No. 19-1435

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ANSBERTO FERNANDEZ GONZALEZ; VILMA OLIVARES SALGUERO; CAMELIA GUERRERO ANTONIO; JACINTO PEREZ ACOSTA; MARIA ELENA MALDONADO JUAREZ,

Plaintiffs-Appellants,

v.

L. FRANCIS CISSNA, Director, United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,

Defendants-Appellees.

On review of the final judgment of the United States District Court for the Eastern District of North Carolina (Boyle, C.J.)

BRIEF OF AMICI CURIAE NON-PROFIT ORGANIZATIONS IN SUPPORT OF APPELLANTS

Julie Carpenter
Richard Caldarone
Tahirih Justice Center
6402 Arlington Blvd., Suite 300
Falls Church, VA 22042
(571) 282-6161

Sejal Zota
ASISTA Immigration Assistance
P.O. Box 12
Suffield, CT 06078
(860) 758-0733

Attorneys for Amici Curiae

DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A) and Fourth Circuit Rule 26.1(a)(1)(A), *amici curiae* submit the following corporate disclosure statements:

Amicus ASISTA Immigration Assistance is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of the litigation.

Amicus the Tahirih Justice Center is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of the litigation.

Amicus Freedom Network USA is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of this litigation.

Amicus the Coalition to Abolish Slavery & Trafficking is a private, non-profit organization. It has no parent company, and no publicly held

company holds more than 10% of its stock or has a direct financial interest in the outcome of this litigation.

Amicus Casa de Esperanza is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of this litigation.

Amicus National Resource Center on Domestic Violence is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of this litigation.

Amicus the National Domestic Violence Hotline is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of this litigation.

Amicus the National Immigrant Justice Center is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of this litigation.

Amicus the Immigration Center for Women and Children is a private, non-profit organization. It has no parent company, and no publicly held company holds more than 10% of its stock or has a direct financial interest in the outcome of this litigation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

REGULATIONS

REGULATIONS (cont'd) **Page(s)**

OTHER

INTEREST OF AMICI CURIAE[1]

Amicus curiae 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. ASISTA serves as liaison for the field with Department of Homeland Security personnel charged with implementing the resulting laws. ASISTA also trains and provides technical support to local law-enforcement officials, judges, domestic violence and sexual assault advocates, and attorneys working with immigrant crime survivors. ASISTA has previously filed *amicus* briefs with the Supreme Court of the United States, this Court, and four other courts of appeals.

Amicus the Tahirih Justice Center ("Tahirih") is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant women and girls who survive gender-based

[1] All parties have consented to the filing of this *amicus* brief. *See* Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part. No party, or counsel for a party, made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made such a monetary contribution. *See* Fed. R. App. P. 29(a)(4)(E).

violence. Tahirih offers legal and social services to women and girls fleeing all forms of gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital cutting/mutilation. Since its beginning in 1997, Tahirih has provided free legal assistance to more than 25,000 individuals, including many who are eligible for, and have received, U nonimmigrant status. Through direct legal and social services, policy advocacy, and training and education, Tahirih protects immigrant women and girls so that they can live in safety and dignity. Tahirih has filed *amicus* briefs with this Court and courts across the country.

Amicus Freedom Network USA ("FNUSA") is the largest alliance of human trafficking advocates in the United States. Our 68 members include survivors of human trafficking and those who provide legal and social services to trafficking survivors in over 40 cities, providing comprehensive legal and social services, including representation in immigration cases. In total, our members serve over 2,000 trafficking survivors per year, including adults and minors, survivors of both sex and labor trafficking, over 65% of whom are foreign national survivors. FNUSA provides training and advocacy to increase understanding of

the wide array of human trafficking cases in the United States, and the many forms of force, fraud and coercion used by traffickers. While many trafficking survivors in the US pursue T Visas, others pursue U Visas. FNUSA has an interest in ensuring that foreign national trafficking survivors have access to employment authorization while their visa applications are pending. Human trafficking is, by nature, a financial crime. Survivors need access to legal, safe employment to recover from their financial, physical, and emotional harms.

