Case No. 17-70054

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Phillip MAN,
Petitioner,

v.

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

BRIEF *AMICI CURIAE* OF ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, ASISTA, COMMUNITY JUSTICE ALLIANCE, COMMUNITY LEGAL SERVICES IN EAST PALO ALTO, FREEDOM NETWORK USA, NATIONAL IMMIGRANT JUSTICE CENTER, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, NORTHWEST IMMIGRANT RIGHTS PROJECT, AND PANGEA LEGAL SERVICES IN SUPPORT OF REHEARING

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY OF AMICI CURIAE

Amici are organizations that work with survivors of domestic violence. Amici have a special understanding of the direct and severe impact that denial of IJ review over inadmissibility waivers will have on immigrant crime victims.[1] Amici have joined to produce one brief. Statements of interest of Amici are listed in the appendix below.

SUMMARY OF ARGUMENT

Congress created the U nonimmigrant visa to provide protection for immigrants and to incentivize reporting crimes to the police. Noncitizens, particularly the undocumented, are susceptible to victimization through domestic violence, rape, sexual assault, kidnapping, torture, felonious assault, extortion, and human trafficking. Historically, noncitizens have been reluctant to report to the police for fear of deportation. The U visa aims to change this through a novel approach, rewarding noncitizens who cooperate with state and local law enforcement to bring malefactors to justice.

[1] No counsel for any party authored this brief in whole or in part, and no other person or entity made any monetary contribution to the preparation or submission of this brief.

The Board of Immigration Appeals ("Board"), however, has adopted policies at odds with the statutory purpose. The Board rejected Petitioner's argument that Immigration Judges (IJs) may waive inadmissibility under the general nonimmigrant waiver statute, 8 U.S.C. § 1182(d)(3)(A)(i) (hereinafter § 1182(d)(3)).[2] The Panel deferred to this reasoning, but that conclusion was erroneous for several reasons.

First, the Panel thought that the Board was interpreting a statute, but the Board expressly assumed Petitioner's statutory argument, that is, that a U visa applicant may obtain a general nonimmigrant waiver from the Attorney General. Rather, the Board's holding was *regulatory*: that even if § 1182(d)(3) authority may be exercised by the Attorney General, he has not delegated authority to IJs to adjudicate those waivers.

Second, the Board's regulations date back decades, to a time when nonimmigrant visas were only obtained abroad; they cannot authoritatively interpret the current statutory interplay.

Third, to the extent that the Panel was holding that the general nonimmigrant waiver is only available to noncitizens seeking admission at ports of entry, that

[2] Under the Board's approach, noncitizens in removal proceedings may not seek a waiver before an Immigration Judge. If the Department of Homeland Security (DHS) happens to adjudicate their applications before they are deported, they may remain here. If not, the Board simply orders them deported.

statutory construction goes beyond the Board's reading and has implications far beyond this case. Such a rule is contrary to general U visa regulations, and contrary to Board case law interpreting admissions language in similar contexts. Amici fear it may harm U applicants, and other noncitizens, well beyond the issues implicated directly in this case.

Finally, Amici would draw the Court's attention to an unpublished Board decision that squarely holds that U visa grants within the United States *are admissions*, reasoning that admission is not always governed by the statutory definition at 8 U.S.C. § 1101(a)(13)(A).

The Panel decision is the only circuit to defer to the Board's published decision. It will cause confusion and harm if not reversed, particularly to victims of crimes, particularly survivors of domestic violence and related offenses. Amici urge the Court to rehear this vitally important question en banc.

ARGUMENT

I. The Board ignores the policy behind the U visa and its vital importance to noncitizens and the communities where they live.

In creating the U Visa, Congress provided critical protections for vulnerable noncitizens subject to domestic violence, sexual abuse, and other crimes. But the statute does more than this; by encouraging noncitizen victims to report crimes and cooperate with law enforcement, Congress sought to make communities safer for

everyone. The effect of the rule at issue is that survivors of domestic violence get no actual hearing before being removed, they must rely on a paper U visa waiver application adjudicated without administrative appeal or review. This contravenes the ameliorative framework Congress created.

