

NISKANEN C E N T E R

Essay Series

Redefining Immigration Reform: How Immigration Supports American Ideals



The Niskanen Center is a 501(c)3 issue advocacy organization that works to change public policy through direct engagement in the policymaking process.

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Urgent Reforms Needed in the U Visa Program

Leslye Orloff

The Violence Against Women Act (VAWA) of 2000 created the U visa to fight crime and stop perpetrators who could elude prosecution by targeting, threatening, and silencing immigrant victims. Congress understood that the public safety of all citizens and immigrants is enhanced when immigrant victims of domestic violence, child abuse, sexual assault, human trafficking, and other crimes are “able to report these crimes...fully participate in the investigation of the crimes committed against them and the prosecution of perpetrators.”³⁸ Congress recognized that perpetrators were “virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the [Department of Homeland Security]³⁹ cannot offer them protection no matter how compelling their case.”⁴⁰

The U visa program helps “strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases ... while offering protection to victims ... [and] encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes.”⁴¹ With 96,713 approved U visa cases (2009–2018) and an approval average of 83.4 percent per year⁴², law enforcement, prosecutors, and courts that signed U visa certifications strengthened the access to justice for immigrant crime victims even in times of increased immigration enforcement and anti-immigrant sentiment.⁴³

³⁸ “Violence Against Women Act of 2000 Section 1513(a)(1)(B),” H.B. 1248, 106th Congress, 2000, <https://www.congress.gov/bill/106th-congress/house-bill/1248>

³⁹ The Department of Homeland Security was created in 2002 and included all functions of the former Immigration and Naturalization Service.

⁴⁰ “Violence Against Women Act of 2000 Section 1502(a)(3),” H.B. 1248, 106th Congress, 2000, <https://www.congress.gov/bill/106th-congress/house-bill/1248>

⁴¹ “Violence Against Women Act of 2000 Section 1513(a)(2)(A),” H.B. 1248, 106th Congress, 2000, <https://www.congress.gov/bill/106th-congress/house-bill/1248>

⁴² “U.S. Citizenship and Immigration Services, U Visa Report - Technical Appendix 3”, USCIS, 2020, https://www.uscis.gov/reports/Technical_Appendix_for_Mini_U_Study_Report.pdf. The efficacy of the U visas program and the numbers of victims and criminal cases it helps is supported by the fact that between 2012 and 2018 67,730 U visas were approved at a rate of 83.4%; “U.S. Citizenship and Immigration Services, Petition for U Nonimmigrant Status Visa - Service-wide Receipts, Approvals, and Denials, Fiscal Years: 2002 Through 2013,” USCIS, 2013, https://www.uscis.gov/visastatistics_2012-nov.pdf. USCIS started granting U visas in 2009, and issued 25,986 U visas 2009–2011.

⁴³ Raphaela Rodrigues, “Promoting Access to Justice For Immigrant and Limited English Proficient Crime Victims In An Age of Increased Immigration Enforcement,” USCIS, 2018, <https://niwaplibrary.edu/immigrant-access-to-justice-national-report>

“The U Visa, created by the Violence Against Women’s Act in 2000, has for 20 years strengthened law enforcement, helped reduce crime in communities around the country, and protected immigrant crime victims. It should be reformed to fight crime better and afford even more protection for the brave victims willing to stand up despite their vulnerability.”

U visas substantially increase justice system participation.⁴⁴ U visa applicants (73.1 percent) often cooperate with law enforcement in their criminal cases,⁴⁵ 22 percent are willing to participate once their perpetrator is identified and located,⁴⁶ and 50.3 percent file police reports when they are victims of subsequent crimes.⁴⁷ U visa victims played a crucial role in helping secure convictions in their and other criminal cases that thwarted the attempted actions of human traffickers, serial domestic violence perpetrators, child sexual predators, and terrorists that plague our communities.⁴⁸

The U visa needs reforms to address the threats to the effectiveness of the program, including:

Permanently eliminating the U visa 10,000 per year statutory cap. It will enable USCIS to eliminate the U visa 4–6–year adjudication backlog, the 142,000 case U visa waitlist,⁴⁹ and any future waitlist by dramatically reducing the number of times each case must be fully adjudicated; with cases adjudicated in the order received;

⁴⁴ Krisztina E. Szabo, “Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants,” NIWAP, 2014, https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12.

