

FLAWED DESIGN

How the U Visa is Revictimizing
the People it was Created to Help

— Fall 2020 —



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The Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women gives law students at the SMU Dedman School of Law the opportunity to provide legal representation to survivors of gender-based harms, including domestic violence, sexual assault, and human trafficking. Partnering with established community organizations, the Hunter Center serves women who are most critically in need of legal assistance and engages in education and advocacy projects that seek long-term solutions to the problem of violence against women.

Human Rights Initiative of North Texas is a legal and critical social services provider for immigrants who have fled human rights abuses. Our clients come from all over the world and their stories are all different. What they have in common is that they have overcome devastating circumstances and now seek legal status in the U.S. under the humanitarian protections provided for by US laws. At HRI, all of our services are free, and all are designed to help forge a path to safety, stability, and opportunity.



TABLE OF CONTENTS

- INTRODUCTION..... 1**

- BACKGROUND..... 3**
 - The U Visa in Context..... 3
 - Law Enforcement Certification: An Unnecessary Barrier..... 5
 - Years of Backlog: The 10,000 Annual Cap & the Elusive Wait List..... 7
 - Risk of Removal: The New Normal..... 8

- THE HUMAN TOLL OF THE BACKLOG: STORIES FROM THE WAIT..... 10**
 - Job and Housing Insecurity..... 10
 - Lack of Healthcare, Medical Services, and the Mental and Emotional Toll..... 12
 - Restrictions on International Travel..... 14
 - Impaired Access to Justice..... 15

- RETURNING TO JUSTICE: FEDERAL SOLUTIONS..... 17**

- CONCLUSION..... 19**

- ENDNOTES..... 20**

INTRODUCTION

“The people that are in [the U Visa] Process don’t decide to go through what we had to go through, right? What I lived with—the abuse—they wanted to kill me. When that opportunity comes to receive my visa, it’s like saying, ‘Well, from what has happened, something better can come. And it’s a hope for a better life and better opportunities.’”

— Leticia,* U visa pending since 2019

Every day in cities across the United States, strength and hope is prevailing. Undocumented survivors of crime are coming forward to protect themselves and their children from danger, to protect their families and friends, and to protect their communities.

They are people like Dolores,* who reported her daughter’s sexual abuse to the police and testified against the abuser at trial so that he could not hurt any other children. They are people like Angelina,* who worked with law enforcement to catch and prosecute her neighbor who kidnapped, raped, and shot her, and who shared his plans to kill his wife. They are people like Jose, who placed himself in harm’s way to save his coworkers from an active shooter and then worked with police and prosecutors to prosecute the assailant.

These individuals are tremendously strong. Although they have endured violence and trauma, they have helped prevent similar harm from happening to others, and are working to rebuild so they can thrive.

They are also tremendously brave. As survivors without permanent legal status, they have come forward at tremendous risk to themselves. By coming out of the shadows, they expose themselves to detention, deportation, and permanent separation from their partners, their children, and the communities where they have built their lives. These risks are very real. Despite his heroism, Jose was forced into immigration detention, separated from his wife and their six children.

They are also tremendously patient, pushing through the substantial hardships that accompany the long road to potential legal status. As Leticia shares, “There’s fear—and maybe sometimes even despair—of saying ‘When will it arrive?’ or ‘What’s the decision?’ But at the same time, hope also emerges when you say, ‘My life will change with this [visa].’”

Their strength, bravery, and patience are incredible—but far too much to ask. The hardships and risks endured by immigrant survivors who come forward to keep their communities safer were neither intended, nor do they represent the best way for our system to operate.

Our legislators understood that if victims do not feel safe reporting crimes, they will stop coming forward to law enforcement. For that reason, in an attempt to allow people without permanent legal status and law enforcement to safely work together, Congress created the U visa: a pathway to legal status for victims who help police, prosecutors, and other agencies detect, investigate, or prosecute one of about 30 serious crimes.

This part of the U visa’s promise remains unfulfilled because of a fundamental design flaw: the law’s 10,000 annual cap on U visas. Because of the cap, people filing a U visa petition today can expect to wait 7 to 10 years for approval. And because of the Trump Administration’s cruel immigration policies, survivors with pending U visa petitions are at risk of deportation unlike ever before. Meanwhile, their lives

are placed on hold in irreparable ways, resulting in damaging impacts in areas ranging from employment to housing, medical care, and mental health.

The U visa’s possibilities also remain unfulfilled because of a second problem in its DNA: its requirement that survivors engage with our criminal justice system. There are many survivors of crime who, despite the theoretical availability of the U visa, may never be able to access it safely because interacting with law enforcement is not safe for them.

Since the U visa was created, advocates have raised concerns about requiring survivors to interact with the criminal justice system. Many have issued thoughtful critiques of the U visa’s law enforcement certification requirement.¹ But particularly in this moment—where this nation has been called, yet again, to come to terms with its persecution, exploitation, and dehumanization of Black people, Indigenous people, and people of color—it would be irresponsible not to shine a light on the ways that the U visa reinforces an unequal system.

Although this Report addresses the damaging effects of both design flaws, it focuses on the 10,000 annual cap’s effects on survivors and the attorneys who represent them. The Report relies on semi-structured interviews with U visa applicants, stories shared by immigration attorneys, and survey data from nearly 150 immigration attorneys all across the country. The research clearly demonstrates that the flawed U visa system re-victimizes the already-vulnerable people it was intended to help.

As the Report illustrates, there are many problems with the system, but the answer is fairly straightforward: Congress must raise or eliminate the 10,000 annual cap on U visas and eliminate the U visa’s mandated interactions with law enforcement. In the meantime, the U.S. Citizenship and Immigration Services (USCIS), the agency that reviews U visa petitions, has the power to ease some of the challenges of the backlog created by the U visa cap. Until then, Congress’s intention that this “humanitarian” visa will “offer protection to victims of” domestic violence, sexual assault, trafficking of aliens, and other crimes” will go unfulfilled.²

RECOMMENDATIONS

CONGRESS	<ul style="list-style-type: none"> • Eliminate or raise the 10,000 annual cap. • Eliminate the U visa’s mandated interactions with law enforcement.
	<ul style="list-style-type: none"> • Increase resources for adjudication of U visa petitions.
USCIS	<ul style="list-style-type: none"> • Grant work authorization within 180 days of submitting a U visa petition. • Adjudicate petitions and grant deferred action to petitioners on the wait list within 6 to 12 months. • Grant parole to wait-listed U visa petitioners and qualifying derivatives residing abroad.
DHS/ DOJ	<ul style="list-style-type: none"> • Department of Homeland Security and Department of Justice: Stop detaining and deporting U visa petitioners.

BACKGROUND

The U Visa in Context

“Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnapping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.”

— Text of Bill that created the U visa program³

Despite its complexity and current dysfunction, the United States immigration system exists for a simple reason: to provide a mechanism for people to enter and either temporarily or permanently stay in the United States. The vast majority of ways for people

to immigrate relate to either their employment possibilities or family members in the United States. A much smaller but critical route is through our humanitarian protection programs: those designed for people who 1) need status in the United States because

Pathways to Permanent Resident Status

Most people who are able to qualify for permanent status come through their family or work. Humanitarian cases make up only a small fraction.



● Family-based, employment-based, and other ● Refugee ● Asylum ● U Visa ● Special Immigrant Visa for Iraqi and Afghan nationals
● Special Immigrant Juvenile Status ● Violence Against Women Act ● T Visa

Data from DHS Office of Immigration Statistics, FY 2018

of external forces beyond their control; and 2) are granted status in the United States in order to serve the public interest.

