), (available at https://asistahelp.org/wp-content/uploads/2018/12/ICE-Guidance-Adjudicating-Stay-Request-Filed-by-U-Applicants.pdf)….....….....13

Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (Sept. 25,

2009), (available at https://asistahelp.org/wp-content/uploads/2018/12/ICE-Memorandum-OPLA-Removal-Proceeding-or-with-Final-Orders-of-Deportation.pdf)..... 13

Jacqueline P. Hand, *Shared Experiences, Divergent Outcomes: American Indian and Immigrant Victims of Domestic Violence*, 25 Wis. J. L. Gender & Soc'y 185, 203
(2010)……...26

Lindsey Bever, *Hispanics "Are Going Further into the Shadows" Amid Chilling Immigration Debate, Police Say,* Wash. Post (May 12, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say……...……28

Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. Rev. 667, 675 (2003)……..26

Michelle J. Anderson, *A License to Abuse: The Impacts of Conditional Status on Female Immigrants,* 102 YALE L.J. 1401, 21, 1427-28, fn. 127 (1993)…….....25

Meagan Flynn, *Houston's Chief Acevedo, Defiant and Introspective, Rails Against SB 4,* Houston Press (Apr. 28, 2017), https://www.houstonpress.com/news/hpd-chief-acevedo-lambasted-sb4-in-defiant-candid-monologue-9394376……...28

Honduras 2018 Human Rights Report, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, 1, 17-18 (Mar. 13, 2019), https:// www.state.gov/ reports/2018-country-reports-on-human-rights-practices/honduras ……...24

Number of Form 1-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status 2009-2019 (Fiscal Year 2019, Quarter 2), United States Dep't Of Homeland Security, Citizen and Immigr. Services (2019), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_ fy2019_qtr2.pdf……18

Nora K. Puffett, *Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court*, Center for Court Innovation (April 2004)…….….24

Pauline Portillo, *Undocumented Crime Victims: Unheard, Unnumbered, And Unprotected,* 20 Scholar 346, 354-55 (2018), https://commons.stmarytx.edu/ cgi/viewcontent.cgi?article=1006&context=thescholar……....28

Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey, National Immigrant Women's Advocacy Project (May 3, 2018), https://www.library.niwap.org/ wp-content/uploads/Immigrant- Access-to-Justice-National-Report.pdf …….……...……27

Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (June. 17, 2011), https://www.ice.gov/foia/prosecutorial-discretion-certain-victims-witnesses-and-plaintiffs-jun-17-2011.....14

Revision of Stay of Removal Request Reviews for U Visa Petitioners, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (Aug. 2, 2019), https://www.ice.gov/factsheets/revision-stay-removal-request-reviews-u-visa-petitioners#wcm-survey-target-id.....13

Samantha Artiga, *Family Consequences of Detention/Deportation,* Kaiser Family Foundation (2018), https://www.kff.org/disparities-policy/issue-brief/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being..... 26

Stacey Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, Int'l Ass'n of Chiefs of Police (Apr. 2018), http://library.niwap.org/wpcontent/uploads/ PoliceChief_April-2018_Building-Trust-With-ImmigrantVictims.pdf..... 6

The No Mas Study: Domestic Violence and Sexual Assault in the Latin@ Community, Case De Esperanza (2015), http://nomore.org/wp-content/uploads/2015/04/NO-MAS-STUDY-Embargoed-Until-4.21.15.pdf 27

Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (June 28, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf..... 21

USCIS Processing Times, Form: 1-918, Field Office or Service Center: VSC, United States Dep't Of Homeland Security, Citizen and Immigr. Services (last accessed February 8, 2020), https://egov.uscis.gov/processing-times..... 18

BRIEF OF AMICI CURIAE

ASISTA Immigration Assistance, American Immigration Lawyers Association, Asian Pacific Institute on Gender-Based Violence, National Immigrant Justice Center, Kentucky Coalition Against Domestic Violence, Ohio Domestic Violence Network, and Tennessee Coalition to End Domestic and Sexual Violence respectfully submit this brief as Amici Curiae in support of Petitioner Ms. ("Petitioner" or "Ms. ") urging that the Court grant the relief the Petitioner requested.

INTEREST OF AMICI CURIAE

Amici are nonprofit organizations that serve and advocate on behalf of survivors of domestic violence, sexual assault, and other forms of gender-based violence. Based on their experience and expertise, Amici understand that immigrant survivors of violence often face a myriad of barriers seeking justice and protection from abuse. Amici have extensive knowledge about the legal protections for immigrant survivors contained in the 1994 Violence Against Women Act and its progeny, which Congress created to help address these barriers. These protections, including the "U" nonimmigrant visa (hereinafter "U visa"), encourage survivors to seek justice and help them gain independence and security. For immigrant survivors, meaningful access to these immigration protections is often the determining factor in whether they seek help, safety and justice. Survivors

in removal proceedings rely on the immigration courts to provide meaningful access to these critical protections, through case law and procedures, that ensures they are not removed before United States Citizenship and Immigration Services grants their applications for status.

