

January 28, 2022

VIA E-Service:

Office of the Principal Legal Advisor, New York City
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
26 Federal Plaza, Room 1130
New York, New York 10278

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Re: [REDACTED]
A# [REDACTED]
Next Master Calendar Hearing: February 23, 2022 at 10:00 a.m.
Immigration Judge [REDACTED]

Request for Exercise of Prosecutorial Discretion to Dismiss Proceedings Based on Prima Facie Eligibility for U Nonimmigrant Status

Or in the Alternative a Joint Motion to Administratively Close Proceedings, or continue Master Calendar Proceedings

Dear DHS Counsel:

The Legal Aid Society of New York represents [REDACTED] in her removal proceedings. Per the direction of Immigration Judge [REDACTED] at the prior master calendar hearing on December 29, 2021, we are herein timely submitting our request for prosecutorial discretion.

Ms. [REDACTED] is Prima Facie Eligible for U Nonimmigrant Status

Ms. [REDACTED] is a victim of domestic violence who is prima facie eligible for U nonimmigrant status. On June 16, 2014, she was violently assaulted by [REDACTED], the father of her daughter [REDACTED]. Mr. [REDACTED] was arrested and prosecuted for various crimes of domestic violence, including assault, strangulation, and endangering the welfare of a child. Ms. [REDACTED] and her daughter went into a domestic violence shelter following the incident. She fully cooperated with the prosecution of Mr. [REDACTED] who ultimately pled guilty to assault in the 3rd degree. Ms. [REDACTED] was granted a five-year permanent order of protection that was valid through November 18, 2019. **See Exhibits A through F.**

On December 16, 2014, the Nassau County District Attorney's Office issued Ms. [REDACTED] a Form I-918 Supplement B U Visa certification attesting to her victimization and helpfulness in their prosecution. **Exhibit E.** Ms. [REDACTED]'s prior counsel, Accredited Representative [REDACTED] at [REDACTED], filed Ms. [REDACTED]'s Form I-918 application for U nonimmigrant status on May 17,

2015, along with an Form I-192, Application for Waiver of Inadmissibility (seeking to waiver her lack of a valid passport). **Exhibit C.**

On January 20, 2020, USCIS denied Ms. [REDACTED]'s application for U nonimmigrant status and associated waiver stating that the Request for Evidence (RFE) was "returned as undeliverable due to a change of address in which USCIS was not notified." **Exhibit B.** However, Ms. [REDACTED] had designated the J [REDACTED] address as her safe mailing address in her initial U filing, and all prior correspondence as well as the denial notice was sent to the same address without issue. Because the June 28, 2018 NTA Policy Memo was in effect at the time Ms. [REDACTED]'s U application was denied, she was placed in removal proceedings. We note that the NTA Policy Memo has since be rescinded and had the same scenario occurred today, Ms. [REDACTED]'s would not have been issued an NTA.

Due to concerns regarding the competency of her prior counsel's representation, Ms. [REDACTED] terminated J [REDACTED]'s representation and requested a copy of her file which was not even a complete record. She was not able to secure new legal representation until the Legal Aid Society took over her immigration matters. Our office recently entered our appearance in her removal case, and are taking affirmative steps to remedy the denial of her U application.

This week our office secured a newly issued U visa certification from the Nassau County District Attorney's Office executed on January 26, 2022. **Exhibit A.** This will allow our office to re-file Ms. [REDACTED]'s U visa application with USCIS, which we are planning to do as soon as we receive a few outstanding documents.

Shortly, we will be filing a Form I-290B Motion to Reconsider with USCIS seeking to reopen Ms. [REDACTED]'s previously filed U application. We are optimistic this motion will be successful and if so, it would avoid Ms. [REDACTED]'s having to wait for the lengthy adjudication of a re-filed U application.

DHS Should Exercise Prosecutorial Discretion to Dismiss Proceedings

Ms. [REDACTED]'s warrants a favorable exercise of discretion under both the September 30, 2021 Mayorkas Memo and the June 17, 2011 Morton Memo on "Prosecutorial Discretion" Certain Victims, Witnesses and Plaintiffs," which remains in effect and applies to OPLA. **Exhibit J.** The Morton Memo specifically states that "[t]o avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and *attorneys* are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints." It further notes that particular attention should be paid to "victims of domestic violence, human trafficking, or other serious crimes." **Exhibit J** (emphasis added).

