Civil and Immigration Remedies Available to Undocumented Immigrant Workers under Labor and Employment Laws – An Overview

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ABA Section of Labor and Employment Law
Employment Rights & Responsibilities Midwinter Meeting
March 28-31, 2012

Over 11 million undocumented individuals live in the United States, and undocumented workers make up 1 in 20 American workers.\(^1\) Largely, labor and employment laws protect undocumented workers from employment discrimination, wage and hour violations, and retaliation, although there are limits on the recoveries available when a plaintiff lacks legal status. There are also a number of practical issues that arise when undocumented individuals experience workplace discrimination or are involved in a labor dispute. Such issues include the admissibility of a plaintiff’s legal status in the subsequent administrative or court proceeding, immigration-based retaliation as a consequence of bringing a charge, and immigration relief available to workers involved in workplace disputes.

This paper explores the overlay of immigration status and labor and employment law, first looking at the civil remedies available to undocumented workers and then discussing the forms of immigration relief available to undocumented workers involved in a labor dispute or discrimination claim. Finally, it provides some practical resources to practitioners who are handling cases involving these issues.

I. Civil Remedies Available to Undocumented Workers

As opposed to civil remedies prescribed by the NLRA, courts have been clear that civil remedies under other employment statutes, including the FLSA and Title VII, are available for workers regardless of their immigration status. These civil remedies include damages under the FLSA’s and Title VII’s anti-retaliation provisions, though such damages are limited. Such retaliation can include an employer’s decision to fire workers based on their immigration status, when the firing was pretext for illegal retaliation for filing a complaint. In addition, other forms of relief like workers’ compensation insurance benefits are generally available.

a. Hoffman Plastic and the National Labor Relations Act

This topic cannot be adequately covered without first addressing the U.S. Supreme Court’s seminal decision in Hoffman Plastic Compounds Inc. v. NLRB (Hoffman Plastic), 535 U.S. 137 (2002), which prevented undocumented immigrant workers from seeking back pay or reinstatement as NLRA remedies against an employer that had illegally fired them for union organizing activities. The Court set up its Hoffman Plastic decision in 1984 in Sure-Tan, Inc. v. NLRB (Sure-Tan), 467 U.S. 883 (1984). In that case, the Supreme Court, reversing the NLRB’s

decision, barred undocumented workers who had returned to their country of origin from collecting back pay for the time after having been illegally fired for protected union activity. The Court held that the workers were not “available” for work—a requirement for back pay remedies—because they would be violating immigration laws if they were to return to the U.S. without being legally admitted. Reinstatement with back pay, the Court ruled, is conditioned on the ability to be “lawfully … present and employed in the U.S.” The Court rejected the NLRB’s ruling in Sure-Tan because, while upholding the intentions of the NLRA, the Board’s ruling would have required the worker to violate the Immigration and Nationality Act (“INA”) by unlawfully reentering the country.

The Supreme Court then dropped a bombshell when it released its decision in Hoffman Plastic. In that case, the Court expanded its ruling in Sure-Tan by denying reinstatement and back pay remedies to undocumented workers who had been fired for protected union activity, but had not left the U.S. In 1986, Congress passed the Immigration Reform and Control Act (IRCA), which, for the first time, made it illegal for employers to knowingly hire persons to work in the U.S. without proper work authorization. The Court used this law to expand the Sure-Tan holding. Therefore, undocumented workers who had stayed in the U.S. after being illegally fired on account of their union organizing activities were also “unavailable” for work, and were thus ineligible for reinstatement and back pay for the time after their unlawful termination.

In August 2011, the NLRB eliminated a wrinkle that remained in the Hoffman Plastic decision. In Mezonos Maven Bakery, Inc., 357 N.L.R.B. No. 47, 2011 WL 3488558 (2011), the Board overturned an ALJ’s ruling that granted undocumented workers back pay for NLRA violations committed by an employer who hired the workers knowing they were undocumented. This situation was different than that of the employer in Hoffman Plastic that had unknowingly hired undocumented workers. Nevertheless, the Board ruled that the undocumented immigrant workers were still precluded from recovering back pay and reinstatement.

Despite this, soon after the Hoffman Plastic ruling, the General Counsel of the NLRB issued a memorandum clarifying that it would still seek to enforce sanctions against employers where the situations differ from those in Hoffman Plastic. This memorandum is still in effect, as is indicated in a June 2011 memorandum updating NLRB procedures in addressing

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2 Sure-Tan, 467 U.S. at 909.
3 Id. at 903.
4 Id.
5 Id. at 903-05.
10 Arthur F. Rosenfeld, Office of the General Counsel Memorandum GC 02-06 (July 19, 2002), available at http://www.nlrb.gov/search/simple/all/gc02-06.
immigration status issues that arise during NLRB proceedings.\textsuperscript{11} One such sanction, suggested by the Board’s \textit{Mezonos Maven Bakery} decision, could take the form of employers paying into a fund an amount equivalent to that which they would have been required to pay a documented worker in back pay.\textsuperscript{12} Such a fund could be used to award back pay to documented workers who were unable to collect from their employers.\textsuperscript{13}

Additionally, the NLRB has indicated that it will cooperate in assisting workers with deferring prosecutions of immigration enforcement actions during the pendency of Board proceedings, and will assist with other forms of immigration relief like U and T visas,\textsuperscript{14} discussed \textit{infra}.

\textbf{b. Civil Remedies Under The Fair Labor Standards Act And Title VII}

As opposed to remedies under the NLRA, a well-established series of court decisions demonstrates that FLSA remedies are available to undocumented immigrant workers. See \textit{Patel v. Quality Inn So.}, 846 F.2d, 700, 704 (11th Cir. 1988) (“FLSA's coverage of undocumented aliens goes hand in hand with the policies behind the IRCA. . . . If the FLSA did not cover undocumented aliens, employers would have an incentive to hire them.”) (emphasis in original); \textit{Zheng Liu v. Donna Karan Int'l, Inc.}, 207 F. Supp. 2d 191 (S.D.N.Y. 2002) (holding that workers’ immigration status was not relevant to FLSA claims that they had been illegally underpaid for work performed); \textit{Contreras v. Corinthian Vigor Ins. Brokerage, Inc.}, 25 F. Supp. 2d 1053, 1056 (N.D. Cal. 1998) (“There is no question that the protections provided by the FLSA apply to undocumented aliens.”); \textit{Flores v. Albertsons, Inc.}, 2002 WL 1163623 at *5 (C.D. Cal. Apr. 9, 2002) (“Federal courts are clear that the protections of the FLSA are available to citizens and undocumented workers alike.”); \textit{Flores v. Amigon}, 233 F. Supp. 2d 462, 462 (E.D.N.Y. 2002) (“Numerous lower courts have held that all employees, regardless of their immigration status, are protected by the provisions of the FLSA.”).

