

DISPARITIES IN THE U VISA CERTIFICATION PROCESS: LOOKING TOWARDS STATE-LEVEL SOLUTIONS

Ilana Dutton*

ABSTRACT

For many noncitizen survivors of crime, the U Nonimmigrant Visa is their only path to legal permanent residency and eventual citizenship. To apply for a U Visa, survivors of crime must obtain a U Certification from a certifying agency where they live. Certifying agencies exercise complete discretion in deciding whether to sign a certification request. Despite being statutorily eligible, many survivors of crime are unable to receive the requisite certification, due to discretionary decisions made by certifying officials.

To demonstrate the problem with the current certification process, this Note conducts an in-depth analysis of two police departments: the New York Police Department (NYPD) and Dallas Police Department (DPD). By synthesizing existing information available on the NYPD website and conducting an Open Records request to get new data on the DPD U Visa process, this Note explores two examples of how certification policies can differ. The analysis shows that some certifying agencies, like the NYPD, have two sets of criteria for decision-making, one that is public-facing and one that is internal. Others, like the DPD, have one set of criteria that is both public-facing and internal, but it includes elements that go beyond the statutory requirements.

This Note argues that state-level legislative solutions are the best path forward for addressing the flaws in the U Certification

* J.D., Columbia Law School, 2025. I would like to thank Professor Clare Huntington for her feedback and support throughout the writing process. I would also like to thank Professor Elora Mukherjee for her expertise and constant guidance in writing this Note and beyond. And thank you to the *Columbia Human Rights Law Review* staffers and executive board, specifically Anne Li and Michael Weaver, for their help throughout this process. Most of all, thank you to my friends and family who listened to me talk about this Note for months and still agreed to read it. I could not have done it without you all!

process. In recognizing that more conservative states may be less likely to pass reforms, this Note provides a wide range of solutions that advocates can pick from. This menu of options will allow advocates in conservative states to slowly chip away at the problem, while advocates in liberal states can take more dramatic steps towards reform.

TABLE OF CONTENTS

ABSTRACT	1222
TABLE OF CONTENTS.....	1224
INTRODUCTION.....	1225
I. LEGISLATIVE HISTORY AND THE CURRENT U VISA SYSTEM	1230
A. History of Congress Protecting Undocumented Victims of Crime	1231
B. Creation of the U Nonimmigrant Visa: Legislative History and Intent	1234
1. Battered Immigrant Women Protection Act of 2000	1235
2. Changes to the U Visa Over Time.....	1237
C. Applying for a U Nonimmigrant Visa.....	1239
1. 2007 Regulations	1240
2. Eligibility for U Nonimmigrant Visa	1240
3. Application Process	1244
II. U VISA IN PRACTICE	1247
A. Approaches to the I-918B	1248
B. Comparing Police Departments.....	1251
1. New York City Police Department	1253
a. NYPD U Visa Certification Process	1255
b. Current Landscape of NYPD U Visa Certification Requests ..	1256
c. Documented Concerns with the NYPD U Visa Process	1257
2. Dallas Police Department	1261
a. DPD U Visa Certification Process	1262
b. Current Landscape of DPD Certification Requests	1263
c. Lack of Data on DPD U Visa Certifications	1264
III. IMPROVING THE U VISA.....	1265
A. Why Make a Change?	1265
B. Focusing on State- and Local-Level Solutions.....	1267
C. State-Level Legislative Reforms to the U Certification Process	1269
1. Transparency	1271
2. Substantive Reforms	1275
CONCLUSION.....	1277

INTRODUCTION

After Nataly Alcantara and her family were robbed in the middle of the night in their home in Miami, she worked closely with the police as they investigated the crime.¹ As an undocumented woman, she was afraid to cooperate with the police, but she wanted to help catch the people who terrorized her family.² She answered calls from the police and let them into her home to investigate; in return for her help, she asked the Miami Police Department to sign a U Visa Certification form, which would have allowed her to access immigration relief for survivors of crime.³ The Miami Police Department exercised their discretion and refused to certify, even though Nataly was statutorily eligible for a certificate.⁴

If Nataly had lived in another state, or even another city, she may have successfully received the certification that she needed. For many noncitizen survivors of crime, where they live plays an essential role in whether they can access a U Nonimmigrant Visa (U Visa).⁵ To apply for a U Visa, an applicant must first receive an I-918B Certification (U Certification).⁶ This form, designed to be signed by a local certifying officer, indicates whether the applicant is a victim of a qualifying crime and was, is, or is likely to be helpful in the investigation or prosecution of that criminal activity.⁷ The U Certification instructions declare that a certifying agency has

1. Laura C. Morel, *The U Visa Is Supposed to Help Protect Immigrants and Solve Crimes. But the Police Are Undermining It*, REVEAL NEWS (Nov. 7, 2019) [hereinafter Morel, *Police Are Undermining the U Visa*], <https://revealnews.org/article/the-u-visa-is-supposed-to-help-solve-crimes-and-protect-immigrants-but-police-are-undermining-it> [<https://perma.cc/DM7J-XC8W>].

2. *Id.*

3. *Id.* The U nonimmigrant visa applies to crimes that occurred in the United States. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53015 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299). For a discussion of the full regulations underlying the U nonimmigrant visa, see *id.* at 53019.

4. Morel, *Police Are Undermining the U Visa*, *supra* note 1.

5. For information on the different approaches that certifying agencies take, see *infra* Section II.A.

6. U.S. CITIZENSHIP & IMMIGR. SERVS., SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION (FORM I-918B) [hereinafter USCIS, FORM I-918B], <https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf> [<https://perma.cc/7NER-UCC7>].

7. U.S. CITIZENSHIP & IMMIGR. SERVS., INSTRUCTIONS FOR SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION 1 [hereinafter USCIS, INSTRUCTIONS FOR SUPPLEMENT B], <https://www.uscis.gov/sites/default/files/document/forms/i-918supbinstr.pdf> [<https://perma.cc/QDK2-VM5A>].

complete discretion over whether to sign the form, even as they acknowledge that, without the form, the applicant is ineligible for U nonimmigrant status.⁸

When Congress created the U Visa, it had two goals. First, Congress wanted to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute crimes against undocumented people.⁹ To accomplish the first goal, Congress delegated certification power to agencies at the state and local level, including but not limited to police departments, district attorneys' offices, and child protective services.¹⁰ By tying the certification to local enforcement agencies, Congress hoped to incentivize immigrant survivors of crime to work with law enforcement agencies.¹¹ Since the U Certification form is a mandatory component of the U Visa application, certifying officials' decisions entirely determine whether an individual can apply for relief at the federal level.¹² Certifying officials across the country take different approaches to certification, and in some localities, the certification requirement increases barriers to immigration relief.¹³ The certification also makes the U Visa different from other forms of immigration relief designed to

8. *Id.*

9. Battered Immigrant Women's Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1518, 1533 (codified at 8 U.S.C. § 1101 note) ("The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes . . . committed against aliens . . ."); see also Jamie R. Abrams, *The Dual Purposes of the U Visa Thwarted in a Legislative Duel*, 29 ST. LOUIS U. PUB. L. REV. 373, 378-79 (2010) (discussing the legislative intention behind the creation of the U Visa).

10. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53019 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299) ("The rule defines a 'certifying agency' as a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of the qualifying criminal activities designed in the BIWPA.").

11. H.R. REP. 939-106, at 56 (2000) ("[P]roviding battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors . . .").

12. See Morel, *Police Are Undermining the U Visa*, *supra* note 1 (noting that the Miami Police Department used their discretion to deny Nataly's U Certification requests and thereby barred her from applying for relief at the federal level).

13. For information on the different approaches that certifying agencies take, see *infra* Section II.A.

protect survivors of crime, such as the T Visa and relief under the Violence Against Women Act (VAWA).¹⁴

Second, Congress wanted to increase protections for undocumented victims of crime.¹⁵ While undocumented people in the United States are vulnerable to the same crimes as U.S.-born individuals, they face unique challenges. For example, immigrants are particularly vulnerable to forced labor and exploitation.¹⁶ Due to fear of deportation, immigrants, but especially undocumented people, may be hesitant to report crime or seek victim services—a reality that may increase their chances of being targeted by perpetrators who are aware of their lack of status.¹⁷ Congress designed the U Visa to

14. Immigration relief under VAWA does not require a certification. See DANHONG CAO ET AL., IMMIGR. LEGAL RES. CTR., USING THE T VISA: LAW ENFORCEMENT RESOURCES GUIDE 2 (2024), <https://www.ilrc.org/sites/default/files/2024-02/Using%20the%20T%20Visa%20Law%20Enforcement%20Resource%20Guide.pdf> [<https://perma.cc/L3CS-6ASQ>] (“The T visa regulations *allow* for the *optional* submission of a law enforcement agency endorsement.”) (emphases added). In fact, the T Visa contains an exception for those who are reasonably unable to cooperate with law enforcement due to age or trauma. *Id.* Another alternative known as Special Immigrant Juvenile Status (SIJS) does require an applicant to first seek relief from a state court. SAFE PASSAGE PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS MANUAL 10 (2017), https://www.safepassageproject.org/wp-content/uploads/2018/09/SAFE_PASSAGE_SIJS_MANUAL_SUMMER_2017_FINAL.pdf [<https://perma.cc/3WNW-VPZX>]. SIJS is a type of relief available to unaccompanied minors who cannot be reunified with one or both parents. *Id.* at 4. State involvement with SIJS is different from the U Visa in that USCIS typically defers to the findings of the state court. Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13086 (March 3, 2022) (to be codified at 8 C.F.R. pts. 204–05, 245). By contrast, USCIS does not automatically grant status based on a signed U Visa Certification. See New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53023–25 (describing the process for submitting a U Visa application). For more on SIJS, see CAO ET AL., *supra*, at 10–13.

15. Battered Immigrant Women’s Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1518, 1533 (codified at 8 U.S.C. § 1101 note) (“The purpose of this section is to create a new nonimmigrant visa classification . . . while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”).

16. *The Intersection Between Migrant Work and Labor Trafficking*, LAB’Y TO COMBAT HUM. TRAFFICKING (Mar. 13, 2023), <https://combathumantrafficking.org/blog/the-intersection-between-migrant-work-and-labor-trafficking/> [<https://perma.cc/4JU7-8YND>] (“While people of all identifies may experience labor trafficking, migrants, undocumented individuals, asylees, and refugees experience higher levels of vulnerability.”).

17. See Alexandra Ricks, *Latinx Immigrant Crime Victims Fear Seeking Help*, URBAN INST. (Sept. 25, 2017), <https://www.urban.org/urban-wire/latinx-immigrant-crime-victims-fear-seeking-help> [<https://perma.cc/TH7U-7DPZ>]

address these concerns by allowing survivors of crime who cooperate with law enforcement to remain in the United States and ultimately providing them a path to citizenship.¹⁸

In short, obtaining a U Certification is a threshold step for a survivor of crime applying for a U Visa, but depending on where an applicant lives, it may be impossible for the survivor to obtain the certification. The discretionary nature of the U Certification process has resulted in inconsistent and often uneven application of the U Visa statute.¹⁹ In some localities, certifying agencies refuse to certify or create impossible standards, meaning qualified applicants are categorically denied.²⁰ This outcome undermines the intentions of the law.²¹

This Note proposes that state-level legislation is the best approach to remedying the geographical differences in the certification system and making U Visas more accessible. While many reforms can only occur at the federal level, the political climate surrounding immigration poses significant barriers to those

(reporting that Latinx immigrants often fall victim to crimes, such as sexual assault or robberies, and are less likely to seek victim services); Pauline Portillo, *Undocumented Crime Victims: Unheard, Unnumbered, and Unprotected*, 20 ST. MARY'S L. REV. ON RACE & SOC. JUST. 346, 355 (2018) (discussing how an undocumented person's abuser may leverage their precarious immigration status as a form of control).

18. Immigrant Legal Servs. Ctr., *FAQ: U Visas for Survivors of Crime*, UNIV. OF CAL. [hereinafter ILSC, *FAQ: U Visas*], https://law.ucdavis.edu/sites/g/files/dgvnsk10866/files/media/documents/FAQ_U_Visas_for_Survivors_of_Crimes_FINAL_updated_08-02-2021.pdf [https://perma.cc/BY4X-CWBL] (last updated Aug. 2, 2021) (providing details on the pathway from the U Visa to citizenship). There is currently a significant backlog, and applicants are facing a multi-year delay in receiving a decision on their U Visa. See U.S. CITIZENSHIP & IMMIGR. SERVS., NUMBER OF FORM I-918 PETITIONS FOR IMMIGRANT STATUS BY FISCAL YEAR, QUARTER, AND CASE STATUS, FISCAL YEARS 2009-2024 (2024) [hereinafter USCIS, I-918 PETITIONS BY FISCAL YEAR], https://www.uscis.gov/sites/default/files/document/data/i918u_visastatistics_fy2023_q4.pdf [https://perma.cc/A7ZL-GWYW] (reporting almost 400,000 total pending petitions for U Visas). This means that their pathway to citizenship is long and often delayed.

19. For a discussion of different approaches to the U Certification, see *infra* Part II.

20. Morel, *Police Are Undermining the U Visa*, *supra* note 1 (noting that of the certifying agencies that she reviewed for the article “four agencies simply refuse to consider requests” including “[t]he police departments in McAllen, Texas; Quincy, Massachusetts; Yonkers, New York; and Rochester, New York”).

21. For a more detailed discussion on the intentions of the U Visa, see Abrams, *supra* note 9, at 379.

changes.²² As an alternative to federal level reforms, advocates can work within state legislatures to make meaningful changes to the U Certification system.²³

States across the country have already begun using legislation to address flaws in the U Certification system.²⁴ States have passed legislation aimed at resolving multiple issues in the U Certification process, such as, but not limited to, delays in responding to certification requests, unclear certification requirements, and vague reasons for denial without an avenue to appeal.²⁵ This Note considers the benefits and drawbacks of state legislative solutions, including whether state solutions may actually increase geographical disparity and which elements of the legislation, if any, will be palatable in conservative states. Although there is not one easy fix to the barriers that immigrant survivors of crime face in obtaining a U Certification, there are legislative solutions that can be put in place to chip away at those barriers and build a system that lives up to congressional intent.

22. See, e.g., Will Weissert & Adriana Gomez Licon, *Immigration Reform Stalled Decade After Gang of 8's Big Push*, AP NEWS (Apr. 3, 2023), <https://apnews.com/article/immigration-asylum-trump-biden-gang-of-eight-3d8007e72928665b66d8648be0e3e31f> [<https://perma.cc/QX8T-ZD4R>] (discussing the 2013 push by the “Gang of Eight” for immigration reform and arguing that it was the closest that Congress had been to a breakthrough on immigration reform since 1996). In February 2024, the Senate put forth a bill that would impose tougher border and asylum restrictions. Sarah Mehta, *Senate Rejects Deal Threatening Protections for Asylum Seekers*, ACLU (Feb. 8, 2024), <https://www.aclu.org/news/immigrants-rights/senate-rejects-deal-threatening-protections-for-asylum-seekers> [<https://perma.cc/K8XD-APE3>]. The bill was the product of bipartisan negotiation but ultimately failed in the Senate. *Id.* While the bill did not have implications for the U Visa, it shows that the climate of Congress is not conducive to meaningful immigration reform right now. For more information on federal level U Visa reforms that have been proposed by other scholars, see *infra* Section III.B.

23. For a more detailed discussion on state-level solutions and current practices, see *infra* Section III.B. Advocates working in this space should not lose sight of federal level reforms when working on state legislative solutions. The two should occur concurrently.

