

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

MICHAELL ACOSTA-GRANADOS,

Plaintiff

v.

PLYMOUTH COUNTY  
SHERIFF'S DEPARTMENT,

Defendant.

**COMPLAINT FOR JUDICIAL  
REVIEW AND CERTIORARI**

**INTRODUCTION**

1. This is an action by Plaintiff Michael Acosta-Granados (“Plaintiff” or “Mr. Acosta”) challenging the Plymouth County Sheriff’s Department (“Defendant” or “PCSD”) denial of Plaintiff’s request for USCIS Form I-918, Supplemental B, U Nonimmigrant Status Certification (“U visa certification”) on November 3, 2021.

2. Federal law authorizes the issuance of nonimmigrant status for certain victims of qualifying criminal activity, known as “U” visas. Federal regulations require that every U visa applicant submit a U visa certification issued by a qualifying local, state, or federal agency (the “certifying agency”) with responsibility for the detection, investigation, or prosecution of the underlying crime for which U visa status has been sought. The applicant for U visa certification need only show that (1) he was a victim of a qualifying crime, and that (2) he was helpful, is helpful, or is likely to be helpful in the detection, investigation, or prosecution of the crime.

3. Until recently, the issuance of U visa certifications by Commonwealth agencies was virtually unregulated by state law. That changed in 2021. Massachusetts General Laws Chapter 258F

now requires certifying agencies subject to the jurisdiction of the Commonwealth to (1) issue a written policy regarding the U visa certification process and (2) respond to requests for U visa certifications in accordance with certain standards and, absent extenuating circumstances, within 90 days. In doing so, the Legislature created substantive and procedural rights upon which individuals in the custody of the Commonwealth are entitled to rely.

4. Mr. Acosta is one of the individuals entitled to the protections of Chapter 258F. Mr. Acosta is a civil immigration detainee held at Plymouth County Correctional Facility (“PCCF”), a component of the defendant PCSD. While detained at PCCF, Mr. Acosta was attacked and badly beaten after he reported sexual harassment by another prisoner. He is consequently the victim of a number of qualifying crimes, including, but not limited to, felonious assault and witness intimidation. Mr. Acosta thoroughly cooperated in PCSD’s investigation of the qualifying crimes and remains willing and able to assist. He therefore meets all the criteria for U visa certification.

5. Notwithstanding Mr. Acosta’s eligibility, the certifying state agency, PCSD, denied his meritorious request for U visa certification by erroneously asserting that he was not a victim of a qualifying criminal activity and that he was not helpful to law enforcement. That denial was based on an error of law, in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedure, unsupported by substantial evidence, arbitrary or capricious, an abuse of discretion, and otherwise not in accordance with law.

6. Pursuant to the Massachusetts Administrative Procedure Act, G.L. c. 30A, § 14 (“MAPA”), Mr. Acosta seeks judicial review of PCSD’s decision. In the alternative, if the Court finds that PCSD’s decision is not reviewable under Chapter 30A, Mr. Acosta brings an action in certiorari under G.L. c. 249, § 4.

## **PARTIES**

7. Mr. Acosta is an individual in the custody of U.S. Immigration and Customs Enforcement (“ICE”) and is currently detained in PCCF, located at 26 Long Pond Road, Plymouth, Plymouth County, Massachusetts.

8. PCSD is a law enforcement agency of the Commonwealth of Massachusetts, located at 24 Long Pond Road, Plymouth, Plymouth County, Massachusetts. PCSD was established as a state agency on January 1, 2010, pursuant to Chapter 61 of the Acts of 2009, which transferred to the Commonwealth all functions, duties, and responsibilities of PCSD and certain other county sheriff departments. PCSD is headed by the Plymouth County Sheriff, an elected official who retains administrative and operational control over PCSD. PCSD administers PCCF, where Mr. Acosta is detained.

## **JURISDICTION AND VENUE**

9. This Court has jurisdiction over the subject matter of this Complaint pursuant to G.L. c. 30A, § 14(1); G.L. c. 212, § 4; and G.L. c. 249, § 4.

10. This Complaint has been timely filed under G.L. c. 30A, § 14 because no more than thirty days have passed since the Defendant’s denial of Plaintiff’s petition for rehearing on November 3, 2021.

11. This Complaint has been timely filed under G. L. c. 249, § 4 because no more than sixty days have passed since the Defendant’s denial of Plaintiff’s petition for rehearing on November 3, 2021.