In a 2002 case, \textit{Flores v. Amigon},\textsuperscript{15} the Eastern District of New York ruled that immigration status is not relevant to a FLSA claim for unpaid wages for work that a bakery worker had already performed. The court reasoned that “unlike the problem posed in \textit{Hoffman Plastic} in which an illegal alien was wrongfully terminated from employment and could not be legally reinstated, . . . here no such impediment exists to repayment of any amounts proved to be owed to plaintiff for work that she already performed.”\textsuperscript{16} This holding typifies federal courts’ willingness to recognize undocumented workers as eligible for remedies under the FLSA for work already performed.

Like the FLSA, Title VII also protects undocumented workers against employment discrimination. See, e.g., \textit{EEOC, et al. v. City of Joliet, et al.}, 239 F.R.D. 490 (N.D. Ill. 2006)

\begin{itemize}
  \item[13] \textit{Id.}
  \item[16] \textit{Id.} at 464.
\end{itemize}
(granting a protective order barring employer from seeing information regarding current employees’ immigration status directly or indirectly, and stating that undocumented workers were entitled to protections and remedies under Title VII; EEOC v. Tortilleria “La Mejor”, 758 F. Supp. 585, 590 (E.D. Cal. 1991) (holding that “the protections of Title VII were intended by Congress to run to immigrants, whether documented or not, who are employed within the United States”). Just as with any other worker, an employer cannot fire, refuse to hire, harass, or take other action against an undocumented worker because of her national origin (including her English language capabilities), race, color, sex, pregnancy, religion, age, or disability.

Usually, Title VII issues arise when an employer nominally fires a worker because of his immigration status—something an employer can and must do under the IRCA—but the given reason is pretext for some other illegal reason for the firing, such as sex, national origin, race, or disability. In such a case, a court will use the same McDonnell Douglas\(^\text{17}\) burden shifting test as it would in any other employment case.\(^\text{18}\) Additionally, the U.S. Department of Justice’s Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), charged with enforcing the anti-discrimination provision (§ 274B) of the Immigration and Nationality Act (INA),\(^\text{19}\) has been very active.\(^\text{20}\) The OSC prosecutes cases against employers based on citizenship status discrimination; national origin discrimination; document abuse (unfair documentary practices during the employment eligibility verification, Form I-9, process); and retaliation or intimidation.

c. **Retaliation Against Workers who File Claims**

Undocumented workers generally cannot benefit from prospective remedies such as back pay, front pay, and reinstatement because, according to the rationales in *Sure-Tan* and *Hoffman Plastic*, they are unavailable for work. This leads to an interesting dilemma when undocumented workers file claims of retaliation under the FLSA and Title VII. The retaliation itself is obviously illegal, regardless of the immigration status of the worker, but the worker’s civil remedies are limited.\(^\text{21}\) However, the Northern District of Illinois, in *Renteria, et al. v. Italia Foods, Inc.*, 2003 WL 21995190 (N.D. Ill. Aug. 21, 2003), ruled that punitive and compensatory damages under the FLSA’s anti-retaliation provision were available to undocumented workers.

Illegal retaliation against undocumented workers can take the same form as illegal retaliation against documented workers. In practice, one of the most common methods of retaliation against undocumented workers for filing complaints is using immigration status as

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\(^{18}\) See, e.g. Contreras v. Corinthian Vigor Insurance Brokerage, Inc., 103 F. Supp. 2d 1180 (N.D.Cal.1998) (discussing the burden shifting test to determine whether a firing was pretextual in a FLSA retaliation case).

\(^{19}\) 8 U.S.C. § 1324b.


\(^{21}\) However, prospective remedies may be available to undocumented immigrant workers that later become authorized to work. See Escobar v. Spartan Security Services, 281 F. Supp. 2d 895 (2003) (S.D. Tex. 2003) (holding that an immigrant worker now authorized to work would be entitled to front pay and reinstatement if he prevailed on the underlying Title VII claims).
pretext for an otherwise illegal firing. Employers that choose to act on Social Security “no-match” letters or decide to participate in the E-Verify program around the time that a worker files an employment complaint should take note that this may be seen as pretextual retaliation. As discussed, supra, this is a form of discrimination, and has also been deemed to constitute illegal retaliation under both the FLSA and Title VII.22 For example, in Contreras v. Corinthian Vigor Ins. Brokerage, 25 F. Supp. 2d 1053 (N.D. Cal. 1998), the Court held that an employer violated the FLSA’s anti-retaliation provision for reporting an undocumented worker to immigration authorities after the worker filed a wage claim.

Illegal retaliation can also take the form of burdensome and harassing discovery inquiries by defendant employers and their attorneys into the immigration status and tax returns of workers.23 Courts have generally freely issued protective orders for this type of information in FLSA cases because it is irrelevant to the merits of the case (i.e. whether the employee was properly paid for work performed), and, when the benefits of such disclosures are balanced against the harm caused to the worker if such information were revealed to the public, the information should be suppressed. See, e.g., In re Reyes, 814 F.2d 168, 170 (5th Cir. 1987) (“[I]t is well established that the protections of the Fair Labor Standards Act are applicable to citizens and aliens alike and whether the alien is documented or undocumented is irrelevant.”); Liu v. Donna Karan Intl, Inc., 207 F. Supp. 2d 191, 192 (S.D.N.Y. 2002) (“[C]ourts addressing the issue of whether defendants should be allowed to discover plaintiff-workers' immigration status in cases seeking unpaid wages brought under the FLSA have found such information to be undiscoverable.”); Rengifo v. Ereos Enter., Inc., 2007 WL 894376, at *3 (S.D.N.Y. Mar. 20, 2007) (granting a protective order barring defendants from inquiring into plaintiff's immigration status or social security number); Avila-Blum v. Casa de Cambio Delgado, 236 F.R.D. 190, 191-92 (S.D.N.Y. 2006) (overruling defendants' objections to magistrate's order that granted plaintiff a protective order barring defendants from inquiring into her immigration status); Topo v. Dhir, 210 F.R.D. 76, 79 (S.D.N.Y. 2002) (finding that plaintiff had demonstrated good cause to warrant a protective order barring defendants from inquiring into her immigration status).