A. The U Visa aims to remedy a statutory gap.

The U visa was adopted to remedy a gap in earlier legislation, by *inter alia* offering protection to immigrant victims of domestic violence who were not married to citizens or lawful permanent residents.[3] Battered Immigrant Women Protection Act, Pub. L. 106-386, §§ 1501-13, 114 Stat. 1464, 1518-37 (2000). The U statute was intended to "remove obstacles currently hindering the ability of battered immigrants to escape domestic violence safely and prosecute their abusers." 146 Cong. Rec. S10170 (2000) (statement of Sen. Ted Kennedy).

Congress structured the U statute to encourage crime victims to seek assistance from law enforcement and to cooperate as witnesses, so they would not avoid such interaction for fear of deportation. This supports the second and interrelated goal of the U statute: strengthening the ability of law enforcement to

[3] For further explanation of the history of the U visa, *see* Leslye E. Orloff & Janice V. Kaguyatan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 Am. U. J. Gender Soc. Pol'y & L. 95, 163 (2002) ; *see also* Katrina Castillo, Alexandra Spratt, Catherine Longville & Leslye E. Orloff, *Legislative History of VAWA (94, 00, 05), T and U-Visas, Battered Spouse Waiver, and VAWA Confidentiality* 2 (2015).

detect, investigate and prosecute crimes. Battered Immigrant Women Protection Act, §§ 1502(a), 114 Stat. at 1518; *see also U.S. v. Cisneros-Rodriguez*, 813 F.3d 748, 762 (9th Cir. 2015). Noncitizens assured protection are more likely to serve as witnesses in investigations and prosecution, making communities safer. *See* Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protection under VAWA I § II*, 17 Berkeley J. Gender, L. and Just. 137, 150 (2002). Successful prosecutions require cooperation from all segments of society, including immigrants.

Local police observe that the U visa has made communities safer: "the U Visa is a tool to discover dangerous criminals and get them off the street." Police Executive Research Forum, *U Visas and the Role of Local Police in Preventing and Investigating Crimes Against Immigrants* 9 (June – Aug. 2017) (quoting Captain Una Bailey, Commander of Special Victims Unit, San Francisco Police Department ("SFPD") ("Without that first victim coming forward and feeling comfortable because of the U Visa process, this man would have continued preying on vulnerable people."). The U visa process has a lasting impact on trust in law enforcement – in several instances, U visa holders who were subsequently victimized promptly reported the crime to the police, regardless of the outcome of the original case. *Id*.[4]

[4]Without such cooperation, calling law enforcement to report a crime can be

B. The Board's rule undermines the U Visa.

However, under *Matter of Khan*, 26 I. & N. Dec. 797 (BIA 2016), the ability to obtain a U visa is drastically undermined. A noncitizen in removal proceedings faces an immediate order of removal, without any determination of whether she is eligible for a U visa. A delay in adjudication – or as in this case, an erroneous or arbitrary denial – is not amenable to administrative oversight. The Agency's policy undercuts this unique ameliorative visa and makes it effectively unattainable for noncitizens in removal proceedings.

If a nonimmigrant waiver is only considered by DHS, the applicant is denied a full and fair opportunity to present her case. DHS does not conduct in-person interviews; only documentary evidence may be submitted to support an application, such as proof of family member status; copies of income tax returns; letters from employers, schools, family members, or friends; and country conditions reports. Nat'l Immigr. Just. Center, *Practice Advisory: The U Visa Inadmissibility Waiver After L.D.G. v. Holder* 6 (2016). If the applicant has criminal convictions, she submits certified dispositions and evidence of

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devastating to noncitizens. "In Miami in February 2009, Rita Cote's sister called 911 to seek police protection after a domestic violence incident. Ms. Cote's sister had lawful immigration status but had a limited capacity to speak English. Law enforcement agents asked for identification from everyone at the scene . . . after Ms. Cote, [who was undocumented], showed her passport to the officers[,] the officers arrested her, and took her away." Immigr. Policy Center, *Reforming America's Immigration Laws* 10 (2010).

rehabilitation. *Id*. Correspondence from treatment facilities and medical records may also show diagnoses with trauma-related conditions (such as Post Traumatic Stress Disorder).

