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The U Visa for Immigrants who are Crime Victims

By Ryan Stark Lilienthal and Florencia Hirsch

At a time when news reports reflect increased violence towards Latinos, immigrants, particularly undocumented immigrants, are less likely to report crimes to the police for fear of being reported to immigration officials. Sadly, by failing to report crimes to the police, perpetrators go unpunished and streets become less safe. While it is vital for municipalities and police departments to make clear that they will not report immigrants who are victims and witnesses to crimes to immigration officials – which Trenton Mayor Douglas Palmer unequivocally stated in his recently signed Executive Order – immigrants must also confront crimes by stepping forward to report them.

Although U.S. immigration law has many problems, the immigration statute wisely provides an incentive for undocumented immigrants to step forward when victimized by crimes. In 2000, the U.S. Congress amended the immigration statute to create the U visa. The U visa is an opportunity for immigrant crime victims to obtain legal status based on their participation in, and support of, criminal investigations. Moreover, U visa recipients are eligible for employment authorization and possible adjustment of status to permanent residence.

Qualified U visa applicants can currently obtain interim protection, called deferred action, because the government has not yet promulgated U visa regulations. Deferred action provides temporary legal status and employment authorization.

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According to the immigration statute, U visa applicants must show that they have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity. Furthermore, applicants must demonstrate that they have been helpful, are being helpful, or are likely to be helpful to a Federal, State, or local law enforcement official; prosecutor; Federal or State judge; an immigration official; or other authority investigating or prosecuting criminal activity.

The types of criminal activity covered by the U visa include rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

To demonstrate eligibility for the U visa, applicants must submit: (1) an affidavit describing the crime; (2) proof of victimization (photographs, police reports, restraining order, if applicable etc); (3) a certificate from a law enforcement official demonstrating that the applicant will be, has been, or is being helpful in the prosecution of these crimes; (4) medical records; (5) affidavits of witnesses; (6) affidavits from police, and health care workers.

The U visa will hopefully encourage those who have been victims of crimes and are undocumented, to speak up about the crimes that have been committed against them. As a result,

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those who have committed crimes will be punished, and our communities will be safer for all residents.

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