⁴⁵ Krisztina E. Szabo, “Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants,” NIWAP, 2014, https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12.

⁴⁶ U.S. Citizenship and Immigration Service, “Trends in U Visa Law Enforcement Certifications, Qualifying Crimes, and Evidence of Helpfulness,” USCIS, July 2020, https://www.uscis.gov/U_Visa_Report.pdf; Leslye Orloff, “U Visa Victims and Lawful Permanent Residency,” USCIS, September 6, 2012, <https://niwaplibrary.edu/uvisalawfulpermanentresidency>. 29.5% of U visa victims were willing, but not asked to cooperate due to a plea, inability to identify or locate the perpetrator.

⁴⁷ Krisztina E. Szabo, “Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants,” NIWAP, 2014, https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12.

⁴⁸ Corrin Chow, “Stories from the Field: The Crime Fighting Effectiveness of the U visa,” NIWAP, August 28, 2020, <https://niwaplibrary.wcl.american.edu/pubs/u-visa-crime-fighting-stories>

⁴⁹ U.S. Citizenship and Immigration Services, “U Visa Report 4,” USCIS, 2020, https://www.uscis.gov/U_Reportpdf

Provide work authorization based on INA Section 214(p)(6) and deferred action within six months of filing (instead of 4–6 years) for U visa victims with pending bona fide/prima facie applications severing victims' economic dependence on abusers.

Prohibit arrest, detention, and deportation of victims with pending and waitlist approved U visa applications using deferred action, stays of removal, reinstating continuances and administrative closures in immigration proceedings, and halting reinstatement of removal of U visa victims.⁵⁰ Despite approvals for the vast majority of U visa applicants (83.4 percent), they must endure long waits; protections are needed in the meantime to provide stability, protection against perpetrators' efforts to have victims deported,⁵¹ and to keep victims available to help with criminal investigations and prosecutions.

End policies designed to increase U visa denials, and removal of U visa victims, including blank space application/certification rejections, notices to appear in immigration court, and restrictive fee waiver policies to ensure that all U visa applicants, regardless of income, can access and receive protections of VAWA confidentiality,⁵² VAWA any credible evidence⁵³ and request for further evidence rules.

Increase staffing and reinstate training programs for all VAWA, T, and U visa USCIS adjudicators like training held between 1997–2015 involving USCIS and outside subject matter experts ensuring adjudication by specially trained staff.⁵⁴ Increase USCIS VAWA unit staffing and then maintain staffing at least at 85% of its capacity at all times.

Amend law enforcement, prosecution, and courts federal funding programs (e.g., COPS, OVW, DOJ) to authorize funding for U visa training⁵⁵ and to create

⁵⁰ Congress urged DHS to exercise its discretion to stop reinstatement of removal against VAWA, T visa and U visa victims in Section 813(b) of the Violence Against Women Act of 2005.

⁵¹ Krisztina E. Szabo, "Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants," NIWAP, 2014, https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12. 26.7% of victims with pending U visa cases have perpetrators who are actively involved in efforts to trigger their removal.

⁵² 8 U.S.C. 1367.

⁵³ 8 U.S.C. 1184(p)(4).

⁵⁴ House Committee on the Judiciary. "Department of Justice Appropriation Authorization Act, Fiscal Years 2006–2009," 109th Congress, 2005.

⁵⁵ International Association of Chiefs of Police, "Resolution on Education and Awareness of U and T Visa Certifications," NIWAP, November 2018, <https://niwaplibrary.edu/u-t-visa2018>

incentives (extra points on applications) to U visa-certifying agencies, and requirements that all grant recipients have active certification practices that are entirely consistent with U visa statutes and federal regulations by 2022.

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