IJ review of U visa inadmissibility waivers – where applicants are already required to present themselves in court for individualized, in person determinations – permits a traumatized victim to speak. To grant relief § 1182(d)(3), the adjudicator performs a balancing test, evaluating: (1) "the risk of harm to society if the applicant is admitted"; (2) "the seriousness of the applicant's prior immigration law, or criminal law, violations, if any"; and (3) the nature of the applicant's reasons for wishing to enter the United States." *Matter of Hranka*, 16 I. & N. Dec. 491, 492 (BIA 1978).

Through testimony, an applicant can explain their situation and circumstances in person, tell their stories fully, respond to concerns of the adjudicating official, and address any other matters at issue. Similarly, the applicant can present testimony from family members, law enforcement officers, or other witnesses. In-person hearings are important because "[a]ll aspects of the witnesses' demeanor – including the expression of his countenance, how he sits or stands, whether he is inordinately nervous, his coloration during critical examination, the modulation or pace of his speech and other non-verbal communication – may convince the observing trial judge that the witness is

testifying truthfully or falsely." *Shrestha v. Holder*, 590 F.3d 1034, 1042 (9th Cir. 2010); *see also Oshodi v. Holder*, 729 F.3d 883, 891 (9th Cir. 2013) ("The importance of live testimony to a credibility determination is well recognized and longstanding.").

In-person assessments are particularly critical for immigrant crime victims, who may be unrepresented, with poor English skills, and often suffer from trauma and other vulnerabilities that may make it difficult for them to establish eligibility for the waiver solely on a paper application. The exceptional vulnerabilities of noncitizens derive from prior trauma, cultural and language differences, economic instability, and fear of deportation – all factors which push immigrant victims into the shadows by both increasing susceptibility to crime and limiting access to protection. By definition, a U visa applicant has been traumatized. Complex family relationships, impoverished and dangerous environments, and chaotic personal backgrounds – all of which make an immigrant vulnerable to violence – may also result in criminal justice involvement.

IJs are well-situated to make decisions balancing the risk of harm, the seriousness of prior immigration violations or criminal conduct, the adequacy of rehabilitative measures, and credibility of the applicants. IJs regularly sift through complex life circumstances, evaluate the quality of evidence, and balance positive and negative equities. IJs routinely assess the gravity of a noncitizens' immigration

and criminal history and evaluate whether other aspects of the applicant's counterbalance any negative history. Similar factors are evaluated by IJs in the context of adjudicating other applications in removal proceedings.

In *Matter of Khan*, the Board did not acknowledge even in passing the importance of Congressional policy, or consider how providing U visa applicants with an opportunity to seek administrative review of waivers would impact Congressional goals. Applying outdated regulations to preclude IJ waiver decisions is "unmoored from the purposes and concerns of the immigration laws." *Judulang v. Holder*, 132 S. Ct. 476, 490 (2011). The Court should not defer to this unreasonable result.

II. This Panel overlooked or misapprehended several aspects of the question.

Amici find convincing Petitioner's plain-text arguments. Pet. Reh'g 5-13. But the Panel opinion is flawed even if the Court rejects Petitioner's plain-meaning arguments. The Panel misapprehended the Board's opinion, overlooked the regulatory context, and relied on a flawed statutory reading that was not adopted by the agency below.

A. The Panel misapprehended *Matter of Khan*, which interpreted regulations, not the statute.

The Panel found the statute ambiguous and purported to defer to the Board's published opinion in *Khan*.