Ms. [REDACTED] is a victim of serious crimes of domestic violence. As discussed above, she is squarely prima facie eligible for U nonimmigrant status based on her cooperation with the Nassau County District Attorney's Office's prosecution of her ex-intimate partner. **Exhibit A, E.**

Ms. [REDACTED] been residing in the U.S. for almost 12 years after entering with a valid visitor visa. She is the mother of three minor U.S. citizen children for whom she is the primary caretaker. Her children would suffer incredible hardship if she were removed to Trinidad. **Exhibit I.**

Ms. [REDACTED]'s disclosed in her U filing a juvenile arrest in Trinidad when she was around 14 years old. The circumstances of this arrest involved an older man trying to touch her in a crowd which led to Ms. [REDACTED]'s and other adults having a physical altercation with this individual in her defense. Ms. [REDACTED]'s pled guilty to the offense of Wounding with Intent and received a fine. **Exhibit G.** She believes that her record in this case has since been expunged, and our office is trying to obtain the corresponding records from Trinidad. Her only other arrest occurred in the US in April 2021, following an incident where she and her girlfriend were threatened by the paramour of a man that had raped Ms. [REDACTED]'s girlfriend just days before. All charges against Ms. [REDACTED] were dismissed. **Exhibit H.** Ms. [REDACTED] girlfriend had reported the rape which was being investigated by a NYPD Special Victims detectives.

Ms. [REDACTED]'s is NOT a threat to national security, public safety, or border security as contemplated by the Mayorkas Memo. Her criminal record is limited to a juvenile record from approximately 20 years ago which may in fact be expunged, and a recent arrest for which all charges were dismissed. These mitigating factors, combined with the fact that she is a victim of domestic violence, and the sole custodial mother of three U.S. citizen children who has resided in the U.S. nearly twelve years, amply support a conclusion that Ms. [REDACTED] warrants a favorable exercise of discretion.

For these reasons, we respectfully request that you exercise your prosecutorial discretion to dismiss Ms. [REDACTED] proceeding before the upcoming master calendar hearing. In the alternative, we are requesting a joint motion to administratively close the proceedings, or a lengthy continuance to allow for the reopening of her previously filed U application and/or the filing and adjudication of a new U application. However, we strongly believe the former is more appropriate.

In support of our request, enclosed please find the following documents:

- Exhibit A:** Newly Issued Form I-918 Supp. B U Certification issued by Nassau County District Attorney's Office, dated January 26, 2022
- Exhibit B:** USCIS Denial Notices for Forms I-918 and I-192 dated January 8, 2020
- Exhibit C:** USCIS Receipt Notice for Forms I-918 and I-192 dated May 27, 2015

- Exhibit D:** Affidavit of [REDACTED] submitted in Support of U Nonimmigrant Status and Explanation of Trinidad Juvenile Arrest (2015)
- Exhibit E:** Initial Form I-918 Supp. B U Certification issued by Nassau County District Attorney's Office, dated December 16, 2014
- Exhibit F:** Letter dated November 14, 2019 from Nassau County District Attorney's Office addressed to Ms. [REDACTED] confirming that Mr. [REDACTED] pled guilty to assault in the 3rd degree with a copy of the five-year order of protection granted to Ms. [REDACTED]
- Exhibit G:** Criminal Minute Guilty Plea to Wounding With Intent dated May 9, 2007, regarding Ms. [REDACTED]'s juvenile arrest in Trinidad
- Exhibit H:** Kings Country Criminal Court Certificate of Dismissal, regarding Ms. [REDACTED]'s arrest on April 10, 2021
- Exhibit I:** Birth Certificates of Ms. [REDACTED]'s Three U.S. Citizen Children
- Exhibit J:** June 17, 2011 Morton Memo on "Prosecutorial Discretion" Certain Victims, Witnesses and Plaintiffs

Thank you for your time and attention to this request. If you have any questions or require any further information, please do not hesitate to contact me at (646) 584-7843.

Sincerely,



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