# Notes

#### Crimes reported stats

Leslye E. Orloff and Paige E. Feldman, National Survey on Types Of Criminal Activities

Experienced By U-Visa Recipients November 29, 2011

Domestic Violence 3376 46.2%

Felonious Assault 929 12.7%

Sexual Assault 817 11.2%

Rape 533 7.3%

Abusive Sexual Contact 456 6.2%

Attempt, conspiracy or solicitation to commit any of the above crimes 232 3.2%

Incest 127 1.7%

False Imprisonment 116 1.6%

‘Similar activity’ related crimes (please list the other crimes in next question) 96 1.3%

Murder 89 1.2%

Witness Tampering 71 1.0%

Sexual Exploitation 65 .9%

Manslaughter 55 .8%

Kidnapping 52 .7%

Unlawful Criminal Restraint 47 .6%

Obstruction of Justice 47 .6%

Being Held Hostage 34 .5%

Torture 31 .4%

Involuntary Servitude 30 .4%

Blackmail 25 .3%

Perjury 23 .3%

Trafficking 22 .3%

Abduction 8 .1%

Female Genital Mutilation 7 .1%

Extortion 7 .1%

Prostitution 6 .1%

Slave Trade 2 .0%

Peonage 1 .0%

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#### Congress created the U visa to confront the growing epidemic of migrant women experiencing domestic violence. Nearly 2/3 of migrant women are assaulted.

Davis, 2004 (Karyl Alice – lawyer @ Troutman Sanders LLP, “Unlocking the Door by Giving Her the Key: A Comment on the Adequacy of the U-Visa as a Remedy”, 56 Ala. L. Rev. 557, shae)

I. INTRODUCTION In the United States, 34% to 49.8% of immigrant women are victims of domestic violence.2 When only considering married immigrant women, the number jumps to 59.5%,3 and when only considering married women with dependent immigration status4-particularly nonimmigrant women5 like Ankita-the number of domestic violence victims jumps as high as 77%.6 While staggering, these percentages underestimate the problem. Because many immigrant and nonimmigrant women do not access social or health services, statistics likely underestimate the number of victims.7 While domestic violence affects women8 regardless of class, nationality, age, race, or legal status,9 the previous statistics point out the prevalence of the problem of domestic violence in the immigrant community. 10 Consequences of not addressing the problem cut deep. Domestic violence accounts for 33% of all female murder victims, 11 sixty-seven billion per year in health care and government dollars, 12 and 50% of all homeless women and children. 13 These facts are all too real for immigrant and non-immigrant women: "When a woman abandons her abusive spouse in order to save her life, she may be out on the street overnight with no legal status, no home, no money, and, more often than not, no cornmunity."14 If domestic violence in the immigrant community is ignored, immigrant and nonimmigrant women will continue to live in fear for their lives and the lives of their children. Because "there is a 70 percent overlap between domestic violence and child abuse," a failure "to stop domestic violence on behalf of immigrant women has the effect of perpetrating child abuse against their children. "15 Domestic violence involves "the abuse of power and control in an intimate relationship." 16 Men "use physical, sexual and psychological abuse, as well as isolation, intimidation and economic abuse to exert power and control over their wives."17 For an immigrant or nonimmigrant woman, "cultural and religious norms, economic considerations, language barriers, and overall limited access to information, services, and legal protection"18 all exacerbate the control her batterer has over her life. Far from alleviating this power imbalance, U.S. immigration law increases the power and control men have over women by giving one spouse control over the other spouse's immigration status. 19 By making lawful permanent resident status conditional upon a spouse's status as a citizen or lawful permanent resident, or a nonimmigrant visa dependent upon a spouse's visa, immigration law isolates battered women within the walls of their abusive homes. As part of the 2000 Violence Against Women Act, Congress created the U-visa, which aims to provide women like Ankita-women with nonimmigrant H-4 dependent visas-a way out of the abusive situation that does not depend upon cooperation from her spouse.20 This Comment seeks to critique the adequacy of the U-visa as a remedy for H-4 visa holders. Part I will trace the history of the response by Congress to the problem of domestic violence for immigrant women. Part ll will focus on the U-visa and specifically identify how the U-visa' s reliance upon the criminal justice system renders it inadequate. Part ID will provide an alternative solution and evaluate the benefits of moving the discussion out of the realm of the justice system and into the control of the women it seeks to help.

#### Despite being created to protect victims of serious crimes, the U visa law enforcement certification requirement relies upon a socially constructed “good immigrant” which invokes fears of deportation for migrant women.

Hipolito, 2010 (Joey – Assistant General Counsel for the United Food & Commercial Workers International Union, “Illegal Aliens or Deserving Victims: The Ambivalent Implementation of the U Visa Program”, *Asian American Law Journal* 17.1, shae)

The U visa application requires that a law enforcement agency certify that the applicant is being, has been, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity.99 Rather than actively training law enforcement agencies about their role in the U visa application process, however, the USCIS continues to provide only assistance on demand.'00 The result is that some law enforcement agencies are crucially misinformed. In one case, a county district attorney refused to sign a U visa petition for a woman victimized by domestic abuse, believing that the husband had to be convicted for the agency to sign.' In another example, a Texas sheriff refused to sign several U visa petitions only until one of the applicants-a victim of sexual abuse-sued him.102 The sheriff explained that he felt unqualified as a result of the USCIS's failure to clarify his role in the process: "I felt like [USCIS] hung us out to dry. . .The statute is very vague. It makes it clear that this is an optional thing, and I didn't feel like I had much support from [USCIS]."103 Ultimately, he signed the form to avoid court fees. More importantly, local law enforcement agencies struggle with determining precisely which of the many undocumented immigrant crime victims deserve visas. The Chief of Detectives at the Los Angeles Police Department refused some U visa petitions, reasoning that "Not everybody who applies is entitled to one. . . [J]ust being a victim is certainly not enough."'4 Similarly, one sheriff in another case could not fathom why a domestic abuse victim should get a U visa "[j]ust because she was beaten up[.]”105 III. THE FRAMEWORK OF DESERVING AND UNDESERVING IMMIGRANTS The sheriff’s hesitation to assist in providing legal status to undocumented victims reflects America's persistent concerns of excessive immigration and of lost control in regulating its territorial borders. These concerns have historically and still currently animate immigration policy. Agencies determine whether an applicant deserves legal status in relation to the competing narrative of an "illegal alien." An applicant for a U visa will be successful only if she or he can articulate a victimhood that not only fits within the language of the statute, but also comports with criteria that a law enforcement agency deems necessary to justify legal recognition.106 By determining whether an undocumented immigrant should receive or be denied a visa, the government defines the boundary between legal and illegal aliens. In making this decision, the government awards visas to undocumented immigrants deemed deserving of legal status, while denying those deemed undeserving. Visas are therefore implemented in a manner that conforms the visa to acceptable narratives of immigrants who are deserving of legal status. To understand the government's delay in properly implementing the U visa, we must first explore the United States' immigration policy and understand how the narrative of the "illegal alien" affects whom the public considers to be deserving of legal status. A. Immigration Policy and Undocumented Immigrants The United States has consistently approached immigration with caution, shifting its policies to reflect desires to include and exclude. In the 1880s, fears about an invasion of Asians led to the passage of the Chinese Exclusion Act and other race-based restrictions. 107 However, public sentiment changed after World War II when widespread dislocation led to the grant of asylum to more refugees.08 The United States' trend of welcoming immigrants continued into the Cold War as the country sought to project its image as the leader of the "free new world" against communism;109 the government even loosened its restrictions against Asian immigrants as further proof.110 Undocumented immigrants form a key part of the labor market, but lack the protections of their legal counterparts."' The result is what Justice Brennan explained in Plyler v. Doe: "the existence of a large number of employed illegal aliens . . . whose presence is tolerated, whose employment is perhaps even welcomed, but who are virtually defenseless against any abuse, exploitation, or callous neglect to which the state or the state's natural citizens and business organizations may wish to subject them."" 2 Concerns about the rising number of undocumented immigrants, and particularly undocumented employees, led to the Immigration Reform and Control Act (IRCA) in 1986."' Again reflecting both inclusionary and exclusionary desires, IRCA both legalized some 2.3 million formerly undocumented immigrants, but also attempted to seal the borders by heightening border enforcement with Mexico and imposing sanctions on employers of undocumented immigrants.1 4 Despite this attempt to stem the increase in immigration, however, the number of unauthorized immigrants is at an all-time high and their labor continues to remain essential in many labor markets."' B. The Slippery Narrative of the "Illegal Alien" These inclusionary and exclusionary desires are based on the popular opinion that immigrants are distinctly good or bad. "Good immigrants" are perceived as entering the country legally, working hard, learning English, raising respectable families, and following the law." 6 The Statue of Liberty captures this ideal by symbolizing America as a beacon of democracy and hope across the world, celebrating the parable of the new immigrant.117 In contrast to "good immigrants," "bad immigrants" are imagined as entering illegally for economic gain, failing to learn English, refusing assimilation, and committing crimes.' 8 The public brands these immigrants using the label "illegal alien," a designation that evokes frightful images of a foreigner taking jobs from U.S. residents and draining welfare and other social services. "9 The "illegal alien," rather than conjuring hope, is seen as abusing America's generosity and riches, causing fear that the government is losing control over its sovereignty and success.10 The term "illegal alien," therefore, connotes criminality in a linguistic and allegorical sense, suggesting to the public that the trespassers and invaders must be stopped and punished.121 The "illegal alien" narrative has powerful implications for undocumented immigrants. Narratives follow a general structure: an individual breaches a norm resulting in a crisis; the goal of the story is to heal the breach of the social norm and to bring resolution and closure.122 Here, an immigrant breaches the norm of being law-abiding by illegally entering the country. The story of the "illegal alien" resolves itself with punishment or deportation.123 As Kevin Johnson notes, the term "illegal alien" is nowhere to be found in the Immigration and Nationality Act, yet it is the operative term in debates surrounding immigration. 2 4 Although not legally defined, the narrative of the "illegal alien" helps rationalize the distinctions in treatment between citizens and noncitizens. 12 Because "illegal aliens" are neither citizens nor invited guests, they therefore can be denied the rights and dignities that legal aliens or citizens possess. Despite public opinion, an immigrant who enters the country illegally is not entirely excluded from society.126 For example, the law permits undocumented workers certain rights that citizens hold, such as the right to public education.127 These inclusive tendencies reflect the nation-state defining membership through formal democratic membership, a project that parallels and works in tandem with formal border exclusion to clarify the concept of citizenship and membership within the nation-state.128 Undocumented immigrants are obvious targets of the border exclusion project, but once they cross into the country, there is uncertainty as to the level of rights that must be afforded to them. 2 9 Undocumented immigrants, therefore, frequently hold simultaneous and contradictory insider and outsider statuses. 30 The state, for instance, may dislike an undocumented immigrant who illegally enters the country, but will still provide the immigrant with legal asylum if she proves that she fled political persecution. "' The legal rights that the state grants undocumented immigrants are a product of the interaction between border regulation and internal democratic membership, an interaction that ultimately defines how the state views its own citizenship and nationhood.132 By constituting the "other"-a foreigner devoid of power, as opposed to a citizen with rights-the undocumented immigrant helps to reinforce the state's own social identity.'133 Legal narratives, though, oftentimes conflict, challenging a society's established norms and ultimately the identities of its citizens. 134 In the case of Garcia, the government could cast Garcia and his coworkers as aliens illegally crossing the border to find work inside the United States, or alternatively, as vulnerable workers at the mercy of a ruthless employer. These subjective frames affect the remedy chosen to heal the breached norm. Should there be a remedy, punishment, or mere inaction? The difficulty with narratives is that they set precedents: once the public "let[s] a thousand powerful stories be told," is the state then responsible for accepting and validating all of them?..3 The government's decisions in the U visa context not only determine who deserves to be within the territorial community, but also serve to reaffirm or to challenge the dominant narratives regarding the "legal" and "illegal" alien.

#### Not only does the certification process disincentivize women from seeking protection but the requirement to contact and cooperate with law enforcement invites police persecution and retribution from their abuser.