Amicus the Coalition to Abolish Slavery & Trafficking ("CAST") is a Los Angeles-based nonprofit and is one of the pioneers of the U.S. anti-trafficking movement. CAST provides life-saving services to survivors of human trafficking and mobilizes citizens to build a future where modern slavery no longer plagues our communities, our city, or our world. Through partnerships with over 100 cultural and faith-based community groups, healthcare organizations, government agencies and law enforcement, CAST provides support at every phase of a human trafficking survivor's journey to freedom. In April 2014, CAST's excellent work was honored by President Obama with the Presidential

Award for Extraordinary Efforts to Combat Trafficking in Persons. CAST was the first non-profit organization to receive this award.

Amicus Casa de Esperanza was founded in 1982 in Minnesota to provide emergency shelter and support services for women and children experiencing domestic violence. In 2009, Casa de Esperanza launched the National Latin@ Network for Healthy Families and Communities, which is a national resource center that provides training and technical assistance, research, and policy advocacy focused on addressing and preventing domestic violence, primarily in Latino and immigrant communities. Casa de Esperanza serves on the Steering Committee of the National Task Force to End Sexual and Domestic Violence and also serves on the board of the National Hispanic Leadership Agenda.

Since 1993, *amicus* the National Resource Center on Domestic Violence ("NRCDV") has provided comprehensive and individualized technical assistance, training, and resource development related to domestic violence intervention and prevention, community education and organizing, and public policy and systems advocacy NRCDV is a trusted national leader renowned for innovation, multi-disciplinary approaches, and a commitment to ensuring that policy, practice, and

research is grounded in and guided by the voices and experiences of diverse domestic violence survivors and advocates. We work with a wide range of partners to advance gender, racial, economic and social justice.

Amicus the National Domestic Violence Hotline ("NDVH") was established in 1996 as part of the Violence Against Women Act. It operates a free, anonymous and confidential, around-the-clock hotline available via phone, internet chat, and text services to offer victims of domestic violence compassionate support, crisis intervention, safety planning, and referral services to enable them to find safety and live lives free of abuse. A substantial number of the victims NDVH serves are immigrants or request help related to immigration-related issues. From May 2015 through March 2017, for example, over 10,000 victims contacted NDVH identifying as immigrants, and over 6,500 of them sought help related to immigration concerns.

Amicus 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, 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. NIJC has worked extensively with immigrants and their families, and particularly with immigrant victims of crime. NIJC has an interest in the case as well as information and a unique perspective that would assist the Court in its consideration of issues presented in the present case. NIJC has no monetary or proprietary interest in the above-captioned cause.

Amicus the Immigration Center for Women and Children ("ICWC") is a non-profit legal services organization whose mission is to provide affordable immigration services to underrepresented immigrants in California and Nevada. Specifically, ICWC cases focus on the rights and legal remedies of the most vulnerable immigrant communities, including victims of serious crimes, domestic violence and sexual assault. ICWC represents thousands of clients before USCIS each year with a specialization in U nonimmigrant status. ICWC assists clients gain legal status and obtain work authorization to improve their lives and create security and stability for their families. ICWC does this

by providing direct legal services, hosting a database for advocates nationwide, conducting national trainings and publishing practice manuals in our area of expertise. Since its ICWC was founded in 2004, ICWC has provided legal assistance to more than thirty thousand individuals, including many who are eligible for, and have received, U nonimmigrant status. ICWC has filed amicus briefs previously.

INTRODUCTION

Congress created U nonimmigrant status to encourage immigrant crime victims to report the crimes against them and to assist the law enforcement officers who investigate and prosecute those crimes. Congress's action has proven highly successful: Tens of thousands of people each year submit applications for U status that include a signed, sworn statement by law enforcement officers that the applicant has been helpful with the investigation or prosecution of serious crimes. The U-status program has therefore encouraged individuals and communities who were previously paralyzed by fear of deportation to access justice, and it has given our law enforcement system a powerful tool to hold perpetrators accountable.

As part of the U-status program, U.S. Citizenship and Immigration Services ("USCIS") has a statutory obligation, codified at 8 U.S.C. § 1184(p)(6), to promptly process work authorization for individuals with pending, bona fide applications for U status. This is a simple, bureaucratic determination that requires little effort beyond ensuring that the application is complete and includes the required

sworn statement from law enforcement. Moreover, it is a determination that USCIS routinely provides in other immigration contexts.

