

CLE

Oregon Crime Victims Law Center Presents

# Access to Justice for Undocumented Crime Victims

**October 27, 2021 | 4:00PM - 5:30PM**  
**Free Online CLE**

Through a panel of experts working through two case studies, this CLE will address how attorneys and other professionals working with crime victims who are undocumented can facilitate and advance a victim's access to justice in the criminal and civil courts.

#### Panelists

Rosemary Brewer, JD; Executive Director, Oregon Crime Victims Law Center

Kara Brooks, JD; Deputy District Attorney, Clackamas County District Attorney's Office

Steve Milla, JD; Steve German Milla, PC

Sarah Purce, JD; Catholic Charities of Oregon

Sean Riddell, JD; Sean Riddell, Attorney at Law

#### Moderator

Megan Johnson, JD; Pickett Dummigan McCall LLP

1.5 Hours Access to Justice Credit Pending

# **Access to Justice for Undocumented Crime Victims**

## **Agenda**

### **I. INTRODUCTION - MEGAN JOHNSON, VICE PRESIDENT, OREGON CRIME VICTIMS LAW CENTER BOARD OF DIRECTORS**

### **II. CASE STUDY #1 – MARIA LOPEZ:**

Maria Lopez is a 32 year-old mother of three teenagers who was crossing the street on her way home from work just after 2:00 a.m. when she was hit by a pickup leaving the Rowdy Bar and Grill. The pickup was owned by James Beam, who had been playing “Tequila Pong” with his best friend, Tommy Topsy, at the Rowdy for several hours, leaving only when the bar closed. After hitting Maria, the driver got out, looked at Maria laying in the street, barely conscious, then got back in the pickup, which fled the scene. A nearby stoplight camera captured the license plate.

Maria’s injuries were severe, but she was able to identify the driver as Tommy Topsy from a photo array, and James Beam as the passenger. Tommy was charged with Assault in the Second Degree for recklessly causing serious physical injury to Maria with a dangerous weapon, acting with extreme indifference to human life. (Tommy had four prior DUIs, including one in which he hit and seriously injured the occupant of the car he hit.)

Maria and her family had entered the United States ten years earlier from Guatemala, but without the required documentation.

#### **Questions:**

1. What challenges might Maria face as a crime victim in the prosecution of Tommy Topsy?
2. What challenges might Maria face if she decides to pursue civil remedies?

#### **Answers:**

- A. Steve Milla – Maria’s Civil Remedies**
- B. Rosemary Brewer – Maria’s Rights in the Criminal Prosecution of Tommy Topsy**
- C. Sarah Purce – Maria’s Immigration Remedies**

### III. CASE STUDY #2 – NURA KHAN

Nura Khan is found in the hallway of her apartment building, suffering from bruising on her cheekbones and chin. A neighbor convinces her to go to a hospital to get examined. At the hospital, Nura tells a nurse that she recently ended an intimate relationship with Helen as a result of prior assaults, but she can't tell the police that because she has overstayed her Visa from Saudi Arabia. Nura also says that tonight, Helen had somehow found her way in the gated apartment complex and was waiting for her at her door when she got home. A police investigation reveals that two weeks prior, Helen had been trespassed from the property by an officer at Nura's request, after a loud verbal argument. Police also locate a 911-hangup call originating from Nura's apartment, where the operator could hear a woman screaming in a different language and another woman screaming in English. Helen is a US Citizen, is arrested with Assault in the Fourth Degree (Domestic Violence), and claims self-defense.

#### Questions:

1. What challenges might Nura face as a crime victim in the prosecution of Helen?
2. What challenges might Nura face if she decides to pursue civil remedies?
3. Would anything be different if Helen and Nura were married?

#### Answers:

- A. Sean Riddell – Nura's Available Civil Remedies
- B. Kara Brooks – Overcoming Challenges in the Criminal Prosecution of Helen
- C. Rosemary Brewer – Nura's Rights in the Criminal Prosecution of Helen
- D. Sarah Purce – Maria's Immigration Remedies

### IV. CONCLUDING REMARKS – MEGAN JOHNSON

## Megan Johnson



Megan Johnson  
Pickett Dummigan McCall LLP  
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megan@pdm.legal

Megan is an attorney in civil practice at Pickett, Dummigan, McCall, LLP. Her personal injury work focuses on the representation of children, the elderly, and disabled individuals. She served as a Deputy District Attorney at the Washington County District Attorney's Office for 17 years. There, she spearheaded the county's system of protection of both children and vulnerable adults by chairing both of the county's multidisciplinary teams. She is the Vice President of a non-profit, the Commission of Elder Abuse and Neglect Specialists (CEANS). She is the Vice President of the Board of Directors of the Oregon Crime Victim's Law Center, and is an advocate and supporter of CARES Northwest, a not-for-profit medical clinic providing evaluation and support of children that have been abused and neglected.

## Steve Milla



Steve Milla  
Milla Law  
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After graduating from law school in 1997 and completing a judicial clerkship in Maryland, Steve initially worked defending government employees against tort claims for Montgomery County, Maryland. He then worked as a prosecutor in Montgomery County before moving to Oregon in 2003. Steve opened his practice in Washington County in 2004, and has represented individuals almost exclusively in personal injury litigation since that time. A large percentage of Steve's clients are from Spanish-speaking communities.

Steve is happily married with three daughters, and enjoys traveling with his family and all manner of sports, but otherwise generally avoids the outdoors.

The Centers for Medicare & Medicaid Services (CMS) is the federal agency that oversees the Medicare program. Many Medicare beneficiaries have other insurance in addition to their Medicare benefits. Sometimes, Medicare is supposed to pay after the other insurance. However, if certain other insurance delays payment, Medicare may make a "conditional payment" so as not to inconvenience the beneficiary, and recover after the other insurance pays.

Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), a new federal law that became effective January 1, 2009, requires that liability insurers (including self-insurers), no-fault insurers, and workers' compensation plans report specific information about Medicare beneficiaries who have other insurance coverage. This reporting is to assist CMS and other insurance plans to properly coordinate payment of benefits among plans so that your claims are paid promptly and correctly.

We are asking you to answer the questions below so that we may comply with this law.

**Please review this picture of the Medicare card to determine if you have, or have ever had, a similar Medicare card.**



**Section I**

Are you presently, or have you ever been, enrolled in Medicare Part A or Part B?												<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No					
If yes, please complete the following. If no, proceed to Section II.																			
Full Name: (Please print the name exactly as it appears on your SSN or Medicare card if available.)																			
Medicare Claim Number:										Date of Birth (Mo/Day/Year)									
**Social Security Number: (If Medicare Claim Number is Unavailable)										-		-		Sex		<input type="checkbox"/> Female		<input type="checkbox"/> Male	

\*\*Note: If you are uncomfortable with providing your full Social Security Number (SSN), you have the option to provide the last 5 digits of your SSN in the section above.

**Section II**

I understand that the information requested is to assist the requesting insurance arrangement to accurately coordinate benefits with Medicare and to meet its mandatory reporting obligations under Medicare law.

\_\_\_\_\_  
Claimant Name (Please Print) \_\_\_\_\_  
Claim Number

\_\_\_\_\_  
Name of Person Completing This Form If Claimant is Unable (Please Print)

\_\_\_\_\_  
Signature of Person Completing This Form \_\_\_\_\_  
Date

If you have completed Sections I and II above, stop here. If you are refusing to provide the information requested in Sections I and II, proceed to Section III.

**Section III**

\_\_\_\_\_  
**Claimant Name (Please Print)**

\_\_\_\_\_  
**Claim Number**

For the reason(s) listed below, I have not provided the information requested. I understand that if I am a Medicare beneficiary and I do not provide the requested information, I may be violating obligations as a beneficiary to assist Medicare in coordinating benefits to pay my claims correctly and promptly.

**Reason(s) for Refusal to Provide Requested Information:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Signature of Person Completing This Form**

\_\_\_\_\_  
**Date**

**742.524 Contents of personal injury protection benefits; deductibles.** (1) Personal injury protection benefits required by ORS 742.520 consist of the following payments for the injury or death of each person:

(a) All reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services incurred within two years after the date of the person's injury, but not more than \$15,000 in the aggregate for all such expenses of the person. Expenses of medical, hospital, dental, surgical, ambulance and prosthetic services are presumed to be reasonable and necessary unless the provider receives notice of denial of the charges not more than 60 calendar days after the insurer receives from the provider notice of the claim for the services. At any time during the first 50 calendar days after the insurer receives notice of claim, the provider shall, within 10 business days, answer in writing questions from the insurer regarding the claim. For purposes of determining when the 60-day period provided by this paragraph has elapsed, counting of days shall be suspended if the provider does not supply written answers to the insurer within 10 days and may not resume until the answers are supplied.

(b) If the injured person is usually engaged in a remunerative occupation and if disability continues for at least 14 days, 70 percent of the loss of income from work during the period of the injured person's disability until the date the person is able to return to the person's usual occupation. This benefit is subject to a maximum payment of \$3,000 per month and a maximum payment period in the aggregate of 52 weeks. As used in this paragraph, "income" includes but is not limited to salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm.

(c) If the injured person is not usually engaged in a remunerative occupation and if disability continues for at least 14 days, the expenses reasonably incurred by the injured person for essential services that were performed by a person who is not related to the injured person or residing in the injured person's household in lieu of the services the injured person would have performed without income during the period of the person's disability until the date the person is reasonably able to perform such essential services. This benefit is subject to a maximum payment of \$30 per day and a maximum payment period in the aggregate of 52 weeks.

(d) All reasonable and necessary funeral expenses incurred within one year after the date of the person's injury, but not more than \$5,000.

(e) If the injured person is a parent of a minor child and is required to be hospitalized for a minimum of 24 hours, \$25 per day for child care, with payments to begin after the initial 24 hours of hospitalization and to be made for as long as the person is unable to return to work if the person is engaged in a remunerative occupation or for as long as the person is unable to perform essential services that the person would have performed without income if the person is not usually engaged in a remunerative occupation, but not to exceed \$750.

(2) With respect to the insured person and members of that person's family residing in the same household, an insurer may offer forms of coverage for the benefits required by subsection (1)(a), (b) and (c) of this section with deductibles of up to \$250. [Formerly 743.805; 1991 c.768 §7; 2003 c.813 §2; 2005 c.341 §1; 2009 c.66 §1; 2015 c.5 §4]



**742.526 Primary nature of benefits.** (1) The personal injury protection benefits with respect to:

(a) The insured and members of the family of the insured residing in the same household injured while occupying the insured motor vehicle shall be primary.

(b) Passengers injured while occupying the insured motor vehicle shall be primary.

(c) The insured and members of family residing in the same household injured as pedestrians shall be primary.

(d) The insured and members of family residing in the same household injured while occupying a motor vehicle not insured under the policy shall be excess.

(e) Pedestrians injured by the insured motor vehicle, other than the insured and members of family residing in the same household, shall be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

(2) The personal injury protection benefits may be reduced or eliminated, if it is so provided in the policy, when the injured person is entitled to receive, under the laws of this state or any other state or the United States, workers' compensation benefits or any other similar medical or disability benefits. [Formerly 743.810]

#### **ORS 471.565**

(1) A patron or guest who voluntarily consumes alcoholic beverages served by a person licensed by the Oregon Liquor Control Commission, a person holding a permit issued by the commission or a social host does not have a cause of action, based on statute or common law, against the person serving the alcoholic beverages, even though the alcoholic beverages are served to the patron or guest while the patron or guest is visibly intoxicated. The provisions of this subsection apply only to claims for relief based on injury, death or damages caused by intoxication and do not apply to claims for relief based on injury, death or damages caused by negligent or intentional acts other than the service of alcoholic beverages to a visibly intoxicated patron or guest.

(2) A person licensed by the Oregon Liquor Control Commission, person holding a permit issued by the commission or social host is not liable for damages caused by intoxicated patrons or guests unless the plaintiff proves by clear and convincing evidence that:

(a) The licensee, permittee or social host served or provided alcoholic beverages to the patron or guest while the patron or guest was visibly intoxicated; and

(b) The plaintiff did not substantially contribute to the intoxication of the patron or guest by:

(A) Providing or furnishing alcoholic beverages to the patron or guest;

(B) Encouraging the patron or guest to consume or purchase alcoholic beverages or in any other manner; or

(C) Facilitating the consumption of alcoholic beverages by the patron or guest in any manner.

(3) Except as provided in subsection (4) of this section, an action for damages caused by intoxicated patrons or guests off the premises of a person licensed by the Oregon Liquor Control Commission, a person holding a permit issued by the commission or a social host may be brought only if the person asserting the claim has given the licensee, permittee or social host the notice required by subsection (5) of this section within the following time periods:

(a) If a claim is made for damages arising out of wrongful death, notice must be given within one year after the date of death, or within one year after the date that the person asserting the claim discovers or reasonably should have discovered the existence of a claim under this section, whichever is later.

(b) If a claim is made for damages for injuries other than wrongful death, notice must be given within 180 days after the injury occurs, or within 180 days after the person asserting the claim discovers or reasonably should have discovered the existence of a claim under this section, whichever is later.

(4) The time provided for the giving of notice under subsection (3) of this section does not include any period during which:

(a) The claimant is under 18 years of age;

(b) The claimant is unable to give notice by reason of the injury or by reason of being financially incapable, as defined in ORS 125.005 (Definitions), or is incapacitated, as defined in ORS 125.005 (Definitions); or

(c) The claimant is unable to determine that the licensee, permittee or social host is liable because the patron or guest who caused the damages asserts a right against self-incrimination and cannot be compelled to reveal the identity of the licensee, permittee or social host, or cannot be compelled to reveal facts that would establish the liability of the licensee, permittee or social host.

(5) A licensee, permittee or social host shall be considered to have been given notice for the purposes of this section if:

(a) The licensee, permittee or social host is given formal notice in the manner specified in subsection (6) of this section;

(b) The licensee, permittee or social host receives actual notice as described in subsection (7) of this section;

(c) An action is commenced by or on behalf of the claimant within the period of time specified by subsections (3) and (4) of this section; or

(d) Any payment on the claim is made to the claimant by or on behalf of the licensee, permittee or social host.

(6) Formal notice of a claim subject to this section must be in writing, must be mailed to the licensee, permittee or social host, or personally served on the licensee, permittee or social host, and must contain all of the following:

(a) A statement that a claim for damages is made against the licensee, permittee or social host.

(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant.

(c) The name of the claimant and mailing address for the claimant to which correspondence regarding the claim may be mailed.

(7) For the purposes of this section, “actual notice” means any communication to a licensee, permittee or social host that gives the licensee, permittee or social host actual knowledge of the time, place and circumstances of the claim, if the communication is such that a reasonable person would conclude that a particular person intends to assert a claim against the licensee, permittee or social host.

**ORS 135.857 Disclosure to victim. (1)** In any criminal prosecution arising from an automobile collision in which the defendant is alleged to have been under the influence of alcohol or drugs, the district attorney prosecuting the action shall make available, upon request, to the victim or victims and to their attorney, or to the survivors of the victim or victims and to their attorney, all reports and information disclosed to the defendant pursuant to ORS 135.805 (Applicability) to 135.873 (Protective orders). The reports and information shall be made available at the same time as it is disclosed to the defendant or as soon thereafter as may be practicable after a request is received. The district attorney may impose such conditions as may be reasonable and necessary to prevent the release of the reports and information from interfering with the trial of the defendant. The district attorney may apply to the court for an order requiring any person receiving such reports and information to comply with the conditions of release.

**(2)** For the purpose of this section:

**(a)** “District attorney” has that meaning given in ORS 131.005 (General definitions).

**(b)** “Drug” has that meaning given in ORS 475.005 (Definitions for ORS 475.005 to 475.285 and 475.752 to 475.980).

## Rosemary Brewer



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Rosemary Brewer is the Executive Director of the Oregon Crime Victims Law Center, a nonprofit organization that provides free legal representation to Oregon crime victims throughout the criminal justice process. She manages the daily operations of the Center, including supervision of a staff of six (including four other attorneys). Ms. Brewer also assists victims in asserting their rights throughout the criminal justice process, including in pretrial and post-conviction proceedings. OCVLC also assists victims with representation in contested restraining order hearings and provides advocacy to crime victims. Ms. Brewer regularly provides training and technical assistance to prosecutors, private attorneys, and advocates throughout the state on various victims' rights issues. Prior to coming to OCVLC, Rosemary was an Assistant State's Attorney in Baltimore, Maryland, where she led an innovative felony drug diversion court and worked in the collateral unit, which handled felony probation violations. Before working in Baltimore, Rosemary was an Assistant District Attorney in Atlanta in the felony trial division. There she handled a large number of cases, including domestic violence, child abuse, rape, and homicide. She has worked with crime victims her entire legal career, and is now dedicated to seeing crime victims' rights recognized and enforced throughout the state of Oregon.

# Access to Justice for Undocumented Crime Victims

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**Oregon Crime Victims Law Center**  
**Rosemary Brewer, Executive Director**

# Foundational Rights

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- To ensure crime victims a meaningful role in the criminal and juvenile justice systems
- To accord crime victims due dignity and respect
- To ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants

**Or Const, Art I, § 42(1). ORS 147.410**

# Constitutional and Statutory Rights

- Right to notice of critical stage proceedings. Or Const, Art I, § 42(1)(a); ORS 147.510; ORS 419C.273(1)(a).
- Right to be present at critical stage proceedings. Or Const, Art I, § 42(1)(a). ORS 40.385(4)(exempting crime victims from the categories of witnesses subject to exclusion at trial at the request of a party); ORS 137.013 (providing for the right of the victim to be present at sentencing
- Right to be heard at a pretrial release hearing. Or Const, Art I, § 42(1)(a)
- Right to be heard at sentencing. Or Const, Art I, § 42(1)(a)
- Under statute, a crime victim has the right at sentencing “to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim, and the need for restitution and compensatory fine.” ORS 137.013
- Right to be consulted, upon request, regarding plea negotiations involving any violent felony. Or Const, Art I, § 42(1)(f); ORS 147.512(2)(a)
- Right to “receive prompt restitution from the criminal convicted criminal who caused the victim’s loss or injury.” Or Const, Art I, § 42(1)(d)
- Upon proof of “nature and amount of damages,” a victim is entitled to full restitution for “economic damages” caused by a defendant’s criminal conduct unless the victim consents to a lesser amount. ORS 137.106(1)

# Language Barriers

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What is your client's native language?

It may take additional time to find interpreters depending on how common the language is. Be sure to ask your client which language or dialect they are most comfortable discussing the case in.

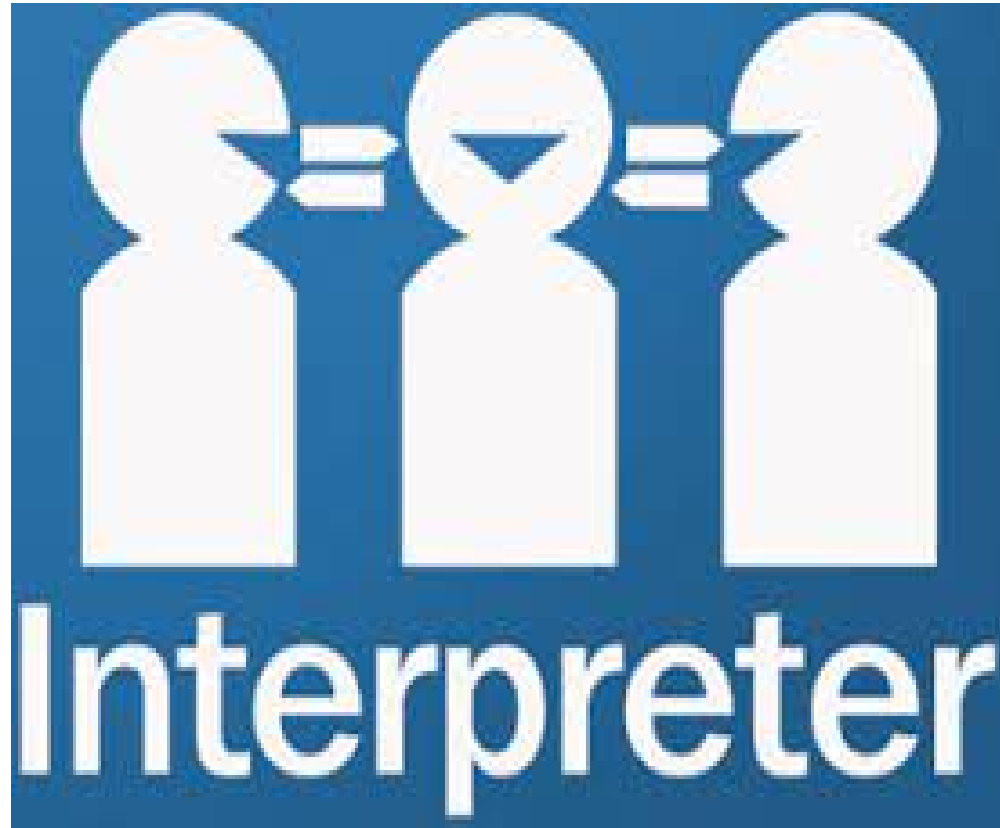
Is your client receiving documents from the DA and others in their native language?

Even if your client speaks English, you may need an interpreter for conversations about more complex subjects like compensation and restitution.

The Oregon Constitution guarantees victims “a meaningful role” in the criminal justice process. It is not meaningful if your client doesn't understand what is happening due to a language barrier.



# Right to a court-appointed interpreter



The court shall appoint a qualified interpreter in a criminal proceeding whenever it is necessary to interpret the proceedings to a non-English-speaking victim who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.

ORS 45.275, ORS 419C.285(4)

# Crime Victims' Compensation

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**The only eligibility requirement is to be a victim of a compensable crime that occurred in Oregon. Legal residency is NOT required.**

- Covers medical and hospital expenses
- Counseling costs
- Rehabilitation expenses
- Lost wages
- Forms available online or through the victim advocate at the DA's office
- Forms are changing – new forms will no longer ask for social security number (which is not required)
- CVC is a payer of last resort, but will pay co-pays and deductibles
- Limits to what CVC will pay (\$20,000 cap for medical/counseling costs)
- Must apply within one year of the date of the criminal injury
- Must cooperate with law enforcement investigation and prosecution (waiver for good cause available)

# Definitions

**Victim** – a person killed or injured in this state as a result of a compensable crime perpetrated or attempted against that person.

