

February 2, 2021

**Re: Testimony in support of HF 321 Certifications for Victims of Crimes**

Dear Chair Becker-Finn and members of the Judiciary Finance and Civil Law Committee:

I write to you as an immigration attorney and member of the MN/Dakotas Chapter of the American Immigration Lawyers Association in order to provide testimony in support of HF 321, a bill on certifications for immigrant victims. In my law practice, I have worked with numerous victims of violent crime who have benefitted from the U Visa. It is in this context that I express my full support for the proposed bill that would standardize the process among law enforcement institutions in Minnesota for providing certifications for eligible victims to apply for the U Visa.

The U Visa is one of the very few humanitarian immigration benefits that we have in our otherwise restrictive immigration system. The program was designed by Congress in 2000 to legalize the status of undocumented immigrants who are disproportionately impacted by violent crime in the U.S., but who are reticent to report those crimes or follow through with the ensuing investigations and prosecutions. The overriding reason that undocumented immigrants fail to report and prosecute crimes is their fear that an encounter with law enforcement will lead to their deportation. It is common in the immigrant community to conflate local police, for example, with officers Immigration and Customs Enforcement or think that they are serving the same agenda to remove them from our communities.

Congress designed the U Visa program with the specific intent of correcting the social problem of the underreporting of crime by undocumented victims. The enactment of the U Visa program is owed in significant part to the advocacy of domestic violence and sexual assault organizations who lobbied tirelessly to create a benefit that encouraged public safety for immigrants and that lead to a permanent status in this country. Data obtained from the adjudicating agency, the United

States Citizenship and Immigration Services, shows that a large percentage of U Visa beneficiaries are victims of domestic violence and sexual abuse, so the advocates' work was for a purpose.

Data also shows that undocumented immigrant crime victims who have benefitted from U Visas are just as often victims of violent street crime, such as aggravated assault and violent robberies. Researchers from the University of Southern California's Tomas Rivera Policy Institute explain that this kind of violent crime is perpetrated disproportionately against undocumented immigrant, particularly Latino young men, because it is well-known that they are paid in cash and they don't report the abuses and so are perfect targets.<sup>1</sup> And, we're not talking about a slight disparity – as the data shows that Latinos under 30 are three times as likely to be homicide victims than white people of the same age and they are substantially more likely to be shot and burglarized than white people.<sup>2</sup>

The pattern of victimization occurs in all cities around the United States, and urban communities in Minnesota are no exception. For the several years that I have been practicing immigration law in Minnesota, I have reviewed countless incident reports of undocumented immigrant victims who have been violently assaulted in our streets. I see how much more vulnerable to violence undocumented immigrants are in their homes and in their neighborhoods in south and north Minneapolis than my family and I are, in contrast, over in Linden Hills. When I think about the injustice of violent crime for immigrants in Minneapolis, I think of a particular client of mine – a beautiful woman in her sixties – who was robbed at gunpoint one afternoon while walking to church. The assailant bashed her in the face with the butt of his gun in order to steal her wallet. An incident like this shocks the conscience, inevitably and forever scarring the life of the victim.

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<sup>1</sup> “Latino Voices: The Impacts of Crime and Criminal Justice Policies on Latinos,” Tomas Rivera Policy Institute, June 2014.

<sup>2</sup> *Id.*



To a certain extent, the U Visa program has achieved its specific objectives of improving public safety for immigrants by encouraging immigrants to go to the police when they have been victimized and participate fully in the investigation and prosecution of the underlying crime. Now that the program has been in existence for the last several years, information about the program has been disseminated in the immigrant community and undocumented immigrants are generally aware that it is a mechanism for legalizing one's immigration status. There are at this point more than a hundred thousand principal beneficiaries and even more derivative beneficiaries who are protected by the U Visa. As a side note, in comparison to the number of undocumented immigrants in this country, the U Visa, which is capped at 10,000 principal beneficiaries each year, is not even scratching the surface of correcting for the larger problem of unauthorized immigration in the United States, which leaves millions of people without lawful status and thus vulnerable to many kinds of abuses. Nevertheless, it is game-changing benefit that dramatically improves the lives of individuals who have by definition suffered a traumatizing experience. And, it further provides a shield to wanton deportation for those who qualify and have submitted an application.

