



**Catholic Legal Immigration Network, Inc. (CLINIC) testimony before the
Maryland House Judiciary Committee, HB 0579,
Criminal Procedure – U Nonimmigrant Status Petitions
Submitted February 25, 2025
Position: Support with Amendments**

“We ourselves need to see, and then to enable others to see, that migrants and refugees do not only represent a problem to be solved, but are brothers and sisters to be welcomed, respected and loved. They are an occasion that Providence gives us to help build a more just society, a more perfect democracy, a more united country, a more fraternal world and a more open and evangelical Christian community.” *(His Holiness Pope Francis, Messages for the 2014 and 2019 World Days of Migrants and Refugees)*

About CLINIC

As the nation’s largest charitable immigration legal services network, the Catholic Legal Immigration Network, Inc. (“CLINIC”) provides substantive legal and program management training and resources as well as advocacy support at state, local, and national levels. CLINIC serves over 400 affiliates organizations across 49 states and the District of Columbia, providing crucial legal services to hundreds of thousands of low-income and otherwise vulnerable immigrants every year. Embracing the Gospel value of welcoming the stranger, CLINIC cultivates projects that promote the dignity and protect the rights of vulnerable immigrant populations. CLINIC’s national office is in Silver Spring, Maryland. In serving our affiliate network and through our programming, CLINIC has particular expertise in the life-changing -- and at times life-saving -- role that access to representation makes in the life of an immigrant.

Position

CLINIC supports, with amendments, HB 0579, the Victims and Witnesses – U Nonimmigrant Status – Certification of Victim Helpfulness bill. When the original U visa certification bill was passed in Maryland, it was a very important piece of legislation that helped protect immigrant victims of crime. It made our communities safer by encouraging these victims to come forward and report crimes to law enforcement. Many of the provisions were incredibly useful, particularly having a uniform turnaround time for agencies processing these requests.

CLINIC is very grateful to those agencies who have worked so diligently in the support of immigrant survivors. That being said, there have also been those certifiers who still do not complete certification in a timely manner, or, who even go as far as refusing to certify altogether.

Because of this, CLINIC approves of some of the proposed changes in the House bill and has a few changes as well as additions that were drafted in a series of meetings by various stakeholders. The bill should assist immigrant victims of crime and ensure that all Marylanders are receiving similar treatment regardless of where in the state the crime occurred.

Changes proposed in the HB 0579 Bill that CLINIC approves

- 1) Language that provides further clarity or links to laws
 - a. Federal U Visa Guidelines and links to federal statutes and regulations;
 - b. Having “Qualifying criminal activity” also being described in federal U Visa guidelines;
 - c. Adding “Attorney, Victim Advocate, or Other Representative” to list of people who may request a U visa certification;
 - d. Ensuring that the language used has the three tenses so “has been helpful, is being helpful, or is likely to be helpful;”
 - e. Including “Sentencing” when discussing the “detection, investigation, or prosecution of that qualifying criminal activity;”
 - f. Adding, “If a victim is applying for certification as a result of being a victim of more than one qualifying crime or qualifying criminal activity, each qualifying crime and qualifying criminal activity shall be listed on the certification;”
 - g. Specifically listing that “There is no statute of limitations for when a qualifying criminal activity occurred relative to the request for certification of victim helpfulness under this section;”
 - h. Including, “Notwithstanding any other provision of this section, a certifying official’s completion of a certification form may not be considered sufficient evidence that an applicant for a U or a T visa has met all eligibility requirements for that visa, and completion of a certification form by a certifying official may not be construed to guarantee that the victim will receive immigration relief under federal law;”
 - i. Adding “By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official’s knowledge.”

Changes proposed in the HB 0579 Bill that CLINIC has questions about or has suggestions for

- 1) Page 2, line 5-6 adds that a certifying entity not only is an agency that has “criminal jurisdiction in the agency’s respective areas of expertise,” but also includes “civil, family, or administrative” jurisdiction.
 - a. The law technically states a certifier can be someone with the responsibility "for the investigation or prosecution of a qualifying crime or criminal activity."
 - b. We already have language in our law that states that a certifying entity also includes “any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity.” It may be less confusing to include wording here that indicates that the “authority” does not have to be an agency whose main jurisdiction is over criminal matters but can also include civil,

family, or administrative agencies who have the authority to detect, investigate, prosecute, or sentence a qualifying crime or criminal activity.