**Compensable crime** - abuse of a corpse in any degree or an intentional, knowing, reckless or criminally negligent act that results in serious bodily injury or death of another person and that, if committed by a person of full legal capacity, would be punishable as a crime in this state.

ORS 147.005

# Restitution

Constitutional and statutory right to restitution:

Right to “receive prompt restitution from the criminal convicted criminal who caused the victim’s loss or injury.” **Or Const, Art I, § 42(1)(d)**

Upon proof of “nature and amount of damages,” a victim is entitled to full restitution for “economic damages” caused by a defendant’s criminal conduct unless the victim consents to a lesser amount. **ORS 137.106(1)**

- If the victim does not have insurance there may be additional costs that can be included in a request for restitution.
- Work with your client to develop a plan to keep track of expenses and receipts.
- Inform the district attorney’s office that there will be a restitution request early.

# Assisting Undocumented Victims of Domestic Violence

Issues facing victims of domestic violence –

- Safety
- Housing
- Family
- Loss of income

Undocumented victims face additional concerns:

- language barriers
- cultural issues
- immigration status

Is there a culturally-specific advocacy group in your area? If so, that group may be a resource for finding interpreters, a support group for the victim, and safety planning.

Oregon residents who are victims of domestic violence or are at risk of becoming victims may be eligible for Temporary Assistance to Domestic Violence Survivors (TA/DVS) emergency monetary grants through the Oregon Department of Human Services. Applicants must have children or be pregnant to qualify. See OAR 461-135-1200.

# Other Considerations

At the beginning of each judicial **settlement conference, plea hearing or sentencing hearing**, the prosecuting attorney shall inform the court whether the victim is present. If the victim is not present and the case involves a defendant charged with a violent felony, the prosecuting attorney shall inform the court whether the victim was informed of the conference or hearing. ORS 147.512

In prosecutions involving violent felonies, a prosecutor must—if requested by the victim—make “reasonable efforts to consult the victim before making a plea offer and before entering into a final plea agreement.” ORS 147.512(2)(a).

If the court finds that the victim requested consultation regarding plea negotiations and that the prosecuting attorney failed to make reasonable efforts to consult the victim, the court shall direct the prosecuting attorney to make reasonable efforts to consult the victim and may not accept the plea unless the court makes a finding on the record that the interests of justice require the acceptance of the plea. ORS 147.512(2)(c).

# Other Considerations

Under the Oregon Constitution, crime victims have “[t]he right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant provided, however, that nothing in this paragraph shall restrict any other constitutional right of the defendant to discovery against the state.” Or Const, Art I, § 42(1)(c).

Under statute, crime victims “may not be required to be interviewed or deposed by or give discovery to the defendant or the defendant’s attorney unless the victim consents.” ORS 135.970(3).

Lease Break: A victim of domestic violence, sexual assault, or stalking, may terminate a rental agreement with a 14 day notice within 90 days of the crime, and has the right to have locks changed by the owner of rental property. ORS 90.453. ORS 90.459.

If a tenant perpetrates a criminal act of physical violence related to domestic violence, sexual assault or stalking against a household member who is a tenant, after delivery of at least 24 hours’ written notice specifying the act or omission constituting the cause and specifying the date and time of the termination, the landlord may terminate the rental agreement of the perpetrating tenant, but may not terminate the rental agreement of the other tenants. ORS 90.445.



# Claim of Rights Violation

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SOMETHING WENT WRONG, SO HOW CAN WE REMEDY IT?



# Contact information

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Rosemary Brewer  
Executive Director  
Oregon Crime Victims Law Center  
503-208-8160  
[rosemary@ocvlc.org](mailto:rosemary@ocvlc.org)

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON

Plaintiff,

v.

DEFENDANT NAME

Defendant.

Case No. (insert case number)

**NOTICE OF APPEARANCE OF VICTIM'S  
COUNSEL AND ASSERTION OF  
VICTIM'S RIGHTS**

The Oregon Crime Victims Law Center, through its attorney *Attorney Name*, hereby provides the Court and parties with notice that it represents the named victim in the above-captioned case and that the victim hereby asserts all of her rights as a crime victim under Article I, §§ 42 and 43 of the Oregon Constitution and the Oregon Revised Statutes, including those rights that must be requested by a crime victim.

The victim further specifically asserts her right to speedy disposition of the case, her right to be consulted about the plea negotiations in this case, her right to refuse all discovery requests from the defendant, and her right to be informed in advance of any critical stage of these proceedings.

Court notices should be addressed to:

*Attorney Name*  
Oregon Crime Victims Law Center  
7412 SW Beaverton-Hillsdale Hwy, Suite 209  
Portland, OR 97225  
Phone: (503) 208-8160, Fax: 1 (866) 838-4142

Dated: October 14, 2021.

*/s/ Attorney Name*  
*Attorney Name, OSB*  
*Attorney for Victim*  
*Attorney Email*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2021 I served a true copy of the foregoing document on counsel for the parties by pre-paid First Class mail, email, or through the OJD eCourt Efile and Serve system:

List DDA and Defense Attorney contact info and email.

/s/ Attorney Name  
Attorney Name, OSB  
Attorney for Victim

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR \_\_\_\_\_ COUNTY

STATE,

)

Case No. \_\_\_\_\_

v.

)

)

CLAIM OF VIOLATION OF CRIME  
VICTIM'S RIGHT(S) UNDER ARTICLE I,  
SECTION 42(1)(a) TO (g) OR 43, OF THE  
OREGON CONSTITUTION

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\_\_\_\_\_  
Defendant.

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(For use in a **criminal** case)

1. I, \_\_\_\_\_, am

- A victim in the above-listed criminal case.
- The district attorney acting at the request of a victim, \_\_\_\_\_, in the above-listed criminal case.
- A private attorney representing a victim, \_\_\_\_\_, in the above-listed criminal case.
- A person who wishes to be, but has not been, recognized as a victim, in the above-listed criminal case.

- 2.  I am the victim and I have provided my contact information on a separate form. I request that my contact information be sealed and not made part of the public record in this case.
- I am acting on behalf of the victim and have included service information with this claim form.

3. The violation occurred on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, when (describe events – attach a separate sheet if you need more space):

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4. I believe this conduct violated the following right(s) granted by Article I, sections 42(1)(a) to (g) and 43, of the Oregon Constitution:

- To be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant is present, and to be heard at the pretrial release hearing and the sentencing.
- Upon request, to obtain information about the conviction, sentence, imprisonment, criminal history, and future release from physical custody of the criminal defendant or convicted criminal.
- To refuse an interview, deposition, or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant.
- To receive prompt restitution from the convicted criminal who caused the victim's loss or injury.
- To have a copy of a transcript of any court proceeding held in open court, if one is otherwise prepared.
- Upon request, to be consulted regarding plea negotiations involving any violent felony.
- To be informed of the above-listed rights as soon as practicable.
- To be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process.
- To have decisions by the court regarding the pretrial release of a criminal defendant based upon the principle of reasonable protection of the victim and the public, as well as the likelihood that the criminal defendant will appear for trial.

5. In accordance with the rights provided in Article I, sections 42 and 43, of the Oregon Constitution, I request the following remedy:

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6. I hereby request that the court grant an appropriate remedy or schedule a hearing to determine whether the victim's right(s) was violated.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Victim, Prosecuting Attorney or Private Attorney  
OSB No. \_\_\_\_\_

**Note: You must file this claim with the court clerk's office.**  
Supplemental Form – Victim Contact Information

Case Name: \_\_\_\_\_

Case No. \_\_\_\_\_

Please list your residential address or an alternate contact address at which you would like to receive information from the court regarding court hearings and court decisions. Until your claim is resolved, you must provide updated contact information to the court if your contact information changes. If you fail to keep the court informed, the court may dismiss your claim.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Address or PO Box (Contact address may be used)

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone Number

Note: You must provide this page to the court and the prosecuting attorney; you do not need to provide this page to the defendant.

THIS INFORMATION MUST BE KEPT UNDER SEAL BY THE COURT.

**147.035 Compensable losses; expiration of claim; rules.** (1)(a) Except as otherwise provided in ORS 147.025 and 147.390, compensation may be awarded under ORS 147.005 to 147.367 only for losses described in this section.

(b) The maximum amount of compensation that may be awarded, in aggregate, to the victim and the survivors and dependents of a deceased victim is \$47,000.

(c) When a compensable crime results in:

(A) Injury to a victim, the losses described in subsections (2), (4), (7) and (8) of this section are compensable.

(B) Death to a victim, the losses described in subsections (3), (4), (6), (7) and (8) of this section are compensable.

(2) When a claim for compensation is filed in a case of injury, compensation may be awarded for:

(a) The victim's reasonable medical and hospital expenses, including counseling expenses, up to a maximum amount of \$20,000;

(b) Loss of the victim's earnings, at a maximum rate of \$600 per week, up to a maximum amount of \$20,000;

(c) The victim's rehabilitation expenses, up to a maximum amount of \$4,000; and

(d) Expenses related to transportation for the victim's medical care or counseling, at a rate determined by the Department of Justice, up to a maximum amount of \$3,000, when:

(A) The medical care or counseling is compensable under this section;

(B) The medical care or counseling is provided more than 30 miles away from the victim's residence; and

(C) Adequate medical care or counseling is not available in closer proximity to the victim's residence.

(3) When a claim for compensation is filed in a case of death, compensation may be awarded for:

(a) Reasonable funeral expenses, up to a maximum amount of \$5,000;

(b) The victim's reasonable medical and hospital expenses, up to a maximum amount of \$20,000;

(c) Loss of support to the dependents of the victim, at a maximum rate of \$600 per week, up to a maximum amount of \$20,000, less any amounts awarded for loss of earnings under subsection (2)(b) of this section;

(d) Reasonable counseling expenses for the survivors of a deceased victim, up to a maximum amount of \$20,000 for each deceased victim and including up to \$1,500 for each survivor for prescription medications prescribed in conjunction with the counseling; and

(e) Expenses related to transportation for a survivor's or a dependent's counseling, at a rate determined by the department, up to a maximum amount of \$3,000, when:

(A) The counseling is compensable under this section;

(B) The counseling is provided more than 30 miles away from the survivor's or dependent's residence; and

(C) Adequate counseling is not available in closer proximity to the survivor's or dependent's residence.

(4) When a claim for compensation is filed in a case of:

(a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim's family are

compensable up to a maximum amount of \$20,000, less any amounts awarded for the victim's medical or hospital expenses under subsection (2)(a) of this section.

(b) Domestic violence as defined in ORS 135.230, the counseling expenses of children who witnessed the domestic violence are compensable up to a maximum amount of \$10,000.

(c) International terrorism, the counseling expenses of a relative of the victim are compensable up to a maximum amount of \$1,000.

(5) Compensation may not be awarded under ORS 147.005 to 147.367 for pain and suffering or property damage.

(6) Notwithstanding subsections (2) to (5) of this section, when a claim for compensation is filed in a case of abuse of corpse in the first degree as defined in ORS 166.087 or abuse of corpse in the second degree as defined in ORS 166.085, compensation may be awarded for one or both of the following:

(a) Reasonable funeral expenses, up to a maximum amount of \$5,000.

(b) Reasonable counseling expenses for emotional distress, up to a maximum amount of \$5,000 for each incident.

(7) If the case against the assailant of the victim is under direct or collateral review and the victim, survivor or dependent is involved in the hearing or oral argument, compensation may be awarded for:

(a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of \$5,000; and

(b) Other expenses related to the review, including transportation and lodging necessary for the victim, survivor or dependent to be involved in hearings and oral arguments, up to a maximum amount of \$3,000.

(8) If the assailant of the victim has a hearing scheduled before the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board and the victim, survivor or dependent is involved in the hearing, compensation may be awarded for:

(a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of \$5,000; and

(b) Other expenses related to the hearing, including transportation and lodging necessary for the victim, survivor or dependent to be involved in the hearing, up to a maximum amount of \$3,000.

(9) A claim for compensation expires and no further payments may be made with regard to the claim:

(a) When three years have elapsed from the entry of a determination order under ORS 147.135; or

(b) If the victim, survivor or dependent attains 21 years of age after the date described in paragraph (a) of this subsection, when the victim, survivor or dependent attains 21 years of age.

(10) Notwithstanding subsection (9) of this section:

(a) In cases of homicide, a claim for reasonable counseling expenses for survivors may continue until five years have elapsed from the date of the determination order.

(b) Claims described in subsection (7) of this section may be filed each time an assailant's case is under direct or collateral review and expire:

(A) If the assailant is released as a result of the direct or collateral review, when six months have elapsed from the date the assailant is released; or

(B) If the assailant is not released as a result of the direct or collateral review, when six months have elapsed from the completion of the review.



(c) Claims described in subsection (8) of this section may be filed each time an assailant has a hearing before the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board and expire:

(A) If the assailant is denied parole, conditional release or discharge, when six months have elapsed from the date of the hearing.

(B) If the assailant is paroled, conditionally released or discharged, when six months have elapsed from the date the assailant is paroled, conditionally released or discharged.

(11) Notwithstanding subsections (2) and (9) of this section, if a victim suffers catastrophic injuries:

(a) A claim for compensation and payments may continue beyond the period described in subsection (9) of this section; and

(b) The department may award compensation for losses in excess of the individual limitations described in subsection (2) of this section, provided that the aggregate award does not exceed the amount described in subsection (1)(b) of this section.

(12) The department shall adopt rules:

(a) Defining catastrophic injuries and establishing the length of time that a claim for compensation and payments may continue under subsection (11)(a) of this section.

(b) For medical fee schedules. The schedules shall represent at least the 75th percentile of the usual and customary fees charged to the public as determined by the department. An applicant or victim may not be charged for the percentile amount reduced by the department.

**OREGON DEPARTMENT OF JUSTICE  
CRIME VICTIM & SURVIVOR SERVICES DIVISION  
APPLICATION FOR CRIME VICTIMS' COMPENSATION**

You may qualify for help through Crime Victims' Compensation (CVC) if you have been the victim of a person crime in the state of Oregon. Claims will be verified by the program, through police and other reports.

An application must be filled out for each victim. If the victim is deceased, is a minor, or an adult that is unable to complete the application, the applicant (person filing for victim) must be an adult who is responsible for the victim. You are not required to be a US Citizen to apply for Crime Victims' Compensation. Please complete as thoroughly and accurately as possible. Type or print clearly. **Unsigned applications will be returned unprocessed.**

You can also file an application electronically through the Crime Victims' Compensation portal: <https://justice.oregon.gov/victims/compensation/>. Once your application is submitted you can register for the portal to view the status of your application. If you submit a paper application, please mail or e-mail it to:

Oregon Department of Justice  
Crime Victims' Compensation Program  
1162 Court Street NE  
Salem, OR 97301-4096  
Telephone: (503) 378-5348 or 1-800-503-7983  
Email: [cvssd@doj.state.or.us](mailto:cvssd@doj.state.or.us)

**Expenses CVC can assist with may include:**

- Medical
- Dental
- Hospital
- Funeral
- Counseling
- Loss of Earnings or Support
- Physical Rehabilitation
- Transportation

\*CVC cannot compensate for lost or damaged property, or for pain and suffering.

\*Loss of earnings or support is only payable if the victim was employed and working at the time of the criminal incident.

\*Expenses related to the crime must first be submitted to your insurance for payment, including health, dental, and auto insurance. Any expenses not fully covered by insurance will be considered for payment.

If you need help completing the application please call your local Victim Assistance Office through the District Attorney's Office, or call Crime Victims' Compensation at (503) 378-5348 or toll free 1-800-503-7983. You have one (1) year from the date of the crime to file an application.

*Thank you for taking the time to complete this application. We will notify you by mail or email when we receive your application, and then again within 60 to 90 days with our claim decision.*

*What do you need to do?*

\*Please notify CVC if your mailing address, phone number, or email address changes.

\*If we request information from you, please respond within the allowed time.

*To learn more about the Crime Victims' Compensation Program, visit us online at:*

<https://www.doj.state.or.us/crime-victims/>

**OREGON CRIME VICTIMS' COMPENSATION PROGRAM**

We are here to help. Our mission is to reduce the impact of a crime on victims and their families. If you have any questions about completing this application or the Crime Victims' Compensation Program, please call us toll-free at 1-800-503-7983.

**APPLICATION FORM**

Please print clearly

**Who referred you to our program?**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Police                    | <input type="checkbox"/> Child Advocacy Center | <input type="checkbox"/> Medical Provider |
| <input type="checkbox"/> Victim Assistance Program | <input type="checkbox"/> Tribal Advocate       | <input type="checkbox"/> Other:           |

**You are filing this application because you are (check one):**

- |  |  |
|--|--|
| <input type="checkbox"/> The victim of a crime                                       | <input type="checkbox"/> A family member of a victim who died as the result of a crime |
| <input type="checkbox"/> The parent/guardian of a crime victim under 18 years of age | <input type="checkbox"/> Other (explain): _____  |

**Victim Information** (Person who is injured or deceased)

First Name:		Middle Name:		Last Name:	
Mailing Address:			Apt #:	City:	State: Zip:
Phone:		Social Security Number (only last 4 digits):		Preferred Language:	
Date of Birth:		If victim is deceased, date of death:		Gender:	
May we contact you by email? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, please provide your email address:			

**Applicant Information** (Parent or Guardian of injured victim, or family member of deceased victim)

First Name:		Middle Name:		Last Name:	
Mailing Address:			Apt #:	City:	State: Zip:
Phone:		Preferred Language:			
Date of Birth:		Gender:		Your relationship to the victim:	
May we contact you by email? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, please provide your email address:			

**Optional Contact Person** (Person we can talk to about your claim)

First Name:		Last Name:		Preferred Language:	
Contact person's phone:		Contact person's e-mail:		Contact person's relationship to the victim:	

**Advocate Information** (Person at the DA's Office, non-profit, or Child Advocacy Center assisting with this application)

Advocate name:		Advocate e-mail:		Advocate phone #:		County:	
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**Insurance Information** (Please check ALL that apply to the victim at the time of the crime)

List insurance company and other resource information below. (use additional pages if necessary)

- 
- Private Health Insurance
- 
- Oregon Health Plan
- 
- Medicare
- 
- Workers' Compensation
- 
- Dental
- 
- None

Insurance Company Name: \_\_\_\_\_ Insurance Company Name: \_\_\_\_\_

**Crime Information** (Required for all claims)

Type of Crime:

- |   |   |   |  |
|---|---|---|--|
| <input type="checkbox"/> Assault                | <input type="checkbox"/> Domestic Violence      | <input type="checkbox"/> Harassment             | <input type="checkbox"/> Stalking          |
| <input type="checkbox"/> Sexual Assault (Adult) | <input type="checkbox"/> Sexual Assault (child) | <input type="checkbox"/> Physical Abuse (child) | <input type="checkbox"/> Human Trafficking |
| <input type="checkbox"/> DUII Assault           | <input type="checkbox"/> Homicide               | <input type="checkbox"/> Robbery                | <input type="checkbox"/> Kidnapping        |
| <input type="checkbox"/> Elder Abuse            | <input type="checkbox"/> Hate/Bias              | <input type="checkbox"/> Other: _____           |  |

Did the crime involve a vehicle?  Yes  No

If yes, name of victim's auto insurance &amp; claim #:

Alleged Suspect (if known):

Date of Birth:

Additional Suspect (if applicable):

Date of Birth:

Date of Crime:

Date Reported:

Report Number:

Name of Police Department reported to:

Name of Officer:

Was the crime reported within 72 hours?  Yes  No

If no, please explain why (required):

Location of Crime: Address

City:

State:

Zip:

County:

**Loss of Earnings** (If you lost wages as a result of the criminal incident)

Was the victim employed on the date of the crime?

 Yes  No

Name of Victim's Employer:

Address:

City

State

Zip

Employer's Phone:

Employer's E-mail:

Returned to work?  Yes  No

Date Returned to work:

Did you miss more than two weeks of work?

 Yes  No

Name of Victim's Doctor:

Address:

City

State

Zip

Doctor's Phone:

Doctor's E-mail:

**Additional Information** (Add information you would like us to know)

**Provider Information** (Medical/counseling providers seen for crime related injuries)

Have you had any medical treatment or counseling as a result of the crime? Please list providers seen for crime-related injuries or trauma, paid or unpaid (attach additional pages if necessary):					<input type="checkbox"/> Yes <input type="checkbox"/> No
Provider Name:	Address:	City:	State:	Zip:	Phone Number:

**Additional Counseling** (Homicide survivor counseling, child witness to domestic violence, family member of child victim of sexual or physical abuse)

Is there anyone besides the victim who is or will be receiving counseling as a result of the crime?				<input type="checkbox"/> Yes <input type="checkbox"/> No
Name of Family Member:	Date of Birth:	Relationship to Victim:	Insurance Carrier:	

**Civil Attorney Information**

Have you retained an attorney regarding a civil lawsuit due to this crime? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Undecided				
Attorney Name:	Telephone:	Email:		
Address:	City:	State:	Zip:	

**For Homicide Claims Only** (Please list all out-of-pocket and unpaid funeral expenses)

Provider of funeral services:	Address:	City:	State:	Zip:	Phone:
At the time of death, was the victim financially supporting any dependents? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, complete loss of support information below.					
Name of Dependent:	Date of Birth:	Address:	Relationship to Victim:		

**Loss of Support Information** (Income loss as a result of the homicide)

Was the victim employed on the date of the crime?					<input type="checkbox"/> Yes <input type="checkbox"/> No
Name of Victim's Employer:	Address:	City:	State:	Zip:	
Employer's Phone:	Employer's E-mail:				

## Information Release

Crime Victims' Compensation (CVC) must investigate all applications. This authorization will be used to gather information from law enforcement, your employer(s), insurance companies, financial institutions, medical facilities, and other sources in order to determine and manage your claim. CVC will disclose information about your claim only when required by law to do so.

### MEDICAL AND OTHER RELEASE:

**BY SIGNING THIS APPLICATION** I HEREBY CONSENT TO RELEASE RECORDS between CVC and any hospitals, physicians, counselors, medical facilities and services, any insurer including social security and disability benefits, any employers, and any social services or governmental agencies including Employment Department, DHS, Worker's Compensation Division, State Court Administrator or any other authorized person or law enforcement agency for purposes relating to my CVC application.

