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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CATHOLIC CHARITIES CYO (SAN FRANCISCO);)	Case No.
INTERNATIONAL INSTITUTE OF THE EAST BAY;)	
VOCES UNIDAS PROJECT;)	COMPLAINT FOR
CENTRAL AMERICAN RESOURCE CENTER (LOS ANGELES);)	DECLARATORY AND
HERMANDAD MEXICANA NACIONAL;)	INJUNCTIVE RELIEF
SANCTUARY FOR FAMILIES (NEW YORK);)	[CLASS ACTION]
FRIENDLY HOUSE (PHOENIX);)	
DIOCESAN MIGRANT & REFUGEE SERVICES, INC. OF EL PASO;)	
SERGIO BUCIO PEREZ AND ANDRES BUCIO PEREZ, THROUGH THEIR NEXT FRIEND, SANDRA BUCIO; SANDRA BUCIO;)	
XIOMARA CASTRO; RAMONA QUINTERO; LUIS R. NUNEZ HERNANDEZ; RICARDO NUNEZ HERNANDEZ; ELIZABETH LOPEZ GOMEZ;)	
MARIA ESTERVINA PEREZ; GIOVANA SAAVEDRA; ELEUTERIO RODRIGUEZ RUIZ;)	
FELIPE SANCHEZ MARTINEZ; FRANCISCA RAMIREZ ALVAREZ; CONSTANTINA CAMPOS;)	
IRMA MORENO SANVICENTE; ROSA GALAVIZ;)	

1 MARIA LUISA ARROYO; JUAN FRANCISCO)
 2 ROCHA ROCHA; JORGE DOMINGUEZ RIVERA,)
)
 3 Plaintiffs,)
 4 -vs-)
)
 5 MICHAEL CHERTOFF, Secretary,)
 6 U.S. Department of Homeland Security;)
)
 7 UNITED STATES CITIZENSHIP AND)
 8 IMMIGRATION SERVICES, U.S. DEPARTMENT)
 9 OF HOMELAND SECURITY,)
)
 10 Defendants.)
)

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Complaint

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Center for Human Rights and Constitutional Law

PRELIMINARY STATEMENT

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4 1. This is a class action seeking declaratory and injunctive relief
5 compelling Defendants Michael Chertoff, Secretary of the U.S. Department of
6 Homeland Security (“DHS”) and the United States Citizenship and Immigration
7 Services (“USCIS”) to discharge their statutory duty to permit immigrant crime
8 victims who assist law enforcement officials in the investigation or prosecution of
9 criminal offenders to apply for lawful immigration status. On October 28, 2000—
10 over six years ago—the Victims of Trafficking and Violence Protection Act of
11 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), codified at, *inter alia*, 8
12 U.S.C. § 1101(a)(15)(U) (“Crime Victims Act” or “Act”), was signed into law.
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14 Among other things, the Crime Victims Act permits immigrants who are victims
15 of serious crimes and who assist law enforcement to apply for and receive “U”
16 visas. After possessing U status for three years, such immigrants may apply for
17 lawful permanent resident status. Section 1101(a)(15)(U) reflects Congress’s
18 judgment that certain crime victims should be permitted to remain lawfully in
19 the United States both for humanitarian reasons and so that they may help bring
20 dangerous, violent criminals to justice.
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23 2. Despite having six years to do so, defendants have unlawfully failed to
24 implement the U visa program. Defendants have failed to promulgate
25 regulations, establish procedures, or publish application forms through which
26 crime victims may apply for U visas. Defendants have set no filing fee, nor have
27 they trained and assigned officers to adjudicate U visa applications. Nor have
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1 defendants referred immigrant crime victims for social services, as required by
2 the 6-year old U visa law. When individuals who are *prima facie* eligible for U
3 visas, including the named individual plaintiffs herein, request defendants to
4 issue them U visas (or promulgate regulations and procedures permitting them
5 to apply for such visas), defendants have refused. Consequently, immigrant
6 crime victims have no way to apply for the immigration benefits Congress
7 conferred on them some six years ago.
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10 3. Plaintiffs and crime victims' advocates have repeatedly urged
11 defendants to promulgate regulations and procedures implementing the U visa
12 program and to begin issuing eligible individuals U visas without further delay.
13 Defendants have ignored these entreaties, and plaintiffs now seek judicial relief
14 on behalf of themselves and those similarly situated requiring defendants to
15 discharge their statutory duty and to restore plaintiffs and their class members to
16 the position they would be in but for defendants' persistent non-feasance of their
17 lawful obligations. Defendants' failure to implement the U visa statute not only
18 unlawfully ignores an existing law, it also discourages immigrant victims of
19 crimes from reporting such crimes and cooperating with law enforcement, and
20 more importantly often allows the perpetrators of crimes to avoid arrest and
21 conviction for such crimes.
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II

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02.

5. Venue is properly in this district pursuant to 28 U.S.C. § 1391(b) and (e)(1), (2) and (4), because some of the acts complained of occurred in this district, some of the plaintiffs reside in this district, defendants have offices in this district, and no real property is involved in this action.

III

PARTIES

6. Plaintiff CATHOLIC CHARITIES CYO is a non-profit organization serving the immigrant communities of San Francisco, Marin, and San Mateo Counties in California. Among other activities, CATHOLIC CHARITIES CYO provides legal aid to indigent immigrants who wish to legalize their status. These services include assistance to immigrant victims of serious crimes who have cooperated with law enforcement agencies. Defendants’ failure to implement the U visa provisions of the Crime Victims Act and refusal to grant crime victims U visas interferes with CATHOLIC CHARITIES CYO’s work and makes the achievement of its goals substantially more difficult. The unavailability of U visas requires CATHOLIC CHARITIES CYO to assist clients to apply for two benefits instead of one. First, it must assist clients to apply for “deferred action,” a discretionary status offered by the USCIS to temporarily suspend removal proceedings against certain

1 immigrants and for temporary employment authorization, relief that must be
2 renewed through a new application annually. This is the only temporary relief
3 that defendants have offered to U visa applicants willing to seek relief prior to
4 the issuance of a formal application form and regulations describing those
5 immigrants whom defendants consider eligible for U visa status. Second, if and
6 when implementing regulations are finally promulgated, CATHOLIC CHARITIES
7 CYO must then assist its clients to apply for U visas. Defendants' non-feasance
8 and other unlawful policies as herein alleged are therefore diverting the limited
9 resources of CATHOLIC CHARITIES CYO and making their work and achievement
10 of their goals more difficult and costly. CATHOLIC CHARITIES CYO's delivery of
11 services to crime victims eligible for U visas is more difficult, time-consuming,
12 and expensive than is its delivery of like services to persons who seek lawful
13 status under provisions of the Immigration and Nationality Act for which
14 implementing regulations have been duly promulgated.

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18 7. Plaintiff INTERNATIONAL INSTITUTE OF THE EAST BAY ("IIEB") is a non-
19 profit legal organization that provides free and low-cost legal and social services
20 to immigrants and refugees in the East Bay of Northern California. Among other
21 activities, IIEB provides legal aid to indigent immigrants who wish to legalize the
22 status. These services include assistance to immigrant victims of serious crimes
23 who have cooperated with law enforcement agencies. The unavailability of U
24 visas requires IIEB to assist clients to apply for two benefits instead of one. First,
25 it must assist clients to apply for "deferred action" and for temporary
26 employment authorization, relief that must be renewed through a new
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1 application annually. Second, if and when implementing regulations are finally
2 promulgated, IIEB must then assist its clients to apply for U visas. Defendants'
3 non-feasance and other unlawful policies as herein alleged are therefore
4 diverting the limited resources of IIEB and making their work and achievement
5 of their goals more difficult and costly. IIEB's delivering services to crime victims
6 eligible for U visas is more difficult, time-consuming, and expensive than is its
7 delivering like services to persons who seek lawful status under provisions of the
8 Immigration and Nationality Act for which implementing regulations have been
9 duly promulgated.