12. Venue is proper in Suffolk County pursuant to G.L. c. 30A, § 14(1)(c).

## FACTS

### Crimes Perpetrated on Mr. Acosta While In PCSD Custody

13. Mr. Acosta was born in 2001 in Honduras. He entered the United States in 2014 at the age of thirteen, accompanied only by an older cousin. He has not returned to Honduras or left the United States since his arrival. He is 20 years old.

14. Mr. Acosta has been in immigration detention since January 2021. In July 2021, he was transferred from a facility in New Jersey to PCCF, where he is currently detained under the custody and supervision of PCSD.

15. While detained at PCCF, Mr. Acosta was sexually harassed by a prisoner (“Prisoner 1”).

16. Mr. Acosta reported Prisoner 1’s sexual harassment to PCSD, pursuant to the procedures of the Prison Rape Elimination Act (“PREA”).

17. PCSD assigned an officer to investigate Mr. Acosta’s PREA report. The investigating officer interviewed Mr. Acosta multiple times, and Mr. Acosta fully cooperated and provided truthful information to PCSD.

18. On or about September 12, 2021, during the pendency of PCSD’s investigation of Mr. Acosta’s PREA report, Mr. Acosta was savagely attacked without provocation by another detainee (“Detainee 1”). As Detainee 1 beat Mr. Acosta, Detainee 1 repeatedly called him a “rat” in reference to Mr. Acosta’s PREA report concerning Prisoner 1. Upon information and belief, Prisoner 1 solicited Detainee 1 to carry out the attack in exchange for payment.

19. Detainee 1 ceased the attack only when guards arrived and physically pulled Detainee 1 off of Mr. Acosta.

20. According to PCSD's September 12, 2021 incident report regarding Detainee 1's attack, Detainee 1 intended to cause serious bodily injury to Mr. Acosta. The officers "deemed the use of OC [pepper] spray inadvisable based on staff's proximity to the assault and the need to end it quickly because [Plaintiff] was showing no signs of fighting back and his potential to be injured"; the attacker "was standing over . . . [Plaintiff] throwing continuous, unanswered punches at him . . . [while] [Plaintiff] was lying on his side attempting to cover his face and head with his arms," the attacker "was seen standing over [Plaintiff] throwing punches with Acosta in the fetal position," the officers "observed [Detainee 1] throwing multiple punches at [Plaintiff] who was on the ground attempting to cover up."

21. According to the same report, Lieutenant Silva described the video footage which confirmed that the Detainee 1's use of force against Mr. Acosta was unprovoked and intended to cause severe harm. PCSD summarized the footage as follows: "Just prior to the assault, both Detainees were standing in front of [a cell] conversing with the cell's occupant and another Detainee who was on recreation. With no apparent warning or provocation [Detainee 1] throws a right-handed punch into [Plaintiff's] face and knocks him backward. [Detainee 1] followed him as he retreated across the dayroom throwing numerous, unanswered punches. [Plaintiff] eventually falls to the ground by the unit staircase and [Detainee 1] stands over him and continues to throw both left and right-handed punches at [Plaintiff's] head and face until he is taken to the floor by [a PCCF officer]."

22. The brutal nature of the attack on Mr. Acosta is also confirmed by PCSD's difficulty in restraining Detainee 1 during the beating. According to PCSD's incident reports: "After the Detainees were separated [Detainee 1] continued to be actively resistant and Spontaneous Use Of Force was needed to secure [Detainee 1] who disregarded all orders to get on

the floor.” Another officer corroborated these statements in his report, stating: “I then went to where [Detainee 1] was, on the floor with Officers Fitzpatrick and R. Proctor, and saw that he was struggling against the handcuffing process... Even after the handcuffs were applied [Detainee 1] continued thrashing his body back and forth... He began struggling against all aspects of officers’ control-attempting to pull away from the officers’ escort, planting his feet and trying to spin into Officer R. Proctor all while continuing to yell at us to get off him and that he’d see us in his cell. At this time I ordered Officers Fitzpatrick and R. Proctor to take him back to the floor where his erratic and aggressive movements could be more safely controlled. Officer Fitzpatrick and R. Proctor firmly grabbed [Detainee 1’s] shoulders/torso and using their legs as leverage, pushed him forward while maintaining control of his weight. They lowered him back to the floor and applied downward pressure on his shoulder blades and legs because he was still violently thrashing against officers' controls...”

23. Detainee 1 unlawfully restrained Mr. Acosta while he held him to the ground as he violently punched him.

24. After the attack, PCCF personnel, including the PREA investigator, interviewed Mr. Acosta about the attack. Mr. Acosta willingly cooperated and provided truthful information.

25. Additionally, through his immigration counsel, Mr. Acosta offered to provide any additional information that might be helpful.