USCIS has nevertheless failed to implement § 1184(p)(6). USCIS's inaction violates the statute, stands at odds with congressional intent, and inflicts needless and severe harm on tens of thousands of U-status applicants. And by forcing countless survivors of violence to remain in the economic control of their victimizers for years after they cooperate with law enforcement, USCIS's inaction threatens the continued success and viability of the U-status program.

ARGUMENT

I. Congress Created U Status to Protect Immigrant Survivors and to Advance Law Enforcement

Congress created U nonimmigrant status as part of a decades-long legislative effort to encourage immigrant survivors of crime to seek justice. Those efforts began with the Violence Against Women Act of 1994 ("VAWA"), Pub. L. No. 103-322, Title IV, 108 Stat. 1796, 1902 (1994), which created legal protections for immigrants subjected to battery or extreme cruelty by a spouse who is a U.S. citizen or lawful permanent resident. *See* 8 U.S.C. § 1154(a)(1). By allowing such immigrants to "self-petition" for lawful permanent resident status,

VAWA freed them from a significant source of control by their abusive spouses. VAWA, however, did not address the needs of survivors of abuse who are not immediate relatives of U.S. citizens or lawful permanent residents.

Congress provided protection to those survivors by creating U nonimmigrant status in 2000. U status is available only to immigrants who were "severely victimized by criminal activity." Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533.[2] U status, once granted, comes with a work authorization (8 U.S.C. § 1184(p)(3)(B)) and extends for four years (*id.* § 1184(p)(6)). At the close of that period, many U-status holders are eligible to adjust their status to lawful permanent residents. *See id.* § 1255(m).

Congress provided these benefits to protect survivors. As the Department of Homeland Security has acknowledged, "[i]mmigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual

[2] The term "U status" derives from the statutory subsection, 8 U.S.C. § 1101(a)(15)(U), where that status is codified.

assault, stalking, and other crimes" because of "language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences." DHS, *U & T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal & Territorial Law Enforcement, Prosecutors, Judges, & Other Government Agencies* ("U & T Guide") 4.[3] Congress therefore created U status to eliminate the fear of deportation and "offer[ ] protection to victims * * * in keeping with the humanitarian interests of the United States." VTVPA, Pub. L. No. 106-386, § 1513(a)(2)(A). And it took particular care to protect survivors of domestic violence and other gender-based crimes: U status expressly extends to survivors of "rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; [and] female genital mutilation." 8 U.S.C. § 1101(a)(15)(U)(iii).

But Congress also had a second goal. It recognized that the fear of deportation prevented many crime survivors who lack lawful immigration status from reporting serious crimes or "fully

[3] https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf (last accessed July 5, 2019).

participat[ing]" in the investigation and prosecution of those crimes. VTPVA, Pub. L. No. 106-386, § 1513(a)(1)(B). And Congress further recognized that encouraging immigrant survivors of violence to come forward would "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" serious crime. *Id.* U status therefore benefits crime survivors, but it does not benefit only survivors. It also operates to make the United States a safer place for everyone.

To advance this second goal, Congress imposed relatively formidable prerequisites to obtaining U nonimmigrant status. Simply surviving victimization does not entitle an immigrant to receive U status. The survivor must complete and submit Form I-918, which provides detailed background and family information as well as information about the qualifying crime. 8 C.F.R. § 214.14(c)(1). She must also submit a signed statement "describing the facts of the victimization" (*id.* § 214.14(c)(2)(iii)) and submit to a biometric capture (*id.* § 214.14(c)(3)).

Most importantly, the survivor must be "helpful" or "likely to be helpful" to "a Federal, State, or local law enforcement official," prosecutor, judge, or similar official. 8 U.S.C. § 1101(a)(15)(U)(i)(III).

And she must provide a certification signed under penalty of perjury by the investigating or prosecuting official that attests to her helpfulness in the investigation or prosecution of criminal activity. *Id.* § 1184(p)(1). DHS recognizes that this third-party certification, which is unique to U status, "acts as a check against fraud and abuse." U & T Guide 26.