12 8. Plaintiff VOCES UNIDAS PROJECT OF THE CENTER FOR HUMAN RIGHTS
13 AND CONSTITUTIONAL LAW ("VOCES UNIDAS") is a national program addressing
14 the needs of Mexican national immigrants residing in the United States who are
15 survivors of domestic abuse and victims of crime. The VOCES UNIDAS project
16 provides technical support and funding for numerous non-profit organizations
17 providing free legal services to immigrant survivors of domestic violence and
18 victims of crime. It also provides free legal services to low-income and under-
19 served immigrants, including those who wish to apply for U visas. Defendants'
20 failure to implement the U visa provisions of the Crime Victims Act and refusal
21 to grant crime victims U visas interferes with VOCES UNIDAS's work and makes
22 the achievement of VOCES UNIDAS's goals substantially more difficult. The
23 unavailability of U visas requires that VOCES UNIDAS provide a range of technical
24 support services it would not have to provide if defendants issued regulations
25 setting forth eligibility standards and procedures for adjudicating U visas. The

1 absence of regulations also requires that the VOCES UNIDAS project assist its
2 direct services clients to apply for two benefits instead of one. First, it must assist
3 clients to apply for “deferred action” and for temporary employment
4 authorization, relief that must be renewed through a new application annually.
5 Second, if and when implementing regulations are finally promulgated, VOCES
6 UNIDAS must then assist its clients to apply for U visas. Defendants’ non-feasance
7 and other unlawful policies as herein alleged are therefore diverting the limited
8 resources of VOCES UNIDAS and making their work and achievement of their
9 goals more difficult and costly. VOCES UNIDAS’s delivering services to crime
10 victims eligible for U visas is more difficult, time-consuming, and expensive than
11 is its delivering like services to persons who seek lawful status under provisions
12 of the Immigration and Nationality Act for which implementing regulations have
13 been duly promulgated.
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17 9. Plaintiff CENTRAL AMERICAN RESOURCE CENTER (“CARECEN”) is a
18 California not-for-profit corporation located in Los Angeles, California.
19 CARECEN’s purposes include protecting and promoting fair and lawful public
20 policies toward immigrants, ensuring compliance with federal laws and the
21 United States Constitution by federal, state and local government agencies in
22 their treatment of immigrants, and delivering social services and humanitarian
23 assistance to immigrants and their families. These services include assistance to
24 immigrant victims of serious crimes who have cooperated with law enforcement
25 agencies. The unavailability of U visas requires CARECEN to assist clients to
26 apply for two benefits instead of one. First, it must assist clients to apply for
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1 “deferred action” and for temporary employment authorization, relief that must
2 be renewed through a new application annually. Second, if and when
3 implementing regulations are finally promulgated, CARECEN must then assist
4 its clients to apply for U visas. Defendants’ non-feasance and other unlawful
5 policies as herein alleged are therefore diverting the limited resources of
6 CARECEN and making their work and achievement of their goals more difficult
7 and costly. CARECEN’s delivering services to crime victims eligible for U visas is
8 more difficult, time-consuming, and expensive than is its delivering like services
9 to persons who seek lawful status under provisions of the Immigration and
10 Nationality Act for which implementing regulations have been duly
11 promulgated.
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15 10. Plaintiff HERMANDAD MEXICANA NACIONAL (“HMN”) is a
16 membership and social and legal services not-for-profit California corporation
17 with several offices located in the County of Los Angeles, California. HMN’s ‘s
18 purposes include protecting and promoting fair and lawful public policies
19 toward immigrants, ensuring compliance with federal laws and the United States
20 Constitution by federal, state and local government agencies in their treatment of
21 immigrants, and delivering social services and humanitarian assistance to
22 immigrants and their families. HMN has approximately 15,000 members, most of
23 whom are immigrants. HMN has members and clients who are the victims of
24 crime in the United States and who have cooperated with law enforcement
25 agencies. As a direct and proximate result of defendants’ non-feasance as alleged
26 herein, HMN’s members are unable to obtain U visas. Some members are
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1 unwilling to apply for deferred action because they fear such applications may
2 prejudice their eligibility for U visas if defendants later issue U visa guidelines or
3 regulations that are inconsistent with the guidelines defendants currently use in
4 determining whether to grant deferred action. The unavailability of U visas
5 requires HMN to assist clients to apply for two benefits instead of one. First, it
6 must assist clients to apply for “deferred action” and for temporary employment
7 authorization, relief that must be renewed through a new application annually.
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9 Second, if and when implementing regulations are finally promulgated, HMN
10 must then assist its clients to apply for U visas. Defendants’ non-feasance and
11 other unlawful policies as herein alleged are therefore diverting the limited
12 resources of HMN and making their work and achievement of their goals more
13 difficult and costly. HMN’S delivering services to crime victims eligible for U
14 visas is more difficult, time-consuming, and expensive than is its delivering like
15 services to persons who seek lawful status under provisions of the Immigration
16 and Nationality Act for which implementing regulations have been duly
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18 promulgated.
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21 11. Plaintiff SANCTUARY FOR FAMILIES (“SFF”) is a New York not-for-
22 profit corporation located in New York, New York. SFF is dedicated to providing
23 services to victims of domestic violence. Among other activities, SFF provides
24 free legal services to low-income and under-served immigrants. These services
25 include assistance to immigrant victims of serious crimes who have cooperated
26 with law enforcement agencies. Defendants’ failure to implement the U visa
27 provisions of the Crime Victims Act and refusal to grant crime victims U visas
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1 interferes with SFF's work and makes the achievement of SFF's goals
2 substantially more difficult. The unavailability of U visas requires SFF to assist
3 clients apply for two benefits instead of one: deferred action and, when and if
4 implementing regulations are promulgated, U visas. In addition, SFF has been
5 required to expend resources urging defendants to promulgate U visa
6 regulations and to issue its clients actual U visas. Defendants' non-feasance and
7 other unlawful policies as herein alleged are therefore diverting the limited
8 resources of SFF and making their work and achievement of their goals more
9 difficult and costly. SFF's delivering services to crime victims eligible for U visas
10 is more difficult, time-consuming, and expensive than is its delivering like
11 services to persons who seek lawful status under provisions of the Immigration
12 and Nationality Act for which implementing regulations have been duly
13 promulgated.
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17 12. Plaintiff FRIENDLY HOUSE is an Arizona not-for-profit corporation
18 located in Phoenix, Arizona. Among other activities, FRIENDLY HOUSE provides
19 low cost, on-site immigration services to the immigrant community in greater
20 Maricopa County in the State of Arizona. These services include assistance to
21 immigrant victims of serious crimes who have cooperated with law enforcement
22 agencies. The unavailability of U visas requires FRIENDLY HOUSE to assist clients
23 to apply for two benefits instead of one. First, it must assist clients to apply for
24 "deferred action" and for temporary employment authorization, relief that must
25 be renewed through a new application annually. Second, if and when
26 implementing regulations are finally promulgated, FRIENDLY HOUSE must then
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1 assist its clients to apply for U visas. Defendants' non-feasance and other
2 unlawful policies as herein alleged are therefore diverting the limited resources
3 of FRIENDLY HOUSE and making their work and achievement of their goals more
4 difficult and costly. FRIENDLY HOUSE's delivering services to crime victims
5 eligible for U visas is more difficult, time-consuming, and expensive than is its
6 delivering like services to persons who seek lawful status under provisions of the
7 Immigration and Nationality Act for which implementing regulations have been
8 duly promulgated.
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11 13. Plaintiff DIOCESAN MIGRANT & REFUGEE SERVICES, INC ("DMRS") is a
12 not-for-profit legal aid clinic located in El Paso, Texas. Among other activities,
13 DMRS provides free and low cost legal services to the low-income immigrants
14 eligible to legalize their status, including immigrant victims of crime who
15 cooperated with law enforcement agencies. The unavailability of U visas requires
16 DMRS to assist clients to apply for two benefits instead of one. First, it must
17 assist clients to apply for "deferred action" and for temporary employment
18 authorization, relief that must be renewed through a new application annually.
19 Second, if and when implementing regulations are finally promulgated, DMRS
20 must then assist its clients to apply for U visas. DMRS also has several clients
21 who are the immigrant parents of United States citizen children who are the
22 victims of crime and who or whose parents cooperated with law enforcement
23 agencies in the investigation or prosecution of such crimes, such that 8 U.S.C. §§
24 1101(U)(i)(III) in conjunction with 1184(p) operate to deny U visa eligibility to
25 these clients while granting such benefit to the immigrant parents of
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1 undocumented and lawful permanent resident children. Defendants’ non-
2 feasance and other unlawful policies as herein alleged are therefore diverting the
3 limited resources of DMRS and making their work and achievement of their
4 goals more difficult and costly. DMRS’s delivering services to crime victims
5 eligible for U visas is more difficult, time-consuming, and expensive than is its
6 delivering like services to persons who seek lawful status under provisions of the
7 Immigration and Nationality Act for which implementing regulations have been
8 duly promulgated.
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11 14. Plaintiffs Sandra Bucio, Xiomara Castro, Ramona Quintero, Luis R.
12 Nuñez Hernandez, Ricardo Nuñez Hernandez, Elizabeth Lopez Gomez, Maria
13 Estervina Perez, Giovana Saavedra, Eleuterio Rodriguez Ruiz, Felipe Sanchez
14 Martinez, Francisca Ramirez Alvarez, Constantina Campos, Irma Moreno
15 Sanvicente, Rosa Galaviz, Maria Luisa Arroyo, Juan Francisco Rocha Rocha, and
16 Jorge Dominguez Rivera are victims of crime in the United States. Each plaintiff
17 is *prima facie* eligible for a U visa under federal law because –
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20 (a) she or he “suffered substantial physical or mental abuse as a result of
21 having been the victim of criminal activity;”

22 (b) she or he “possesses information concerning the criminal activity;”

23 (c) she or he “has been helpful, is being helpful, or is likely to be helpful to
24 Federal, State, or local law enforcement official investigating or
25 prosecuting...[the] criminal activity;”

26 (d) “the criminal activity...violated the laws of the United States or
27 occurred in the United States,” and
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1 (e) “the criminal activity...involv[ed] ... rape, ... trafficking, ... domestic
2 violence, ... sexual assault, false imprisonment ... [or] felonious assault...”
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4 8 U.S.C. § 1101(a)(15)(U). As alleged herein defendants have unlawfully refused
5 to afford said plaintiffs a means to apply for and receive U visas.