The most well-known humanitarian protection program is asylum for refugees, but others exist as well: protections for children who have been abused, abandoned, or neglected by their parents; a visa for survivors of human trafficking; and a pathway to lawful status for people married to abusive U.S. citizens and green-card holders.⁴ The U visa program is another one of these limited humanitarian protection programs.⁵

The U visa was created by Congress for the humanitarian purpose of protecting immigrants without lawful status in the United States who were victims of crime. The U visa was enacted as part of the federal Battered Immigrant Women Protection Act (BIWPA).⁶ Part of the Victims of Trafficking and Violence Protection Act of 2000, BIWPA sought, in part, to increase protections for immigrants not covered by existing humanitarian remedies available in the Violence Against Women Act (VAWA).⁷ Prior to BIWPA's enactment, immigrants who were victims of crime in the United States, specifically domestic violence, had no recourse unless they could establish their eligibility for VAWA by proving, among other things, that they were married to (or the parent or child of) a U.S. citizen or lawful permanent resident who was abusing them.⁸

By creating a pathway to status, the program was also intended to encourage undocumented people—who

TO QUALIFY FOR A U-VISA:

- 1** You must have been the **victim or witness** to a qualifying crime.
- 2** You must have suffered **physical or mental harm** because of that crime.
- 3** You must **have information** about the crime.
- 4** You must be **helpful** in investigating or reporting that crime.

Common qualifying crimes include:

- Domestic violence • Sexual Assault • Rape • Incest • Manslaughter • Murder • Kidnapping • Felonious Assault

but there are about 30 qualifying crimes in total

might otherwise fear immigration consequences from a law enforcement interaction—to come forward.⁹

To qualify for a U visa, a person must: (1) have been a victim of one or more eligible crimes in the United States; (2) have suffered “substantial physical or mental abuse” as a result; (3) possess information about the crime at issue; and (4) have been helpful, or be likely to be helpful, to law enforcement in investigating or prosecuting the crime.¹⁰ The statute makes the visa available to victims of a variety of qualifying crimes, including rape, sexual exploitation, witness tampering, kidnapping, and domestic violence.¹¹

Law Enforcement Certification: An Unnecessary Barrier

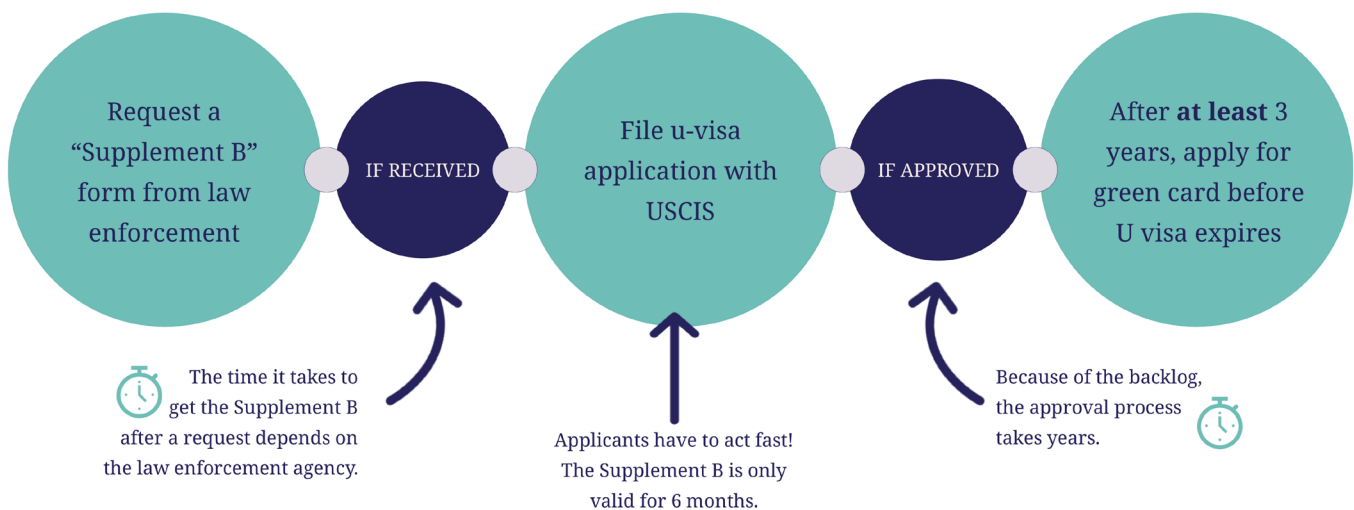
“It’s more than just a federal program. It’s connecting with the city. It took me four years to get my [Law Enforcement Certification] Form signed. Four years from the time I requested it until it was actually signed. It would have been nice, at least more communication. If I called them, it would be like, it’s being processed, it’s being processed.”

— Luis, U visa approved 2018

Before submitting their application, U visa applicants must obtain a form called a “Supplement B” certification, which verifies that the victim has been helpful to the agency investigating or prosecuting the qualifying crime. To issue a certification, the head of the agency, a designated supervisor, or judge can consider how the person reported the crime, participated in the criminal investigation, or assisted in the prosecution of the case. As a result, the U visa typically requires applicants to engage with law enforcement numerous times, and often on an ongoing basis.¹²

This requirement is inherent to the U visa’s design. As a “community-policing and crime-fighting tool,” the U visa program can help build bridges between local police and the people they serve.¹³ When law enforcement educates community members about the U visa, it significantly increases the likelihood that an individual will report a crime.¹⁴ Agencies that use the U visa regularly report that community members are more willing to report *past* crimes and immigrant crime victims are “more likely to reach out to the police, regardless of whether they will apply for legal status.”¹⁵

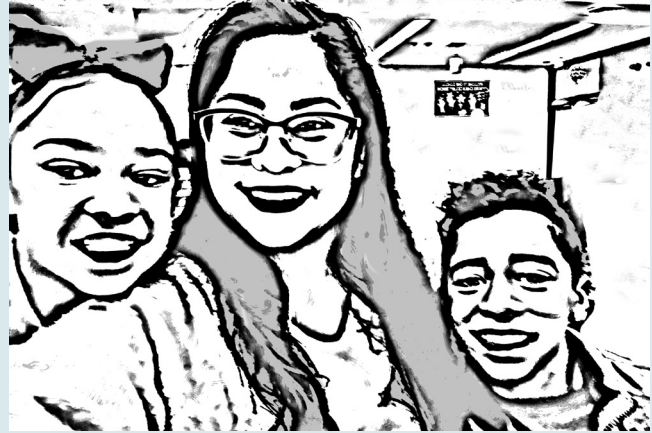
Law Enforcement Certification: The beginning of a long process



The U visa was designed to foster trust between immigrants and the police, but that intention fails to reflect the reality of policing in America. In reality, interacting with law enforcement in these ways is not safe for many survivors—particularly Black and LGBTQIA survivors. For people of color—and particularly Black, transgender, and non-binary people—calling a law enforcement officer can mean serious bodily harm, or worse. For domestic violence survivors, calling a law enforcement officer can lead to arrest of survivors themselves.¹⁶ For any member of a misrepresented community,¹⁷ calling a law enforcement officer can mean being disbelieved in favor of an assailant.

For many, alternative, non-law enforcement means of protection may be the only safe option. This may be through a transformative justice¹⁸ or community accountability¹⁹ model in place in their community, it may be through a trusted network of family or friends, or it may be through a network of domestic violence shelters or other community organizations. But these survivors who must find protection through an alternative route are categorically ineligible for the U visa's protection.