True, the Board found ambiguity in the interplay between 8 U.S.C. § 1182(d)(3)(A) and 8 U.S.C. § 1182(d)(14). *Khan*, 26 I. & N. at 801.[5] But its statutory observations did not drive its decision. The Board did not resolve the issue on statutory grounds; it stopped its statutory analysis after concluding "it is not clear that Congress would have intended for the Attorney General to have jurisdiction over these waivers to accord U nonimmigrant status once it gave the DHS exclusive jurisdiction over U visas." *Khan*, 26 I&N Dec. at 801. The Board did not find that the "Attorney General" *cannot* grant § 1182(d)(3) waivers in this context, as it would have done under the Panel's holding. Indeed, the Board *expressly declined* to address that question, finding that IJs lack jurisdiction "even if the Attorney General has this waiver authority regarding U visas." *Id*.

The Board was not ultimately interpreting the statute to determine the substantive law question; it was applying (in a flawed, wooden manner) the governing regulations. *Khan*'s ultimate holding was that "*the regulations* limit the Immigration Judge's authority to adjudicate an inadmissible nonimmigrant's request for a section 1182(d)(3)(A)(ii) waiver to narrow and specific circumstances

[5] Federal regulations interpret § 1182(d)(3)(A) as available to waive U visa inadmissibility. 8 C.F.R. § 212.17. This effectively resolves any ambiguity in the interplay of those statutes. Whether § 212.17 was applying the plain text of the statute or was an exercise of judgment in construing an ambiguous text, the result is the same: the § 1182(d)(3)(A) waiver is available for U visa applicants.

that are inapplicable to a petitioner for U nonimmigrant status." *Id*. at 802 (emphasis added).

This also illustrates that the Board did not perceive itself to be starting from a position of interpretational liberty. *See also id*. at 803 (finding "the powers and duties of Immigration Judges … [constitute] only that authority delegated to them by the Act and by the Attorney General through regulation.").

The Panel held that the Board's decision "rests on the Board's interpretation of provisions in the INA." *Man v. Barr*, 940 F.3d 1354 (9th Cir. 2019) at 1356. The Panel framed the case as considering whether "to displace the Board's interpretation of § 1182(d)(3)(A)(ii)." *Id*. at 1358. Respectfully, these statements show that the Panel misapprehended the question before it and the agency authority on which it turned. This is inconsistent with recent Supreme Court guidance about deference: "[a] court must carefully consider the text, structure, history, and purpose of a regulation before resorting to deference." *Kisor v. Wilkie*, 139 S.Ct. 2400, 2405 (2019) (plurality); *see also Pereira v. Sessions*, 138 S. Ct. 2105, 2120 (2018) (Kennedy, J., concurring) (criticizing "reflexive deference" accorded to agencies).

B. The regulations applied by the Board long predate the U visa statute and thus cannot constitute a reasonable interpretation of it.

As Petitioner has pointed out, *see* Pet. Reh'g. 14-15, *Matter of Khan* rested on regulations it conceded to be "outdated." 26 I. & N. Dec. at 802 n.6. The

substance of these regulations dates to the mid-1960's, when port officials, benefit adjudicators, and immigration judges were all within the Department of Justice. *See* 29 Fed. Reg. 15252 (Nov. 13, 1964).[6] Numerous statutory changes have taken place since then, without substantive amendment of those regulations.

In the intervening 50 years, Congress amended the statute to allow nonimmigrant visas to be sought within the U.S., including by individuals not in current lawful status. U Visa applicants are one significant category. 8 U.S.C. § 1184(p). But they are not alone. *See* 8 U.S.C. § 1101(a)(15)(T)(i)(II) (victims of human trafficking "present in" the U.S.); 8 U.S.C. § 1184(q) (family members of permanent residents). Indeed, trafficking victims may *only* seek T visa status within the United States. 9 Foreign Affairs Manual 402.6-5(E)(1).