Similarly, under Title VII, granting plaintiff’s motion for a protective order against defendant’s request that workers fill out I-9 forms after they had filed an EEOC complaint, the Northern District of Illinois wrote that “the main purpose behind this alleged new found desire to abide by the law is to effect a not so subtle intimidation of the intervener plaintiffs and all the potential class members.” EEOC, et al. v. City of Joliet, et al., 239 F.R.D. 490 (N.D. Ill. 2006)(granting plaintiff’s motion for a protective order against defendant’s request that workers fill out I-9 forms, and stating that undocumented workers were entitled to protections under Title VII.) Of course, such information may become relevant if workers seek prospective remedies requiring their availability for work—like back pay, front pay, and reinstatement—but absent such requests, it has been generally found irrelevant and not subject to discovery.


23 See our co-panelist Frank Van Dusen’s paper discussing Suchite v. Kleppin, _ F. Supp. 2d __, 2011 WL 1748547 (S.D. Fla. May 5, 2011) (holding that defendant employer’s attorney’s threat to report plaintiff worker to immigration authorities was not pretext for unlawful retaliation).
The U.S. Department of Labor (DOL) entered into a revised Memorandum of Understanding (MOU) with the Department of Homeland Security (DHS) in 2011, for the purpose of ensuring that their enforcement activities do not conflict. The MOU prohibits the DHS from carrying out immigration enforcement activities during the pendency of a DOL investigation into a labor dispute. A “labor dispute” includes any assertion of workplace rights enforced by the DOL, including protected concerted activity. The MOU also explains the agencies’ positions against employers calling immigration authorities as retaliation against its workers. The MOU is triggered at the point at which a complaint is filed with a DOL agency, so practitioners should be aware of it, and ensure that immigration authorities are not illegally called to a worksite. The MOU is attached as an appendix to this paper.

d. Other Relief for Undocumented Workers—Workers’ Compensation & Tort Claims

Most states allow undocumented workers to recover workers’ compensation insurance benefits, though states vary as to the extent of such benefits. For example, California, Nebraska, and Oregon prohibit vocational retraining benefits for undocumented workers. However, New York, and other states, grant full workers’ compensation benefits for undocumented workers.

In 2011, the U.S. Supreme Court denied certiorari in a case presenting the question of whether federal immigration law preempts state workers’ compensation laws. In that case, Rodriguez v. Integrity Contracting, 09-1537 (La. App. 3 Cir. 5/5/98) 38 So. 3d 511, an undocumented Louisiana worker sought workers’ compensation benefits for an injury on the job, which the employer contested under the theory of Hoffman Plastic. The court, distinguishing Hoffman Plastic, held that the worker had earned workers’ compensation benefits, and found nothing in Louisiana law that bars undocumented workers from recovering those benefits. Because the U.S. Supreme Court declined to address the issue last year, states will continue to independently determine whether to extend workers’ compensation benefits to undocumented workers.

Similarly, some state courts have approved tort claims, including claims for lost wages, for workplace injuries suffered by undocumented workers.

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24 See Mark Noonan, Raising Debate Beyond the Borders, RISK & INSURANCE, March 3, 2011, available at http://www.riskandinsurance.com/story.jsp?storyId=5333333131 (listing states that expressly allow and deny workers’ compensation benefits to undocumented workers; as of the time of his writing, only Wyoming had expressly denied such benefits, though several states were considering bills to deny benefits).

25 Id.


28 See, e.g., Balbuena v. IDR Realty LLC., 845 N.E.2d 1246 (2006) (undocumented immigrant workers who were injured and did not tender false documents were not barred under IRCA from receiving lost wages, i.e., past wages from the time of the accident until verdict and future loss of earnings, under New York tort law).
II. Immigration Remedies Available to Undocumented Workers

An undocumented worker is less likely to come forward to participate in an investigative process, such as that conducted by the Equal Employment Opportunity Commission, or to participate in litigation related to workplace violations or in the prosecution of crimes if the worker fears deportation. Recognizing that an undocumented worker’s cooperation, assistance, and safety is essential to the investigation and prosecution of certain crimes, Congress has created specific immigration protections, in the form of temporary legal status visas, which are available to undocumented workers who are victims of certain workplace violations or criminal activity.29

While federal agencies such as the Equal Employment Opportunity Commission do not inquire as to a worker’s legal status when investigating allegations of illegal discrimination,30 as federal labor and employment laws apply to both documented and undocumented workers,31 the legal status of the worker may be a real obstacle to the completion of an investigation or to the prosecution of a crime if the worker’s availability and presence in the United States is jeopardized by detention or deportation.

In addition to advocating for an employee’s rights in the workplace, attorneys who represent undocumented workers in discrimination actions should consider seeking temporary legal status for clients by utilizing the specific protections discussed in this paper so that the civil litigation or criminal prosecution may continue without disruption or unnecessary harm to the case or investigation. Such protections include U and T visas, the Violence Against Women Act, and parole status.

Congress broadly defined the type of illegal activity which qualifies an undocumented worker to apply for temporary legal status under the applicable statues to include violations of

29 Battered Immigrant Women Protection Act (BIWPA), 8 U.S.C. § 1513(a)(2)(A); see also, 8 U.S.C. § 1101(a)(15)(U). The Department of Homeland Security regulations state that immigrant “victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.” 72 Fed. Reg. 53014 (2007). In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of immigrants and other crimes, while offering protection to victims of such crimes. See BIWPA, § 1513(a)(2)(A). Congress also sought to encourage law enforcement officials to better serve immigrant crime victims. 72 Fed. Reg. 53014-15 (2007).
30 Discussed, supra. See also EEOC v. Hacienda Hotel, 881 F.2d 1504, 1517 n.10 (9th Cir. 1989) (assuming without deciding that undocumented workers are entitled to the protections of Title VII), overruled on other grounds, Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998); see also EEOC v. Tortilleria “La Mejor”, 758 F. Supp. 585, 590 (E.D. Cal. 1991).
31 Discussed, supra. See also 42 U.S.C. §§ 2000(f), -1, -2(f), and (g); Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 891-92 (1984) (ruling that because undocumented immigrants are not expressly exempted by Congress, they plainly come within the broad statutory definition of employees covered by the NLRA); EEOC Compliance Manual (CCH) P 3806 at 3810-11 (1982) (“the term 'any individual' in § 703 of the Act includes any person, whether documented or not, within the jurisdictional boundaries of any 'State' . . . .”).
local, state, and federal laws. In the workplace context, for example, a female employee who is sexually harassed and who experiences an attempted sexual assault is eligible to apply for relief in the form of a U visa.