24. See ALISON KAMHI & SARAH LAKHANI, IMMIGR. LEGAL RES. CTR., A GUIDE TO STATE LAWS ON U VISA AND T VISA CERTIFICATIONS 3–9 (2020), https://www.ilrc.org/sites/default/files/resources/u_visa_and_t_visa_pa-04.2020.pdf [<https://perma.cc/5DPJ-9U6P>] (providing a detailed breakdown of existing state legislation on the U Certification process).

25. For solutions that have been implemented to address these issues and a more detailed analysis of other options for state-level reform, see *infra* Sections III.B.1–2.

Part I of this Note provides an overview of the U Visa. It begins with a discussion of the ways that Congress protected undocumented survivors of crime before the creation of the U Visa, then turns to the legislative history of the U Visa. It next examines how Congress created the U Visa, as well as the changes made since its passage. Part I concludes by reviewing the 2007 regulations that created the U Visa as it is understood today, the eligibility requirements for noncitizens to apply, and the application process for the U Visa. This Part provides critical background information to understand how the U Visa is implemented in various states.

Part II looks at two certifying agencies, the New York Police Department (NYPD) and the Dallas Police Department (DPD), to show how the certification process differs in the two jurisdictions. For each agency, the Note examines the city's demographics (focusing on the undocumented population), the city's published U Certification process, and any documented complaints regarding the process. The NYPD is far more transparent, providing significantly more information than the DPD.²⁶ As a result, this Part also notes areas where the DPD lacked details that the NYPD provided.

Part III argues that state-level reforms are the best avenue to reform the U Certification process in our current political climate. While there are crucial changes that can only be made at the federal level, it is unlikely that Congress will implement those changes in the near future. As a result, this Note focuses on realistic legislative changes. It divides possible legislation into two categories: (1) changes focused on transparency that are likely to be politically palatable in states across the political spectrum and (2) more systemic changes that will require an immigrant-friendly legislature to pass. The changes are not all-or-nothing fixes but instead move states towards U Visa policies that are fair, consistent, and live up to the intentions of Congress.

I. LEGISLATIVE HISTORY AND THE CURRENT U VISA SYSTEM

This Part describes the U Visa's history and how it works in practice today. It describes the different ways Congress attempted to protect undocumented survivors of gender-based violence before the

26. For details on how the NYPD is more transparent in their U Certification data than the Dallas Police Department see discussion *infra* Section II.B.1–2. *But see infra* note 214 and accompanying text (discussing an Open Records request from the DPD that provides more data on the U Certification request data and grant rate for DPD).

U Visa and the gaps in those solutions that led Congress to pass the U Visa statute. It then examines the U Visa's legislative history, focusing on the structure of the Visa and the decision to delegate power to certifying officials. It also tracks how Congress has amended the U Visa over time to further support the dual policy intentions of strengthening law enforcement and protecting noncitizen survivors of crime. Finally, this Part explains how noncitizens can apply for the U Visa today, including eligibility requirements and the application process. This description is essential context for understanding how the current U Visa system fails to live up to the intentions that Congress had when creating the visa.

A. History of Congress Protecting Undocumented Victims of Crime

The U Nonimmigrant Visa's creation in 2000 was not the first time that Congress passed legislation to address the issues facing undocumented survivors of crime. In 1990, Congress created a hardship waiver, commonly known as the "Battered Spouse Waiver," which was its first instance of protecting undocumented victims of crime.²⁷ Congress subsequently passed VAWA in 1994, creating the VAWA self-petition, which protects undocumented individuals who, in good faith, marry U.S. citizens or green card holders and then experience extreme cruelty at the hands of that spouse.²⁸

27. Immigration Act of 1990, Pub. L. No. 101-648, § 701, 104 Stat. 4978, 5085–96 (codified as amended at 8 U.S.C. § 1186a(c)(4)) (introducing the "battered spouse waiver," which allows victims of domestic violence who obtained conditional permanent residency based on their marriage to a U.S. citizen to file an application to remove that conditionality without the assistance of their abusive spouse); *see also* AM. IMMIGR. COUNCIL, VIOLENCE AGAINST WOMEN ACT (VAWA) PROVIDES PROTECTIONS FOR NONCITIZEN WOMEN & VICTIMS OF CRIME 4 (2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/violence_against_women_act_provides_protections_for_noncitizen_women_and_victims_of_crime.pdf [<https://perma.cc/3KGV-EDT3>] (noting that the "battered spouse waiver" assists noncitizens whose green card applications were tied to an abusive spouse in part by removing the two-year conditions on a green card so that the noncitizen is no longer reliant on their spouse for their status).

28. Violence Against Women Act of 1994, Pub. L. No. 103-322, § 40701(a)(C), 108 Stat. 1902, 1953 (codified as amended at 8 U.S.C. § 1154(a)(1)). The 1994 VAWA was a part of the larger Violent Crime Control and Enforcement Act of 1994, Pub. L. No. 103-322, tit. IV, § 40001, 108 Stat. 1792, 1902. Since 1994, Congress has reauthorized VAWA multiple times. Each reauthorization has included new provisions and will be referred to with the year that it was passed. *See* Rosie Hidalgo, *Violence Against Women Act: Milestones Achieved and the Road Ahead*, U.S. DEP'T OF JUST.: BLOG (Sept. 13, 2023), <https://www.justice.gov/archives/ovw/blog/violence-against-women-act-milestones->

Congress likely began legislating in this space due to the increased public awareness of violence against women in the 1990s.²⁹ In 1993, violence was the leading cause of injury to women ages fifteen to forty-four, and a Department of Justice report found that three out of four American women would be victims of violent crimes at some point in their lives.³⁰ While Congress was concerned with violence faced by all women regardless of their immigration status, they also recognized that the dangers of domestic violence can be exacerbated in marriages where one individual is a citizen and the other is not.³¹ A U.S. citizen or legal permanent resident can play an important role in helping a noncitizen secure immigration status, but when the U.S. citizen or legal permanent resident abuses their noncitizen spouse, that power dynamic can deter a noncitizen from reporting violence.³²

In thinking about how to prevent violence against women, Congress considered this possibility.³³ Research in the 1990s—when Congress was debating these acts—suggested that while immigrant populations were victims of crimes at rates similar to the American-born population, they were less likely to report crime.³⁴ The results of

achieved-and-road-ahead [<https://perma.cc/LNR8-FNZJ>] (discussing the evolution of the VAWA).

29. H.R. REP. NO. 103-395, at 26 (1993) (“Domestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizens legal status depends on his or her marriage to the abuser.”). According to the Department of Justice, intimate partner violence declined between 1993 and 2001, even as Senators began talking about this problem more. For more on that data, see CALLIE MARIE RENNISON, BUREAU OF JUST. STAT., INTIMATE PARTNER VIOLENCE 1993–2001 (2003), <https://bjs.ojp.gov/content/pub/pdf/ipv01.pdf> [<https://perma.cc/UWE3-956V>].

30. H.R. REP. NO. 103-395, at 25 (citing U.S. DEP’T OF JUST., REPORT TO THE NATION ON CRIME AND JUSTICE 29 (1988)).

31. *Id.* at 26.

32. *Id.*

33. *See id.* (discussing the factual findings underlying VAWA); *see also Battered Immigrant Women Protection Act of 1999: Hearing Before the Subcomm. on Immigr. & Claims of the H. Comm. on the Judiciary*, 106th Cong. 30 (2000) (statement of Rep. Sheila Jackson Lee) (“We need this bill because far too often, the pleas for help by these immigrant victims are not heard because of language or cultural barriers. Moreover, many victims remain silent because the threat of deportation looms over them and their children.”).

34. *See, e.g.*, ROBERT C. DAVIS & EDNA EREZ, NAT’L INST. OF JUST., IMMIGRANT POPULATIONS AS VICTIMS: TOWARDS A MULTICULTURAL JUSTICE SYSTEM 1 (1998), ojp.gov/pdffiles/167571.pdf [<https://perma.cc/P9SQ-ACRJI>] (reporting a consensus among U.S. officials and leaders of six ethnic communities surveyed that many recent immigrants generally fail to report crimes).

more recent studies vary. On the one hand, many such studies find that noncitizens are less likely to report crime due to the risk of detection resulting in deportation or language barriers that make reporting channels inaccessible.³⁵ On the other, there is some data indicating that immigration status has no bearing on whether someone is likely to report a crime.³⁶ Regardless, Congress took the possibility into account when drafting protections for noncitizen survivors of crime.

Both the 1990 Battered Spouse Waiver and the 1994 VAWA self-petitioning process were designed to help survivors leave abusive relationships, but they were only geared towards noncitizens married to U.S. citizens or legal permanent residents.³⁷ Those limitations left

35. See, e.g., Tracie L. Klinke & Alpa Amin, *U Non-Immigrant Status: Encouraging Cooperation Between Immigrant Communities and Law Enforcement Agencies*, 15 J. MARSHALL L.J. 433, 436–37 (2012) (arguing that noncitizens have historically been afraid to report crime due to fear of deportation or removal); Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, N.Y. TIMES (June 3, 2018) <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html> (on file with the *Columbia Human Rights Law Review*) (reporting that Houston police saw a 16% drop in domestic violence reports from the city’s Hispanic community which they ascribed to the “tough new immigrant enforcement in Texas and the increasingly hostile political climate across the country surrounding the issue of illegal immigration”). For immigrant survivors of domestic violence, their abusers will often use threats of deportation as a form of control. See Aisha Alsinai et. al., *Use of Immigration Status for Coercive Control in Domestic Violence Protection Orders*, 8 FRONTIERS SOCIO. 1, 2 (2023) (“The use of immigration-related circumstances may be a particularly effective form of coercive control because of the use of legitimate underlying societal structures that reify various systems of oppression.”) (citation omitted). As a result, survivors are especially scared to report violence to law enforcement agencies. *Id.* at 1.

36. See, e.g., JESSICA M. VAUGHN ET. AL., CTR. FOR IMMIGR. STUD., ARE IMMIGRANTS LESS WILLING TO REPORT CRIME? DATA FROM THE NATIONAL CRIME VICTIMIZATION SURVEY SAYS “NO” 1 (2021), <https://cis.org/Report/Are-Immigrants-Less-Willing-Report-Crime> [<https://perma.cc/34G7-7GFV>] (finding no evidence in the National Crime Victimization Survey data that crimes against immigrants are reported to police at lower rates than crimes against the native-born population and arguing that this “indicat[es] that the routine, even active, cooperation between local law enforcement and federal immigration authorities that takes place in most jurisdictions does not suppress crime reporting by immigrants”).

37. See Immigration Act of 1990, Pub. L. No. 101-648, § 701(a)(4)–(5), 104 Stat. 4978, 5085–96 (codified as amended at 8 U.S.C. § 1186a(c)(4)) (providing that the “battered spouse waiver” shall apply to alien spouses or children); Violence Against Women Act of 1994, Pub. L. No. 103-322, § 40701(a)(C), 108 Stat. 1902, 1953 (codified as amended at 8 U.S.C. § 1154(a)(1)) (amending the

many noncitizen survivors of crime without protections, causing Congress to consider alternative methods to protect other undocumented survivors of crime and encourage them to report any such abuses.³⁸

B. Creation of the U Nonimmigrant Visa: Legislative History and Intent

The U Visa is designed to simultaneously strengthen the ability of law enforcement to investigate certain crimes by encouraging noncitizens to report crimes and provide protections for immigrant survivors of crime.³⁹ For eligible noncitizens, a U Visa can provide a path to legal permanent residency and ultimately citizenship.⁴⁰ Before applying for a U Visa from the U.S. Citizenship and Immigration Services (USCIS), a noncitizen must obtain a U Certification from a certifying agency, which in turn requires a certifying official to affirm that the noncitizen was, is currently, or may be helpful to the investigation or prosecution of the qualifying crime.⁴¹ Examples of qualifying crimes include murder, extortion, domestic violence, and witness tampering.⁴²

Congress created the U Visa through the Battered Immigrant Women Protection Act of 2000 (BIWPA), which was a part of the larger bill entitled the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).⁴³ Much like the 1994 VAWA bill, Congress

Immigration and National Act to allow alien spouses who have been battered or subject to “extreme cruelty” by their spouse to self-petition for certain rights).

38. H.R. REP. NO. 103-395, at 25–26 (1993).

39. For a more detailed discussion on the intention of the U Visa, see Abrams, *supra* note 9, at 378–79.

40. See Immigration and Nationality Act §101(a)(U)(i)(I)–(IV), 8 U.S.C. § 1101(a)(U)(i)(I)–(IV) (defining the eligibility criteria of the U Visa); ILSC, *FAQ: U Visa*, *supra* note 18 (describing the pathway to citizenship under a U Visa).

41. New Classifications for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53023–24 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299); see generally DEP’T OF HOMELAND SEC., U VISA LAW ENFORCEMENT RESOURCE GUIDE [hereinafter DHS, U VISA ENFORCEMENT GUIDE], https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf [<https://perma.cc/9MNR-J7M5>] (providing detailed information on the U Certification process).

42. New Classifications for Victims of Criminal Activity, 72 Fed. Reg. at 53023–24.

43. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, tit. V, §§ 1501–13, 114 Stat. 1464, 1518–37 (2000) (codified as amended in scattered sections of 8 U.S.C.).

designed BIWPA to remove the barriers that immigration laws often create for survivors attempting to leave abusive relationships.⁴⁴ The BIWPA, and the U Visa in particular, also filled gaps in the 1994 and 2000 VAWA, which left people who were not in a relationship with a U.S. citizen or Legal Permanent Resident especially vulnerable.⁴⁵

1. Battered Immigrant Women Protection Act of 2000

The U Visa provides temporary status to certain noncitizen survivors of crime who assist or who are willing to assist law enforcement.⁴⁶ As discussed above, Congress was aware of the prevalence of violence against women and the unique challenges that undocumented women experience.⁴⁷ Beyond recognizing that undocumented survivors needed protection, BIWPA showed that Congress was concerned that undocumented survivors were not reporting crimes and that law enforcement was not appropriately assisting undocumented communities.⁴⁸ Congress designed the U

44. *Id.* § 1502(a)(1), 114 Stat. at 1518; *see also* 146 CONG. REC. S10192 (daily ed. Oct. 11, 2000) (statement of Sen. Orrin Hatch) (noting that BIWPA continues the work of VAWA “in removing obstacles inadvertently interposed by our immigration laws that many hinder or prevent battered immigrants from fleeing domestic violence safely”).

45. Battered Immigrant Women’s Protection Act of 2000, Pub. L. No. 106-386, § 1502(a)(3), 114 Stat. 1518, 1518 (codified at 8 U.S.C. § 1101 note) (finding that there are several groups of battered immigrant women and children who do not have access to the immigrant protections of the Violence Against Women Act of 1994); *see also Battered Women Immigrant Act of 1999: Hearing Before the Subcomm. on Immigr. & Claims of the H. Comm. on the Judiciary*, 106th Cong. 28 (2000) (statement of Rep. Sheila Jackson Lee) (noting that “[t]he 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser” and declaring that “[t]he spirit and intent of the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice” but lamenting that “we are still finding groups of battered immigrants who are trapped in abusive relationships despite the access to such lawful status”).

46. AM. IMMIGR. COUNCIL, *supra* note 27, at 2. For a more detailed discussion of the eligibility of the U nonimmigrant visa, *see infra* Section I.C.2.

47. For a discussion of the unique challenges that undocumented survivors of violence experience, *see supra* Section I.A.