ASISTA Immigration Assistance ("ASISTA") is a national organization dedicated to helping attorneys assist noncitizen survivors of violence with their immigration matters through comprehensive, cutting-edge technical assistance and resources. 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 and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security personnel charged with implementing these laws, most notably Citizenship and Immigration Services, Immigration and Customs Enforcement, and Department of Homeland Security's Office for Civil Rights and Civil Liberties. ASISTA 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 to the Supreme Court and to the Second, Seventh, Eighth, and Ninth Circuits. *See United States v. Castleman*, 134 S. Ct. 1405 (2014); *State of*

Washington v. Trump, No. 17-35105 (9th Circuit, March 17, 2017); *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014); *Torres-Tristan v. Holder*, 656 F.3d 653 (7th Cir. 2011); *Lopez-Birrueta v.Holder*, 633 F.3d 1211 (9th Cir. 2011); *Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Sanchez v. Keisler*, 505 F.3d 641 (7th Cir. 2007).

American Immigration Lawyers Association ("AILA") is a national association with more than 15,000 members throughout the United States, 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 ("DHS"), immigration courts, and the Board of Immigration Appeals, as well as before the United States District Courts, Courts of Appeals, and the Supreme Court of the United States.

Asian Pacific Institute on Gender-Based Violence ("Institute") 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 and immigrant 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.

Kentucky Coalition Against Domestic Violence ("KCADV") mobilizes and supports member programs and allies to end intimate partner violence. KCADV provides a strong, statewide voice on behalf of survivors and their children. KCADV is comprised of 15 member programs throughout Kentucky. It runs a Certification Program for all domestic violence program staff and operates an Economic Empowerment Program serving survivors across the state. KCADV also advocates on domestic violence-related issues at the state and federal levels, coordinates an annual conference with the Kentucky Association of Sexual Assault programs, and provides resources, training, and technical assistance to its member programs.

National Immigrant Justice Center ("NIJC"), a program of the Heartland Alliance for Human Needs and Human Rights, is a Chicago-based not-for-profit organization that provides legal representation and consultation to immigrants,

refugees and asylum-seekers of low-income backgrounds. Each year, NIJC represents hundreds of domestic violence and crime survivors before the Executive Office for Immigration Review (EOIR), the Courts of Appeals and the Supreme Court of the United States through its legal staff and a network of over 1,000 *pro bono* attorneys.

Ohio Domestic Violence Network (ODVN) advances the principles that all people have the right to an oppression and violence free life; fosters changes in our economic, social and political systems; and brings leadership, expertise and best practices to community programs. ODVN believes that ending violence against women and children requires connection with organizations and individuals to create a clear vision and collective voice for social and systemic change. ODVN's purpose is to support and strengthen Ohio's response to domestic violence through training, public awareness and technical assistance and to promote social change through the implementation of public policy. ODVN maintains a commitment to the empowerment of battered women and children as well as to the elimination of personal, institutional and cultural violence.

Tennessee Coalition to End Domestic and Sexual Violence is a state-wide organization advocating for the rights of victims of domestic violence. The mission of the Tennessee Coalition to End Domestic and Sexual Violence is to end domestic and sexual violence in the lives of Tennesseans through public policy advocacy,

education and activities that increase the capacity of programs that provide emergency assistance and direct legal services to victims.

Amici have a direct interest in this case because the result will affect future U visa applicants. Additionally, Amici have a direct interest in ensuring that noncitizens are not unduly prevented from pursuing motions to reopen.

INTRODUCTION

Immigrant populations are particularly vulnerable to crimes such as domestic violence, sexual assault, and human trafficking because, if they fear they will be deported for contacting law enforcement, they are unlikely to report domestic abuse and sexual assault. *See* Stacey Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, Int'l Ass'n Of Chiefs Of Police (Apr. 2018), PoliceChief_April-2018_Building-Trust-With-Immigrant-Victims.pdf. One of the most intimidating tools of power and control abusers use is threatening to get their victims deported if they seek help. *Id*. Such threats help abusers "maintain control over their victims and . . . prevent them from reporting crimes to the police." *Id*.

Congress created the U visa as part of a decades-long legislative effort to encourage immigrant crime victims to seek safety and justice and protect the public by cooperating in the investigation and prosecution of crime. Those efforts took a great leap forward with the Violence Against Women Act of 1994, Pub. L. No.

103-322, tit. IV, 108 Stat. 1902 (Sept. 13, 1994). In 2000, Congress expanded the program to include additional crime victims under the U visa. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513,114 Stat. 1464 (Oct. 28, 2000). The U visa offers a pathway to secure immigration status for victims of violent crimes who are helpful to law enforcement in the investigation or prosecution of their perpetrators. 8 U.S.C. § 1101(a)(15)(U)(i).