6 15. Plaintiffs have petitioned Defendants, in writing, to issue them U visas
7 and to promulgate regulations implementing the Crime Victims Act. Defendants
8 have unlawfully ignored these requests, just as they have ignored for over six
9 years their duty to faithfully execute the law as enacted by Congress.

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11 16. Plaintiffs SERGIO BUCIO PEREZ and ANDRES BUCIO PEREZ are minor
12 children of Plaintiff SANDRA BUCIO. The Crime Victims Act provides in part that
13 “the Attorney General may also grant status ... based upon certification of a
14 government official listed in clause (i)(III) [including “Federal, State, or local law
15 enforcement official[s]...”] that an investigation or prosecution would be harmed
16 without the assistance of the ... child ... of the [crime victim].” 8 U.S.C. §
17 1101(a)(15)(U)(ii). Local law enforcement officials made such certifications for
18 each of the above-mentioned minor plaintiffs. Defendants have unlawfully
19 refused to adjudicate the U visa applications filed on behalf of Plaintiffs MINOR 1
20 and MINOR 2. Plaintiffs SERGIO and ANDRES BUCIO PEREZ sue by and through
21 their next friend and parent, Plaintiff SANDRA BUCIO.

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25 17. Plaintiff SANDRA BUCIO is a citizen and national of Mexico. She is a
26 resident of the City of San Francisco, State of California. Plaintiff BUCIO is a
27 victim of an aggravated battery, false imprisonment and aggravated assault. She
28 cooperated with law enforcement and is statutorily eligible for the issuance of a

1 U visa. On or about February 1, 2004 Plaintiff BUCIO presented Defendants a
2 written request that they issue her and her children, Plaintiffs SERGIO and
3 ANDRES BUCIO PEREZ, lawful status in accordance with the Crime Victims Act.
4 Defendants have refused to grant or deny Plaintiff BUCIO'S and Plaintiffs SERGIO
5 and ANDRES BUCIO PEREZ U visa status.
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7 18. Plaintiff XIOMARA CASTRO is a citizen and national of El Salvador. She
8 is a resident of the City of San Francisco, State of California. Plaintiff XIOMARA
9 CASTRO is a victim of criminal assault and domestic violence. She cooperated
10 with law enforcement and is statutorily eligible for the issuance of a U visa. On
11 or about July 30, 2004 Plaintiff XIOMARA CASTRO presented Defendants a written
12 request for benefits under the Crime Victims Act. Defendants have refused to
13 grant or deny Plaintiff CASTRO a U visa.
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16 19. Plaintiff RAMONA QUINTERO is a citizen and national of Mexico. She is
17 a resident of the City of San Francisco, State of California. Plaintiff QUINTERO is a
18 victim of criminal threats, Restraining Order violation, and battery (domestic
19 violence). She cooperated with law enforcement and is statutorily eligible for the
20 issuance of a U visa. On or about October 6, 2004 Plaintiff QUINTERO presented
21 Defendants a written request for benefits under the Crime Victims Act.
22 Defendants have refused to grant or deny Plaintiff QUINTERO a U visa.
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25 20. Plaintiff LUIS R. NUNEZ HERNANDEZ is a citizen and national of
26 México. He is a resident of the City of San Francisco, State of California. Plaintiff
27 NUNEZ HERNANDEZ is a victim of aggravated assault with a gun and attempted
28 murder. He cooperated with law enforcement and is statutorily eligible for the

1 issuance of a U visa. On or about September 17, 2004, Plaintiff NUNEZ
2 HERNANDEZ presented Defendants a written request for benefits under the
3 Crime Victims Act. Defendants have refused to grant or deny plaintiff NUNEZ
4 HERNANDEZ a U visa.
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6 21. Plaintiff RICARDO NUNEZ HERNANDEZ is a citizen and national of
7 México. He is a resident of the City of San Francisco, State of California. Plaintiff
8 RICARDO NUNEZ HERNANDEZ is a victim of aggravated assault with a gun and
9 attempted murder. He cooperated with law enforcement and is statutorily
10 eligible for the issuance of a U visa. On or about September 17, 2004, Plaintiff
11 NUNEZ HERNANDEZ presented Defendants a written request for benefits under
12 the Crime Victims Act. Defendants have refused to grant or deny plaintiff
13 NUNEZ HERNANDEZ a U visa.
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16 22. Plaintiff ELIZABETH LOPEZ GOMEZ is a citizen and national of México.
17 She is a resident of the City of San Mateo, State of California. Plaintiff ELIZABETH
18 LOPEZ GOMEZ is a victim of the infliction of corporal injury on a spouse, criminal
19 assault, and criminal threats. She cooperated with law enforcement and is
20 statutorily eligible for the issuance of a U visa. On or about May 21, 2004,
21 Plaintiff LOPEZ GOMEZ presented Defendants with a written request for benefits
22 in accordance with the Crime Victims Act. Defendants have refused to grant or
23 deny Plaintiff LOPEZ GOMEZ a U visa.
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26 23. Plaintiff MARIA ESTERVINA PEREZ is a citizen and national of El
27 Salvador. She is a resident of the City of Menlo Park, State of California. Plaintiff
28 ESTERVINA PEREZ is a victim of the infliction of corporal injury and criminal

1 assault. She cooperated with law enforcement and is statutorily eligible for the
2 issuance of a U visa. On or about July 28, 2004, Plaintiff ESTERVINA PEREZ
3 presented Defendants with a written request for benefits in accordance with the
4 Crime Victims Act. Defendants have refused to grant or deny Plaintiff
5 ESTERVINA PEREZ a U visa.
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7 24. Plaintiff GIOVANA SAAVEDRA is a citizen and national of Peru. She is a
8 resident of the City of Newark, State of California. She is a victim of domestic
9 violence and is statutorily eligible for the issuance of a U visa. On or about
10 November 21, 2006, she petitioned the USCIS to issue her benefits under the
11 Crime Victims Act. Plaintiff SAAVEDRA submitted her application without a U
12 certification after making several good faith efforts to obtain one from the
13 Newark Police Department and the Alameda County District Attorney's office,
14 but they refused despite the fact that the abuser in her case was prosecuted and
15 pled guilty. Defendants have refused to grant or deny Plaintiff SAAVEDRA a U
16 visa.
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19 25. Plaintiff ELEUTERIO RODRIGUEZ RUIZ is a citizen and national of
20 Mexico. He is a resident of the City of Stockton, State of California. He is a victim
21 of an aggravated assault perpetrated by a United States citizen vigilante armed
22 with a deadly weapon, cooperated with law enforcement that investigated the
23 crime, and is statutorily eligible for the issuance of a U visa. On or about June 30,
24 2005, he petitioned the USCIS to issue him a U visa. Defendants have refused to
25 grant or deny Plaintiff RODRIGUEZ RUIZ's request for a U visa.
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1 26. Plaintiff FELIPE SANCHEZ MARTINEZ is a citizen and national of
2 Mexico. He is a resident of the City of Phoenix, State of Arizona. He is a victim of
3 an aggravated assault perpetrated by a United States citizen vigilante armed
4 with a deadly weapon, cooperated with law enforcement that investigated the
5 crime, and is statutorily eligible for the issuance of a U visa. On or about June 30,
6 2005, he petitioned the USCIS to issue him a U visa. Defendants have refused to
7 grant or deny Plaintiff SANCHEZ MARTINEZ's request for a U visa.
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10 27. Plaintiff FRANCISCA RAMIREZ ALVAREZ is a citizen and national of
11 Mexico. She is a resident of the City of Louisville, State of Kentucky. She is a
12 victim of domestic violence and is statutorily eligible for the issuance of a U visa.
13 On or about March 19, 2002, she petitioned the Louisville, KY Immigration and
14 Naturalization Service office for benefits under the Crime Victims Act. On
15 January 2, 2003, she petitioned the USCIS for benefits under the Crime Victims
16 Act. Defendants have refused to grant or deny Plaintiff FRANCISCA RAMIREZ
17 ALVAREZ a U visa.
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20 28. Plaintiff CONSTANTINA CAMPOS is a citizen and national of Mexico.
21 She is a resident of the City of New York, State of New York. She is a victim of
22 domestic violence, cooperated with law enforcement, and is statutorily eligible
23 for the issuance of a U visa. On or about July 12, 2002, she petitioned the USCIS
24 for benefits under the Crime Victims Act. Defendants have refused to grant or
25 deny Plaintiff CAMPOS a U visa.
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27 29. Plaintiff IRMA MORENO SANVICENTE is a citizen and national of
28 Mexico. She is a resident of the City of New York, State of New York. She is a