48. H.R. REP. NO. 939-106, at 56 (2000) (Conf. Rep.) (noting that providing noncitizens protection from deportation would free them to cooperate with law enforcement). For more on the historical relationship between law enforcement and undocumented communities, *see ANITA KHASHU ET AL., VERA INST. OF JUST., BUILDING STRONG POLICE-IMMIGRANT COMMUNITY RELATIONS: LESSONS FROM A NEW YORK CITY PROJECT* 2–3 (2005), <https://vera-institute.files.svdcdn.com/production/downloads/publications/Building-Strong-police-immigrant-community-relations.pdf> [https://perma.cc/Z2XR-JM96]

Visa to simultaneously strengthen the ability of law enforcement to investigate and prosecute certain crimes while providing protections for immigrant survivors of crime.⁴⁹

While the U Visa addresses similar themes to the Battered Spouse Waiver and the VAWA self-petition, the U Visa is distinct in two critical ways. First, the U Visa both protects undocumented survivors and encourages them to cooperate with law enforcement.⁵⁰ While both the VAWA and Battered Spouse Waiver applications require the applicant to demonstrate battery and extreme cruelty, they do not require a law enforcement certification to demonstrate cooperation with law enforcement.⁵¹ When Congress was debating BIWPA, there was significant discussion as to whether survivors of crime should be required to cooperate with law enforcement to receive protection.⁵² Ultimately, Congress included a requirement for cooperation with law enforcement to qualify for the U Visa, but did not amend VAWA or the Battered Spouse Waiver to require

(discussing historic distrust between law enforcement and immigrant communities).

49. Battered Immigrant Women's Protection Act, § 1513(a)(2)(A), 114 Stat. at 1533–34; *see also* Abrams, *supra* note 9, at 378–80 (discussing how the U Visa classification addressed a gap by VAWA by protecting immigrant domestic violence victims not married to citizens or permanent residents); H.R. REP. NO. 939-106, at 72 (“[A]ll women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement . . .”). While the language in this section of the bill is gendered, the section is titled “protection for certain crime victims including victims of crimes against women.” Battered Immigrant Women's Protection Act, § 1513, 114 Stat. at 1533.

50. Battered Immigrant Women's Protection Act, § 1513(a)(2)(A), 114 Stat. at 1533–34. This is different from the Battered Spouse Waiver and VAWA self-petition, which do not require cooperation with law enforcement. Immigration Act of 1990, Pub. L. No. 101-648, § 701, 104 Stat. 4978, 5085–96 (codified as amended at 8 U.S.C. § 1186a); Violence Against Women Act of 1994, Pub. L. No. 103-322, § 40701, 108 Stat. 1902, 1953–54 (codified as amended at 8 U.S.C. § 1154(a)(1)).

51. *See* JORDAN TACHER ET AL., NAT'L IMMIGRANT WOMEN'S ADVOC. PROJECT, VAWA IMMIGRATION AND PUBLIC BENEFITS ELIGIBILITY PROCESS 2–4 (Dec. 31, 2021), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/PB-BenchCrd-VAWAEligibilityProcess-04.17.13.pdf> [<https://perma.cc/JNX6-AKN3>] (discussing the legal requirements for a VAWA Self-Petition and the Battered Spouse Waiver and noting that both require proof of extreme cruelty but neither requires cooperation with law enforcement).

52. *See* Danielle Kalil, *Certified Disaster: A Failure at the Intersection of the U Visa and the Child Welfare System*, 35 GEO. IMMIGR. L.J. 513, 527 (2021) (discussing the debate regarding whether survivors should be required to cooperate with law enforcement).

cooperation.⁵³ This distinction between the U Visa and other forms of relief to protect immigrant survivors of crime supports the notion that Congress intended the U Visa to promote cooperation with law enforcement.⁵⁴

Second, the U Visa does not apply exclusively to survivors of gender-based violence. Although Congress created the U Visa as a part of BIWPA to protect survivors of gender-based violence, the U Visa is written to apply broadly to victims of qualifying crimes.⁵⁵

2. Changes to the U Visa Over Time

Both the VAWA and the VTVPA require periodic reauthorization, allowing Congress to make any changes it deems necessary to carry out the purpose of the Acts.⁵⁶ Although Congress initially passed the U Visa as a part of the VTVPA, Congress has used the reauthorization of VAWA, as well as the VTVPA, to make

53. Rachel Gonzalez Settlage, *Uniquely Helpful: The U Visa's Disparate Treatment of Immigrant Victims of Domestic Violence*, 68 RUTGERS U.L. REV. 1747, 1768–69 (2016) (explaining the unique nature of the U Visa law enforcement certification).

54. New Classifications for Victims of Criminal Activity Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53037 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299) (addressing the requirement of cooperation with law enforcement); *see also* Battered Immigrant Women’s Protection Act, § 1513(a)(2)(A), 114 Stat. at 1533 (“The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases . . .”).

55. For a discussion of what is considered a qualifying crime, *see infra* Section I.C.b.

56. *See, e.g., 2013 and 2022 Reauthorizations of the Violence Against Women Act (VAWA)*, DEPT. OF JUST. (Apr. 7, 2023), <https://www.justice.gov/tribal/2013-and-2022-reauthorizations-violence-against-women-act-vawa> [<https://perma.cc/5TCJ-CFF8>] (discussing certain implications of the reauthorizations of the VAWA in 2013 and 2022); *Human Trafficking: Key Legislation*, DEPT. OF JUST., <https://www.justice.gov/humantrafficking/key-legislation> [<https://perma.cc/7VJU-26VX>] (discussing some of the VTVPA’s reauthorizations). An authorization provides the legal authority for a government to act. JAMES V. SATURNO, CONG. RSCH. SERV., R46497, AUTHORIZATIONS AND APPROPRIATIONS PROCESS 1 (2023). Reauthorizations became a part of congressional practice in the 20th century and are mandatory, since Congress can create programs for specific, time-limited periods. *Id.* at 4–5. The process for reauthorization is similar to the authorization process, in that the congressional committee will hold hearings, hear testimony, and debate rules. *See id.* at 2–4 (discussing the formal rules underlying the authorization process). Committees may also consider changes during the reauthorization process. *Id.* at 4.

necessary changes to the U Visa (as there were elements of the VAWA bill that related to the U Visa).⁵⁷ The 2005 and 2013 VAWA reauthorizations have had the most direct impact on the U Certification process and the role of certifying agencies.⁵⁸

As part of its 2005 reauthorization of the VAWA, Congress made technical and substantive corrections to the 1994 VAWA.⁵⁹ The 2005 VAWA also required the Department of Homeland Security (DHS) to promulgate regulations 180 days after enactment.⁶⁰ Although the U Visa was created by Congress in 2000, the regulations governing the application process for the U Visa and establishing the U Visa rules as they are understood today were not promulgated until 2007.⁶¹ Additionally, Congress determined that the

57. See KATRINA CASTILLO ET. AL., NAT'L IMMIGRANT WOMEN'S ADVOC. PROJECT, LEGISLATIVE HISTORY OF VAWA (94, 00, 05), T AND U-VISAS, BATTERED SPOUSE WAIVERS, AND VAWA CONFIDENTIALITY 53 (2023), https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/VAWA_Leg-History_Final.pdf [<https://perma.cc/8PK8-VFCK>] (discussing amendments to the VAWA relating to U Visas and T Visas).

58. See generally *id.* (providing a summary of the changes to the U Visa and related programs through the VAWA authorization in 1994 and reauthorizations in 2000, 2005, and 2013). There have been other changes over time which did not impact certifying agencies directly but are still important to keep in mind when thinking about the U Visa more broadly. For example, in the 2008 reauthorization, Congress created a fee waiver throughout the entire adjudication process, including adjustment of status, thereby providing indigent noncitizens a chance to apply for the U Visa, even if they could not pay the fees. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 201(d)(3), 122 Stat. 5044, 5054 (codified as amended 8 U.S.C. § 1255(l)(7)). Additionally, it authorized USCIS to provide employment authorization to individuals with pending bona fide applications. *Id.* § 201(e), 122 Stat. at 5053. More recently, the Biden Administration implemented the authorization of the bona fide determination process, allowing certain U nonimmigration visa petitioners to apply for work permits and deferred action while they wait for full adjudication. ARIEL BROWN & ALISON KAMHI, IMMIGRANT LEGAL RES. CTR., OVERVIEW OF THE NEW U NONIMMIGRANT ("U VISA") BONA FIDE DETERMINATION 3 (2021), https://www.ilrc.org/sites/default/files/resources/u_nonimmigrant_status_bfd.pdf [<https://perma.cc/Y6FP-7X8S>].

59. See generally Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (codified in scattered sections of 42 U.S.C.) (providing numerous amendments to the VAWA).

60. *Id.* § 828, 119 Stat. at 3066.

61. See *id.* (obligating the Attorney General, the Secretary of Homeland Security, and the Secretary of State to "promulgate regulations to implement the provisions contained in the Battered Immigrant Women Protection Act of 2000"); see also discussion *infra* Section I.C.1 (discussing the regulations that DHS promulgated pursuant to this obligation).

duration of the initial grant of legal status should be four years but provided that there should be opportunities for extension upon certification from a law enforcement official, prosecutor, judge, or other investigative authority stating that the noncitizen's presence in the United States is needed to assist in the prosecution.⁶²

In the 2013 VAWA reauthorization,⁶³ Congress focused on the role of certifying agencies in the U Visa process. Specifically, the reauthorization encouraged additional training and protocols for law enforcement in the prosecution of crimes,⁶⁴ added "stalking" to the list of qualifying criminal activities,⁶⁵ and created a system for reporting the number of applications submitted by survivors of abuse and the outcomes of those applications.⁶⁶

C. Applying for a U Nonimmigrant Visa

As described above, the U Visa is designed to simultaneously protect victims of crimes who are willing to help law enforcement and to encourage law enforcement to serve immigrant crime victims.⁶⁷ This Section discusses eligibility for the U Visa, the application process, and (briefly) the adjudication procedure. While the U

62. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 821(b), 119 Stat. at 3062. This subsection provides certifying agencies with flexibility, especially for long-term cases that may require a noncitizen to assist in the prosecution of a case over a period of time longer than four years. However, the U Visa offers an opportunity to recipients to adjust their status after four years. *Green Card for a Victim of a Crime (U Nonimmigrant)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-a-victim-of-a-crime-u-nonimmigrant> [<https://perma.cc/A3NC-DB5S>]. Consequently, this provision may not be as useful today. Nevertheless, it provides an incentive for certifying agencies to provide a certification, since it will allow their witnesses to remain in the United States under a visa.

63. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified in scattered sections of 42 U.S.C.).

64. *Id.* § 102(a)(1)(A)(ix)(14), 127 Stat. at 70.

65. *Id.* § 801, 127 Stat. at 110.

66. *Id.* § 802, 127 Stat. at 110–11.

67. The U Visa is available to individuals other than undocumented individuals. People in the United States with other forms of temporary status, like Temporary Protected Status or another nonimmigrant visa, can apply. *See Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status> [<https://perma.cc/4Q5W-HVM8>] ("The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.").

Certification process depends on the policies of the individual certifying agencies, this Section provides an overview of the process and the statutory guidelines that certifying agencies may use in drafting their policies.

1. 2007 Regulations

Although Congress enacted the VTVPA (which created the U Visa program) in 2000, the U Visa program was not implemented until 2007.⁶⁸ As discussed above, the 2005 Violence Against Women Reauthorization Act implemented a deadline, which required DHS to release regulations to enact the U Visa system within 180 days of the passage of the act.⁶⁹ The regulations (published in 2007, well after this deadline) created both the eligibility requirements and application process for a U Visa,⁷⁰ which will be discussed in this Section.

2. Eligibility for U Nonimmigrant Visa

To be eligible for a U Visa, a noncitizen must:

1. Demonstrate that they suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime;
2. Possess credible and reliable information establishing that they have knowledge of the details concerning the criminal activity upon which the petition is based;

68. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299). There is no clear answer as to why it took such a long time to issue the regulations. It may be because some regulations take a long time to develop or that there was insufficient political will to push the regulations forward.

69. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 828, 119 Stat. 2960, 3066 (codified at 8 U.S.C. § 1101 note).

70. New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53014. Agencies like the DHS establish how they will implement a prescribed law through regulations. CONG. RSCH. SERV., RL32240, THE FEDERAL RULEMAKING PROCESS: AN OVERVIEW 2 (2013). The public is allowed to comment on proposed regulations as part of the statutorily mandated process for creating them. For more on the public comment process, see Harold Krent, *An Overview of the United States Administrative Procedures Act*, 2 GDANSKIE STUDIA PRAWNICZE 69, 70–72 (2020).

3. Demonstrate that they have been helpful, are being helpful, or are likely to be helpful to a certifying agency; and
4. Show that the criminal activity violated a law of the United States.⁷¹

The following discussion of eligibility is based on the 2007 interim regulations that were later codified into the Code of Federal Regulations.⁷² The following discussion addresses how USCIS will consider an application for a U Visa.

First, to be eligible for a U Visa, a noncitizen must have suffered substantial physical or mental abuse as a result of a qualifying crime. A “victim of a qualifying crime” can include direct or indirect victims of a crime, though it excludes noncitizens who were themselves culpable of criminal activities.⁷³ Physical or mental abuse is defined as substantial injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.⁷⁴ Finally, the criminal activity in question must be within the scope of “qualifying criminal activity.”⁷⁵ As codified, the Immigration and Nationality Act (INA) does not include a list of specific statutory violations but instead includes a non-exclusive list of general categories of criminal activity, including blackmail, witness tampering, and abusive sexual contact.⁷⁶ Due to the non-exclusive nature of the list, a criminal activity that is substantially similar to one of the listed examples may be considered a qualifying crime.⁷⁷

71. Immigration and Nationality Act §101(a)(U)(i)(I)–(IV), 8 U.S.C. § 1101(a)(U)(i)(I)–(IV); Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. § 214.14(b)(1)–(4) (2025).

72. New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53015.

73. 8 C.F.R. § 214.14(a)(14)(i)–(iii). The rule defines “victim of a qualifying activity” as a noncitizen who is directly and proximately harmed by qualifying criminal activity. *Id.* § 214.14(a)(14). It further defines an indirect victim as someone who has a qualifying family relationship to a direct victim in cases where the direct victim is unable to assist law enforcement. *Id.* § 214.14(a)(14)(i). Additionally, an indirect victim must satisfy all other U Visa requirements. DHS, U VISA ENFORCEMENT GUIDE, *supra* note 41, at 7.

74. 8 C.F.R. § 214.14(a)(8). For a list of the factors that USCIS uses in considering whether harm is substantial, see *id.* § 214.14(b)(1).

75. Immigration and Nationality Act § 101(a)(15)(U)(iii).

76. *Id.* § 101(a)(15)(U)(iv); New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53018.

77. New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53018.

The second factor requires a noncitizen, who was either a direct or indirect victim, to possess information regarding the qualifying criminal activity, thereby satisfying the congressional intent that the U Visa facilitate the investigation and prosecution of crimes.⁷⁸ For the purposes of a U Visa application, USCIS deems a noncitizen as possessing information if the person knows details that would assist in the investigation or prosecution of the criminal activity.⁷⁹

Third, to be eligible for a U Visa, a noncitizen must demonstrate that they are being, have been, or are likely to be, helpful in the prosecution of a crime.⁸⁰ To satisfy this requirement, a noncitizen must be “helpful” to a certifying agency.⁸¹ USCIS interprets “helpful” to mean “assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity” of which the applicant is a victim.⁸² The helpfulness must be ongoing, and failure to continue this assistance could result in ineligibility.⁸³ Additionally, helpfulness can occur at multiple stages of the prosecution process, per the intention of the BIWPA.⁸⁴ There is only one exception to the “helpful” requirement: individuals under sixteen years of age do not have to be helpful if a parent, guardian, or “next friend” can provide the required assistance.⁸⁵

78. *Id.* In publishing its interim rule, USCIS noted that “[t]he findings that Congress expressed in sections 1513(a)(1) and (2) of the BIWPA make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity.” *Id.* It went on to declare: “USCIS believes that, to give effect to congressional intent, the information that the alien must possess must be related to the crime of which he or she is a victim. If not, the stated purpose of the statute is thwarted.” *Id.*

79. 8 C.F.R. § 214.14(b)(2).