Congress' clear intent in creating the U visa was to overcome noncitizen victim's fears that contacting law enforcement would result in their deportation. *See* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014 (2007). The Board of Immigration Appeals (hereinafter "BIA") decision in this case thwarts this Congressional goal and occurs at a time when the DHS has launched numerous efforts to eviscerate U visa law without legislative approval. Whether intentionally or not, denying Ms. 's continuance sends a message to both crime victims and United States law enforcement: perpetrators may once again use our immigration courts as weapons against their victims.

Ms. is exactly the kind of person Congress had in mind when it created the U visa. Amici ask this Court to stand firm against Executive efforts to eliminate, through practice and policy, the protections for crime survivors

Congress created in the U visa. We respectfully request that this Court reject the BIA's ruling and remand for further proceedings.

SUMMARY OF ARGUMENT

This Court should reverse the BIA's decision to deny the Petitioner's motion to remand her removal proceedings for consideration of whether the immigration court should continue or administratively close her proceedings so she may pursue her U visa petition in the United States. Congress created the U visa to provide protection to noncitizen victims of violent crimes who may not otherwise report their perpetrators because they fear deportation if they do so. Congress recognized the significant public interest in encouraging noncitizen victims to report crime and access services. The laws enacting and expanding the U visa and the legislative history of those laws illustrate Congressional intent that U visa applicants remain in the United States while their U visa applications are pending.

Over the years since Congress created the U visa, USCIS and Immigration and Customs Enforcement (hereinafter "ICE"), have implemented several systems to ensure legitimate crime victims are not removed while awaiting decisions on their U visa cases. The BIA previously adopted a similar framework to avoid removing crime victims in immigration proceedings. This agency action was necessary to give effect to congressional intent. This Court should repudiate the BIA's effort to avoid, through procedural sleight of hand, its responsibility for

ensuring immigrant survivors of domestic violence are not removed while their cases are pending at USCIS.

ARGUMENT

I. Congress Created the U Visa to Encourage Reporting by Those Who Fear Removal If They Access Our Criminal Legal System.

In 1994, Congress enacted the watershed Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (Sept. 13, 1994) ("VAWA 1994"), representing our nation's first multi-disciplinary attempt to halt and address domestic violence and sexual assault against all women in this country, including noncitizens. VAWA 1994 provided a "self-petitioning" option for immigrants subjected to "battery or extreme cruelty" by a United States citizen or lawful permanent resident spouse or parent. VAWA 1994 at § 40701, *see* 8 U.S.C. § 1154(a)(1)(A)(ii) & (B)(ii). That law freed many immigrant domestic violence victims from the inherent power and coercive control over immigration status that abusive spouses otherwise possess in our family immigration system.

VAWA 1994 did not address, however, violence by those who were not in intimate relationships with lawful permanent residents or United States citizens. In 2000 Congress created the U visa to both help additional survivors of violent crimes, including domestic violence, find safety and to provide a tool for law enforcement to work with crime victims too afraid of deportation to report the

crimes they experience. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No, 106-386, 8 U.S.C. § 1513(a) (Oct. 28, 2000). Congress explicitly stated that it was creating the U visa to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status," *id.* § 1513(a)(2)(B), and to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" serious crime. *Id.* § 1513(a)(2)(A).

"[P]roviding battered immigrant women and children who were experiencing domestic violence at home *with protection against deportation* . . . frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers." Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No, 106-386, § 1502(a)(1)(2) (Oct. 28, 2000). (emphasis added). Congress enacted the Battered Immigrant Women Protection Act to cover victims whose "abusers are virtually immune from prosecution *because their victims can be deported* as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law." *Id*. § 1502(a)(1)(3). (emphasis added). Congress recognized that "immigrant women and children are often targeted to be victims of crimes committed against them in the United States." *Id*. § 1513(a)(1)(A).

The legislative history accompanying the bill also demonstrates that Congress intended to alleviate the barriers that immigrant victims of violent crimes face and specifically address the fear of deportation that prevents many from reporting abuse. Senator Patrick Leahy explained that the U visa "ma[d]e it easier for abused women and their children to become lawful permanent residents" and ensured that "battered immigrant women should not have to choose to stay with their abusers in order to stay in the United States." 146 Cong. Rec. S10185 (2000) (statement of Sen. Patrick Leahy). Senator Paul Sarbanes stated that this expansion of the Violence Against Women Act of 1994 "will also make it easier for battered immigrant women to leave their abusers w*ithout fear of deportation*." 146 Cong. Rec. S8571 (2000) (statement of Sen. Paul Sarbanes) (emphasis added); *see also* 146 Cong. Rec. H8094 (2000) (statement of Rep. John Conyers) ("There are still demographic groups that need better access to services and the criminal justice system. Predominantly among them are people who have not had their immigrant status resolved and are not yet citizens but are subject to lots of unnecessary violence."). More recently, during the debate on the Violence Against Women Reauthorization Act of 2013, Senator Amy Klobuchar described the importance of the U visa program from a former prosecutor's perspective, recounting several cases where the perpetrator threatened to deport the immigrant victim if the victim came forward to law enforcement. 159 Cong. Rec. S497, 498 (2013).