1 victim of criminal domestic violence, cooperated with law enforcement, and is
2 statutorily eligible for the issuance of a U visa. She first petitioned the USCIS for
3 U visa benefits in late 2005, but the USCIS refused to adjudicate her petition on
4 the basis that her law enforcement certification had expired. On or about
5 February 3, 2006, Plaintiff MORENO SANVICENTE petitioned the USCIS again for
6 benefits under the Crime Victims Act. In January 2007, Plaintiff MORENO
7 SANVICENTE petitioned the USCIS for a renewal of deferred action status and for
8 a U visa. Absent regulations allowing for the issuance of U visas, Plaintiff
9 MORENO SANVICENTE's 17-year-old daughter in Meixco is in danger of aging out
10 of eligibility as a derivative to her mother's U visa application. Defendants have
11 refused to grant or deny Plaintiff IRMA MORENO SANVICENTE a U visa.
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15 30. Plaintiff ROSA GALAVIZ is a citizen and national of Mexico. She is a
16 resident of the State of Indiana. She is a victim of criminal domestic violence, has
17 cooperated with law enforcement, and is statutorily eligible for the issuance of a
18 U visa. On or about June 28, 2006, she petitioned the USCIS to issue her a U visa
19 in accordance with the Crime Victims Act. She has also petitioned on behalf of
20 her seven minor children who reside in Mexico and are eligible for U visas as
21 derivatives. The domestic violence perpetrated against Plaintiff GALAVIZ by her
22 abusive husband resulted in his deportation. Absent regulations allowing for the
23 issuance of U visas, Plaintiff ROSA GALAVIZ's children are in danger of aging out
24 of eligibility as derivatives to her U visa application. Defendants have refused to
25 grant or deny Plaintiff ROSA GALAVIZ or her children U visas.
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1 31. Plaintiff MARIA LUISA ARROYO TORRES is a citizen and national of
2 Mexico. She is a resident of the City of Mercedes, State of Texas. She is a victim of
3 assault and domestic violence and is statutorily eligible for the issuance of a U
4 visa. On or about July 10, 2006, she petitioned the USCIS for benefits under the
5 Crime Victims Act. Plaintiff TORRES submitted her application with a U
6 certification signed on August 5, 2005 by Assistant Criminal District Attorney of
7 the County of Hidalgo, over six months before the date on which she applied for
8 U visa benefits. Defendants rejected her request for a U visa because her U
9 certification was not signed within six months of her request for a U visa.
10

11
12 32. Plaintiff JUAN FRANCISCO ROCHA ROCHA is a citizen and national of
13 Mexico. He is a resident of the City of Alamo, State of Texas. He and his family
14 were the victims of a felonious assault and attempted murder, cooperated with
15 law enforcement, and are statutorily eligible for the issuance of a U visa. On or
16 about November 30, 2006, he petitioned the USCIS to issue him benefits under
17 the Crime Victims Act. At the same time, Plaintiff ROCHA ROCHA filed an I-765
18 application for employment authorization. Prior to November 2006, the USCIS
19 accepted concurrent filing of U visa or deferred action status and employment
20 authorization applications. On information and belief, in or about November
21 2006, without complying with the notice and comment provisions of the
22 Administrative Procedures Act, defendants changed their policy and now no
23 longer accept employment authorization applications along with applications for
24 U visas or deferred action status. Plaintiff ROCHA ROCHA was issued a denial of
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1 his application for employment authorization on or about January 17, 2007, and
2 his application for U visa benefits remains pending.

3 33. Plaintiff JORGE DOMINGUEZ RIVERA is a citizen and national of Mexico
4 temporarily residing in Tucson, Arizona. He is the victim of felonious assault
5 perpetrated by a U.S. Border Patrol agent on January 12, 2007, when that agent
6 tried to run Plaintiff DOMINGUEZ RIVERA over with his vehicle. Plaintiff
7 DOMINGUEZ RIVERA has cooperated with law enforcement agents investigating
8 the incident. Plaintiff DOMINGUEZ RIVERA has applied for a U visa and requested
9 that Defendants issue a U certification since Defendants' agents are investigating
10 the alleged felonious assault. In February 2007, Defendants threatened Plaintiff
11 DOMINGUEZ RIVERA with execution of an order of expedited removal before his
12 application for a U visa is adjudicated. Defendants have refused and failed to
13 issue regulations and to adjudicate Plaintiff JORGE DOMINGUEZ RIVERA's
14 application for a U visa.
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18 34. Defendant Michael CHERTOFF is the Secretary of the United States
19 Department of Homeland Security. Defendant CHERTOFF is charged with the
20 implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*,
21 and with the administration of the United States Citizenship and Immigration
22 Services. He is sued in his official capacity.
23
24

25 35. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
26 ("USCIS") is a bureau of the U.S. Department of Homeland Security. USCIS is
27 charged with the implementation of the Immigration and Nationality Act, 8
28 U.S.C. §§ 1101 *et seq.*, including the U visa provisions, as well as enactments of

1 Congress requiring the promulgation of implementing regulations pursuant to
2 which plaintiffs and those similarly situated may have their eligibility for U visas
3 lawfully determined.
4

5 IV

6 CLASS ALLEGATIONS

7 36. Plaintiffs bring this action on behalf of themselves and all other
8 persons similarly situated pursuant to Fed.R.Civ.Proc. Rule 23(a) and 23(b)(2).
9 Plaintiffs provisionally propose this action be certified on behalf of the following
10 class:
11

12 All persons who are *prima facie* eligible for a U visa and who have applied
13 for or would apply for issuance of a U visa but for defendants' failure to
14 issue U visas or promulgate regulations implementing § 1512 of the
15 Victims of Trafficking and Violence Protection Act of 2000.
16

17 37. Members of the proposed class likely number in the thousands and are
18 so numerous that joinder of all members is impracticable. The claims of the
19 proposed class representatives and those of the proposed class members raise
20 common questions of law and fact concerning, *inter alia*, whether defendants
21 may lawfully refuse to provide a path by which individuals who are *prima facie*
22 eligible for U visas may apply for the immigration benefit Congress has made
23 available to them. These questions are common to the named plaintiffs and to the
24 members of the proposed class because Defendants have acted and will continue
25 to act on grounds generally applicable to both the named plaintiffs and proposed
26 class members. The individual named plaintiffs' claims are typical of the class
27
28

1 claims. The named plaintiffs will adequately represent all members of the
2 proposed class.