II. To Advance the Goals of U Status, Congress Required USCIS to Make Work Authorization Available to Survivors Who Submit Bona Fide U-status Applications

Congress recognized that work authorizations represent critical safeguards for immigrant victims of crime, and it accordingly made such authorizations available to those who receive U status. In addition, when it became clear that meritorious applications for U status would exceed the annual cap on that status, in § 1184(p)(6) Congress required USCIS to adjudicate work authorization requests for applicants *while* their applications remained pending. That requirement applies separately from USCIS's own regulatory waiting list for U status, which also provides eligibility for work authorization. Section 1184(p)(6) also applies *before* USCIS makes waiting-list decisions. And Congress also delineated a standard for determinations

under § 1184(p)(6)—whether an application is "bona fide"—that entails a low bar to work authorization and a minimal burden on USCIS.

A. Congress required USCIS to make work authorization determinations for U-status applicants before adjudicating their applications on the merits

The ability to work forms a crucial part of the relief available under the U-status program. Many victims of crime—especially survivors of domestic violence, rape, and human trafficking—live under the economic control of their victimizers. To escape that control, survivors need the legal ability to work. As a result, Congress mandated that every individual granted U status must be given a work authorization. 8 U.S.C. § 1184(p)(3)(B).

Congress also did more: In 8 U.S.C. § 1184(p)(6), it stated that USCIS "may grant work authorization to" anyone "who has a pending, bona fide application" for U status. As appellants' opening brief demonstrates, although this text gives USCIS the discretion to grant or deny work authorization *to any particular individual*, it requires USCIS to *implement a procedure* for making work-authorization decisions. Op. Br. 13-14. Indeed, a contrary reading of § 1184(p)(6) would violate the rule that "[c]ourts should not render statutes nugatory through

construction" (*United States v. Tohono O'odham Nation*, 563 U.S. 307, 315 (2011); *accord, e.g.*, *Discover Bank v. Vaden*, 396 F.3d 366, 369 (4th Cir. 2005)) by failing to give effect to the work-authorization language.

Congress's use of "pending" and "bona fide" in § 1184(p)(6) also compels the further conclusion that it intended the determination for work authorizations to be made shortly after a U-status application is filed. An application is "pending" if it is "undecided" or "awaiting decision or settlement." Random House Webster's Unabridged Dictionary 1433 (2d ed. 2001). And an application is "bona fide" if it is "'genuine'" or "'made * * * in good faith' and 'without deception or fraud.'" *Yates v. Mun. Mortg. & Equity, LLC*, 744 F.3d 874, 895 (4th Cir. 2014) (quoting Random House Webster's Unabridged Dictionary 237 (2d ed. 2001)); *see also Black's Law Dictionary* (10th ed. 2014). An application can therefore be bona fide even if it is ultimately rejected; put another way, a bona fide application does not necessarily entitle the applicant to U status. The language Congress used in § 1184(p)(6) requires USCIS to provide up-front work authorization determinations for U-status applicants *before* a determination on the merits.

The history of § 1184(p)(6) confirms that Congress intended to provide swift work authorization for U-status applicants. When it originally created U status in 2000, Congress imposed a cap of 10,000 U-status grants per year. 8 U.S.C. § 1184(p)(2)(A). That number proved insufficient; as USCIS anticipated in the regulations implementing the U-status program , the quota led to a backlog of U applications. *See* USCIS, *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014, 53,027 (Sept. 17, 2007); *see also* USCIS, *Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status 2009-2019* ("U Petition Status")[4] (showing current and historical backlogs).

Once the prospect of a backlog became clear, Congress enacted the work-authorization language of § 1184(p)(6) for those with "pending, bona fide applications." *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. 110-457, § 201(c), 122 Stat. 5044, 5053 (2008). Congress did so because survivors and other victims of crime "should not have to wait for up to a year

[4] https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2019_qtr2.pdf (last accessed July 5, 2019).

before they can support themselves and their families." 154 Cong. Rec. H10,888, 10,905 (Dec. 10, 2008) (statement of Reps. Berman & Conyers). Thus, at a time when it was apparent that a backlog in U-status applications would soon appear, Congress acted to ensure that work authorizations, quite apart from the applications themselves, were not caught up in those backlogs.