The intent of Congress is clear: immigrants who have been victimized in the United States should be able to work with law enforcement without the threat of deportation.

A. DHS Adopts Regulations and Policies to Avoid U Visa Crime Survivor Removal.

DHS in multiple ways has implemented a structure designed to stay removals of U visa applicants. Under 8 C.F.R. § 214.14(c)(1)(i), ICE is authorized "to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or BIA, whichever is appropriate, *while a petition for U nonimmigrant status is being adjudicated by USCIS*." (emphasis added). Similarly, 8 C.F.R. § 214.14(c)(1)(ii) provides for stays of a final order of removal while a victim's U visa application is being processed.

Because Congress limited the number of U visas that USCIS may allocate each year to 10,000, USCIS created a regulatory "waitlist" for U visa applicants who would receive a visa except for the 10,000 visas a year cap. 8 C.F.R. § 214.14(d)(2). USCIS grants deferred action and attendant work authorization to U visa applicants on the waitlist. *Id*. USCIS explained that it created the wait list "to balance the statutorily imposed numerical cap against the dual goals of enhancing law enforcement's ability to investigate and prosecute criminal activity and providing protection to alien victims of crime. . ." *New Classification for Victims*

of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014 at 53,027 (Sept. 17, 2007).

In 2009, ICE issued two memoranda establishing a system in which it seeks a "prima facie determination" from USCIS for U visa applicants seeking stays, release from detention or relief in removal proceedings. *Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visas) Applicants*, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (Sept. 24, 2009), (available at https://asistahelp.org/wp-content/uploads/2018/12/ICE-Guidance-Adjudicating-Stay-Request-Filed-by-U-Applicants.pdf); *Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal*, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (Sept. 25, 2009), (available at https://asistahelp.org/wp-content/uploads/2018/12/ICE-Memorandum-OPLA-Removal-Proceeding-or-with-Final-Orders-of-Deportation.pdf).[1]

[1] While ICE asserts, through an FAQ, that the stay guidance is no longer its policy, it has failed to either formally revoke that guidance, provide new guidance, or speak to the memorandum addressing U visa petitioners in immigration proceedings. *See Revision of Stay of Removal Request Reviews for U Visa Petitioners*, United States Dep't of Homeland Security, Immigr. and Customs Enforcement (Aug. 2, 2019), https://www.ice.gove/factsheets/revision-stay-removal-request-reviews-u-visa-petitioners#wcm-survey-target-id. This FAQ reveals that ICE either misunderstands or intends to undermine the Congressional goals of the law, since it blithely asserts that deporting U visa crime victims should harm neither the victim, nor law enforcement. Under its new "policy" created through FAQ, the thousands of U visa applicants waiting for USCIS to place them on the waitlist may be deported, making the U visa a false promise to both law enforcement and to crime victims.

The memorandum on U visa cases in proceedings states that, when an individual provides proof that they have filed a U visa petition, "the OCC [Office of Chief Counsel] *shall* request a continuance to allow USCIS to make a prima facie determination." *Id.* at 2. The guidance further states that "[o]nce USCIS has determined that the alien has made a prima facie case, the OCC should consider administratively closing the case or seek to terminate proceedings pending final adjudication of the petition." *Id.* It remains, moreover, the stated policy of ICE that in removal cases involving crime victims and witnesses, "ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to *minimize any effect* that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice." *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,* United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (June. 17, 2011), https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses- plaintiffs.pdf (emphasis added).

B. The BIA Articulated Its Own Prima Facie Protection for U Visa Applicants in Proceedings.

In 2012, the BIA issued *Matter of Sanchez-Sosa*, 25 I.&N. Dec. 807 (BIA 2012) ensuring that crime victims seeking U visas would not be removed while

USCIS determined the fate of their applications. The BIA held that in determining whether good cause exists to continue removal proceedings to await USCIS's decision on a U visa applicant's case, an immigration judge must consider the immigrant's "prima facie eligibility for the U visa." *Id.* at 813 n.7. For U visa applicants seeking a continuance, the BIA held that immigration judges should consider good faith factors including "(1) the DHS's response to the motion; (2) whether the underlying visa petition is prima facie approvable; and (3) the reason for the continuance and other procedural factors." *Id*. As a general rule, the BIA determined that a rebuttable presumption exists that an individual who has filed a prima facie approvable U visa application with USCIS will warrant a continuance. *Id*. at 815.