80. Immigration and Nationality Act § 101(a)(15)(U)(i)(III).

81. *Id.*

82. New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53019.

83. *See id.* (“USCIS believes that the statute imposes an ongoing responsibility on the [noncitizen] victim to provide assistance, assuming there is an ongoing need for the applicant’s assistance.”).

84. *See id.* (noting that the helpfulness requirement “was written with several verb tenses” and arguing that this recognizes that a noncitizen might apply for U nonimmigrant status throughout the investigation or prosecution).

85. *Id.*; *cf.* U.S. CITIZENSHIP & IMMIGR. SERVS., T VISA LAW ENFORCEMENT RESOURCE GUIDE 5 (2022), <https://www.uscis.gov/sites/default/files/document/guides/T-Visa-Law-Enforcement-Resource-Guide.pdf> [<https://perma.cc/3ANU-VDTD>] (noting that cooperation with reasonable requests for assistance from law enforcement is not

As referenced above, a noncitizen must be helpful to a certifying agency and must include a certification from that agency in the application for a U Visa.⁸⁶ “Certifying agency” is defined elsewhere as a federal, state, or local law enforcement agency, prosecutor, judge, or other authority responsible for the investigation or prosecution of the qualifying criminal activities discussed above.⁸⁷ The definition is broad and recognizes that other agencies, such as the Equal Employment Opportunity Commission, the Department of Labor, and child protective services agencies, have criminal investigative jurisdiction.⁸⁸ “Investigation or prosecution” is also defined broadly, and includes “the detection or investigation of a qualifying crime, as well as the prosecution, conviction, or sentencing of the perpetrator”⁸⁹

Finally, the qualifying criminal activity must violate a law of the United States or have occurred in the United States.⁹⁰ Conduct that occurs outside of the United States constitutes a qualifying criminal activity if it violates a federal statute that allows for

required for a T Visa if the noncitizen was under eighteen at the time of victimization or has suffered “physical or psychological trauma” which prevents them from cooperating). A “next friend” refers to a person who appears in a lawsuit in order to act on behalf of the victim of a qualifying crime when the victim is under sixteen years old or incapacitated. DEP’T OF HOMELAND SEC., U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE 14 [hereinafter DHS, U VISA CERTIFICATION GUIDE], https://www.dhs.gov/xlibrary/assets/privacy/dhs_u_visa_law_enforcement_certification_guide.pdf [<https://perma.cc/L2VY-TV93>].

86. Immigration and Nationality Act § 214(p)(1).

87. Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. § 214.14(a)(2) (2025).

88. *Id.*; New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53019 (defining a “certifying agency” as “one of the government officials and entities identified in the statute that is investigating or prosecuting qualifying criminal activity” which includes other agencies “such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor”).

89. 8 C.F.R. § 214.14(a)(5).

90. Immigration and Nationality Act § 101(a)(15)(U)(i)(IV) (requiring noncitizens seeking U Visa status to have been victimized by “criminal activity” that “violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States”). In this context, the United States refers to the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. *Id.* § 101(a)(38); *see also* New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53020 (providing a detailed discussion of how tribal land, military installations, and territories are considered for the purpose of U Visa applications).

extraterritorial jurisdiction and may therefore be construed as violating the laws of the United States.⁹¹

3. Application Process

For eligible noncitizens, applying for a U Visa is a two-step process. If a noncitizen experiences a qualifying crime, they must first get a certification from a certifying agency, called an I-918B certificate.⁹² The 2007 regulations created the U Certification, which was not included in the initial language of the BIWPA.⁹³ The U Certification allows USCIS to rely on the expertise of the certifying agencies to determine whether a noncitizen meets the statutory criteria.⁹⁴

The federal government provides certain guidelines to certifying agencies in determining whether to issue a U Certification, but certifying agencies ultimately have discretion over whether to

91. UCSIS has clarified that the distinction between criminal activity violating a law of the United States or having occurred in the United States is not based on whether U.S. or foreign laws were violated, but instead is based on where the crime occurred. *New Classification for Victims of Criminal Activity*, 72 Fed. Reg. at 53020; *see also* 8 C.F.R. § 214.14(b)(4) (providing that “qualifying criminal activity” must have occurred in the United States “or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court”). For example, the United States has jurisdiction to prosecute cases involving U.S. citizens or nationals who engage in illicit sexual conduct outside of the United States. 18 U.S.C. § 2423(c).

92. *New Classification for Victims of Criminal Activity*, 72 Fed. Reg. at 53023.

93. *Id.*; *see generally* Battered Immigrant Women’s Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1518 (codified in scattered sections of 8 U.S.C.) (requiring cooperation with law enforcement officials but not mentioning any certification requirement).

94. *New Classification for Victims of Criminal Activity*, 72 Fed. Reg. at 53019 (noting that certifying agencies have criminal investigative jurisdiction in their area of expertise). The U Visa is not the only example of USCIS relying on the expertise of another agency or body. In Special Immigrant Juvenile Status (SIJS) cases, USCIS defers to the expertise of juvenile courts in making child welfare decisions. *Special Immigrant Juvenile Petitions*, 87 Fed. Reg. 13066, 13086 (Mar. 3, 2022) (to be codified at 8 C.F.R. pts. 204–05, 245). SIJS deference to expertise differs from the U Visa in that USCIS does not reweigh the evidence considered by the juvenile court in SIJS cases. *Id.* In U Visa cases, receiving a signed I-918B does not guarantee that a noncitizen will receive a U Visa from USCIS. *New Classification for Victims of Criminal Activity*, 72 Fed. Reg. at 53024.

grant a certificate.⁹⁵ The requirements for the I-918B were designed to satisfy the four statutory eligibility requirements for an applicant (described above).⁹⁶

By signing the U Certification, an official is certifying the following: (1) that they are the head of an agency that has been designated with the authority to issue the I-918Bs; (2) that the agency is a federal, state, or local law enforcement agency or another authority that is responsible for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; (3) that the petitioner is a victim of a qualifying criminal activity that the certifying official or their office is investigating; (4) that the petitioner possesses information that has been or will be helpful in the investigation or prosecution of the criminal activity; (5) that the petitioner has been, is being, or is likely to be helpful in the investigation or prosecution; and (6) that the qualifying criminal activity violated the laws of the United States or occurred within the United States.⁹⁷ Despite these clear criteria, certifying officials still have broad discretion over whether to certify and are not required to provide their reasoning for rejection.⁹⁸ This discretion is the root of the issue explored in this Note and will be explained in detail in Part II.

After receiving a signed I-918B, an applicant has six months to submit their application to USCIS before the signature expires and they must request recertification.⁹⁹ The form to submit the full application is known as the I-918 Application for U Nonimmigrant Status.¹⁰⁰ Although USCIS gives significant weight to a properly

95. *Orosco v. Napolitano*, 598 F.3d 222, 226 (5th Cir. 2010) (finding that “the language of §1184(p) makes it abundantly clear that the decision to issue a law enforcement certification is a discretionary one”); *Trevino v. Benton Cnty.*, 578 F. App’x 626, 627 (8th Cir. 2014) (concluding that the District Court did not abuse their discretion in denying a U Certification because signing a U Certification is discretionary).

96. New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53024.

97. *Id.* at 53023–24.

98. There is no language in the I-918B instructions or in the Federal Rules discussing the U Visa that indicates that a certifying agency must provide a reason for their denial. This will be discussed in more detail in Part III, *infra*.

99. DHS, U VISA CERTIFICATION GUIDE, *supra* note 85, at 3.

100. USCIS, FORM I-918, *supra* note 6.

signed I-918B, the certification alone is not enough to prove that the applicant meets the eligibility requirements.¹⁰¹

The full application packet that a petitioner submits to USCIS typically includes an I-918, the signed I-918B, and other supporting evidence.¹⁰² The 2007 regulations provide petitioners with guidance on the types of evidence they may submit to USCIS to strengthen their application.¹⁰³ While the type of evidence may vary, the 2007 regulations and legal services providers recommend submitting evidence that speaks to the categories of eligibility, including the crime that occurred, the knowledge that the noncitizen possesses, and their experience working with law enforcement.¹⁰⁴

Each year, USCIS may grant up to ten thousand U Visas.¹⁰⁵ Due to that cap, USCIS is currently experiencing a significant backlog in adjudicating U Visa applications.¹⁰⁶ In FY 2022, USCIS received 30,120 new petitions.¹⁰⁷ They approved 10,006 and denied 2,992.¹⁰⁸ The rest of the petitions are carried over to the next year.¹⁰⁹

101. New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53024. This is because USCIS believes that it is in the best position to determine whether a petitioner satisfies the eligibility requirements. *Id.*

102. See DHS, U VISA CERTIFICATION GUIDE, *supra* note 85, at 2 (providing an overview of the typical application process for a U Visa). This sentence is not meant to imply that all applications will look the same. The content of the application packet will also depend on the petitioner and their circumstances. For example, someone who is inadmissible under the INA would need to submit form I-192. New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53025. Someone who wants to include their spouse or children on their application would submit the I-918A. *Id.*

103. *Id.* at 53023.

104. *Id.*; see also NAT'L IMMIGR. JUST. CTR., PRO BONO ATTORNEY MANUAL ON IMMIGRATION RELIEF FOR CRIME VICTIMS: U VISAS 20–24 (2017), <https://immigrantjustice.org/for-attorneys/legal-resources/file/nijc-pro-bono-attorney-manual-immigration-relief-crime-victims-u> [https://perma.cc/9UX6-K7HX] (explaining what a noncitizen needs to prove in a U Certification request).

105. See Battered Immigrant Women's Protection Act of 2000, Pub. L. No. 106-386, §1513(c)(2)(A), 114 Stat. 1518, 1535 (codified as amended at 8 U.S.C. § 1184) (establishing the annual cap of ten thousand U visas).

106. Tirzah Christopher, *A Visa Program Created to Help Law Enforcement Put Immigrant Victims at Risk Instead*, NAT'L PUB. RADIO (Aug. 12, 2023) <https://www.npr.org/2023/08/12/1193597303/a-visa-program-created-to-help-law-enforcement-solve-crimes-puts-immigrant-victi> [https://perma.cc/XAN7-ZEEQ] (“And there is a large backlog of cases waiting to be reviewed. According to the latest report from US Citizenship and Immigration Services, which oversees the program, more than 300,000 U visa applications are pending.”).

107. USCIS, I-918 PETITIONS BY FISCAL YEAR, *supra* note 18.

108. *Id.* Although the U Visa rules are clear that there is a statutory cap of ten thousand U Visas that can be granted per year, occasionally, more U Visas are

According to USCIS's statistics, this ten-thousand visa limit has created a current backlog of 207,133 pending petitions (as of the end of FY 2023).¹¹⁰ The backlog means that the 31,204 new petitions will go to the back of the line, and that the 10,000 petitions approved in FY 2023 belong to individuals who applied years ago.¹¹¹

II. U VISA IN PRACTICE

As described in Part I, Congress designed the U Visa to simultaneously protect undocumented individuals and strengthen the ability of law enforcement to prosecute crimes by encouraging

granted each year. *See id.* (reporting between 10,003 and 10,077 U Visas approved each year between FY 2010 and FY 2022). According to USCIS, this is the result of “certain errors in USCIS adjudicative systems.” *Id.*

109. *See* New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53027 (establishing a “waiting list” for all U Visa petitions submitted in a given fiscal year after the statutory cap has been reached).

110. USCIS, I-918 PETITIONS BY FISCAL YEAR, *supra* note 18.

111. *Id.* Advocates have attempted to challenge the backlog, but the cases are still working their way through the court system. *See* A.M.P. v. U.S. Dep't of Homeland Sec., No. 2:23-cv-13230, 2025 U.S. Dist. LEXIS 340, at *2–3 (E.D. Mich. Jan. 2, 2025) (granting plaintiffs' Motion to Alter or Amend Judgment in a case involving a request to compel USCIS to make a bona fide determination for plaintiffs' work authorizations). Through its bona fide determination process, the Biden Administration permitted individuals waiting for their U Visa petition to be adjudicated to receive a work permit. For more on that process, see Press Release, U.S. Citizenship & Immigr. Servs., USCIS Issues Policy Providing Further Protections for Victims of Crime (June 14, 2021), <https://www.uscis.gov/newsroom/news-releases/uscis-issues-policy-providing-further-protections-for-victims-of-crime> [<https://perma.cc/6CEE-CATR>]. The bona fide determination process is still in place today. Under Immigration and Customs Enforcement's Directive 11005.4 (issued in January 2025), ICE agents *should* communicate with the Office the Principal Legal Advisor to determine whether an individual has a pending U Visa case, but the guidance does not require them to do so. Memorandum from Caleb Vitello, Acting Director, U.S. Immigr. & Customs Enf't, to ICE Employees, Policy No. 11005.5, at 2 (Jan. 30, 2025) (on file with the *Columbia Human Rights Law Review*). Moreover, even if ICE agents decide to consult the Office of the Principal Legal Advisor, such a consultation would not necessarily prevent ICE from making an arrest. The American Immigration Lawyers Association construes that guidance as merely a procedural step for ICE instead of a substantive protection from deportation. Cecelia Friedman Levin et al., *Practice Alert: New ICE Guidance on Current or Potential Victim-Based Benefits*, AM. IMMIGR. LAW.'S ASS'N 3 (Mar. 3, 2025), <https://asistahelp.org/wp-content/uploads/2025/03/ICE-Guidance-Practice-Alert-3.3.2025.pdf> [<https://perma.cc/77D7-7XD5>].

cooperation between law enforcement and undocumented people.¹¹² Although there are certain statutory elements that a noncitizen must meet, certifying agencies can create their own policies, and the decision to grant the required I-918B certification is discretionary.¹¹³ USCIS has published certain “best practices,” but they do not officially recommend any policy or practice, since “the certifying agency has the sole authority on the policies and procedures it will use in signing law enforcement certifications.”¹¹⁴ Specifically, USCIS has suggested that certifying agencies establish a local policy (although certifying agencies are not required to do so), keep records of signed forms to facilitate subsequent adjudication, and provide specific details when responding to the questions included on relevant forms, especially in instances where they deny the certification request.¹¹⁵

Due to the discretionary nature of the U Visa process, noncitizens’ experiences applying for a U Visa vary greatly depending on where they are located, and simply meeting the statutory requirements does not guarantee that an agency will issue a U Certification.¹¹⁶ This Part explores the differences in U Visa implementation by comparing two police departments in different parts of the country: the New York Police Department and the Dallas Police Department. First, this Part provides a broad overview of how different localities approach U Certifications.¹¹⁷ Then, it looks at how these two specific police departments approach U Certifications, examining whether the information on their approach to U Certifications is accessible and whether their systems are transparent to the public.

A. Approaches to the I-918B

The discretionary nature of the U Certification allows every certifying agency to create their own policies for certification,

112. Battered Immigrant Women’s Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1518, 1533 (codified at 8 U.S.C. § 1101 note).

113. See *Orosco v. Napolitano*, 598 F.3d 222, 225 (5th Cir. 2010) (holding that law enforcement officers have discretion in granting U Certification requests).

114. DHS, U VISA CERTIFICATION GUIDE, *supra* note 85, at 8.

115. DHS, U VISA ENFORCEMENT GUIDE, *supra* note 41, at 11.

116. *Abrams*, *supra* note 9, at 403 (addressing nationwide disparity and law enforcement opposition).