Davis, 2004 (Karyl Alice – lawyer @ Troutman Sanders LLP, “Unlocking the Door by Giving Her the Key: A Comment on the Adequacy of the U-Visa as a Remedy”, 56 Ala. L. Rev. 557, shae)

B. The Limits of Law Enforcement While the U-visa provides much-needed relief for nonimmigrant H-4 visa holders, the relief is grounded in the criminal justice system. Therefore, the relief is often not meaningful. The VAWA and the BIWPA are both parts of larger crime bills. 106 The goals behind each act focus on the prosecution of the batterer. 107 The grounding of relief for nonimmigrant victims of domestic violence in the criminal justice system is problematic because immigrant and nonimmigrant women fear repercussions for contacting law enforcement from their batterers, the police, and immigration officials. Because nonimmigrant women do not trust the criminal justice system, and the system is a critical component to the dispersement of U-visas, the U-visa faces implementation barriers similar to previous acts aiding women married to citizens or legal permanent residents. 108 If women do not contact the police due to cultural barriers, language barriers, and discriminatory acts, then they may not satisfy the evidentiary burden necessary to qualify for the U-visa.109 1. Fear for Safety The U-visa requires nonimmigrant women to cooperate with the criminal justice system in the prosecution of their abusers.110 However, prosecution leads many batterers to escalate the violence. 111 For example, during the prosecution stage, 30% of batterers assault their victims. 112 A nonimmigrant woman may hesitate to cooperate with law enforcement because she, like abused women generally, fears for her safety and that of her children. A recent study finds that an intimate partner of the victim commits 33% of all female homicides,113 and most occur when the victim is trying to leave the batterer or has already left. 114 Another study found that current or former husbands or lovers commit three-fourths of all murders where women are the victims. 115 Leslye Orloff, the Director of the Immigrant Women Program of the NOW Legal Defense and Education Fund, testified before the House Judiciary Committee and cautioned against conditioning aid on the cooperation of victims with law enforcement officials: "[L]ots of times you have women who may want to cooperate but are legitimately terrified that if in fact they cooperate with law enforcement they will get killed."116 Even calling the police increases the danger of injury, because "[i]t is then that the abuser's power and control over his wife is threatened."117 As a result, "[b]attered women may thus be much more concerned about preventing future violence than about vindicating the state's interest in penalizing the defendant for crimes previously committed."118 Despite the evidence that separation poses a danger to victims, Congress failed to recognize the "lethal limitations" of involving the criminal justice system when creating the U-visa. 119 2. Fear of Arrest Police also represent danger to many nonimmigrant women. Far from acting as harbingers of peace, police involvement may bring with it a fear of additional violence from law enforcement. Current policing policies frequently result in the criminalization of the victim. 120 This occurs when police arrest victims of domestic violence as well as batterers. 121 Mandatory arrest statutes often require police to arrest victims when responding to domestic violence calls, 1 2 but police also arrest victims because abusers file counter charges against them.123 Such arrests fail to recognize that "[women]'s violent acts may be rooted in self-defense." 124 Language barriers may contribute to perceived police bias. 125 Few police speak a language other than English. 126 When they respond to calls where one person speaks English and the other does not, they often speak only to the English speaker. 127 One-sided conversations communicate bias towards the English speaker. 128 Often the result is the arrest of the victim or no arrest at all.129 A lack of knowledge about the U.S. criminal justice system also fosters distrust. The only reference for many immigrants and nonimmigrants is the criminal justice system in their native country. Bad experiences with law enforcement in their home country may lead to a distrust of the U.S. system. 130 For example, Russian mail-order brides may not know that U.S. law enforcement will enforce laws against domestic violence because Russian police fail to arrest and prosecute batterers. 131 Police insensitivity and misconduct also create distrust between the immigrant community and police. 132 "Alienated from her mother culture, 'alien' in the dominant culture, the woman of color does not feel safe ... • " 133 In communities of color, police represent violence, not a protection from violence.134 The use of the criminal justice system as the avenue for aid discourages women from seeking help because the system has historically discriminated against people of color.135 The problem of institutional racism and its disparate impact upon women of color decreases the trust that nonimmigrant women have in the criminal justice system. 136 Police zealousness may deter nonimmigrant women from dialing 911 in the same way that it deters African-American women.137 Overall, by requiring nonimmigrant women to work with law enforcement in order to qualify for the U-visa, Congress effectively shackles the victim instead of the abuser. 3. Fear of Deportation A nonimmigrant woman may also hesitate to apply for the U-visa because she fears deportation. An abusive husband often uses his wife's dependent immigration status as a means of control; he may threaten her with deportation if she leaves or seeks assistance from service agencies. 138 A survey of Latina immigrants in the District of Columbia found that 21.7% listed fear of being reported to immigration as their primary reason for remaining in abusive relationships. 139 The threat works because many consequences accompany deportation: [S]he may lose custody of her children, may not be allowed to enter the country to see her children for five years, may return to poverty, famine, or political persecution, and may no longer be able to financially assist her family in her home country. She may be deported to a country whose laws do not protect her from domestic violence. She may be ostracized by friends and family members because she got a divorce, or sought a protection order against her abuser. 140 Combining threats of deportation with threats of separating the mother from her children keeps many victims from contacting police. 141 The U-visa provides a means for some nonimmigrant victims of domestic violence to avoid deportation, but it does not eliminate the fear of deportation. Language barriers may limit the amount of knowledge that the victim has about the criminal justice system and the assistance it provides to victims of domestic violence. 142 Even if she knows about the services, she may hesitate to use them because most agencies target English-speaking victims, 143 and may not have a translator available. 144 Limited numbers of bilingual 911 operators, police, and court personnel mean that the batterer may be the only translator available to the victim. 145 As a result, the batterer may be able to effectively control the information that the victim receives. 146 Even for nonimmigrant women without a language barrier, the evidentiary standards that must be met to qualify for the visa are unclear.147 Congress made 10,000 visas available each year, 148 but in the four years since the creation of the U-visa none have been issued. 149 The government has attributed the delay in issuing regulations for the U-visa to the reorganization of the Department of Homeland Security after September 11, 200 I. 150 Once finalized, the regulations could address the issue by lessening the burden of proof, but this goes against past policies that have attempted to counter the risk of fraud by requiring strict evidentiary standards. 151 The U visa requires a victim to show that she has suffered serious physical or mental abuse, 152 but if a victim does not contact law enforcement such evidence may be scant. 153 Many advocates have argued that a victim's testimony and the testimony of people in her community should qualify as evidence. 154 However, immigration law has continued to focus on official reports in order to establish abuse. 155 As a result of the subjective nature of the qualification process, no law, including the U-visa, allows women to leave abusive relationships without the fear of deportation.

#### And the certification standard places applicants in tenuous position of always already slipping towards criminality for failure to secure the state through prosecution.

Gehi and Munshi, 2015 (Pooja – Director of Immigrant Justice @ the Sylvia Rivera Law Project, and Soniya – Assistant Professor of Sociology @ CUNY Borough of Manhattan Community College, “Connecting State Violence and Anti-Violence: An Examination of the Impact of VAWA and Hate Crimes Legislation on Asian American Communities”, *Asian American Law Journal* 21.1, shae)

The next authorization of VAWA in 2000 widened the parameters of inclusion for immigrant survivors of violence. This version created special visas, such as the U-visa,110 designed for immigrant crime victims who have experienced substantial physical or mental abuse and are willing to cooperate with criminal legal investigation or prosecution of the perpetrator(s); cooperation is verified through certification from a government official. The U-visa protects people with insecure immigration status from deportation by providing them with a temporary visa and work authorization.111 After three years, the Attorney General has discretionary power to grant permanent residence if the adjustment of status can be justified on humanitarian grounds, family unity, or if it is in the public interest.112 If at any point a U-visa holder is found to be unreasonably uncooperative with a criminal investigation or prosecution, she is ineligible to adjust her status to permanent resident.113 Regulations for the implementation of the U-visa were not issued until 2007.114 Since 2007, U-visa holders have also been eligible for some public benefits; before then, they were barred from receiving any form of public assistance.115 In the case of the U-visa, the immigration status of the perpetrator(s) of violence is not relevant; the survivor of violence does not become eligible for the visa because of her relationship to someone who is a U.S. citizen or legal permanent resident. Her eligibility is based on her willingness to offer evidence to the state to strengthen its ability to prosecute. In other words, she demonstrates that she is not a threat through her disassociation with that threat. The U-visa, therefore, adds another dimension to the technologies of population racism116 enacted by VAWA by delinking the eligibility criteria from the victim-perpetrator relationship. Unlike the “battered immigrant woman” who was abused in the context of an ongoing relationship that was sufficiently long that a legal marriage could take place, the U-visa applicant can become eligible in a flash—the length of a violent incident. The violent incident itself, provided the victim is willing to participate in the criminal legal prosecution, proffers eligibility. Similarly, the victim can become ineligible just as quickly—simple refusal to cooperate with prosecutors precludes U-visa eligibility. U-visa applicants are also inherently associated with crime and risk because they become eligible only through their victimization. They can distance themselves from being read as a threat through the application, but if they lose eligibility, they also slip towards the unworthy end of the spectrum of risk: the dependent, criminal, or terrorist threat. The U-visa creates flexibility in which the logics of inclusion are tenuous, requiring a continuous re-assessment and ongoing demonstration of worth. Becoming VAWA-eligible also means becoming subject to state power. For example, although the designation of “battered immigrant women” is created through VAWA, it circulates in other realms of state governance. For example, in 1996, the U.S. welfare system was dismantled and replaced with Temporary Assistance for Needy Families (“TANF”).117 Undocumented people and nonimmigrant visa holders were cut off from all benefits except emergency medical care, and recent legal immigrants were blocked from accessing public benefits during their first five years of residence. TANF also instituted a lifetime sixty-month limit and work requirements for all recipients of public assistance. Yet, TANF also offered states the option of adopting a Family Violence Option (“FVO”) for domestic violence survivors, which relaxes work requirements and “stops the clock” on the sixty-month lifetime limit on public assistance.118 Qualified immigrants who meet VAWA’s “battered immigrant woman” standard can apply for the FVO.119 U-visa holders are not eligible for the FVO. The regulations have changed since the visa was created. As of 2010, U-visa holders are eligible for some select public benefits120 but do not have the same level of access as “battered immigrant women.” Immigrant survivors of domestic violence who are ineligible for consideration as “battered immigrant women” are excluded from the FVO, and generally are limited in the forms of public assistance that they can receive. In summary, while VAWA provides some survivors of violence with some relief from otherwise harsh immigration and welfare policies, it does so only by shoring up the prison industrial complex; ensuring that survivors cooperate with law enforcement and comply with narrow narratives about violence; reinforcing the dichotomy between “deserving” and “undeserving” immigrants, poor people, and survivors; and focusing on interpersonal violence rather than state and institutional violence. These policies do not undermine the hierarchies between citizens and immigrants, the rich and the poor, or white and racialized persons, and do not redistribute resources and power in a more just way. In a sense, VAWA creates another disciplinary mechanism both relying on and reproducing a “model minority” framework. Similar tensions emerge in state policies regarding another form of interpersonal violence: hate crimes.

#### The certification process itself is dangerous by invoking the specter of an ideal victim. Women who come forward constantly doubt their own experiences while being forced to constant relive their trauma through criminal proceedings.

Lawler, 2018 (Opheli Garcia, “America's U Visa offers hope to survivors of awful crimes, even under Donald Trump. But applying can be its own kind of nightmare.”, Vice, May 9, <https://www.vice.com/en_us/article/8xky73/when-recalling-the-trauma-of-sexual-violence-is-your-best-shot-at-a-visa>, shae)

As the headlines of the past seven months have made clearer than ever, sexual misconduct and violence are an epidemic in the United States. But for undocumented people who have been victims of violent sex crimes, these extremely traumatic experiences can become inextricably tied to their futures by way of America’s U Visa application process—one survivors call a mess that often requires them to dig up old wounds at the behest of government scrutiny. Angy, who is now an activist working with undocumented youth in New York City, has a deep understanding of the way the system works. But while she was going through the process of applying for the U Visa, she experienced a perverse kind of inner turmoil. "If the crime wasn’t violent enough, if you didn’t report it, now suddenly, you’re blaming yourself for not doing the things that you should have done," she told me. In other words, when the need to prove a certain level of harm is required in order to secure documentation, the traumatic experience of being assaulted can be compounded by feelings of self doubt. Angy recalled thoughts like, "I should have spoken up. Maybe if they would have done this more, if they would have hurt me in a different way, I would have qualified for something." Meanwhile, proving what Angy referred to as a "certain level of harm" is a multi-step process. U Visas are available to immigrants, including undocumented people, who "suffered substantial mental or physical abuse and are willing to assist law enforcement and authorities in the investigation or prosecution of the criminal activity." These abuses include abduction, abusive sexual contact, domestic violence, rape, incest, involuntary servitude, and over 22 other crimes. To qualify for a U Visa, notably, the crime must have occurred in the United States or else violated US law. First, an undocumented person needs to report the qualifying crime to the local authorities—and, crucially, be seen as cooperating in any ensuing investigation. Then they need to fill out the appropriate paperwork: Form I-918 and its supplemental documents serve as verification that the crime occurred and help attest to the victim's participation. These supplements require certification from the local authorities that the person applying has met the requirements of US Citizenship and Immigration Services (USCIS). U Visas are administered under the Victims of Trafficking and Violence Protection Act, which was created by Congress and advanced by Senators Ted Kennedy and Spencer Abraham in October 2000. It included multiple initiatives to protect undocumented people from various forms of violence including human trafficking, domestic violence and sexual assault. The initiative was a bipartisan one, meant to target a wide variety of issues facing women regardless of their nationality. Around the time he signed the bill into law, President Bill Clinton said it was the "most significant step we've ever taken to secure the health and safety of women at home and around the world." But after receiving the documentation, which grants temporary residency with the option to apply for a green card, immigrants tend to report mixed feelings about their new status. The U Visa can give you access to jobs, to financial security, to a sense of safety. But it can come with feelings of guilt—the feeling on part of the applicant that they might be somehow taking advantage of their past. And many who come to the United States were seeking refuge from violence in their own countries, only to experience it again once they arrive here. "It’s another assault," said Jane Christmas, a mental health counselor who works with U Visa recipients, referring to applicants who encounter new violence when they reach the United States. "They come here thinking that they’ve found a safe place. And then they start thinking that nowhere is safe." Not that U Visas aren’t a step in the right direction in many ways—lawmakers did recognize real dangers immigrants faced when coming into the United States. Exploitation, theft, human trafficking, and sexual abuse are entirely too common during or after the often-long journey to America. An Amnesty International report found over a six-month period between 2008 and 2009 that nearly 10,000 migrants passing through Mexico were kidnapped. Migrant shelters have estimated that roughly 80 percent of women coming from Central America through Mexico are raped, according to a 2014 investigation by Fusion. In a country that has criminalized immigration with increasing severity since 1996—and has been ramping up its militarization of that fight under Donald Trump—a U Visa can seem like the least bad option. But the process is a fraught one. First, filing for a U Visa automatically exposes the applicant’s immigration status. Then there’s the actual bureaucratic nightmare of going through the application, a scenario Angy said took the better part of a year when she applied for her U Visa during the Obama administration. According to immigration lawyers, that saga can now last anywhere from five to seven years. Under Obama, there was an official memo granting many U Visa applicants a temporary stay; under Trump, no such protection is guaranteed, especially if there is a removal order in place for the applicant. "ICE has been opposing continuances and also refusing to grant discretion for U Visa applicants with removal orders to remain pending the outcome of their visa petitions," explained Cristina Velez, a staff attorney at New York University’s Immigrant Defense Initiative. "I have heard of people getting removed." A massive backlog has contributed to the possibility of being deported while waiting for the U Visa. The United States limits the number of them available to 10,000 per year. But in 2015, over 35,000 people applied for the U Visa. By the end of 2016, over 150,000 applications were pending—and even though only 3,161 of the 60,710 applications received that year were denied, the rest were stuck in limbo. "The law has not caught up to real life," said Andres Guerra, a California immigration attorney who's worked over 50 U Visa cases. "That number isn’t useful anymore. Today they are working on cases from 2014." When reached for comment about survivors' critiques of the program, a USCIS official said the U Visa had "brought relief to thousands of victims while supporting the drive to bring criminals to justice." The official added that while petitioners "must... be willing to help law enforcement authorities in the investigation and prosecution of the criminal activity," the agency "does not place the petitioner in front of adjudicating officers to recount their experiences." Meanwhile, Brendan Raedy, a public affairs officer and spokesperson for ICE, stated that "the pendency of an application for a U nonimmigrant visa does not pose a legal impediment to removal of an alien subject to an administratively final order of removal. US Immigration and Customs Enforcement has discretion to stay the removal of an alien with a pending application for a U nonimmigrant visa and exercises that discretion pursuant to longstanding policy." Despite the difficulty of the application process, the complicated relationship survivors of violent crime can have with the U Visa, and the slim chances of receiving a green card, immigrants may feel little choice but to pursue the option if they can. Other programs like DACA are even less certain because they are not firmly established in law, whereas the U Visa program is something that cannot be reversed from administration to administration. The program also has the broadest parameters: Under the statute, factors like how an applicant entered the country, being flagged for prior removal, and criminal history would not automatically exclude someone from eligibility. Still, Monica\*, who received her U Visa in the Obama era, said that under Trump, more women from her Northern California community were hesitant to come forward and seek out resources like the U Visa. "The most traumatic thing is having to remember your trauma," she said, speaking through a translator while explaining that the process caused her a lot of psychological harm. "Telling your story three to four times, being very detailed in everything that the abuser did. Like it would be great to say that I was able to fix my status through my children or my amnesty, or through an amnesty program, but knowing that it was through an abuser, that's the most painful thing."