That action was prescient. The number of pending U applications has grown and now stands at almost 142,000. *See* U Petition Status. USCIS granted roughly 80% of U-status applications that it processed in 2017 and 2018. *See id*. Assuming no significant change in the proportion of meritorious applications, about 113,600 individuals entitled to U status have applications currently pending before USCIS. An individual filing a meritorious U-status application today can therefore expect to wait at least eleven years before receiving a grant of U status. Given the critical importance of work authorization in allowing survivors to be economically independent from perpetrators, a years-long wait for work authorization would undercut U status entirely.

B. Section 1184(p)(6) imposes a requirement distinct from, and antecedent to, the operation of USCIS's regulatory waiting list

In 2007, USCIS finally promulgated regulations for the U-status application, including a regulatory waiting list for U status. Under those regulations, USCIS is required to place on the waiting list all applicants who, "due solely to the cap, are not granted U-1 nonimmigrant status." 72 Fed. Reg. at 53,039; *see* 8 C.F.R. § 214.14(d)(2). In other words, under the regulations, USCIS must grant U status to the first 10,000 approved applications and then place all other individuals who submitted applications that qualified them, under a full merits review, for U status on the waiting list. The next year's U-status grants would begin with those at the top of the waiting list. 8 C.F.R. § 214.14(d)(2). USCIS provides both deferred action and eligibility for work authorization to individuals on the waiting list. *Id.*

The waiting list for U status has not cured the hardships to survivors caused by the backlog. According to USCIS's own estimates, someone who files a U-status application today can expect to wait more than four years for USCIS to adjudicate the merits of the application to be admitted onto the waiting list. *See* USCIS, *Check Case Processing*

Times ("Processing Times").[5] Thus, although Congress intended that work authorizations be available within 60 days, the authorization that comes with placement on the waiting list is not available for years.

Moreover, the language of § 1184(p)(6) makes clear that the statutory authorization for work permits operates separately from, but in tandem with, the regulatory waiting list. When it enacted the work-authorization provision in § 1184(p)(6), Congress presumptively knew from the existing regulation that USCIS provided work authorization to those on the waiting list as well as those who received U status. *See Cannon v. Univ. of Chi.*, 441 U.S. 677, 696-97 (1979); *Medina v. United States*, 259 F.3d 220, 225 (4th Cir. 2001). Had Congress wanted to merely codify the work-authorization language of 8 C.F.R. § 214.14(d)(2), it would have used language that tracked the language of the regulation. It did not do so.

Congress instead did something very different. Under the plain language of the waiting-list regulation, USCIS places applicants on the waiting list only after it has decided on the merits that they are eligible

---

[5] https://egov.uscis.gov/processing-times/ (select Form I-918 and the Nebraska or Vermont Service Center) (last accessed July 5, 2019).

for U status. The waiting list is for those who have applications that USCIS has determined are meritorious but who have not received U status "solely due to the [statutory] cap." 8 C.F.R. § 214.14(d)(2). In contrast, Congress implemented a separate work authorization for every applicant with a "pending, bona fide" application. That language refers to a more cursory adjudication *before* a merits decision. (*See supra* p. 15.)

C. Section 1184(p)(6) contains a workable, non-burdensome standard for adjudicating work authorizations

By including the term "bona fide" in § 1184(p)(6), Congress also told USCIS the standard it is to apply when making work authorization decisions under the statute. The determination whether an application is bona fide requires an evaluation, made in a specific context, of whether the application was submitted in good faith and without fraud. *See, e.g.*, *United States v. U.S. Shoe Corp.*, 523 U.S. 360, 369 (1998); *Yates*, 744 F.3d at 895-96; *Rhodes v. Amoco Oil Co.*, 143 F.3d 1369, 1372 (10th Cir. 1998); *Slatky v. Amoco Oil Co.*, 830 F.2d 476, 485 (3d Cir. 1987). The statutory and regulatory requirements for U-status

applications provide a clear picture of what "bona fide" means in this context.