Despite all the good that this program has generated, it is still beset by a considerable shortcoming that the proposed bill HF 321 intends to address head on. That is what I consider an "abuse" of the discretionary power that was delegated by Congress to law enforcement agencies to certify that a particular applicant for the U Visa meets various requirements. Pursuant to the federal law and implementing regulations, the requirements for issuing a law enforcement certification are three-fold, namely that the "certifying agency" must certify that an applicant was the victim of an enumerated crime, the certifying agency in fact investigated or prosecuted that incident and that the person was, is or is likely to be "helpful" in that investigation and/or prosecution. In specifying that certifying authority is at the discretion of the particular certifying agency, Congress was being mindful of the constitutional prohibition against the federal government commandeering the states in the area of policing. Unintentionally, their deference to state police power has opened the door for racial bias and xenophobia to hinder decision-making by law enforcement agencies who hide behind the discretion that has been delegated

to them to choose to provide or not a law enforcement certification to undocumented immigrant victims. The result is a pervasive abuse of certifying agents of their authority, which at the end of the day, undermines the legislative intent to foster trust between the immigrant community and local law enforcement agencies.

In 2014, the immigrant rights clinic at the University of North Carolina conducted a national survey to assess the extent of the problem and what they found is that countless law enforcement agencies from around the country are culpable of “immigration gatekeeping” by either attaching additional requirements for issuing certifications or they refusing to certify altogether.<sup>3</sup> For example, a law enforcement agency may decline to issue a law enforcement certification if a case is still open, or if the case is closed, or if the statute of limitations has run, or if the victim didn’t require medical treatment or any number of other reasons. From the perspective of immigrant community, a law enforcement agency that rejects a certification request that meets the federal requirements is anti-immigrant, and therefore, cannot and should not be trusted.

The Star Tribune reported on exactly this problem of “immigration gatekeeping” by the St. Paul Police Department (SPPD) in April of 2017, noting that the certification rates by the SPPD were a discreditable 10% in contrast to a certification rate of 80% by the Minneapolis Police Department.<sup>4</sup> Pressure by immigrant rights groups spurred the SPPD to revise its policy and come closer in line with the federal regulations on U Visa certifications, which has had the obvious effect of improving certification rates. Members of various immigrant rights groups and nonprofits approached the SPPD Chief Todd Axtell and asked him to reckon with the commonly-held perception that the SPPD does not certify U Visas and how this kind of policy served anyone’s interests, especially their own. I was present in a meeting in which Chief Axtell was faced with many tough

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<sup>3</sup> Abreu et al., “Visa Denied: The Political Geography of the U Visa: Eligibility as a Matter of Locale,” UNC School of Law Immigration/Human Rights Policy Clinic, June 2014.

<sup>4</sup> Mila Koumpilova, “Immigrant Crime Victims Here Find Wide Disparities in Visa Program,” *Star Tribune*, April 25, 2017.



questions: How can the police say they are working to protect and serve the immigrant community, when they are intentionally blocking legitimate victims from receiving such an important benefit? How can it be anything other than racism driving that kind of policy? Fortunately, Chief Axtell understood the criticism and implemented an overhaul to his department's certification policy.

The idea behind HF 321 is to set a cohesive certification policy for the entire state. A state law would be ideal because it would force uniformity in the processing and issuance of certifications across Minnesota – this is one of the recommendations advanced by the UNC human rights clinic for addressing abuse of discretionary authority by law enforcement agencies. This bill expressly provides that neither an investigation, filing of charges, prosecution, nor a conviction is necessary for an immigrant crime victim to request and obtain a certification. If implemented, this provision will allow many deserving victims to pursue the U Visa process notwithstanding limitations in the criminal process that prevents the perpetrators from being held accountable for their crimes.

Moreover, I applaud the provision in this ordinance that establishes an expedited review process of certification requests for immigrant crime victims who are in removal proceedings. That is because the docket for detained immigrants moves at an accelerated pace, giving a respondent extremely short periods of time to establish a viable U Visa defense. Given that a law enforcement certification is a requirement to submit an application, and given that an immigration judge will only allow for the U Visa to block a removal order if the respondent provides proof of a pending application, having a reliable, consistent and immediately-accessible process is more critical than ever.

While the present conversation has arisen in the context of augmenting protections for undocumented immigrant residents of Minneapolis and combating racist policing, I encourage the council to pay special attention to the larger social problem that exists to make the immigration benefit available to undocumented immigrants in the first place – that our communities are violent places for undocumented immigrants. I will close by reiterating my full support for this



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policy and encourage the committee to as a critical mechanism for ensuring public safety for our immigrant neighbors in Minnesota.

Thank you very much for taking my testimony into consideration as you deliberate this bill.

Best wishes,

Danielle Robinson Briand, Esq.