Moreover, across the country, a person's residence often dictates whether they have access to the process at all. Many agencies refuse to issue Supplement B forms entirely; others refuse to sign arbitrarily, creating additional barriers to certification that are not required by the law.²⁰ In a best case scenario, calling a law enforcement officer in these circumstances may allow for some intervention, but leave immigration relief foreclosed. In a worst case scenario, it may mean inviting immigration enforcement to a survivor's doorstep. Ultimately, the patchwork of local policies means that a survivor's access to relief is arbitrary, depending entirely on where the perpetrator committed the crime.



Monse,* Age 28

“Strong, educated, world-saving mom of 3 kids, who lives to help others above all else, while creating a better future for her kids and the rest of the world, P.L.U.R (Peace Love Unity Respect).”

“If I can affect a hundred people and those people affect a hundred people, it can make an impact.”

ON SURVIVING: “I’ve been a victim of domestic violence and physical abuse as a child and as an adult. I chose to be a survivor and not a victim my whole life. I want to help women who are fleeing those situations—tell them: ‘Hey, it’s okay. You can still do this. Don’t live in fear.’ To see it as: ‘I can do this, I deserve better.’ Not to give up, especially if they have kids. You don’t have to be a prisoner to your past.”

ON NAVIGATING LIFE WITHOUT STATUS: “They’re like, ‘You’re not even supposed to be here. I can just call and you’ll never see your kids again.’ Or the whole, ‘Your opinion doesn’t matter—you’re not really here anyway.’ All through that, you felt unseen. After I started getting my social and everything, I felt like I actually had a voice. Like I did matter.”

ON WHAT DRIVES HER: “I’ve always been interested in fighting for other people who can’t fight for themselves or don’t know how to fight for themselves. Even my whole family is like ‘You sure do like to argue when something is wrong. You should have been a doctor—you should have been a lawyer.’ I could have been anything because I always studied. I just want to be someone who can help people.”

Years of Backlog: The 10,000 Annual Cap & The Elusive Wait List

“It’s very difficult to counsel my clients and see how upset they are by the backlog. For many of them it takes tremendous courage to come forward. The promise of a U visa emboldens them to seek help, only to feel stuck for years in the waiting game.”

— Los Angeles-based immigration attorney

One major source of problems for U visa applicants stems from the statutory limit or “cap” on U visas: there can be no more than 10,000 U visas issued per year.²¹ This cap has created a mounting backlog that creates a substantial burden on applicants whose status is in limbo while they wait for their visas to be processed.

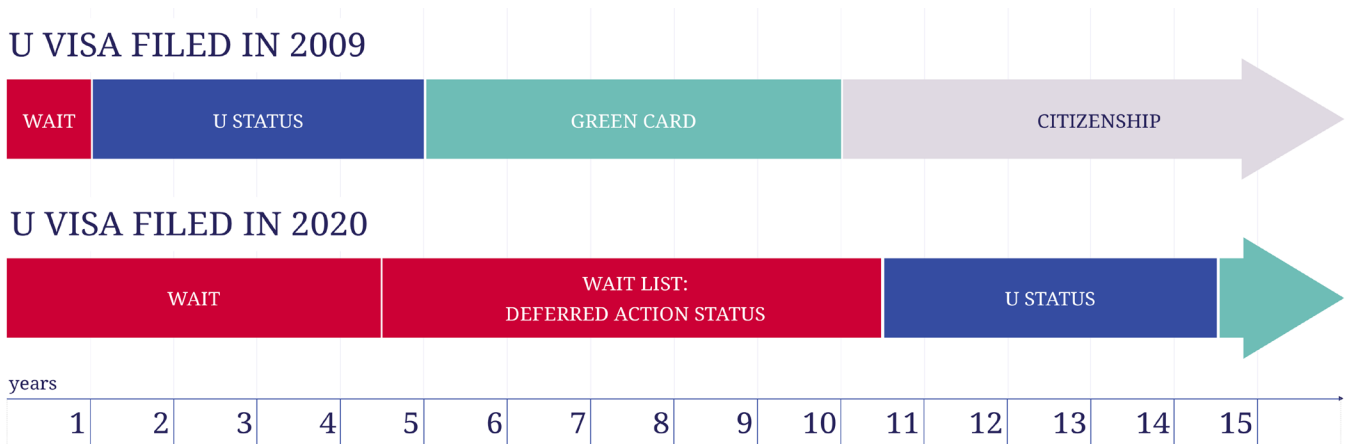
The extent of the backlog is staggering. Each year since 2011, just two years after the U visa became available, USCIS received more applications than it could approve under the cap.²² In fiscal year 2011, for example, USCIS received over 14,000 applications; during fiscal year 2019, it received over 28,000.²³ Despite the unique challenges the COVID-19 pandemic has posed,²⁴ this

fiscal year should follow the same trend: in the first three months alone, USCIS received nearly 6,000 applications. The mounting applications have created a major backlog, leaving over 153,000 people awaiting a decision as of March 31, 2020.²⁵

The existing system provides little clarity on when an applicant may finally reach the front of the line. As a Washington-based immigration lawyer reflected, “[g]iven the current backlog, it’s difficult as attorneys to even tell clients how long it will take to get a visa.”

Importantly, approval of a U visa petition is not the end of a person’s immigration journey. Although a U visa approval means that a person can work legally and live

A Timeline Compared: The Growing Wait for the U Visa Wait List



“Clients often seek immigration assistance shortly after they’ve stabilized from the initial trauma of their victimization. I believe the U visa is meant to offer them a modicum of hope — a chance to further stabilize their lives and redeem the suffering they’ve endured. With the backlog, however, this hope is diminished. There is little hope in telling someone who has experienced domestic violence and who has recently become the sole breadwinner of her family that it will be at least five years before she might be eligible for work authorization in the United States.”

— Illinois-based immigration attorney

in the United States without fear of removal, it does not permit someone to stay in the U.S. indefinitely. That is because the U visa is a temporary status, which only lasts for four years.

To remain in the United States past the expiration of the U visa, the U visa holder must apply for lawful

permanent resident status (or a “Green Card”) during the last year of their U visa status. If they²⁶ are approved, they must wait five years before they can apply to become a U.S. citizen. In total, a person must wait nine years after their U visa approval to apply for citizenship. For someone applying for a U visa today, that means that citizenship is likely at least 20 years away.

Risk of Removal: The New Normal

“Being a victim of U eligible crime and filing a U visa used to offer at least some protection if a person was put in removal proceedings, but no longer, and that’s especially frightening because of the long backlog.”

— Texas-based immigration attorney

For many years, U visa applicants with meritorious applications facing removal proceedings had some protection while their U visa applications were pending. A 2012 case, *Matter of Sanchez Sosa*, held that an immigration judge could grant a continuance in a case, effectively putting a removal proceeding on hold, for a U visa petitioner who had filed an application that, on its face, met the visa’s requirements.²⁷ In addition to the obvious importance to applicants, the

policy made sense from an administrative efficiency standpoint: there is no reason to spend government time and resources to deport someone who would likely receive immigration status.

Things changed significantly in 2018, when then-Attorney General Jeff Sessions sharply limited immigration judges’ discretion to grant continuances, directing that they should be rarely granted.²⁸ Instead of focusing primarily on the merits of the underlying application, the new standard requires immigration judges to take into account the length of time the immigration case will need to remain open, the number of continuances the court has granted or may need to grant, and when the applicant decided to file their U visa application.²⁹ Because U visa cases are stuck in such a lengthy backlog, these factors have caused immigration judges to issue removal orders even when people have meritorious U visa petitions pending.³⁰

Similarly, the Trump administration has also limited the use of “administrative closure,” a process by which immigration judges can temporarily remove a case from their docket. By allowing judges to effectively pause the cases of individuals who would likely be granted immigration relief, administrative closure created efficiency in the immigration court system for nearly three decades. However, in 2018, Sessions changed the law, holding that judges lack general authority to administratively close cases.³¹ With administrative closure now only available in certain limited circumstances, judges’ hands are tied and many U visa petitioners are at risk of deportation. As one immigration attorney reflected, “My clients in removal proceedings have no form of certainty

or safety from removal while they are waiting for their U visa, even though they have a clear form of immigration relief through the U visa.”