Most importantly, the U-status application, unlike other applications for status, contains a statement signed by a third-party government official—the certification from a law enforcement officer, prosecutor, or judge. As shown above (at 13), USCIS itself acknowledges that this certification acts as a check on abusive or fraudulent applications. In the vast majority of cases, then, the presence of this completed and signed certification is sufficient standing alone to establish that an application for U status was bona fide.[6]

Amici acknowledge that there may be rare cases in which USCIS could determine that an application including a certification is not bona fide. That conclusion might apply, for example, to an application that does not list the predicate crime or is incomplete in some truly significant way. Such glaring deficiencies can be identified by an initial, cursory glance at the application. And performing such an initial review

[6] The certification also sharply distinguishes applications for U nonimmigrant status from applications for T nonimmigrant status. For the latter, which do not include an objective, third-party certification, USCIS's determination whether an application is bona fide involves a more searching review. *See* 8 C.F.R. § 214.11(e).

is not a novel task for USCIS. To the contrary, it routinely makes both initial determinations whether immigrants are entitled to work authorization (*see* 8 U.S.C. § 1158(d)(2) (asylum applicants); 8 C.F.R. § 274a.12(c)(9) (VAWA self-petitioners)) and determines in various contexts whether immigrants have submitted bona fide applications for relief (*see* 8 U.S.C. § 1182(a)(9)(B)(iii)(II) ("bona fide application for asylum"); 8 C.F.R. § 214.11(e) (stating bona fide standard for T status applications)).

The result is that the implementation of the work-authorization language in § 1184(p)(6) will not impose a significant burden on USCIS. A scan of the certification, and of the rest of the application, takes very little time—especially when compared to the four hours that USCIS spends adjudicating the merits of the average U-status application. *See* USCIS, *Response to Representative Garcia's February 12, 2019 Letter* 3.[7]

In fact, USCIS could simply implement a checklist of the sort that *amici* know from experience it uses to conduct low-level, non-merits

[7] https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/uscis-responds-to-letter-from-86-house-members (last accessed July 5, 2019).

review of documentation and applications. Here, the checklist could be something like the following:

1. Does the application include Form I-918 (Petition for U nonimmigrant status)?

    a. Is the form signed and dated?

    b. Is a response provided to all of the required questions?

2. Does the application include the required law-enforcement certification (Form I-918B)?

    a. Is the form signed and dated?

    b. Is a response provided to all of the required questions?

3. Does the application include the required signed statement from the victim?

4. Has a biometric capture been conducted by USCIS?

5. Is the preparer, certifier, or applicant someone known to USCIS to have engaged in fraudulent or deceptive conduct?

If the answer to all parts of questions 1 through 4 is yes, and the answer to question 5 is no, then a determination can be made that the application is bona fide.

USCIS may not now complain that even this cursory process would be burdensome in light of the number of pending applications. That situation is of the agency's own making: Had it followed the law by beginning to make work-authorization decisions in 2008, there would not be anything like 138,000 applicants awaiting such decisions. But it did not (*see infra* pp. 24-25)—and USCIS's failure to follow the law does not, and cannot, change the meaning of the plain text of § 1184(p)(6).

III. USCIS's Failure to Implement § 1184(p)(6) Impedes Law Enforcement and Has Caused Significant Harm to Tens of Thousands of Crime Survivors

USCIS has failed to implement § 1184(p)(6). It has continually refused to determine whether pending applications are bona fide, or to issue work-authorization decisions before undertaking full review of an application on the merits. The result is that tens of thousands of applicants—and, in all likelihood, more than 100,000 applicants—with pending, bona fide applications for U status must wait for years before they have any chance to obtain work authorization.[8] There can be no

[8] USCIS does not publicize data about the waiting list for U status. In the experience of *amici*, however, only a small percentage of those with pending U applications are on the waiting list at any given time.

question that requiring U-status applicants to wait for years to obtain work authorization while they have pending, bona fide applications undermines Congress's intent that such authorization generally be available within 60 days.