3 38. The prosecution of separate actions by individual members of the class
4 would create a risk of inconsistent or varying adjudications establishing
5 incompatible standards of conduct for defendants. The issuance of regulations,
6 forms, standards and procedures is a national function, not a function performed
7 differently in each individual case or in each USCIS district or region.
8

9 Prosecution of separate actions would create the risk that individual class
10 members will secure court orders that would as a practical matter be dispositive
11 of the claims of other class members not named parties to this litigation, thereby
12 substantially impeding the ability of unrepresented class members to protect
13 their interests.
14

15 39. Defendants, their agents, employees, and predecessors and successors
16 in office have acted or refused to act, and will continue to act or refuse to act, on
17 grounds generally applicable to the class, thereby making appropriate injunctive
18 relief or corresponding declaratory relief with respect to the class as a whole.
19

20 Plaintiffs will vigorously represent the interests of unnamed class members. All
21 members of the proposed class will benefit by the action brought by the
22 plaintiffs. The interests of the plaintiffs and those of the proposed class members
23 are identical. Plaintiffs are represented by counsel associated with non-profit
24 public interest law firms and reputable private firms acting *pro bono publico* and
25 include attorneys highly experienced in federal class action litigation involving
26 the rights of foreign nationals, children, and refugees within the United States.
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FACTUAL ALLEGATIONS

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4 40. Although the Crime Victims Act set no specific date by which
5 defendants were required to promulgate regulations implementing the U visa
6 program, several years after its enactment, in the Violence Against Women and
7 Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960
8 (2006) (“VAWA Reauthorization Act”), Congress directed defendants to
9 “promulgate regulations to implement” the U visa program “[n]o later than 180
10 days after the date of enactment of this Act...” *Id.* at § 828. On January 5, 2006,
11 the VAWA Reauthorization Act was signed into law, and defendants were
12 thereafter under an unambiguous legal duty to promulgate U visa regulations no
13 later than July 4, 2006.
14
15

16 41. Defendants have nevertheless persisted in their failure to afford crime
17 victims a means to apply for and obtain U visas. Instead, defendants have
18 granted some U visa-eligible persons a quasi-legal, non-statutory temporary
19 status known as “deferred action.” Deferred action is no more than an exercise of
20 prosecutorial discretion not to seek a crime victim’s immediate deportation or
21 removal. Deferred action confers no cognizable legal status and simply defers an
22 individual’s deportation from the United States. In contrast, recipients of actual
23 U visas are entitled, among other benefits, to be employed, to travel abroad, to be
24 referred for social and related services, and to accrue time toward eligibility for
25 lawful permanent residence. 8 U.S.C. § 1255(m) (U visa holders eligible for
26 permanent residence after three years).
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1 42. Pursuant to 8 U.S.C. § 1101(U)(ii), the spouses, children, and, if the
2 applicant is under 21, the unmarried siblings, of persons who are issued U visas
3 are entitled to “derivative” U visas if they are “accompanying or following to
4 join” a U visa holder. *Id.* 8 U.S.C. § 1101(b)(1) defines the term “child” as “an
5 unmarried person under twenty-one years of age ...” Persons eligible for
6 derivative U visas as “children” accordingly become ineligible for such visas
7 upon turning 21 years of age. Because defendants have failed to issue U visas,
8 persons eligible for derivative U visas have been denied and will be denied
9 benefits Congress intended to extend to them because the defendants have
10 permitted them to “age out” of eligibility.
11

12 43. Shortly after enactment of the Crime Victims Act, defendants adopted
13 a policy and practice permitting persons who sought U visas or deferred action
14 on the basis of asserted eligibility for U visas to apply for employment
15 authorization concurrently with their requests for deferred action. This policy
16 and practice allowed persons whom defendants granted deferred action status to
17 work lawfully in the United States after a maximum delay of 90 days. 8 C.F.R. §
18 274a.13(d). The policy and practice was consistent with defendants’ treatment of
19 applicants for other immigration benefits who are permitted to apply for
20 employment authorization concurrently with their applications for lawful status.
21 *See, e.g.* 8 C.F.R. § 274a.13(a)(2).
22

23 44. However on or about November 2, 2006, defendants discontinued the
24 afore-alleged policy and practice and adopted a new policy to reject applications
25 for employment authorization from persons seeking U visas or deferred action
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1 based on asserted eligibility for a U visa until after deferred action is actually
2 granted. Defendants take an average of several months to decide a request for
3 deferred action based on asserted eligibility for a U visa. Defendants' new policy
4 and practice accordingly delay for an additional several months the time when
5 persons statutorily eligible for U visas are permitted to work lawfully in the
6 United States. Said policy and practice encode a substantive value judgment and
7 substantially alter the rights or interests of regulated parties, but were adopted
8 entirely informally and without compliance with any of the rulemaking
9 provisions of the Administrative Procedure Act, 5 U.S.C. § 553.
10

11
12 45. 8 U.S.C. § 1184(p)(3)(A) requires defendants to "provide aliens
13 [holding U visas] with referrals to nongovernmental organizations to advise the
14 aliens regarding their options while in the United States and the resources
15 available to them..." As a matter of policy and practice, defendants fail to
16 provide persons statutorily eligible for U visas with referrals as required by 8
17 U.S.C. § 1184(p)(3)(A).
18

19
20 46. 8 U.S.C. § 1184(p)(1) requires that "[t]he petition filed by an alien [for a
21 U visa] shall contain a certification from a Federal, state or local law enforcement
22 official, prosecutor, judge, or other Federal State or local authority investigation
23 criminal activity ... This certification shall state that the alien 'has been helpful, is
24 being helpful, or is likely to be helpful' in the investigation or prosecution of
25 criminal activity..." Nothing in § 1184(p) or elsewhere requires that the specified
26 certification be executed within any specific time proximate to the filing of an
27 application for a U visa.
28

1 47. However, defendants, as a matter of policy and practice, deny deferred
2 action to individuals who seek such relief based on asserted eligibility for U visas
3 whenever they do not furnish a § 1184(p)(1) certification executed within six
4 months of their requests for deferred action. Said policy and practice graft onto §
5 1184(p)(1) an *ultra vires* and unlawful eligibility requirement.

7 48. Plaintiff SANDRA BUCIO is a citizen and national of Mexico. She is a
8 resident of the City of San Francisco, State of California. Plaintiff BUCIO is a
9 victim of an aggravated assault and battery and false imprisonment. Section
10 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible
11 for U Visas. Plaintiff BUCIO reported these crimes to the Hidalgo Police Station
12 in New Mexico and the perpetrator was arrested and was charged with several
13 crimes, including aggravated battery, false imprisonment, and child abuse. On
14 December 20, 2002 a Deputy District Attorney of Grant County in New Mexico
15 certified that Plaintiff BUCIO had been helpful in the investigation and
16 prosecution of the crime. On October 3, 2003, a new certification was obtained
17 from the same District Attorney's office. The law enforcement certification
18 further states that the criminal investigation and prosecution would be harmed
19 without the assistance of Plaintiff SANDRA BUCIO's children, Plaintiffs SERGIO
20 BUCIO PEREZ AND ANDRES BUCIO PEREZ. On or about February 1, 2004 Plaintiff
21 SANDRA BUCIO presented Defendants a written request for benefits for her and
22 her children under the Crime Victims Act. Defendants have refused and failed to
23 issue U visas to Plaintiff SANDRA BUCIO or SERGIO or ANDRES BUCIO PEREZ. On
24 information and belief, Plaintiff BUCIO alleges that Defendants have not and will
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1 not adjudicate her or her children's applications for U visas until after they
2 promulgate implementing regulations, something Defendants have failed to do
3 for six years.

4
5 49. Plaintiff XIOMARA CASTRO is a victim of criminal assault and domestic
6 violence. On or about January 26, 2002, Plaintiff XIOMARA CASTRO was
7 physically attacked by her husband and suffered extreme physical abuse as a
8 result. Section 1512 of the Crime Victims Act of 2000 declares the victims of such
9 crimes eligible for U Visas. Plaintiff XIOMARA CASTRO reported these crimes to
10 the Rosenberg Police Department in Rosenberg, TX and the perpetrator was
11 found guilty as charged. Additionally, on March 30, 2004, a Police Officer from
12 the Rosenberg Police Department certified that XIOMARA CASTRO was being
13 helpful in the investigation and prosecution of the crime. On or about July 30,
14 2004, Plaintiff XIOMARA CASTRO presented Defendants a written request for
15 benefits under the Crime Victims Act. Defendants have refused and failed to
16 issue regulations and or to issue Plaintiff XIOMARA CASTRO a U visa. On
17 information and belief, Plaintiff XIOMARA CASTRO alleges that Defendants have
18 not and will not adjudicate an application for a U visa until after they
19 promulgate implementing regulations, something Defendants have failed to do
20 for six years. Defendants' failure to issue implementing regulations deprives
21 Plaintiff XIOMARA CASTRO, and those similarly situated of procedures,
22 standards, and forms by which they may obtain a U visa. Defendants' unlawful
23 failure and refusal to adjudicate Plaintiff XIOMARA CASTRO's application for a U
24 visa blocks their ability to travel abroad and accrue three years temporary
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1 residence as required by the Victims Protection Act before they may obtain
2 permanent residence.