I ALSO HEREBY CONSENT TO RELEASE TO CVC any document(s) related to disability information or income from other sources and/or my medical records even if it contains information about drugs, alcohol, mental health, or HIV testing.

I EXPRESSLY AND VOLUNTARILY AUTHORIZE DISCLOSURE of my records for the purpose stated above. I further understand that I am not giving permission for any disclosure other than that described above. I understand that I may revoke this authorization at any time, except to the extent action has been taken on this authorization.

### My Promise to the Program

**BY SIGNING THIS APPLICATION** I HEREBY **AGREE** to immediately inform CVC when any crime-related recovery is expected or received. I further agree to reimburse CVC from those recoveries a sum that is equal to the amount of the total CVC award. I acknowledge and agree that the sources of recovery this subrogation agreement will pertain to include, but are not limited to, the following: court-imposed restitution, civil judgments against the offender or other liable/obligated third parties, any insurance settlements, or settlements/benefits from any other governmental or private agency. I further agree to reimburse CVC all sums of money paid by CVC pursuant to this claim, if the claim is at any time determined to be in error, false or fraudulent.

**BY SIGNING THIS APPLICATION** I UNDERSTAND THAT UNDER PENALTIES OF UNSWORN FALSIFICATION, I declare that the information in this application is true and accurate. I, or we, authorize the Crime Victims' Compensation Program of the Department of Justice to verify any information on this application.

Signature of Victim/Applicant	Date:
Signature of 14-17 year old Victim:	Date:

OREGON DEPARTMENT OF JUSTICE  
CRIME VICTIM & SURVIVOR SERVICES DIVISION  
1162 Court St NE Salem, Oregon 97301-4096  
(503) 378-5348 or 800 503-7983 Fax (503) 378-5738

Per ORS 147.105 (1)(i) the CVC has the authority to request information to process applications for compensation. If compensation is received by intentionally misrepresenting information which CVC relies upon to determine or pay compensation, compensation awards shall be forfeited.

### Nondiscrimination

To be eligible to receive federal funds for distributing purposes of crime victims' compensation, the State of Oregon must comply with the nondiscrimination requirements of the Federal Victims of Crime Act of 1984. To ensure it meets those requirements regarding nondiscrimination, the State of Oregon must collect information about the victim's race, religion, sex, national origin, age, and any handicapping condition. The information you provide will not be used in any manner to determine acceptance or denial of your claim and will be kept confidential.

Recipients of funds under the Act are subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1974, as amended: Subtitle A, Title II of the Americans with Disabilities Act (ADA); and Department of Justice implementing regulations on disability discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1974; and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G.

The following voluntary information is used for statistical purposes only to comply with federal regulations	
Is the Victim disabled? <input type="checkbox"/> Yes <input type="checkbox"/> No	Was the Victim disabled prior to the date of crime? <input type="checkbox"/> Yes <input type="checkbox"/> No
Ethnicity of victim: <input type="checkbox"/> Black or African American <input type="checkbox"/> Asian <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Native Hawaiian or Other Pacific Islander	<input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> White Non-Latino or Caucasian <input type="checkbox"/> Other: _____

## Sarah Purce



Sarah Purce (she/her/ella)  
Assistant Director  
Immigration Legal Services  
Catholic Charities  
2740 SE Powell Blvd #2  
Portland, OR 97202  
503.688-2712 (Direct)  
spurce@CCOregon.org

Sarah Purce is the Assistant Director and Rural Program Coordinator for Catholic Charities Immigration Legal Services. Sarah has been working as an immigration attorney since 2009. Her work focuses primarily on representing immigrant survivors of domestic violence, sexual assault, and human trafficking. Sarah received her undergraduate degree from Western Washington University and she graduated *cum laude* from the American University, Washington College of Law in 2009. Sarah is a member of the Washington State Bar Association (WSBA), Oregon State Bar (OSB), and is on the executive committee of the Oregon Chapter of the American Immigration Lawyers Association (AILA). Sarah also serves as the chair of the Oregon Department of Justice's Immigrant Crime Victims' Rights subcommittee, as a member of the Oregon DOJ Labor Trafficking Taskforce, and as a member of the Oregon Foreign-Born Human Trafficking Task Force.

# Immigration Relief for Survivors of Abuse and Serious Crimes

## **Catholic Charities of Oregon, Immigration Legal Services**

Sarah Purce, Assistant Director/Rural Program Coordinator

Email: [Spurce@CCOregon.org](mailto:Spurce@CCOregon.org)  
Phone: (503) 688-2712 (Direct)



# Immigration Remedies for Victims/Survivors of Abuse & Crime

- **U Visas** for victims of serious crimes (10,000/yr.)
- **VAWA Self-Petitions**
- Gender-based Asylum: FGM; DV; Sexual Violence
- T Visas for victims of trafficking (5,000/yr.)
- Special Immigrant Juvenile Status (SIJS)
- Cancellation of Removal under the VAWA
- I-751, Removal of Condition Waiver based on Abuse
- S “Snitch” Visa (200 limit per yr.)

**Please refer any immigrant survivors to a qualified immigration legal services providers**

# U Visa

# What is the U Visa?

A temporary form of legal status available to victims of certain serious crimes who have cooperated with law enforcement and suffered as a result of the crime.

INA §101(a)(15)(U)(i)

# U Visa Purposes

- **Public Safety:**
  - Encourage reporting and other cooperation
  - Assist law enforcement in the investigation and prosecution of serious crimes
- **Humanitarian: help domestic violence and other crime survivors**

# Eligibility Requirements

- Victim of Qualifying Crime
- Has information about the crime
- Helpful in the Investigation AND/OR Prosecution
- Substantial suffering as result of crime
- Law enforcement must certify helpfulness
  - Not responsible for determining suffering or other eligibility for the U-Visa

# Indirect victims of crimes are also eligible to apply for the U Visa

## Who qualifies as an indirect victim?

	Eligible as Indirect Victims	
For crime victims who are <b>21 or older</b>	Spouse	Children under 21
For crime victims who are <b>under 21</b>	Parents	Unmarried siblings under 18

# Criminal Activity for U Visas

- **Rape**, torture, trafficking, incest, **domestic violence**, **sexual assault**, **abusive sexual contact**, prostitution, sexual exploitation, FGM, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, **felonious assault**, **stalking**, fraud in foreign labor contracting, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes, or any **similar activity** in violation of federal, state or local criminal law

# Helpfulness to Law Enforcement

- Victim has been, is being, or will be helpful to a law enforcement agency
  - Helpfulness can be at any point in the investigation and/or prosecution
- Under 16 (on date of qualifying criminal activity), incompetent, or incapacitated: parent, guardian, or “next friend” may provide the assistance



## Certifying Agency

- Federal, state or local law enforcement agency, prosecutor, judge, or other authority with responsibility for investigation or prosecution of qualifying crimes.
- Child Protective Services, Equal Employment Opportunity Commission, and Department of Labor may also certify.

# Benefits of the Approved U Visa

- Nonimmigrant status in U.S. for up to 4 years
- Waiver for (majority of) prior immigration or criminal violation available for U Nonimmigrants – discretionary
- Employment authorization
- Possibility of nonimmigrant status for family members
- Possibility of applying for permanent residence (after three years)

# Derivative Beneficiaries

- Adult U Visa applicant may include:
  - Spouse (not abuser)
  - Children (unmarried, under 21 at time of filing I-918)
- Minor (under 21) applicant may include:
  - Spouse (not abuser)
  - Parent (not abuser)
  - Siblings (under 18 at time of filing)

- Derivatives may be living outside of U.S.

# Additional Training on U Visas

Catholic Charities Immigration Legal Services will be training attorneys on U Visa Applications for Immigrant Survivors of Serious Crimes on **Wednesday, November 3rd**.

The training is introductory, but you will emerge from it knowing the U Visa well enough to represent a pre-screened Catholic Charities client and his or her family members pro bono, with technical supervision from Catholic Charities. The training will feature a comprehensive set of materials. There is no fee for this training. We have requested 4.0 CLE credits from the Oregon State Bar.

**What:** U Visa Applications for Immigrant Survivors of Serious Crimes

**Where:** Remotely via video conference

**When:** Wednesday, November 3rd – 8:30am to 1:00 pm (Please RSVP by 10/29)

**Cost:** FREE, includes 4.0 CLE credits.

**Call (503.688.2708) or email ([ILS-Rural@ccoregon.org](mailto:ILS-Rural@ccoregon.org)) with any questions or to RSVP.**

# Asylum

- Flagging that Nura is in a same-sex relationship and is from a country that is not accepting of this. This could give rise to an asylum claim, but there are many other factors to consider.
- 8 U.S. Code § 1158 - Asylum

**Please refer any immigrant survivors to a qualified immigration legal services providers**

# **Violence Against Women Act (VAWA)**

# Power and Control in the Immigration Process

- The Petitioner/Perpetrator holds the power in the process
  - Application does not provide legal status
  - It does not provide work authorization
  - It just holds the beneficiary's place in line for a visa (approval can take decades.)
- The Petitioner/Perpetrator can withdraw the petition at any time
  - Relationship must be intact at the time that the beneficiary applies for residency

## What is a VAWA self-petition?

- Congress recognized that immigration laws were being used as tools of power and control over immigrant victims of domestic violence
- VAWA allows victim/survivor of abuse/battery to petition for themselves if they meet eligibility requirements under INA § 204(a)(1)(A) or INA § 204(a)(1)(B)



# Who Qualifies for VAWA Self-Petitioning?

- Abused spouse of USC or LPR
- Non-abused spouse of USC or LPR whose child has been abused by the USC or LPR spouse, even if child not related to abuser
- Abused child of USC or LPR
- Abused parents of adult USC son or daughter

# VAWA Requirements

- Battery or Extreme Cruelty
- Qualifying Relationship (Abuser is Spouse, Adult USC Child, Parent)
- Abuser is LPR or USC
- Joint Residence
- Good Faith Marriage (for spouses)
- Good Moral Character

# VAWA Exceptions

- You can still self-petition up to two years after:
  - Death of USC abuser
  - Termination of marriage if connection between termination and abuse
  - Loss of immigration status of LPR abuser, if loss related to domestic violence
- Child victims can self-petition up to age 25 if abuse was a central reason for failure to file before age 21
- Victim of bigamous marriage may self-petition

**Please refer any immigrant survivors to a qualified immigration legal services providers**

## Documentation Is Required for Each Element

- **Any credible evidence standard**
  - How would someone show “battery or extreme cruelty”?
  - How would someone show a good faith marriage and joint residence?

# Benefits of VAWA Approval

- Limited Public Benefits (including applicants with a finding of Prima Facie eligibility) depending on where you live – not in Oregon!
- If otherwise eligible, ability to adjust status to lawful permanent resident by themselves (abusive spouse does NOT go to interview)
- Children are included on parent's self-petition (no separate petition is required)
- Deferred Action status

# Deferred Action Status

- Generally protects an individual from being placed in removal proceedings
- Not a permanent status
- Can't travel outside the U.S. because the person does not have permission to re-enter the U.S.
- Qualifies approved self-petitioner for employment authorization (work permit)

## How is the U Visa different from VAWA?

- There is no requirement of an intimate or familial relationship between the perpetrator and the victim
- There is no requirement that the perpetrator be a US citizen or Lawful Permanent Resident
- **The process takes much longer**
  - There is a statutory cap of 10,000 U visas per year. Almost 200,000 have been submitted. We estimate it will take ~10 years for people applying today, but that number frequently gets longer

# Nonprofit Legal Service Providers

- **Catholic Charities**
  - Phone: (503) 542-2855
  - Email: ILS-intakes@ccoregon.org
- **Victim Rights Law Center (VRLC):** legal services for sexual assault survivors.
  - Phone: 503-274-5477 x6
- **Immigration Counseling Service**
  - Phone: (503) 221-1689
  - Email: consult@ics-law.org
- **IRCO Immigration Legal Services**
  - Phone: 971-271-6537
  - Email: ircoils@irco.org
- **Lutheran Community Services NW**
  - Phone: 503-231-7480
- **SOAR**
  - Phone:(503) 384-2482
  - Email: soarlegal@emoregon.org
- **Center For Non-Profit Legal Services**
  - Phone: (541) 779-7292




# Questions?



**U.S. Citizenship and Immigration Services**

## Victims of Criminal Activity: U Nonimmigrant Status



**Don't be afraid to ASK FOR HELP**

Immigration relief is available for victims of human trafficking, domestic violence and other crimes

The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women’s Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.

To learn about updates to the program, visit our [U Nonimmigrant Status Program Updates](#) page.

### U Nonimmigrant Eligibility

You may be eligible for a U nonimmigrant visa if:

- You are the victim of qualifying criminal activity.
- You have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- You have information about the criminal activity. If you are under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on your behalf (see [glossary](#) for definition of ‘next friend’).
- You were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime. If you are under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on your behalf.
- The crime occurred in the United States or violated U.S. laws.
- You are admissible to the United States. If you are not admissible, you may apply for a waiver on a [Form I-192, Application for Advance Permission to Enter as a Nonimmigrant](#).

### Qualifying Criminal Activities

- Abduction
- Involuntary Servitude
- Slave Trade
- Abusive Sexual Contact
- Kidnapping
- Stalking

- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes\*†

\*Includes any similar activity where the elements of the crime are substantially similar.

†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.

#### Applying for U Nonimmigrant Status (U Visa)

To apply (petition) for a U nonimmigrant status, submit:

- [Form I-918, Petition for U Nonimmigrant Status](#)
- [Form I-918, Supplement B, U Nonimmigrant Status Certification](#). The Form I-918, Supplement B, must be signed by an [authorized official of the certifying law enforcement agency](#) (PDF, 1.45 MB) and the official must confirm that you were helpful, and currently being helpful, or will likely be helpful in the investigation or prosecution of the case.
- If any inadmissibility issues are present, you must file a [Form I-192, Application for Advance Permission to Enter as Nonimmigrant](#), to request a waiver of the inadmissibility;
- A personal statement describing the criminal activity of which you were a victim; and
- Evidence to establish each eligibility requirement - visit our [Forms](#) section, specifically the Humanitarian Benefits Based Forms.

**You may also apply (petition) for U nonimmigrant status if you are outside the United States. To do this, you must:**

- File all the necessary forms for U nonimmigrant status with the Vermont Service Center.
- Follow all instructions that are sent from the Vermont Service Center, which will include having your fingerprints taken at the nearest U.S. Embassy or Consulate.
- If your petition is approved, you must [consular process](#) to enter the United States, which will include an interview with a consular officer at the nearest U.S. Embassy or Consulate.
- Information about your nearest United States Embassy or Consulate can be found at [www.usembassy.gov](http://www.usembassy.gov).

#### Filing for Qualifying Family Members

Certain qualifying family members are eligible for a derivative U visa based on their relationship to you, the principal, filing for the U visa. The principal petitioner must have their petition for a U visa approved before their family members can be eligible for their own derivative U visa.

If you, the principal, are...	Then...
Under 21 years of age	You may petition on behalf of your spouse, children, parents and unmarried siblings under age 18
21 years of age or older	You may petition on behalf of your spouse and children.

To petition for a qualified family member, you must file a [Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient](#), at the same time as your application or at a later time.

#### Fees to File U Nonimmigrant Status Applications U Visa Extensions

- All U nonimmigrant status applications (petitions) and other forms related to the U petition are filed with the USCIS Vermont Service Center.
- All U nonimmigrant status applications (petitions) are free. You may request a fee waiver for any other form that is necessary for your U nonimmigrant status application (petition) by filing a [Form I-912, Request for Fee Waiver](#), or by including your own written request for a fee waiver with your application or petition.

#### U Visa Extensions

When U nonimmigrant status is granted, it is valid for four years. However, [extensions are available in certain, limited circumstances if the extension is: \(PDF, 97 KB\)](#)

- Needed based on a request from law enforcement,
- Needed based on exceptional circumstances,
- Needed due to delays in consular processing, or
- Automatically extended upon the filing and pendency of an application for adjustment (application for a Green Card).

#### U Visa Cap

- The limit on the number of U visas that may be granted to principal petitioners each year is 10,000. However, there is no cap for family members deriving status from the principal applicant, such as spouses, children, or other eligible family members.
- If the cap is reached before all U nonimmigrant petitions have been adjudicated, USCIS will create a waiting list for any eligible principal or derivative petitioners that are awaiting a final decision and a U visa. Petitioners placed on the waiting list will be granted deferred action or parole and are eligible to apply for work authorization while waiting for additional U visas to become available.
- Once additional visas become available, those petitioners on the waiting list will receive their visa in the order in which their petition was received. Petitioners on the waiting list do not have to take any additional steps to request the U visa. USCIS will notify the petitioner of the approval and the accompanying U visa.

**Note to Petitioners:** Principal U nonimmigrant petitioners are employment authorized incident to status, after the underlying petition for U nonimmigrant status is approved and an employment authorization document is automatically issued without filing Form I-765, Application for Employment Authorization.

Derivative family members residing inside the United States are also employment authorized incident to status, however an employment authorization document is not automatically issued. Form I-765, Application for Employment Authorization, may be filed for a derivative to obtain an employment authorization document.

Employment authorization for principals and derivatives can only be issued after the underlying U nonimmigrant status petition is approved, regardless of when the Form I-765, Application for Employment Authorization, is filed.

If the statutory cap is reached in a fiscal year and USCIS uses the waiting list process described at 8 CFR 214.14(d)(2), petitioners for U nonimmigrant status and derivatives in the United States can apply for employment authorization using Form I-765, Application for Employment Authorization, based on deferred action. An application for employment authorization based on deferred action can only be approved after DHS has deferred action in your case, regardless of when the Form I-765 is filed

### Applying for a Green Card

You may be eligible to apply for a Green Card (adjustment of status/permanent residence) if you meet certain requirements, including:

- You have been physically present in the United States for a continuous period of at least three years while in U nonimmigrant status, and
- You have not unreasonably refused to provide assistance to law enforcement since you received your U visa.
- To apply for permanent residence (a Green Card) for yourself or a qualifying family member, visit our [Green Card for a U Nonimmigrant](#) page.
- **PLEASE NOTE:** Any qualifying family member who does not have a derivative U visa when the principal U nonimmigrant receives a Green Card is no longer eligible for a derivative U visa, but may still be eligible to apply for lawful permanent residence.
- For information on extending your principal U visa to ensure your family member remains eligible for a U visa, please visit the [T and U visa extension memorandum \(PDF, 97 KB\)](#).

### Family Members Deriving Status

If the family member deriving status based on your status has met the eligibility requirements for a Green Card, they may apply for lawful permanent residence by filing their own [Form I-485, Application to Register Permanent Residence or Adjust Status](#).

Even if your family members never had U nonimmigrant status or a U visa, they may still be eligible for a Green Card.

- First, you must file a [Form I-929, Petition for Qualifying Family Member of U-1 Nonimmigrant](#), for each eligible family member.
- You may file the Form I-929 at the same time or after you file your Form I-485.

If the Form I-929 for your family member(s) is approved:

- Family members in the United States may file the Form I-485 to apply for a Green Card.
- Family members outside the United States must first visit a U.S. embassy or consulate to obtain their immigrant visa. Information for the local U.S. embassy or consulate and the procedures for obtaining a visa to enter the United States may be found at [www.usembassy.gov](http://www.usembassy.gov).
- **NOTE:** The Form I-929 is the form that is used to establish whether your family member is eligible to apply for a Green Card based on your U visa based lawful permanent resident status. This does not mean that your family member will receive a Green Card. Even if the Form I-929 is approved,

your family member is not automatically eligible for work authorization. They are eligible to work once they have received their Green Card.

### **Fees to File Form I-929**

- All Form I-929 applications are sent to the USCIS Vermont Service Center.
- There is a filing fee for the Form I-929. If you are unable to pay the fee, you may request a fee waiver by also filing a [Form I-912](#), or by submitting a separate written request for a fee waiver.

Please visit our [Green Card for a Victim of a Crime \(U Nonimmigrant\)](#) Web page for more information.

### **Resources for Victims of Human Trafficking & Other Crimes**

USCIS offers resources for victims of human trafficking and other crimes and the organizations that serve them. This information is designed to help answer any questions you or your family might have about obtaining T or U Nonimmigrant status. Please see [Resources for Victims of Human Trafficking & Other Crimes](#) for more information.

Last Reviewed/Updated: 06/12/2018

# Code of Federal Regulations

## Title 8 - Aliens and Nationality

Volume: 1

Date: 2016-01-01

Original Date: 2016-01-01

Title: Section Â§ 214.14 - Alien victims of certain qualifying criminal activity.

Context: Title 8 - Aliens and Nationality, CHAPTER I - DEPARTMENT OF HOMELAND SECURITY, SUBCHAPTER B - IMMIGRATION REGULATIONS, PART 214 - NONIMMIGRANT CLASSES.

### § 214.14 Alien victims of certain qualifying criminal activity.

(a) *Definitions.* As used in this section, the term:

(1) *BIWPA* means Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Pub. L. 106-386, 114 Stat. 1464, (2000), *amended by* Violence Against Women and Department of Justice Reauthorization Act of 2005, tit. VIII, Pub. L. 109-162, 119 Stat. 2960 (2006), *amended by* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (2006).

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or

(ii) A Federal, State, or local judge.

(4) *Indian Country* is defined as:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

(6) *Military Installation* means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.

(7) *Next friend* means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: 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. The term "any similar activity" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

(10) *Qualifying family member* means, in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U), the spouse or child(ren) of such alien; and, in the case of an alien victim under the age of 21 who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, *qualifying family member* means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien.

(11) *Territories and Possessions of the United States* means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

(12) *U nonimmigrant status certification* means Form I-918, Supplement B, "U Nonimmigrant Status Certification," which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

(13) *U interim relief* refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations.

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the



alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(c) *Application procedures for U nonimmigrant status*—(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U-1 nonimmigrant status must submit, by mail, Form I-918, "Petition for U Nonimmigrant Status," applicable biometric fee (or request for a fee waiver as provided in 8 CFR 103.7(c)), and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I-918. A petitioner who received interim relief is not required to submit initial evidence with Form I-918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

(i) *Petitioners in pending immigration proceedings.* An alien who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who would like to apply for U nonimmigrant status must file a Form I-918 directly with USCIS. U.S. Immigration and Customs Enforcement (ICE) counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Petitioners with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-1 nonimmigrant status directly with USCIS. The filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the petitioner's removal.