117. While it is outside of the scope of this Note to provide an exhaustive description of how every locality approaches U Certifications, the goal of this Part is to provide broad categories to show the discrepancies across the United States.

meaning they can implement criteria that go beyond the statutory elements for eligibility.¹¹⁸ Since not every agency is transparent about its policy,¹¹⁹ it is not possible to comprehensively categorize every agency's approach. However, it is possible to examine some general examples of how different jurisdictions might approach certifications.

Some agencies will likely implement the best practices identified by DHS.¹²⁰ The relevant best practices promulgated by DHS explain the statutory criteria, emphasize the importance of taking a trauma-informed approach, and encourage agencies to develop clear policies.¹²¹ Other agencies will publish a policy that lists the statutory elements as criteria, but then will consider other elements without informing the applicant of those elements.¹²² Some will publish their criteria, which includes both statutory and extra-statutory elements, but will not provide any information about the

118. See DALL. POLICE DEP'T, U VISA NONIMMIGRANT STATUS CERTIFICATION POLICY (2017) [hereinafter DPD, U VISA POLICY], <https://dallaspolice.net/divisions/PublishingImages/resource/victimServices/U%20Visa%20Policy%20English.pdf> [<https://perma.cc/2AYE-2ZJY>] (explaining the additional criteria that the Dallas Police Department uses to determine if someone is eligible for U Certification).

119. See, e.g., Laura C. Morel, *How Law Enforcement Agencies Undermine the U Visa*, REVEAL NEWS (Nov. 7, 2019) [hereinafter Morel, *How Agencies Undermine the U Visa*], <https://revealnews.org/article/how-law-enforcement-agencies-undermine-the-u-visa/> [<https://perma.cc/EQ8E-8XXT>] (laying out the different standards used in the U Visa Certification process across the ten U.S. states with the largest immigrant populations). Reveal is the publication arm of the Center for Investigative Reporting that focuses on holding the powerful accountable and uncovering information that may otherwise remain hidden. *About Us*, REVEAL, <https://revealnews.org/about-us/> [<https://perma.cc/6VW2-CWN6>].

120. See DHS, U VISA CERTIFICATION GUIDE, *supra* note 85, at 8 (noting that while DHS does not endorse or recommend any particular policies, since the certifying agency has sole discretion, there are some examples that can guide other certifying agencies in developing their policies).

121. See DHS, U VISA ENFORCEMENT GUIDE, *supra* note 41, at ii (discussing the importance of a trauma-informed approach); *id.* at 4 (summarizing the eligibility criteria); *id.* at 11–13 (laying out general best practices in issuing U Certifications).

122. See MARK G. PETERS & PHILIP K. EURE, N.Y.C. DEP'T OF INVESTIGATION, WHEN UNDOCUMENTED IMMIGRANTS ARE CRIME VICTIMS: AN ASSESSMENT OF NYPDS HANDLING OF U VISA CERTIFICATION REQUESTS 11–16 (July 28, 2017) <https://www.courthousenews.com/wp-content/uploads/2017/07/U-VisaNYPD.pdf> [<https://perma.cc/XGC9-ND6F>] (discussing elements that the NYPD considers but does not include in their formal criteria).

reason for their denials.¹²³ Finally, some agencies may adopt blanket policies of refusing to certify if the case did not end in an arrest or conviction or if the case has been open too long; others may just generally refuse to certify.¹²⁴

Many factors—whether personal, political, or institutional—can impact how an agency approaches its U Certification process.¹²⁵ For some certifying organizations, their lack of knowledge about congressional intent stops them from certifying a request for victims who were likely to be helpful but were not needed for the investigation.¹²⁶ For others, they define helpfulness in a way that drastically limits access to the relief.¹²⁷ Some advocates have raised concern that the rise in anti-immigrant sentiment has led to denials, as political opinions interfere with certifying officers' decision-making.¹²⁸ Regardless of the reason for denial, the current U Certification process is disjointed, causing confusion for applicants and minimizing the positive impact that this visa program can have on both noncitizens and law enforcement.

123. See DPD, U VISA POLICY, *supra* note 118 (declaring that the DPD's policy does not allow for reconsideration or appeal of applications).

124. For example, the police departments in McAllen, Texas; Quincy, Massachusetts; Yonkers, New York; and Rochester, New York, decline to review all U Visa requests. Morel, *How Agencies Undermine the U Visa*, *supra* note 119. By comparison, the Gwinnett County Police Department in Georgia considers the "solvability" of the case, as do at least four other departments. *Id.*

125. See *id.* (noting factors that may influence a certifying official's decision across different police departments).

126. See, e.g., Alexis Krell, *Crime Victims Turn to Police But Don't Get the Protection They Expect: Visas to Stay in the U.S.*, KIRO 7 (June 30, 2017) <https://www.kiro7.com/news/local/crime-victims-turn-to-police-but-dont-get-protection-they-expect-visas-to-stay-in-us/545767192/> [<https://perma.cc/79N8-RWKF>] (discussing how some law enforcement officials believe that the goal of the program is to support the criminal justice system, not immigration, and therefore conclude that noncitizens does not have a reason to stay in the country if they are not needed for the case).

127. See Diane Mickelson, Comment, *When the Problem Is the Solution: Evaluating the Intersection Between the U Visa "Helpfulness" Requirement and No-Drop Prosecution Policies*, 53 UNIV. RICH. L. REV. 1455, 1467 (2019) (discussing how the "helpfulness" requirement for a U Visa is currently used by law enforcement agencies and arguing that "its implementation has done much more to discourage this purpose [of supporting law enforcement's ability to detect, investigate, and prosecute crimes] than to further it").

128. Morel, *Police Are Undermining the U Visa*, *supra* note 1.

B. Comparing Police Departments

From 2012 to 2018, police officers certified 65% of all I-918Bs submitted to USCIS,¹²⁹ meaning police departments play a significant role in determining whether an individual has the ability to apply for a U Visa at the federal level.¹³⁰ As explained above, the discretionary nature of the U Visa means that police departments around the country can implement their own policies, often going beyond the statutory requirements of the U Visa.¹³¹ The additional elements they introduce often operate as barriers to noncitizen survivors of crime and are inconsistent across jurisdictions, making it difficult for noncitizens to navigate the legal system.¹³²

Due to the outsized role that police departments play in the certification of U Visas, this Note looks at two police departments—the NYPD¹³³ and the DPD¹³⁴—to explore how different jurisdictions

129. DEPT OF HOMELAND SEC., TRENDS IN U VISA LAW ENFORCEMENT CERTIFICATIONS, QUALIFYING CRIMES, AND EVIDENCE OF HELPFULNESS: ANALYSIS OF DATA THROUGH FY 2018 at 3 (2020), https://www.uscis.gov/sites/default/files/document/reports/U_Visa_Report-Law_Enforcement_Certs_QCAs_Helpfulness.pdf [<https://perma.cc/RV5G-5FMB>].

130. See USCIS, INSTRUCTIONS FOR SUPPLEMENT B, *supra* note 7, at 1 (noting that without a U Certification form a noncitizen is not eligible to apply for a U Visa).

131. See New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53023 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299) (defining “certifying official” as “the head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications” and opining that this definition “should encourage certifying agencies to develop internal policies and procedures so that certifications are properly vetted”).

132. See, e.g., Morel, *How Agencies Undermine the U Visa*, *supra* note 119 (finding that “nearly 1 of every 4 of these [local certifying] agencies create barriers never envisioned” as part of the U Visa process).

133. The New York Police Department has a long history of implementing policies that disproportionately effect communities of color, including “broken windows” policing policies. See K. Babe Howell, *The Cost of “Broken Windows” Policing: Twenty Years and Counting*, 37 CARDOZO L. REV. 1059, 1060–61 (2016) (arguing that zero-tolerance policing such as those based on the “Broken Windows” theory “make[s] public spaces *very, very dangerous* for black people, Latino people, poor people, LGBTQ people, people with substance abuse problems, people with mental health problems, and homeless problems”). Today, the NYPD continues to disproportionately target Black and Hispanic residents of New York City. Laura Schenker et. al., *Segregation and “Out-of-Placeness”: The Direct Effect of Neighborhood Racial Composition on Police Stops*, 76 POL. RSCH. Q. 1646, 1651 (2023). As a result, looking at the NYPD provides insight into how a law enforcement agency with a documented history of targeting minority groups

approach U Certifications. The NYPD and the DPD both have U Visa Certification programs, but each uses substantively distinct applications, evaluates those applications using distinct criteria, operates under varying levels of transparency, and has a distinct approach to the appeals processes.¹³⁵

Both New York City and Dallas are major cities, with large populations of undocumented immigrants.¹³⁶ New York City is considered a liberal city, with a liberal mayor, located in a liberal state with a Democratic governor who is generally supportive of immigrants.¹³⁷ On the other hand, although Dallas is considered a

handles U Certification requests that are most frequently submitted by members of minority groups. Additionally, given the widely reported allegations of migrants attacking police officers in Times Square in February 2024, we can use the current data as a benchmark to assess whether their policies change given the tension between migrants and police officers in New York City. Jake Offenhartz, *Brawl Between Migrants and Police in New York's Times Square Touches Off Backlash*, AP NEWS (Feb. 5, 2024), <https://apnews.com/article/times-square-migrant-brawl-police-new-york-3504c2e1f4b6de73512c5a89b4cf2d48> [<https://perma.cc/5F65-XTK6>].

134. Like the NYPD, the DPD has a history of racial discrimination and brutality, specifically against Mexican Americans. Brent M.S. Campney, *Police Brutality and Mexican American Families in Texas: 1945-1980*, 649 ANNALS AM. ACAD. POL. & SOC. SCI. 108, 116 (2021). This history can lead to distrust between the immigrant community and the police.

135. Compare N.Y. POLICE DEPT., HOW TO REQUEST A CERTIFICATION FOR U NONIMMIGRANT STATUS (U VISA) FROM THE NEW YORK CITY POLICE DEPARTMENT (NYPD) [hereinafter NYPD, HOW TO REQUEST U CERTIFICATION], https://www.nyc.gov/assets/nypd/downloads/pdf/domestic_violence/u-visa-guidelines.pdf [<https://perma.cc/F7LJ-CB95>] (summarizing the process for requesting a U Visa through the NYPD), with DPD, U VISA POLICY, *supra* note 118 (declaring DPD's policies and processes for requesting a U Visa).

136. Jeffrey S. Passel & D'Vera Cohn, *20 Metro Areas Are Home to Six-in-Ten Unauthorized Immigrants in the U.S.*, PEW RSCH. CTR. (Mar. 11, 2019), <https://www.pewresearch.org/short-reads/2019/03/11/us-metro-areas-unauthorized-immigrants> [<https://perma.cc/D69P-AH8J>].

137. See, e.g., *New York Results 2022*, CNN (Apr. 4, 2023), <https://www.cnn.com/election/2022/results/new-york> [<https://perma.cc/J6ZR-MWCP>] (showing that in 2022 the majority of both New York City and New York state voted for Democrats); Rachel Treisman & Brian Mann, *Mamdani Wins New York City Mayoral Race, in a Historic Win for Progressives*, NPR (Nov. 5, 2025), <https://www.npr.org/2025/11/04/nx-s1-5597788/election-results-zohran-mamdani-new-york-city-mayor> [<https://perma.cc/7TC7-TPU8>] (describing Mamdani as “Democratic socialist”). Governor Hochul has received a lot of pushback from immigration advocates on how the state has handled the crisis resulting from the recent influx of migrants into New York City. Anthony Izaguirre & Maysoon Khan, *New York Governor Wants to Spend \$2.4B to Help Deal with Migrant Influx in New Budget Proposal*, AP NEWS (Jan. 16, 2024),

relatively liberal city, which now has a conservative mayor, and is located in a conservative state with a Republican governor who is generally less supportive of immigration.¹³⁸ The similarities and differences between New York City and Dallas and their respective approaches to U Visas provide insight into how U Certification programs can differ based on location and politics.

The following sections will look at each police department in turn. Each Section begins by providing relevant demographic information about the city and the police department, then turns to look at the U Visa Certification process, available data, and any documented concerns with the program.

1. New York City Police Department

In its 2025 annual report, the Mayor's Office of Immigrant Affairs (MOIA) estimated that New York City is home to approximately three million immigrants, of whom approximately 15% are noncitizens.¹³⁹ Due to underreporting, it is difficult to provide an accurate account of the undocumented population in New York City, but in 2019, the Migration Policy Institute estimated that 835,000

<https://apnews.com/article/new-york-migrants-budget-immigration-cf17616264d95e301f74e7b16856fb39> [<https://perma.cc/MC7P-2LD5>]. Due to that criticism, the Governor has begun looking for new solutions. *Id.*

138. *Texas Results 2022*, CNN (Aug. 24, 2023), <https://www.cnn.com/election/2022/results/texas> [<https://perma.cc/95JE-HS5N>] (showing that although Dallas is a relatively Democratic city it is in a very Republican state); Joshua Fechter & Brian Lopez, *Dallas Mayor Eric Johnson Switches to Republican Party*, TEX. TRIB. (Sept. 22, 2023), <https://www.texastribune.org/2023/09/22/dallas-mayor-eric-johnson-republican/> [<https://perma.cc/WWV5-UCQQ>] (announcing that Johnson was switching his party affiliation to be Republican after original being elected as a Democrat). In recent years, Texas Governor Greg Abbott has passed multiple immigration laws designed to limit the flow of noncitizens across the southern border. For more on his most recent bill, see Uriel J. García, *Gov. Greg Abbott Signs Bill Making Illegal Immigration a State Crime*, TEX. TRIB. (Dec. 18, 2023), <https://www.texastribune.org/2023/12/18/texas-governor-abbott-bills-border-wall-illegal-entry-crime-sb3-sb4> [<https://perma.cc/S7F2-XYCQ>].

139. N.Y.C. MAYOR'S OFF. OF IMMIGR. AFFS., REPORT ON NEW YORK CITY'S IMMIGRANT POPULATION AND INITIATIVES OF THE OFFICE 22, 25 (2025) [hereinafter MOIA, 2025 REPORT], https://www.nyc.gov/assets/immigrants/downloads/pdf/2025_Spread-Annual-Report-3_17-interactive.pdf [<https://perma.cc/VW4A-NKJJ>]. For the purposes of this Note, "noncitizen" refers to anyone with an immigration status other than U.S. citizens. This includes legal permanent residents and undocumented individuals.

undocumented individuals lived in the city.¹⁴⁰ In 2023, over one hundred thousand asylum-seekers arrived in New York City as a result of the Texas bussing policies, increasing the number of noncitizens in the city.¹⁴¹

There are ten certifying agencies in New York City, including the five District Attorney offices across the five boroughs, the Administration of Child Services, and the NYPD.¹⁴² The NYPD is the focus of this Note, but it is important to remember that each of these agencies has their own certification policies, which can vary dramatically.¹⁴³

The NYPD is the largest police department in the United States, with 36,000 officers and 19,000 civilian employees.¹⁴⁴ The U Visa Certification Office, within the Domestic Violence Unit (DVU), handles U Visa Certifications.¹⁴⁵

140. *Profile of the Unauthorized Population: New York*, MIGRATION POLY INST. (2019) <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NY> [<https://perma.cc/78XP-X7LJ>]. While this data may be slightly old, it is difficult to get population estimates of undocumented populations. For more on the difficulties in calculating hidden populations, see Johnathan S. Feinstein & Edward H. Kaplan, *Why Hidden Populations Are So Hard to Count*, YALE INSIGHTS (Dec 13., 2018), <https://insights.som.yale.edu/insights/why-hidden-populations-are-so-hard-to-count> [<https://perma.cc/6DDH-GX2Q>].