- c. The proposed wording as-is could lead to confusion over who exactly can certify.
- 2) Page 2, line 7 adds “Adult Protective Services” to the list of some of the other certifiers that include child protective services, the Commission on Civil Rights, and the Maryland Department of Labor.
 - a. While there is no issue with adding “Adult Protective Services,” it does beg the question why this particular addition is needed? It could be useful to have wording that shows that the current list is non-exhaustive.
 - b. There are other agencies that can certify that are not specifically called out such as the Equal Employment Opportunity Commission or the Maryland Occupational Safety and Health state plan.
 - 3) Page 3, line 23 remove “unreasonably” from the suggested addition of “**FOR PURPOSES OF DETERMINING HELPFULNESS FOR A REQUEST FOR CERTIFICATION UNDER SUBSECTION (A) OF THIS SECTION, AN INDIVIDUAL SHALL BE CONSIDERED HELPFUL IF, SINCE THE INITIATION OF HELPFULNESS, THE INDIVIDUAL HAS NOT UNREASONABLY REFUSED TO COOPERATE OR FAILED TO PROVIDE INFORMATION AND ASSISTANCE REASONABLY REQUESTED BY A CERTIFYING ENTITY.**”
 - a. This mirrors the wording in the federal law.
 - 4) Page 4, Line 20-26 Addition of “(H) IF THE CERTIFYING OFFICIAL CANNOT DETERMINE WHETHER THE APPLICANT IS A VICTIM OF A QUALIFYING CRIMINAL ACTIVITY OR DETERMINES THAT THE APPLICANT DOES NOT QUALIFY FOR CERTIFICATION, THE CERTIFYING OFFICIAL SHALL PROVIDE A WRITTEN EXPLANATION TO THE VICTIM OR THE VICTIM’S PARENT, GUARDIAN, NEXT FRIEND, ATTORNEY, VICTIM ADVOCATE, OR
 - 5) OTHER REPRESENTATIVE SETTING FORTH REASONS WHY THE AVAILABLE EVIDENCE DOES NOT SUPPORT ISSUANCE OF THE CERTIFICATION.”
 - a. Would eliminate the first part of the proposed addition regarding determination of criminal activity. Since there is a presumption of helpfulness, there should not be an issue about whether the certifying official can determine if the applicant is a victim of a qualifying criminal activity. If they are not 100% sure, they should still certify as long as the helpfulness requirement is met.
 - b. There could also be a section added that permits victims to re-request certification upon learning of the reasons why they were denied (if they are able to cure the issue).
 - 6) Page 4, Line 33-35 Addition of “IF, AFTER CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES, THE PERSON PROVIDING THE HELPFULNESS UNDER SUBSECTION (A) OF THIS SECTION UNREASONABLY REFUSED TO COOPERATE OR FAILED TO PROVIDE INFORMATION OR ASSISTANCE REASONABLY REQUESTED BY A CERTIFYING OFFICIAL.”
 - a. Would remove “unreasonably.”

- b. Would also define “totality of the circumstances as it needs to be defined or given context.”
 - i. For instance, "all aspects of the situation must be considered, including, but not limited to, the nature of the crime, the victim's trauma, their capacity to cooperate, any potential safety concerns, the victim's mental and physical state, age, cultural background, access to support services, the severity of the crime, whether the request was made with a qualified interpreter present, transportation and work requirements that burden the victim excessively, and more."
 - ii. A couple of examples could also be useful such as a victim may have testified about a lot of the domestic violence but may not be comfortable discussing the rape in court. This is reasonable. It is also reasonable for the survivor of domestic violence to not want to demand incarceration as a punishment for their abuser as their abuser may be the only breadwinner of the family.

- 7) Page 5, Lines 10-13 proposes to add “Completion of a Certification Form by a certifying official only serves as verification of the factual information relevant for a federal immigration official to determine eligibility for a U or a T visa.”
 - a. Suggest not adding this. There is already a lack of knowledge about what U visa certification entails. CLINIC spends a lot of time educating certifiers on the fact that they are only looking at helpfulness and the crime details. Many certifiers do not understand that USCIS adjudicates the actual U visa. The way this is phrased very broadly talks about “factual information” but does not limit it to what certifiers should be examining. The last thing we want is a certifier trying to make a judgment about an issue such as whether someone’s abuse is substantial or not.

- 8) Page 5, Line 19 is an addition that states, “Describe whether the person has been helpful to the certifying entity.”
 - a. Propose keeping the language consistent with other proposed changes regarding “has been, is being, or is likely to be helpful.”

- 9) Page 5, Lines 21-23 is a proposed addition stating, “Provide any additional information the certifying official or certifying entity believes might be relevant to adjudication of a U or a T visa application.”
 - a. There are two concerns here. One, T visas are mentioned here although there is no further mention of T visas elsewhere. If we are going to include it, we need to do a more inclusive and in-depth process to define and include T visas in this.
 - b. The second issue is that law enforcement officers may have biases, like we all do. Especially in today’s society where a lot of misinformation is spouted that promotes fear of immigrants, we need to ensure that any biases do not get translated into the assistance provided to immigrant victims of crime. There can be misunderstandings based on cultural differences. A law enforcement officer may not like that an immigrant has charges or a criminal record. This phrasing gives certifiers leeway to

send anything they might believe is relevant to USCIS. We do not want to see certifiers including unhelpful information that may harm the immigrant victim.