#### The impact is massively exacerbated by congress only allocating 10,000 U Visas per year. This arbitrary limit has created an 11 year backlog for victims of abuse seeking justice.

Ramey, 2018 (Sara – Executive Director @ the Migrant Center for Human Rights, “Eliminating the U Visa Cap Will Help Catch Criminals”, *The Hill*, February 14, <http://thehill.com/opinion/immigration/373808-eliminating-the-u-visa-cap-will-help-catch-criminals>, shae)

As Congress debates immigration reform, it should seriously consider eliminating the U visa cap. It’s the annual 10,000 limit on visas for immigrants who report crime and cooperate with law enforcement. Trump has said that he wants to deport immigrant criminals. What better way is there to catch immigrant criminals than to encourage immigrants in the community to come forward and report when a crime is committed to law enforcement? The problem is that many immigrants who do not have legal status are reasonably afraid to call the police because they believe that the police will have them deported. In October 2000 because of this problem Congress passed the Victims of Trafficking and Violence Protection Act creating the U visa to encourage undocumented immigrants to report crime and cooperate with law enforcement by giving them the option of a four-year U visa and thereby eliminating the fear that reporting crime will automatically lead to their own deportation. U visas are not automatic. Before an immigrant is even eligible, she or he must have the police, prosecutor, or judge certify her or his helpfulness in the investigation and/or prosecution of the crime. If law enforcement doesn’t think the person was/will be helpful, they will not sign the certificate of cooperation. The immigrant must also prove that she or he was the victim of a serious crime and, as a result of the crime, suffered substantial physical or mental abuse. There are several ways the U visa program can be improved to increase cooperation with law enforcement. For one, Congress has authorized 10,000 U visas per year. This is not enough. At the end of September 2017 there were 110,511 pending principle applications, making the wait time for a U visa about 11 years. As Gail Pendleton of ASISTA says: “When victims hear that the visas are used up they may think it's not worth it to come forward”. Several efforts to raise the 10,000 U visa cap have been made throughout the years, most notably when the Senate’s bipartisan “gang of eight” tried to pass comprehensive immigration reform in 2013, including an increase in U visas to 18,000 per year. Although helpful, with 36,531 principle applications filed in fiscal year 2017 alone, this increase would still be woefully insufficient. There is no reason to cap the number of U visas available. Immigrant victims of serious crime, usually domestic violence, are often already living in the U.S. and have close ties to the community. They are frequently the sole care providers for their U.S. citizen children. Keeping them in legal limbo for years only prolongs the time it takes them to obtain solid employment and effectively support their U.S. citizen children, allowing those children to no longer need government benefits like food stamps and Medicaid. While a change in the U visa cap requires Congressional action, Trump can act now to increase the incentives for crime victims to report to law enforcement.

#### And because there are no uniform, federal regulations regarding certification delays are rampant and some law enforcement officials outright refuse to provide certification.

Orloff et al, 2010 (Leslye E. – Vice President and Director of the Immigrant Women Program at Legal Momentum in Washington DC, Kathryn C. Isom – graduate of Columbia Law School, and Edmundo Saballos – graduate of American University Law School, “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”, *The Georgetown Journal of Gender and the Law*, Symposium Issue, shae)

Congress mandated that VAWA’s “any credible evidence” rules apply in U-visa cases, as it has for all forms of crime-victim-related immigration relief since VAWA1994.73 However, unlike the “any credible evidence” standard in all other VAWA cases, the U-visa application process also requires an immigrant crime victim to obtain a certification by an approved certifying official verifying that the victim possesses information about the criminal activity perpetrated against the U-visa applicant and attest to the fact that the victim has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of that criminal activity.74 Petitioners are required to submit a certification form (commonly referred as “Form B”) filled out and signed by a certifying law enforcement official during the six months immediately preceding the submission of the victim’s U-visa application.75 In recognition of the fact that obtaining certification may be difficult for U-visa victims, Congress explicitly listed in the statute a wide range of government officials who could provide U-visa certifications. These certifying officials include:76 • federal, state, or local law enforcement officials;77 • federal, state, or local prosecutors; • federal, state, or local criminal, civil, or administrative law judges;78 • the Department of Homeland Security; or • other authorities investigating a criminal activity described in section 101(a)(15)(U)(iii).79 The Department of Homeland Security issued regulations requiring that with the exception of certifications provided by judges, the government official signing the I-918 Supplement B certification form must be an official with a supervisory role and must be specifically designated as a certifying official by that official’s agency heads.80 This supervisory official certification requirement was not required by statute. As with the imposition of the mandatory affidavit of a licensed mental health professional by regulation when INS implemented the battered spouse waiver, DHS’s regulatory requirement that all certifying officials have supervisory authority and be the head of an agency or specifically designated by the head of an agency to sign U-visas, this requirement significantly narrowed immigrant victim’s access to U-visa protection. 1. Problems in the Implementation of the Regulations The U-visa regulations have had the effect of directly undermining Congressional intent to facilitate the reporting of crimes,81 the fostering of better relationships between justice system officials and immigrant crime victims, the encouragement of law enforcement to better serve immigrant crime victims, the prosecution of crimes perpetrated against immigrants,82 and the furtherance of the humanitarian interests of the United States in protecting crime victims.83 These regulations also created confusion among law enforcement officials and agencies and had the effect of narrowing the number of certifiers available to victims. The mandatory certification requirement in the regulations left victims’ cases dependent on the ability of the often time-pressed agency head to sign the form or to designate an official with authority to do so. While some law enforcement agencies have issued protocols, implemented procedures, or adopted practices of designating law enforcement officials as certifiers,84 a great number of law enforcement agencies and prosecutors’ offices have not. The problems created by the regulations are exemplified in the stories of immigrant victims of crimes that have attempted to comply with the certification requirement.85 Advocates, individual attorneys, and service providers have reported reluctance on the part of law enforcement officials to certify victims.86 The extensive application required by the regulations require the assistance of an experienced professional, and the fact that many agencies and police departments have not designated certifying officials delays the process and, in some cases, discourages victims from continuing cooperation with law enforcement.87 The 2007, DHS U-visa regulations led some law enforcement agencies that had previously been issuing U-visa certifications to stop U-visa certifications all together. The Lexington, Kentucky police department had, prior to the issuance of the DHS U-visa regulations, received national recognition for its U-visa certification work. The U-visa certification process provided an opportunity for the development of strong and improved relationships between the police department and the local immigrant community. This work led the National Network to End Violence Against Immigrant Women to highlight the Lexington Police Department’s achievements and issue them an award for their work at the Network’s national conference in November of 2007, shortly after the U-visa regulations went into effect. Within a year after receiving this award, following issuance of the U-visa regulations requiring that only the chief of police or a designated supervisory authority be the only persons authorized to issue U-visa certifications, the Lexington police department stopped issuing U-visa certifications altogether. Unfortunately, while the Lexington police department provides a stark example of the significance of this problem, they are not the only police department to decide to not issue U-visa certifications.88 Since certifying the application is mandatory for the immigrant victim of crime,89 but left at the discretion of the investigating agency,90 the aggregate result of the obstacles imposed by the regulation is to undermine the stated purpose of Congress in creating the U-visa. When law enforcement officers and prosecutors refuse to sign U-visa certifications, perpetrators of crimes against immigrants are not prosecuted and immigrant victims willing to assist with the detection, investigation, and prosecution of crimes are blocked by the lack of certification from attaining Violence Against Women Act U-visa protection. This is not what Congress envisioned when creating the U-visa.

#### Plan: The United States federal government should eliminate the law enforcement certification requirement and remove the numerical cap for the U visa.

#### Removing law enforcement certification makes the U visa an effective avenue to legal permanent residency.

Settlage, 2016(R.G. –Assistant Professor and Director of the Asylum and Immigration Law Clinic @ Wayne State Law School, “Uniquely Unhelpful: The U Visa's Disparate Treatment of Immigrant Victims of Domestic Violence”, 68 Rutgers L. Rev. 1747, Summer)