Contrary to what DHS may argue, the Attorney General's *Matter of L-A-B-R* decision does not change the standard set out in *Sanchez-Sosa*. *See Matter of L-A-B-R*, 27 I. & N. Dec. 405,413,418 (A.G. 2018) (citing *Sanchez-Sosa* with approval). In fact, *L-A-B-R* states unequivocally that it is "consistent with Board precedents." *Id.* at 418 (citing *Sanchez-Sosa*). Moreover, in a recent precedent decision, the Board found "[i]n *Matter of L-A-B-R-*, the Attorney General *refined* this [*Sanchez-Sosa*] analytical framework" and the Board again chose not overturn *Matter of Sanchez-Sosa* in this new decision. *Matter of Mayen,* 27 I & N Dec. 755, 757 (BIA 2020) (Emphasis added). In *Mayen*, the Board builds on *L-*

A-B-R- discussing the balancing of primary and secondary factors immigration judges ("IJs") should consider in granting a request for a continuance when a noncitizen has an application for "collateral" relief adjudicated under the exclusive jurisdiction of USCIS. *Id*.

If ICE is dismantling the protective "prima facie" system it has used for a decade to ensure U visa applicants are not removed, it is more important than ever that EOIR perform the function ICE eschews: enforcing the will of Congress. Deporting immigrant crime survivors—certified by law enforcement to have been the victim of qualifying crime and helpful in the investigation or prosecution of that crime—will undoubtedly discourage immigrant crime victims from participating in our criminal justice system, thereby making communities less safe.

i. *The BIA Uses Motions to Reopen to Ensure the Integrity of Sanchez- Sosa.*

The BIA has applied *Sanchez-Sosa* to determine whether proceedings should be reopened based on a noncitizen application for a U visa or other relief before USCIS. For example, in *Matter of Peleayz*, No. AXXX XX4 106, 2017 WL 7660455 3, 3 (BIA Oct. 24, 2017), (available at https://www.scribd.com/document/ 365695330/Augustine-Peleayz-A208-934-106-BIA), the BIA cited *Sanchez-Sosa* in finding that reopening is warranted in light of "new and previously unavailable documentary evidence concerning the

respondent's application for nonimmigrant U visa status." Additionally, in *Matter of Y-A-L-L-*, AXXX XXX 594 2, 2 (BIA Oct. 29, 2015), (available at https://www.scribd.com/ document/290079091/Y-A-L-L- AXXX-XXX-594-BIA-Oct-29-2015), about two months after the court ordered the respondent's departure, the respondent filed a motion to reopen because of a then-pending U visa. The BIA granted the respondent's motion to reopen because the respondent was "awaiting final adjudication of her application" for a U visa. *Id.*

There is no rational distinction between Ms. 's case and the cases in which the BIA granted motions to reopen so that it could entertain a *Sanchez-Sosa* prima facie showing. The Board determined, "we agree with the Immigration Judge's determination that [Ms.] has not shown 'good cause' for a continuance as she has not established prima facie eligibility for a U-Visa…or established that the collateral matter would materially affect the outcome of the removal proceedings." A.R. 195-96. The Board's conclusory assertion happens to be wrong. The IJ in Ms. 's case did *not* find that she was not prima facie eligible for a U visa nor did the IJ find that her receipt of U nonimmigrant status would not materially affect the outcome of proceedings, because Ms. did not request a continuance before the IJ. The motion Ms. filed before the IJ was for administrative closure of her removal proceedings pending the adjudication of her U visa

petition, which required the IJ to engage in a different analysis than the IJ would have undertaken had she sought a continuance. A.R. 376-436. During the pendency of the appeal, after an intervening precedent decision all but eliminated the likelihood of administrative closure, Ms. requested that the Board remand her case to the IJ to determine whether she had established good cause for a continuance. A.R. 21. *See Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018). The Board failed to follow its own precedent when it denied Ms. 's motion to remand her case to the IJ for consideration of continuance eligibility.

ii. *The U Visa Backlog Strengthens the Need for Sanchez-Sosa.*

Tens of thousands of U visa applicants are waiting to be put on the waitlist and, short of mandamus in federal court, have no control over the timing of that decision. *See Number of Form 1-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status 2009-2019* (Fiscal Year 2019, Quarter 2), United States Dep't Of Homeland Security, Citizen and Immigr. Services (2019), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2019_qtr2.pdf. As of February 2020, USCIS estimates it is taking more than *four years* (54 months) to process U visas. *See USCIS Processing Times,* Form: 1-918, Field Office or Service Center: VSC, United States Dep't Of Homeland Security, Citizen and Immigr. Services (last accessed February 8, 2020), https://egov.uscis.gov/