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

(ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United States (including Indian country and U.S. military installations) or in the

territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

(iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner; and

(iv) If the petitioner is inadmissible, Form I-192, "Application for Advance Permission to Enter as Non-Immigrant," in accordance with 8 CFR 212.17.

(3) *Biometric capture.* All petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I-918.

(4) *Evidentiary standards and burden of proof.* The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

(5) *Decision.* After completing its de novo review of the petition and evidence, USCIS will issue a written decision approving or denying Form I-918 and notify the petitioner of this decision. USCIS will include in a decision approving Form I-918 a list of nongovernmental organizations to which the petitioner can refer regarding his or her options while in the United States and available resources.

(i) *Approval of Form I-918, generally.* If USCIS determines that the petitioner has met the requirements for U-1 nonimmigrant status, USCIS will approve Form I-918. For a petitioner who is within the United States, USCIS also will concurrently grant U-1 nonimmigrant status, subject to the annual limitation as provided in paragraph (d) of this section. For a petitioner who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918. A petitioner who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(A) *Notice of Approval of Form I-918 for U-1 petitioners within the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from within the United States, USCIS will notify the alien of such approval on Form I-797, "Notice of Action," and include Form I-94 (see § 1.4), "Arrival-Departure Record," indicating U-1 nonimmigrant status.

(B) *Notice of Approval of Form I-918 for U-1 petitioners outside the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from outside the United States, USCIS will notify the alien of such approval on Form I-797, "Notice of Action," and will forward notice to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or, for a visa exempt alien, to the appropriate port of entry.

(ii) *Denial of Form I-918.* USCIS will provide written notification to the petitioner of the reasons for the denial. The petitioner may appeal a denial of Form I-918 to the Administrative Appeals Office (AAO) in accordance with the provisions of 8 CFR 103.3. For petitioners who appeal a denial of their Form I-918 to the AAO, the denial will not be deemed administratively final until the AAO issues a decision affirming the denial. Upon USCIS' final denial of a petition for a petitioner who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(c)(1)(i), DHS may file a new Notice to Appear (see section 239 of the Act, 8 U.S.C. 1229) to place the individual in proceedings again. For petitioners who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(6) *Petitioners granted U interim relief.* Petitioners who were granted U interim relief as defined in paragraph (a)(13) of this section and whose Form I-918 is approved will be accorded U-1 nonimmigrant status as of the date that a request for U interim relief was initially approved.

(7) *Employment authorization.* An alien granted U-1 nonimmigrant status is employment authorized incident to status. USCIS automatically will issue an initial Employment Authorization Document (EAD) to such aliens who are in the United States. For principal aliens who applied from outside the United States, the initial EAD

will not be issued until the petitioner has been admitted to the United States in U nonimmigrant status. After admission, the alien may receive an initial EAD, upon request and submission of a copy of his or her Form I-94, "Arrival-Departure Record," to the USCIS office having jurisdiction over the adjudication of petitions for U nonimmigrant status. No additional fee is required. An alien granted U-1 nonimmigrant status seeking to renew his or her expiring EAD or replace an EAD that was lost, stolen, or destroyed, must file Form I-765 in accordance with the instructions to the form.

(d) *Annual cap on U-1 nonimmigrant status*—(1) *General*. In accordance with section 214(p)(2) of the Act, 8 U.S.C. 1184(p)(2), the total number of aliens who may be issued a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal year.

(2) *Waiting list*. All eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U-1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U-1 nonimmigrant numbers for that fiscal year will be issued to new qualifying petitioners in the order that the petitions were properly filed. USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.

(3) *Unlawful presence*. During the time a petitioner for U nonimmigrant status who was granted deferred action or parole is on the waiting list, no accrual of unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), will result. However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.

(e) *Restrictions on use and disclosure of information relating to petitioners for U nonimmigrant classification*—(1) *General*. The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited unless the disclosure is made:

(i) By the Secretary of Homeland Security, at his discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8;

(ii) By the Secretary of Homeland Security, at his discretion, to law enforcement officials to be used solely for a legitimate law enforcement purpose;

(iii) In conjunction with judicial review of a determination in a manner that protects the confidentiality of such information;

(iv) After adult petitioners for U nonimmigrant status or U nonimmigrant status holders have provided written consent to waive the restrictions prohibiting the release of information;

(v) To Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c);

(vi) After a petition for U nonimmigrant status has been denied in a final decision;

(vii) To the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals);

(viii) With prior written consent from the petitioner or derivative family members, to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims; or

(ix) To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(2) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(3) Officials of the Department of Homeland Security are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity.

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(f) *Admission of qualifying family members*—(1) *Eligibility*. An alien who has petitioned for or has been granted U-1 nonimmigrant status (i.e., principal alien) may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. A qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 nonimmigrant status. To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:

(i) The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

(ii) The qualifying family member is admissible to the United States.

(2) *Filing procedures*. A petitioner for U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting a Form I-918, Supplement A, "Petition for Qualifying Family Member of U-1 Recipient," for each family member either at the same time the petition for U-1 nonimmigrant status is filed, or at a later date. An alien who has been granted U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting Form I-918, Supplement A for each family member. All Forms I-918, Supplement A must be accompanied by initial evidence and the required fees specified in the instructions to the form. Forms I-918, Supplement A that are not filed at the same time as Form I-918 but are filed at a later date must be accompanied by a copy of the Form I-918 that was filed by the principal petitioner or a copy of his or her Form I-94 demonstrating proof of U-1 nonimmigrant status, as applicable.

(i) *Qualifying family members in pending immigration proceedings*. The principal alien of a qualifying family member who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who is seeking U nonimmigrant status, must file a Form I-918, Supplement A directly with USCIS. ICE counsel may agree to file, at the request of the qualifying family member, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while the petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Qualifying family members with final orders of removal, deportation, or exclusion*. An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-2, U-3, U-4, or U-5 nonimmigrant status directly with USCIS. The filing of a petition for U-2, U-3, U-4, or U-5 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the alien's removal.

(3) *Initial evidence*. Form I-918, Supplement A, must include the following initial evidence:

(i) Evidence demonstrating the relationship of a qualifying family member, as provided in paragraph (f)(4) of this section;

(ii) If the qualifying family member is inadmissible, Form I-192, "Application for Advance Permission to Enter as a Non-Immigrant," in accordance with 8 CFR 212.17.

(4) *Relationship*. Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to exist at the time Form I-918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.

(i) If the U-1 principal alien proves that he or she has become the parent of a child after Form I-918 was filed, the child shall be eligible to accompany or follow to join the U-1 principal alien.

(ii) If the principal alien was under 21 years of age at the time he or she filed Form I-918, and filed Form I-918, Supplement A for an unmarried sibling under the age of 18, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status even if the principal alien is no longer under 21 years of age at the time of adjudication, and even if the sibling is no longer under 18 years of age at the time of adjudication.

(5) *Biometric capture and evidentiary standards*. The provisions for biometric capture and evidentiary standards in paragraphs (c)(3) and (c)(4) of this section also are applicable to petitions for qualifying family members.

(6) *Decision*. USCIS will issue a written decision approving or denying Form I-918, Supplement A and send notice of this decision to the U-1 principal petitioner. USCIS will include in a decision approving Form I-918 a

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list of nongovernmental organizations to which the qualifying family member can refer regarding his or her options while in the United States and available resources. For a qualifying family member who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918, Supplement A. A qualifying family member who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

- (i) *Approvals for qualifying family members within the United States.* When USCIS approves a Form I-918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien U-2, U-3, U-4, or U-5 nonimmigrant status. USCIS will notify the principal of such approval on Form I-797, "Notice of Action," with Form I-94, "Arrival-Departure Record," indicating U-2, U-3, U-4, or U-5 nonimmigrant status. Aliens who were previously granted U interim relief as defined in paragraph (a)(13) of this section will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. Aliens who are granted U-2, U-3, U-4, or U-5 nonimmigrant status are not subject to an annual numerical limit. USCIS may not approve Form I-918, Supplement A unless it has approved the principal alien's Form I-918.
- (ii) *Approvals for qualifying family members outside the United States.* When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval on Form I-797. USCIS will forward the approved Form I-918, Supplement A to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the qualifying family member is located, or, for a visa exempt alien, to the appropriate port of entry.
- (iii) *Denial of the Form I-918, Supplement A.* In accordance with 8 CFR 103.3(a)(1), USCIS will provide written notification of the reasons for the denial. The principal alien may appeal the denial of Form I-918, Supplement A to the Administrative Appeals Office in accordance with the provisions of 8 CFR 103.3. Upon USCIS' final denial of Form I-918, Supplement A for a qualifying family member who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(f)(2)(i), DHS may file a new Notice to Appear (see section 239 of the INA, 8 U.S.C. 1229) to place the individual in proceedings again. For qualifying family members who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.
- (7) *Employment authorization.* An alien granted U-2, U-3, U-4, or U-5 nonimmigrant status is employment authorized incident to status. To obtain an Employment Authorization Document (EAD), such alien must file Form I-765, "Application for Employment Authorization," with the appropriate fee or a request for a fee waiver, in accordance with the instructions to the form. For qualifying family members within the United States, the Form I-765 may be filed concurrently with Form I-918, Supplement A, or at any time thereafter. For qualifying family members who are outside the United States, Form I-765 only may be filed after admission to the United States in U nonimmigrant status.
- (g) *Duration of U nonimmigrant status—(1) In general.* U nonimmigrant status may be approved for a period not to exceed 4 years in the aggregate. A qualifying family member granted U-2, U-3, U-4, and U-5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.
- (2) *Extension of status.* (i) Where a U nonimmigrant's approved period of stay on Form I-94 is less than 4 years, he or she may file Form I-539, "Application to Extend/Change Nonimmigrant Status," to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. USCIS may approve an extension of status for a qualifying family member beyond the date when the U-1 nonimmigrant's status expires when the qualifying family member is unable to enter the United States timely due to delays in consular processing, and an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.
- (ii) Extensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539 and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539.
- (h) *Revocation of approved petitions for U nonimmigrant status—(1) Automatic revocation.* An approved petition for U-1 nonimmigrant status will be revoked automatically if, pursuant to 8 CFR 214.14(d)(1), the beneficiary of the approved petition notifies the USCIS office that approved the petition that he or she will not apply for admission to the United States and, therefore, the petition will not be used.

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(2) *Revocation on notice.* (i) USCIS may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

(A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing;

(B) Approval of the petition was in error;

(C) Where there was fraud in the petition;

(D) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the relationship to the principal petitioner has terminated; or

(E) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the principal U-1's nonimmigrant status is revoked.

(ii) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the U nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation.

(3) *Appeal of a revocation of approval.* A revocation on notice may be appealed to the Administrative Appeals Office in accordance with 8 CFR 103.3 within 30 days after the date of the notice of revocation. Automatic revocations may not be appealed.

(4) *Effects of revocation of approval.* Revocation of a principal alien's approved Form I-918 will result in termination of status for the principal alien, as well as in the denial of any pending Form I-918, Supplement A filed for qualifying family members seeking U-2, U-3, U-4, or U-5 nonimmigrant status. Revocation of a qualifying family member's approved Form I-918, Supplement A will result in termination of status for the qualifying family member. Revocation of an approved Form I-918 or Form I-918, Supplement A also revokes any waiver of inadmissibility granted in conjunction with such petition.

(i) *Removal proceedings.* Nothing in this section prohibits USCIS from instituting removal proceedings under section 240 of the Act, 8 U.S.C. 1229(a), for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in Form I-918 or Form I-918, Supplement A and supporting documentation, or after revocation of U nonimmigrant status.

[72 FR 53036, Sept. 17, 2007, as amended at 72 FR 54813, Sept. 27, 2007; 74 FR 55738, Oct. 28, 2009; 78 FR 18472, Mar. 27, 2013]

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**INA: ACT 245(m) - ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE**

Sec. 245. [8 U.S.C. 1255]

245(m)

(1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if –

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 101(a)(15)(U)(i) the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 101(a)(15)(U)(ii) if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(5)

(A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).

(B) Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).

8 USC § 1101  
Title 8 - ALIENS AND NATIONALITY  
Chapter 12 - IMMIGRATION AND NATIONALITY

8 USC § 1101. Definitions

SUBCHAPTER I - GENERAL PROVISIONS [...]

[...](U) (i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that -

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i) -

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: 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[.]



**8 USC § 1182(d) Temporary admission of nonimmigrants**

...(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title. The Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(U) of this title, if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

**8 U.S.C.**

United States Code, 2011 Edition

Title 8 - ALIENS AND NATIONALITY

CHAPTER 12 - IMMIGRATION AND NATIONALITY

SUBCHAPTER II - IMMIGRATION

Part II - Admission Qualifications for Aliens; Travel Control of Citizens and Aliens

Sec. 1182 - Inadmissible aliens

From the U.S. Government Printing Office, [www.gpo.gov](http://www.gpo.gov)**§1182. Inadmissible aliens** [INA 212]**(a) Classes of aliens ineligible for visas or admission**

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

**(1) Health-related grounds****(A) In general**

Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;<sup>1</sup>

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissible.

**(B) Waiver authorized**

For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g) of this section.

**(C) Exception from immunization requirement for adopted children 10 years of age or younger**

Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in subparagraph (F) or (G) of section 1101(b)(1) of this title;<sup>1</sup> and

(iii) is seeking an immigrant visa as an immediate relative under section 1151(b) of this title,

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

**(2) Criminal and related grounds**

**(A) Conviction of certain crimes**

**(i) In general**

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21),

is inadmissible.

**(ii) Exception**

Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

**(B) Multiple criminal convictions**

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

**(C) Controlled substance traffickers**

Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

**(D) Prostitution and commercialized vice**

Any alien who—

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(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

**(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution**

Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

**(F) Waiver authorized**

For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.

**(G) Foreign government officials who have committed particularly severe violations of religious freedom**

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22, is inadmissible.

**(H) Significant traffickers in persons**

**(i) In general**

Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of title 22, is inadmissible.

**(ii) Beneficiaries of trafficking**

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

**(iii) Exception for certain sons and daughters**

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

**(I) Money laundering**

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Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18 (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

### **(3) Security and related grounds**

#### **(A) In general**

Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

#### **(B) Terrorist activities**

##### **(i) In general**

Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.

##### **(ii) Exception**

Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

**(iii) "Terrorist activity" defined**

As used in this chapter, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

**(iv) "Engage in terrorist activity" defined**

As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

- (aa) for the commission of a terrorist activity;
- (bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;
- (cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or
- (dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

**(v) "Representative" defined**

As used in this paragraph, the term "representative" includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

**(vi) "Terrorist organization" defined**

As used in this section, the term "terrorist organization" means an organization—

- (I) designated under section 1189 of this title;
- (II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or
- (III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

**(C) Foreign policy**

**(i) In general**

An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

**(ii) Exception for officials**

An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

**(iii) Exception for other aliens**

An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

**(iv) Notification of determinations**

If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

**(D) Immigrant membership in totalitarian party**

**(i) In general**

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Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

**(ii) Exception for involuntary membership**

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

**(iii) Exception for past membership**

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

**(iv) Exception for close family members**

The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

**(E) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing**

**(i) Participation in Nazi persecutions**

Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

**(ii) Participation in genocide**

Any alien who ordered, incited, assisted, or otherwise participated in genocide, as defined in section 1091(a) of title 18, is inadmissible.

**(iii) Commission of acts of torture or extrajudicial killings**

Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of title 18; or

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(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

**(F) Association with terrorist organizations**

Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

**(G) Recruitment or use of child soldiers**

Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18 is inadmissible.

**(4) Public charge**

**(A) In general**

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

**(B) Factors to be taken into account**

(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

- (I) age;
- (II) health;
- (III) family status;
- (IV) assets, resources, and financial status; and
- (V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

**(C) Family-sponsored immigrants**

Any alien who seeks admission or adjustment of status under a visa number issued under section 1151(b)(2) or 1153(a) of this title is inadmissible under this paragraph unless—

- (i) the alien has obtained—
  - (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title;
  - (II) classification pursuant to clause (ii) or (iii) of section 1154(a)(1)(B) of this title; or
  - (III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 1183a(f) of this title or any alternative sponsor permitted under paragraph (5) (B) of such section) has executed an affidavit of support described in section 1183a of this title with respect to such alien.

**(D) Certain employment-based immigrants**

Any alien who seeks admission or adjustment of status under a visa number issued under section 1153(b) of this title by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 1183a of this title with respect to such alien.

**(5) Labor certification and qualifications for certain immigrants**

**(A) Labor certification****(i) In general**

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

**(ii) Certain aliens subject to special rule**

For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

**(iii) Professional athletes****(I) In general**

A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

**(II) "Professional athlete" defined**

For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

**(iv) Long delayed adjustment applicants**

A certification made under clause (i) with respect to an individual whose petition is covered by section 1154(j) of this title shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

**(B) Unqualified physicians**

An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

**(C) Uncertified foreign health-care workers**

Subject to subsection (r) of this section, any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools.

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or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

- (i) the alien's education, training, license, and experience—
  - (I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;
  - (II) are comparable with that required for an American health-care worker of the same type; and
  - (III) are authentic and, in the case of a license, unencumbered;
- (ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and
- (iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

**(D) Application of grounds**

The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title.

**(6) Illegal entrants and immigration violators**

**(A) Aliens present without admission or parole**

**(i) In general**

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

**(ii) Exception for certain battered women and children**

Clause (i) shall not apply to an alien who demonstrates that—

- (I) the alien is a VAWA self-petitioner;
- (II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and
- (III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

**(B) Failure to attend removal proceeding**

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

**(C) Misrepresentation**

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**(i) In general**

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

**(ii) Falsely claiming citizenship****(I) In general**

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

**(II) Exception**

In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

**(iii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (i) of this section.

**(D) Stowaways**

Any alien who is a stowaway is inadmissible.

**(E) Smugglers****(i) In general**

Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

**(ii) Special rule in the case of family reunification**

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

**(iii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

**(F) Subject of civil penalty****(i) In general**

An alien who is the subject of a final order for violation of section 1324c of this title is inadmissible.

**(ii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (d)(12) of this section.

**(G) Student visa abusers**

An alien who obtains the status of a nonimmigrant under section 1101(a)(15)(F)(i) of this title and who violates a term or condition of such status under section 1184(f)<sup>2</sup> of this title is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

**(7) Documentation requirements**

**(A) Immigrants****(i) In general**

Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or

(II) whose visa has been issued without compliance with the provisions of section 1153 of this title,

is inadmissible.

**(ii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (k) of this section.

**(B) Nonimmigrants****(i) In general**

Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

**(ii) General waiver authorized**

For provision authorizing waiver of clause (i), see subsection (d)(4) of this section.

**(iii) Guam and Northern Mariana Islands visa waiver**

For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (f).

**(iv) Visa waiver program**

For authority to waive the requirement of clause (i) under a program, see section 1187 of this title.

**(8) Ineligible for citizenship****(A) In general**

Any immigrant who is permanently ineligible to citizenship is inadmissible.

**(B) Draft evaders**

Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

**(9) Aliens previously removed****(A) Certain aliens previously removed****(i) Arriving aliens**

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Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

**(ii) Other aliens**

Any alien not described in clause (i) who—

(I) has been ordered removed under section 1229a of this title or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

**(iii) Exception**

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

**(B) Aliens unlawfully present**

**(i) In general**

Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) <sup>3</sup> of this title) prior to the commencement of proceedings under section 1225(b) (1) of this title or section 1229a of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

**(ii) Construction of unlawful presence**

For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

**(iii) Exceptions**

**(I) Minors**

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

**(II) Asylees**

No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

**(III) Family unity**

No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining

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the period of unlawful presence in the United States under clause (i).

**(IV) Battered women and children**

Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if "violation of the terms of the alien's nonimmigrant visa" were substituted for "unlawful entry into the United States" in subclause (III) of that paragraph.

**(V) Victims of a severe form of trafficking in persons**

Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 7102 of title 22) was at least one central reason for the alien's unlawful presence in the United States.

**(iv) Tolling for good cause**

In the case of an alien who—

- (I) has been lawfully admitted or paroled into the United States,
- (II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and
- (III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

**(v) Waiver**

The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

**(C) Aliens unlawfully present after previous immigration violations**

**(i) In general**

Any alien who—

- (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
- (II) has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

**(ii) Exception**

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

**(iii) Waiver**

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

- (I) the alien's battering or subjection to extreme cruelty; and
- (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

**(10) Miscellaneous**

**(A) Practicing polygamists**

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Any immigrant who is coming to the United States to practice polygamy is inadmissible.

**(B) Guardian required to accompany helpless alien**

Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 1222(c) of this title, and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i),

is inadmissible.

**(C) International child abduction**

**(i) In general**

Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

**(ii) Aliens supporting abductors and relatives of abductors**

Any alien who—

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

**(iii) Exceptions**

Clauses (i) and (ii) shall not apply—

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

**(D) Unlawful voters**

**(i) In general**

Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

**(ii) Exception**

In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed

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at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

**(E) Former citizens who renounced citizenship to avoid taxation**

Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

**(b) Notices of denials**

(1) Subject to paragraphs (2) and (3), if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a) of this section, the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is inadmissible or adjustment <sup>4</sup> of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a) of this section.

**(c) Repealed. Pub. L. 104–208, div. C, title III, §304(b), Sept. 30, 1996, 110 Stat. 3009–597**

→ **(d) Temporary admission of nonimmigrants**

(1) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(S) of this title. The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(S) of this title, if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 1101(a)(15)(S) of this title for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 1101(a)(15)(S) of this title.

(2) Repealed. Pub. L. 101–649, title VI, §601(d)(2)(A), Nov. 29, 1990, 104 Stat. 5076.

(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)

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(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 1223(c) of this title.

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title.

(6) Repealed. Pub. L. 101-649, title VI, §601(d)(2)(A), Nov. 29, 1990, 104 Stat. 5076.

(7) The provisions of subsection (a) of this section (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United States of the aliens described in this proviso.<sup>5</sup> Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 1231(c) of this title.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs

(3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

(9), (10) Repealed. Pub. L. 101-649, title VI, §601(d)(2)(A), Nov. 29, 1990, 104 Stat. 5076.