C. All Immigrant Victims of Domestic Violence are Equally Worthy of Protection Regardless of Law Enforcement Cooperation The U visa regulations treat immigrant domestic violence victims differently than do all other forms of protection offered to battered immigrants. Battered immigrants who are eligible only for U visa relief are the only battered immigrants required to cooperate with law enforcement in the investigation or prosecution of their abuse. This requirement makes a battered immigrant who is only eligible for a U visa less likely to seek help because she is unable to obtain the safety of lawful status before putting herself in harm's way by reporting her abuse. Is there some other identifiable characteristic that justifies making the process to lawful status easier for one group over the other? What is it that makes a battered immigrant who is only eligible for a U [\*1794] visa less deserving of protection unless she is willing to cooperate with law enforcement? It is not as simple as saying that battered immigrants who are only eligible for a U visa are undocumented, whereas other battered immigrants already have some form of status. A battered spouse who wishes to self-petition or cancel her removal under VAWA, like applicants for a U visa, need not have entered the country legally, and often do not. n293 Battered immigrants need not be lawfully present in the United States at the time they apply for other forms of immigration relief, and often they are not. n294 U visa applicants also need not be lawfully present, but sometimes do have another temporary lawful status such as a student visa or a derivative worker visa. n295 The status of the abuser is also not a determining factor alone, nor is the marital status of the victim. An applicant for a U visa may be married, although her spouse may not be a U.S. citizen or lawful permanent resident. In contrast, she may be battered by her U.S. citizen or lawful permanent resident partner to whom she is not married. The factor which determines whether a battered immigrant may self-petition or cancel removal under VAWA is the combination of the abuser's status and the victim's marital status, i.e., an applicant must be married to a U.S. citizen or lawful permanent resident. n296 This is also true for a conditional permanent resident seeking to remove her conditions of residency on the basis of being a battered spouse. n297 Fundamentally, the difference between these groups is that battered immigrants who are eligible for forms of relief other than the U visa already had a path to lawful status and citizenship based on their marriage, and they could have followed that path but for their abuse. n298 Battered immigrants who are not married to a U.S. citizen or lawful permanent resident did not have a previous path to status on the basis [\*1795] of their relationship. Even though that path to lawful status exists for the immigrant married to a U.S. citizen or lawful permanent resident, U.S. immigration laws still treat the battered immigrant spouse more favorably that a non-battered immigrant spouse whose U.S. citizen or lawful permanent resident spouse simply will not cooperate in petitioning for lawful status on her behalf. This is because Congress recognized the complicity of U.S. immigration laws in exacerbating an abusive situation by "trapping" a spouse in an abusive marriage if that is the only way for her to obtain status. n299 But U.S. immigration laws are also complicit in trapping undocumented immigrants not married to a U.S. citizen or lawful permanent resident in abusive situations. Fear of deportation or detention, as well as an inability to work, obtain a driver's license, or access social services because of a lack of status, means battered immigrants are prevented from leaving an abusive relationship. n300 Yet U.S. immigration laws treat battered immigrants married to a U.S. citizen or lawful permanent resident differently and more favorably. Those battered immigrants not eligible for any form of immigration relief other than a U visa are the only battered immigrants forced to cooperate with law enforcement in order to receive lawful status. As discussed previously, this means that for many of these battered immigrants, protection is unobtainable. n301 The unwillingness to help battered immigrants only eligible for a U visa unless they cooperate with law enforcement reflects a reluctance to aid those who, because they would otherwise have no path to lawful permanent status unless they had the misfortune to be a crime victim, are perceived to be circumventing immigration laws. The U visa essentially perpetuates the notion that undocumented immigrants are less deserving of protection from battery. n302 The U visa regulations thus reflect negative societal and political views held towards undocumented immigrants. n303 The political and social environment in the United States in the last decade, when the U visa regulations were issued, has become increasingly hostile to undocumented immigrants as compared [\*1796] to 1994 when Congress first authorized VAWA. n304 The VAWA 2013 reauthorization fight reaffirmed this hostility and demonstrated that those opposing reauthorization considered immigrants in general to be less worthy of protection than other domestic violence victims. n305 Thus, the benefit of immigration relief based upon being a crime victim must be balanced by a quid pro quo of law enforcement cooperation, regardless of the dangers of such cooperation for victims of domestic violence. Even an immigrant battered in her home country can apply for asylum in the United States on the basis of that battery without having to cooperate with law enforcement. n306 Asylum seekers whose claims are based on domestic violence are also immigrants who did not have a path to lawful status in the United States but for the abuse they experienced in their home country. It is true that an asylum applicant must prove that the government was the abuser, or that the government was unable or unwilling to the control the abuser. n307 However, secondary evidence of the futility of seeking assistance from law enforcement is enough to demonstrate eligibility. n308 Thus, inherent in a grant of asylum is a condemnation of the foreign government. n309 For U visa applicants in the United States, there is an inherent assumption that if the U visa applicant seeks help, U.S. law enforcement agencies will offer her protection. Yet, depending on where [\*1797] the domestic violence victim lives, this is not true. n310 U.S. immigration laws and enforcement programs further exacerbate the vulnerabilities of undocumented immigrants in abusive situations. n311 Thus, U.S. immigration laws are complicit in making immigrants vulnerable to abuse. Battered immigrants at the heart of this disparity should be eligible for protection even if they do not cooperate with law enforcement, regardless of whether or not they had a preexisting path to lawful status, or whether their abuse happened in another country. V. Conclusion Under VAWA and the battered spouse wavier, Congress created forms of immigration relief for battered immigrants married to U.S. citizens or lawful permanent residents. In creating these forms of relief, Congress recognized both the unique vulnerabilities of battered immigrants, as well as the complicity of U.S. immigration laws in exacerbating abusive situations involving immigrant victims. Congress created the U visa to provide protection for immigrant crime victims in the United States, including battered immigrants not married to a U.S. citizen or lawful permanent resident. But Congress also intended for the U visa to promote cooperation with law enforcement, and to further this intent, Congress required proof of law enforcement cooperation in the form of an LEC. Other forms of relief for battered immigrants do not require cooperation with law enforcement in recognition of the potential dangers of such cooperation. n312 Yet, the U visa is unavailable without the quid pro quo of law enforcement cooperation. Much scholarship has been written about the problems inherent in the LEC requirement for the U visa. n313 Some scholars have recommended amending the LEC requirement to reflect similar pieces of legislation such as the T visa, which allows for a waiver of the law enforcement cooperation requirement in the case of trauma. n314 Advocacy efforts have explored ways to make the LEC requirement less of a barrier to immigrant victims, including through increased training for [\*1798] law enforcement agencies and personnel, n315 or through changes in state law. n316 These proposals would be helpful changes, but they do not go far enough. Inherent in these solutions is an acceptance of the dual intent of the U visa, not just to protect immigrant crime victims, but to encourage their cooperation with law enforcement. In other words, rather than purely promoting the protection of immigrant victims, U visa protection is only offered to certain domestic violence victims if they help law enforcement. While the U visa covers much more than domestic violence, Congress created the U visa primarily as a solution for immigrants in domestic violence relationships who are not eligible for other forms of immigration relief. n317 Requiring law enforcement cooperation is not reasonable for immigrant victims of domestic violence who share multiple unique vulnerabilities as a result of their lack of lawful status. Furthermore, requiring a law enforcement certification as proof of cooperation with law enforcement actually discourages law enforcement cooperation. Finally, this is a requirement that immigrant victims of domestic violence who are eligible for other forms of immigration relief need not meet. There is no justifiable reason for the disparity in treatment. U.S. immigration laws are complicit in exacerbating the vulnerabilities of immigrants in abusive situations regardless of whether the battered immigrant already had a path to status through her abuser. n318 All battered immigrants face the same dangers if they are forced to cooperate with law enforcement, dangers that Congress recognized when creating all other forms of immigration relief except for the U visa. n319 Immigrant women battered in the United States who are only eligible for a U visa because they are not married to a U.S. citizen or lawful permanent resident should be put on equal footing with other battered immigrants. This disparity can be remedied in several ways, first and foremost by eliminating the LEC requirement entirely for a U visa application. However, unless eliminating the LEC requirement includes eliminating [\*1799] the "helpfulness" requirement, battered immigrants will still face significant barriers to obtaining protection. Alternatively, all victims of domestic violence could be allowed to self-petition for a visa under current VAWA regulations regardless of whether or not they were married to a U.S. citizen or lawful permanent resident. This would require amending the VAWA regulations to focus on intimate partner relationships rather than marriage. Finally, a new visa for immigrant victims of domestic violence that does not require cooperation with law enforcement could be created. It is true that there may be little political will to pursue any of these options at the present time. However, it is important that the discussion around U visas be shifted from recommendations to make the LEC more obtainable. Instead, the underlying requirement of cooperation with law enforcement needs to be recognized as an inappropriate requirement for domestic violence victims and should be abolished.

#### Combatting intimate partner violence is your primary ethical responsibility.

Straton, 1989 (Jack; Co-Chair – National Organization of Men Against Sexism, “How to Form a Men Against Rape Group,” May, http://www.europrofem.org/contri/2\_04\_en/en-viol/29en\_vio.htm)

It is time to shred the myth that rape will be with us forever, that the best we can do is to teach women to protect themselves with outdoor lighting, locks, or martial arts. This attitude is an abdication of responsibility from those able to respond and an acceptance of rape by those who profess to abhor rape. I declare to you that there is no acceptable level of death, no acceptable level of humiliation, and no acceptable level of degradation in a culture that calls itself civilized. How can a country that holds justice high, a country dedicated to freedom, accept the level of fear that women live with daily? We’ve got to stop rape, and we can stop it. For too long we have lived in denial. I can no longer deny the reality that every rape is a violation of my humanity. I can no longer deny that my silence implies my consent. I can no longer deny my sisters their freedom. What man can look his daughter in the eye and try to explain that "we live in the land of the free, but you must not go out at night?" Which of you can look your kid sister in the eye and tell her you love her and yet do nothing while she and one in three of her girl friends will be raped by the age of eighteen; raped by their relatives and peers? How long are men going to allow our 96 year old grandmothers and 3 month old daughters to be sexually assaulted, before we get off our butts and do something? I am sick to death of hearing men say that because they would never rape, rape is not their problem. Well who’s problem is it then? Obviously women who survive an assault experience a "problem" — a "problem" that will transform their lives for years to come. But what about the father who is ready to kill because his daughter has been raped? Is he experiencing "a problem?" And why doesn’t he generalize his feelings about his daughter to every woman on the planet? What about the husband of a woman who has been raped whose marriage dissolves within 2 years in 2 of 3 cases? Is he experiencing a problem? What about the college senior whose partner lives with fear of rape or memories of rape? Is he experiencing "a problem?" What do men say? "Oh I’m sympathetic, but I really don’t have the time right now." Rest assured that unless you make the time right now, your problem of rape will be waiting for you when you finally get around to doing something. "I’ve got to put my energies into stopping nuclear war" or "environmental destruction." When will you make the connection that the same male patterns of violence involved in power, control, and humiliation in international conflict are involved in the violation, degradation, and domination of individual women by individual men? You identify with the porpoises that are destroyed at the hands of the tuna industry to provide a food source for you to eat. Why is it harder for you to identify with the women who are humiliated, mutilated, and murdered at the hands of the pornography industry to provide images for you to view while masturbating? How can a new age man consider himself sensitive if he cannot sense or does not respond to the pain that engulfs his sisters?

# Case

## Inherency

### Non-Uniform Certification

#### And a lack of uniformity in the certification process prevents deserving individuals applying and receiving a visa.

Weissman et al, 2014 (Deborah M., Jean Abreu, Sidney Fowler, Nina Holtsberry, Ashley Klein, Kevin Schroeder, Melanie Stratton Lopez, Cecelia Friedman Levin, Gail Pen, UNC School of Law Immigration/Human Rights Policy Clinic, “The Political Geography of the U Visa: Eligibility as a Matter of Locale”, shae)

Congress vested the authority to decide whether a petitioner is eligible for U visa status to the U.S. Citizenship and Immigration Services (USCIS). A mandatory requirement of the U visa application is a signed certification by a law enforcement agency indicating that the victim was helpful in the investigation or prosecution of a qualifying crime. The law enforcement certification is commonly known by its USCIS form designation, “I-918B” or “Supplement B.” This report primarily uses the phrase “I-918B” to refer to the law enforcement certification form requirement of the U visa application. The U visa holds out promise to those who have suffered as crime victims and at the same time, promotes improved community relations with law enforcement and other investigatory agencies. Despite the salutary purposes of the statute, immigrant and civil rights advocates have observed that there is no uniformity among U visa certification processes, as the decision whether to sign a U visa certification is within discretion of that law enforcement agency. For this reason, certification practices vary among different law enforcement agencies and in different jurisdictions. As a result, some immigrant victims who meet the statutory elements are successful in obtaining the signed I-918B certification form and, ultimately, the U visa. Other immigrant victims with virtually identical fact patterns are often denied certification by agencies whose policies run contrary to the Congressional intent in establishing the U visa program. These applicants, thus, have no chance to obtain consideration of their U visa application by USCIS as they are unable to meet the requirement of submitting an I-918B certification.

### Certification Key

#### The certification requirement is the largest obstacle to acquiring a U visa.

Collins, 2014 (Katherine Grant, “Decline to Sign: The Impact of Local Bureaucratic Discretion on Immigrant Victims’ Equal Access to the Law”, Master’s Thesis submitted and defended @ UC San Diego, <https://cloudfront.escholarship.org/dist/prd/content/qt7dc4m4n3/qt7dc4m4n3.pdf>, shae)

U.S. immigration law is known for being the most complicated, and most ambiguous law on the books (Legomsky, 2010), and since its creation, the U Visa has shown itself to be particularly unnavigable for undocumented immigrants, their advocates, and local justice systems alike. The largest obstacle in obtaining this visa has shown itself to be the initial phase of application process, which requires obtaining the signature of a “certifying agency” on a form called the “I-918 Supplement B.”2 The purpose of this form is to provide “official” proof to that the immigrant was indeed a victim of a crime and aided in the investigation of that crime, and without this signature, an immigrant’s application for the U Visa will not be considered for approval. A problem has emerged that local certifying agencies are refusing to sign this form in large numbers (Jensen, 2009), resulting in the significant delay, and possibly the complete denial of the petitioner’s access to this form of immigration relief. For those denied this signature, the road to legal status stops there.

## Solvency

### Reform Solvency Advocate

#### Eliminating the law enforcement certification requirement means the “any credible evidence” standard is sufficient to receive a U visa.

Orloff et al, 2010 (Leslye E. – Vice President and Director of the Immigrant Women Program at Legal Momentum in Washington DC, Kathryn C. Isom – graduate of Columbia Law School, and Edmundo Saballos – graduate of American University Law School, “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”, *The Georgetown Journal of Gender and the Law*, Symposium Issue, shae)

Mandatory certification in U-visa crime victim cases acts to significantly reduce the numbers of eligible crime victims who can come forward, out of the shadows and out from under the control of their abusive spouses, employers, or human traffickers to report, be protected from deportation, and to cooperate in criminal investigations and prosecutions. Requiring mandatory certification is unnecessary as a fraud check when U-visa cases are adjudicated by the same division of DHS, the VAWA Unit, that has years of expertise making similar adjudicatory decisions based on “any credible evidence” in T-visa cases. Congress should amend the U-visa statute to offer U-visa victims the same access to crime victim protection available to trafficking victims and VAWA self-petitioners. Crime law enforcement or justice system certification in U-visa cases should become primary evidence of helpfulness, and U-visa victims should be able to prove helpfulness by providing the best evidence they can muster under the “any credible evidence” standard of proof. This approach will give U-visa eligible crime victims the equal access to VAWA’s U-visa crime victim protections wherever victims live in the United States. Victims in all jurisdictions across the United States will be able to come forward and report crimes and cooperate in criminal prosecutions and contribute to making all of our communities safer.

#### “Any credible evidence” standard is pretty dang broad.

US Justice Department, 1998 (Paul W. Virtue – General Counsel @ the US Justice Department, Memorandum for Terrance M. O’Reilly [Director], “‘Extreme Hardship’ and Documentary Requirements: Involving Battered Spouses and Children”, October 16, <http://www.asistahelp.org/documents/resources/Virtue_Memo_on_Any_Credible_Evidenc_914E6417FB497.pdf>, shae)

Some general principles are applicable in making a credibility determination. The preamble to the Service's interim rule implementing the VAWA states that "more weight will be given to primary evidence and evidence provided in court documents, medical reports, police reports, and other official documents ... self petitioners who submit affidavits are urged, but not required, to provide affidavits from more than one person. Other forms of documentary evidence may be submitted, including evidence ... not ... identified in the Service's regulations." Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant: Self-Petitioning for Certain Battered or Abused spouses and Childre·n,,61 F.R. 13061 (1996). This principle recognizes the fact that battered spouse and child self-petitioners are not likely to have access to the range of documents available to the ordinary visa petitioner for a variety of reasons. Many self-petitioners have been forced to flee from their abusive spouse and do not have access to critical documents for that reason. Some abusive spouses may destroy documents in an attempt to prevent the self-petitioner from successfully filing. Other self-petitioners may be self-petitioning without the abusive spouse's knowledge or consent and are unable to obtain documents for that reason. Adjudicators should be aware of these issues and should evaluate the evidence submitted in that light. Adjudicators should be sure to give the self-petitioner ample opportunity to add to the evidence submitted in support of the petition if necessary. As in the discussion of extreme hardship above, no scorecard can be provided to reach a conclusion that evidence in a particular case is credible. Each adjudicator must make that determination in each case based on the facts and circumstances of that case only, taking into account the limitations that pertain to battered spouse and child self-petitioners.