processing-times. While the backlog illustrates the success of the U visa as a tool for law enforcement, USCIS's lengthy delay in placing U visa applicants on the waitlist leaves many crime victims languishing without legal work authorization and, under an apparent change in DHS policy, subject to deportation. Therefore, the extensive and growing U visa backlog is, if anything, an additional reason the BIA should insist that EOIR grant continuances to U visa applicants who make prima facie showing. *See Matter of Alvarado-Turcio*, A201-109-166 2, 3 (BIA Aug 17, 2017) https://www.scribd.com/document/360077591/Edgar-Marcelo Alvarado-Turcio-A201-109-166-BIA-Aug-17-2017 (recognizing the significant U visa backlog and holding that "processing delays are insufficient, in themselves, to deny an alien's request for a continuance"); *see Malilia v. Holder*, 632 F.3d 598, 606 (9th Cir. 2011) (holding that "delays in the USCIS approval process are no reason to deny an otherwise reasonable continuance request."); *see Ahmed v. Holder*, 569 F.3d 1009, 1013 (9th Cir. 2009) (noting "concern about blaming a petitioner for an administrative agency's delay in processing an employment-based visa application").

If ICE dismantles its prima facie determination system for U visa applicants, and USCIS continues to inadequately staff and sluggishly process crime victim applications, EOIR will be the last safeguard against deporting thousands of crime

victims who have been helpful to United States law enforcement, and whom Congress chose to protect.

C. IJs and the Board have Authority to Administratively Close Removal Proceedings.

The Attorney General's interpretation of 8 C.F.R. §§ 1003.10(b) and 1003.1(d)(1)(ii) in *Matter of Castro Tum* need not be afforded deference, as the regulations are unambiguous. The regulations provide that IJs and the Board "may take any action . . . appropriate and necessary for the disposition" of the case. 8 C.F.R. §§ 1003.1(d)(1)(ii) & 1003.10(b). Because administrative closure is within the realm of "any action" that is contemplated by statute, regulation, and Board precedent to manage or dispose of a case, "the authority of IJs and the BIA to administratively close cases is conferred by the plain language of 8 C.F.R. §§ 1003.10(b) and 1003.1(d)(1)(ii)." *Zuniga Romero v. Barr,* 937 F.3d 282 (4th Cir. 2019).

In *Hernandez-Perez v. Whitaker*, 911 F.3d 305 (6th Cir. 2018), this Court favored an interpretation of an ambiguous statute and its accompanying regulatory scheme that would not have the "unusually broad implication" of invalidating almost all Notices to Appear. *Hernandez-Perez v. Whitaker*, 911 F.3d at 314. *Matter of Castro Tum*, which involves an *unambiguous* regulation, produces this type of an unusually broad implication: it abolishes the immigration courts' over 30-year use

of this effective docketing tool. *Zuniga Romero v. Barr*, 937 F.3d at 304. This type of sudden deviation from a "long-established procedural mechanism" is the result this Court sought to avoid in *Hernandez-Perez v. Whitaker*. Because there is no "genuine ambiguity" contained within 8 C.F.R. §§ 1003.1(d)(1)(ii) or 1003.10(b), deference should not be given to the Attorney General's interpretation in *Castro Tum*. This interpretation impermissibly strips his own IJs of their adjudicatory power and produces an unusually broad implication. *Id.*

II. The BIA Should Protect Immigrant Crime Survivors, Not Deport Them.

The BIA must not shirk its duty to protect U visa applicants, either by refusing to apply its own *Sanchez-Sosa* prima facie analysis or through denying motions to reopen and remand, such as the one filed by Ms. . For the first time in its history, USCIS has adopted a policy to initiate removal proceedings against unsuccessful U visa applicants. *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, United States Dep't Of Homeland Security, Immigr. and Customs Enforcement (June 28, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf. At the same time, ICE is attempting to remove, instead of assist, U visa crime survivors. Elly Yu, *A Northern Virginia Mother was a Victim of Domestic Violence. She was Deported,*

WAMU 88.5 (Sept. 11, 2019) https://wamu.org/story/19/09/11/a-northern-virginia- mother-was-a-victim-of-domestic-violence-she-was-deported. Now more than ever, immigrant crime survivors, the law enforcement officers, and prosecutors who work with them rely on the BIA and the federal courts to ensure that the U visa remains a powerful tool for law enforcement to gain the trust of immigrant communities and powerful incentive for undocumented immigrants to cooperate with law enforcement, just as it was designed to be.

A. Protecting Survivors Against Deportation Encourages Crime Reporting.

In affirming the Immigration Judge's decision in this case, the BIA endorses an approach to crime victims that dismisses deportation as a serious consequence, bolsters abusers' threats, and thwarts the will of Congress. The BIA decision in this case embraces the misguided view that because U visa applicants may pursue cases from abroad, deporting them does no harm. *See* Certified Administrative Record 48. This position reveals deep ignorance about the reality immigrant crime victims experience in this country and threatens the integrity of the U visa system Congress created to reduce the leverage of abusers' threats to have victims deported, and encourage full participation in the U.S. criminal justice system. It undermines the ability of law enforcement to investigate and prosecute crimes committed by dangerous individuals; in some instances, the BIA will be

ordering the removal of U visa applicants who are assisting law enforcement in an ongoing matter.