Instead of encouraging survivors to come forward, the increased risk of deportation that now exists in the U visa process has caused some people to make the opposite choice. Jessica,* for example, could not bring herself to file a police report against the man who sexually assaulted her six-year-old daughter after learning about the wait time and deportation risks. The man remains in the community, without any intervention and able to reoffend against someone else’s child, and Jessica’s family has been forced to work through their trauma in the shadows.

THE HUMAN TOLL OF THE BACKLOG: STORIES FROM THE WAIT

“Clients have to really consider whether it is worth it in the long run. They have to add an additional stress and trauma to what they already went through as crime victims/witnesses. And whether cooperating is really worth it.”

— New York-based immigration attorney

To better understand the realities of living and working in the shadow of the backlog, the authors of this Report conducted long-form, semi-structured interviews with six U visa petitioners and holders, who represent 12 total U visa applicants, collected stories from 16 immigration practitioners from 9 states, and surveyed 143 immigration practitioners nationwide. The perspectives are those of people in various stages of the U visa process, but their

remarks and reflections shared a common and thunderous echo: the wait-time is long, it is arduous, and it is unnecessary.

The following sections examine the common obstacles³² that these individuals shared: job and housing insecurity; limited access to healthcare, medical, and mental health services; inability to engage in essential travel; and impaired access to justice.

Job and Housing Insecurity

“In the back of my mind, it is a constant thought: when am I going to get a response? When am I going to get my work permit or my visa? I am always checking the mail or thinking about it.”

— Leticia, waiting since 2019

Because of the backlog, U visa applicants must wait years without any form of legal protection while their petitions are pending. Under federal law, U visa petitions should not sit untouched while awaiting a final decision from USCIS. Once the statutory cap has been reached in a fiscal year, all applicants who “due solely to the cap” are not granted a U visa “must be placed on a waiting list.”³³ Placement on the waiting list automatically grants the U visa petitioner deferred action, which provides some protection from removal, as well as the ability to apply for work authorization.³⁴

USCIS has, however, failed to timely fulfill this promise for applicants, and over time, even the wait for the wait list has grown. Today, review for the wait list is estimated to take four and half years.³⁵ As one Wisconsin-based immigration attorney shared, “[r]eceiving a grant of deferred action used to only take 1 to 2 years. My most recent case took 5 years to receive deferred action.”

Like the backlog for the U visa itself, the wait for the wait list is not because U visa applications are particularly burdensome to review; it is because the federal government has failed to allocate sufficient resources to timely adjudicate applications—or, in USCIS’s own words, due to “agency resource constraints.”³⁶

The years of delay have dramatic effects. As Luis explains, without deferred action or lawful U visa status, a person is barred from “anything that you need a social [security number] for. And literally it’s

everything.” Reflecting on employment, he shares, “[y]ou needed a social to have a good job. When I say good job, you can do construction that pays on the side—stuff like that. But if you want benefits, you have to have a work permit.” For many people, a lack of lawful immigration status can lead to exploitation and job insecurity.” Work without authorization means, as Monse explains, that you have to find cash jobs,

which for her “was really a struggle”—working “really crappy jobs and sometimes being treated really badly.” Over 55% of the attorneys surveyed reported that they had a U visa client lose a job while awaiting their visa.

Lack of job security has collateral effects on many areas of life, but has particular effects on ability to access and maintain housing. Without regular income,

Luis, Age 30

“A dreamer dreaming of change where a child will never have to ask where his dad is and the family member reply, ‘He’s not here he’s in Mexico’ (because of deportation) but one day will return.”

“When I graduated college, I was like, ‘Why end the legacy here? Why not continue to set the standard even higher?’ My goal is a PhD.”

ON LIFE: “You can replace talent. There will always be better spokespersons, lawyers, whatever. But you cannot replace character. You cannot replace integrity. You cannot replace, in essence, who you are. So stay true to yourself, stay true to your conviction.”



ON WORKING WITH THE POLICE AND TESTIFYING FOLLOWING A VIOLENT ROBBERY: “I helped the police, I didn’t ask for anything. It was just natural. I went to go testify. I was studying, and I was writing a descriptive essay in college, so I was very descriptive of what I saw. He robbed like seven stores or something like that. Other people were afraid, but I was like ‘Yeah, I’ll go look at the pictures, I’ll go testify.’ I was there. His name was Brian,* may God bless him. I asked the judge if I could say a little something, and I looked at Brian, and I was like ‘I don’t hold anything against you, and I just wish you the best.’ Releasing those words, making sure he didn’t feel burdened with the consequences. I’m good. That was a nice experience. And out of that, turned into something great.”

ON NAVIGATING LIFE WITHOUT STATUS: “It doesn’t matter if I finish my high school degree, if I pursue the Associate’s Degree, the Bachelor’s Degree, the Master’s. No, that doesn’t matter. It feels like nobody cares. So you don’t feel fully assimilated to your home country. You’re trying to get assimilated here, but you’re not fully accepted. It’s an inner struggle—not knowing where you belong.”

ON WHAT DRIVES HIM: “I’m committed to Christ, committed to my faith, committed to my family. Personally, there’s a strong commitment with God because when I was 16 years old, I was broken. I remember I wanted to jump in the middle of the road. My mom would stop me—she’d be like, ‘What are you doing?’ You just felt so hopeless. No future. No future, no nothing. And in that state or condition, Christ received. And I was awed, I felt so much love: ‘I feel your presence God, I feel your love, I feel your mercy.’ I had never felt this, never felt this in my life. It was like: How are you going to receive a person, a sinner like me? That has no future, that cannot give back to you? I’m rejected by the United States of America, right? I’m rejected by Society. I’m pretty much seen as a person from the hood. If only they knew that person inside is crying for change. Crying for a difference.”

it is difficult to find a steady place to live. Over a third of the immigration attorneys surveyed reported that they had a client lose housing during the waiting period. One Virginia-based immigration attorney shared, “One of my applicants is in transitional housing, which will run out before the individual has work authorization and/or the U visa is adjudicated.” Many U visa applicants are forced to bounce from places of their own to couches—or even the street—as money ebbs and flows. As a California-based immigration attorney observed, “The inability to work has continued to be a major issue for my clients, especially living in an area with a high cost of living and a housing crisis.”

Despite federal law that prohibits landlords from discriminating against tenants because of immigration status,³⁷ many U visa applicants are unable to access housing without a social security number. As Luis explains, “If you were going to live in a nice apartment—they’ll want to do a background [check], and having to do a background [check, you need] a social.” Monse recalled one time that she lost her apartment after her boyfriend moved out; when she asked the apartment complex to transfer everything to her name, they told her that she needed some sort of documentation to stay: “So I had to go back to living with some friends or just anyone.” Documentation of lawful immigration status can also be a prerequisite for certain housing assistance programs.

These barriers can be particularly difficult for survivors of domestic violence (who make up a large share of U visa petitioners³⁸), who have had to separate from an abusive partner who may have been providing the family’s income or housing. Mayela,* for example, was without status when her daughter called the police to report that Mayela’s husband had severely beaten Mayela and needed medical attention. Although Mayela cooperated with law enforcement through this time—helping prosecutors secure a conviction against her husband for assault and drug possession—her family faced eviction from her husband’s house. She and her four children slept in a park for a few days, until her daughters’ boyfriends were able to pay for a hotel for two weeks. They were eventually able to move in with one of the boyfriends.