#### “Any credible evidence” is really, really, reeeeeeaaally broad.

USCIS, 2002 (“New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status”, January 31, <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-79324/0-0-0-83564/0-0-0-83823.html>, shae)

The alien may provide any credible evidence to meet this prong of eligibility or any other prong of eligibility. A non-exhaustive list of suggested forms of secondary evidence includes trial transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. Under 8 CFR 103.2, affidavits are not considered primary or secondary evidence. They are another form of evidence, nonetheless. Applicants may provide their own affidavits and those from other witnesses.

## Impacts

### Subjective Destitution

#### Certification can be withdrawn for any reason at any time resulting in the subjective destitution of petitioners as they seek to fit the standard of the ideal victim seeking to recuperate the American Dream.

Berger, 2009 (Susan – Department of Political Science @ Fordham University, “(Un)Worthy: Latina battered immigrants under VAWA and the construction of neoliberal subjects”, *Citizenship Studies* 13.3, shae)

U visas: freedom to become a victim VAWA’s U visa presents another particular identity dilemma for battered immigrant women.16 The visa was created by Congress as part of the Battered Immigrant Woman Protection Act of 2000 to facilitate the reporting of crimes and criminal activities (including, but not exclusively, domestic violence)17 to law enforcement by undocumented victims by offering to regularize the immigration status of those who cooperate with police and courts to prosecute perpetrators. Unlike under VAWA self-petitioning regulations, the U visa does not require that the abuser be a citizen or legal permanent resident, nor that the victim be/have been married to her abuser. A battered immigrant woman applying for the U visa, therefore, does not have to illustrate in her narrative that she married in good faith, but she does have to demonstrate that she has good moral character,18 ‘faced substantial physical or mental harm’ and possessed ‘credible and reliable information of the criminal activity and cooperates with law enforcers’ (Immigrant Women Program 2001, p. 3). Still, the evidentiary standard for the visa remains ‘any credible evidence’, and thus, like the VAWA self-petitioner, the U visa applicant may establish the substantial harm suffered through her narrative affidavit alone (p. 3). While the U visa opens up new avenues of regularization for battered undocumented Latinas, the surrounding discourse of the law and the regulatory process being established continue to subjectify battered immigrants into a clichéd binary of worthy and unworthy, and encourage U visa petitioners to take steps to remake themselves into neoliberal citizens. To be deemed worthy of a U visa, a battered immigrant crime victim must first demonstrate her worthiness by responding to acts of violence and working with law enforcers in ways that are deemed appropriate by the legal and judicial regimes. In fact, to obtain a U visa, a crime victim must obtain certification from a government agency (e.g., law enforcement agency, prosecutor, judge, Child Protective Service, etc.) attesting to her helpfulness in a criminal investigation and prosecution. The victim has the ongoing responsibility to cooperate with enforcers and her certification can be withdrawn at any time. To be labeled worthy, thus depends on being the rational person who follows through, leaves the batterer, cooperates with prosecuting the case, and does not provoke violence, take drugs or drink, or abuse children. A woman’s ability to perform such a self is conditional upon conforming to the law’s definitions of rational and autonomous reactions to violence. The victim of violence encounters this conditional definition of the legally protected self offered to her as she endeavors to assume the proffered identity (Merry 2003, p. 353). Closely related to demonstrating her rationality, a successful U visa applicant must also illustrate her willingness to shift her subject position from a constituent member of family and community to that of an autonomous individual, linked by the promise of protection of individual rights to the state. The worthy victim initiates her willingness to adopt an individualistic position by participating in the arrest, imprisonment, and deportation of her abuser. The Latina victim’s decision to work with law enforcers often isolates her from traditional identity markers (wife, mother, daughter, friend) and leads to the altering of her subject position in the extended family and community. Individualism is a keystone of the US free-market philosophy and is a necessary first step in the neo-citizenization of immigrant subjects. Once a battered immigrant woman has submitted her U visa petition and it is pending, she will be granted the authorization to work. While IIRAIRA made it possible for VAWA self-petitioners to obtain some temporary public assistance as they transitioned into self-sufficient heads-of-households, U visa petitioners and holders do not qualify for any public assistance. Instead, they must immediately (re)enter the marketplace to support themselves and children. This is not easy for many abused Latina immigrants, who may lack adequate employment or language skills and may be caring for minor-aged children alone. While encouraging state assistance for battered immigrant women, we should remain cognizant of the ways in which the victim is asked to rethink her subject position and the effects (negative and positive) that repositioning will have on her life in the United States.

### Numerical Cap Bad

#### Tag

Collins, 2014 (Katherine Grant, “Decline to Sign: The Impact of Local Bureaucratic Discretion on Immigrant Victims’ Equal Access to the Law”, Master’s Thesis submitted and defended @ UC San Diego, <https://cloudfront.escholarship.org/dist/prd/content/qt7dc4m4n3/qt7dc4m4n3.pdf>, shae)

When VAWA came up for reauthorization again in 2012, it did not enjoy the bipartisan backing as it had in the past. Unexpectedly, the act became a politicized piece of legislation; with the protections for immigrant victims a central cause of this polarization. In 2012, the U Visa cap of 10,000 annual visas had been met consecutively for the third year in a row. A concern emerged from immigrant victim advocates that many of those who immediately needed the benefits of the visa (such as employment authorization and access to social benefit programs), were being placed on a lengthy wait list. This was leading those most vulnerable to live in a status-less limbo, potentially forcing them to remain in abusively dependent situations. In response, in May 2012, the Senate passed a re-authorization of the Violence Against Women Act, that modestly raised the cap on U Visas to 15,000 (U Visas Hit Ceiling, 2012). However, when the bill arrived at the House, Republicans pushed through a regressive measure that omitted the Senate’s U Visa increase, as well as various other restrictions, including an elimination of the existing ability of U Visa holders to apply for permanent residency after three years. Congress could not reconcile the two versions of the bill, and VAWA was not re-authorized until March of 2013. The final version of VAWA 2013 did not include the additional 5,000 visas, nor did it include the restrictions suggested by House Republicans. The only change to the U Visa that was made was “stalking” was added to the list of qualifying crimes covered by the visa (U Visas Hit Ceiling, 2012).

### Prosecution Standard Bad

#### Tag

Gehi and Munshi, 2015 (Pooja – Director of Immigrant Justice @ the Sylvia Rivera Law Project, and Soniya – Assistant Professor of Sociology @ CUNY Borough of Manhattan Community College, “Connecting State Violence and Anti-Violence: An Examination of the Impact of VAWA and Hate Crimes Legislation on Asian American Communities”, *Asian American Law Journal* 21.1, shae)

Domestic violence arrests and prosecution can have adverse consequences for survivors. In addition to potential jail time, an arrest can cause retaliation from her abuser, family, and community; jeopardize her employment; adversely affect access to public benefits; and it can adversely affect child custody agreements.125 These policies also produce impacts when the abusive person is arrested without the survivor’s consent. Survivors of violence may not want their abusive partners arrested for reasons as varying and complicated as love, fear, economic interdependence or dependence, mobility interdependence or dependence, fear of retaliation, shame or embarrassment, and immigration status dependence.126 Criminal legal responses to domestic violence can also open up a home to further state intervention and surveillance, such as involvement of child protective services.127 These state agents can abuse their power; for example, rampant incidents of sexual violence perpetrated by law and immigration enforcement officials against survivors of color have been documented.128

### Transphobia

#### Certification requirement exposes applicants to violent prejudice by law enforcement officials rooted in cisheternormativity.

Acosta, 2016 (Yesenia – immigration attorney @ the Law Offices of Scott Warmuth, “Green Cards Still Elusive for Many Same-Sex Couples”, The Advocate, February 26, <https://www.advocate.com/commentary/2016/2/26/green-cards-still-elusive-many-same-sex-couples>, shae)

Marriage-based green cards are the most salient examples, but there are a number of special petitions that present particular challenges to LGBT people, like the U visa for victims of crime (including rape, assault and domestic violence) that allows for undocumented people to petition for a visa when they assist law enforcement. I recall a case in which the applicant was a transgender woman who tried to apply for a visa as a victim of a violent crime, and we needed a law enforcement detective’s signature to confirm that she was helpful to the police in their investigation. The client told me beforehand that the detective in the case was clearly prejudiced against her as he interviewed her about the violent crime she suffered. The agent kept asking her whether she was actually a man, something that the victim chose not to disclose openly. Sure enough, I had to fight the detective for months as to why he would not certify her application, and he eventually admitted his conclusion: that my client was a prostitute who was beaten by the perpetrator in a "fight for territory" and thus she was not a helpful victim who should benefit from this special visa. Of course, his stated conclusion should not have bearing on whether or not my client reported the crime she suffered and gave information helpful to the investigation, as required for U visa eligibility. But nonetheless, it shows how bias can pose obstacles for LGBT applicants in a way that may not be quantifiable, but that does not mean it should be overlooked.

## A2 Fraud DA

### No Widespread Fraud

#### There’s no evidence of widespread U Visa fraud.

Mankin, 2017 (Imogene – JD Candidate @ UC-Berkeley, “Abuse-in(g) the System: How Accusations of U Visa Fraud and Brady Disclosure Perpetuate Further Violence Against Undocumented Victims of Domestic Violence”, 27 La Raza L.J. 40, shae)

Public defenders do not typically concur with conservative politicians on many things, but they do agree on one thing: undocumented immigrants may be fabricating or exaggerating crimes to get U visas.1 Designed to “facilitate” immigrant cooperation with law enforcement,2 the U visa is an immigration status awarded to victims of certain crimes that took place in the United States. With the U visa, an undocumented immigrant gains nonimmigrant status, the privilege to work legally in the U.S., and a very slow path to citizenship.3 On its face, the U visa is an easy target for fraud accusations. It seems like an uncharacteristically generous and forgiving4 oasis in the otherwise stingy and draconian desert of our immigration law. I will argue that the U visa is not as tempting to fraud as it may seem due to fraud prevention measures baked into its requirements and widespread fear of law enforcement in immigrant communities, ever increasing in the dawn of the Trump administration. There is no indication that Department of Homeland Security5 (DHS) has anticipated or observed any significant levels of U visa fraud. However, Republican congressmen report “rampant” U visa fraud, and criminal defense attorneys continue to accuse U visa applicants of fabrication on the stand. Accusations of U visa fraud from such partial actors are not only mostly unsubstantiated but also unreliable because they serve their own vested interests.

### Court Bias

#### Tag

Mankin, 2017 (Imogene – JD Candidate @ UC-Berkeley, “Abuse-in(g) the System: How Accusations of U Visa Fraud and Brady Disclosure Perpetuate Further Violence Against Undocumented Victims of Domestic Violence”, 27 La Raza L.J. 40, shae)

Largely controlled by local law enforcement and prosecutors,6 the U visa has been vulnerable to accusations of fraud by criminal defendants, who attempt to impeach undocumented victim witnesses by accusing them of making up the crime for the U visa.7 Because many prosecutors consider the U visa to be “exculpatory” evidence, they disclose the victim’s8 otherwise private immigration information to defendants. This leaves victims vulnerable to aggressive defenses and cross-examination in court, among other injustices.9 As discussed in Section V, case law suggests that U visas are exculpatory evidence only because courts have held that other types of law enforcement cooperation visas are exculpatory evidence. I distinguish U visas from these other types of visas and argue that they are not exculpatory evidence in the absence of case law specifically addressing U visas. Victims of domestic violence are particularly vulnerable to this type of fraud accusation because they can already make for unreliable witnesses as it is.10 Due to trauma, complicated relationship dynamics, and a desire to protect their families, they often contradict themselves, recant testimony, or refuse to testify altogether.11 As a result, it is easy for a defense attorney to capitalize on this shaky testimony and accuse the U visa applicant of fabricating the domestic violence. Jurors who are unfamiliar with domestic violence may find an incentive to lie for a tangible benefit to be more plausible than a motive to lie because of complicated power dynamics and trauma. The U visa is too wrapped up in the adversarial criminal justice system, leaving victims vulnerable to re-victimization by the process. Prosecutors are required to make Brady disclosures and turn over all “exculpatory” evidence to the defense.12 Prosecutors dislike the U visa because disclosure of the victim-witness’s U visa application and their subsequent impeachment could ruin an otherwise strong case.13 On the other side, defense counsel and defendants often resent the possibility that a U visa applicant can trade an accusation for immigration benefits, even if it is true.14 Thus, U visa fraud accusations often arise from within the criminal justice system, and not the Department of Homeland Security, the agency in charge of administering the U visa program. For an undocumented victim of domestic violence, the mere suggestion or accusation of fabrication, fraud, or deception may be traumatic, especially coming from an authority figure. This trauma of accusation and cross-examination is a form of psychological violence.

### Process=Slow

#### It would be easier to just sneak into the US.

Mankin, 2017 (Imogene – JD Candidate @ UC-Berkeley, “Abuse-in(g) the System: How Accusations of U Visa Fraud and Brady Disclosure Perpetuate Further Violence Against Undocumented Victims of Domestic Violence”, 27 La Raza L.J. 40, shae)

Contrary to Representative Black’s gross oversimplification of “stapl[ing] green cards to police reports,”64 the U visa petition process is vastly longer and more onerous than this. There are several eligibility requirements for U visas beyond the police report.65 Only after the victim has reported the crime, cooperated with law enforcement—or the prosecution, depending on the agency’s policy—and obtained a signed certification, can the victim compile the necessary documents to submit to USCIS.66 The victim’s access to a certification may depend on whether they live in a U visa friendly locality.67 The U visa regulations require a signed statement from the applicant “describing the facts of the victimization,” as well as proper completion of several forms.68 Additionally, the regulations invite applicants to submit “any additional evidence” that proves their eligibility, such as medical documents, a psychological evaluation, court documents, and the police report.69 With all of these requirements, the U visa just might be the slowest existing path to citizenship—currently over fifteen years long. Once the U visa petition is pending, the current processing time with USCIS is approximately two and a half years.70 However, due to the high volume of U visa applications, in 2012, the Department of State reached the annual visa quota of 10,000 U visas, which resulted in a massive backlog in U visa adjudications.71 After the two and a half year wait, the provisionally approved are then placed on a six-to-seven year-long “waiting list” for their U visa.72 With a provisional approval, a U visa applicant receives deferred action73 and may become eligible for a work permit and certain public benefits, but remains in legal limbo.74 The U visa holder must maintain this provisionally approved status for three years before they are eligible to apply for legal permanent residency,75 also known as a “green card.” Thus, the true time lapse between police report and green card is over eleven years—at least two and a half years for provisional approval, six to seven years of visa backlog, and three years of holding U visa status before applying for permanent residency. The path could be much longer than eleven years if the victim does not apply for a U visa shortly after she files the police report. After five years as a lawful permanent resident, the former U visa holder finally becomes eligible for naturalization,76 which brings the total time from crime to citizenship to at least sixteen years. Despite conservative politicians’ claims over the years that the U visa is an “invitation to fraud,” in reality the U visa is too slow and onerous a process to be an invitation to anything. Applicants must not only prove their eligibility but they must also persevere through many years of bureaucratic red tape just to get on the path to legal permanent residency.