26. Mr. Acosta suffered severe injuries as a result of the attack. As reflected in medical records, Mr. Acosta suffered serious bodily injury, including pain in his head, neck, right cheek, left jaw, and spine. In addition, Mr. Acosta suffered severe emotional distress and other mental health injuries.

27. It is likely that Mr. Acosta would have been injured even more severely, and possibly killed, had the guards not intervened and stopped the attack.

### **Relevant Statutory and Regulatory Authority**

28. A U visa is available to victims of certain qualifying crimes who have assisted law enforcement authorities with an investigation or prosecution of the crime. *See* 8 U.S.C. §§ 1101(a)(15)(U); 8 C.F.R. § 214.14. The regulation establishes four eligibility criteria: (1) the applicant has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity; (2) the applicant 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; (3) the applicant 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; and (4) the qualifying criminal activity occurred in the United States. 8 C.F.R. § 214.14(b).

29. Criminal activity covered by the U visa statute includes, without limitation, abusive sexual contact, unlawful criminal restraint, stalking, felonious assault, murder, wrongful imprisonment, witness tampering, attempt, conspiracy, or solicitation to commit any of these crimes. 8 U.S.C. § 1101(a)(15)(u)(iii).

30. Federal regulations require that a noncitizen in removal proceedings who is seeking a U visa file a Form I-918 directly with USCIS. Form I-918 must be accompanied by a “U Nonimmigrant Status Certification” or Form I-918, Supplement B, signed by a “certifying official” of a “certifying agency.” The certification must attest that “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.” 8 C.F.R. 214.14(c)(2)(i).

31. Under the regulation, “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.” 8 C.F.R. § 214.14(a)(5) (emphases added).

32. According to guidance published by the U.S. Department of Homeland Security, a finding that the victim is “helpful” means that the victim is helpful, has been helpful, or is *likely* to be helpful to the detection, investigation, or prosecution of the qualifying criminal activity if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

33. In 2021, the Massachusetts Legislature enacted, and Governor Baker signed, Acts 2021, c. 24, § 65, codified at Chapter 258F of the Massachusetts General Laws. The law requires, among other things, that:

- “A certifying entity shall adopt a policy for completing and signing nonimmigrant status certification forms for . . . victims of criminal activity who intend to petition for nonimmigrant visas under 8 U.S.C. 1101(a)(15)(U)” (G.L. c. 258F, § 2(i));
- “A certifying entity shall respond to a nonimmigrant status certification request from a victim of criminal activity who intends to petition for a nonimmigrant visa under 8 U.S.C. 1101(a)(15)(U) . . . not later than 90 days after receiving the request for certification” (*id.* § 3); and



- “The certifying entity shall respond to the request by: (i) completing and signing the certification forms; (ii) issuing a written denial of the request, without prejudice, informing the victim of the reason that the request does not meet the requirements of the certifying entity's policy under section 2; or (iii) in extenuating circumstances outside the control of the certifying entity that prevent the certifying entity from responding to the certification request in the required time period, issuing a written explanation of the delay . . .” (*id.*).

34. A “[c]ertifying entity” is defined as a law enforcement agency, prosecutor or other state or local entity that has the authority to detect, investigate or prosecute severe forms of trafficking in persons or criminal activity. G.L. c. 258F § 1.

#### **Mr. Acosta’s Satisfaction of All Predicate Requirements for U Visa Certification**

35. Mr. Acosta was a victim of multiple qualifying crimes while detained at PCCF, resulting in substantial physical and mental injury.

36. Mr. Acosta has been helpful, is being helpful, and is likely to be helpful to PCSD in its investigation or prosecution of the qualifying criminal activity upon which the U visa petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested.

37. Accordingly, Mr. Acosta has met all eligibility criteria and predicate requirements for a U visa certification.

#### **PCSD’s Improper Denial of Mr. Acosta’s Request for U Visa Certification**

38. On or about October 1, 2021, Mr. Acosta’s counsel filed a Request for a U visa certification with PCSD.

39. At all times, PCSD was a certifying entity under the meaning of G.L. c. 258F § 1.

40. At the time that Mr. Acosta’s request was filed and adjudicated by PCSD, PCSD had failed to adopt a policy for completing and signing nonimmigrant status certification forms, in violation of G.L. c. 258F, § 2(i).

41. On or about October 19, 2021, PCSD denied Mr. Acosta’s request in a form letter, stating that “[t]he applicant was determined **not** to be a victim of a qualifying criminal activity” and “[t]he applicant was determined **not** to have been helpful to law enforcement.” (Emphases in original).