If § 1182(d)(3) were categorically unavailable within the U.S., it would mean Congress allowed noncitizens to seek U visas inside the U.S., but not associated waivers.[7] Whatever the viability of such a reading, the Board based its

[6] For example, 8 C.F.R. § 212.4(b) refers to renewing the waiver application before a "special inquiry officer" a position that was replaced with "Immigration Judge" in 1973. *See Immigration and Naturalization Service Definitions: Immigration Judge*, 38 Fed. Reg. 8590, 8590 (Apr. 4, 1973) (codified as amended at 8 C.F.R. § 1.1 (2005) (amending part 1 of chapter 1 of the title 8 of the Code of Federal Regulations "to provide that the terms 'immigration judge' and 'special inquiry officer' may be used interchangeably").

[7] Indeed, taken as a reading of § 1182(d)(3), the Panel's approach would preclude waivers entirely in some contexts. The "V Visa" is a nonimmigrant visa available to family members of lawful permanent residents, including individuals present within the United States. 8 U.S.C. § 1184(o)(3). The agency determined that any V visa

view on regulations that have not been updated in 50 years. And did so despite Agency has interpreted the statute in other contexts to permit § 1182(d)(3) nonimmigrant waivers within the U.S. This is unreasonable.

C. The statutory admissions analysis of the Third Circuit was not adopted by the Board and runs contrary to agency precedent, in ways unacknowledged by the Panel.

Petitioner persuasively explains the problems with the Panel's statutory analysis. Pet. Reh'g. 5-13. But Amici would emphasize a more fundamental point: the Third Circuit's interpretation in *Sunday v. Att'y. Gen'l*., 832 F.3d 211 (3d Cir. 2016), was not adopted by the Board in *Khan*. Indeed agency precedent interpreting similar admissions language reaches a contrary conclusion.

Sunday, decided before *Khan*, found that § 1182(d)(3) "unambiguously limits the Attorney General's authority to issue waivers of inadmissibility to those aliens 'seeking admission,'" as defined in 8 U.S.C. § 1101(a)(13)(A). *Sunday*, 832 F.3d at 214, 217. *Sunday* upheld the regulations primarily on the basis of this statutory construction. *Id*. at 216.

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applicant "who is inadmissible as a nonimmigrant on any other ground under section 212(a) of the Act may apply to the Service for any available nonimmigrant waivers." *V Nonimmigrant Classification; Spouses and Children of Lawful Permanent Residents*, 66 Fed. Reg. 46697, 46699 (Sept. 7, 2001). The only nonimmigrant waiver available in that context would be the general nonimmigrant waiver at § 1182(d)(3)(A). If the § 1182(d)(3)(A) waiver is unavailable to noncitizens within the United States, i.e., not seeking admission a ports of entry, no waivers would be available for V Visa applicants within the United States.

Khan's discussion of *Sunday* was nuanced; the Board did "find support for [its] conclusion" in that decision. *Khan*, 26 I&N Dec. at 803. But the Board only found that *IJs* could not adjudicate such waivers, based on its regulations; it did not rule on a statutory basis. *See id*. It did not find § 1182(d)(3) limited to noncitizens seeking admission at ports of entry, nor did the Board find 8 C.F.R. § 212.17 impermissible to the extent it allows § 1182(d)(3) waivers for U applicants; the Board considers itself unauthorized to reject regulations. *Matter of Fede*, 20 I&N Dec. 35, 35-36 (BIA 1989).

Meanwhile, *other* Board authority holds that "conversion to nonimmigrant status … must be equated to an inspection and admission into the United States as a nonimmigrant." *Matter of Menendez*, 12 I. & N. Dec. 291, 292 (BIA 1967); *see also Matter of Lee*, 11 I. & N. Dec. 96, 96 (BIA 1965) ("The change of status is the equivalent of admission…, there being no necessary distinction between being granted that status at the border or being granted it within the United States."); *cf. Matter of Agour*, 26 I. & N. Dec. 566, 579–80 (BIA 2015) (finding that "adjustment of status constitutes an admission" because § 1101(a)(13)(A) "does not provide the exclusive definition for an admission"). *See generally Baez-Sanchez v. Sessions*, 872 F.3d 854, 856 (7th Cir. 2017) (explaining why admissions argument did not follow).