# A2 Disads

## Impact Framing

### DV 1st

#### Ongoing domestic violence outweighs.

Jackson, 2012 (Richard; 8/5/12; Ph.D. in Political Science from the University of Canterbury, Professor of Peace Studies at the University of Otago, Director of the National Centre for Peace and Conflict Studies, former senior lecturer at the University of Manchester; Richard Jackson Terrorism Blog, “The Great Con of National Security,” [https://richardjacksonterrorismblog.wordpress.com/2012/08/05/the-great-con-of-national-security/; RP)](https://richardjacksonterrorismblog.wordpress.com/2012/08/05/the-great-con-of-national-security/))

It may have once been the case that being attacked by another country was a major threat to the lives of ordinary people. It may also be true that there are still some pretty serious dangers out there associated with the spread of nuclear weapons. For the most part, however, most of what you've been told about national security and all the big threats which can supposedly kill you is **one big con** designed to distract you from the things that can really hurt you, such as the **poverty**, inequality and **structural violence** of capitalism, global warming, and the manufacture and proliferation of weapons - among others. The **facts are** simple and **irrefutable**: you're far more likely to die from **lack of health care** provision than you are from terrorism; from stress and overwork than Iranian or North Korean nuclear missiles; from lack of road safety than from **illegal immigrants**; from mental illness and suicide than from computer hackers; from domestic violence than from asylum seekers; from the misuse of legal medicines and alcohol abuse than from international drug lords. And yet, politicians and the servile media spend most of their time talking about the threats posed by terrorism, immigration, asylum seekers, the international drug trade, the **nuclear programmes** of Iran and North Korea, computer hackers, animal rights activism, the threat of China, and a host of other issues which are all about as equally unlikely to affect the health and well-being of you and your family. Along with this obsessive and perennial discussion of so-called 'national security issues', the state spends truly vast sums on security measures which have virtually **no impact on the actual risk** of dying from these threats, and then engages in massive displays of **'security theatre'** designed to show just how seriously the state takes these threats - such as the x-ray machines and security measures in every public building, surveillance cameras everywhere, missile launchers in urban areas, drones in Afghanistan, armed police in airports, and a thousand other things. This display is meant to convince you that these threats are really, really serious. And while all this is going on, the rulers of society are hoping that you won't notice that increasing social and **economic inequality** in society leads to increased ill health for a growing underclass; that suicide and crime always rise when unemployment rises; that workplaces remain highly dangerous and kill and maim hundreds of people per year; that there are preventable diseases which plague the poorer sections of society; that **domestic violence** kills and injures thousands of women and children annually; and that globally, poverty and preventable disease kills **tens of millions** of people needlessly every year. In other words, they are hoping that **you won't notice** how much **structural violence** there is in the world. More than this, they are hoping that you won't notice that while literally trillions of dollars are spent on military weapons, foreign wars and security theatre (which also arguably do nothing to make any us any safer, and may even make us marginally less safe), that domestic violence programmes struggle to provide even **minimal support** for women and children at risk of serious harm from their partners; that underfunded mental health programmes mean long waiting lists to receive basic care for at-risk individuals; that drug and alcohol rehabilitation programmes lack the funding to match the demand for help; that welfare measures aimed at reducing inequality have been inadequate for decades; that health and safety measures at many workplaces remain insufficiently resourced; and that measures to tackle global warming and developing alternative energy remain hopelessly inadequate. Of course, none of this is surprising. Politicians are a part of the system; they don't want to change it. For them, all the **insecurity, death and ill-health** caused by capitalist inequality are a price worth paying to keep the basic **social structures as they are**. A more egalitarian society based on equality, solidarity, and other non-materialist values would not suit their interests, or the special interests of the lobby groups they are indebted to. It is also true that dealing with economic and social inequality, improving public health, changing international structures of inequality, restructuring the military-industrial complex, and making the necessary economic and political changes to deal with global warming will be **extremely difficult** and will require long-term commitment and determination. For politicians looking towards the next election, it is clearly much easier to paint **immigrants as a threat** to social order or pontificate about the ongoing danger of terrorists. It is also more exciting for the media than stories about how poor people and people of colour are discriminated against and suffer worse health as a consequence. Viewed from this vantage point, national security is one **massive confidence trick** - misdirection on an epic scale. Its primary function is to **distract you** from the structures and inequalities in society **which are the real threat** to the health and wellbeing of you and your family, and to convince you to be permanently afraid so that you will acquiesce to all the security measures which keep you under state control and keep the military-industrial complex ticking along. Keep this in mind next time you hear a politician talking about the threat of uncontrolled immigration, the risk posed by asylum seekers or the threat of Iran, or the need to expand counter-terrorism powers. The question is: when politicians are talking about national security, what is that they don't want you to think and talk about? What exactly is the misdirection they are engaged in? The truth is, if you think that terrorists or immigrants or asylum seekers or Iran are a greater threat to your safety than the capitalist system, you have been well and truly conned, my friend. Don't believe the hype: you're **much more likely to die** from any one of several forms of structural violence in society than you are from immigrants or terrorism. Somehow, we need to challenge the politicians on this fact.

#### Addressing intimate partner violence outweighs and is a pre-requisite to the prevention of war.

Duncan, 2007 (Lara; Member of STAND! – a grassroots organization committed to ending domestic violence, “Standing Up To Domestic Violence,” Peace Power, Spring, http://calpeacepower.org/0301/pdf/domesticv.pdf)

The number of women murdered by their intimate partners in the United States in the last 11 years is equal to the number of U.S. soldiers killed in the Vietnam War.1 The United States expends much energy and resources for causes abroad, but there are still issues at home that need help. Just as war causes many deaths, so too does violence in the home. In addition to the sheer number of men and women involved in such abuse, domestic violence has a far-reaching impact on children, the future generation of society. Adolescents who have grown up in violent homes are at risk of perpetuating the abusive relationships of their parents/guardians. They are more likely to attempt suicide, abuse drugs and alcohol, run away from home, engage in teenage prostitution and other delinquent behavior, and commit sexual assault crimes.2 In fact, “a child’s exposure to the father abusing the mother is the strongest risk factor for transmitting violent behavior from one generation to the next.”³ Due to its private context, domestic violence runs the risk of being overlooked, especially amidst more outwardly demanding social and political issues such as war and terrorism. However, Gandhi’s concept of swadeshi teaches us to first work for change within ourselves, then extend outward to wider circles of influence. Swadeshi suggests that violence in the home must be addressed before a culture of nonviolence can be achieved.⁴ Two non-governmental organizations that propose divergent means through which to eliminate domestic violence are STAND! Against Domestic Violence and the Purple Berets. STAND! believes that we must change prevailing attitudes about violence through education, whereas the Purple Berets pursue policy change and retribution. While both education and legislation are important, STAND! embodies a more principled nonviolent approach.

### Public/Private K

#### Treating domestic violence as a private concern ensures its continual perpetuation.

Davis, 2004 (Karyl Alice – lawyer @ Troutman Sanders LLP, “Unlocking the Door by Giving Her the Key: A Comment on the Adequacy of the U-Visa as a Remedy”, 56 Ala. L. Rev. 557, shae)

V. CONCLUSION

Current immigration law, consequently, "seem[s] more concerned with 'policing the borders"' between non-citizens and citizens than with helping to make empowered citizens of immigrant women."173 According to Gloria Anzaldua, "[b)orders are set up to define the places that are safe and unsafe, to distinguish us from them."114 Because nonimmigrant women are not citizens, their problems are not seen as our problems. The walls of homes become borders in and of themselves-allowing larger society to relegate terror to the domestic front, to label domestic violence a private problem, and to tum the other cheek. For nonimmigrant women who are victims of domestic violence, danger lies on both sides of the border. "A border is a dividing line, a narrow strip along a steep edge ... an unnatural boundary."175 The unnatural boundary in immigration law that has divided women who are married to permanent residents and those who are married to temporary workers is not only artificial, it is deadly. Along this border "the Third World grates against the first and bleeds."176 Living in the United States without recognizable, enforceable rights as autonomous human beings is home for nonimmigrant women: "This is [their) home / this thin edge of / barbwire."177 Because of the excessive policing of the border between dependent visa holders and independent visa holders, nonimmigrant women are locked into a political space that is neither safe nor secure. Until independent visa status is granted to all nonimmigrants, the state has failed to provide abused nonimmigrant women with any choice other than to live with terror. Under current immigration law, an abused nonimmigrant woman with a dependent visa either chooses to access the criminal justice system, which carries with it the terror of deportation and economic destitution, or she chooses to stay with her abusive husband, which carries with it the terror of physical, sexual and emotional violence, including the fear of death. It is time that battered nonimmigrant women have a real choice, and it is time for the state to eliminate coverture in immigration law.

# A2 Reform CP

## Visa Revocation DA

#### Maintaining law enforcement certification sustains the permanent threat of visa revocation and abuse by law enforcement.

Baronich, 2013(Taylor – University of Mississippi - School of Law, “SHELTERED NO MORE: THE U-VISA REVOCATION PROCESS UNDERMINES CONGRESS’S PURPOSE OF VICTIM PROTECTION” SSRN)

Similarly, the ability of the certifying official to revoke based on ongoing cooperation and reasonable helpfulness creates an ambiguous expectation for the victim that he or she is likely unable to uphold. While the “ongoing cooperation” requirement is a seemingly good policy on a surface level to achieve Congress’s goal of prosecuting criminals, such demands for a victim to be constantly available are impractical and even damaging.145 Immigrant women, especially battered women, still faces challenges with stability; the language and cultural barriers, coupled with little family roots and inability to receive an adequately paying job, forces frequent relocation and a consistent battle to rise above the same vulnerability with which they entered the country.146 Victims also suffer from post-traumatic symptoms, ranging from 80% of women reporting repeated, disturbing memories, thoughts, or images of the abuse and 70% of victims avoiding activities or situations because they reminded the victim of the abuse.147 Two example mentioned previously demonstrate how the “ongoing cooperation” and helpfulness requirement easily endanger a victim’s visa being revoked. Had Ms. Ileana Herrera’s visa been issued and she did not respond to law enforcement’s request because she was in a shelter, her visa could have been revoked based on lack of helpfulness just as easily as the law enforcement officer refused certifying her LEC based on helpfulness. Additionally, the 2013 USCIS Administrative Appeals Office case that revoked a kidnapping victim’s visa because the district attorney found him unhelpful absolutely violated the spirit of the revocation statute. As explained in the Department of Homeland Security’s U Visa Law Enforcement Certification Resource Guide, stating a notice of intent to revoke should be done if the victim has not reasonably responded to law enforcement requests. This case unfortunately demonstrates that even if a victim is, in good faith, providing ongoing cooperation to law enforcement, her U-Visa protection can still be stripped if the victim’s actions don’t fit the law enforcement’s definition of “helpful” or “ongoing.” The requirement of “ongoing cooperation” and reasonable helpfulness continues to follow the victim into her ability to apply for permanent status, and receive an immigrant visa.148 She must prove that she did not unreasonably fail to cooperate with police, as well as prove she has resided continuously in the United States for three years.149 As seen in the previous examples, even if a victim is simply trying to survive as in Ileana Herrera’s case, or a victim is trying to be helpful but a district attorney simply has no use for him as in the 2013 USCIS Administrative Appeals Office case, proving this “ongoing cooperation” can be an overwhelming hurdle even with the victim’s best of intentions. This requirement of cooperation is just one of several statutory language conflicts that undermine Congress’s purpose of the U-Visa. III. THE U-VISA REVOCATION STATUTE THWARTS THE U-VISA The Code of Federal Regulations clearly states how a visa may be revoked, and most are easily understood as necessary and just such as the revocation due to fraud or error. The statute, however, is also wrought with ambiguity and unrealistic expectations of victims.150 While the revocation ability of law enforcement was included in the regulations as a safeguard against problematic petitioners, the revocation statute reaches beyond a safeguard and, instead, creates opportunity to injure the very faction it was meant to protect. Not only is the revocation process of the U-Visa the only of its kind in the pool of immigrant and nonimmigrant visas, its vague language makes it ripe for inconsistent interpretation, misinterpretation, and abuse. Because of such impact on the U-Visa application process, the revocation procedures set out in the Federal Regulations undermine the UVisa itself.

#### The threat of visa revocation is traumatizing for U visa applicants.

Baronich, 2013(Taylor – University of Mississippi - School of Law, “SHELTERED NO MORE: THE U-VISA REVOCATION PROCESS UNDERMINES CONGRESS’S PURPOSE OF VICTIM PROTECTION” SSRN)

Created by Congress in 2000, the U-Visa is a life-saving nonimmigrant visa for victims of crime that occurred to them in the United States. Congress’s recognition that immigrant victims face insurmountable obstacles escaping an abuser led to their dual-prong purpose for the U-Visa to protect victims and prosecute criminals. However, with full discretion in the hands of local law enforcement to provide the mandatory law enforcement certification of a victim’s crime and her cooperativeness, police have the power to grant or deny certification at their will not matter if the victim has satisfied all criteria for the U-Visa application. While many legal scholars have discussed the overly broad discretion given to law enforcement over the U-Visa application process by the U-Visa regulations created in 2009, none have discussed the equally appalling parallel broad discretion granted to law enforcement to revoke a U-Visa based upon trivial, inconsequential, or nonexistent reasoning. This excessively broad power in the hands of law enforcement to revoke U-Visas not only violates Congress’s original dual-purpose for the U-Visa, but it also places victims right back into a state of vulnerability and into the hands of their abusers.