In one recent case, the EEOC in Detroit certified a worker for a U visa who had experienced such harassment and attempted assault. There, a hotel manager sexually harassed the undocumented housekeeper. The harassment consisted of conduct that would violate state criminal laws, including sexual assault, attempted sexual assault, and false imprisonment. The housekeeper’s U visa application was ultimately approved, which allowed the housekeeper to remain in the U.S. during the pendency of the EEOC’s investigation and protected her from immigration-based retaliation from her employer. A copy of the EEOC’s certification is attached as an appendix to this paper.

### U Visa

In order to qualify for a U visa, a person must: (1) have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity; (2) possess information concerning the qualifying criminal activity; (3) have been helpful, be helpful, or be likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity; and (4) show that the qualifying criminal activity violated a local, state, and federal law, and had occurred in the United States.

Federal regulations broadly define the qualifying criminal activity. The statutory list is non-exclusive and broadly inclusive of “any similar activity” under local, state, or federal statutes. It also includes attempts or conspiracy to commit any of the listed activities. The qualifying criminal activity does not need to be the criminal activity that is eventually prosecuted.

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33 Other possible scenarios where employees may be granted temporary immigration relief include in the prosecution or investigation of wage and hour law violations; wage theft; visa fraud; and extortion.
36 8 U.S.C. § 1101(a)(15)(U)(i)(III). 8 C.F.R. § 214.14(a)(5) defines “investigations or prosecution” of a qualifying crime or criminal activity as “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.” See also 8 C.F.R. § 214.14(c)(2)(i).
38 Qualifying criminal activity includes that which involves “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 U.S.C. § 1101(a)(15)(U)(iii); 8 C.F.R. § 214.14(a)(9).
nor is it required that the prosecution secure a conviction. Additionally, there is no requirement on how long ago the criminal activity took place or how long it was after it was reported.

If approved for a U visa, the undocumented worker will be permitted to live and work in the U.S. for up to four years and may be eligible to apply for a lawful permanent status after three years. Applicants may also be granted derivative visas for qualifying family members.

Before submitting the U visa application to the U.S. Citizenship and Immigration Services, the undocumented crime victim must obtain a certification by an approved certifying official who verifies the type of criminal activity perpetrated against the applicant and confirms that the victim has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of that criminal activity. Because the first official visas were not issued until late 2008, the visa is still relatively unknown to some law enforcement officials and, therefore, an attorney representing an undocumented worker may need to educate law enforcement officials about the visa and the agency’s role in certifying the visa petition.

Congress explicitly permits federal, state, and local law enforcement officials to be certifying agencies. The Equal Employment Opportunity Commission, the U.S. Department of Labor, and the National Labor Relations Board all have criminal investigative jurisdiction in their respective areas of expertise and act as valid certifying agencies. State agencies, such as the New York Department of Labor and the California Department of Fair Housing and Employment, also qualify as valid certifying agencies. Most of these agencies have released certification protocol for U visas. For example, the EEOC requires that the qualifying criminal activity be related to unlawful employment discrimination investigated by the EEOC, which may encompass federal or state crimes.

Since U visa regulations were issued in September of 2007 naming the EEOC as a certifying agency, the EEOC has certified about fifty U visa applications. According to EEOC officials, these applications have come from about two-thirds of the district offices. Currently, the EEOC is working to place certifying officials in each EEOC Regional Office. Similarly, the U.S. DOL has designated regional U Visa Coordinators to whom a request for certification

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42 The request for certification, including Form I-918B, and a detailed description of facts and relevant case law and statutes should be submitted to the EEOC Regional Attorney.
43 The request for certification, including Form I-918B, and a detailed description of facts and relevant case law and statutes should be submitted to one of five Wage and Hour Regional U Visa Coordinators. See U.S. Dep’t. of Labor, U Visa Process and Protocols Question – Answer, available at http://www.dol.gov/opa/media/press/whd/whd20110619-qa.pdf.
44 8 C.F.R. § 214.14(a)(2).
should be submitted. Authority to certify with the DOL is limited to the Wage and Hour Division.

No one certifying agency is the “right” certifying agency. The representing attorney should use his or her judgment and knowledge of current relationships with the law enforcement agency before presenting an application for certification. For example, a worker who is sexually assaulted by her employer may file a police report at a local law enforcement agency as well as a charge of sex discrimination with the EEOC. Either the law enforcement agency or the EEOC may be the appropriate certifying agency for the U visa petition.

b. T Visa

Another form of immigration relief available to workers in certain circumstances is the T visa. Some forms of labor exploitation by employers may fall within the definition of human trafficking, as defined by the Trafficking Victims Protection Act (TVPA). Congress created the T visa as a form of immigration relief available to trafficking victims.

The T visa is available to an undocumented worker who: (1) is or has been a victim of a severe form of trafficking; (2) satisfies the physical presence requirement; (3) has complied with any reasonable request for assistance in investigating or prosecuting trafficking (if age 18 or older); (4) and would suffer extreme hardship involving unusual and severe harm upon removal. The T visa allows victims of severe forms of trafficking to reside in, receive services, and work legally in the U.S. for up to four years on a non-immigrant visa.

In the case of labor trafficking, an undocumented worker is a victim of a “severe form of trafficking” where the victim provides evidence she was: (1) a person recruiting or harboring or transporting or provided or obtained; (2) by force or fraud or coercion; (3) for the purposes of involuntary servitude or peonage or debt bondage or slavery or a commercial sex act.

In the case of sex trafficking, an undocumented worker is a victim of a “severe form of trafficking” where the victim provides evidence that she was induced (1) by force or fraud or coercion (2) to perform a commercial sex act.