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) of this section in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F) of this section—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title, and

(B) in the case of an alien seeking admission or adjustment of status under section 1151(b)(2)(A) of this title or under section 1153(a) of this title,

if no previous civil money penalty was imposed against the alien under section 1324c of this title and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13)(A) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title, except that the ground for inadmissibility described in subsection (a)(4) of this section shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 1101(a)(15)(T) of this title, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's <sup>6</sup> discretion, may waive the application of—

(i) subsection (a)(1) of this section; and

(ii) any other provision of subsection (a) of this section (excluding paragraphs (3), (4), (10)(C), and (10(E))) <sup>7</sup> if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

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(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title. The Secretary of Homeland Security, in the Attorney General's <sup>6</sup> discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(U) of this title, if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

**(e) Educational visitor status; foreign residence requirement; waiver**

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall

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## Referral List for Immigration Attorneys

*Please note: these attorneys and organizations are not affiliated with Catholic Charities.*

### Portland Area

Attorney	Phone	Languages (other than English)	Works with detention cases in Tacoma, WA?
Alexandra Blodget	(503) 479-7555	Spanish	
Brian Conry	(503) 274-4430	Spanish	Yes
Geoffrey Doolittle	(971) 325-5347	Spanish	Yes
Frohman Law Office, LLC	(971) 266-0796 (503) 445-0130	Spanish, Taiwanese, Mandarin	
Hecht & Norman	(503) 363-9903	Spanish	Yes
Gonzales, Gonzales & Gonzales	(503) 274-1680	Spanish	Yes
Phil Hornik	(503) 243-2733	Spanish	
Kim T. Le & Sherilyn Waxler	(503) 517-0054	Spanish, Vietnamese	
Joseph A. Lear	(971) 340-4705	Spanish	
Jesse Maanao	(503) 577-9611		
Marandas Sinlapasai, P.C.	(503) 607-0444	Spanish, Laotian, Nepali	Yes
Bryan McGowan	(503) 222-9900	Spanish, Russian	
Meadowlark Immigration	(503) 764-9890	Spanish	Yes
Ruben Medina	(503) 656-0091	Spanish	Yes
Nelson & Smith	(503) 224-8600	Spanish	Yes
Oregon Immigration Group	(503) 548-1575	Spanish	
Parker Butte & Lane	(503) 241-1320	Spanish	Yes
Michael Purcell	(503) 241-8203	Spanish, French, German (and access to interpreters)	Yes
Ruben Rivera	(503) 223-5800	Spanish, French	
N. David Shamloo	(503) 220-5045	Farsi	Yes
Baoquin Wang	(503) 626-7051	Cantonese, Mandarin	

### Vancouver, WA Area

Mercedes Riggs	(360) 836-0974	Spanish	
Eulalia Soto-Esquivel	(360) 695-5656	Spanish	

### Salem Area

Maria Cobarrubias	(503) 967-7933	Spanish	
Terrence Green	(503) 877-3439	Spanish	Yes
Hecht & Norman	(503) 363-9903	Spanish	Yes
Maria Zlateva	(512) 787-4346	Russian, Bulgarian	

### Eugene Area

Hecht & Norman	(541) 465-2173	Spanish	Yes
Katrina Kilgren	(541) 600-8864	Spanish	

### Medford Area

Attorney	Phone	Languages	Works with detention cases in Tacoma, WA?
John Almaguer	(541) 772-6969	Spanish	
Yaschar Sarparast	(541) 772-8635	Spanish, Farsi	Yes
Richard B. Thierolf, Jr.	(541) 773-2727		
Neal Metler	(541)891-9831		

### Bend Area

Attorney	Phone	Languages	Works with detention cases in Tacoma, WA?
Bend Immigration Group	(541) 633-7933	Spanish	Yes

Dan R. Larsson	(541) 749-2102	Spanish, German, Swedish, Russian, Norwegian, Danish	Yes
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### **Seattle, WA Area**

Carney and Marchi	(206) 224-0909	Spanish	Yes
Dobrin and Han	(206) 448-3440	Spanish	
Gibbs Houston & Pauw	(206) 682-1080	Spanish, Punjabi	Yes
Global Justice Law Group	(206) 787-1406	Spanish	Yes

### **Low Cost Legal Service Providers**

<b>Organization</b>	<b>Telephone</b>	<b>Address</b>	<b>Works with detained cases in Tacoma, WA?</b>
Catholic Charities Immigration Legal Services	(503) 542-2855	2740 SE Powell Blvd. #2 Portland, OR 97202	
Immigration Counseling Service	Portland: (503) 221-1689  Hood River: (541) 399-8029	519 SW Park Ave. Suite 610 Portland, OR 97205  216 Columbia St. Hood River, OR 97031	
Lane County Law and Advocacy Center	(541) 485-1017	376 E. 11 <sup>th</sup> Ave. Eugene, OR 97401	
Lutheran Community Services of Oregon and Southwest Washington	Portland: (503) 233-0042  Vancouver: (360) 694-5624 ext. 26	605 SE 38 <sup>th</sup> Ave. Portland, OR 97214  3600 Main St. Second Floor Vancouver, WA 98663	
Medford Legal Aid Services of Oregon/Center for Nonprofit Legal Services	(541) 779-7291	225 W. Main St./PO Box 1586 Medford, OR 97501	
Metropolitan Public Defender	(503) 225-9100	630 SW 5 <sup>th</sup> Ave., Suite 500 Portland, OR 97204	Yes
Northwest Immigrant Rights Project	(206) 587-4009	Seattle, WA	Yes
Oregon Law Center (Ontario)	(541) 889-3121 (888) 250-9877	2449 SW 4 <sup>th</sup> Ave. Suite 208 Ontario, OR 97914	
Sponsors Organized to Assist Refugees (SOAR)	(503) 384-2482	7931 NE Halsey St. Suite 302 Portland, OR 97213	
Volunteer Advocates for Immigrant Justice	(206) 359-6200	Seattle, WA	Yes
Victim Rights Law Center	(503) 274-5477 Mondays 11:00 am - 1:00 pm (English and Español) Wednesdays 2:00 - 4:00 pm (English and Español)	Portland, OR 520 SW Yamhill, Suite 430 Portland, OR 97204	

## Lista De Referencias Para Abogados De Inmigración

*Por favor note: estos abogados y organizaciones no están afiliados con Caridades Católicas.*

### Portland

Abogado	Teléfono	Idioma(s) aparte de Ingles	¿Trabaja con casos de detención en Tacoma, WA?
Alexandra Blodget	(503) 479-7555	Español	
Brian Conry	(503) 274-4430	Español, Ruso	Sí
Geoffrey Doolittle	(971) 325-5347	Español	Sí
Frohman Law Office, LLC	(971) 266-0796 (503) 445-0130	Español, Taiwanés, Chino	
Hecht & Norman	(503) 363-9903	Español, Francés	Sí
Gonzales, Gonzales & Gonzales	(503) 274-1680	Español	Sí
Phil Hornik	(503) 243-2733		
Kim T. Le & Sherilyn Waxler	(503) 517-0054	Español, Vietnamita	
Joseph A. Lear	(971) 340-4705	Español	
Jesse Maanao	(503) 577-9611		
Marandas Sinlapasai, P.C.	(503) 607-0444	Español, Laosiano, Nepali	Sí
Bryan McGowan	(503) 222-9900	Español, Ruso	
Meadowlark Immigration	(503) 764-9890	Español	Sí
Ruben Medina	(503) 656-0091	Español	Sí
Nelson & Smith	(503) 224-8600	Español	Sí
Oregon Immigration Group	(503) 548-1575	Español	
Parker Butte & Lane	(503) 241-1320	Español	Sí
Michael Purcell	(503) 241-8203	Español, Francés, Aleman	Sí
Ruben Rivera	(503) 223-5800	Español, Francés	
N. David Shamloo	(503) 220-5045	Farsi	Sí
Baoquin Wang	(503) 626-7051	Chino	

### Vancouver, WA

Mercedes Riggs	(360) 836-0974	Español	
Eulalia Soto-Esquivel	(360) 695-5656	Español	

### Salem

Maria Cobarrubias	(503) 967-7933	Español	
Terrence Green	(503) 877-3439		Sí
Hecht & Norman	(503) 363-9903	Español, Francés, Portugués	Sí
Maria Zlateva	(512) 787-4346	Ruso, Búlgaro	

### Eugene

Hecht & Norman	(541) 465-2173	Español, Francés, Portugués	Sí
Katrina Kilgren	(541) 600-8864	Español	

### Medford

John Almaguer	(541) 772-6969	Español	
Yaschar Sarparast	(541) 772-8635	Español, Farsi	Sí
Richard B. Thierolf, Jr.	(541) 773-2727		
Neal Metler	(541)891-9831		

### Bend

Abogado	Teléfono	Idioma(s)	¿Trabaja con casos de
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			<b>detención en Tacoma, WA?</b>
Bend Immigration Group	(541) 633-7933	Español	Sí
Dan R. Larsson	(541) 749-2102	Español, Alemán, Sueco, Ruso, Noruego, Danés	Sí

### **Seattle, WA**

Carney and Marchi	(206) 224-0909	Español	Sí
Dobrin and Han	(206) 448-3440	Español	
Gibbs Houston & Pauw	(206) 682-1080	Español, Punjabi	Sí
Global Justice Law Group	(206) 787-1406	Español	Sí

### **Boise, ID**

Chris Christensen	(208) 995-2919	Español	
María Andrade	(208) 342-5100	Español	
Chris Christensen	(208) 995-2919 <a href="http://www.christensenlegal.org">www.christensenlegal.org</a>	Español	

## **Proveedores De Servicios Legales De Bajo Costo**

<b>Organización</b>	<b>Teléfono</b>	<b>Dirección</b>	<b>¿Trabaja con casos de detención en Tacoma, WA?</b>
Caridades Católicas Servicios Legales de Inmigración	(503) 542-2855	2740 SE Powell Blvd. #2 Portland, OR 97202	
Immigration Counseling Service	Portland: (503) 221-1689  Hood River: (541) 399-8029	519 SW Park Ave. Suite 610 Portland, OR 97205  216 Columbia St. Hood River, OR 97031	
Lane County Law and Advocacy Center	(541) 485-1017	376 E. 11 <sup>th</sup> Ave. Eugene, OR 97401	
Lutheran Community Services of Oregon and Southwest Washington	Portland: (503) 233-0042  Vancouver: (360) 694-5624 ext. 26	605 SE 38 <sup>th</sup> Ave. Portland, OR 97214  3600 Main St. Second Floor Vancouver, WA 98663	
Medford Legal Aid Services of Oregon/Center for Nonprofit Legal Services	(541) 779-7291	225 W. Main St./PO Box 1586 Medford, OR 97501	
Metropolitan Public Defender	(503) 225-9100	630 SW 5 <sup>th</sup> Ave., Suite 500 Portland, OR 97204	Sí
Northwest Immigrant Rights Project	(206) 587-4009	Seattle, WA	Sí
Oregon Law Center (Ontario)	(541) 889-3121 (888) 250-9877	2449 SW 4 <sup>th</sup> Ave. Suite 208 Ontario, OR 97914	
Sponsors Organized to Assist Refugees (SOAR)	(503) 384-2482	7931 NE Halsey St. Suite 302 Portland, OR 97213	
Volunteer Advocates for Immigrant Justice	(206) 359-6200	Seattle, WA	Sí

# SEAN J. RIDDELL



Sean J. Riddell, P.C.  
2905 NE Broadway St.,  
Portland, OR 97232  
(971) 219 8453  
Sean.riddell@live.com

Sean Riddell is a native of Long Valley, New Jersey. After high school Sean attended a small Liberal Arts Jesuit college called LeMoyné College in Syracuse, New York. He graduated in May of 1994 with a Bachelor of Arts Degree in Philosophy. Considering the need for fulltime philosophers, Sean entered Marine Corps Officer Candidate School in Quantico, Virginia in June of 1994 and graduated a Second Lieutenant in the Marine Corps twelve weeks later. After completing his initial training at The Basic School, Sean attended the Infantry Officer's Course and reported to his first assignment as an Infantry Platoon Commander with 2<sup>nd</sup> Battalion 8<sup>th</sup> Marine Regiment in Camp Lejeune, North Carolina. Sean left active duty Marine Corps in June of 1998, backpacked across Ireland and, then drove cross county to a city he never visited before, where he knew no one, to attend a law school he just learned about six months before. When asked why, Sean replies, "Because it is the only law school that accepted my application." Sean graduated Lewis and Clark Law School in May of 2001 and passed the bar in September of 2001.

After a short period working for an insurance company, Sean started work as a Deputy District Attorney with the Multnomah County District Attorney's office in June of 2002. While at the Multnomah County District Attorney's Office Sean prosecuted misdemeanor offenses,



felony property crimes, domestic violence crimes, sexual assault crimes, homicides, aggravated murders, gun related crimes, financial fraud crimes and gang related crimes. Sean left the Multnomah County District Attorney's Office in June of 2009 to serve as a prosecutor with the Oregon Department of Justice. Sean worked in the Criminal Justice Division for two years and the Civil Litigation Division of the Oregon Department of Justice for one year, before starting his own practice in June of 2012. Between 2002 and 2012, Sean was recalled twice to active duty by the Marine Corps to serve in Iraq as a Combat Engineer Officer in support of Operation Iraq Freedom.

Sean focuses his practice on representing victims of crimes, public employees and veterans. Sean's practice touches several areas of the law including, but not limited to: plaintiff personal injury; labor disputes; internal affairs investigations; veteran's preference in public employment; whistleblower protections; and civil rights litigation. Sean was elected to the board for the National Crime Victims Law Institute in May of 2019.

Sean remained active in the Marine Corps Reserves after his deployments. He served in various billets over the years including: Battalion Commander; Engineer Officer for Marine Forces Pacific; and Deputy Regimental Commander for the 4<sup>th</sup> Marine Logistics Regiment. He has served in several countries including: South Korea, Latvia; Lithuania; Tunisia; Israel; Iraq; Kuwait; Albania; and France. Sean also completed his Masters in Strategic Studies from the US Army War College in June of 2014. He retired at the rank of Colonel in January of 2020.

Sean lives in Portland, Oregon and Waldport, Oregon with his wife Erin Greenawald and daughters Sophia and Georgia. When not working, Sean is the world's worst, but most enthusiastic cold water surfer.

# PARALLEL PROCEEDINGS

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# PARALLEL PROCEEDINGS

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CRIMINAL PROCEEDING

CIVIL PROCEEDING

PROTECTIVE ORDER

DIVORCE PROCEEDING

# CRIMINAL PROCEEDING

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## NOTICE OF REPRESENTATION – example

DA's Office – I am here to help.

Defense Counsel – Stay away from my client.

## PRESERVATION OF EVIDENCE – example

Third Parties – Video Cameras etc

Defendant - Social Media – Text Messages

# CIVIL PROCEEDING

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## INDIVIDUAL

Battery/NIED/IIED

## THIRD PARTY – APARTMENT

Negligence –Foreseeable Criminal Act

*Stewart v. Kids Inc. of Dallas*, 245 Or App 267 (2011)

Premises Liability – *Whelchel v. Strangways*, 275 Or 297 (1976)

(2-3 years)

A complaint is a legal document that initiates a lawsuit. It will lay out the facts and describe the damages of the claim and the relief/compensation being sought. The complaint will be filed with the court and the Defendant(s) will be served a summons.

Discovery is a period of investigation around the facts of the incident. During this period, every piece of information that relates in any way to the case will be collected in preparation for litigation. An official request will also be filed demanding any information that the Defendant(s) might have. The collected information may include:

- Documents
- Photos/Videos
- Depositions
- Texts/Emails
- Medical Records
- Social Media

Mediation is when both parties attempt to reach an agreement before the case goes to trial. Communications between the Plaintiff and Defendant(s) are usually conducted through a neutral person called the Mediator. The Plaintiff can propose a settlement, which can include monetary compensation (damages) or other forms of relief such as imposed changes to the conditions that resulted in the incident (e.g. policy change). This will be negotiated through the Mediator. If no agreement can be reached, the case will proceed to trial.

Complaint

Discovery

Mediation

(Up to 2 years)

(1-2 years)

(~3 months)

(Up to 60 days)

Incident

Answer

Motion for Summary Judgment

Trial

For most civil cases, there is a 2 year statute of limitations. A complaint must be filed before 2 years have passed from the initial incident.

After the Defendant(s) have been served a summons, they have up to 60 days to file a response. The response will include any admissions or denials of the allegations, as well as any claims against the plaintiff.

Motion for Summary Judgment (MSJ): If either the Plaintiff or Defendant(s) believe that the other party has no cause of action, they can file an MSJ, at which point the judge assigned to the case will hear the arguments of each party and either grant or deny the motion. If the MSJ is granted, the case is dismissed.

If the suit is not settled or dismissed during mediation, it will proceed to trial. During trial, each side will argue their case to a jury. At the end of the trial, the jury will decide the amount that the Defendant(s) must give the Plaintiff as compensation for the damages resulting from the incident.

(2-3 years)

# CIVIL PROCEEDING

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IF YOU HAVE TO FILE BEFORE THE END OF CRIMINAL CASE

Stay Discovery – example

IF DEFENDANT IS CONVICTED

Motion for Partial Summary Judgment

Issue Preclusion - contact me for an example

INTENTIONAL TORTS – PUNITIVE DAMAGES – contact me for example

What is defendant worth –tax returns – bank statements?

Linkhart v. Savely, 190 Or 484 (1951)

Stark v. Epler, 59 Or 262 (1911)

# PROTECTIVE ORDER

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## WHICH ORDER DO YOU NEED/QUALIFY FOR?

See Comparison Chart – [Oregonlawhelp.org](http://Oregonlawhelp.org)

## CAN BE HELPFUL AND HURTFUL

Is Defendant in custody/Non-contact order ?

Client can be questioned by opposing counsel.

## BE PREPARED

Treat it like a trial. Witnesses/Exhibits/etc

Give the court notice of a multiday hearing. (15mins)



# DIVORCE PROCEEDING

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## IMMEDIATE INTRODUCTION

I am here to help.

Most divorce decrees have a mutual release.

## IF THERE ARE ASSETS

What is client entitled to absent the tort?

That is the floor.

Additional consideration for the tort.

# PARALLEL PROCEEDING

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## SETTLEMENT EARLY AND OFTEN

Insert yourself in the judicial settlement conference.

Schedule a global mediation.

## ETHICAL ISSUES

Rule 3.4 (b) – your client is a witness. Offer to pay contingent upon the content of testimony; outcome of the case....etc

Rule 3.4(g) – threaten to present criminal charges to obtain an advantage in a civil matter... etc

That is why you want a mediator, make it clear that your client's participation in the criminal matter, testimony, cooperation and/or endorsement of plea agreement is not contingent on the settlement.

# PARALLEL PROCEEDING

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## IF YOUR CLIENT TESTIFIES

You want to prep your client. Mock cross-exam – remember your sessions are privileged.

Do you want to be present? (bias/interest/motive)

## CIVIL COMPROMISE

Non-DV/Non-DUII– Chargeable as a misdo

Bench memo – contact me for example

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Sean J. Riddell, P.C.  
2905 NE Broadway St.,  
Portland, OR 97232  
Sean.Riddell@Live.com  
971 219 8453

"You must never confuse faith that you will prevail in the end - which you can never afford to lose - with the discipline to confront the most brutal facts of your current reality, whatever they might be."

-Vice Admiral James Bond Stockdale, USN, MOH, POW

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF DESCHUTES

STATE OF OREGON, )  
 ) Case No. XXXXXX  
Plaintiff, )  
 ) NOTICE OF APPEARANCE OF  
v. ) COUNSEL AND ASSERTION OF  
XXXXXXXXXX ) RIGHTS  
 )  
Defendant. )  
 )

xxxxxxx, listed victim in the above captioned matter, by and through her attorneys, Erin Greenawald and Sean Riddell, hereby provides the Court and parties with notice that the victim is represented by counsel. She hereby asserts all of her rights as a crime victim under Article I, §§ 42 and 43 of the Oregon Constitution and the Oregon Revised Statutes, and all other victim rights as allowed by law.

The listed victim further specifically asserts her right to speedy disposition of the case, her right to be consulted about the plea negotiations in this case, her right to refuse all discovery requests from the defendant, and her right to be informed in advance of any critical stage of these proceedings.

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1 NOTICE OF APPEARANCE OF COUNSEL

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Court notices should be addressed to:

Erin Greenawald  
Greenawald Law  
2905 NE Broadway  
Portland, OR 97232

Dated April 14, 2020.

/s/ Erin S. Greenawald  
Erin S. Greenawald, OSB#990542

/s/ Sean J. Riddell  
Sean J. Riddell OSB#013943  
Attorneys for Barbara Seaman

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2  
3 **CERTIFICATE OF SERVICE**

4 I certify that I served a true and correct copy of the foregoing NOTICE OF  
5 APPEARANCE OF COUNSEL AND ASSERTION OF RIGHTS on the date indicated on the  
6 signature line below by email and USPS to the following persons:

7 Deschutes County District Attorney’s Office  
8 Attn: Brandi Shroyer  
9 Deschutes County Courthouse  
10 1164 NW Bond St.,  
11 Bend, OR 97703  
12 Email: brandi.shroyer@dca.us  
13 Attorney for Prosecutor’s Office

14 Valerie Wright  
15 1222 NE 4<sup>th</sup> St  
16 Bend, OR 97701  
17 Email: valerie@lawyersofbend.com  
18 Attorney for Defendant

19 Dated April 14, 2020.

20 /s/ Erin S. Greenawald  
21 Erin S. Greenawald, OSB#990542

22 /s/ Sean J. Riddell  
23 Sean J. Riddell OSB#013943  
24 Attorneys for Barbara Seaman

## PRESERVATION LETTER

September 29, 2020

XXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX

Subject: incident date

To Whom It May Concern:

The purpose of this letter is to respectfully request that you take reasonable steps to preserve evidence relevant to the assault of xxxxxx or incident xxxxxx that occurred on your premise located at xxxxxx on xxxxxx.