141. For more on bussing policies, see Luis Ferré-Sadurní, *What to Know About the Migrant Crisis in New York City*, N.Y. TIMES (Dec. 6, 2023), <https://www.nytimes.com/article/nyc-migrant-crisis-explained.html> (on file with the *Columbia Human Rights Law Review*).

142. MOIA, 2025 REPORT, *supra* note 139, at 91. The NYPD is the focus of this Note, but it is important to remember that each of these agencies has the authority to develop and implement their own certification policies, which could plausibly result in wide variations in U Visa processes within the same geographic area.

143. For example, the New York City Administration for Children Services (ACS) has a policy of considering U Visa Certification requests “from individuals who have helped with the investigation and/or prosecution of a child protective case.” *Requesting U Visa Law Enforcement Certifications from New York City Administration for Children Services (ACS)*, N.Y.C. ADMIN. CHILD SERVS., <https://www.nyc.gov/assets/immigrants/downloads/pdf/visa-acv.pdf> [<https://perma.cc/PY8U-ZK7G>]. Though no other information is publicly available about the details of the ACS’s policy, it is clearly a far more niche category of U Visas than those issued by the NYPD or other agencies with broader purviews.

144. *About NYPD*, N.Y. POLICE DEP’T, <https://www.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.pages> [<https://perma.cc/46XV-PEQE>].

145. NYPD, HOW TO REQUEST U CERTIFICATION, *supra* note 135.

a. NYPD U Visa Certification Process

The NYPD is an example of a certifying agency that relies on the statutory elements on paper but in practice includes additional criteria that it does not share with the public. According to the NYPD website, an applicant who wishes to apply for an I-918B must email a letter to the NYPD that includes, at a minimum, their name, the qualifying crime, how they assisted the NYPD, and a mailing address.¹⁴⁶ Additionally, the applicant should specify if they are in Immigration and Customs Enforcement (ICE) custody, if they are in removal or deportation proceedings, and/or if a qualifying family member will become ineligible for derivative status within three months of the date of the letter.¹⁴⁷

The NYPD created a formal appeals process in 2016, making it one of the first police departments in the country to do so.¹⁴⁸ The NYPD introduced the appeals process to ensure a more fair, transparent, and efficient process.¹⁴⁹ When a request for a U Visa is denied, the applicant can appeal the agency's decision in writing.¹⁵⁰

The NYPD Patrol Guide also details the roles and responsibilities of the Chief of the Domestic Violence Unit and the designated certifying official.¹⁵¹ Per the Guide, the adjudication process occurs in two phases. First, the Chief of the DVU assesses the applicant based on the statutory elements of eligibility and prepares a recommendation as to whether the certifying officer should complete the form.¹⁵² That recommendation is sent to the certifying

146. *Id.*

147. *Id.*

148. *U Visas and the Role of Police in Preventing and Investigating Crimes Against Immigrants*, SUBJECT TO DEBATE (Police Exec. Rsch. F., Washington, D.C.), June 2017, at 12, https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2017/debate_2017_junaug.pdf [<https://perma.cc/6H53-FL5S>].

149. *Id.*

150. N.Y. POLICE DEP'T, PATROL GUIDE PROC. NO. 207-37, at 4 (2025) [hereinafter NYPD PG PROC. NO. 207-37], https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf [<https://perma.cc/6LX7-MSLW>]. Appeals are handled by the NYPD Legal Bureau Department Attorney. *Id.* The attorney in charge must respond to all requests for appeals within ninety days. *Id.*

151. *Id.* at 1–7. The left-hand column of the patrol guide indicates who is responsible for each step in the U Visa process. The Police Commissioner is the de facto certifying official, but the Commissioner can designate additional members of the department as certifying officials. *Id.* at 1.

152. *Id.* at 2–3; *see also id.* at 5 (noting that the Chief of the DVU's review of certifications focuses on completing the six parts of the certification and that the

official, who makes a final determination.¹⁵³ Per the Guide, the NYPD is responsible for responding to requests within forty-five days unless the request requires more time (in which case the DVU must inform the applicant of the potential delay).¹⁵⁴

b. Current Landscape of NYPD U Visa Certification Requests

In 2022, the NYPD broke the record at the time for the highest recorded number of U Certification requests, with 1,088 requests submitted¹⁵⁵—up over 300 from the 808 requests in 2021.¹⁵⁶ The NYPD processed only 759 of the 1,088 requests, meaning only around 70% were considered for certification.¹⁵⁷ The NYPD issued only 404 certifications—a grant rate of just over 53% of all processed petitions.¹⁵⁸ This grant rate represents a decrease of over fifteen percentage points compared to the grant rate of just under 69% in 2021.¹⁵⁹ The NYPD denied 252 U Certification requests in 2022.¹⁶⁰ The NYPD mainly denied certification requests because it did not

Department must review the written request from the applicant and Department's records to determine whether it can complete the form).

153. *Id.* at 3. The certifying official can approve the application, deny it, defer it pending more information, or refer the applicant to a more appropriate certifying agency. *Id.*

154. *Id.* at 4. Requests that require substantial research must be determined within ninety days. *Id.* It is unclear whether applicants are notified whether they fall into the forty-five or ninety days category or are only notified if the request will require additional time beyond the ninety days.

155. N.Y.C. MAYOR'S OFF. OF IMMIGR. AFFS., REPORT ON NEW YORK CITY'S IMMIGRANT POPULATION AND INITIATIVES OF THE OFFICE 46 (2022) [hereinafter MOIA, 2022 REPORT], https://www.nyc.gov/assets/immigrants/downloads/pdf/MOIA_WeLoveImmigrant_NYC_AR_2023_final.pdf [<https://perma.cc/F5FT-CYNY>]. The Mayor's Office of Immigrant Affairs is the city department responsible for promoting the well-being of immigrant communities by acting as a bridge between the city government and immigrant communities. *Id.* at 9.

156. N.Y.C. MAYOR'S OFF. OF IMMIGR. AFFS., 2021 REPORT 57 (2021) [hereinafter MOIA, 2021 REPORT], <https://www.nyc.gov/assets/immigrants/downloads/pdf/MOIA-2021-Report.pdf> [<https://perma.cc/WMF2-SFVU>].

157. MOIA, 2022 REPORT, *supra* note 155, at 46. There is no available information on why only around 70% of the applications were processed.

158. *Id.*

159. See MOIA, 2021 REPORT, *supra* note 156, at 57 (showing that the NYPD issued certifications for 550 of 799 applications processed in 2021 for a grant rate of 68.8%).

160. MOIA, 2022 REPORT, *supra* note 155, at 46.

consider the applicant to be the victim of a qualifying crime.¹⁶¹ Other cited reasons include lack of helpfulness, insufficient documentation, and expiration of the statute of limitations.¹⁶² Forty-eight of the denied certification requests were appealed in 2022.¹⁶³ Out of those forty-eight, fourteen appellants received certifications, twenty-five denials were upheld, and nine were referred to another agency.¹⁶⁴ Notably, although processing and grant rates have improved, the number of overall requests has also continued to rise dramatically, meaning that the NYPD still denied roughly twice as many applications in 2025 as it did in 2022.¹⁶⁵

c. Documented Concerns with the NYPD U Visa Process

In 2017, the New York City Department of Investigation (DOI) released a report assessing how the NYPD handled U Visa Certification requests.¹⁶⁶ In the report, the DOI made five key findings. First, it found that the NYPD's internal standards and procedures hinder applicants.¹⁶⁷ Specifically, the DOI found that the NYPD lacks uniform guidance on how to review U Certification requests, resulting in an abuse of discretion that prevents noncitizens from accessing federal immigration relief.¹⁶⁸ Additionally, the NYPD goes beyond the federal guidelines and conducts a background check on all applicants.¹⁶⁹ However, there is no information in the NYPD's U Visa guidelines indicating that applicants will be subject to a

161. *Id.* at 47. Specifically, MOIA recorded that the NYPD cited a non-qualifying crime as the justification for denying 240 applications (just over 95% of all denials). *Id.*

162. *Id.*

163. *Id.* at 46.

164. *Id.* A certification request may be referred to another agency when the case is no longer in the jurisdiction of the original agency. *See* NYPD PG PROC. NO. 207-37, *supra* note 150, at 3 (providing that the DVU Chief has the authority to refer a U Visa Certification to another agency with jurisdiction to certify the request).

165. MOIA, 2025 REPORT, *supra* note 139, at 92 (reporting that the NYPD processed 1,617 of the 1,618 U and T Visa requests it received in 2025 and ultimately denied roughly 400, or 25%).

166. PETERS & EURE, *supra* note 122.

167. *Id.* at 10–18.

168. *See id.* at 10–11 (finding that the NYPD lacked uniform written guidance for staff and concluding that “certain NYPD practices for certification requests resulted in the denial or return of certifications for applicants who may have otherwise been eligible”).

169. *Id.* at 12.

background check.¹⁷⁰ According to the DOI, NYPD uses those background checks to deny applicants but provides no standard for how the results should be used, resulting in a discretionary, potentially arbitrary, process through which certifying agencies can deny qualified applicants.¹⁷¹

Second, the DOI found that the NYPD does not sufficiently document findings regarding helpfulness and qualifying crimes.¹⁷² The DOI reported that the NYPD typically relies on officer or detective notes to determine helpfulness but found that it lacks a systematized approach to understanding the context as to why someone may have stopped cooperating with the police.¹⁷³ This gap prevents the NYPD from accurately documenting *unreasonable refusals* to cooperate, which should be considered on a case-by-case basis.¹⁷⁴

Third, the DOI found that the process lacks transparency.¹⁷⁵ When denying a request, the NYPD fails to provide a fact-specific explanation as to why they denied the application.¹⁷⁶ The lack of detail in the denials negatively impacts the efficacy of the appeals process, since applicants are unable to make informed decisions as to whether they should seek an appeal.¹⁷⁷

Fourth, the DOI found that the NYPD fails to properly disseminate public information about the U Visa.¹⁷⁸ When the DOI investigators visited precincts throughout the city, they found no written information about U Visas and encountered NYPD personnel

170. *Id.*

171. *Id.* at 12–13.

172. *Id.* at 18–22.

173. *Id.*; see also New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53019 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299) (finding that USCIS defines “helpful” as meaning that the victim has been, is being, or is likely to assist in the detention, investigation, conviction, or sentencing of the qualifying criminal activity).

174. Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75540, 75546–47 (proposed Dec. 12, 2008) (to be codified at 8 C.F.R. pts. 103, 212, 214, 245, 299); see also NYPD PG PROC. NO. 207-37, *supra* note 150, at 7 (“While there may be specific factual circumstances where a victim reasonably refuses to help, that determination is made on a case-by-case basis.”).

175. PETERS & EURE, *supra* note 122, at 22–23.

176. *Id.* at 22.

177. *Id.*

178. *Id.* at 23–24.

who were unfamiliar with the program.¹⁷⁹ This lack of information makes it difficult for survivors of crime who do not have access to legal services to correctly request a U Certification, or to even know that they can do so.

Finally, the DOI found that officers who interact with victims and immigrant communities lack special training on U Visas.¹⁸⁰ The NYPD has expressed concern that training officers on the U Visa program could put them in a position to discuss the immigration status of crime victims, which is prohibited under the Mayor's Executive Order 34.¹⁸¹ While it is unlikely that providing information on the U Visa would violate the Executive Order,¹⁸² police interactions with undocumented residents still pose thorny public relations issues for the NYPD. Specifically, heightened concerns about collaboration between the NYPD and ICE¹⁸³ could lead to more anxiety about interacting with the NYPD.

Despite these concerns, the NYPD has several units that are in regular contact with immigrant communities and that are trained to interact with crime victims.¹⁸⁴ Those units are in a unique position

179. *Id.* at 24.

180. *Id.* at 24–25.

181. *Id.*; see also Off. of the Mayor, Exec. Order No. 34: City Policy Concerning Immigrant Access to Services, § 4 (May 13, 2003) (prohibiting law enforcement officials from asking about a person's immigration status in most situations); Off. of the Mayor, Exec. Order No. 41, City-Wide Privacy Policy and Amendment of Executive Order No. 34 Relating to City Policy Concerning Immigrant Access to City Services, § 3 (Sept. 17, 2003) (amending Executive Order No. 34 to cover "illegal activity" which includes unlawful activity but not mere status as an undocumented person).

182. Specifically, Executive Order No. 34 provides that "[l]aw enforcement officers shall not inquire about a person's immigration status unless investigating illegal activity other than mere status as an undocumented alien." Off. of the Mayor, Exec. Order No. 34: City Policy Concerning Immigrant Access to Services, § 4(a). It is difficult to see how *providing* information would conflict with this prohibition. Nevertheless, the DOI reported that the NYPD was hesitant to provide U Visa training to patrol officers for fear that it would produce "the unintended consequence of officers discussing details regarding immigration status with crime victims." PETERS & EURE, *supra* note 122, at 24–25.

183. See, e.g., Marcia Kramer, *Mayor Eric Adams Wants to "Bring Down Anxiety" in NYC's Immigrant Community Amid Deportation Fears*, CBS NEWS (Jan. 21, 2025), <https://www.cbsnews.com/newyork/news/nyc-deportation-sanctuary-city-laws/> [https://perma.cc/57MB-P6M3] (reporting that city officials were taking steps to ease anxieties among immigrant communities that they would continue to use public services include the police).

184. PETERS & EURE, *supra* note 122, at 25.

to share information about the U Visa program with crime victims.¹⁸⁵ With appropriate training, these officers will be better equipped to answer questions and provide information without needing to discuss immigration status with victims.¹⁸⁶

In its report, the DOI provided the NYPD with ten recommendations,¹⁸⁷ which they have since used to assess the NYPD's progress in improving the U Visa system. In March of 2022 and 2023, the DOI released their eighth and ninth annual reports, respectively.¹⁸⁸ These reports discuss the status of all investigative reports and recommendations the DOI has issued to the NYPD since 2015, including the 2017 U Visa report.¹⁸⁹ In both the 2022 and 2023 reports, the DOI found that the NYPD had taken "commendable steps" to improve the U Visa process but noted that there were still concerns about the program.¹⁹⁰ In the ninth annual report, DOI found that out of their ten recommendations, the NYPD had fully implemented three, partially implemented five, and rejected the other two.¹⁹¹

The NYPD rejected the recommendation to provide concrete written standards for situations where a U Visa will be denied due to an applicant's criminal background check, claiming those standards are already covered by the NYPD Patrol Guide and federal guidelines.¹⁹² Yet further research by the DOI revealed both that the Patrol Guide does not expressly state which criminal histories will result in a denial and that federal guidelines do not require a background check for the U Certification process.¹⁹³ The NYPD also

185. *Id.*

186. *Id.*

187. *Id.* at 26–29.

188. JOCELYN STRAUBER & JEANENE BARRETT, N.Y.C. DEP'T OF INVESTIGATION, EIGHTH ANNUAL REPORT (Mar. 31, 2022) [hereinafter STRAUBER & BARRETT, 8TH ANNUAL REPORT], https://www.nyc.gov/assets/doi/press-releases/2022/March/08OIGNYPDAnnualRpt_Release_3312022.pdf [https://perma.cc/Z8GC-DD4B]; JOCELYN STRAUBER & JEANENE BARRETT, N.Y.C. DEP'T OF INVESTIGATION, NINTH ANNUAL REPORT (Mar. 30, 2023) [hereinafter STRAUBER & BARRETT, 9TH ANNUAL REPORT], <https://www.nyc.gov/assets/doi/reports/pdf/2023/13OIGNYPDRpt.Release.03.30.2023.pdf> [https://perma.cc/89L3-6Q67].