Undocumented immigrant workers may remain in exploitive work situations in the absence of physical restraint. The TVPA supports a broad vision of coercion. Court opinions

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45 U.S. Dep’t. of Labor, U Visa Process and Protocols Question – Answer, supra note 43.
46 Id.
47 Trafficking Victims Reauthorization Act of 2005, §103 (TVPA); 22 U.S.C. 7101 et seq.
48 Victims of Trafficking and Violence Prevention Act of 2000 (“TVPA”) § 107(e); 22 U.S.C. § 7105(e).
53 22 U.S.C. § 7102(8).
have clarified and reinforced the TVPA’s broad coercion standard, affirming “subtle psychological methods of coercion” as encompassed by the TVPA.\textsuperscript{56} In fact, law enforcement agencies find that victims are commonly subjected to more psychological and situational coercion than duress tactics.\textsuperscript{57}

Further, intentional manipulation of a worker’s situation, such as keeping a worker’s passport, not offering to regularize a worker’s presence in the U.S., and giving false statements indicating that the current employer is the only employer lawfully able to employ the worker may rise to the level of “threatened abuse of the law or the legal process” and “serious harm” as defined by the TVPA.\textsuperscript{58} Indirect threats of financial harm to the undocumented worker’s family and vague warnings about the worker’s lack of immigration status may constitute a “scheme, pattern, or plan” sufficient for a forced-labor conviction.\textsuperscript{59} In sum, any evidence that the employer is taking advantage of the employee’s undocumented immigration status may give rise to liability under the anti-trafficking statutes.

c. **Violence Against Women Act**

Trafficked persons may enter the U.S. as foreign fiancées or as foreign spouses. The Violence Against Women Act (VAWA) provides relief to battered immigrants, without the immigrants having to rely on U.S. citizen or legal permanent resident spouses, parents, or children to sponsor their Adjustment of Status applications. Through a self-petitioning process, the battered spouse/child may apply for immigration status without the knowledge or involvement of the abuser. Derivative status is available to certain children and parents of the principal immigrant.

\textsuperscript{55} See, e.g., United States v. Garcia, 2003 WL 22938040, at *1 (W.D.N.Y. Dec. 2, 2003) (holding that employers coerced workers to labor involuntarily where the employers threatened that the workers would be deported or “hunted down” and returned to the farm-labor camps if they tried to escape).

\textsuperscript{56} See, e.g., United States v. Bradley, 390 F.3d 145, 148 (1st Cir. 2004), vacated on other grounds, 545 U.S. 1101 (2005) (ruling that workers from Jamaica were trafficked to New Hampshire and forced to labor on a tree farm where defendants paid workers above the minimum wage and workers were free to travel to the nearby town unaccompanied, yet the workers also labored unconscionably long hours and lived in a dilapidated shack with no running water, and were subject to a pattern of intimidation and indirect threats of harm by defendants such that the workers felt they did not have the freedom to quit).


\textsuperscript{58} See United States v. Calimlim, 538 F.3d 706, 709-710 (7th Cir. 2008) (quoting 18 U.S.C. § 1589).

\textsuperscript{59} Id. at 710; see also United States v. Farrell, 563 F.3d 364, 367-70 (8th Cir. 2009) (determining that evidence established sufficient coercion for a finding of forced labor where defendants subjected Philippine hotel housekeepers to harsh working conditions and coerced workers’ compliance through threats of violence, deportation, and social isolation).
The VAWA Self-Petition enables the spouse of a citizen or legal permanent resident to petition for residency if she can show that (1) the marriage was legal and valid; (2) the marriage was entered into in good faith; (3) she lived with the abusive spouse at some time; (4) she is a person of good moral character; and (5) during the marriage, the immigrant or a child of the immigrant has been battered or has been subject to extreme cruelty perpetrated by the immigrant’s spouse or intended spouse.

If eligible, the Form I-360 Self-Petition is filed with supporting documentation. There is extensive evidence that must be gathered, including evidence of battery/abuse/extreme cruelty and proof of the qualifying relationship to the abuser. Immigrants who can establish the basic requirements outlined will be given a “prima facie” determination and then be eligible for certain public benefits.

If the VAWA petition is approved, the undocumented person is granted deferred action status in most cases. Deferred action means that removal or deportation proceedings will not be initiated. Applicants are also eligible for work authorization upon approval of their VAWA petition.

d. Parole Status

The U.S. Citizenship and Immigration Services has discretion to parole an individual into the U.S. temporarily for humanitarian reasons or for reasons rooted in the public interest on a case-by-case basis. The grant of parole is rare and is reserved for “urgent humanitarian reasons or significant public benefit.” Parole status may allow an undocumented worker entry into the U.S. to appear for and participate in civil litigation or a criminal prosecution. Humanitarian parole can be applied for in one of two ways: (1) by applying through U.S. Citizenship and Immigration Services (USCIS); or (2) by applying through U.S. Customs and Border Protection (CBP) at a U.S. port of entry.

An attorney should prepare a detailed parole request, which includes an explanation of the applicant’s inadmissibility as well as the compelling reasons for seeking parole. Supporting documentation is crucial to a successful parole request. If seeking parole at a U.S. port of entry, an attorney should consider accompanying the client to the port of entry on her date of application. Since parole is granted on a case-by-case basis, a CBP official cannot approve a parole request prior to the actual in-person application.

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60 8 U.S.C. § 212(d)(5)(A); Clarification of the Relation between Release Under § 236 and Parole Under § 212(d)(5) of the Immigration and Nationality Act 4, Office of the General Counsel, DHS (Sept. 28, 2007), reprinted at 15 Bender’s Immigr. Bull. 98, 114 (App. C) (Jan. 15, 2010) (“Parole under the [INA] § 212(d)(5)(A) is a discretionary Act exercised by DHS on a case-by-case basis and restricted to circumstances where urgent humanitarian reasons justify the parole or where a significant public benefit will result from the parole.”).

61 INA § 212(d)(5)(A).

III. **Litigation Support & Practice Guides**

For practitioners seeking litigation support or attempting to contact workers who have returned to their country of origin, two organizations specialize in this work. The Centro de Los Derechos del Migrante (www.cdmigrante.org) provides expert, professional litigation support services and investigative support for private U.S. firms, solo practitioners, government agencies, and non-profit organizations with Mexico-based clients. The organization also offers class and collective action outreach, transnational discovery assistance, and transnational settlement distribution. For more information, contact Silas Shawver, CDM’s Legal Director, at silas@cdmigrante.org or 1-800-401-5901.