The Panel may not have appreciated the extent to which the statutory reading it adopted would undermine other agency case law. If § 1182(d)(3)(A) allows nonimmigrant waivers only for noncitizens seeking admission at ports of entry, that reading does more than constrain IJ authority over U visas; it precludes *any* adjudicator, including DHS adjudicators, from granting § 1182(d)(3) waivers for noncitizens present in the United States, in U visa cases or in other cases.

The admissions language in § 1182(d)(3)(A) cannot bear the weight placed upon it.

D. Unpublished Board authority treats U visa status as an admission.

In fact, the Board has held in an unpublished case that noncitizens granted U status while present in the United States are "admitted." In *Garnica*, the noncitizen claimed that when he obtained a U visa within the United States, it did not qualify as an admission, so he was not removable for a crime committed afterwards. *In re: Matter of Garnica Silva*, 2017 WL 4118896 (BIA 2017) (unpublished) (attached). With the benefit of amicus briefing, the Board disagreed.

Garnica noted that the statute governing nonimmigrants refers to "[t]he admission to the United States of any alien as a nonimmigrant." 8 U.S.C. § 1184(a)(1). It cited multiple statutes and regulations that simply make no sense if U visa status is not pursuant to an admission. *Garnica* at 5. *Garnica* cited published Board case law, as well as case law from this Court, to "underscore[] the

fact that the term 'admission' sometimes serves purposes that its statutory definition cannot satisfy." *Id*. at *4 (citing *Garcia-Quintero v. Gonzales*, 455 F.3d 1006 (9th Cir. 2006); *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017); *Matter of Agour*, 26 I&N Dec. 566, 571-72, 578 (BIA 2015)). *Garnica* found that "interpreting the term 'admission' in accordance with its statutory definition… would lead to the incongruous result that [adjustment of status] is unavailable to virtually all U nonimmigrants, the only exceptions being those few individuals (typically derivative beneficiaries) who were 'admitted' through a port of entry after obtaining U visas abroad." *Garnica*, supra, at *6. It therefore concluded that "an alien granted U nonimmigrant status through stateside processing has been 'admitted' to the United States …, even if he never made an 'entry' within the meaning of section 101(a)(13)(A) of the Act." *Id*. at *8.

Garnica helps explain why the Board did not adopt the Third Circuit's reading of § 1182(d)(3), and suggests that this Court ought not do so, either. As Garnica argued, if U visa applicants inside the United States are not "seeking admission," then the inadmissibility grounds under 8 U.S.C. § 1182—which render noncitizens "ineligible to be admitted," 8 U.S.C. § 1182(a)—would not apply at all. By this logic, Mr. Man would require no waiver, and someone granted a U visa would not be subject to the deportability grounds in the future. That cannot be

right. A "change of status is the equivalent of admission." *Lee*, 11 I. & N. Dec. at 96.

An agency cannot take contradictory positions on the statute's meaning, favoring whichever position leads to deportation: "an agency cannot merely flit serendipitously from case to case, like a bee buzzing from flower to flower, making up the rules as it goes along." *Henry v. INS*, 74 F. 3d 1, 6 (1st Cir. 1996). Deference in that context would put courts "in the impossible position of having to uphold as reasonable on Tuesday one construction that is completely antithetical to another construction we had affirmed as reasonable the Monday before." *Lin v. U.S. Dep't of Justice*, 416 F. 3d 184, 190 (2d Cir. 2005). In *Garnica*, the Government argued that a U visa granted in the United States constitutes an admission; here, it argues that U visa grants inside the United States are not admissions. Both positions cannot be true. The Court should at minimum insist that the Board reconcile these contradictory positions prior to affording deference.