189. STRAUBER & BARRETT, 8TH ANNUAL REPORT, *supra* note 188, at 1.

190. *Id.* at 39; STRAUBER & BARRETT, 9TH ANNUAL REPORT, *supra* note 188, at 38.

191. STRAUBER & BARRETT, 9TH ANNUAL REPORT, *supra* note 188, at 38.

192. STRAUBER & BARRETT, 8TH ANNUAL REPORT, *supra* note 188, at 39. For details on this recommendation, see PETERS & EURE, *supra* note 122, at 26.

193. STRAUBER & BARRETT, 8TH ANNUAL REPORT, *supra* note 188, at 39–40.

rejected the DOI recommendation that the NYPD should provide a written rationale for their denials as they claim that their non-exhaustive checklist for denial reasons is sufficient.¹⁹⁴ The DOI disagrees; since the NYPD checklist does not require a written explanation, an applicant may not receive sufficient information as to why the NYPD denied their request.¹⁹⁵

2. Dallas Police Department

Dallas County is home to 1.4 million immigrants with an estimated 864,000 noncitizens.¹⁹⁶ It is estimated that in 2019 there were 293,000 undocumented individuals living in Dallas, Texas, but the true number is likely underreported.¹⁹⁷

Similar to New York City, Dallas County has multiple certifying agencies, including the Dallas Police Department and the District Attorney's Office.¹⁹⁸ Under the DPD's most recent policy, applicants submit U Certification requests to the Investigation Bureau within the Crimes Against Persons Division, where the Victim Services Coordinator serves as the point person for all applications.¹⁹⁹

194. *Id.* at 40.

195. *Id.*

196. VERA INST. OF JUST., PROFILE OF THE FOREIGN-BORN POPULATION IN DALLAS, TEXAS (2023), <https://vera-institute.files.svdcdn.com/production/downloads/publications/profile-of-foreign-born-population-dallas.pdf> [<https://perma.cc/7L5N-AQG8>].

197. *Profile of the Unauthorized Population: Dallas, Texas*, MIGRATION POL'Y INST. (2019), <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/48113> [<https://perma.cc/8BXN-4ESW>]. For more on why this number is likely underreported, see Elaine Kamarack & Christine Stenglein, *How Many Undocumented Immigrants Are in the United States and Who Are They?*, BROOKINGS INST. (Nov. 12, 2019), <https://www.brookings.edu/articles/how-many-undocumented-immigrants-are-in-the-united-states-and-who-are-they/> [<https://perma.cc/7TBX-4WCJ>] (finding that not all undocumented individuals participate in population surveys due to their fear of being discovered).

198. See DALL. CNTY. DIST. ATTY, U VISA NONIMMIGRANT STATUS CERTIFICATION POLICY (2019) https://www.dallascounty.org/Assets/uploads/docs/district-attorney/policies/U-Visa-Policy-Signed_update.pdf [<https://perma.cc/L4KU-GXD7>] (providing an example of another certifying agency's policy).

199. DALL. POLICE DEP'T, U VISA NONIMMIGRANT STATUS CERTIFICATION POLICY (July 27, 2017) [hereinafter DPD, U VISA CERTIFICATION POLICY], <https://dallaspolice.net/divisions/PublishingImages/resource/victimServices/U%20Visa%20Policy%20English.pdf> [<https://perma.cc/8MBL-4BL6>].

a. DPD U Visa Certification Process

The DPD is a certifying agency that assesses criteria beyond the scope of the statutory requirements, but which publicly shares those additional elements as part of their U Certification policy. DPD has published its official certification policy on its website, which has not been updated or revised since July 27, 2017.²⁰⁰ To request a U Certification, an applicant must fill out the Dallas Police Department U-Visa Certification Request Form, which is available on the DPD's website.²⁰¹ The form lists the statutory elements that an applicant must satisfy and asks for basic identifying information about the applicant, as well as a "Service (Report) Number."²⁰² From there, applicants can email, mail, fax, or drop their request off in person to the Victims Services Unit, after which the office purportedly takes six to eight weeks to process requests.²⁰³

Per the DPD's policy, to receive a signed certification, individuals must meet the statutory eligibility requirements and the DPD's additional criteria.²⁰⁴ The first additional element is that the criminal activity at the core of the request must be classified as a Class B misdemeanor or above and it must have been reported to the DPD.²⁰⁵

Second, the offense must be under the jurisdiction of DPD and the applicant must submit an application within one year of the occurrence of the criminal offense.²⁰⁶ In addition, if the statute of limitations for the underlying criminal activity has not expired, the DPD Certifying Official (CO) may consider the request if the petitioner shows that they have significant information that could lead to the identification of the perpetrator or the CO has otherwise determined that a public benefit exists to review the request for certification.²⁰⁷

200. *Id.*

201. DALL. POLICE DEP'T, U VISA CERTIFICATION REQUEST FORM, <https://dallaspolice.net/divisions/PublishingImages/resource/victimServices/U%20Visa%20Request%20Form.pdf> [<https://perma.cc/RUN6-ZNTB>].

202. *Id.*

203. *Victim Services*, DALL. POLICE DEP'T, <https://dallaspolice.net/resource/victimServices> [<https://perma.cc/7D9B-C4ZT>].

204. *See* DPD, U VISA CERTIFICATION POLICY, *supra* note 199, at 1–2 (reiterating the four statutory eligibility criteria and providing six additional criteria).

205. *Id.* at 1.

206. *Id.*

207. *Id.* at 1–2.

Third, the DPD states that it will act as a certifying agency when the above requirements have been met and “it is determined to be in the best interest of justice.”²⁰⁸ It seems that the DPD could still deny a petitioner’s U Visa Certification form based on this element, even if that petitioner were to have satisfied the Class B misdemeanor requirement, submitted their application before the one-year mark, and established that they have significant information to identify the perpetrator.

The DPD U Visa Policy also lays out procedural elements that impact a U Certification decision. Similar to the NYPD, once a case has been filed with any District Attorney’s office within the City of Dallas, the DPD can refer the petitioner to the relevant District Attorney’s office for certification.²⁰⁹ Unlike the NYPD, the DPD does not accept requests for recertification or reexamination of previously reviewed applications.²¹⁰ Therefore, if an applicant’s I-918B expires, or if they feel that the DPD erroneously denied their application, they have no recourse and are unable to apply for a U Visa.

There is some evidence that the City of Dallas is attempting to implement educational policies to support its U Visa program. The City of Dallas’s Welcoming Communities and Immigrant Affairs Department has been implementing its strategic plan to promote safe, healthy, and connected immigrant communities.²¹¹ One of the three key recommendations underlying the Department’s plan was to strengthen relationships between the DPD and immigrant communities, which included holding classes on the U Visa policy to educate the immigrant community about the program.²¹²

b. Current Landscape of DPD Certification Requests

Despite language in the DPD U Visa Policy indicating that the Victim Services Coordinator tracks requests and decisions,²¹³ it is

208. *Id.* at 2.

209. *Id.*

210. *Id.*

211. Off. of Equity & Inclusion, *Safe, Healthy & Connected Communities: Goal 3*, CITY OF DALL., <https://dallascityhall.com/departments/office-of-equity-and-inclusion/wcia/Pages/Safe-Healthy-Connected-Communities.aspx> [<https://perma.cc/D4WV-2Q8Y>].

212. *Id.*

213. *See* DPD, U VISA CERTIFICATION POLICY, *supra* note 199, at 2 (“All applications and decisions will be recorded and maintained by the Victims Services Coordinator/Advocates.”).

difficult to find data on how many certification requests the DPD received or how many it chose to grant. Neither the City of Dallas nor the DPD have U Certification data available on their websites. A City of Dallas Open Records request revealed that between January 1, 2022, and December 31, 2023, the Dallas Police Department received 1,357 U Certification requests.²¹⁴ Out of those requests, they granted 467 and denied 890.²¹⁵

c. Lack of Data on DPD U Visa Certifications

There are no recent studies or reports that explore how the DPD handles U Visa requests. In 2014, the University of North Carolina Law School Immigration and Human Rights Clinic conducted an in-depth study on geographical disparity in U Visa Certification, interviewing advocates who had experience with the U Certification process.²¹⁶ In that report, advocates claimed that the DPD had a blanket policy of denying U Certifications.²¹⁷ The data obtained through the Open Records request indicates that the DPD grants approximately 34% of requests.²¹⁸

One advocate reported that, as of 2014, the DPD would refuse to certify requests because sixty days had passed since the crime, even where the case was open and active.²¹⁹ Another claimed that the DPD would only certify for felony crimes reported within thirty days, even though it was difficult to get in contact with their office regarding certification requests.²²⁰ More recently, in 2019, an investigative report by Reveal found that the DPD only reviews requests made within a certain time frame,²²¹ which is in accordance with the DPD's written policy of only considering requests made

214. Open Records Request, Dall. Police Dep't (Feb. 6, 2024) (on file with the *Columbia Human Rights Law Review*).

215. *Id.*

216. JEAN ABREU ET AL., UNC SCH. OF L. IMMIGR./HUM. RTS. POL'Y CLINIC, THE POLITICAL GEOGRAPHY OF THE U VISA: ELIGIBILITY AS A MATTER OF LOCALE (2014), <https://law.unc.edu/wp-content/uploads/2019/10/uvisafullreport.pdf> [<https://perma.cc/PWN6-HNDZ>].

217. *Id.* at 20.

218. Open Records Request, *supra* note 214.

219. ABREU ET AL., *supra* note 216, app. IV, ¶ 1.

220. *Id.* app. IV, ¶ 16.

221. See Morel, *How Agencies Undermine the U Visa*, *supra* note 119 (reporting that DPD will not consider requests after a certain time frame).

within one year.²²² This strict time frame can prevent some noncitizens from receiving the assistance that they need.²²³ Beyond these two reports and its own written policy, there is no information on how the DPD evaluates U Certification requests.

III. IMPROVING THE U VISA

As shown by the U Certification processes of the New York and Dallas Police Departments, the process of applying for a U Certification can be confusing and inconsistent for applicants. These problems hinder individuals' ability to apply for the relief that they need and raise the question of how advocates can improve the system. This Part will explore possible state- and local-level solutions to reduce the geographical discrepancies in the U Certification process. It will begin by discussing why it is so important to improve this system and argue that state- and local-level solutions are the best approach to this issue. Then, it will explore legislative and educational options for how to improve the certification system as it stands today.

A. Why Make a Change?

When used as Congress intended, the U Visa is a tool that keeps noncitizen victims participating in the criminal justice system and enhances the community's trust in their law enforcement officials.²²⁴ The U Visa also offers protection to extremely vulnerable

222. See DPD, U Visa Certification Policy, *supra* note 199, at 1 (“The offense must still be under jurisdiction of the Dallas Police Department and the petitioner must make application within one year of the occurrence of the criminal offense”).

223. Survivors of gender-based violence often face barriers in cooperating with law enforcement. Laurie A. Minter, *Victimization or Deportation? Addressing the Unsettling Consequences of the U Visa Requirements on Domestic Violence Victims*, 41 T. JEFFERSON L. REV. 61, 68 (2018). The acute nature of their trauma may make it particularly difficult for them to comply with a time restriction, as noncitizens may be reluctant to seek out law enforcement due to “fear and distrust of police, lack of knowledge regarding the United States justice system and fear of their abuser.” *Id.* These reporting restrictions for certifications provide survivors with little grace and fail to recognize the complexities of trauma. *See id.* at 80–81 (advocating to amend the U Visa to constrain law enforcement officials' discretion and provide a remedy for victims of domestic violence).

224. *Immigrant Crime Fighters: How the U Visa Program Makes US Communities Safer*, HUM. RTS. WATCH (July 3, 2018) [hereinafter *Immigrant Crime Fighters*], https://www.hrw.org/report/2018/07/03/immigrant-crime-fighters/how-u-visa-program-makes-us-communities-safer#_ftn11 [perma.cc/WS9D-7EMR] (noting that the U Visa helps police apprehend

populations, including undocumented survivors of domestic violence and labor exploitation.²²⁵ While undocumented immigrants are vulnerable to the same crimes as U.S.-born individuals, they are often specifically targeted, since perpetrators understand and take advantage of their lack of status and their fear of deportation.²²⁶

In a time when crime and public safety are major concerns throughout the United States, the U Visa can play an important role in supporting law enforcement efforts to mitigate crime.²²⁷ On the other hand, the increased threat of deportation and the noted cooperation between law enforcement and ICE may discourage undocumented individuals from engaging with law enforcement agencies.²²⁸ The disconnect between undocumented communities and law enforcement means that undocumented individuals with valuable information are not coming forward to help law enforcement identify and prosecute the perpetrators of crime.²²⁹

In drafting the legislation that created the U Visa, Congress intentionally included language granting discretion to certifying

perpetrators of crime by encouraging undocumented victims of crime to come forward).

225. *FAQ: The U Visa and How It Can Protect Workers*, NAT'L IMMIGR. L. CTR. (Sept. 1, 2024), <https://www.nilc.org/issues/workersrights/how-the-u-visa-can-protect-immigrant-workers/> [<https://perma.cc/ZG44-7XXE>] (discussing the role of the U Visa in combating labor exploitation); see also Natalie Nanasi, *The U Visa's Failed Promise for Survivors of Domestic Violence*, 29 YALE J.L. & FEMINISM 273, 285 (2018) (explaining the value of a U Visa to an undocumented survivor of gender-based violence).

226. Pauline Portillo, *Undocumented Crime Victims: Unheard, Unnumbered, and Unprotected*, 20 ST. MARY'S L. REV. ON RACE & SOC. JUST. 346, 355 (2018).

227. *Immigrant Crime Fighters*, *supra* note 224 (finding that "effective crime-fighting requires that all members of the community are comfortable reporting crimes to police" which includes undocumented folks).

228. Martin Kaste, *Mass Deportations Will Depend on Local Police. Only Some Are Offering to Help*, NAT'L PUB. RADIO (Feb. 5, 2025), <https://www.npr.org/2025/02/05/g-s1-46620/mass-deportations-will-depend-on-local-police-only-some-are-offering-to-help> [<https://perma.cc/T622-9MSF>] (noting that while not all local law enforcement agencies are engaging with ICE, it is clearly a priority of the Trump administration to partner with local enforcement to facilitate ICE's mass deportation efforts).

229. STACY ALLRED ET. AL., UNC SCH. OF L. INT'L HUM. RTS. & POL'Y CLINIC, A LEGAL ADVOCACY GUIDE TO BUILD INTEGRATED COMMUNITIES IN NORTH CAROLINA 165 (2012), <http://www.law.unc.edu/documents/clinicalprograms/buildingcommunitiesfullreport.pdf> [<https://perma.cc/YV2Q-38BE>] (explaining that criminals prey upon undocumented immigrants due to the "disconnect" between the undocumented population and the law enforcement).

officials to both rely on their expertise and to strengthen their ability to investigate crimes against noncitizens.²³⁰ As a result, they likely foresaw that there would be variation in how certifying agencies would administer the I-918B, but the current system fails to satisfy Congress' original intention of supporting both law enforcement and immigrant communities.

B. Focusing on State- and Local-Level Solutions

Reforming the U Visa system and reducing state disparities could occur at the federal or state level. Federally, Congress would need to pass new legislation. One option for federal legislative change is to amend the Immigration and Nationality Act to remove the discretionary language altogether.²³¹ Another option would be to create an exception, similar to the one found in the T Visa statute so that survivors who are unable to cooperate with law enforcement are still eligible.²³² However, the current make-up of Congress and political rhetoric surrounding immigration makes it unlikely that there would be congressional support for these types of amendments.²³³ Additionally, the re-election of Donald Trump almost

230. See *Orosco v. Napolitano*, 598 F.3d 222, 226–27 (5th Cir. 2010) (explaining that the language of the INA makes it “abundantly clear” that officials are required to exercise discretion every time they issue a certification, particularly when making a discretionary determination that a noncitizen “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity). For more on how one possible reason for creating the certification process is to rely on the expertise of certifying agencies in the investigation and prosecution of crimes against noncitizens, see *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53019–20 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299).