You should anticipate that much of the information subject to disclosure or responsive to discovery in this matter is stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones). Electronically stored information (hereinafter "ESI") should be afforded the broadest possible definition and includes (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically or optically stored as:

- Digital communications (e.g., e-mail, voice mail, instant messaging);
- Word processed documents (e.g., Word or WordPerfect documents and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data files);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);



- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, Yahoo, blog tools);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and,
- Back Up and Archival Files (e.g., Zip, .GHO)

ESI resides not only in areas of electronic, magnetic and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You are obliged to preserve potentially relevant evidence from both these sources of ESI, even if you do not anticipate producing such ESI.

The demand that you preserve both accessible and inaccessible ESI is reasonable and necessary. Pursuant to amendments to the Federal Rules of Civil Procedure that have been approved by the United States Supreme Court (eff. 12/1/06), you must identify all sources of ESI you decline to produce and demonstrate to the court why such sources are not reasonably accessible. For good cause shown, the court may then order production of the ESI, even if it finds that it is not reasonably accessible. Accordingly, even ESI that you deem reasonably inaccessible must be preserved in the interim so as not to deprive the plaintiffs of their right to secure the evidence or the Court of its right to adjudicate the issue.

### **Preservation Requires Immediate Intervention**

You must act immediately to preserve potentially relevant ESI including, without limitation, information with the earlier of a Created or Last Modified date on or after the purchase/ordering of the table in question through the date of this demand and concerning, the events and causes of action described above. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques and protocols suited to protection of ESI. Be advised that sources of ESI are altered and erased by continued use of your computers and other devices. Booting a drive, examining its contents or running any application will irretrievably alter the evidence it contains and may constitute unlawful spoliation of evidence. Consequently, alteration and erasure may result from your failure to act diligently and responsibly to prevent loss or corruption of ESI.

Nothing in this demand for preservation of ESI should be understood to diminish your concurrent obligation to preserve document, tangible things and other potentially relevant evidence.

### **Suspension of Routine Destruction**

You are directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things, and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further directed to immediately identify and modify or suspend features of your information systems and

devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using data or media wiping, disposal, erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
- Re-assigning, re-imaging or disposing of systems, servers, devices or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server or IM logging; and,
- Executing drive or file defragmentation or compression programs. <sup>[1]</sup>Guard Against Deletion <sup>[1]</sup>You should anticipate that your employees, officers or others may seek to hide, destroy or alter ESI and act to prevent or guard against such actions. Especially where company machines have been used for Internet access or personal communications, you should anticipate that users may seek to delete or destroy information they regard as personal, confidential or embarrassing and, in so doing, may also delete or destroy potentially relevant ESI. This concern is not one unique to you or your employees and officers. It's simply an event that occurs with such regularity in electronic discovery efforts that any custodian of ESI and their counsel are obliged to anticipate and guard against its occurrence. You should anticipate that certain ESI, including but not limited to spreadsheets and databases, will be sought in the form or forms in which it is ordinarily maintained. Accordingly, you should preserve ESI in such native forms, and you should not select methods to preserve ESI that remove or degrade the ability to search your ESI by electronic means or make it difficult or burdensome to access or use the information efficiently in the litigation.

You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible

With respect to servers like those used to manage electronic mail (e.g., Microsoft Exchange, Lotus Domino) or network storage (often called a user's "network share"), the complete contents of each user's network share and e-mail account should be preserved. There are several ways to preserve the contents of a server depending upon, e.g., its RAID configuration and whether it can be downed or must be online 24/7. If you question whether the preservation method you pursue is one that we will accept as sufficient, please call to discuss it.

### **Home Systems, Laptops, Online Accounts and Other ESI Venues**

Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems may contain potentially relevant data. To the extent that officers, board members or employees have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, you must preserve the contents of systems, devices and

media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD-R disks and the user's PDA, smart phone, voice mailbox or other forms of ESI storage.). Similarly, if employees, officers or board members used online or browser-based e-mail accounts or services (such as AOL, Gmail, Yahoo Mail or the like) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved.

### **Ancillary Preservation**

You must preserve documents and other tangible items that may be required to access, interpret or search potentially relevant ESI, including logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction sheets, data entry forms, abbreviation keys, user ID and password rosters or the like.

You must preserve any passwords, keys or other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals and license keys for applications required to access the ESI.

You must preserve any cabling, drivers and hardware, other than a standard 3.5" floppy disk drive or standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives and other legacy or proprietary devices.

### **Paper Preservation of ESI is Inadequate**

As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both forms.

### **Agents, Attorneys and Third Parties**

Your preservation obligation extends beyond ESI in your care, possession or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you must notify any current or former agent, attorney, employee, custodian or contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you must take reasonable steps to secure their compliance.

In the event you deem it impractical to sequester systems, media and devices, we believe that the breadth of preservation required, coupled with the modest number of systems implicated, dictates that forensically sound imaging of the systems, media and devices is expedient and cost effective. As we anticipate the need for forensic examination of one or more of the systems and the presence of relevant evidence in forensically accessible areas of the drives, we demand that you employ forensically sound ESI preservation methods. Failure to use such methods poses a significant threat of spoliation and data loss.

By "forensically sound," we mean duplication, for purposes of preservation, of all data stored on the evidence media while employing a proper chain of custody and using tools and methods that make no changes to the evidence and support authentication of the duplicate as a true and complete bit-for-bit image of the original. A forensically sound preservation method guards against changes to metadata evidence and preserves all parts of the electronic evidence, including in the so-called "unallocated clusters," holding deleted files

## **Preservation Protocols**

We are desirous of working with you to agree upon an acceptable protocol for forensically sound preservation and can supply a suitable protocol, if you will furnish an inventory of the systems and media to be preserved. Else, if you will promptly disclose the preservation protocol you intend to employ, perhaps we can identify any points of disagreement and resolve them. A successful and compliant ESI preservation effort requires expertise. If you do not currently have such expertise at your disposal, we urge you to engage the services of an expert in electronic evidence and computer forensics. Perhaps our respective experts can work cooperatively to secure a balance between evidence preservation and burden that's fair to both sides and acceptable to the Court.

I'm available to discuss reasonable preservation steps; however, you should not defer preservation steps pending such discussions if ESI may be lost or corrupted as a consequence of delay. Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay in production of evidence to which we are entitled, such failure would constitute spoliation of evidence, and we will not hesitate to seek sanctions.

Respectfully,

**IN THE CIRCUIT COURT FOR THE STATE OF OREGON**  
**FOR THE COUNTY OF WASHINGTON**

PLAINTIFF,

Plaintiff,

v.

DEFENDANT,

Defendant.

CASE NO. xxxxxxxx

PLAINTIFF'S MOTION TO STAY  
DISCOVERY

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Comes now, Plaintiff, by and through her counsel, xxxxxx, hereby moves the Court to Stay Discovery in the above action pending the outcome of State v. xxxxxx Washington County Case #xxxxxx and/or quash the subpoena for deposition directed at plaintiff and subpoena duces tecum directed at plaintiff.

**UTCR 5.050 INFORMATION**

Time requested for oral argument:	30 min
Telephonic argument requested:	Yes
Court reporting services requested:	Yes

**UTCR 5.101 COMPLIANCE**

Counsel for plaintiff made a good faith effort to confer with counsel for the defendant on the issues raised in this motion. The parties were unable to resolve certain issues, necessitating the filing of this motion.

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## STATEMENT OF FACTS

XXXXXXXXXX

### ARGUMENT

#### **1. The Court should stay discovery because the stay is “in the interests of justice.”**

Courts have the authority to stay civil proceedings or civil discovery pending the outcome of a related criminal action when to do so would be in “the interests of justice.” *United States v. Kordel*, 397 US 1, 12 n.27 (1970); *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9<sup>th</sup> Cir. 1995) (quoting *Kordel*). This power to stay proceedings is part of a court’s inherent power to “control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 US 248, 254 (1936).

When deciding whether to stay proceedings in the face of a related criminal case, courts must consider the particular circumstances and competing interests involved in the case. *Landis*, 299 US at 254-255. The party requesting the stay bears the burden of demonstrating that the stay is necessary. *Id.*, at 255.

Oregon courts have not yet articulated specific factors that a court must consider when deciding whether a stay is in the interests of justice. Most jurisdictions consider the same core factors when making a decision: (1) the extent to which the issues presented in the criminal case overlap with those presented in the civil case, including the extent to which pretrial proceedings implicate the defendant’s Fifth Amendment rights; (2) the status of the criminal case, including whether the defendant has been indicted; (3) the interests of any party in staying the proceeding; (4) the prejudice to any party from staying the proceeding; (5) the interests of nonparties; (6) court convenience; and (7) the interest of the public in the civil and criminal litigation. *See, e.g., Keating*, 45 F.3d at 324; *Dominguez v. Hartford Financial Serv’s Grp., Inc.*, 530 F.Supp.2d 902, 905 (S.D. Tex. 2008); *State v. Deal*, 740 N.W.2d 755, 766 (Minn. 2007); *King v. Olympic Pipeline Co.*, 16

P.3d 45, 52-53 (Wash. Ct. App. 2000). The balance of factors for or against a stay may change over time as the criminal case develops. Under the above factors, the court should find that the factors weigh in favor of granting a stay.

(1) The issues presented in both the criminal case and the civil case are the same – they involve the same or similar types of abuse perpetrated by defendant against plaintiff. Testimony about defendant’s abuse of the victim would be the same in both the civil and criminal cases. Without staying discovery, the defendant would be obligated to produce documents, answer questions at a deposition and answer requests for admission in violation of his 5<sup>th</sup> Amendment right to remain silent.

(2) On or about March 2, 2020, the Washington County District Attorney’s Office charged defendant with Sexual Abuse in the Third Degree – ORS 163.415 listing xxxxxxxx was the victim, and Harassment – ORS 166.065 listing plaintiff, xxxxx as the victim. Washington County Criminal Case #xxxxxxx . The criminal case is currently not set for trial due to COVID-19 restrictions.

(3) The interests of plaintiff in staying discovery in this case are strong. Plaintiff is in fear of defendant and, at this time, would suffer emotional and psychological harm if forced to attend a deposition, likely at his attorney’s office, which would cause her to be in the same room as defendant. Furthermore, any discovery provided in the civil case, would be available to the defendant and therefore available to the criminal defense attorney.

(4) Defendant would not be prejudiced by staying the deposition in this case. As there is now a criminal case pending, defendant, as a criminal defendant, is entitled to discovery from the State, including all police reports and other recorded statements of the victim made about the abuse alleged in the indictment. Thus, defendant is in possession of a full statement of the petitioner, along with police reports identifying other witnesses and evidence.

(5) The interests of a nonparty, the State of Oregon, in staying the discovery in this case are strong. As further discussed below, the victim has a right to refuse a discovery or deposition request from a criminal defendant. To allow the defendant to depose the plaintiff or request documents about the very same facts that form the basis of the criminal case would be allowing a defendant to circumvent the protections put in place by the Oregon Constitution and Oregon's criminal statutes.

(6) Staying discovery in this case will not inconvenience the court. There are currently no scheduled appearances or deadlines set by the court in this matter. In addition, the circumstances created by the COVID-19 pandemic have required this court to take extraordinary measures to protect the health and safety of judges, court staff, and all those who visit the courthouse. The result of said measures is that there is an unavoidable backlog of criminal and civil cases.

(7) The interest of the public in criminal and civil litigation weighs in favor of staying discovery. Forcing a plaintiff to engage in discovery at defendant's request circumvents the protections set forth in Oregon statutes regarding the criminal discovery process. This point is further discussed below.

Weighing all the above factors, the court should find that it is in "the interests of justice" to stay discovery at this time.

**2. The Court should issue a protective order preventing or staying discovery under ORCP 36(C) for "good cause."**

Oregon Rule of Civil Procedure 36(C) authorizes courts, upon showing of "good cause," to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Or. R. Civ. P. 36(C). Such an order may provide that discovery not be had, that the discovery be had only on specified terms and conditions,



that the discovery may only be taken by a method other than that selected by the party seeking discovery, or that the discovery be limited to certain matters. *Id.*

To show “good cause” for the protective order, a party must provide the court with a substantial and concrete reason for the requested protection. *See State v. Pettit*, 675 P.2d 183, 185 (Or. Ct. App. 1984) (analyzing the term “good cause” and concluding that “[i]n the context of the discovery statutes, good cause means a substantial reason – one that affords a legal excuse.”)

Oregon courts have not ruled directly on the issue of a victim’s request for a protective order to stay discovery during the pendency of a related criminal case. Case law from other jurisdictions suggests that a victim would be able to establish “good cause” where allowing the defendant to proceed with discovery would violate the victim’s rights or enable the defendant to circumvent criminal discovery. *See, e.g. State v. Lee*, 245 P.3d 919, 923-24 (Ariz. Ct. App. 2011) (concluding that trial court erred when it denied the state’s requests for a protective order in criminal and civil cases to prevent the pretrial depositions of crime victims where the victims had a constitutional right to refuse a defendant’s deposition request); *State v. Deal*, 740 N.W.2d 755, 765 (Minn. 2007) (finding that the public policy of “[m]aintaining the integrity of a criminal proceeding by preventing circumvention of the criminal discovery rules” can constitute “‘good cause’ to issue a protective order staying civil discovery”).

“Good cause” also exists for a protective order staying some or all civil discovery during the pendency of a related criminal case where the victim can show that the stay is necessary to protect her from harassment or intimidation by the defendant. *See State ex rel Anderson v. Miller*, 882 P.2d 1109, 1111-1112 (recognizing that a protective order might be necessary to protect a civil litigant from intimidation or harassment by the opposing party, but finding that the trial court erred in issuing a protective order where “the record contains no factual basis to support a [protective order] ruling based on intimidation or harassment”). Finally, a victim has “good cause” for a

protective order where the victim can demonstrate that allowing the defendant to proceed with discovery would put the victim's emotional and psychological health at risk. *Deal*, 740 N.W.2d at 767 (noting that the risk of a civil deposition intimidating or harassing a crime victim is high where the victim is a minor who was sexually assaulted by the criminal defendant seeking to civilly depose her).

In this case, the plaintiff requests the stay in order to prevent circumvention of the criminal discovery process, to uphold her rights as a crime victim, and to protect her from unnecessary embarrassment, harassment, intimidation, and emotional and psychological harm.

*a. The Court should stay discovery because allowing the deposition would allow the defendant to circumvent the criminal discovery process.*

The scope and methods of discovery in a criminal case are much narrower than those available in a civil case. Oregon law does not afford defendants the right to depose potential state's witnesses. *State ex rel. O'Leary*, 769 P.2d 188, 192 (Or. 1989). Criminal depositions in Oregon are not discovery devices, but instead are tools to *preserve* witness testimony. ORS 136.080, 135.420.

These differences reflect the legislature's determination of what processes best accomplish the different purposes of civil litigation and criminal prosecution. *State v. Bonebrake*, 736 P.2d 1020, 1023 (Or. 1987). If the defendant is permitted to depose the plaintiff while she is a named victim in a criminal case based upon the same abuse alleged in her civil suit, this use of civil discovery would undermine this careful legislative determination.

*b. The Court should stay discovery because allowing discovery would violate the plaintiff's rights, as a crime victim, to refuse a defense discovery request and be protected from the defendant.*

The Oregon Constitution guarantees crime victims "[t]he right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf

of the criminal defendant, provided, however, that nothing in this paragraph shall restrict any other constitutional right of the defendant to discovery against the state.” Or. Const. Art 1, Sec 42. Similarly, under Oregon statute, “[a] victim may not be required to be interviewed or deposed by or give discovery to the defendant or defendant’s attorney unless the victim consents.” ORS 135.970(3). Allowing a criminal defendant to circumvent such protections through civil discovery conflicts with the plain language of these rights.

Crime victims also have “[t]he right to be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process.” Or. Const. Art 1, Sec 43(1)(a). Allowing defendant to depose plaintiff would remove a protection built into the criminal justice process and would undermine the purpose of these rights.

The Arizona Court of Appeals reached a similar conclusion in *State v. Lee*, 245 P.3d 919 (Ariz. Ct. App. 2011). Like Oregon’s constitution, Arizona’s constitution guarantees a crime victim the right “[t]o refuse an interview, deposition, or other discovery request by the defendant, defendant’s attorney, or the person acting on behalf of the defendant.” Ariz. Const. Art. II, Sec 2.1(A)(5). In *Lee*, the court held that “victims retain their constitutional right to refuse to be deposed by defense in a civil proceeding where the subject matter of the proposed deposition is the criminal offense committed against the victim.” 245 P.3d at 920. The court found that “even if the right to refuse to be deposed is limited to the duration of the criminal justice process, a victim may assert that right in any venue during that time.” *Id.* At 923-24. Noting that the purpose of the right “is to protect victim privacy and minimize contact with the defendant prior to trial,” the court concluded that “[a]ny deposition about the offense would expose victims to the very harm against which the [Victims Bill of Rights] protects... [T]he right to refuse to be deposed is immediately and completely defeated if the defendant can compel a victim to submit to a deposition in a separate proceeding.” *Id.* (internal citations omitted).

Similarly, to avoid undermining the rights of crime victims in Oregon, and the rights of plaintiff, the court should grant the request to stay the deposition in this case.

*c. The Court should stay discovery in order to protect Plaintiff from annoyance, embarrassment, oppression, undue burden, and intimidation and harassment by Respondent.*

The plaintiff in this case is especially prone to embarrassment, intimidation, and harassment by the defendant through this request for discovery because she is a victim, at defendant's hands, of physical violence and/or harassment. Plaintiff has already provided statements to the police and her employer. Petitioner does not want to be in the same room as defendant, as she has already been physically assaulted by defendant and would suffer further emotional and mental harm by being forced to comply with discovery or a deposition. Defendant's demand for discovery is, plainly speaking, a tactic of abuse; a sophisticated tactic of abuse, but abuse, nonetheless. Plaintiff is willing to testify as required in the civil and criminal cases, but should not, at this time, be subjected to the further questioning or civil discovery demands.

**3. The court should grant Plaintiff's request to stay discovery based on precedent of this and other Oregon circuit court(s).**

In *State v. Carrillo*, 16CR21979, the court granted the State's Motion to Quash Civil Subpoena related to the victim's FAPA case. In that case, the defendant argued that since the FAPA case is civil, defendant should be allowed to depose the petitioner per the Oregon Rules of Civil Procedure (ORCP). Defendant additionally argued that the protections against depositions in a criminal case to do not extend to FAPA proceedings. The State argued, as plaintiff does here, that victims have statutory and constitutional rights to refuse to submit to a deposition or other discovery requests by a criminal defendant or any person acting on behalf of that defendant. The State also argued that in a FAPA proceeding, when a parallel criminal case is pending, this

constitutional right precludes the criminal / civil defendant from deposing the victim / petitioner. The court agreed with the State and granted the State's motion.

There have been other such cases and findings around the state such as in *State v. Jerrid Jay Edwards*, Lane County Case 22-13-10951. In that case, the State filed a Motion to Assert Victim's Right to Refuse Interview, Deposition, or Other Discovery Request. The Circuit Court granted the State's Motion. The defendant filed a mandamus with the Oregon Supreme Court. The Supreme Court declined to take up the mandamus.

### CONCLUSION

For the above-stated reasons the court should find good cause to stay discovery in this case until the related criminal case is adjudicated. Our client's dual positions as victim in a criminal case and plaintiff in a civil matter cannot and should not be divested of one another. Her constitutional and statutory rights as a crime victim should not be limited by virtue of having filed a civil lawsuit, to meet statute of limitations requirements, against her abuser.

Plaintiff prays for the court to issue an order staying discovery in *Smith v. Smtih Case* # xxxxxx pending the resolution of the *State v. xxxxxx Case* #xxxxxxx.

Dated: October 14, 2021.