This time was particularly challenging for Mayela because all of her immediate family was in her home

country. She reflected that things were “even more [difficult] when it was just me and the four kids. I saw really hard times. I worked day and night to give them enough for them to be what they are right now. People would always tell me, ‘You’re not going to be able to do it. Your children are going to be nobodies.’ And here they are.”

Although having a work permit is certainly not a golden ticket, it can be a game changer. As Iris,* who recently received her U visa, explains, having a work permit and then a U visa “made my life easier. Because with a work permit, you can do a lot. It works like an ID. With that, they know you are legal here, and that you can work. With the visa, we feel safety and comfort.” After her U visa was approved, Monse was able to move from cash jobs to a dry cleaning company, to a nature center, to a background check company, and finally to a construction company. Reflecting on getting work authorization and then her U visa, she said: “It’s helped me a lot—I was fortunate enough to find a house.”

Lack of Healthcare, Medical Services, and the Mental and Emotional Toll

“My sisters, they were citizens... anything they needed, they went to the doctor. I was like, ‘I’m sick. Where can I go?’”

— Luis, U visa approved 2018

Without status during the waiting period, U visa applicants also face major barriers to accessing healthcare and medical services. People without documentation cannot access the federal insurance exchanges, are much less likely to receive health insurance through an employer, and—in many states—are unable to access Medicaid. That leaves many people paying out-of-pocket if they need to see a doctor, which often leaves them entirely without access to care. This is the reality for many U visa petitioners: 62% of the attorneys surveyed reported

that they had a U visa client experience a medical issue or had a client who was unable to seek medical care during the waiting period.

Reflecting on his childhood, Luis shared, “I was never able to go to the doctor [growing up] because you needed a social [security number]” to have a job with health insurance. Without insurance coverage, if you are able, “you just go to the care clinics and churches that have . . . clinics that let you pay \$20 out of love because people are volunteering their time.”

Although these care clinics do an important job, they cannot fill the gap that inability to access regular medical care creates. For some U visa applicants, that shortfall is a matter of life and death. A California-based immigration attorney reported that one of their clients passed away with a pending U visa application because she needed a lung transplant and could not get on the list without a U visa approval. Another California-based immigration attorney represented a client who died in 2019 from medical issues and health complications, still awaiting a decision on the U visa case that was submitted in 2015. A D.C.-based immigration attorney shared that one of their clients with a pending U visa application has been unable to get on a list for a kidney transplant because of immigration status.

U visa applicants are not the only ones impacted by lack of medical coverage: their children feel it too. Mary* is the mom of a 19-year-old son who has experienced seizures since he was 12. Although he continues to experience seizures (and their physical and mental effects), he has aged out of the care program that he qualified for through a local community hospital, leaving him without access to the range of care he needs. Instead, the family relies on ambulances and emergency medical professionals when he needs medical assistance—a very expensive, dangerous, and inefficient stopgap.

Untreated medical issues can be particularly difficult when they arise out of the victimization a person has experienced. For example, medical concerns can force a survivor of intimate partner violence back into the hands of an abuser who has access to money or healthcare. As an Arizona-based immigration attorney shared, “The backlog has created significant challenges for principal applicants who need the help

of their immediate relatives due to injuries sustained by the crime that qualified them for the U visa.”

Even when someone does have access to health coverage, it can come at a high price. Leticia, who is the mother of a six-year-old and a domestic violence survivor, is grateful that she is able to afford insurance for herself and her son. But, she pays nearly \$500 per month for healthcare coverage, which causes her to “feel that pressure, because my paycheck is not very big.”

Mental health support is even more difficult to come by. The events—or frequently, in the case of domestic violence and sexual assault survivors, repeated events—that qualified someone for the U visa often have serious mental health repercussions. The wait for status can create its own additional mental and emotional toll. As a New York-based immigration attorney explains, “The backlog of the U visa process has mental, physical, and emotional effects on our clients. Not only have they been victimized by a crime, but they continue to be traumatized by the U visa process.” More than 80% of the attorneys surveyed reported representing a client who suffered mental health repercussions during the waiting period, citing trauma, revictimization, diminished hope, anguish, increased anxiety, and exacerbated vulnerability and fear.

The toll has only increased during this period of increased interior immigration enforcement, when immigrants are being indiscriminately placed into removal proceedings.³⁹ Mayela, a mother of four who was able to escape the abuse of her ex-husband, was very fearful of removal, “scared of having to leave and my children having to stay here and having to be with their father. He is not responsible. He doesn’t really care about them.” Day-to-day activities caused stress: “My biggest fear was that I would get pulled over, or I would just get stopped and I wouldn’t know what to say. And I’d say, ‘God no, please no.’ Because I didn’t have documents.” Her fear was almost a reality for Luis: he was taken to jail because of a traffic ticket and was told that he would be transferred to Immigration and Customs Enforcement (ICE) custody. Luckily his mother and grandmother were able to get him out of jail before he was turned over to immigration enforcement, but, in his words, it “almost could have happened.”

Restrictions on International Travel

“Many clients left children or sick parents behind and don't want to be separated that long. The long wait is cruel and inhumane in what it forces the immigrant to sacrifice - like a slow, continuous bloodletting.”

— Kentucky-based immigration attorney

Allowing people with pending or approved immigration applications to temporarily leave and return to the country without giving up their chance at immigration status is common for humanitarian reasons, including to visit ailing relatives or attend funeral services for family members.⁴⁰ But for reasons particular to the U visa, returning after travel is practically impossible not only while applicants wait for their U visa to be approved, but even after their visa has been granted.

The inability to see family members who are overseas can be devastating for U visa applicants and holders. More than 75% of the attorneys surveyed had a client who was unable to make a necessary trip to their home country during the waiting period. The separation places tremendous strain on applicants who are forced to miss innumerable life milestones: births, deaths, marriages, and more. A Texas-based U visa holder (who becomes green card eligible this year) shared that while she was waiting for approval, one of her parents in Mexico became ill and passed away, and she was unable to travel to attend the funeral. Just two years ago, after she had received her U visa, another tragedy struck: her brother died and she was still unable to travel to grieve with her family at his funeral.

One Texas-based immigration attorney shared that their client Jessica* has a teenage son still living in her home country who is experiencing depression and has attempted suicide because of the separation from Jessica and his younger siblings. She is afraid to leave the United States with her younger children

Mayela,* Age 43

*“Mother of 4;
Grandmother of 4;
Dedicated to fighting
for them until God
permits.”*

*“They told me:
behind all of [your
kids] there is you.
You pushing them,
pushing them. Now
look: they are the seeds you have
planted, the fruits you have
harvested.”*



ON HER KIDS: “The oldest is twenty-two. The next daughter is 20, the next is 15, and my son is 8. The two oldest have already graduated; they’re nurses. The 15-year-old is representing her school. My son says that he wants to invent a robot so that when I’m old and I can’t do stuff, the robot will do it for me. His teacher says that he can do it because of his grades and his mindset. That anything he wants to do, he can do.”

ON HER GOALS: “I started with a company and the people whose houses I was cleaning started liking me and trusting me. Little by little, they were asking me to clean their houses. And so a co-worker and I left and started cleaning houses on our own. From there, other people heard about us and I’ve been getting more work. My goal is to open up a house cleaning company. I hope it comes true.”

ON GETTING HER U VISA: “I was with my daughter when I got the call. I told my daughter, ‘Look! Look who it is!’ And my daughter said, ‘Oh my god.’ When I answered, [the attorney] said ‘I have good news for you.’ And I just started crying and so did my daughter. Right now I feel like crying. But it’s okay to cry—it’s because of everything I went through with my children.”

