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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

Federico Reyes Vasquez,

Petitioner

v.

KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security,

TODD LYONS, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement,

Michael Bernacke, in his official capacity as  
ICE Field Officer Director,

PAMELA BONDI, in her official capacity as  
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs  
Enforcement.

Respondents

Civil No.: **2:25-cv-01146-JNP**

**PETITIONER'S REPLY IN SUPPORT OF  
MOTION FOR U-VISA CERTIFICATION**

**IMMIGRATION HABEAS CASE**

1 **PETITIONER’S REPLY IN SUPPORT OF MOTION FOR U-VISA CERTIFICATION**

2 Respondents’ opposition to U-visa certification rests on a misstatement of the governing legal  
3 standard, a misunderstanding of the Court’s authority, and an improper conflation of victim  
4 certification with criminal adjudication. When the correct statutory and regulatory framework is  
5 applied, Petitioner plainly satisfies the requirements for certification.  
6

7 **I. U-Visa Certification Is a Pre-Adjudicative Determination, Not a Criminal Finding**

8 Respondents repeatedly treat U-visa certification as though it requires proof sufficient to  
9 establish criminal liability, including proof of intent, knowledge, and satisfaction of every element of  
10 a criminal offense. That is not the law.

11 The U-visa statute requires only that the applicant demonstrate that he “has been helpful, is  
12 being helpful, or is likely to be helpful” in the investigation or prosecution of qualifying criminal  
13 activity. 8 U.S.C. § 1101(a)(15)(U)(i). The implementing regulation provides that a certifying official  
14 may sign a certification where the petitioner “has been a victim of qualifying criminal activity” and  
15 “has been helpful, is being helpful, or is likely to be helpful.” 8 C.F.R. § 214.14(c)(2)(i).  
16

17 Nothing in the statute or regulations requires proof beyond a reasonable doubt, a criminal  
18 charge, a pending prosecution, or a conviction. Certification is pre-adjudicative and exists to facilitate  
19 investigation—not to resolve criminal guilt.  
20

21 DHS’s own guidance confirms this framework. The DHS U and T Visa Law Enforcement  
22 Resource Guide explains that certification may be appropriate even where there has been no arrest,  
23 prosecution, or conviction, and that the certifying official’s role is to confirm victimization and  
24 helpfulness, not to adjudicate criminal liability. U.S. Dep’t of Homeland Sec., U and T Visa Law  
25 Enforcement Resource Guide (2015).<sup>1</sup>  
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28 <sup>1</sup>[https://mgaleg.maryland.gov/cmte\\_testimony/2025/jud/1dhnSH0j69eRL4aox1wrhiWJbSepAe9ut.pdf](https://mgaleg.maryland.gov/cmte_testimony/2025/jud/1dhnSH0j69eRL4aox1wrhiWJbSepAe9ut.pdf)

1           **II.     Petitioner Is a Victim of Witness Tampering and Obstruction of Justice**

2           Respondents' opposition fails to grapple with the core allegation supporting certification:  
3           Petitioner was the victim of conduct that interfered with his ability to participate in a federal judicial  
4           proceeding and obstructed the administration of justice.

5           Witness tampering and obstruction of justice are expressly enumerated qualifying crimes for  
6           U-visa purposes. 8 C.F.R. § 214.14(a)(9). For witness tampering, Congress expressly provided that "an  
7           official proceeding need not be pending or about to be instituted." 18 U.S.C. § 1512(f)(1).  
8           

9           Here, Petitioner credibly alleged—and supported with sworn declarations and documentary  
10          evidence—that:

- 11           1. He was a party to a pending federal habeas proceeding and was scheduled to participate in that  
12           proceeding;  
13           2. A court order was in effect prohibiting his removal during the pendency of the case;  
14           3. Notwithstanding that order, Respondents removed him from the United States;  
15           4. That removal prevented his participation in a scheduled federal court hearing, severed  
16           communication with counsel, and interfered with the Court's ability to adjudicate the matter.  
17

18           The causal link between removal and interference is direct, not speculative.  
19           

20           For certification purposes, the question is not whether Respondents committed a crime, but  
21          whether Petitioner was harmed by conduct that constitutes qualifying criminal activity as credibly  
22          alleged. Removal in violation of a court order that prevents a litigant from participating in a judicial  
23          proceeding constitutes conduct that falls within the statutory definitions of obstruction of justice and  
24          witness tampering.  
25          