The Global Workers Justice Alliance (www.globalworkers.org) has a Defenders Network that faciliates partnerships between U.S.-based attorneys and local attorneys in Southern Mexico and Guatemala. The local attorneys, called “Defenders,” assist with locating clients, completing questionnaires and affidavits, conducting depositions, collecting documents, connecting injured workers with local health care services, and settlement distributions. For more information, email info@globalworkers.org or call 1-646-351-1160.

The National Employment Law Project (www.nelp.org) has extensive resources available on its website to assist practitioners who represent undocumented workers, and employers who seek to comply with the law.

Finally, for guidance on the U or T visa process, the following resources are helpful:


APPENDIX A
Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites

I. Purpose

This revised memorandum of understanding (MOU) is entered into by the Department of Homeland Security (DHS) and the Department of Labor (DOL). Its purpose is to set forth the ways in which the Departments will work together to ensure that their respective civil worksite enforcement activities do not conflict and to advance the mission of each Department.

In entering this MOU, both Departments recognize the importance of enforcing labor and immigration laws relating to the worksite. Effective enforcement of labor law is essential to ensure proper wages and working conditions for all covered workers regardless of immigration status. Effective enforcement of immigration law is essential to protect the employment rights of lawful U.S. workers, whether citizen or non-citizen, and to reduce the incentive for illegal migration to the United States. The parties further recognize that effective enforcement of both labor- and immigration-related worksite laws requires that the enforcement process be insulated from inappropriate manipulation by other parties.

II. Affected Components within the Departments

The principal and responsible parties to this MOU are the following components within each Department. On behalf of the Department of Homeland Security, the principal component is U.S. Immigration and Customs Enforcement (ICE). On behalf of the Department of Labor, the principal components are the Wage and Hour Division (WHD), the Office of Federal Contract Compliance Programs (OFCCP), the Occupational Safety and Health Administration (OSHA), the Office of Labor-Management Standards (OLMS), and the Office of the Assistant Secretary for Policy (OASP).

III. Definitions and Understandings

For purposes of this MOU—

A. A “labor dispute” means a labor-related dispute between the employees of a business or organization and the management or ownership of the business or organization concerning the following employee rights:

   o the right to be paid the minimum legal wage, a promised or contracted wage, and overtime;
   o the right to receive family medical leave and employee benefits to which one is legally entitled;
   o the right to have a safe workplace and to receive compensation for work-related injuries;
   o the right to be free from unlawful discrimination;
the rights to form, join or assist a labor organization, to participate in collective bargaining or negotiation, and to engage in protected concerted activities for mutual aid or protection;

- the rights of members of labor unions to union democracy, to unions free of financial improprieties, and to access to information concerning employee rights and the financial activities of unions, employers, and labor relation consultants; and
- the right to be free from retaliation for seeking to enforce the above rights.

B. The worksite enforcement activities of DHS include the civil authorities of ICE to inspect Forms I-9, to investigate, to search, to fine, and to make civil arrests for violations of the immigration laws relating to the employment of aliens without work authorization. They do not include any of ICE's criminal authorities.

C. The worksite enforcement activities of DOL include the authority of WHD, OFCCP, OSHA, and OLMS to enforce the requirements of the labor laws under their jurisdiction, including the relevant provisions of the Fair Labor Standards Act, Family and Medical Leave Act, the Migrant Seasonal Worker Protection Act, the Davis Bacon and Related Acts, the Service Contract Act, Executive Order 11246, the Occupational Safety and Health Act, the Vietnam Era Veterans' Readjustment Assistance Act, Section 503 of the Rehabilitation Act of 1973, the Labor-Management Reporting and Disclosure Act of 1959, and Section 211A of the Labor-Management Relations Act of 1947. OASP does not have enforcement authority.

IV. Coordination and Deconfliction

ICE and the principal DOL components agree to the following commitments and exchanges in order to ensure coordination and deconfliction of their respective civil enforcement activities.

A. Except as noted in paragraph C, ICE agrees to refrain from engaging in civil worksite enforcement activities at a worksite that is the subject of an existing DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding. ICE will continue its existing practice of assessing whether tips and leads it receives concerning worksite enforcement involve a worksite with a pending labor dispute. DOL agrees to assist ICE's efforts under this paragraph by providing ICE with timely and accurate information to allow for identification of overlapping enforcement activity.

B. ICE further agrees to be alert to and thwart attempts by other parties to manipulate its worksite enforcement activities for illicit or improper purposes. ICE will continue its existing practice of assessing whether tips and leads it receives concerning worksite enforcement are motivated by an improper desire to manipulate a pending labor dispute, retaliate against employees for exercising labor rights, or otherwise frustrate the enforcement of labor laws. DOL agrees to assist ICE's efforts under this paragraph by informing ICE of information DOL may have that other parties seek to manipulate a pending labor dispute, retaliate against employees for exercising labor rights, or otherwise frustrate the enforcement of labor laws.
C. Notwithstanding paragraph A, ICE may engage in worksite enforcement activities at a worksite that is the subject of a pending labor dispute if—

- the Director or Deputy Director of ICE determines the enforcement activity is independently necessary to advance an investigation relating to national security, the protection of critical infrastructure (e.g., ports, power plants, or defense facilities), or a federal crime other than a violation relating to unauthorized employment;
- the enforcement activity is directed by the Secretary of Homeland Security; or
- the enforcement activity is requested by the Secretary of Labor, the Solicitor of Labor, or another Department of Labor official designated by the Secretary of Labor.

D. In those instances in which ICE decides to engage in a worksite enforcement activity under paragraph C, ICE agrees to provide DOL notice unless the Director or Deputy Director of ICE determines that notice would violate federal law or would otherwise compromise the ICE investigation. ICE further agrees to make available for interview to DOL any person ICE detains for removal through a worksite enforcement activity conducted under paragraph C, provided the interview is consistent with federal and state law, would not compromise an ongoing ICE investigation or prosecution, and is approved by the relevant U.S. Attorney’s Office. DOL agrees that any DOL interview conducted under this paragraph shall be at DOL’s expense and shall not interfere with or delay removal proceedings except as provided in paragraph F below.

E. Unless specifically agreed to by both DOL and ICE, ICE and the DOL components covered by this MOU will not conduct joint or coordinated civil enforcement activities at a worksite.