It also undercuts the broader congressional intent behind U status. As shown above (at 9-13), Congress created U status to encourage immigrant victims to report crimes against them and to strengthen the ability of law enforcement to investigate and prosecute those crimes. USCIS's failure to implement § 1184(p)(6), however, leaves many crime survivors trapped in economic reliance on the very people who victimized them to begin with. And crime victims who face the prospect of years of victimization *after* they cooperate with law enforcement are much less likely to report the crimes to begin with.

USCIS's decision to ignore the work-authorization language in § 1184(p)(6) therefore inflicts significant harm on crime survivors and law enforcement alike. Furthermore, the harm to survivors is not

abstract. It is concrete, substantial, and individualized, as shown by the following examples:[9]

AA's[10] husband physically, sexually, and verbally abused her for more than 20 years. He also abused their five children. After an incident in which her husband beat their daughter, AA called the police and participated in the ensuing child-abuse investigation and prosecution. She also separated from her husband and moved into a shelter with her children. After a year of trying to find housing and to support her family, however, AA was forced to move back into a separate apartment in her husband's home—where, despite a protective order, he maintained control over AA by taking actions such as shutting off the electricity. AA has said that "[i]t's like I'm a slave" and that her family's situation is "eating me alive." AA filed an application for U nonimmigrant status in August 2015. USCIS has not yet begun to process applications filed that month. *See* Processing Times.

---

[9] These examples, of course, cannot even begin to convey the immense totality of the harm that USCIS has caused the many tens of thousands of applicants with pending, bona fide applications for U status.

[10] All names have been redacted to protect the anonymity of non-party survivors.

BB cooperated with law enforcement in connection with domestic violence charges against her former spouse. BB has two young sons, one of whom has special needs. BB filed an application for U status in August 2014 and sought employment authorization at the same time. USCIS's delay in adjudicating her requests caused BB severe anxiety and other mental health issues. Because of those issues, her son's special needs, and the fact that she was a single mother, BB's attorneys requested in March 2016 that USCIS expedite the adjudication of her application. USCIS took only eight days to deny that request. But it was not until August 2017—three years after BB filed her application—that USCIS authorized her to work.

CC was the single mother of two U.S. citizen children. CC's husband physically and emotionally abused her until his arrest for assaulting her in 2009. After she separated from her husband, CC cared for her two young children entirely by herself. CC was afraid to work without documentation for fear of deportation. She filed her application for U status in March 2017.

DD, who had two young daughters, survived seven years of physical abuse from her partner. In 2017, she cooperated with police

following another attack from her partner, and in July 2017, she filed an application for U status. DD struggled to find work to help her move forward with her life and said she is terrified that the victimization she suffered at the hands of her partner will lead to destitution and homelessness for her and her children.

EE is a survivor of past domestic violence whose partner slammed her head into a pole in 2014. He also punched her and pulled a patch of hair out of her head. And he never allowed to work and used her economic dependence to belittle her and keep her in the relationship. After filing her application for U status in January 2016, EE—who was the sole provider for her two U.S. citizen children—struggled to find stable employment because she lacked a valid work permit.

In 2013, the partner of FF raped and attempted to kill her as part of a sustained onslaught of physical and sexual violence. FF's cooperation with the police led to her partner's removal to Mexico. Shortly after he was deported, however, FF's partner arranged for her abduction to Mexico. She was finally able to flee back to the United States with her four U.S. citizen children in late 2016. FF filed her application for U status in September 2017.

Congress required USCIS to mitigate these harms, and the similar harms suffered by countless other applicants for U status, by providing work authorization to those with pending U-status applications. The agency's failure to do so violates the law, contravenes Congress's intent in creating the U-status program, and threatens to undermine that program by forcing applicants to remain in the economic control of their victimizers. Plaintiffs have accordingly stated viable claims against the agency.

CONCLUSION

The judgment of the district court should be reversed, and this case should be remanded for further proceedings.

CERTIFICATE OF COMPLIANCE

This brief complies with type-volume limits in Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5,180 words.

This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 29(a)(4) and 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Century Schoolbook font.

Dated: July 8, 2019 s/ Richard Caldarone _

CERTIFICATE OF SERVICE

I certify that, on this 8th day of July 2019, the foregoing brief was served on counsel of record for all parties through the CM/ECF system.

Dated: July 8, 2019 s/ Richard Caldarone _