ON WHAT DRIVES HER: “For me it’s all about my kids. Sometimes, they would say, ‘Mommy, I want this,’ and I would say, ‘I’m sorry, I can’t do it.’ Everything I do is for my children. I don’t want to make thousands and thousands. I just want to make enough for them.”

because her home country is not a safe place for them, but she is a single mother and has no family members in the U.S. who could care for her children if she left to support her older son. Jessica has broken down in multiple meetings with her legal team because she is faced with an impossible choice. Struggles like hers are unfortunately common for applicants: over 70% of the attorneys surveyed had a client who faced challenges during the wait because of separation from their derivative children living abroad.

Circumstances sometimes force applicants to leave the U.S. and risk prolonged family separation. A Washington-based immigration attorney shared a story about her client, who was the victim of an armed robbery during which she watched helplessly as her young daughter was held with a gun to her head. This client made the difficult choice to return to her home country while her U visa was pending to care for her husband who had suffered a stroke. She left her children behind in the United States and faces years of separation before she will be able to return.

The pain of family separation was obvious during the client interviews conducted for this Report. Several of the interviewees became emotional as they described prolonged separation, missing moments of mourning, and losing opportunities to build relationships across generations. As a Texas-based immigration attorney reflected, “Their world continues to move forward while they wait for immigration to make their decision.”

Impaired Access to Justice

“ We call our clients every 6 months to let them know their case is pending and we have no news, we give them an update on the processing times. But still when we get approvals after 5 years and we call clients to inform them, most say, I thought you scammed me because it had been so long; I considered my case lost. ”

— California-based immigration attorney

The years-long wait has yet another significant effect: it undermines the attorney-client relationship, thereby exposing applicants to exploitation, fraud, and re-victimization. It also significantly limits the legal assistance available to new victims. Together, these unintended effects significantly impair U visa applicants’ access to justice.

Because the U visa process takes so long—much longer than many comparable forms of humanitarian relief—some applicants become concerned that the delay is a result of attorney negligence. Although attorneys may be able to reassure their clients, the distrust can seriously impact the attorney-client relationship. A Kentucky-based immigration attorney explains, “I have seen many people coming to me who have filed U visas elsewhere trying to fire their lawyer because they assume the lawyer hasn’t done anything when in fact they are just waiting.”

When this occurs, the best outcome is when clients visit another immigration attorney who can verify their case is stuck in the backlog and that their current attorney has done all they can. Unfortunately, some clients instead visit notarios, who exploit the backlog to make false promises about expediting applications with additional payments.⁴¹ As a North Carolina-based immigration attorney explains, “I hear more clients going to notarios or have clients calling saying that someone has told them that it should only take 6 months to get a U visa if they request . . . expedited processing. This backlog is placing victims of crime in vulnerable positions as they become victims of notarios.” A California-based immigration attorney echoed this observation: “[a]fter 3—sometimes 4—years [of the backlog], most tend to go to notarios or look for second opinions because they question the service we provide since it takes so long for a decision.”

Notarios are not the only people who exploit U visa applicants stuck in the backlog. Jay,* who came forward to work with law enforcement after his child was sexually assaulted, is being extorted for money by someone in his community who learned that his family is undocumented. This individual threatened to call ICE if Jay does not pay what has been demanded. Jay’s family filed U visa petitions in 2017 and still have many years to wait without protection. Similarly, those who have escaped domestic violence are frequently

re-victimized by abusers who use survivors' lack of status, income, or housing to further manipulate or control them. As an immigration attorney at a Massachusetts-based domestic violence (DV) agency shared, "We are a DV agency so we see people who are concerned about immigration risks, but also the possibility that their abuser will find them and exploit their lack of status."

As the backlog grows, more applicants are being forced to navigate the Byzantine immigration system without representation. More than 20 immigration attorneys reported that their organizations or firms have had to reduce or entirely stop taking new U visa cases because of the processing delays. Administratively, the cases require more resources; as one Texas-based immigration attorney shares, "We have to explain the U visa process over and over to

angry and worried clients who think their cases are being handled incorrectly by our office because it's taking so long." Organizations that rely on pro bono attorneys to represent U visa clients report having trouble retaining pro bono partners through the duration of cases. And private practitioners with pending cases are grappling with an inability to transition to new practice areas or retire if their caseload includes too many pending U visa cases.

Together, these forces significantly limit a U visa applicant's ability to access justice during the backlog. A New York-based immigration attorney sums it up well: "The legislative and humanitarian intent behind this relief is obviated by the multi-year backlog and refusal of the Trump [Administration's] USCIS to give real interim benefits."

RETURNING TO JUSTICE: FEDERAL SOLUTIONS

“All they are asking for is just a chance to prove themselves. If they are willing to wait 50, 60 years, what do you think they would do once they have it? Just give them a chance and you’ll see what they can do.”

— Luis, U visa approved 2018

As the interviews, stories, and survey responses demonstrate, the U visa’s design flaws have damaging and far-reaching effects. Urgent action by Congress and—in the meantime, administrative agencies—is necessary. Recommendations to address these issues include:

Congress: Eliminate or raise the 10,000 annual cap on U visas.

Fundamentally, the backlog is a direct result of the statutory cap on the annual number of U visas that USCIS can allocate. Every year since the first visa was issued, USCIS has approved petitions up to the statutory cap.⁴² But the cap prevents USCIS from granting enough visas to meet the need, causing pending petitions to mount.

Eliminating the statutory cap is both necessary and practical. There is no reason to place a cap on the number of visas that are intended to protect survivors and promote safety within our borders. Other humanitarian programs, like asylum or relief under the Violence Against Women Act, are available to as many people as who need them each year.

Raising the cap, although insufficient, is an alternative. Using a formula-based cap, which takes into account the number of petitions received over a period of years, is a way to arrive at a number of available visas that rationally tethers an annual limit to the actual need. For example, a formula could calculate an annual cap based on the number of petitions received in the previous two fiscal years, less the number of applications denied.⁴³

Congress: Eliminate the U visa’s mandated interactions with law enforcement.

Requiring U visa petitioners to interact with law enforcement excludes from protection survivors

who are unable to engage with law enforcement safely, with particularly harmful effects on Black and LGBTQIA survivors. Congress should eliminate this mandate. Instead, Congress should expand the U visa’s definition of helpfulness to cover circumstances when a person has been helpful, is being helpful, or is likely to be helpful, to *either* law enforcement *or the public* in redressing the crime.

Such a definition would render the law enforcement certification process unnecessary, and would open the U visa’s pathway to status to survivors who must find safety and redress their victimization through alternative mechanisms. It would also align the U visa more closely with VAWA protections available to survivors of domestic violence married to U.S. citizens or Lawful Permanent Residents (a.k.a., Green Card holders) who abuse them. Those survivors can submit any credible evidence to demonstrate their eligibility; U visa survivors could be permitted to prove their helpfulness in similar ways.

Alternatively, exceptions could be added to the U visa law enforcement certification requirement. For example, the T visa contains an opt-out provision for minors as well as those who are unable to cooperate due to physical or psychological trauma.⁴⁴ Likewise, the process to adjust from a U visa to a Green Card also already contains an exception: to prove that they have continued to cooperate with law enforcement, Green Card applicants can either submit a new I-918B Certification Form *or* alternative forms of proof.⁴⁵

The U visa requirements could be rewritten to incorporate similar exceptions for survivors who are too traumatized to engage with law enforcement, for those whose safety or security would be compromised by reporting or cooperating, for victims who can demonstrate that a law enforcement

agency arbitrarily or unreasonably refused to sign a certification form, or for those who can demonstrate another hardship that either prevents them from cooperating or would endanger them if they were deported.