F. ICE agrees to consider DOL requests that ICE grant a temporary law enforcement parole or deferred action to any witness needed for a DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding where such witness is in the country unlawfully. DOL agrees to provide ICE all needed information for ICE to consider the request and understands that any parole or deferred action ICE may grant will ordinarily terminate upon the completion of DOL’s investigation and any related proceeding. DOL further agrees to inform ICE on a periodic basis determined by ICE and DOL whether parole or deferred action for a given witness is still needed and to assist ICE with any monitoring or supervision of the witness. ICE and DOL retain full worksite enforcement authorities (as identified in Section III) to seek a visa or other remedy for a DOL witness during the pendency of a DOL investigation and any related proceeding.

G. Under no circumstances will ICE personnel engaged in enforcement activities at a worksite suggest that they represent or act for DOL absent the express approval of DOL. Similarly, under no circumstances will DOL personnel engaged in enforcement activities at a worksite suggest that they represent or act for ICE absent the express approval of ICE.

H. ICE and DOL agree to create a joint Worksite Enforcement Coordination Committee to review the implementation of this MOU, resolve any disputes, work in partnership as cases
arise, and deconflict civil enforcement activities. This committee shall meet each quarter unless the parties determine otherwise. Any disputes concerning the implementation of this MOU that cannot be resolved by the committee shall be resolved by the Deputy Director of ICE and the relevant Deputy Assistant Secretary or equivalent designated by DOL.

I. ICE and DOL agree to create a means to exchange information to foster enforcement against abusive employment practices directed against workers regardless of status. ICE agrees to develop a means to refer to DOL information concerning violations of DOL's civil worksite authorities described in section III of this MOU. DOL agrees to develop a means to refer to ICE information concerning ICE's criminal worksite authorities relating to human smuggling and trafficking; child exploitation; and extortion or forced labor.

J. ICE and DOL agree to ensure that this MOU is disseminated and implemented within ICE and DOL through appropriate implementation instructions, employee notification, and training.

K. ICE and DOL agree to seek each other's approval before issuing press releases that mention each other's enforcement activities.

L. ICE and DOL agree to keep confidential information shared pursuant to section IV(A) of this MOU.

V. Effective Date

A. This MOU is effective upon signature and valid until rescinded by either ICE or DOL subject to Section V (B). ICE and DOL agree, however, to assess the terms and effectiveness of this MOU one year from the date of signing and to consider whether modifications or additions are needed.

B. This MOU reflects the full understanding between ICE and DOL on this subject and may not be modified without ICE and DOL's consent. Both ICE and the relevant DOL components may unilaterally rescind their participation in the MOU but only upon written notice to all other signatories provided at least 60 days in advance.

C. This MOU voids and supersedes all previous MOUs on this subject between ICE (including its predecessor, the Immigration and Naturalization Service) and DOL.
D. This MOU is an agreement between DHS and DOL, and does not create or confer any right or benefit on any other person or party, public or private. Nothing in this MOU or its implementation is intended to restrict the legal authority of ICE or the relevant DOL components in any way.

For the Department of Homeland Security

John Morton
Director
U.S. Immigration and Customs Enforcement
Department of Homeland Security

Date: DEC 07 2011

For the Department of Labor

M. Patricia Smith
Solicitor of Labor
Department of Labor

Date: DEC 07 2011
APPENDIX B
August 4, 2009

VIA REGULAR MAIL  
& ELECTRONIC MAIL

RE:
Charge No.

Dear Ms.:

I am pleased to announce that the Commission has designated our Regional Attorney, to serve as the Certifying Official for issuance of a U Nonimmigrant Status Certification for .

Enclosed please find the U Visa Certification form and a completed Form I-918, Supplement B. Having reviewed the instructions, it is my understanding that these materials should be submitted by your client in support of her application.

Should you have any questions or concerns, please do not hesitate to contact me at (313)

Thank you.

Sincerely yours,

Trial Attorney, EEOC
Telephone: ( )

Cc:
Supervisory Trial Attorney
U VISA CERTIFICATION FORM

Applicant.

I, , hereby affirm the following:

1. I am a: (check one)

   ___ Federal Official

   ___ INS officer

   Specifically, I am a: (check one)

   ___ Law Enforcement Officer

   ___ Prosecutor

   ___ Judge

   ___ Other Investigating Authority (EEOC)

Regional Attorney
Equal Employment Opportunity Commission
Indianapolis District Office
101 W. Ohio Street
Indianapolis, IN 46204, Room 1900
317-226-

2. The agency for which I work is investigating (or overseeing the investigation of) unlawful activity involving possible violations of (some or all of) the following types of criminal offenses under Federal, State or local criminal laws: 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 these crimes. The EEOC seeks monetary and injunctive remedies against some of those offenses, when they constitute employment discrimination.

3. The unlawful activity at issue in this case may involve (but is not limited to) possible violations of the following criminal laws:

   Michigan Penal Code: MCL: 750.520c (CSC II); 750.520e (CSC IV); 750.520g (Assault with intent to commit criminal sexual conduct); 750.349 (Kidnapping).

Based on my understanding of these laws, I have determined that these laws fall within the list of offenses set forth in Paragraph 2 or is similar activity violating Federal, State or local criminal law.
4. It is suspected that this criminal activity occurred on or about:


5. I affirm that
(check all that apply):

X has been helpful:
X is being helpful;
X is likely to be helpful

in an investigation and/or prosecution of this criminal activity.

6. I affirm that possesses relevant information relating to this criminal activity. This information includes (but is not limited to) the following:

has provided information which indicates that her employer unlawfully subjected her to sexual assaults. See attached EEOC Charge of Particulars and Affidavit.

7. I affirm that this criminal activity occurred: (check all that apply)

X in the United States (including Indian country and military installations;

in territories and possessions of the United States; or

outside the United States, but violated United States' laws.

Date 7/27/09
START HERE - Please type or print in black ink.

Part 1. Victim Information.

Family Name

Given Name

Middle Name not applicable

Other Names Used (Include maiden name/nickname)

Date of Birth (mm/dd/yyyy)

Gender

[ ] Male [x] Female

Part 2. Agency Information.

Name of Certifying Agency

US Equal Employment Opportunity Commission

Name of Certifying Official

Title and Division/Office of Certifying Official

Regional Attorney/Indianapolis Dist.