Garnica highlights the problem with the statutory interpretation adopted by the Third Circuit, and now this Court. If the Third Circuit's statutory construction were actually applied, the consequences would be far-reaching, depriving the statute of the ameliorative effect intended by Congress. Setting aside the merits of the Board's regulatory reasoning—and Amici disagree with it strongly—the Court

should not decide the case on statutory grounds that go beyond the reasoning of the Agency. *See SEC v. Chenery Corp*., 332 U.S. 194, 196 (1947).

The Court should either join the Seventh and Eleventh Circuits, or should remand for further analysis by the Board.

CONCLUSION

Depriving U applicants of their day in court is significant enough. But the statutory interpretation adopted by the Panel goes beyond even the Agency's reasoning, and may cause grievous and irrevocable harm to survivors of domestic violence residing within this circuit. This effect may not have been evident to the Panel when it rendered its unpublished disposition, or when it voted to publish that memorandum. But Amici submit that the significance of the issue, the flaws in the analysis, and the likely impact of the decision all support Amici's contention that the Court should rehear this case en banc.

Date: January 17, 2020

Respectfully submitted,

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ADDENDUM: AMICI STATEMENTS OF INTEREST

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) worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes, which were incorporated in the 1994 Violence Against Women Act (VAWA) and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security (DHS) personnel charged with implementing these laws, most notably Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE), and DHS's Office for Civil

Rights and Civil Liberties. ASISTA also trains and provides technical support to local law enforcement officials, civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono, and private attorneys working with immigrant crime survivors. ASISTA has previously filed amicus briefs in the Second, Seventh, Eighth, and Ninth Circuits. *See Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Sanchez v. Keisler*, 505 F.3d 641 (7th Cir. 2007); *Torres-Tristan v. Holder*, 656 F.3d 653 (7th Cir. 2011); *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014); *Lopez-Birrueta v. Holder*, 633 F.3d 1211 (9th Cir. 2011).

Community Justice Alliance ("CJA") is a California-based 501(c)(3) organization fighting for immigrant and racial justice. Our legal team provides legal representation to noncitizens in their pursuit for immigration relief and protection from removal. Our clients are both detained and non-detained individuals, primarily located in California's Central Valley, with cases pending before the U.S. Department of Justice - Executive Office of Immigration Review, Board of Immigration Appeals ("BIA"), and federal district courts. Our cases involve dozens of victims of serious crimes, eligible for and/or applying for U nonimmigrant status. CJA believes that immigration courts are well-positioned to adjudicate the waiver of inadmissibility application accompanying most U

nonimmigrant petitions as fact-finders regularly engaged in the evaluation of humanitarian relief and balancing of equities.

Community Legal Services in East Palo Alto (CLSEPA) provides legal assistance to low-income individuals and families in East Palo Alto and the surrounding community. Our practice areas include housing, immigration, employment, and consumer law. Our mission is to provide transformative legal services, policy advocacy, and impact litigation that enable diverse communities in East Palo Alto and beyond to achieve a secure and thriving future. We have represented hundreds of individuals in their petitions for U Nonimmigrant Status before U.S. Citizenship and Immigration Services, some of whom are also in removal proceedings before the Executive Office for Immigration Review.

Freedom Network USA ("FNUSA") is the largest alliance of human trafficking advocates in the United States. Our 51 members work directly with human trafficking survivors in over 30 cities, providing comprehensive legal and social services, including representation in immigration cases. In total, our members serve over 1,000 trafficking survivors per year, over 75% of whom are foreign national survivors. Through our national effort, FNUSA increases awareness of human trafficking and provides decision makers, legislators and other stakeholders with the expertise and tools to make a positive and permanent impact in the lives of all survivors. FNUSA provides training and advocacy to increase