The hazards of deportation are well-documented. The crime survivor loses financial stability, access to our civil and criminal justice systems, and, for the domestic violence survivor, the services she and her children need to escape and overcome domestic abuse. Instead, she and her family experience trauma and face possible violence, ostracization, and discrimination in their home country because they challenged male privilege. Moreover, immigrants may come from countries in which authorities are "brazenly corrupt" and "horrifyingly brutal." David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America,* Bepress Legal Series (May 18, 2006), https://law.bepress.com/cgi/viewcontent.cgi?article=6323&context=expresso. This is particularly true with enforcement of laws in the home country, if they exist, protecting women against domestic abuse and marital rape.

i. *Abuse and Violence Follow the Victim Home.*

In some cases, as in the Petitioner's, the abuser and victim come from the same country. When the immigrant abuser is prosecuted for their violent crime, they will likely be deported after serving their sentence. *See* 8 USC § 1227(a)(2)(E) (rendering crimes of domestic violence a ground of deportability). Abusers also sometimes escape to their home country to avoid prosecution in the United States.

Domestic violence is commonly repetitive, and often escalates following separation. Deborah K. Andersson, & Daniel G. Saunders, Leaving *an abusive partner.* Trauma, Violence, & Abuse, 4 (2), 163-191(2003). A woman's attempt to leave her abusive relationship was the "precipitating factor in 45 percent of the murders of a woman by a man." Carolyn R. Block, *Intimate Partner Homicide*, United States Dep't Of Just., 250 Nat'l Inst. of Just., 1, 6 (Nov. 2003), https://www.ncjrs.gov/pdffiles1/ jr000250.pdf. Of abusers convicted on a misdemeanor domestic violence charge, thirty-one percent were arrested again within a year of being released and forty-four percent were arrested again within two years of being released; in both instances, the most common re-arrest was for felony assault. Nora K. Puffett, *Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court*, Center for Court Innovation (April 2004).

Survivors such as Ms. may be left without protection in a country where the abuser is likely to retaliate. The BIA has now given the green light to Ms. 's deportation to Honduras, where laws prohibit domestic violence, but are limited "…if the victim's physical injuries do not reach the severity required to categorize the violence as a criminal act…" Honduras 2018 Human Rights Report, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, 1, 24 (Mar. 13, 2019), https://www.state.gov/reports/2018-

country- reports-on-human-rights-practices/honduras. Honduras' laws provide little in the way of protection to victims: "Female victims of domestic violence are entitled to certain protective measures. Abusers **caught in the act** ***may*** be detained for ***up to 24 hours*** as a ***preventative*** measure." *Id.* (Emphasis added).

ii. *Allowing for the Removal of U Visa Applicants Harms Innocent Children.*

Many survivors consider their children when deciding whether to report abuse and risk deportation. Deportation leaves two possible outcomes for the survivor's children, both of which place them at greater harm than remaining in the abusive relationship. The children may: (1) be separated from the survivor and remain in the U.S., either with an abusive parent or in foster care, without her protection, or (2) be deported along with their mother to her home country to face tightened financial and physical risks. Michelle J. Anderson, *A License to Abuse: The Impacts of Conditional Status on Female Immigrants,* 102 YALE L.J. 1401, 21, 1427-28, fn. 127 (1993). The Centers for Disease Control and Prevention report that in homes where violence between partners occurs, there is a thirty to sixty percent chance of co-occurring child abuse. Andrea Hazen. *Intimate Partner Violence Among Female Caregivers of Children Reported for Child Maltreatment.* Child Abuse and Neglect, 30, 302,1–319 (March 2004), https://doi.org/10.1016/ j.chiabu.2003.09.016. If survivors report abuse and are not offered protection from

deportation, their physical safety and that of their children will be further compromised.

Deportation causes families "sudden and severe financial impact." Samantha Artiga, *Family Consequences of Detention/Deportation,* Kaiser Family Foundation (2018), https://www.kff.org/disparities-policy/issue-brief/family- consequences-of-detention-deportation-effects-on-finances-health-and-well- being. Many children have grown up in the United States and do not have strong connections to their countries of origin. These immigrants are often deported to homelessness. Amy F. Kimpel, *Coordinating Community Reintegration Services for "Deportable Alien" Defendants: A Moral and Financial Imperative,* 70 Fla. L. Rev. 1019, 1021 (2018).

iii. *Survivors Are Already Discouraged from Reporting*

Prior to VAWA self-petitioning and the U visa, many crime survivors refrained from accessing justice. Undocumented immigrants, especially, under-reported crimes due to the fear they would be deported if they did so. Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. Rev. 667, 675 (2003). The law Congress created to protect undocumented immigrants gave them hope. Jacqueline P. Hand, *Shared Experiences, Divergent Outcomes: American Indian and Immigrant Victims of Domestic Violence*, 25 Wis. J. L. Gender & Soc'y 185, 203 (2010).