/s/ \_\_\_\_\_

**Comparison Chart of Protective Orders in Oregon**  
 Current as of September 2021

	FAPA Family Abuse Prevention Act Restraining Order, ORS §107.700 – 735	EPPDAPA Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order, ORS §124.005 – 040	SAPO Sexual Abuse Protective Order, ORS §163.760 – 777	SPO Stalking Protective Order, ORS §163.730 – 755 (criminal and civil citation route) & ORS §30.866 (civil petition route)	ERPO Extreme Risk Protection Order, ORS §166.525 – 543	EPO Emergency Protective Order, ORS §133.035
<b>ELIGIBILITY</b>						
<b>Relationship between petitioner and respondent</b>	Respondent must be petitioner’s “family or household member,” which is defined as: <ul style="list-style-type: none"> <li>• Spouse / former spouse</li> <li>• Adults related by blood, adoption, or marriage</li> <li>• Person who is cohabitating or formerly cohabitated with petitioner (cohabitate implies sexual relationship)</li> <li>• Former sexual partner (within last 2 years)</li> <li>• Parent of petitioner’s child (ORS 107.705(4))</li> </ul>	Petitioner and respondent do not have to have a particular relationship. However, the respondent cannot be the person’s guardian or conservator (ORS 124.010(1)(c),(8)).  Petitioner must be: 65 years or older, OR Person with a disability Guardian or guardian ad litem for an elderly person or person with a disability (ORS 124.010(1))	<b>Adult petitioners</b> --respondent <i>cannot</i> be a household or family member as defined by FAPA statute. (ORS 163.763(a); ORS 163.760(1); ORS 107.705)  <b>Minor petitioners</b> —can obtain a SAPO against a family member or intimate partner in limited situations (ORS 163.763(1)(a); ORS 107.705).	Petitioner and respondent do not have to have a particular relationship (See ORS 30.866 generally)	Petitioner must be either: <ul style="list-style-type: none"> <li>• Law enforcement officer (OSP, Sheriff, city police, tribal police; not campus security), or</li> <li>• <b>Family or household member</b>, which is defined as:                             <ul style="list-style-type: none"> <li>○ Spouse</li> <li>○ Intimate partner</li> <li>○ Parent, sibling, or child of respondent</li> <li>○ Any person living in the same household as respondent. (ORS 166.525(2); ORS 166.527(1))</li> </ul> </li> </ul>	Respondent must be “family or household member” as defined in FAPA. (see first column) (ORS 133.035(1)(a)(B), ORS 107.705(4))  NOTE: peace officer applies for order on behalf of the victim of abuse. The parties are the “protected person” and the respondent. (ORS 133.035(1))
<b>Does petitioner have to be over 18 to apply?</b>	Minors may obtain a FAPA in limited circumstances. The respondent must be over 18 and must be petitioner’s: Spouse / former spouse	No, but minor petitioner would require a guardian ad litem (ORCP 27B).	A person 12 years or older may petition court for a restraining order. If younger than 12, petitioner must apply through a parent, guardian, or guardian	No, but minor petitioner would require a guardian ad litem (ORCP 27B). A parent or guardian can also present a complaint for a stalking	No, but minor petitioner would require a guardian ad litem (ORCP 27B).	N/A, peace officer responding to a domestic violence incident applies. (ORS 133.035(1))  However, the protected

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	Person with whom they have been involved in a sexually intimate relationship at any point in time (no 2-year limit) (ORS 107.726)		ad litem (ORS 163.763(2)(a)).	citation to protect a minor or dependent person. (ORS 163.744(3)).		person may be a minor in certain circumstances
<b>Does the respondent have to be over 18?</b>	Yes (ORS 107.726(2)).	Unclear. Nothing in the EPPDAPA statute prohibits the action but see ORS 419B.100(1)(c) re exclusive jurisdiction of Juvenile Court over minor whose condition or circumstances endanger self or others.  If filed against a minor respondent, a guardian ad litem is required (ORCP 27B).	Yes (ORS 163.763(1)(b)).	No; In addition the Court <i>may</i> enter an order against a minor respondent without a GAL (ORS 30.866(5)).	Unclear. Nothing in the ERPO statute prohibits the action but see ORS 419B.100(1)(c) re exclusive jurisdiction of Juvenile Court over minor whose condition or circumstances endanger self or others.  If filed against a minor respondent, a guardian ad litem is required (ORCP 27B).	The Respondent may be a minor in certain circumstances
<b>Types of abuse that qualify petitioner for the order</b>	Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury Intentionally, knowingly, or recklessly placing the petitioner in fear of imminent bodily injury Causing petitioner to engage in sexual relations by force or	Physical injury caused by non-accidental means or at variance with given explanation Neglect leading to physical harm Abandonment by a person who owes duties of care to an elderly person or person with disability Willful infliction of	Sexual abuse, which means sexual contact with: A person who does not consent to the sexual contact* A person who is incapable of consenting due to incapacity (ORS 163.760(2))  * Sexual Contact is any	Intentionally, knowingly, or recklessly engaging in two or more unwanted contacts* that alarmed or coerced the petitioner or member of the petitioner's family or household (ORS 30.866(1)).  * Contacts include	Abuse to petitioner is not required.  Petitioner must show that respondent represents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person. (ORS 166.527(6)(a))	The circumstances for mandatory arrest exist (an assault between family or household members, OR one person has placed the other in fear of imminent serious physical injury), <b>OR</b> The person is in immediate danger of abuse by a family or

**Comparison Chart of Protective Orders in Oregon**  
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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	threat of force (ORS 107.705(1))	physical pain or injury Verbal abuse (see statute for definition) Threats of physical or emotional harm Sweepstakes abuse (see statute for definition) Wrongfully taking or threatening to take money or property Nonconsensual sexual contact (ORS 124.005(1))	touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party. (ORS 163.305)	coming into the visual presence of the other person, following the other person, waiting outside their home, damaging property, speaking with the person, and more (ORS 163.730(3)).	Court must consider certain mandated elements: <ul style="list-style-type: none"> <li>• History of suicide attempts or threats</li> <li>• Acts of violence against another person</li> <li>• History of use, attempted use, or threatened use of physical force against another person</li> <li>• Previous conviction for stalking, misdemeanors involving violence, or offenses involving domestic violence</li> <li>• DUII</li> <li>• Cruelty or abuse of animals</li> <li>• Unlawful use of controlled substances</li> <li>• Prior use or display of deadly weapons</li> <li>• Prior violations of FAPA orders</li> <li>• Efforts to acquire weapon in last 6 months</li> </ul> (ORS 166.527(4))	household member (ORS 133.055(2))



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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
<b>Timing of abuse</b>	Abuse must have occurred within last 180 days. Can exclude periods of time where respondent was in jail or lived more than 100 miles from the petitioner's residence (ORS 107.710(1),(6)).	Abuse must have occurred within last 180 days. Can exclude periods of time where respondent was in jail or lived more than 100 miles from the petitioner's residence (ORS 124.010(1),(6)).	There is no time limit for when the abuse occurred.	Stalking contacts must have taken place within last 2 years (ORS 30.866(6)).	Statute implies that the conduct must be ongoing or recent since the risk must be in near future or imminent.	Statute implies timing of abuse must have been recent. Peace officer must be responding to a domestic disturbance and the person must be in immediate danger (ORS 133.035(1)).
<b>Number of incidents of abuse</b>	One incident of abuse (ORS 107.710(1)).	One incident of abuse (ORS 124.010(1)).	One incident of abuse (ORS 163.763(2)(B))	2 or more stalking contacts (ORS 163.73(7)).	No minimum number of incidents	One incident of abuse (ORS 133.055)
<b>Additional requirements</b>	1. Petitioner must be in <b>imminent danger</b> of further abuse <i>(required for issuance of initial order only)</i> 2. Respondent must be a <b>credible threat</b> to the physical safety of petitioner or petitioner's child. (ORS 107.718(1))	Petitioner must be in <b>immediate &amp; present danger</b> of further abuse (ORS 124.010(1)).	1. Petitioner must have <b>reasonable fear</b> for their physical safety with respect to the respondent (ORS 163.763(2)(b)(A)). 2. Respondent must not be prohibited from contacting petitioner by any other restraining or no contact order (ORS 163.763(1)(c)).	1. Victim's feeling of alarm or coercion must be <b>objectively reasonable</b> 2. Repeated and unwanted contacts must cause the victim <b>reasonable apprehension</b> regarding their personal safety/safety of immediate family (ORS 30.866(1)) If stalking contacts are purely communicative, contact must contain an unambiguous, unequivocal, and specific threat, and petitioner must believe the respondent intends	Issuance of an ERPO is mandatory if the court finds by clear and convincing evidence that the respondent presents a risk in the near future, including an imminent risk, of suicide or causing physical injury to another. (ORS 166.527(6)(a))	Emergency protective order must be <b>necessary</b> to prevent further abuse

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
				to carry out the threat ( <i>State v. Rangel</i> ).		
<b>PROCEDURE</b>						
<b>How to apply</b>	Forms available at courthouse or online at <a href="http://www.courts.oregon.gov">www.courts.oregon.gov</a> . Petitioner files paperwork in circuit court of county where petitioner or respondent resides (ORS 107.728)	Forms available at courthouse or online at <a href="http://www.courts.oregon.gov">www.courts.oregon.gov</a> v. Petitioner, guardian, or guardian ad litem files paperwork in circuit court in county where petitioner or respondent resides (ORS 124.012).	Forms available at courthouse or online at <a href="http://www.courts.oregon.gov">www.courts.oregon.gov</a> v. Petitioner for restraining order must be filed in circuit court in the county where petitioner or respondent resides (ORS 163.763(2)(a)).	Two routes: <b>1. Civil petition:</b> Person files petition in circuit court in county where respondent resides or where one incident of stalking occurred (ORS14.080(1)), or <b>2. Stalking citation:</b> Police can issue a citation upon receipt of a complaint that stalking has occurred (ORS 163.735).	Forms available at courthouse or online at <a href="http://www.courts.oregon.gov">www.courts.oregon.gov</a> . Petitioner applies to circuit court in an ex parte proceeding.	Peace officer applies to a circuit court in an ex parte proceeding. Protected person must consent to the application (ORS 133.035(1)).
<b>Filing Fees</b>	No filing, service, or hearing fees (ORS 107.718(8)).	No filing, service, or hearing fees (ORS 124.020(7));	No filing, service, or hearing fees (ORS 163.777(1)).	No filing, service, or hearing fees (ORS 30.866(9)).	No filing, service, or hearing fees (ORS 166.527(11)).	No filing, service, or hearing fees (ORS 133.035).
<b>Ex Parte Hearing</b>	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by telephone (ORS 107.718(1)).	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by telephone (ORS 124.020).  The required showing at ex parte does not have to be made by the victim, it can also be	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by telephone (ORS 163.765(1)).	<b>Civil petition:</b> court holds ex parte hearing same day or next day after petition is filed (ORS 30.866).  <b>Stalking citation:</b> no ex parte hearing, police officer issues citation requiring respondent to appear in court in 3 days to show cause	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by video. (ORS 166.527(2); 166.527(5)(b)).  Hearing can be continued for good cause (ORS	No hearing requirement. Peace officer submits the proposed order and supporting declaration ex parte to the on-call judge (ORS 133.035(1), (9)).

**Comparison Chart of Protective Orders in Oregon**  
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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
		made by a guardian, GAL, a witness to abuse, or Adult Protective Services worker who conducted an investigation (ORS 124.020(3)).		why a protective order should not be entered against them (ORS 163.735(1)).	166.527(5)(c).  If court declines to enter the order, court must state with particularity the reasons for the denial on the record (ORS 166.527(12)).	
<b>Contested Hearing</b>	Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 107.718(10)(a)), or if court sets an exceptional circumstances (EC) hearing.  EC hearing is set if there are concerns about petitioner's request for custody. EC hearing is also contested hearing and respondent's only opportunity to object to restraining order (ORS 107.716(2)(a),(c)).  If no EC hearing is set and respondent fails to contest the order within 30 days, it is	Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 124.020(9)).  Protected person can also request a hearing if GAL or guardian applied for order on their behalf (ORS 124.010(7)(c),(d)).  Court must provide petitioner with a copy of respondent's hearing request (ORS 124.020(9)(b)).  Hearing can be held by telephone (ORS 124(9)(c)).	Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 163.765(6)(a)).  Note: The Court may order that the SAPO be served by alternative service per ORCP 7D(6).  If respondent fails to appear or contest the order within 30 days, the order is upheld by operation of law. (ORS 163.765(7)).  Court must provide petitioner with a copy of respondent's hearing request (ORS 163.765(6)(b)).  Note: Rape Shield Law	<b>Civil petition:</b> Show cause hearing is automatically set by court when a temporary stalking order is granted at ex parte hearing. Respondent is required to personally appear at the hearing. If respondent fails to appear at hearing, court <b>may</b> issue a warrant, continue hearing for 30 days, or enter a permanent stalking order (ORS 30.866(3); ORS 163.738; ORS 133.110).  <b>Stalking citation:</b> Show cause hearing is automatically set when a police officer issues a citation. Respondent must be given an	Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 166.527(9)(a)).  Court must provide petitioner with a copy of Respondent's request for hearing and notify both parties of date and time of hearing (ORS 166.527(9)(b)).  Oregon Evidence code applies but court may consider testimony of parties or any witness or consider sworn affidavits of parties or any witness. Court may examine the parties and witnesses. (ORS	No contested hearing available because of temporary nature of order

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	<p>upheld by operation of law ((ORS 107.718(11)).</p> <p>To continue a FAPA after a contested hearing, court must find:</p> <ol style="list-style-type: none"> <li>1. Petitioner reasonably fears for their physical safety, and</li> <li>2. Respondent represents a credible threat to the safety of petitioner or petitioner's children.</li> </ol> <p><i>Note: The "imminent danger of further abuse" finding is no longer required to continue a FAPA after hearing.</i></p> <p>Court must provide petitioner with a copy of respondent's hearing request (ORS 107.718(10)(b)).</p> <p>Parties may request to appear by phone. Court can waive requirement that motion for telephone testimony be filed 30 days before hearing. Court should</p>		<p>applies to the contested hearing (ORS 40.210, Rule 412)</p> <p>Parties may request to appear by phone. Court can waive requirement that motion for telephone testimony be filed 30 days before hearing. Court should consider expedited nature of proceeding and whether good cause exists. Good cause includes safety and welfare of the parties or witnesses (ORS 163.770).</p>	<p>opportunity to show cause why a courts stalking protective order should not be entered (ORS 163.738(2)(a)). If respondent fails to appear at hearing, court <b>shall</b> issue a warrant (ORS 163.738(4)). Temporary stalking order can be issued pending further proceedings. (ORS 163.738(2)(A))</p>	<p>166.530(1)(a); 166.530(2)(a)).</p> <p>Court may ensure at the contested hearing that a reasonable search has been conducted for criminal history records of the respondent (ORS 166.530(1)(b)).</p> <p>Court may not include MH diagnosis in findings, or draw nexus between mental illness and risk. (Court may apparently draw nexus between <i>conduct</i> and risk). (ORS 166.530(3)(d)).</p> <p>A continued order must include terms that weapons surrendered to law enforcement remain in LEA custody; date/time of issuance of order; date/time of expiration of order; local protocol for surrender of weapons (ORS 166.530(4)).</p> <p>Order terminating order must state</p>	

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	consider expedited nature of proceeding and whether good cause exists. (ORS 107.717(3)).				reasons on record with particularity (ORS 166.530(7)).  Respondent and Petitioner may each submit a written request to terminate order once during the 12 month effective period of the order and once during any 12 month renewal period of the order (ORS 166.533(1)).	
<b>Burden of proof</b>	Petitioner must prove claim by a preponderance of the evidence (ORS 107.710(2)).	Petitioner must prove claim by a preponderance of the evidence (ORS 124.010(2)).	Petitioner must prove claim by a preponderance of the evidence (ORS 163.763(2)(d)).	Temporary stalking order and stalking citation can be issued upon a finding of probable cause (ORS 30.866(2); ORS 163.735(1)).  Petitioner must prove claim by a preponderance of the evidence (ORS 30.866(7)).	Petitioner must prove claim by clear and convincing evidence (ORS 16.527(6)(a)).	Probable cause (ORS 133.035(1)).
<b>Timing of hearing</b>	Hearing must be held within 21 days of hearing request, <b>unless</b> respondent contests custody, then hearing must be held within 5	Court must hold a hearing within 21 days of the request for a hearing (ORS 124.015(1)).	Court must hold a hearing within 21 days of the request for a hearing (ORS 163.767).	<b>Civil petition:</b> Statute doesn't specify timeframe in which show cause hearing must be set.	Court must hold hearing within 21 days of respondent's request for hearing (ORS 166.527(9)(c)).	N/A

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	<p>days of request (ORS 107.716(1)).</p> <p>If court sets exceptional circumstance hearing, it must be held within 14 days. Respondent can request earlier hearing to be held within 5 days. (ORS 107.716(2)).</p>			<p><b>Stalking citation:</b> Show cause hearing occurs within three judicial days after issuance of stalking citation (ORS 163.735).</p>		
<b>Continuances</b>	<p><b>Discretionary continuances:</b> Court may extend hearing up to five days if one party is represented and the other party wishes to hire an attorney or hearing notice is inadequate to provide sufficient notice of hearing, (ORS 107.716(4)(a)).</p> <p><b>Mandatory continuance:</b> If respondent seeks to raise an issue not indicated in hearing request or petitioner seeks new relief not granted in the original order, other party is entitled to reasonable continuance to prepare</p>	<p><b>Discretionary continuances:</b> Court may extend hearing up to five days if one party is represented and the other party wishes to hire an attorney (ORS 124.015(3)).</p> <p><b>Mandatory continuance:</b> If respondent or victim seeks to raise an issue not raised in hearing request, other parties are entitled to a reasonable continuance to prepare a response. (ORS 124.020(9)(c)).</p>	<p><b>Discretionary continuances:</b> Court may extend hearing up to five days if one party is represented and the other party wishes to hire an attorney or hearing notice is inadequate to provide sufficient notice of hearing, (ORS 163.767(2)(b)).</p>	<p>Court <b>may</b> continue show cause hearing for up to 30 days (ORS 30.866(3)(a), ORS 163.738(2)(a)).</p>	<p>Court may continue the ex parte hearing, a contested hearing, a subsequent termination hearing, or a renewal hearing for “good cause.” Any order issued stays in effect during the continuance (ORS 166.527(5)(c); 166.530(2)(b); 166.533(3)(c)).</p>	N/A

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	a response (ORS 107.718(10(c))).					
<b>Length of restraining order</b>	One year, but order can be renewed upon a finding that a person in petitioner’s situation would reasonably fear further acts of abuse by respondent if order is not renewed. No need to prove further acts of abuse (ORS 107.718(3); ORS 107.725(1)).	One year, but order can be renewed upon “good cause shown.” No need to prove further acts of abuse (ORS 124.035).	Three possible durations: (1) Five years, but order can be renewed upon a finding that person in petitioner’s situation would reasonably fear for their physical safety if not renewed. No need to prove further acts of abuse (ORS 163.775(1)(a)).  (2) If petitioner is under 18, the SAPO is effective until January 1 <sup>st</sup> of the year following the year of Petitioner’s 18 <sup>th</sup> birthday or for 5 years, whichever occurs later. (ORS 163.765(8)(a)).  (3) Court shall enter a permanent order if respondent has been convicted of a crime described in ORS 163.355- 163.445 against petitioner. (ORS 163.765(8)(b)). Court may enter a permanent	Unlimited duration if judge signs a permanent order (ORS 163.738(b)).  Dismissal may be allowed under case law if grounds for order no longer exist; court’s inquiry should focus primarily on whether petitioner continues to suffer “reasonable apprehension” due to the past acts of the respondent. <i>Edwards v. Biehler, 203 Or.App. 271 (2005).</i>	One year, but order can be renewed (and further renewed) within 90 days of expiration at a hearing for which both parties receive notice and at which the petitioner proves that a predicate risk remains (ORS 166.527(10); 166.535(1); 166.535(4)).  Petitioner for renewal must be law enforcement or family/household member, but does not need to be the original petitioner (ORS 166.535(1)).	Expires 7 days after the judge signs the order (ORS 133.035(7)(a)).

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
			restraining order if it is objectively reasonable for petitioner to fear for their physical safety and the passage of time or change in circumstance would not dissipate that fear. (ORS 163.765(8)(c))			
<b>Modifications to protective orders</b>	Either party may request to modify temporary custody, parenting time, ouster, and no contact provisions upon "good cause shown." Request to modify must be made after 30 day hearing request period has passed. The petitioner can request ex parte to remove or make less restrictive ouster and no contact provisions. (ORS 107.730(1)(a)(b))	No procedure addressed in statute, but legislature seemed to anticipate amendments to order (see ORS 124.020(1))	Either party can request a modification upon "good cause shown." The petitioner may request to make the restraining order less restrictive through an ex parte motion. (ORS 163.775(2))	Not addressed in statute	Not addressed in statute	
<b>AVAILABLE RELIEF</b>						
<b>No contact provisions</b>	Respondent can be ordered to stop contacting petitioner in person, by telephone, and by mail. (ORS 107.718(1)(i))	Respondent can be restraining from abusing, intimidating, molesting, interfering with, or menacing the victim. (ORS 124.020(1)(c))	Respondent can be restrained from contacting petitioner and petitioner's children, family, or household members and from intimidating,	Order shall specify the type of contact respondent is to refrain from, including following the petitioner, waiting outside petitioner's	Not available	Restraint from contacting the person protected by order and restraint from intimidating, molesting, or interfering with protected person. (ORS



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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	<p>Respondent can be restrained from intimidating, harassing, interfering, and menacing petitioner and petitioner's custodial children. (ORS 107.718(1)(e), (f))</p> <p>Respondent can be restrained from entering a reasonable area around petitioner's residence, workplace, and other premises petitioner frequents (ORS 107.718(1)(c),(g)).</p>	<p>Respondent can be restrained from entering any premises if necessary to prevent further abuse. (ORS 124.020(1)(d))</p> <p>Respondent can be restrained from mailing sweepstakes promotions and ordered to remove petitioner from mailing list (ORS 124.020(1)(e)).</p>	<p>molesting, or interfering with them. (ORS 163.765(a), (b))</p> <p>Respondent can be restrained from entering a reasonable area around petitioner's residence, workplace, and other premises if necessary to prevent further abuse (ORS 163.765(1)(b)(C)).</p>	<p>home, sending emails, or damaging the petitioner's property. (ORS 163.738(2)(b), ORS 163.730)</p>		133.035(4)(a))
<b>Temporary custody / parenting time orders</b>	<p>Court can enter temporary custody orders (ORS 107.718(1)(a)).</p> <p>Court can modify a prior custody order if necessary for the safety of the petitioner or petitioner's child (ORS 107.722(2)).</p>	Not available	Not available	Not available	Not available	Not available
<b>Monetary relief</b>	Available if necessary for safety of petitioner or petitioner's children (ORS 107.718(1)(h)).	If court finds that respondent financially abused the protected person, the court can order relief as	(not explicit in the statute, but see 'other relief' provision below)	Petitioner can request damages, including punitive damages and damages for emotional distress (ORS	Not available	Not available

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
		necessary to remedy or stop the financial abuse (ORS 124.020(2)(a)).		30.866(4)).		
<b>Ouster</b>	<p>Respondent can be required to move from petitioner's residence if:</p> <p>Residence is solely in petitioner's name, Residence is jointly owned/rented by petitioner and respondent, or Parties are married to each other (ORS 107.718(1)(b)).</p> <p><b>Civil standby:</b> Party moving out is entitled to have police officer accompany them one time, for 20 minutes, to collect essential personal items from residence (ORS 107.718(1)(d), 107.719)).</p>	<p>Respondent can be required to move from petitioner's residence if:</p> <p>Residence is solely in petitioner's name, Residence is jointly owned/rented by petitioner and respondent, or Parties are married to each other (ORS 124.020(1)(a); ORS 124.015(2)(a)).</p> <p>At contested hearing, court can order either party to move from residence if residence is jointly held (ORS 124.015(2)(a)).</p> <p>Party moving out is entitled to have police officer accompany them one time, for 20 minutes, to collect essential personal items from residence (ORS 124.020(1)(b); 124.025(1))</p>	Not available	Not available	Not available	Not available, protected person should seek another, more permanent restraining order or family law remedy if they want to oust abuser from the residence