3 50. Plaintiff RAMONA QUINTERO is a victim of criminal threats, Restraining
4 Order violation, and battery (Domestic Violence). On or about July 15, 2003
5 RAMONA QUINTERO was physically attacked by her former husband and
6 suffered extreme physical abuse. Plaintiff RAMONA QUINTERO reported these
7 crimes to the San Francisco Police Department and on August 26, 2004, an
8 Assistant District Attorney of the San Francisco District Attorney's Office
9 certified that RAMONA QUINTERO has been helpful in the prosecution of the
10 crime. On or about October 6, 2004, Plaintiff RAMONA QUINTERO presented
11 Defendants a written request for benefits under the Crime Victims Act.
12 Defendants have refused and failed to issue regulations or to grant Plaintiff
13 RAMONA QUINTERO a U visa. On information and belief, Plaintiff RAMONA
14 QUINTERO alleges that Defendants have not and will not adjudicate an
15 application for a U visa until after they promulgate implementing regulations,
16 something Defendants have failed to do for six years. Defendants' failure to issue
17 implementing regulations deprives Plaintiff RAMONA QUINTERO, and those
18 similarly situated of procedures, standards, and forms by which they may obtain
19 a U visa. Defendants' unlawful failure and refusal to adjudicate Plaintiff
20 RAMONA QUINTERO's application for a U visa blocks their ability to travel abroad
21 and accrue three years temporary residence as required by the Victims Protection
22 Act before they may obtain permanent residence.
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1 51. Plaintiff LUIS R. NUNEZ HERNANDEZ is a victim of aggravated assault
2 with a gun and attempted murder. Section 1512 of the Crime Victims Act of 2000
3 declares the victims of such crimes eligible for U Visas. Plaintiff HERNANDEZ
4
5 reported these crimes to the San Francisco Police Station in California and an
6 Assistant District Attorney has certified that Plaintiff HERNANDEZ has been
7 helpful in the investigation of the crime. On or about September 17, 2004,
8 Plaintiff HERNANDEZ presented Defendants a written request for a U visa.
9
10 Defendants have refused and failed to issue U visa regulations or to grant
11 Plaintiff HERNANDEZ a U visa. On information and belief, Plaintiff HERNANDEZ
12 alleges that Defendants have not and will not adjudicate an application for a U
13 visa until after they promulgate implementing regulations, something
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15 Defendants have failed to do for six years.

16 52. Plaintiff RICARDO NUNEZ HERNANDEZ is a victim of aggravated
17 assault with a gun and attempted murder. On or about March 21, 2003, Plaintiff
18 NUNEZ HERNANDEZ was shot in the chest. Section 1512 of the Crime Victims Act
19 of 2000 declares the victims of such crimes eligible for U Visas. Plaintiff NUNEZ
20 HERNANDEZ reported these crimes to the San Francisco Police Department in
21 California and an Assistant District Attorney has certified that NUNEZ
22 HERNANDEZ has been helpful in the investigation of the crime. On or about
23 September 17, 2004, Plaintiff NUNEZ HERNANDEZ presented Defendants with a
24 written request for relief under the Crime Victims Act. Defendants have refused
25 and failed to issue U visa regulations or to grant Plaintiff NUNEZ HERNANDEZ a
26 U visa. On information and belief, Plaintiff RICARDO NUNEZ HERNANDEZ alleges
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1 that Defendants have not and will not adjudicate an application for a U visa until
2 after they promulgate implementing regulations, something Defendants have
3 failed to do for six years.

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5 53. Plaintiff ELIZABETH LOPEZ GOMEZ is a victim of felonious assault,
6 infliction of corporal injury, and criminal threats. Section 1512 of the Crime
7 Victims Act of 2000 declares the victims of such crimes eligible for U visas.
8 Plaintiff LOPEZ GOMEZ reported these crimes to the Menlo Park Police
9 Department, and the perpetrator was arrested and prosecuted as a result. On or
10 about April 30, 2004, a San Mateo County deputy district attorney certified that
11 plaintiff LOPEZ GOMEZ possesses information concerning this criminal activity
12 and was being helpful in the prosecution of the perpetrator. On or about May 21,
13 2004 plaintiff LOPEZ GOMEZ presented defendants with a written request for
14 benefits under the Crime Victims Act. Defendants have refused and failed to
15 issue regulations or to grant plaintiff LOPEZ GOMEZ a U visa. On information and
16 belief, defendants have not and will not adjudicate an application for a U visa
17 until after they promulgate implementing regulations, something they have
18 failed to do for more than six years.

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22 54. Plaintiff MARIA ESTERVINA PEREZ is a victim of the infliction of corporal
23 injury and criminal assault. Section 1512 of the Crime Victims Act of 2000
24 declares the victims of such crimes eligible for U visas. Plaintiff ESTERVINA PEREZ
25 reported these crimes to the Menlo Park Police Department, and the perpetrator
26 was arrested and prosecuted as a result. On or about May 4, 2004, a San Mateo
27 County deputy district attorney certified that plaintiff ESTERVINA PEREZ
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1 possesses information concerning this criminal activity and was being helpful to
2 the prosecution of the perpetrator. On or about July 28, 2004 Plaintiff ESTERVINA
3 PEREZ presented defendants with a written request for benefits under the Crime
4 Victims Act. Defendants have refused and failed to issue regulations or to grant
5 plaintiff ESTERVINA PEREZ a U visa. On information and belief, Plaintiff
6 ESTERVINA PEREZ alleges that Defendants have not and will not adjudicate an
7 application for a U visa until after they promulgate implementing regulations,
8 something they have failed to do for more than six years.

11 55. Plaintiff GIOVANA SAAVEDRA ANGULO is a victim of criminal domestic
12 violence perpetrated by her husband in 2005. In or around July 2005, Plaintiff
13 SAAVEDRA ANGULO called the Newark police and reported the crime. Section
14 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible
15 for U visas. Plaintiff SAAVEDRA ANGULO gave detailed statements to law
16 enforcement officials regarding this crime, and the perpetrator was arrested for
17 and charged with criminal domestic violence. The perpetrator was convicted.
18 Despite Plaintiff SAAVEDRA ANGULO's cooperation, the documented domestic
19 violence, and the guilty plea in this case, both the Newark Police Department
20 that arrested the perpetrator, and the Alameda County District Attorney's office
21 that prosecuted the perpetrator, declined as a matter of policy to sign a U
22 certification. On or about November 21, 2006, Plaintiff SAAVEDRA ANGULO
23 presented defendants with a written request for benefits under the Crime
24 Victims Act. On information and belief, Plaintiff SAAVEDRA ANGULO alleges that
25 defendants have not and will not adjudicate an application for a U visa until and
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1 unless defendants first issue implementing regulations, including regulations
2 addressing the circumstance when a crime victim is unable to secure a U
3 certification from a local law enforcement agency.
4

5 56. Plaintiff ELEUTERIO RODRIGUEZ RUIZ is a victim of felonious
6 aggravated assault, false imprisonment, and unlawful criminal restraint. On or
7 about April 10, 2005, he was falsely imprisoned at gunpoint and otherwise
8 victimized in an act of vigilante violence along the Mexico-United States border
9 in the State of Arizona; he suffered extreme mental abuse as a result. Section 1512
10 of the Crime Victims Act of 2000 declares the victims of such crimes eligible for U
11 visas. Plaintiff RODRIGUEZ RUIZ gave detailed statements to law enforcement
12 officials regarding this crime, and the perpetrator was arrested for felonious
13 aggravated assault with a deadly weapon. A law enforcement officer has
14 certified that plaintiff RODRIGUEZ RUIZ possesses information concerning the
15 criminal activity, has been helpful to local law enforcement in its investigation,
16 and remains willing to cooperate with any further investigation into the crime.
17 On or about June 30, 2005, Plaintiff RODRIGUEZ RUIZ presented defendants with a
18 written request for a U visa pursuant to the Crime Victims Act. However
19 defendants have failed to issue regulations implementing the U visa provisions
20 of the Crime Victims Act, and have failed to adjudicate Plaintiff RODRIGUEZ
21 RUIZ's application for a U visa. On information and belief, Plaintiff RODRIGUEZ
22 RUIZ alleges that defendants have not and will not adjudicate his application for
23 a U visa until and unless defendants first issue implementing regulations.
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1 57. Plaintiff FELIPE SANCHEZ MARTINEZ is a victim of felonious aggravated
2 assault, false imprisonment, and unlawful criminal restraint. On or about April
3 10, 2005, he was falsely imprisoned at gunpoint and otherwise victimized in an
4 act of vigilante violence along the Mexico-United States border in the State of
5 Arizona; he suffered extreme mental abuse as a result. Section 1512 of the Crime
6 Victims Act of 2000 declares the victims of such crimes eligible for U visas.
7 Plaintiff SANCHEZ MARTINEZ gave detailed statements to law enforcement
8 officials regarding this crime, and the perpetrator was arrested for felonious
9 aggravated assault with a deadly weapon. A law enforcement officer has
10 certified that plaintiff SANCHEZ MARTINEZ possesses information concerning the
11 criminal activity, has been helpful to local law enforcement in its investigation,
12 and remains willing to cooperate with any further investigation into the crime.
13 On or about June 30, 2005, plaintiff SANCHEZ MARTINEZ presented defendants
14 with a written request for a U visa pursuant to the Crime Victims Act. However
15 defendants have failed to issue regulations implementing the U visa provisions
16 of the Crime Victims Act, and have failed to adjudicate plaintiff SANCHEZ
17 MARTINEZ's application for a U visa. On information and belief, plaintiff
18 SANCHEZ MARTINEZ alleges that defendants have not and will not adjudicate his
19 application for a U visa until and unless defendants first issue implementing
20 regulations.
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26 58. Plaintiff FRANCISCA RAMIREZ ALVAREZ is a victim of criminal domestic
27 violence and is statutorily eligible for the issuance of a U visa. Plaintiff RAMIREZ
28 ALVAREZ was threatened with guns and knives and was beaten and sexually