42. This determination is erroneous as a matter of fact and law, and is contravened by available evidence, including PCSD’s own incident reports, video footage, and Mr. Acosta’s active and forthcoming cooperation with PCSD investigators regarding his knowledge of the qualifying criminal activity of which he was a victim. Additionally, the determination fails to take into account whether Mr. Acosta is helpful or is likely to be helpful to the detection, investigation, or prosecution of the qualifying criminal activity.

43. In violation of G.L. c. 258F, § 3(ii), PCSD’s denial failed to inform Mr. Acosta of the reason that the request does not meet the requirements of the certifying entity’s policy (because PCSD unlawfully had no policy).

44. On October 26, 2021, Mr. Acosta, through counsel, sought reconsideration of PCSD’s initial decision.

45. On November 3, 2021, PCSD denied the petition for reconsideration, referring to its initial determination without supplying any additional information.

46. Only on November 15, 2021—well after a final decision was made on Mr. Acosta’s petition—did PCSD finally implement a U visa certification policy.

**COUNT I**  
**(Judicial Review of Agency Decision, G.L. c. 30A, § 14)**

47. Mr. Acosta repeats and incorporates herein paragraphs 1-46 set forth above.

48. As a “certifying agency,” PCSD is empowered by statute and regulation to make final decisions on requests for U visa certification from detainees in PCSD custody, such as Mr. Acosta.

49. PCSD’s decision denying Mr. Acosta’s application for U visa certification was a final decision in an adjudicatory proceeding, as defined by G.L. c. 30A, § 14.

50. PCSD’s decision denying Mr. Acosta’s petition for reconsideration was an agency denial of a petition for rehearing, as defined by G.L. c. 30A, § 14(1).

51. PCSD’s denial of Mr. Acosta’s application and its denial of Mr. Acosta’s petition for reconsideration were in excess of its statutory authority or jurisdiction, based upon an error of law, made upon unlawful procedure, unsupported by substantial evidence, arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law; all to the prejudice of the Plaintiff’s substantive rights.

52. As a consequence, the Court should vacate and set aside PCSD’s decision, and order PCSD to issue Mr. Acosta a U visa certification pursuant to applicable law.

**COUNT II**  
**(Certiorari Review, G.L. c. 249, § 4)**

53. Mr. Acosta repeats and incorporates herein paragraphs 1-52 set forth above.

54. If the Court determines that it lacks jurisdiction to provide judicial review pursuant to G.L. c. 30A, § 14, Mr. Acosta pleads in the alternative an action in the nature of certiorari, pursuant to G. L. c. 249, § 4.

55. Certiorari may be filed in the Superior Court, as a remedy to correct errors in proceedings not otherwise subject to review by motion or appeal. The Complaint is timely because it was commenced within sixty days after the complained of proceeding. G. L. c. 249, § 4.

56. If judicial review under M.G.L. c. 30A is unavailable, Mr. Acosta is entitled to certiorari review because (i) PCSD's denial of his request for U visa certification is a judicial or quasi-judicial proceeding, (ii) there is no other reasonably adequate remedy at law, and (iii) a substantial injury or injustice has arisen from the proceeding under review.

57. PCSD's decision denying Mr. Acosta's application for U visa certification was a substantial error of law apparent on the record and has adversely affected Mr. Acosta's constitutional and statutory rights, resulting in manifest injustice to Mr. Acosta. The decision lacks the support of substantial evidence on the record, was arbitrary and capricious, and constituted an abuse of discretion by PCSD.

58. As a consequence, the Court should review PCSD's denial under its powers of certiorari, vacate and set aside PCSD's decision, and order PCSD to issue Mr. Acosta a U visa certification pursuant to applicable law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Grant judicial review of PCSD's decision under G.L. c. 30A, § 14;
2. Following due consideration of the record, and after hearing, determine that PCSD's decision was based on an error of law, in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedure, unsupported by substantial evidence, and/or arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law;

3. In the alternative to judicial review, review PCSD's decision under the Court's certiorari powers;
4. Set aside PCSD's denial of Plaintiff's application for U visa certification;
5. Permanently enjoin PCSD from denying Plaintiff's application for U visa certification;
6. Issue an order compelling PCSD to issue Plaintiff a U visa certification in accordance with applicable law;
7. Award Plaintiff his attorneys' fees and costs as may be permitted by law; and
8. Grant such other relief as the Court deems appropriate.

[SIGNATURE PAGE FOLLOWS]

Dated: December 3, 2021

Respectfully submitted,

MICHAELL ACOSTA-GRANADOS,

By his attorneys:

/s/ Jonathan D. Persky

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