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
<b>Other relief</b>	<p>Court can order “other relief” as necessary for safety and welfare of petitioner or children in petitioner’s custody (ORS 107.718(1)(h)).</p> <p>“Other relief” provision gives court discretion to order that Respondent not possess weapons (even at ex parte).</p> <p>Court can also provide for the safety of a service animal or pet (not animals kept for economic purposes) (ORS 107.718(1)(h)(B)).</p> <p>Court can order law enforcement to assist in recovering custody of child (ORS 107.732).</p>	<p>Court can order “other relief” as necessary for safety and welfare of petitioner (ORS 124.020(1)(f)).</p> <p>“Other relief” provision gives court discretion to order that Respondent not possess weapons (even at ex parte).</p> <p>Order can include a variety of relief to protect from “sweepstakes promotions” (ORS 124.020(1)(e)).</p> <p>Order can include a provision that Respondent refrain from exercising control over the money or property of the petitioner and return misappropriated money/property to petitioner (ORS 124.020(2)(a)).</p>	<p>Court can order “other relief” as necessary for safety and welfare of petitioner or petitioner’s children, family, or household members (ORS 163.765(1)(b)(E)).</p> <p>“Other relief” provision gives court discretion to order that Respondent not possess weapons (even at ex parte).</p>	<p>Court can order respondent to undergo mental health evaluation and treatment (ORS 30.866(3)(a); ORS 163.738(5)).</p> <p>Court can initiate civil commitment proceedings if respondent is dangerous to self or others (ORS 30.866(3)(a); ORS 163.738(6)).</p>	<p>The only relief available under ERPO is the ban on respondent’s possessing or purchasing or attempting to purchase or possess a deadly weapon, and the requirement to surrender the deadly weapons (ORS 166.527).</p>	<p>No other relief available under this temporary protective order</p>
<b>OTHER PROVISIONS</b>						

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	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
<b>Attorney fees and costs</b>	Reasonable attorney fees and costs available (ORS 107.716(3)).	Reasonable attorney fees and costs available (ORS 124.015(b)).	Not available	Petitioner (only) may recover attorney fees (ORS 30.866(4)).	Not available	Not available
<b>Violation of order</b>	<p><b>Violations of order</b></p> <ul style="list-style-type: none"> <li>• Petitioner <b>cannot</b> violate the terms of the order that restrain respondent</li> <li>• Petitioner can be found in contempt for violating custody or parenting terms in the order</li> <li>• Mandatory arrest laws apply if respondent violates the restraining order (ORS 133.310(3)).</li> <li>• After respondent is served with restraining order, it is entered into LEDS and NCIC (ORS 107.720(1); ORS 124.022(2))</li> </ul>					
<b>Consequences of violation</b>	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS chpt. 33 and UTCR chpt. 19).</p> <p>Contempt proceedings can be brought in county of issuance or where violation occurred (ORS 107.728).</p>	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS chpt. 33 and UTCR chpt. 19).</p> <p>Contempt proceedings can be brought in county of issuance or where violation occurred (ORS 124.012).</p>	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS chpt. 33 and UTCR chpt. 19).</p> <p>Contempt proceedings can be brought in county of issuance or where violation occurred (ORS 163.773).</p>	<p>First violation is a Class A misdemeanor. If respondent has a prior conviction for violating a protective order, then it is a Class C Felony (ORS 163.750(2)).</p> <p>For violations that are expressive contacts, conduct must create reasonable apprehension regarding petitioner’s personal safety (ORS 163.750(1)(c)).</p>	<p>Violation of ERPO is a Class A misdemeanor if the order was issued after notice and a hearing, confirmed by operation of law when no hearing was requested within 30 days, or renewed at hearing. Conviction for this misdemeanor results in additional 5 year ban on possession of firearms. (ORS 166.543)</p>	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS 133.035(8)(a), ORS chpt. 33 and UTCR chpt. 19).</p>
<b>Federal gun prohibition</b>	<p><b>Federal gun dispossession applies when person is subject to a qualifying protective order:</b></p> <ul style="list-style-type: none"> <li>• Order was issued after a hearing where respondent had actual notice and opportunity to be heard</li> <li>• Parties have an intimate partner relationship <ul style="list-style-type: none"> <li>○ Spouse or former spouse</li> <li>○ Other parent of respondent’s child</li> <li>○ Person who does or did cohabit (live in a sexually intimate relationship) with respondent</li> </ul> </li> <li>• Order restrains future abuse</li> </ul>					

**Comparison Chart of Protective Orders in Oregon**  
*Current as of September 2021*

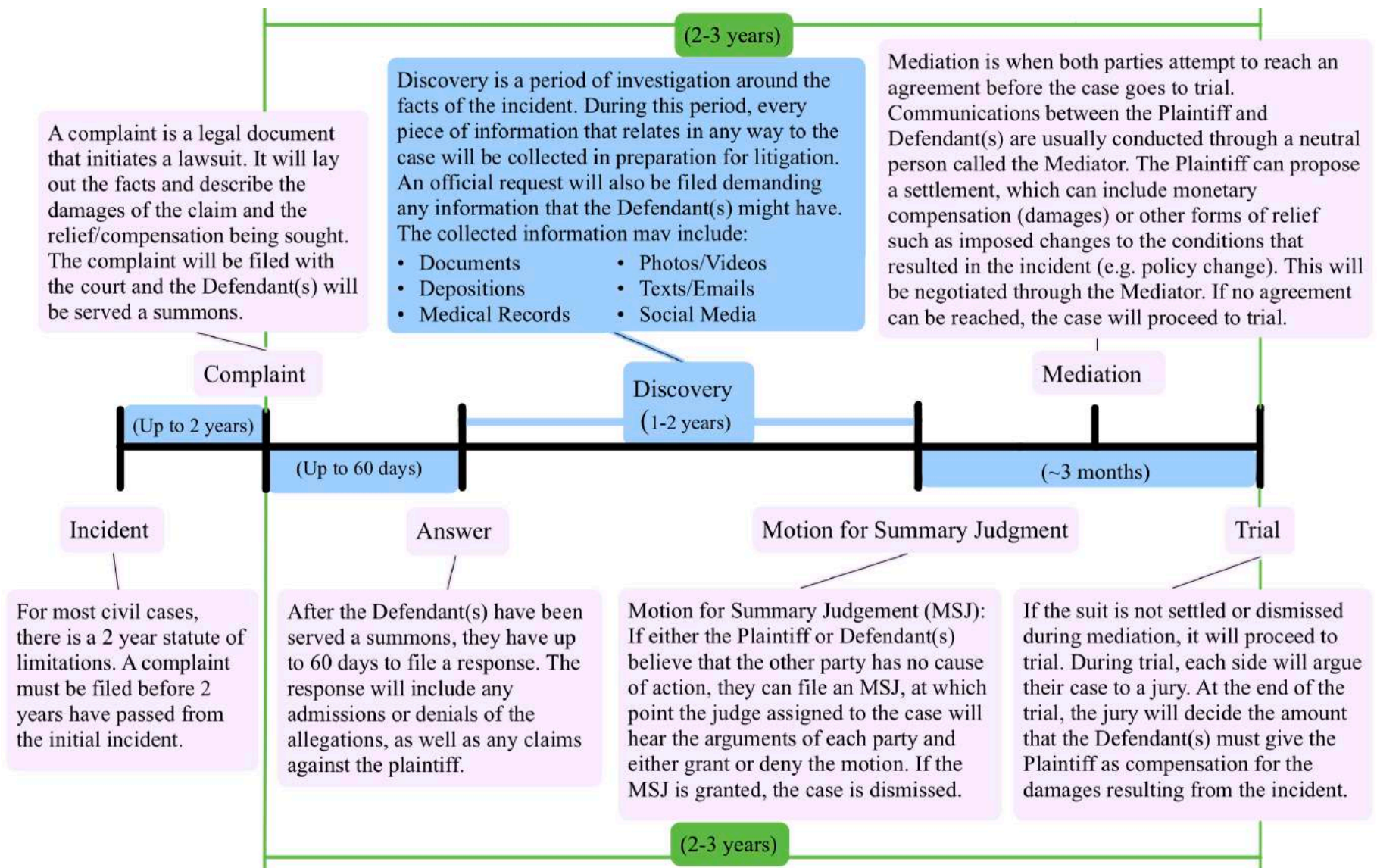
	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	<ul style="list-style-type: none"> <li>Credible threat finding or physical force prohibition (18 USC §921(a)(32); 18 USC §922(g)(8)).</li> </ul>					
	FAPAs will almost always trigger the federal gun prohibitions if the order is upheld after a contested hearing (arguably even when respondent fails to show up to the hearing).	Credible threat finding is not required in EPPDAPA. Therefore, a Judge would have to make additional findings (listed in the "Firearms Findings" in the "Order After Hearing") for federal gun prohibitions to apply.	A finding of "credible threat" is not required in SAPO. Therefore, a Judge would have to make additional findings that the respondent is a "credible threat" (listed in the "Firearms Findings" in the "Order After Hearing"). In addition, the requisite relationship will be rare in a SAPO unless the petitioner is a minor.	Credible threat finding is not required in SPOs. Therefore, a Judge would have to make additional findings (listed in the "Firearms Findings" in the "Order After Hearing"). See ORS 30.866(10) and ORS 163.738(b) for authority to include firearms findings.	Does not apply because ERPO does not restrain from harassing, stalking, or threatening.	Does not apply because there is no contested hearing.
<b>State gun prohibition</b>	It is unlawful for a respondent to knowingly possess a firearm or ammunition if subject to a court order that: <ol style="list-style-type: none"> <li>was issued or continued after a hearing for which the respondent had actual notice and opportunity to be heard, or</li> <li>was issued, continued, or remains in effect</li> </ol>	Courts may order "No Firearms" under the provision of "other relief" that the court considers necessary to provide for the safety and welfare of the petitioner.  For state firearms prohibitions to apply, the court would need to make a credible threat finding and the petitioner would need to be a family or	Courts may order "No Firearms" under the provision of "other relief" that the court considers necessary to provide for the safety and welfare of the petitioner.  For state firearms prohibitions to apply, the court would need to make a credible threat finding and the petitioner would need to be a family or	If the respondent has been convicted of stalking under ORS 163.732, it is unlawful for the respondent to knowingly possess a firearm or ammunition. (ORS 166.255(1)(c))  If there has been no stalking conviction, state firearm prohibition applies only if the court makes a credible threat finding <b>and</b> if the petitioner is	Does not apply because ERPO does not restrain from stalking, intimidating, molesting, or menacing.	Does not apply because there is no contested hearing.

**Comparison Chart of Protective Orders in Oregon**

*Current as of September 2021*

	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	<p>after the respondent received notice of the opportunity to request a hearing and either requested the hearing and didn't show, withdrew the request before the hearing occurred, or did not request a hearing.</p> <p>The court order must restrain the respondent from stalking, intimidating, molesting, or menacing the petitioner and includes a finding that the respondent represents a credible threat to the physical safety of the petitioner. (ORS 166.255(1)(a))</p>	<p>household member of the respondent. (ORS 166.255(1)(a))</p>	<p>household member of the respondent. (ORS 166.255(1)(a))</p>	<p>a family or household member of the respondent. (ORS 166.255(1)(a))</p>		

Materials created by Legal Aid Services of Oregon and Oregon Law Center July 2017. Updated by Amy Benedum and Judge Maureen McKnight of the Oregon Judicial Department, and Oregon Law Center February 2020; rev Sept. 2021.



\*Settlement: At any point during this process, if the Plaintiff and Defendant(s) can agree on appropriate compensation (monetary or otherwise) for the damages suffered, the parties may settle without going to trial.

# Kara Brooks



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Kara Brooks is a Deputy District Attorney at the Clackamas County District Attorney's Office. As a prosecutor, she has handled hundreds of criminal matters and has taken nearly 100 cases to trial, including major person crimes, sexual assaults, and murder.

Her specialty is prosecuting domestic violence offenders. As part of this work, she works closely with crime victims, including many who are underserved or especially vulnerable. Giving these victims a voice in the criminal justice system and working to obtain justice is the most rewarding part of her work.

Kara graduated with honors from Lewis & Clark Law School in 2013. Prior to earning her JD, Kara worked in public media and broadcasting and earned a bachelor of arts degree *cum laude* from Barnard College in New York City.



# U-Visas and Discovery Obligations in Criminal Prosecutions

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# U-Visas and Crime Victims

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**U-Visa** – permits a victim of a qualifying crime (or a victim’s immediate family member) to enter or remain in the US, *provided they are willing to assist law enforcement in the investigation and/or prosecution of criminal activity*

**Qualifying crimes include:**

- ❖ Domestic violence offenses
- ❖ Felonious assault
- ❖ Sexual assault
- ❖ Murder
- ❖ Kidnapping
- ❖ Stalking
- ❖ Witness tampering
- ❖ Human trafficking

# Constitutional Discovery Obligations

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Discovery obligations stem from Due Process Clause of US Constitution

- *Brady v. Maryland*, 373 US 83 (1963) - Prosecution's suppression of evidence favorable to the accused violates due process where the evidence is material to either guilt or punishment, regardless of good or bad faith of the prosecution
- *Giglio v. US*, 405 U.S. 150 (1972) – Key witness told he would not be prosecuted, but this was not disclosed to defense
- *Kyles v. Whitley*, 514 US 419 (1995) – Materiality of undisclosed evidence must be evaluated cumulatively (not item by item) and evaluation must include evidence withheld from the prosecutor by the police

# Statutory Discovery Obligations

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ORS 135.815 – Disclosure to defendant (in relevant part):

- (g) Any material or information that tends to:
  - (A) Exculpate the defendant;
  - (B) Negate or mitigate the defendant’s guilt or punishment; or
  - (C) Impeach a person the district attorney intends to call as a witness at the trial.
- (2)(a) The disclosure required by subsection (1)(g) of this section:
  - (A) Shall occur regardless of whether the material or information is recorded or in writing. [Sen. Bill 751, eff. Jan. 1 2022]
  - (B) Shall occur without delay:

# Ethical Obligations

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## Oregon Rules of Professional Conduct

### ORCP 3.8 – the prosecutor shall:

- (b) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor

# *Brady* Evidence

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Includes but not limited to evidence of:

- Bias, interest, or motive
- Inconsistent statements
- False reports
- Pending charges
- Convictions
- Promises, offers of leniency, sentence concessions
- Drug use/impairment

# If Nura has applied for a U-Visa, what are a prosecutor's discovery obligations?

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The fact that a victim or State witness has applied for a U-Visa is subject to disclosure pursuant to State and constitutional discovery obligations.

*State v. Valle*, 255 Or. App. 805 (2013) – Court of Appeals holds that the fact that victim or witness has applied for a U-Visa is probative of the witness' possible **bias, interest, or motive to fabricate**

- “[Victim] had applied for an opportunity to stay in the country on the ground that she had been abused; based on that fact, a jury could reasonably infer that she had a personal interest in testifying in a manner consistent with her application for that opportunity” and thus evidence is considered exculpatory and defense can question about visa application

# What if Nura's family member has applied for a U-Visa?

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Concept of bias is broad – even if a victim's family member (who is not a witness) has applied for a U-Visa, this fact must be disclosed

*State v. Del Real-Galvez*, 270 Or. App. 224 (2015) – evidence that a victim's mother had applied for a U-Visa based on the victim's allegation of sexual abuse against the defendant was evidence that the victim had a personal interest in testifying against the defendant, even though she herself did not apply

- “Bias may arise in a variety of ways and may be evidenced by personal, family, romantic, sexual, or business relationships ... Because [the victim's] mother had applied for an opportunity to stay in the United States on the ground that her daughter had been sexually abused and coerced, a jury could reasonably infer that [the victim], out of a desire to help her mother obtain a U visa, had a personal interest in testifying against defendant.”



# What if a Nura *may* apply for a U-Visa?

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The fact that a victim or witness intends to apply for a U-Visa, but has not yet, is also considered *Brady* evidence and must be disclosed

*State v. Hernandez*, 269 Or. App. 327 (2015) – evidence that a victim knew her testimony could help her with a later U-Visa application was held to be evidence of victim’s bias or interest

- “[W]e conclude that evidence regarding whether [victim] intended to apply for a U visa was relevant to whether she had a particular personal interest in the outcome of the case”
- Reversible error not to allow defense to question victim regarding her immigration status, her desire to remain in the country, her awareness of her ability to apply for U-Visa, and whether she intended to apply for one

# What must be disclosed?

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- If you are in possession or control of the U-Visa application, disclose the application
  - Consider filing a protective order to limit disclosure of application or file motion for *in camera* inspection of the application rather than discover the entire application (ORS 135.873)
- If you are not in possession or control of the application, but are aware that a victim or witness has applied, discover the fact that the application has been made
  - Generally, no duty to disclose what is not in the district attorney's custody or control (ORS 135.815(1))
    - *Gomez v. State*, 245 So. 3<sup>rd</sup> 950 (4<sup>th</sup> District Court of Appeals) (2018) – no *Brady* violation for prosecutor's failure to produce U-Visa application. “[t]he State neither had possession of the visa application nor did it have control over it, and it was equally available to the defense, who knew about it and could have subpoenaed the application. Thus, the State had no obligation to produce it.”
  - But, still must disclose fact that application was made
    - ORS 135.815(2)(a)(A) – disclosure of exculpatory material or information “shall occur regardless of whether the material or information is recorded or in writing”

# Handling U-Visa defenses at trial

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As these cases demonstrate, be prepared for the argument that victim may be fabricating the allegations in order to secure a visa to remain in the US

Prepare your victim for questioning about U-Visas and their immigration status

- Anticipate what questions may be asked by the defense and discuss answers in advance of trial
- Consider asking these questions of your victim in your direct examination and having victim explain, rather than waiting until cross examination

If you anticipate this being an important part of the defense, consider filing a motion in limine or asking for a 104 hearing to determine pre-trial the scope of defense questioning and prevent objectionable questions from being asked in front of a jury

- Courts may limit scope of questioning – particularly into areas like a victim's national origin and undocumented status, while still allowing defense to ask other questions regarding bias. Seeking pre-trial ruling can prevent objectionable, inflammatory questions from being asked on the record in front of a jury.

# Questions?

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**Enrolled**  
**Senate Bill 751**

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION  
(at the request of Oregon Criminal Defense Lawyers Association)

CHAPTER .....

AN ACT

Relating to pretrial discovery; creating new provisions; and amending ORS 135.805 and 135.815.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 135.805 is amended to read:

135.805. (1) The provisions of ORS 135.805 to 135.873 are applicable to all criminal prosecutions in which the charging instrument has been brought in a court of record.

(2) **Except as otherwise provided in a protective order entered under ORS 135.873, or any other provision of law prohibiting or restricting the disclosure of specific material or information,** as used in ORS 135.805 to 135.873, “disclose” means [*to afford the adverse party an opportunity to inspect or copy the material.*] **to provide:**

(a) **A copy of the material, including but not limited to any document, photograph, report, audio recording, video recording or electronically stored information;**

(b) **The opportunity to inspect and photograph tangible physical evidence; and**

(c) **The opportunity to conduct independent testing of tangible physical evidence, provided that the testing does not destroy the evidence.**

(3) **Subsection (2)(a) of this section does not apply to any material that contains depictions of sexually explicit conduct involving a child, as those terms are defined in ORS 163.665.**

**SECTION 2.** ORS 135.815 is amended to read:

135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney:

(a) The names, [*and*] addresses **and telephone numbers** of persons whom the district attorney intends to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons.

(b) Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one.

(c) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which the district attorney intends to offer in evidence at the trial.

(d) Any books, papers, documents, photographs or tangible objects:

(A) Which the district attorney intends to offer in evidence at the trial; or

(B) Which were obtained from or belong to the defendant.

(e) If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.

(f) All prior convictions of the defendant known to the state that would affect the determination of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Commission.

(g) Any material or information that tends to:

(A) Exculpate the defendant;

(B) Negate or mitigate the defendant's guilt or punishment; or

(C) Impeach a person the district attorney intends to call as a witness at the trial.

(2)(a) The disclosure required by subsection (1)(g) of this section:

(A) **Shall occur regardless of whether the material or information is recorded or in writing.**

(B) Shall occur without delay [*after arraignment*] **in accordance with ORS 135.845** and prior to the entry of any guilty plea pursuant to an agreement with the state. If the existence of the material or information is not known at that time, the disclosure shall be made upon discovery without regard to whether the represented defendant has entered or agreed to enter a guilty plea.

(b) Nothing in subsection (1)(g) of this section:

(A) Expands any obligation under a statutory provision or the Oregon or United States Constitution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement officers.

(B) Imposes any obligation on the district attorney to provide material or information beyond the obligation imposed by the Oregon and United States Constitutions.

(3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine the alcoholic content of the person's blood the district attorney shall disclose to a represented defendant at least the following material and information within the possession or control of the district attorney:

(a) Any report prepared by a police officer relating to field tests, interviews, observations and other information relating to the charged offense;

(b) Any report relating to the test results;

(c) A copy of the form provided to the defendant under ORS 813.100 (2)(b); and

(d) Any checklist prepared by the operator of the instrument for the test.

(4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the defendant all of the information described in subsections (1) and (3) of this section except for the personal identifiers of the victim and any witnesses.

(b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial court shall order the district attorney to disclose the personal identifiers of the victim and any witnesses if the trial court finds that:

(A) The defendant has requested the information; and

(B)(i) The victim or witness is a business or institution and disclosure of the information would not represent a risk of harm to the victim or witness; or

(ii) The need for the information cannot reasonably be met by other means.

(5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers of a victim or witness obtained under subsections (1) and (3) of this section.

(b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the defendant the personal identifiers of a victim or witness if the court finds that:

(A) The defendant's lawyer has requested the district attorney to disclose the information to the defendant;

(B) The district attorney has refused to disclose the information to the defendant; and

(C) The need for the information cannot reasonably be met by other means.

(6) As used in this section:

(a) "Personal identifiers" means:

(A) In relation to a witness, the witness's address, telephone number, Social Security number and date of birth and the identifying number of the witness's depository account at a financial institution, as defined in ORS 706.008, or credit card account.

(B) In relation to a victim, the victim's address, electronic mail address, telephone number, Social Security number, date of birth, any user names or other identifying information associated with the victim's social media accounts and the identifying number of the victim's depository account at a financial institution, as defined in ORS 706.008, or credit card account.

(b) "Representative of the lawyer" has the meaning given that term in ORS 40.225.

(c) "Represented defendant" means a defendant who is represented by a lawyer in a criminal action.

(d) "Social media" has the meaning given that term in ORS 659A.330.

**SECTION 3. The amendments to ORS 135.805 and 135.815 by sections 1 and 2 of this 2021 Act apply to offenses alleged to have occurred on or after the effective date of this 2021 Act.**

**Passed by Senate April 22, 2021**

.....  
Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 7, 2021**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

.....  
Shemia Fagan, Secretary of State