Unfortunately, in 2019, many immigrant crime survivors once again fear that, despite Congress' repeated attempts to help them, reporting crimes will now result in their deportation and the deportation of their children. A 2017 survey of more than 800 advocates working with survivors of intimate partner violence, sexual abuse, and human trafficking revealed that forty-three percent of advocates had clients who dropped a civil or criminal case due to fear of immigration enforcement. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, National Immigrant Women's Advocacy Project, 1, 43 (May 3, 2018), https://www.library.niwap.org/ wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf. Forty-one percent of Latinos and Latinas reported that deportation is the primary reason why Latino and Latina survivors do not come forward. *The No Mas Study: Domestic Violence and Sexual Assault in the Latin@ Community*, Case De Esperanza (2015), https://nomore.org/wp-content/uploads/2015/04/NO-MAS- STUDY-Embargoed-Until-4.21.15.pdf.

B. The Fear of Deportation is Harming Law Enforcement Efforts to Keep Us All Safe

When immigrant crime victims fear accessing the U.S. criminal justice system, everyone suffers. Criminals target vulnerable populations such as

immigrants, and leverage the threat of deportation to keep them silent. Pauline Portillo, *Undocumented Crime Victims: Unheard, Unnumbered, And Unprotected,* 20 Scholar 346, 354-55 (2018), https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1006&context=thescholar. For example, gang members are strengthened by immigrant vulnerability to deportation because witnesses will not come forward. Dan Lieberman, *MS13 Members: Trump Makes the Gang Stronger,* CNN (July 28, 2017), https://www.cnn.com/2017/07/28/us/ms-13-gang-long-island-trump/index.html. Victim fear generated by deportations significantly fetters the ability of law enforcement to take dangerous criminals off the street. Meagan Flynn, *Houston's Chief Acevedo, Defiant and Introspective, Rails Against SB 4,* Houston Press (Apr. 28, 2017), https://www.houstonpress.com/news/hpd-chief-acevedo- lambasted-sb4-in-defiant-candid-monologue-9394376. Witnesses to crimes will no longer report. Lindsey Bever, *Hispanics "Are Going Further into the Shadows" Amid Chilling Immigration Debate, Police Say,* Wash. Post (May 12, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say. When crime witnesses and victims are too afraid to speak out, we are all unsafe.

CONCLUSION

Ms. did exactly what Congress sought to accomplish with the U visa: she helped law enforcement authorities investigate and prosecute her abuser. Allowing the BIA to avoid, through procedural manipulation, its responsibility under *Sanchez-Sosa* to protect Ms. against removal reinforces the growing belief that the U visa program is an unreliable, false promise and aids and abets abusers' threats of deportation. Amici, immigrant survivors, and law enforcement who help them rely on this Court to help us ensure that the most fearful in our communities find the courage to challenge abuse, that reporting abuse does not lead to deportation, and that crime perpetrators who prey on immigrants are held accountable. It is apparent that immigration system is drifting towards becoming, once again, exactly what Congress sought to fix in the original VAWA of 1994: a weapon for abusers, rapists and other criminals to silence and control their victims. The Court should grant the Petition.

///

Dated: February 11, 2020

Respectfully submitted,

s/Laura Flores Bachman
Laura Flores Bachman
ASISTA Immigration Assistance
P.O. Box 12
Suffield, CT 06078
860-758-0733
laura@asistahelp.org

s/Lillian Saldinger Axelrod
Lillian Saldinger Axelrod
Siskind Susser PC
1028 Oakhaven Rd
Memphis TN 38119
(901) 682 6455
Laxelrod@visalaw.com

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32-1(a) because, excluding the parts of the document exempted Fed. R. App. P. 32(f), this document contains 6,178 words.
2. This document complies with the type style requirements of Fed. R. App. P. 32(a)(5) and the type face requirements of Fed. R. App. P. 32(a)(6) because these documents have been prepared in a proportionally spaced typeface using Microsoft Word 2016 14-point Times New Roman.

s/Lillian Saldinger Axelrod
Lillian Saldinger Axelrod
Siskind Susser PC
1028 Oakhaven Rd
Memphis TN 38119
(901) 682 6455
Laxelrod@visalaw.com

CERTIFICATE OF SERVICE

I, Lillian Saldinger Axelrod, the undersigned, hereby certify that February 11, 2020, I electronically filed the foregoing Motion for Leave to File Brief Out-of-Time Brief of *Amici Curiae* in Support of Petitioner by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Executed on this 11th day of February 2020 at Memphis, Tennessee. I declare under penalty of perjury that the foregoing is true and correct.

s/Lillian Saldinger Axelrod
Lillian Saldinger Axelrod
Siskind Susser PC
1028 Oakhaven Rd
Memphis TN 38119
(901) 682 6455