1 assaulted. Plaintiff RAMIREZ ALVAREZ has been issued a U visa certification,
2 signed by a law enforcement official on March 18, 2002, stating that Plaintiff
3 RAMIREZ ALVAREZ has been helpful to local law enforcement in its criminal
4 investigation. On or about June March 19, 2002, she petitioned the local
5 Louisville, KY Immigration and Naturalization Service (INS) office for a U visa
6 or deferred action status. Having been granted no benefits, on or about January
7 2, 2003, Plaintiff RAMIREZ ALVAREZ petitioned the Vermont Service Center of
8 INS for relief under the Crime Victims Act. She was finally granted deferred
9 action status on or about October 17, 2003. On information and belief, Plaintiff
10 RAMIREZ ALVAREZ alleges that Defendants have not and will not adjudicate her a
11 U visa until and unless Defendants first issue implementing regulations.
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15 59. Plaintiff CONSTANTINA CAMPOS was a victim of domestic violence in
16 the City of New York. The perpetrator was arrested and prosecuted in Kings
17 County Criminal Court and Plaintiff CAMPOS received a Criminal Court Order of
18 Protection against him. Section 1512 of the Crime Victims Act declares the
19 victims of such crimes eligible for U visas. Plaintiff CAMPOS reported these
20 crimes to the New York City Police Department and a law enforcement official
21 certified that Plaintiff CAMPOS has been helpful in the prosecution of the crime.
22 On or about June 21, 2002, and several times thereafter, Plaintiff CAMPOS has
23 presented Defendants with written request for relief under the Crime Victims
24 Act. Defendants have refused and failed to issue regulations or to grant Plaintiff
25 CAMPOS a U visa. On information and belief, Plaintiff CAMPOS alleges that
26 Defendants have not and will not adjudicate an application for a U visa until
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1 after they promulgate implementing regulations, something Defendants have
2 failed to do for six years.

3 60. Plaintiff IRMA MORENO SANVICENTE is a victim of domestic violence
4 perpetrated by her husband. Plaintiff MORENO SANVICENTE has suffered
5 substantial physical and mental harm as a result. In or around March of 2005,
6 Plaintiff MORENO SANVICENTE's husband was arrested following an incident of
7 domestic violence. Her husband was prosecuted in New York County Criminal
8 Court. Plaintiff MORENO SANVICENTE cooperated with the police and District
9 Attorney throughout the investigation and prosecution of the crime. Plaintiff
10 MORENO SANVICENTE obtained a certification from the New York County
11 District Attorney's Office describing her cooperation. In or around late 2005,
12 Plaintiff MORENO SANVICENTE presented Defendants with a written request for
13 relief under the Crime Victims Act. On November 15, 2005, Defendants refused
14 to grant relief on the basis that her law enforcement certification was not signed
15 within six months of her request. Plaintiff MORENO SANVICENTE sought and
16 obtained an updated U certification. On or about February 3, 2006, Plaintiff
17 MORENO SANVICENTE presented Defendants with a second request for benefits
18 under the Crime Victims Act. She was eventually granted deferred action status
19 however she has not been granted U visa status and her 17-year old daughter
20 who remains in México is in danger of "aging out" of U visa derivative
21 eligibility. Plaintiff MORENO SANVICENTE is unable to reunite with her daughter
22 because of defendants' failure to issue U visas or derivative U visas.
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1 61. Plaintiff ROSA GALAVIZ is a victim of criminal domestic violence
2 perpetrated by her husband. Plaintiff GALAVIZ has suffered substantial physical
3 and mental abuse as a result of this criminal abuse. On or about March 20, 2006,
4 her husband pled guilty to charges of domestic battery against Plaintiff GALAVIZ
5 and was sentenced to a period of incarceration. In or about May 2006 Plaintiff
6 GALAVIZ's husband was deported to México and now resides with Plaintiff
7 GALAVIZ's seven minor children, the oldest of whom is 14 years of age. In 2006,
8 a Deputy Prosecuting Attorney from Marion County, Indiana certified that
9 Plaintiff GALAVIZ had been helpful in the criminal investigation and prosecution.
10 On or about June 28, 2006, Plaintiff GALAVIZ petitioned the USCIS for benefits
11 under the Crime Victim Act. On or about February 13, 2007, Plaintiff GALAVIZ
12 also petitioned the USCIS on behalf of her seven minor children in México,
13 seeking to reunite with them in the United States and remove them from the
14 danger of their abusive father. Defendants have refused and failed to issue
15 regulations or to grant Plaintiff ROSA GALAVIZ's or her children U visas. On
16 information and belief, Plaintiff GALAVIZ alleges that Defendants have not and
17 will not adjudicate an application for a U visa until after they promulgate
18 implementing regulations, something Defendants have failed to do for six years.
19 Defendants' failure and refusal to grant Plaintiff ROSA GALAVIZ a U visa blocks
20 her ability to travel abroad and to seek reunification with her dependent children
21 in a timely manner that protects their safety and well-being.

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27 62. Plaintiff MARIA LUISA ARROYO TORRES is a victim of criminal assault
28 and domestic violence perpetrated by her ex-husband. She reported these crimes

1 to the Hidalgo County Sheriff's Department on or about September 11, 2004 and
2 August 2, 2005. On or about July 10, 2006, she petitioned the USCIS for benefits
3 under the Crime Victims Act. Plaintiff ARROYO TORRES submitted her application
4 with a U certification signed on or about August 5, 2005 by Assistant Criminal
5 District Attorney of the County of Hidalgo, stating that Plaintiff ARROYO TORRES
6 possesses information concerning the criminal activity, has been helpful to local
7 law enforcement in its investigation, and remains willing to cooperate with any
8 further investigation into the crime. That certification was issued more than six
9 months before Plaintiff ARROYO TORRES applied for a U visa or deferred action
10 status. In or about October 2006 defendants denied Plaintiff ARROYO TORRES
11 relief under the Crime Victims Act because her U certification was signed more
12 than six months before it was submitted to the USCIS. On or about December 1,
13 2006, Plaintiff TORRES received a denial of her employment authorization
14 application.

18 63. Plaintiff JUAN FRANCISCO ROCHA ROCHA is a victim of felonious
19 assault and attempted murder perpetrated by unknown assailants. Plaintiff
20 ROCHA ROCHA suffered substantial physical and mental abuse as a result, as did
21 his wife and two young sons. A law enforcement officer has certified that
22 Plaintiff ROCHA ROCHA and his family have been helpful to law enforcement in
23 the investigation of the crime. On or about November 30, 2006, Plaintiff ROCHA
24 ROCHA and each of his family members submitted applications for relief under
25 the Crime Victims Act, concurrently with applications for employment
26 authorization. On or about January 17, 2007, Plaintiff ROCHA ROCHA's
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1 application for employment authorization was denied, on information an belief
2 based upon defendants' new policy of not accepting employment authorization
3 applications until the defendants have granted an applicant deferred action
4 status. Defendants have refused and failed to issue regulations or to grant
5 Plaintiff ROCHA ROCHA a U visa. On information and belief, Plaintiff ROCHA
6 ROCHA alleges that Defendants have not and will not adjudicate an application
7 for a U visa until after they promulgate implementing regulations, something
8 Defendants have failed to do for six years.