26           The absence of a criminal charge or prosecution does not negate victimization. DHS expressly  
27          rejected any requirement that an official proceeding be pending, and the certification framework does  
28

1 not require proof of criminal intent or guilt. U.S. Dep't of Homeland Sec., *U and T Visa Law*  
2 *Enforcement Resource Guide* 7. (2015)(“A current investigation, the filing of charges, a prosecution or  
3 conviction is not required to sign the law enforcement certification.”)<sup>2</sup>

4 **III. Judges Are Expressly Authorized Certifying Officials and May Investigate**  
5 **Interference with Their Own Proceedings**

6 Respondents argue that certification is improper because judges are not “law enforcement” and  
7 do not conduct investigations. That argument ignores the regulation’s plain text.

8 Federal judges are expressly listed as certifying officials. 8 C.F.R. § 214.14(a)(2). The  
9 regulation defines responsibility broadly to include “detection, investigation, prosecution, conviction,  
10 or sentencing” of qualifying criminal activity. *Id.*

11 Where alleged obstruction or witness tampering occurs in the Court’s own proceedings, the  
12 Court is directly responsible for detecting and addressing that conduct. Indeed, federal courts possess  
13 inherent authority to initiate criminal contempt proceedings sua sponte to vindicate their authority and  
14 ensure compliance with their orders. *See* 18 U.S.C. § 401; *Young v. United States ex rel. Vuitton et Fils*  
15 *S.A.*, 481 U.S. 787, 793–801 (1987) (“it is long settled that courts possess inherent authority to initiate  
16 contempt proceedings for disobedience to their orders, authority which necessarily encompasses the  
17 ability to appoint a private attorney to prosecute the contempt.”); *United States v. United Mine Workers*  
18 *of Am.*, 330 U.S. 258, 303–04 (1947) (“Violations of an order are punishable as criminal contempt  
19 even though the order is set aside on appeal”).

20 The fact that a court may choose not to pursue contempt proceedings—or that a prosecutor may  
21 later decline prosecution—does not negate the existence of qualifying criminal activity or victimization  
22 for certification purposes.

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<sup>2</sup> Fn. 1.

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**IV. Victim Status Does Not Depend on Prosecutorial Discretion**

Respondents improperly conflate victim status with prosecutorial action. The law draws no such equation.

An individual who reports a crime at a police station does not cease to be a victim simply because police decline to investigate or a prosecutor declines to file charges. Victimization is determined by the conduct suffered—not by later discretionary decisions of authorities. 8 C.F.R. § 214.14(c)(2)(i); DHS U and T Visa Law Enforcement Resource Guide at 8 (2015).

The same principle applies here. Petitioner submitted information to this Court describing conduct that interfered with a federal judicial proceeding. Whether the Court elects to investigate further, refer the matter to prosecutors, or take no additional action is a matter of discretion. But discretionary choices do not retroactively erase victim status under the U-visa statute. *Id.*

**V. Respondents’ Focus on Whether Removal Was “Lawful” Is Misplaced—and the Removal Violated a Court Order**

Respondents emphasize that removal was lawful under the immigration statutes. That argument fails for two reasons.

First, certification does not turn on whether conduct was administratively authorized. Even if DHS claims statutory authority to execute removal, violating an operative court order is not ‘lawful’ conduct, and it is the interference with the Court’s proceeding that supplies the qualifying activity theory.

Second, the removal here was unlawful because it violated an operative court order prohibiting removal. Parties subject to a court order must comply unless and until the order is modified, stayed, or vacated. *See Walker v. City of Birmingham*, 388 U.S. 307, 314–15 (1967). Removal in violation of a

1 court order that was issued to preserve jurisdiction constitutes unlawful conduct and independently  
2 supports a finding of interference with a federal proceeding.

3 At the certification stage, the Court need only determine whether Petitioner has presented  
4 credible evidence of qualifying criminal activity and demonstrated helpfulness. 8 C.F.R. §  
5 214.14(c)(4). He has done so.  
6

7 **Conclusion**

8 Respondents' opposition relies on legal standards the U-visa statute does not impose, ignores  
9 DHS's own certification guidance, and misconstrues both the Court's authority and the nature of  
10 victimization. Nothing in the statute or regulations bars this Court from exercising its discretion here,  
11 and the equities favor certification. Because Petitioner has presented credible evidence that he was the  
12 victim of witness tampering and obstruction of justice and has demonstrated helpfulness, the Court  
13 should grant the requested U-visa certification.  
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15 Dated: January 26, 2026

16 Respectfully submitted,  
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