10) Page 5 Lines 24-Page 6 Line 3 proposes deleting this and replacing it although nothing was struck through in the document.

- a. Make it clear that the original disclosure and liability section is being struck through.
 - i. If this is doing away with the language around giving immunity from liability to certifiers who act or fail to act in good faith in compliance with this section, then this is a wonderful change.
- b. One of the suggested additions to the wording on disclosure includes lines 13-16 that state, “This section may not be construed to alter or diminish the duties and requirements of a law enforcement officer, a state’s attorney, or the attorney general from disclosing exculpatory information to a defendant in a criminal case.”
 - i. The concern around this wording is if Maryland’s State’s Attorneys (SAOs) are going to just naturally interpret this to mean that U visa certifications are exculpatory.
 1. We know various prosecutors struggle with this issue all over the country. Some feel they have to disclose under *Brady*, others do not and protect U visa information as privileged and not appropriate for disclosure. It is important that SAOs push back on this because one of the main reasons why Congress even established U visas, was to help bring immigrant victims forward to assist law enforcement. If State’s Attorneys are defaulting to disclosing this information, then there is the chance of re-traumatization as well as revealing the victim’s immigration status, which would undermine original Congressional intent.
 2. Some SAOs prefer not to have to fight these battles and just want everyone to wait until the trial is over which can be very time consuming and tedious. Although the wording of the suggested amendment still leaves it up to the SAOs to determine what their obligations are under *Brady*, based on past communication with the SAOs, it is likely that this additional wording will be taken to mean U visas are exculpatory information.
 3. This language is unnecessary.

CLINIC’s Additional Suggestions

For the last several years, CLINIC has been in touch with its Maryland affiliates and other partners including Catholic Legal Immigration Network, Catholic Charities DC, Catholic Charities Baltimore, Tahirih Justice Center, the ACLU, Kids in Need of Defense, Luminus, Amica Center, HIAS, the Women’s Law Center, World Relief and private attorneys. We have discussed U visa certification concerns in Maryland as there have been some consistent issues.

Based on our meetings, here is a list of our additional suggestions:

1) A prohibition of blanket policies around when the crime happened and when the immigrant is seeking certification.

Many victims of crime do not know about the U visa and will find out about it years down the road.

Helpful language that exists in other states includes Nevada's law that "prohibits a certifying agency from considering the period of time between when the petitioner was victimized by the criminal activity and when the petitioner requested certification."

Colorado's law states, "More than one victim may be identified and provided with certification, depending upon the circumstances."

2) A reporting mechanism. Many states have law enforcement agencies track and report each year the number of certification requests received, how many were granted, how many were denied, the number of pending certifications on the date that the data is pulled for reporting, and the reasons for the denials. States vary on who receives this information: the Attorney General, a Criminal Justice Commission, a Legislative Committee, the public, etc.

3) An Accountability mechanism. Virginia has a law that allows victims to seek assistance from a court if they believe a certification was improperly denied. Maryland's law has language that gives immunity from liability except in cases of "willful or wanton misconduct." This standard is very high and gives immunity to certifying agencies who not only act in good faith but to those who also fail to act in good faith. Maryland's law also does not allow for attorney's fees except for willful or wanton misconduct. CLINIC has not seen a single court action against a certifier in the many years since the bill became law, even though we know there have been plenty of issues. Attorneys and immigrants are just not incentivized to seek this remedy.

4) Appeal of a Denial. States have language that when a denial is issued, the agency shall inform the individual of the reason, and that the individual may make another request and submit additional evidence satisfying the other requirements.

5) Multiple Certifiers are Allowed. Any agency that can detect, investigate and/or prosecute the qualifying criminal activity is able to certify. No agency takes precedence over another. No agency should wait upon an approval or denial from another agency but rather should determine whether to certify based on the victim's helpfulness with their agency.

6) Language Around Purpose of U Cert. It is important to clarify that certifiers shall not consider any other factors in deciding whether to sign the certification form, except whether the individual was a victim of qualifying criminal activity and the victim's helpfulness.

CLINIC urges lawmakers to support HB 0579 with amendments to uphold the rights and dignity of immigrant victims of crime in Maryland. We hope to see all certifiers being willing to certify U visa certification requests in a timely and informed manner that does not subject immigrants to further trauma. It is a challenge for immigrant victims to come forward and report crimes as they may face language, cultural, and financial challenges to reporting. There is the fear, however justified or not, that reporting to the police could land them in immigration removal proceedings or detention. It is vital that Maryland does what it can to protect its immigrants and empowers them further to report their crime and collaborate with law enforcement.

CLINIC appreciates your consideration and urges a favorable report with amendments for House Bill 0579.