## A2 Crime NB

#### Mandatory law enforcement intervention replicates the trauma of intimate partner violence

Nanasi, 2016(Natalie – Assistant Professor and Director of the Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women @ the Southern Methodist University Dedman School of Law, “THE U VISA’S FAILED PROMISE FOR SURVIVORS OF DOMESTIC VIOLENCE”, SMU Dedman School of Law Legal Studies Research Paper No. 341)

However, despite these stated benefits, many scholars and advocates argue that the pendulum has swung too far and that the deprivation of choice inherent in mandatory legal interventions can be extraordinarily harmful to survivors of domestic violence. First, some survivors may not want to be involved with a criminal justice system that they view with suspicion or distrust. This is particularly true for women in minority or marginalized communities, as “race, class, sexual orientation, immigration status, and other identities may have [a profound impact] on women’s decisions to invoke formal systems.”84 If a woman’s previous calls to police have gone unanswered, if officers who responded in the past did not treat her or her family members with respect or kindness, she may be disinclined to reach out for help again. If an immigrant woman views local police as agents of a federal immigration system that seeks her deportation, her willingness to engage with that system is obviously curtailed. And if a black woman believes that reporting domestic violence will confirm biases of law enforcement towards African American men and/or will lead to the incarceration of another black male, she may decide that the needs of her community override her individual safety or needs.85 It is difficult to disentangle issues of race, gender, sexual orientation and class from conversations about domestic violence and law enforcement, as women’s intersectional identities significantly impact their attitudes toward engagement with the state. Ultimately, we must remember that “… for many battered women[,] criminal prosecution is deeply problematic … [A]ctivists and legal reformers continue to raise questions concerning criminalization, reflecting tensions around issues involving women’s autonomy, poor women, and women of color…”86 As such, a blanket policy that forces all survivors to engage with law enforcement discounts their individualized experiences and desires. Regardless of a survivor’s feelings about the efficacy of law enforcement, she may still make an informed choice to not seek outside intervention in her marriage or to discontinue engagement that she has either begun herself or that has been initiated on her behalf (e.g., after a neighbor calls the police to report a disturbance).87 A decision to avoid police involvement is often a rational calculation, “made based on past experiences and with intimate knowledge of their partners, their resources, their political views, their family concerns – in short, based on the lives that they seek to fashion.”88 For example, some victims of abuse simply want the violence they are facing to stop; they do not want to leave their spouse or partner. A victim is almost always “in a better position to choose [how to protect herself], as she knows best what her partner is capable of and what is likely to occur from the separation.” 89 A member of the staff of Genesis Women’s Shelter in Dallas, TX colorfully explains this phenomenon by inquiring about the best place to stand when in a room with a fire-breathing dragon. Upon reflection, most respond that the safest place is right next to, or even under, the dragon, highlighting the fact that in order to survive, a woman may be forced to align herself with her batterer. Thus, if separation from an abuser is not a victim’s ultimate goal – which can stem from a myriad complex and interrelated reasons such as economic needs, emotional, cultural or familial ties, or belief that she will be safer if she remains – the arrest and prosecution of her spouse or partner is not a viable means to assist her. As such, forced engagement with the criminal justice system is at best disempowering, and at worst, dangerous for a survivor of domestic violence. Scholars have long argued that mandatory interventions perpetuate the cycle of violence that is intrinsic in domestic abuse relationships by supplanting the abuser’s power and control with the authority of the state.90 For example, Professor Aya Gruber explains that when a woman is not permitted to drop charges against her partner, her voice is not only ignored, but her choice may be held against her, “and in an effort to make her change her mind, the state uses its own coercive powers to counter the assumed duress she has been placed under by her partner.”91 The empowerment that domestic violence lawyers and advocates strive to attain for their clients is thwarted by a system that discounts their desires and dictates the manner in which they address the abuse they face. Moreover, once a woman is forced to work within a system against her will, with official actors she believes are not acting in her best interest, she may be reluctant to seek any form of help in the future, which could increase the level of risk and danger she faces in her relationship. Mandatory arrest and prosecution could also have the unintended “effect of realigning the battered woman with the batterer.”92 A survivor of domestic violence may come to see her abuser as the victim of a system that perpetrates harm against him and possibly their family, which can lead her to seek to “protect him, and to [thereby] further entrench her in the abusive relationship.”93 In the most extreme cases, a woman who is subpoenaed and forced to testify against her abuser may be “willing to perjure herself rather than testify against her partner. In some jurisdictions, this choice will result in the victim being prosecuted for making a decision that she felt was in her best interest.”94 The stripping of agency from survivors though either mandatory or coercive interaction with law enforcement is another troubling aspect of because the primary goal of domestic violence advocates is to empower victims who have been subjected to abusive power and control. Forced engagement with law enforcement does not allow a survivor of domestic violence to control the means in which she extricates herself from a potentially violent relationship. It also does not allow a victim to determine her own goals and priorities or assess her own risks, for example, whether she would rather continue to receive critical financial, transportation or childcare assistance from the abuser, which would disappear if he were incarcerated and potentially deported. Autonomy and agency are deprived from victims when separation is the only recognized goal, as Professor Leigh Goodmark explains: “… almost all of these [mandatory] legal interventions are premised on the notion that battered women want to end their relationships, invoke the power of the legal system to keep their batterers away, and ultimately sever all ties with their abusers.”95 A paternalistic approach is also ineffective. Utilizing law enforcement interaction as a means to hasten a victim’s departure from a relationship is likely doomed to fail, particularly considering the statistic that a victim leaves a violence relationship on average seven times before being able to permanently extricate herself from the situation.96 Ultimately, although the move towards mandatory interventions is understandable when viewed in a historical context, and some benefits do arise from facilitating survivors’ access to state protection, the harms to battered women outweigh the advantages. Professor Linda Mills sums up the shortcomings bluntly and starkly: “[m]andatory state interventions, even when sponsored by feminists … are in danger of replicating the rejection, degradation, terrorization, social isolation, missocialization, exploitation, emotional unresponsiveness, and close confinement that are endemic to the abusive relationship.” 97 And while forced engagement with law enforcement is problematic for any survivor of domestic violence, as discussed below, the negative impacts are compounded for immigrant women, casting doubt upon the central role of U visa’s law enforcement certification requirement.

#### Plan solves the net benefit better.

Nanasi, 2016(Natalie – Assistant Professor and Director of the Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women @ the Southern Methodist University Dedman School of Law, “THE U VISA’S FAILED PROMISE FOR SURVIVORS OF DOMESTIC VIOLENCE”, SMU Dedman School of Law Legal Studies Research Paper No. 341)

Providing U visa applicants a path to status that does not require immediate cooperation with law enforcement as a condition of relief is another mechanism by which to accomplish the humanitarian objectives of the U visa without compromising the law enforcement aims. First, any victims who do not have concerns about working with police would still be able and required to do so. Moreover, the grant of U nonimmigrant status to a survivor of domestic violence not only does not preclude future assistance to law enforcement, but might actually encourage it. Once a victim regularizes her immigration status and obtains work authorization, many of the barriers to reporting addressed above may no longer exist. Her fear of arrest and deportation would likely subside and she would be less isolated, more financially stable, and importantly, safe and free from her abuser. The strength and stability that flow from coming out of the shadows could be a significant motivating factor for aiding law enforcement in the arrest and prosecution of her abuser.

# A2 Kritiks

## Domesticity K

#### The aff validates victims of domestic violence, empowering US women to turn in their abusers, using the same mentality as #MeToo

Jayson, 2017 (Sharon – journalist, “How #MeToo Sparks Sharing—And Healing”, US News and World Report, November 14, https://www.usnews.com/news/health-care-news/articles/2017-11-14/how-metoo-hashtag-sparks-sharing-and-healing)

AS A PH.D. CANDIDATE IN the social sciences more than 20 years ago, Duana Welch, 49, had done enough research to know the consequences she'd face by reporting sexual harassment in the workplace. "When women came forward with allegations of sexual abuse and sexual harassment, the woman was the person blamed and the woman was not believed," she said. "I was very angry that I would pay the price for coming forward. I knew what would happen." Like most who've had similar experiences, Welch, a relationship expert in Eugene, Oregon, kept quiet. She wanted to bury the inappropriate encounters initiated by men who outranked her in the workplace. Welch worried that her fledgling career would be doomed. That was until #MeToo. "I jumped in immediately," she said. "I knew that this was our moment. It was the first time I became very public about abuses and inappropriate sexual conduct that I've experienced." But figuring out why Welch and the millions who have posted on social media using #MeToo isn't as simple as chalking it up to the power of the hashtag. Rather, a complex set of psychological and sociological factors is at work. Sparked by revelations about Hollywood titan Harvey Weinstein, the mushrooming list of accused harassers and those unwilling to stay silent any longer illustrate that what's happening with this avalanche of disclosures is more than just a show of strength in numbers. "Admissions of being a victim are stigmatizing," said John Pryor, a professor of psychology emeritus at Illinois State University who has studied sexual harassment for more than 30 years and is participating in a National Academy of Sciences study of sexual harassment in STEM fields – science, technology, engineering and mathematics. "Research has shown that people with stigmatizing conditions that can be hidden often engage in what is called 'label avoidance.' With regard to sexual harassment, the more people who come forward and say 'me, too,' the less stigmatizing the label," he said. Gayle Pitman, a professor of psychology and women's studies at Sacramento City College in California, said the sense she's gotten from the #MeToo posts are "almost like a catharsis." "'Finally, I can release this.' There's also some fear. 'What happens now that I outed myself? What are people going to think of me and how am I going to feel now?'" she said. "There is definitely a possibility of reliving a traumatic experience or dredging up past wounds. A lot of people who have been victims of sexual violence probably have untreated PTSD [post-traumatic stress disorder] and can lie dormant for a long time until something triggers it – even a deliberate disclosure." The risk of triggering a traumatic experience is lessened as more women step up and validate the experience. "You think less that it's my fault and I did something wrong and you're blaming yourself," said Lucia Gilbert of San Jose, California, a professor emerita of psychology at Santa Clara University. "It validates that you have been validated. Now there's a validation in the culture, and that's huge." Social media is at the heart of this change, experts agree. [ READ: Me Too: Every Woman Has a Story About Sexual Harassment. This Is Mine ] "It connects one person's story to a much broader story and simultaneously creates heft to your story. It's not just me. My voice is a part of this giant groundswell," said Amanda Lenhart, of the nonpartisan think tank New America, who has studied the internet and American life at the research institute Data & Society as well as at the Pew Research Center. Although viewed as a critic of social media, psychology professor Jean Twenge of San Diego State University – whose book "iGen: Why Today's Super-Connected Kids Are Growing Up Less Rebellious, More Tolerant, Less Happy – and Completely Unprepared for Adulthood – and What That Means for the Rest of Us" explores the detrimental effects of smartphones on youth – said the #MeToo trend illustrates the positives of social media. "It allows people to band together and share their stories at lightning speed," she said. "The workplace certainly ups the stakes for the person experiencing the sexual harassment, and it also ups the level of anger because you're talking about someone's livelihood. You're talking about a career or feeding their kids. Part of the conversation is not just the Hollywood starlet but the cashier at the grocery store." Women may believe now is a safer time to disclose what they wouldn't have before, said Gilbert. "Women are speaking up, and the political environment feels different," she said. The worldwide women's march on Jan. 21 "was huge. Women may better understand the importance of fighting for their rights." She suggests that change is possible when power shifts to more women at the top in certain traditionally male-dominated industries, such as the entertainment and media arenas, politics, the sciences and tech. "It's much harder to change the pattern of behavior and the sense of entitlement when you don't change the power differential," Gilbert said. In his 1995 study of more than 2,600 employees at a government agency with more than 8,000 employees in 37 offices nationwide, Pryor found that office norms and the workplace culture are underlying factors – which hasn't really changed in the decades since. "If you look at women in those offices, office by office, women were more likely to say they were sexually harassed in the offices where the men said it was tolerated," Pryor said. Family law attorney Cindi Graham, 53, of Amarillo, Texas, knows all about how such behavior can be tolerated. "There's a lawyer who says inappropriate statements, and everybody just laughs and says that's who he is," she said. "It's offensive. He'll blatantly stare at women's breasts. He won't go so far as grope, but he'll leer." Welch said the inappropriate behavior and harassment she experienced ranged from having a supervisor expose himself to her in his office (which caused her to quickly transfer and take a pay cut) to being harassed over a two-year period by a man whose office was located in her path. "He had a lot of power, including power over my career," she said. "I found another way to get into the building and he came to my office and said, 'It's starting to feel like you're avoiding me.'" "In my early 20s, my story would have been an isolated event brushed away and me blamed for it," Welch said. "I wanted to add to what I see is a really important cause. Now most people are believing us."

## Iconic Victim K

### Link Turn

#### Reducing statutory restrictions on the U visa undermines the distinction between deserving and undeserving migrants.