Decoupling the U visa from law enforcement cooperation would not necessarily eliminate Congress's aim to promote the investigation and prosecution of crimes against immigrant survivors.⁴⁶ Without mandated cooperation with law enforcement, survivors who are able to come forward to police would remain eligible for a U visa, and records relating to any criminal investigation or prosecution would likely be part of the proof they submit with their application. But Congress should be equally concerned with providing justice—whatever that means for the survivor—for those cannot access it within our existing criminal system.

Congress and USCIS: Increase resources for adjudication of U visa petitions.

Congress should appropriate and USCIS should allocate additional resources for adjudicating U visa petitions. Insufficient staff allocation to the U visa program has driven the delay in making wait list determinations. Additional resources are necessary to ensure petitioners receive timely review.

USCIS: Grant work authorization within 180 days of submitting a U visa petition.

USCIS should promulgate regulations for work authorization akin to the asylum process that was in place for many years: permit the filing of an application for work authorization within 150 days of submitting a U visa petition and mandate adjudication of work authorization applications within 180 days of filing. Granting work authorization earlier in the U visa adjudication process would alleviate much of the hardship the backlog currently causes for applicants.

USCIS: Adjudicate petitions and grant deferred action to petitioners on the wait list within six to twelve months.

USCIS should promulgate regulations that ensure U visa applicants receive deferred action within 6 to 12 months of filing their application. USCIS regulations already mandate that petitioners be placed on the

wait list when they are not granted their visa solely because of the cap.⁴⁷ However, USCIS is not timely adhering to this requirement. Additional regulation is necessary to ensure that wait list determinations are made and deferred action is granted to those eligible within 6 to 12 months of filing, which is critical to ensuring that survivors are protected from removal while their applications are pending.

USCIS: Grant parole to wait-listed U visa petitioners and qualifying derivatives residing abroad.

USCIS should ensure that U visa petitioners and their family members who have been put on the wait list and who are residing outside of the United States are able to come back into the country while they await the final issuance of their U visa. Granting parole in these circumstances will ease much of the hardship inflicted by family separation while petitioners wait for final approval.

Department of Homeland Security and Department of Justice: Stop detaining and deporting U visa petitioners.

The Department of Homeland Security and the Department of Justice can take a range of steps to ensure that those eligible for U status are not detained or deported while they await their visas. First, ICE should recommit to its 2011 policy that restricts the detention of and the initiation of removal proceedings against victims.⁴⁸ Similarly, USCIS should rescind its recently enacted policy that permits the initiation of removal proceedings against those whose U visas are denied,⁴⁹ as such a practice may have a chilling effect on those seeking to apply. The Department of Justice should also reverse its new policies making it more difficult for immigration judges to put removal cases on hold while a U visa petition is pending. Returning this discretion to judges would reduce the mental and emotional toll on survivors, reduce the risks to survivors who come forward to work with law enforcement, eliminate unnecessary spending on attorney fees, and promote efficient use of scarce government resources. Finally, the Department of Justice should implement policy restraining immigration judges from deporting those with pending U visa petitions.

CONCLUSION

“The longer they wait, the longer the person is stopping me from getting out of the hood, from experiencing something new, from coming out of the current reality and becoming even more productive—giving back to my community, giving back to society, helping with the economy, paying even more taxes.”

— Luis, U visa approved 2018

The U visa is a critical protection for victims of crime that, when working effectively, could help survivors achieve safety and stability as they heal from trauma and rebuild their lives. Unfortunately, because of mandated law enforcement interactions, the USCIS backlog, and the backlog’s far-reaching effects, it has failed to achieve its promise.

It is important to remember that, like other humanitarian programs, the U visa exists in the context of the broader U.S. immigration system—one that is in desperate need of comprehensive reform. In its current form, the immigration system is divorced from the realities that push people to the United States, relegating people to second-class status and placing

them at higher risk of violence and exploitation. As Luis explains, “I think that the U visa in itself is the only existing way and hope that there is right now for a lot of immigrants. But I know that there’s thousands of people that don’t have that opportunity that are crying—hoping and crying—for a change.”

In short: it is time for transformation. For too long, the U visa program has been unable to fulfill its promise, and for too long, too many have been forced to live in the shadows. Lawmakers and policymakers must ensure that the U visa is not a false hope for the survivors who need it, while putting in place a new system that provides pathways to status for all who need them.

ENDNOTES

- 1 *E.g.*, Natalie Nanasi, *The U Visa's Failed Promise for Survivors of Domestic Violence*, 29 YALE J. LAW & FEM. 273,285–313 (2018); Jamie Rene Abrams, *Legal Protections for an Invisible Population: An Eligibility and Impact Analysis of U Visa Protections for Immigrant Victims of Domestic Violence*, 4 MOD. AM. 26, 32 (2008); Edna Erez & Carolyn C. Hartley, *Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*, 4 W. CRIM. REV. 155, 158 (2003); *see also* UNC SCHOOL OF LAW IMMIGRATION/HUMAN RIGHTS POLICY CLINIC & ASISTA, *The Political Geography of the U Visa: Eligibility as a Matter of Locale* (2014), <https://law.unc.edu/wp-content/uploads/2019/10/uvisafullreport.pdf>; Leslye Orloff, Kathryn Isom & Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections and its "Any Credible Evidence" Rules—A Call for Consistency*, 11 GEORGETOWN J. GENDER & L. 619 (2010).
- 2 Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533–534 (2000).
- 3 *Id.* § 1513(a)(1)(A).
- 4 U.S.CITIZENSHIP AND IMMIGRATION SERVICES, *Humanitarian*, <https://www.uscis.gov/humanitarian>.
- 5 Pauline Portillo, *Undocumented Crime Victims: Unheard, Unnumbered, and Unprotected*, 20 SCHOLAR 345, 369 (2018).
- 6 Anna Hanson, *The U-Visa: Immigration Law's Best Kept Secret*, 63 ARK. L. REV. 177, 185 (2010).
- 7 *Id.*
- 8 8 C.F.R. § 204.2(c) (2009).
- 9 Portillo, *supra* note 5, at 370 (citing Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2), 114 Stat. 1464, 1533–534 (2000)).
- 10 8 U.S.C. § 1101(a)(15)(U)(i) (2012).
- 11 *Id.* § 1101(a)(15)(U)(iii) (“[T]he criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.”).
- 12 Even after cooperating sufficiently to obtain a signed law enforcement certification form, the victim still has an ongoing responsibility to “provide continuing assistance when reasonably requested.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 179 (proposed September 17, 2007) (to be codified at 8 C.F.R. pt. 103, 212). Whether such a requirement is consistent with the statute is an open question. If the victim does not do as law enforcement requests while the U visa petition is pending, the certification can be revoked. 8 C.F.R. § 214.14(h)(2) (2016). And when U visa holders seek to adjust status to that of lawful permanent resident, they must once again demonstrate to USCIS that they have continued to provide any assistance to law enforcement that has been requested. 8 U.S.C. § 1255(m) (2012).
- 13 VERA INSTITUTE OF JUST., *How Law Enforcement is Using the U-Visa* 1 (Oct. 2011). https://www.vera.org/downloads/Publications/how-law-enforcement-is-using-the-u-visa/legacy_downloads/U-visa-practice-brief.pdf.