understanding of the wide array of human trafficking cases in the U.S. Human trafficking and related crimes (including involuntary servitude, kidnapping, sexual exploitation, and fraud in foreign labor contracting) are included in the qualifying crimes for the U nonimmigrant visa. Human trafficking survivors have often also experienced child abuse, sexual abuse, and domestic violence in their lifetimes. Traffickers exploit these vulnerabilities—past trauma, poverty, isolation, language barriers, immigration status, fear of government authorities—to force their victims to provide labor and services—both legal and illegal. Our clients have been forced to commit a variety of crimes by their traffickers including stealing, selling illegal drugs, engaging in prostitution, and recruiting other victims. Traffickers bail their victims out of jail and force them to plead guilty or leave the jurisdiction, leaving victims with long and damaging criminal records which leave the victims even more vulnerable and dependent upon the trafficker. It is critical that the very immigration process designed to break this cycle of vulnerability and dependency include measures to ensure that the full experience of victims is considered. Crime victims must be given the opportunity to confront any evidence presented against their waiver applications, explain the full circumstances of the crime, and to demonstrate their rehabilitation and growth. IJs must be able to use the expertise and authority to consider the full record and credibility of the crime victim, and to provide a clear decision.

The 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 individuals before the immigration courts, Board of Immigration Appeals ("BIA"), Federal Courts of Appeals, and the Supreme Court of the United States through its legal staff and network of nearly 1,500 pro bono attorneys. This has included representation of dozens of individuals who are eligible for U visas as victims of designated crimes.

The National Network to End Domestic Violence ("NNEDV") is a not-for-profit organization incorporated in the District of Columbia in 1994 to end domestic violence. As a network of the 56 state and territorial domestic violence and dual domestic violence and sexual assault coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions women, children and men victimized by domestic violence. NNEDV was instrumental in promoting Congressional enactment and eventual implementation of the Violence Against Women Acts of 1994, 2000, 2005 and 2013 and, 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. WomensLaw, one of NNEDV's signature projects, provides legal

information about various forms of domestic-violence-related immigration relief, including U visas, through the WomensLaw.org website, which is visited by more than 1.4 million individuals annually. NNEDV also corresponds with thousands of victims of domestic violence each year through the WomensLaw Email Hotline; a large percentage of whom are undocumented Spanish-speaking and English-speaking immigrants who are victims of crime and potentially eligible for U visa relief. NNEDV believes that empowering Immigration Judges with the ability to issue a waiver of inadmissibility to a U visa applicant in a deportation hearing can affect many domestic violence victims who are similarly situated to the Petitioner-Appellant.

The Northwest Immigrant Rights Project ("NWIRP") is a non-profit legal organization dedicated to the defense and advancement of the legal rights of noncitizens in the United States with respect to their immigrant status. NWIRP provides direct representation to low-income immigrants applying for immigration benefits and placed in removal proceedings. NWIRP provides representation, workshops, screenings and legal advice to low-income immigrants applying for U nonimmigrant status.

Pangea Legal Services (Pangea) is a non-profit organization that provides low-cost and free legal services to immigrants in removal proceedings. In addition to direct legal services, Pangea also advocates on behalf of the immigrant

community through policy advocacy, education, and legal empowerment efforts. Pangea serves, represents, and advocates for many noncitizens who have been victims of violence, including those who are eligible for U Visas.

CERTIFICATION OF COMPLIANCE TO FED. R. APP. 32(a)(7)(C) AND CIRCUIT RULE 32-1

I certify that:

__**1.** Pursuant to Fed. R. App. P. 32 (a)(7)(C), 29(a)(5) and Ninth Circuit Rule 32-1, the attached opening brief is:

✓ Proportionally spaced, has a typeface of 14 points or more and contains

_**4147**_____ words

_1/17/2020_____ Date

___s/ Charles Roth_____ Signature of Attorney

CERTIFICATE OF SERVICE

I certify that:

I hereby certify that on January 17, 2020, I electronically filed the foregoing Petitioner's Reply Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, and that all attorneys in the case are registered to receive service through that system.

_1/17/2020_____ Date

___s/ Charles Roth_____ Signature of Attorney