Hipolito, 2010 (Joey – Assistant General Counsel for the United Food & Commercial Workers International Union, “Illegal Aliens or Deserving Victims: The Ambivalent Implementation of the U Visa Program”, *Asian American Law Journal* 17.1, shae)

The government's lethargic implementation of the U visa program reflects upon the government's broader treatment of undocumented immigrants. While approximately ten to twelve million undocumented immigrants live in the United States, the government rarely grants undocumented immigrants legal status." The government establishes visa programs available to undocumented immigrants based upon a framework that classifies petitioners as either deserving or undeserving of legal status.32 These visa programs help define and maintain the border between aliens deemed illegal and legal.33 Within this framework, the government has developed policies that enshrine archetypes of undocumented immigrants it believes deserve status, while effectively excluding petitioners who do not fall into these narrow categories. These deserving archetypes broadly label immigrants as "victims" or as "informers." 34 In regards to asylum applications and self-petitions for battered women, for instance, the government only rescues certain undocumented victims of persecution and marital abuse while excluding economic migrants." The S visa, additionally, allows the government to provide legal status to undocumented immigrants who serve -36 as informers. The relatively new T and U visas are hybrids. They require the petitioners to be both victims of specified crimes and willing to serve as informers." Unlike the U visa, the government released T visa regulations shortly after the passage of the VTVPA.3 These regulations effectively narrowed the applicability of the T visa to an iconic figure-a victim of sex trafficking whom the federal government rescues and who is willing to testify on behalf of the federal government.3 9 This iconic figure guides government and law enforcement agencies in maintaining the boundary between illegal and legal aliens by providing legal status only to immigrants deemed worthy. 40 The visa programs that correspond to the iconic figure receive acceptance and endorsement only because they narrowly define the categories of immigrants considered deserving, thereby preserving the government's binary framework. However, unlike the aforementioned visas, an iconic figure neither guided passage of, nor emerged from, the U visa statute.4 1 The U visa statute is unusually broad in its potential application, applying to victims of a variety of crimes beyond domestic abuse and sex trafficking and permitting a multitude of law enforcement agencies to certify the applicant's helpfulness.42 Such broad statutory language threatens the closely guarded distinction between illegal and legal aliens, because the U visa statute could potentially grant legal status to many undocumented immigrants who possess "undeserving" qualities. Ultimately, without the guidance that a permissible and deserving iconic figure provides to navigate this boundary, the government delayed releasing regulations and fully implementing the U visa program.43

### Link Defense

#### U visa eligibility covers so many disparate crimes that there is no iconic victim.

Hipolito, 2010 (Joey – Assistant General Counsel for the United Food & Commercial Workers International Union, “Illegal Aliens or Deserving Victims: The Ambivalent Implementation of the U Visa Program”, *Asian American Law Journal* 17.1, shae)

1. An Absent Preexisting Prototypical Victim Unlike with the T visa, legislators did not debate the U visa program based on a clear preexisting stereotype. In fact, Congress did not debate the U visa legislation on the floor, but merely adopted it as part of the VTVPA, resulting in sparse legislative history. 18 4 The U visa's stated purpose is broad, making it difficult to discern a prototypical victim. As provided in the statute, the U visa is intended to "encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens" by strengthening the ability of law enforcement to investigate and prosecute cases of the enumerated crimes, "while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.""' This purpose serves both humanitarian and investigative purpose and does not identify a target population.186 No clear iconic figure emerges from the language of the statute itself. Although the T visa statute covered both labor and sex trafficking, the regulations and implementation narrowed the visa primarily to sex trafficking.'"' The U visa's language appears to straddle both the VTVPA's concerns about trafficking and VAWA's anxieties about domestic abuse, resulting in an expansive list of crimes that lack a focused target. In the realm of trafficking, the U visa covers: prostitution, sexual exploitation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, and false imprisonment.189 However, the statute also covers a number of domestic abuse crimes: rape, torture, incest, domestic violence, sexual assault, abusive sexual contact, and female genital mutilation.' 90 Ultimately, advocates for both domestic abuse and trafficking victims claim the U visa as a remedy precisely because it embraces a wide range of crimes that other visa programs do not. The U visa embraces even additional crimes beyond the areas of trafficking and domestic abuse, making it further difficult to determine a specific victim. Victims of felonious assault may also seek U visas,191 as may family members of victims of murder or manslaughter.' 92 In addition, the U visa covers attempts to commit crimes such as blackmail, extortion, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the aforementioned crimes.19' Most importantly, the statute is open-ended, permitting victims of "any similar activity" to also apply for the U visa.194 Ultimately, the U visa is relevant to a wide swath of the undocumented immigrant population because they are oftentimes victims of the enumerated crimes against which the program protects. This broad applicability stands in contrast not just to the T visa, but also to the other visa programs that target very specific populations.

# A2 Topicality

## 2ac generic

#### Legal immigration is the process of obtaining LPR status

Deardoff, 2001– US Census Bureau staff (Kevin, “Evaluating Components of International Migration: Estimates of the Foreign-Born Population by Migrant Status in 2000” <https://census.gov/content/dam/Census/library/working-papers/2001/demo/POP-twps0058.pdf>

The Immigration and Nationality Act defines legal immigration as the process by which a non-citizen of the United States is granted legal permanent residence. A non-citizen with legal permanent residence status may remain in the country, be employed, travel freely, and seek naturalization to become a U.S. citizen. Legal immigrants, as categorized by the Census Bureau, include new arrivals to the United States, people adjusting their migrant status to legal permanent resident (including Special Agricultural Workers (SAWs) and pre-1982 entrants (LAWs)), asylees, and refugees (Perry et al., 2001).

#### That’s limited to family, employment, refugees, U and T – it’s in the INA

**Kandel 18** – Kandel is an Immigration Policy Analyst for the Congressional Research Service (William A, “Permanent Legal Immigration to the United States: Policy Overview”, Congressional Research Service, 05/11/2018, <https://fas.org/sgp/crs/homesec/R42866.pdf>)

Family-Sponsored and Employment-Based Preference Immigrants As noted, family-sponsored and employment-based preference category immigrants are numerically limited. Both types of immigrants are subdivided into five categories. Within each family and employment preference category, the INA further allocates the number of people who can receive LPR status each year. The five family preference categories are based broadly upon a hierarchy of family relationships to U.S. citizens and LPRs. Among the five employment preference categories, the first three are based broadly upon a hierarchy of professional accomplishments and skills needed by U.S. employers (Table 1). The fourth category includes 13 sub-categories of “special immigrants,” including religious workers, employees of the U.S. government abroad, and juvenile court dependents. As part of the Immigration Act of 1990, Congress added a fifth preference employment-based category that allows foreign investors to acquire LPR status (“EB-5 immigrant investors”). For this preference category, the INA allocates up to 10,000 admissions annually and generally requires a minimum $1 million investment and employment of at least 10 U.S. workers. Less capital is required for aliens who invest in “Targeted Employment Areas” (TEAs), which include rural areas (as defined by the Office of Management and Budget) or areas experiencing unemployment at 150% of the national average.22 Employers seeking to hire prospective immigrants through the second and third employment based preference categories must petition the U.S. Department of Labor (DOL) to obtain a labor certification on behalf of the alien. Prospective immigrants must demonstrate that they meet the qualifications for both the particular job and the preference category. If DOL determines that a labor shortage exists in the occupation for which a petition is filed, it will issue a labor certification. If DOL determines that such a labor shortage does not exist, the employer must submit evidence of extensive recruitment efforts that have failed in order to obtain certification.23 Table 1 summarizes the preference system for family-sponsored and employment-based immigrants. In most instances unused numbers roll down to the next preference category. Employment-based LPR allocations not used in a given year rollover to the family preference categories the following year, and vice versa for unused family-sponsored LPR allocations.24 Diversity Immigrant Visa The diversity immigrant visa fosters legal immigration from countries that send relatively few immigrants to the United States.25 Each year, 50,000 visas are made available to selected natives of countries from which immigrant admissions totaled less than 50,000 over the preceding five years.26 Since the visa’s inception in the early 1990s, the regional distribution of diversity lottery immigrants has shifted from Western European to African and Eastern European countries. To be eligible for a diversity immigrant visa, foreign nationals must have a high school education or two years of work experience within the past five years in an occupation that requires at least two years of training or experience to perform. Applicants are selected by lottery whose winners must also meet the standard eligibility criteria required for most immigrants. Other Permanent Immigration Categories Several other pathways apart from family-sponsored and employment-based immigrants allow persons to acquire LPR status. They range from aliens in removal (i.e., deportation) proceedings who are granted LPR status by an immigration judge, victims of crime and human trafficking, and refugees and asylees who adjust to LPR status. 27 Table 2 summarizes these major pathways and any related numerical limitations.

#### Key to aff ground

**Argueta, 16** --- Analyst in Immigration Policy at Congressional Research Service (7/28/16, Carla N., “Numerical Limits on Permanent Employment-Based Immigration: Analysis of the Per-country Ceilings,” <https://fas.org/sgp/crs/homesec/R42048.pdf>, accessed on 5/10/18, JMP)

*Most foreign nationals who become LPRs were already living in the* *U*nited *S*tates. For example, approximately 86% of employment-based LPRs adjusted to LPR status in FY2014 and only 14% arrived from abroad. Figure 2 shows that over the last decade, within almost all employment-based LPR preference categories, most individuals were adjusting from within the *U*nited *S*tates, typically as nonimmigrants.21 The 5th preference immigrant investors were the exception and had a majority of individuals being admitted as new arrivals (82% from FY2004-FY2014).22

## A2 Limits

#### No topic explosion – the U visa is unique and there’s an immigration component

Lancen, 2014– National Immigrant Women’s Advocacy Project, American University, Washington College of Law (Joyce, “The Categories of “Dual Intent” Nonimmigrant Visas Anticipate That Immigrants Can Permanently Remain in the United States” 3/25, <http://library.niwap.org/wp-content/uploads/U-visas-as-Dual-Intent_FINAL-3.26.14-1.pdf>

Why U Visas Are Dual Intent Visas U visas are humanitarian visas issued to immigrant crime victims have been, are or are likely to be helpful to crime detection, investigation, prosecution, conviction, or sentencing.27 The purpose of these types of visas is to provide protection from deportation, services, and stability for victims of criminal activity perpetrated in the United States.28 All U visa victims have come forward, reported criminal activity, and provided help to law enforcement in the detection, investigation, prosecution, conviction or sentencing of criminal perpetrators.29 The INA and DHS implementing regulations require this helpfulness and ongoing cooperation once the U visa is granted. The more that a victim cooperates with law enforcement, the more likely the victim will be threatened or targeted by their assailants. Once the period of the visa holder’s temporary stay expires, if victims who have been helpful or who have been cooperating with law enforcement are required to return to their home countries, many victims are at grave risk of retaliation from human traffickers, batterers, sexual assault and other crime perpetrators abroad. Since cooperation with criminal investigations and prosecutions can lead to the noncitizen perpetrator’s removal from the United States, the perpetrator poses a danger to victims who are removed from or leave the United States. Perpetrators who are U.S. citizens, lawful permanent residents or immigrants with visas that allow travel to and from the United States are able to follow victims who are forced to leave the country and retaliate. Perpetrators of U visa domestic violence, sexual assault, stalking, trafficking and other U visa covered crimes threaten to harm the victims or their families abroad and can and do act on these threats of retaliation. For this reason, the U visa includes a path to permanent residency for U visa victims of criminal activity.30 The vast majority (99.8%) of U visa applicants and U visa holders know that they will qualify for lawful permanent residency through the U visa program based upon humanitarian need, public interest or family unity so long as they cooperate or do not unreasonably refuse to cooperate with reasonable requests for assistance once their U visa has been granted.31 Seventy percent of U visa recipients provide ongoing cooperation to law enforcement and another 29.45% are willing to cooperate but for a range of reasons are not asked for further cooperation beyond what they initially provided to law enforcement.32 If the perpetrator is a noncitizen and is convicted of a U visa criminal activity, in the vast majority of cases the perpetrator will be turned over to DHS for removal from the United States upon completion of his sentence.33 These facts can form the basis of a grant for lawful permanent residency to a U visa victim based upon humanitarian need. Many times, U visa holders have U.S. born children. When the perpetrator is the citizen parent of the U visa victim’s child, the victim’s removal from the U.S. at the end of the U visa period could result in the child being placed in the custody of the abusive parent which is contrary to state best interests of the child custody statutes. Under the U visa, the crime victim immigrant parent would be able to attain lawful permanent residency based upon family unity to be able to remain in the U.S. under the protection of U.S. laws and care for her children. If the perpetrator is a noncitizen and the children are U.S. born, when the perpetrator is removed from the United States the only avenue to protect the children and their U visa holder parent from retaliation is through U visa lawful permanent residency granted for family unity and humanitarian need. U visa holders in the vast majority of cases have, or over the course of the criminal case develop, the intent to remain in the United States under the protection of U.S. laws, although their U visa is a nonimmigrant visas.34 These visa holders are better protected from perpetrator retaliation in the U.S. If they are forced to return to their home countries, they are subject to retaliation for their involvement with law enforcement in the criminal case against their assailants. In comparison with other nonimmigrant visas (such as student, visitor visas, temporary workers) where the intent is explicitly stated to return to the visa holders’ home countries, U visa holders lack this intent to return due to safety concerns and often a significant risk of danger. Many times, the perpetrator and victim come from the same country. The perpetrator may be a naturalized citizen or lawful permanent resident with the ability to travel freely between the home country and the U.S. noncitizen perpetrators can be removed based on criminal convictions that resulted from the U visa victim’s helpfulness and cooperation with law enforcement. If required to return, the victims would be at a much greater risk than if they remained permanently in the U.S. This humanitarian need to remain in the U.S. and the public interest involved in encouraging immigrant crime victims to come forward, report crimes and participate in criminal investigations or prosecutions work together to form the grounds for granting lawful permanent residency to U visa holders. Additionally, many U visa crime victims receive a range of crime victim services available to noncitizen crime victims in the U.S. offered to victims at the state level with the Victims of Crime Act,35 Violence Against Women Act36 and Family Violence Prevention and Services Act37 funding. Such victims are also eligible to receive a variety of services necessary to protect life and safety.38 Some states offer state funded public benefits to U visa applicants and U visa holders receive access to prenatal and child healthcare in the U.S. 39 These services may not be available in the victim’s home country. Therefore, if the U visas were nonimmigrant visas only, U visa victims would lose access to this assistance if they were required to leave the U.S. Instead these factors contribute to their ability to remain permanently in the U.S. based upon humanitarian need.