- 14 *Id.* at 3.
- 15 *Id.*
- 16 *E.g.*, Susan S. Miller, *The Paradox of Women Arrested for Domestic Violence*, 7 VIOLENCE AGAINST WOMEN 1339, 1343 (2001).
- 17 The authors use “misrepresented communities” to mean communities whose voice and/or power are not equitably represented within the larger society.
- 18 *See, e.g.*, TRANSFORM HARM, *Transformative Justice*, <https://transformharm.org/transformative-justice/>.
- 19 *See, e.g.*, TRANSFORM HARM, *Community Accountability*, <https://transformharm.org/community-accountability/>.
- 20 UNC SCHOOL OF LAW IMMIGRATION/HUMAN RIGHTS POLICY CLINIC, *supra* note 1, at 13–14; *see also* Laura C. Morel, *The U Visa Is Supposed to Help Crimes and Protect Immigrants. But Police Are Undermining It.*, TAMPA BAY TIMES (Nov. 9, 2019), <https://www.tampabay.com/special-reports/2019/11/09/the-u-visa-is-supposed-to-help-solve-crimes-and-protect-immigrants-but-police-are-undermining-it/>.
- 21 This number only refers to “principal aliens” who have applied for status, not their “derivatives,” namely the spouses, children—or in the case of a child applicant—the parents of the victim.
- 22 U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Number of Form I-918, Petition for U Nonimmigrant Status By Fiscal Year, Quarter and Case Status Fiscal Years 2009-2020* (Apr. 20, 2020), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2020_qtr1.pdf.
- 23 *Id.*
- 24 *E.g.*, AMERICAN IMMIGRATION COUNCIL, *The Impact of COVID-19 on Noncitizens and Across the U.S. Immigration System*, <https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system>; Letter from Human Rights Initiative of North Texas, *et al.*, to Joseph Edlow, *et al.* (Mar. 31, 2020), <https://drive.google.com/file/d/10jq-CbkE84xDE4oVxbXQdT9xIk7xYxoQ/view?usp=sharing> (the letter requests that the U.S. Citizenship and Immigration Services implement “emergency measures” at the agency in response to the COVID-19 pandemic).
- 25 *Id.*
- 26 Throughout the Report, the authors refer to individuals by their self-identified pronouns, including when a person uses the singular “they” as their pronoun. The authors also use “they” as a generic third-person pronoun to refer to a person whose gender is unknown or irrelevant to the context of the usage. As the American Psychological Association’s Style Guide explains, use of the singular “they” “is inclusive of all people and helps writers avoid making assumptions about gender.” AMERICAN PSYCHOLOGICAL ASSOCIATION, *Singular “They,”* <https://apastyle.apa.org/style-grammar-guidelines/grammar/singular-they> (last updated July 30, 2020).
- 27 *Matter of Sanchez Sosa*, 25 I. & N. Dec. 807, 815 (BIA 2012).
- 28 *Matter of L-A-B-R-*, 27 I. & N. Dec. 405, 405, 407 (Att’y Gen. 2018).
- 29 *Id.* at 415–17.
- 30 *E.g.*, *Matter of Mayen-Vinalay*, 27 I. & N. Dec. 755, 757 (BIA 2020).
- 31 *Matter of Castro-Tum*, 27 I. & N. Dec. 187 (Att’y Gen. 2018). This problem would be further worsened by the Administration’s proposed rule to prohibit both immigration judges and the Board of Immigration Appeals from administratively closing cases. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 52491 (proposed August 26, 2020).

- 32 See TAHIRIH JUSTICE CENTER, *Nationwide Survey: A Window Into the Challenges Immigrant Women and Girls Face in the United States and the Policy Solutions to Address Them* (2018), <http://www.tahirih.org/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf>.
- 33 8 C.F.R. § 214.14(d)(2).
- 34 *Id.*; 8 C.F.R. 274a.12(c)(14).
- 35 U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Check Case Processing Times, Form I-918 Petition for U Nonimmigrant Status* (May 4, 2020), <https://egov.uscis.gov/processing-times/>.
- 36 See, e.g., AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration* (2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>; U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *U Visa Filing Trends* (2020), https://www.uscis.gov/sites/default/files/USCIS/statistics/Mini_U_Report-Filing_Trends_508.pdf.
- 37 E.g., *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 528 (5th Cir. 2013).
- 38 From 2012–2018, 41% of all Supplement B forms certified domestic violence as one or more qualifying crimes. USCIS, *Trends in U Visa Law Enforcement Certifications, Qualifying Crimes, and Evidence of Helpfulness* (2020), https://www.uscis.gov/sites/default/files/document/reports/U_Visa_Report-Law_Enforcement_Certs_QCAs_Helpfulness.pdf.
- 39 Under the Obama Administration, the Priority Enforcement Program (PEP) prioritized agency resources and focused on removing individuals with criminal histories. Although people without criminal histories and with low-level criminal histories were removed while PEP was in place, the Trump Administration’s elimination of PEP and return to the Secure Communities program has resulted in widespread, indiscriminate removals. See, e.g., TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *ICE Detains Fewer Immigrants with Serious Criminal Convictions Under Trump Administration* (Dec. 6, 2019), <https://trac.syr.edu/immigration/reports/585/>; NAT’L IMM. L. CTR., *Understanding Trump’s Executive Order Affecting Deportations and “Sanctuary” Cities* (Feb. 24, 2017), <https://www.nilc.org/issues/immigration-enforcement/exec-order-deportations-sanctuary-cities/> Meanwhile, collaboration between local law enforcement and immigration has expanded through increased use of the 287g program and state laws like Texas’s SB4. See, e.g., IMMIGRANT LEGAL RESOURCE CTR., *National Map of 287(g) Agreements* (Nov. 27, 2019), <https://www.ilrc.org/national-map-287g-agreements>; Rose Cuison Villazor & Pratheepan Gulasekaram, *The New Sanctuary and Anti-Sanctuary Movements*, 52 U.C. DAVIS L. REV. 549, 551–52 (2018).
- 40 The temporary travel authorization that provides permission for those without permanent legal status in the United States to reenter the United States after traveling abroad is called “advance parole.” See INA §§ 103(a) and 212(d)(5). The USCIS Ombudsman has highlighted the challenges borne by U visa petitioners and their derivatives who must leave the United States, recommending that USCIS grant those individuals parole to enter the United States once added to the waitlist. See CITIZENSHIP & IMMIGRATION SERVS. OMBUDSMAN, ANNUAL REPORT 2019, at 87, https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2019-annual-report-to-congress.pdf.
- 41 In Latin America, a “notario” is known as a legal expert, whereas the English translation, “notary,” is a clerical position. “Many notaries know undocumented immigrants turn to them for assistance in immigration matters either out of naivety or necessity, and they capitalize on this misunderstanding. . . . Aside from private attorneys, immigrants often turn most to notarios for legal help.” Bianca Carvajal, *Combating California’s Notary Fraud*, 35 CHICANO-LATINO L. REV. 1, 4–5 (2017).
- 42 USCIS, *supra* note 22.
- 43 See, e.g., Jason A. Cade & Meghan L. Flanagan, *Five Steps to a Better U: Improving the Crime-Fighting Visa*, 21 RICHMOND PUB. INTEREST L. REV. 86, 113 (2018).
- 44 8 U.S.C. § 1101(a)(15)(T)(III)(bb)-(cc) (2014).

- 45 This alternative proof can include an affidavit describing efforts to obtain a newly executed Form I-918B “or other evidence describing whether or not the alien received any request to provide assistance in a criminal investigation or prosecution, and the alien's response to any such request.” 8 C.F.R. § 245.24(e)(2) (2016).
- 46 See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2), 114 Stat. 1464, 1533–534 (2000).
- 47 8 C.F.R. § 214.14(d)(2).
- 48 U.S. DEP’T HOMELAND SECURITY, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (July 17, 2011), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.
- 49 U.S. CITIZENSHIP & IMMIGRATION SERVS., *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (June 28, 2018), <https://www.uscis.gov/sites/default/files/document/memos/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.