Name of Head of Certifying Agency

Acting Chairman

Agency Address - Street Number and Name Suite #

101 West Ohio, Street 1900

City State/Province Zip/Postal Code

Indianapolis EN 46204

Daytime Phone # (with area code and/or extension) Fax # (with area code)

(317) 226-7953

Agency Type

[ ] Federal [ ] State [ ] Local

Case Status

[ ] On-going [ ] Completed [ ] Other

Certifying Agency Category

[ ] Judge [ ] Law Enforcement [ ] Prosecutor [ ] Other See Attachment

Case Number FBI # or SID # (if applicable)

EOC Charge #


1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

[ ] Abduction [ ] Female Genital Mutilation [ ] Obstruction of Justice [ ] Slave Trade

[ ] Abusive Sexual Contact [ ] Hostage [ ] Peonage [ ] Torture

[ ] Blackmail [ ] Incest [ ] Perjury [ ] Trafficking

[ ] Domestic Violence [ ] Involuntary Servitude [ ] Prostitution [ ] Unlawful Criminal Restraint

[ ] Extortion [ ] Kidnapping [ ] Rape [ ] Witness Tampering

[ ] False Imprisonment [ ] Manslaughter [ ] Sexual Assault [ ] Related Crime(s)

[ ] Felonious Assault [ ] Murder [ ] Sexual Exploitation [ ] Other: (If more space needed, attach separate sheet of paper)

[ ] Attempt to Commit any of the Named Crimes [ ] Conspiracy to Commit any of the Named Crimes [ ] Solicitation to Commit any of the Named Crimes

See Attachment.
Part 3. Criminal acts. (Continued)

2. Provide the date(s) on which the criminal activity occurred.
   Date (mm/dd/yyyy)       Date (mm/dd/yyyy)       Date (mm/dd/yyyy)       Date (mm/dd/yyyy)
   Apr. 12/01-31/2008      Apr. 01/01-10/2008

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.
   MCL: 750.520c (CSC II - Criminal Sexual Conduct); 750.520g (Assault with Intent to Commit
   Criminal Sexual Conduct); 750.349 (Kidnapping)

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States?
   ☑ Yes  ☐ No

   a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?
      ☐ Yes  ☑ No

   b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

   c. Where did the criminal activity occur?

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.
   See Attachment.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.
   See Attachment.

Part 4. Helpfulness of the victim.

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated):

1. Possesses information concerning the criminal activity listed in Part 3.
   ☑ Yes  ☐ No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided.)
   ☑ Yes  ☐ No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)
   ☐ Yes  ☑ No
4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.) □ Yes ☒ No
Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

See Attachment.

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? □ Yes  □ No

2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

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I am the head of the agency listed in Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed in Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2. ____________________________  Date (mm/dd/yyyy)  7/12/09
ATTACHMENT TO I-918 SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION FOR

Part 2. Agency Information

Certifying Agency Category. Other:

The Equal Employment Opportunity Commission (EEOC) became involved in this matter through the investigation of a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e et. seq. ("Title VII"), when now filed a Charge of Discrimination with the EEOC Detroit Field Office on June 8, 2008, alleging that her former employer, , subjected her to sexual harassment. In her EEOC charge and accompanying charge of particulars and affidavit, alleged that her male supervisor sexually assaulted and attempted to rape her. If the investigation of the charge of discrimination reveals a Title VII violation, the EEOC will seek compensatory damages, punitive damages, and injunctive relief to address the conduct described in Part 3, sections 5 and 6 below.

Part 3. Criminal Acts

1. Other:

The conduct described in sections 5 and 6 of Part 3 constitutes sex discrimination in violation of Title VII of the Civil Rights Act of 1964.

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

is the victim of the criminal activity being investigated. She worked for the , Michigan as a housekeeper. alleges that immediately after she started working for , in early December 2007, she was subjected to sexual harassment from her supervisor, whose first name was . This harassment began with comments of a sexual nature, exposure to pornographic images, requests to massage Ms. and requests for sex. repeatedly rejected these advances and when she did, the harasser gave her extra work. After a few weeks of this conduct, the harassment escalated to being physical.

In early January 2008, the supervisor pinned down on a bed in one of the hotel rooms, ripped open her uniform, and touched her breasts. suffered bruises to her arms from the harasser's grip when he pinned her down. A few days later, the supervisor trapped in a room a second time and attempted to kiss her. Later that day, he trapped in a storage closet and kissed her and groped her body. On or around January 7, 2008, the supervisor trapped in a guest room, pushed her down on the bed, pulled her pants down, and began touching her under her clothes. was able to escape being raped when the supervisor shifted to pull his own pants down.
After threatened to talk to the hotel manager, the supervisor cut her hours and would not let her enter the premises. Sometime during the second week of January 2008, learned that the supervisor had raped another employee, who feared the supervisor would become violent if confronted. As a result of this information and the continuing sexual assaults by her supervisor, did not return to the after Thursday, January 10, 2008.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

As a result of the incidents described in section 5 above, suffered physical injuries and emotional distress. She suffered bruising on her wrists and arms, as well as a sore neck from being restrained by the perpetrator. During the attacks she was crying. also reports that on Sunday January 13, 2008, she discovered that the word "BITCH" was scratched on her car in two places and that a hole had been punched in her gas tank. did not seek medical treatment for any physical aspect of the assaults. did, however, seek counseling from the Women's Center of Southeastern Michigan, in Ann Arbor, Michigan.

Part 4. Helpfulness of the victim.

5. Other, please specify.

has personal knowledge of the sexual assaults and attempted rape she was subjected to by her supervisor at . She has been extremely helpful in the EEOC's investigation of On March 6, 2008, she came into the EEOC's Detroit office, located in the federal building, for a personal interview. During her interview, she shared information regarding the crimes she suffered while working at the in December 2007 and January 2008, and provided information regarding the perpetrator allegedly raping another female employee.

The following day, on March 7, 2008, through her counsel, sent the EEOC a written document listing the charge of particulars and also provided video clips. The video clips show with bruises on her legs that she suffered when attempting to escape from the perpetrator when he attacked her the last time. The video clips also show where the word "BITCH" was scratched in large letters in two places on her car shortly after her last day of employment at .

is an instrumental part of the EEOC's investigation because of her knowledge of the sexual assaults committed against her and her ability to assist the EEOC with locating other victims. EEOC will use the information provided by in making its administrative determination as to whether the treatment of at constituted a violation of Title VII of the Civil Rights Act of 1964. If EEOC files a lawsuit against based on 's Charge of Discrimination, will be an important witness at trial.