11 64. Plaintiff JORGE DOMINGUEZ RIVERA is a victim of felonious assault
12 perpetrated by a U.S. Border Patrol agent on January 12, 2007, when that agent
13 tried to run Plaintiff DOMINGUEZ RIVERA over with his vehicle. That same day,
14 Plaintiff DOMINGUEZ RIVERA witnessed the same Border Patrol agent shoot and
15 kill his brother, Francisco Javier Dominguez Rivera. Plaintiff DOMINGUEZ
16 RIVERA has suffered substantial mental abuse as a result. On or about February
17 24, 2007, Plaintiff DOMINGUEZ RIVERA petitioned the USCIS for a U visa or
18 deferred action status. A U certification has not been issued by any
19 representative of the Government currently investigating the January 12, 2007
20 incident, though requests have been made in an effort to obtain such
21 certification. Defendants have threatened Plaintiff DOMINGUEZ RIVERA with
22 execution of an order of expedited removal before his application for a U visa is
23 adjudicated. Defendants have refused and failed to issue regulations and to
24 adjudicate Plaintiff DOMINGUEZ RIVERA's application for a U visa. On
25 information and belief, Plaintiff DOMINGUEZ RIVERA alleges that Defendants

1 have not and will not adjudicate his application for a U visa until after they
2 promulgate implementing regulations, something Defendants have failed to do
3 for six years.

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5 VI

6 IRREPARABLE INJURY

7 65. Plaintiffs and those similarly situated are suffering and will continue to
8 suffer irreparable injury unless this Court orders relief as prayed for herein. Such
9 injury includes, *inter alia*, deprivation of due process and equal protection
10 through withholding of U visas. Damages cannot adequately address the injuries
11 suffered by plaintiffs and their proposed class members, including the inability
12 to legalize their immigration status in a manner made available by Congress and
13 the loss of ancillary benefits available to U visa holders.
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16 VII

17 FIRST CAUSE OF ACTION

18 [Failure to promulgate regulations implementing U visa program]

19 66. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65
20 above as though fully re-alleged here.
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22 67. Defendants' failure to promulgate regulations implementing 8 U.S.C. §
23 1101(a)(15)(U) is agency action unlawfully withheld or unreasonably delayed, is
24 arbitrary, capricious, an abuse of discretion, otherwise not in accordance with
25 law, and violates (i) the Victims Protection Act of 2000, Pub. L. No. 106-386, Div.
26 A, 114 Stat. 1464 (2000), *codified at, inter alia*, 8 U.S.C. § 1101(a)(15)(U); (ii) the
27 Immigration and Nationality Act, 8 U.S.C. § 1103; (iii) the Violence Against
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Complaint

1 Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162,
2 119 Stat. 2960 (2006); (iv) the Administrative Procedure Act, §§ 5 U.S.C. §§ 551 *et*
3 *seq.*; (v) the due process clause and equal protection guarantee of the Fifth
4 Amendment to the United States Constitution; and (vi) Article II, §§ 1 and 3, of
5 the United States Constitution.
6

7 VIII

8 SECOND CAUSE OF ACTION

9 [Refusal to adjudicate U visa applications and issue U visas]

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11 68. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65
12 above as though fully re-alleged here.

13 69. Defendants' failure to adjudicate applications for U visas and refusal to
14 issue U visas is agency action unlawfully withheld or unreasonably delayed, and
15 is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with
16 law, and violates (i) the Victims Protection Act of 2000, Pub. L. No. 106-386, Div.
17 A, 114 Stat. 1464 (2000), *codified at, inter alia*, 8 U.S.C. § 1101(a)(15)(U); (ii) the
18 Immigration and Nationality Act, 8 U.S.C. § 1103; (iii) the Violence Against
19 Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162,
20 119 Stat. 2960 (2006); (iv) the Administrative Procedure Act, §§ 5 U.S.C. §§ 551 *et*
21 *seq.*; (v) the due process clause and equal protection guarantee of the Fifth
22 Amendment to the United States Constitution; and (vi) Article II, §§ 1 and 3, of
23 the United States Constitution.
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IX

THIRD CAUSE OF ACTION

[Refusal to adjudicate U visa applications Impact on the
Right to Work and Travel]

70. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65 above as though fully re-alleged here.

71. Defendants' failure to adjudicate applications for U visas and refusal to issue U visas also deny eligible immigrants employment authorization during the pendency of their U status and the ability to travel abroad without having to make separate applications which are often denied for each trip abroad and violates (i) the Victims Protection Act of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), *codified at, inter alia*, 8 U.S.C. § 1101(a)(15)(U); (ii) the Immigration and Nationality Act, 8 U.S.C. § 1103; (iii) the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006); (iv) the Administrative Procedure Act, §§ 5 U.S.C. §§ 551 *et seq.*; (v) the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution; and (vi) Article II, §§ 1 and 3, of the United States Constitution.

2 FOURTH CAUSE OF ACTION

3 [Failure to adjudicate applications for or issue derivative U visas]

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5 72. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65
6 above as though fully re-alleged here.

7 73. Defendants’ failure to adjudicate applications for derivative U visas
8 and to issue derivative U visas is agency action unlawfully withheld or
9 unreasonably delayed, and is arbitrary, capricious, an abuse of discretion,
10 otherwise not in accordance with law, and violates (i) the Victims Protection Act
11 of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), *codified at, inter alia*, 8
12 U.S.C. § 1101(a)(15)(U); (ii) the Immigration and Nationality Act, 8 U.S.C. § 1103;
13 (iii) the Violence Against Women and Department of Justice Reauthorization Act
14 of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006); (iv) the Administrative Procedure
15 Act, §§ 5 U.S.C. §§ 551 *et seq.*; (v) the due process clause and equal protection
16 guarantee of the Fifth Amendment to the United States Constitution; and (vi)
17 Article II, §§ 1 and 3, of the United States Constitution.
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22 FIFTH CAUSE OF ACTION

23 [Unlawful failure to publish employment authorization
24 rule for notice and comment]
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26 74. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65
27 above as though fully re-alleged here.
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XIII

SEVENTH CAUSE OF ACTION

[Unlawful rejection of law enforcement certifications]

78. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65 above as though fully re-alleged here.

79. Defendants’ policy and practice to reject certificates of cooperation executed by law enforcement more than six months prior to the filing of U visa applications violates (i) 8 U.S.C. §§ 1101(U)(i)(III) and 1184(p)(1); and (ii) the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution.

XIV

EIGHTH CAUSE OF ACTION

[Unlawful failure to issue U Certifications]

80. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65 above as though fully re-alleged here.

81. Defendants’ policy and practice to reject or deny applications unaccompanied by U certifications when applicants are unable despite good faith efforts and U visa eligibility to obtain such certifications from other law enforcement agencies violates (i) 8 U.S.C. §§ 1101(U)(i)(III) and 1184(p)(1); and (ii) the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution.

1 XV

2 NINTH CAUSE OF ACTION

3 [Unconstitutional Restriction on U Visa Eligibility]

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5 82. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-65
6 above as though fully re-alleged here.

7 83. 8 U.S.C. §§ 1101(U)(i)(III) in conjunction with 1184(p) operate to deny
8 U visa eligibility to the immigrant parents of United States citizen children who
9 are the victims of crimes and who or whose parents cooperated with law
10 enforcement agencies in the investigation or prosecution of such crimes, while
11 granting such benefit to the immigrant parents of undocumented and lawful
12 permanent resident children. This unequal treatment is irrational and violates the
13 equal protection guarantee of the Fifth Amendment to the United States
14 Constitution.
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17 XVI

18 PRAYER FOR RELIEF

19
20 WHEREFORE, plaintiffs pray that this Court –

- 21 1. Assume jurisdiction over this action;
- 22 2. Certify this action as a class action pursuant to Rule 23(b)(2),
23 Fed.R.Civ.Proc.;
- 24 3. Declare that defendants’ policies, procedures, and practices as alleged
25 throughout this Complaint violate the Immigration and Nationality Act, as
26 amended by the Victims Protection Act; the Violence Against Women and
27 Department of Justice Reauthorization Act of 2005; the Administrative Procedure
28 Complaint

1 Act, 5 U.S.C. §§ 551 *et seq.*; the due process clause and equal protection guarantee
2 of the Fifth Amendment to the United States Constitution; and Article II, §§ 1 and
3 3, of the United States Constitution;

4
5 4. Issue preliminary and permanent injunctions requiring that Defendants,
6 their agents, employees, and successors in office timely adjudicate U visa
7 applications presented by the individual named Plaintiffs, their proposed class
8 members, and the members and clients of the organizational Plaintiffs,
9 promulgate regulations or procedures implementing the U visa provisions of the
10 Victims Protection Act, and otherwise comply with the terms of the Victims
11 Protection Act and other applicable laws when adjudicating applications filed by
12 the named Plaintiffs, their proposed class members, and the clients and members
13 of the organizational Plaintiffs;
14
15

16 5. Award Plaintiffs costs of suit and attorney's fees reasonably incurred as
17 a result of this lawsuit; and

18 6. Grant such further relief as the Court may deem just and proper.

19 Dated: March 6, 2007.

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21 CONSTITUTIONAL LAW
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23 Carlos R. Holguín
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