231. Removing the discretionary language and requiring certifying officials to certify based on certain standards may pose constitutional issues given the Tenth Amendment's prohibition on commandeering. See *New York v. United States*, 505 U.S. 144, 178 (1992) (“No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate.”). Anti-commandeering is beyond the scope of this Note but may pose limitations on federal U Visa reform.

232. See *Nanasi*, *supra* note 225, at 315–16 (discussing the benefits of such an exception and arguing that implementing an exception would not undermine the U Visa's goal of supporting law enforcement and may actually assist law enforcement).

233. See, e.g., Suzanne Gamboa, *Congress Has Failed for More Than Two Decades to Reform Immigration – Here's a Timeline*, NBC NEWS (May 9, 2023), <https://www.nbcnews.com/news/latino/immigration-reform-failure-congress-timeline-rcna64467> [<https://perma.cc/7TRF-ZDEV>] (“The outlook for any

immediately resulted in the passage of anti-immigrant policies that will likely push immigrant survivors of violence further into the shadows, due to fear of deportation.²³⁴

Most national U Visa discussions focus on the backlog of cases and the statutory cap for U Visas.²³⁵ While addressing the backlog is important, doing so will not solve the issue of discretionary policies preventing some eligible individuals from applying for a U Visa simply based on where they live.

Courts across the country have upheld the discretionary nature of the U Certification process, making a legal challenge

meaningful immigration reform in the new Congress is bleak.”). In February 2024, the Senate introduced a bill that would have been the most sweeping immigration reform bill of the 21st Century. *An Analysis of the Senate Border Bill*, AM. IMMIGR. COUNCIL (Feb. 8, 2024), <https://www.americanimmigrationcouncil.org/research/analysis-senate-border-bill> [<https://perma.cc/H86Q-AVQV>]. While the bill was focused on the U.S.-Mexico border, the ways it was discussed in Congress and by then former-President Trump demonstrate how difficult it will be to pass any meaningful immigration reform right now (in addition to foreshadowing how immigration was later discussed during the 2024 presidential election). See Kelly Garrity, *Trump Throws Cold Water on Border Bill – Again*, POLITICO (Feb. 5, 2024), <https://www.politico.com/news/2024/02/05/border-bill-trump-00139584> [<https://perma.cc/72S3-3RS8>] (quoting then-former President Trump as declaring that “[o]nly a fool, or a Radical Left Democrat, would vote for this horrendous Border Bill”).

234. See, e.g., Kaste, *supra* note 228 (discussing the potential consequences of the Trump administration’s push to enlist local law enforcement agencies to assist in its mass deportation efforts).

235. For more on the backlog, see Andrew Kreighbaum, *Immigrant Crime Victims Struggle as Special Visa Delays Mount*, BLOOMBERG L. (Apr. 19, 2023), <https://news.bloomberglaw.com/daily-labor-report/immigrant-crime-victims-struggle-as-special-visa-delays-mount> (on file with the *Columbia Human Rights Law Review*). For an example of litigation arising from the backlog, see Garcia v. U.S. Dep’t Homeland Sec., 25 F.4th 430, 435 (6th Cir. 2022) (concluding that plaintiffs had pleaded sufficient facts that DHS’ delaying their waitlist determinations had harmed the plaintiffs’ health and welfare to survive the government’s motion to dismiss). For more on the statutory cap and arguments in favor of lifting it, see Jason A. Cade & Meghan L. Flanagan, *Five Steps to a Better U: Improving the Crime-Fighting Visa*, 21 RICH. PUB. INT’L L. REV. 85, 90 (2018) (“Congress should upwardly revise the annual cap to more accurately reflect the number of undocumented crime victims who report serious crime each year.”); Alison J. Coutifaris, *Surviving Crime and Facing Deportation: U Visas as a Defense Against Removal in a System of Divided Agency Jurisdiction*, 36 GEO. IMMIGR. L. J. 909, 951 (2022) (“Eliminating the statutory cap would provide relief to the 286,504 U petitioners currently stuck in the backlog awaiting visa availability.”).

difficult, if not impossible.²³⁶ In *Orosco v. Napolitano*, the petitioner argued that, as a victim of trafficking who provided valuable information to law enforcement, he should have been statutorily eligible for a U Certification.²³⁷ The petitioner stated that since he satisfied the statutory prerequisites, the court should compel law enforcement to issue the certification.²³⁸ The Fifth Circuit Court of Appeals rejected that argument, finding that the decision to issue a certification is discretionary, regardless of whether the petitioner satisfies the prerequisites.²³⁹ Other courts have adopted this reasoning, and therefore it is unlikely that a lawsuit will result in a court order to sign a certification.²⁴⁰

As of the writing of this Note, neither President Trump nor any federal agency have issued any changes to the U Visa, but the field is evolving rapidly with bleak predictions for immigrants. Additionally, the anti-immigrant rhetoric across the federal government makes it unlikely that there will be any avenue for federal reform to the U Visa, which means advocates need to look towards alternative strategies to strengthen protections for noncitizen survivors of crime. As such, this Note proposes looking at state- and local-level reforms that could effectively address some of the jurisdictional discrepancies.

C. State-Level Legislative Reforms to the U Certification Process

Since it appears that applicants will be unsuccessful in suing to receive U Visa Certification and because national legislation is currently unlikely, advocates need to consider other avenues to improve the U Certification process. One possible option is to pass bills through the state legislature that provide uniform policy requirements for certifying agencies throughout the state.

236. See, e.g., *Orosco v. Napolitano*, 598 F.3d 222, 226 (5th Cir. 2010) (“We think the language of §1184(p) makes it abundantly clear that the decision to issue a law enforcement certification is a discretionary one.”).

237. *Id.* at 224.

238. *Id.* at 225.

239. *Id.* at 226–27.

240. See also *Baiju v. U.S. Dep’t of Lab.*, No. 12-cv-5610 (KAM), 2014 U.S. Dist. LEXIS 12372, at *63–65 (E.D.N.Y. Jan. 31, 2014) (“The decision to sign a U-Visa certification form is discretionary.”); *Trevino v. Benton Cnty.*, 578 F. App’x 626, 627 (8th Cir. 2014) (“Finally, we conclude that the district court did not abuse its discretion in denying Trevino’s motion for U-Visa certification.”); *Orneglas-Morales v. United States*, No. 3:15-cv-02304-SI, 2015 U.S. Dist. LEXIS 168575, at *5 (D. Or. Dec. 17, 2015) (“To the contrary, whether to sign Form I-918 is discretionary.”).

Due to the political diversity of across the United States, the strategies that advocates use to achieve these goals may differ. This solution will not rectify all geographical disparities, but it will help make the system more transparent. In some states, these solutions may increase access to the U Visa by creating more consistent and immigrant-friendly policies. In those instances, state-level solutions are a helpful approach.

However, this approach is not without its risks. One possible risk of emphasizing state-level solutions is that more conservative jurisdictions with anti-immigration policy preferences may use their state legislatures to pass laws that limit the ability of certifying officials to grant I-918B certifications.²⁴¹ Another risk is that having state-level solutions might increase geographical disparity, since it is possible that more liberal states will be the only ones to implement these types of laws. These are risks that advocates will have to grapple with as they think about how to move ahead in each jurisdiction.

To address that risk, this Section provides a variety of solutions, many of which are small steps that advocates can push to slowly improve the U Visa system in ways that are more politically palatable to conservative lawmakers. The purpose of this Section is to pull from existing legislation and propose new additions to create ideal legislation.²⁴² From there, advocates can use the pieces that they feel will be most effective in their state. While one piece of legislation may not address the whole issue, it can begin the process of reforming the U Visa Certification system at a statewide level.

241. At the time this Note was drafted, there were no states that had passed more restrictive laws for U Certifications, and it is unclear what those more restrictive laws would look like, given the level of discretion that the statute currently provides certifying officials. Despite the current lack of more restrictive statutes, it is possible that states could introduce those types of laws in response to other states passing laws to improve the U Certification system.

242. Advocacy organizations have already been working to create resources to support advocates in passing bills at the state level. For example, the Catholic Legal Immigration Network has put together model legislation and a checklist for advocates to use in passing an effective bill. *Drafting U Visa Certification Laws: 10 Essential Points to Include in an Effective Bill*, CATH. LEGAL IMMIGR. NETWORK, INC., <https://www.cliniclegal.org/sites/default/files/2022-04/Model%20Language%20For%20Drafting%20A%20U%20Visa%20Certification%20Bill.pdf> [https://perma.cc/82KZ-YFWQ]. This Note builds upon the ideas already presented in these documents.

As of 2023, fifteen states across the political spectrum have enacted laws regarding U Visas.²⁴³ These laws typically require law enforcement agencies to develop clear protocols for the U Certification process.²⁴⁴ These protocols address multiple elements of the certification process, including imposing time limits for responding to requests, establishing written procedures to respond to requests, implementing a helpfulness presumption, and creating clear standards for how certifying officers within the state respond to requests.²⁴⁵

1. Transparency

One of the major issues with the current U Certification process is the lack of transparency. Advocates should push for legislative changes to make the application and deliberation process more transparent.²⁴⁶

The first way to make the process more transparent is to require law enforcement agencies to create a written policy on how they approach U Certifications. While this may seem like a basic change, neither the legislation nor the federal rules require certifying agencies to develop a policy.²⁴⁷ As a result, certifying agencies only have a clear policy if they have chosen to create one or if their state requires them to have one.²⁴⁸ Those policies should be easily available

243. KAMHI & LAKHANI, *supra* note 24, at 3–5. This chart contains seventeen states, but two of them are only focused on T visas. *Id.* at 3–4. Additionally, there are four states whose laws apply to both U and T Visas, but only in instances of trafficking. *Id.* at 3, 5. While those are included in the fifteen mentioned above, they will only be relevant to individuals who apply for a U Visa related to trafficking.

244. See, e.g., DEL. CODE ANN. tit. 11, § 787(n) (West 2024) (establishing a law enforcement agency protocol for certification requests); MONT. CODE ANN. § 44-4-1503 (West 2023) (same); N.D. CENT. CODE ANN. § 12.1-41-18 (West 2023) (same).

245. For a comprehensive breakdown of how these state laws approach each of these issues, see KAMHI & LAKHANI, *supra* note 24, at 3–5.

246. This Note will not address every possible solution for promoting a transparent U Certification process. Instead, it will focus on key issues revealed by the case studies discussed in Part II, *supra*.

247. For details on what is included in the regulations and what is not, see *supra* Sections I.B.2, I.C.1.

248. It is difficult to find a comprehensive list of certifying agencies that do not have a policy. In 2013, the National Immigrant Women's Advocacy Project conducted a mass survey which asked legal advocates to report reasons given for certification denials. NATALIA LEE ET. AL., NAT'L IMMIGRANT WOMEN'S ADVOC. PROJECT, NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO

to the public and should contain both the statutory criteria and any additional discretionary criteria that the agency uses to determine eligibility.

Second, legislation should require certifying agencies to respond to U Certification requests within a specific time frame. Implementing a clear time frame for turning around certification requests will increase accountability for certifying officials and help clarify the process for applicants and advocates.²⁴⁹ Multiple states across the political spectrum have passed legislation that requires certifying officers to respond to requests within a certain period.²⁵⁰ The time frame varies across states, with some providing a specific number of days and others using language like “expeditiously” or “as soon as practicable.”²⁵¹ Additionally, multiple states have pathways

IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION AND LANGUAGE ACCESS 13–14 (2013), <https://www.masslegalservices.org/system/files/library/Police%20Response%20U%20Visas%20Language%20Access%20Report%20NIWAP%20%204%2016%2013%20FINAL.pdf> [<https://perma.cc/S2WN-GGU7>]. In that survey, about 2.3% of the responses indicated that their request was denied because the agency had no policy. *Id.* at 14 tbl.1. The report does not provide details regarding which agencies lack that data.

249. Transparency in law enforcement agencies helps build trust with the community and allows both survivors and advocates to hold law enforcement accountable for the standards that they set. *See* OPPORTUNITY AGENDA, TRANSFORMING THE SYSTEM 67–76, 90 (2016), <https://transformingthesystem.org/pdfs/Transforming-The-System-CJReport.pdf> [<https://perma.cc/E4KH-T4TN>] (explaining how transparency and accountability in law enforcement and prosecution can improve the criminal prosecution system). For survivors of crime, uncertainty about the status of their case, especially when it relates to something as sensitive as their immigration status, can exacerbate the trauma of the underlying experience. For more on this, see VICTIM SUPPORT, LEFT IN THE DARK: WHY VICTIMS OF CRIME NEED TO BE KEPT INFORMED 12 (2011), <https://www.victimsupport.org.uk/wp-content/uploads/documents/files/Left%20in%20the%20dark%20-%20why%20victims%20of%20crime%20need%20to%20be%20kept%20informed.pdf> [<https://perma.cc/9FND-Y2SD>].

250. ARK. CODE ANN. § 12-19-104(b) (West 2025); WASH. REV. CODE ANN. § 7.98.020(3) (West 2024).

251. *See* CONN. GEN. STAT. ANN. § 46b-38b(g)(5)(A) (West 2023) (requiring applications to be processed “expeditiously”); DEL. CODE ANN. tit. 11, § 787(n) (West 2024) (requiring applications to be processed “as soon as practicable”); CAL. PENAL CODE § 679.10(j)(1) (West 2024) (requiring certifications to be processed within thirty days); 5 ILL. COMP. STAT. ANN. 825/10(d) (West 2024) (requiring certifications to be processed within ninety days).

for individuals who are in removal proceedings to request expedited review.²⁵²

When thinking about the time frame that should be included in the proposed legislation, advocates should take into consideration the political climate in their area and the willingness of certifying agencies in that area to cooperate in the U Certification process. The ideal time frame would be thirty days, with the ability to request expedited review for certain individuals.²⁵³ The thirty days would give law enforcement officers a sufficient amount of time to assess the request, while ensuring that undocumented survivors of crime are not stuck in limbo longer than necessary.

For states where it may be difficult to pass a thirty-day deadline, advocates could look at the approach taken by the NYPD, which implements a forty-five-day time frame, with the option to extend to ninety days for more complicated requests.²⁵⁴ Under that policy, in instances where the full ninety days are required, the certifying official is required to inform the applicant of the delay.²⁵⁵ Then, if it is going to take longer than ninety days, the certifying agency must give the applicant notice of further delay.²⁵⁶ This approach promotes transparency while recognizing the resource constraints that may impact the response time.

Advocates should avoid legislation that includes language like “as soon as practicable” or “expeditiously.”²⁵⁷ That language is not specific enough to provide the applicant any insight into how long the process will take and makes it more difficult for advocates to call out certifying officials for taking too long when there is no concrete guideline.

Third, advocates should push for policies and legislation that require certifying officials to provide a detailed reason as to why they denied the certification request and an opportunity to appeal the

252. MD. CODE ANN., CRIM. PROC. § 11-931(d)(2) (West 2024); NEV. REV. STAT. ANN. § 217.585 (West 2025); 5 ILL. COMP. STAT. ANN. 825/10(d)–(e).

253. Thirty days is an appropriate time frame since it gives certifying officials enough time to conduct any required research but will not unnecessarily drag out the process for victims of crime who may already have been traumatized by their interactions with the criminal legal system.

254. NYPD PG PROC. NO. 207-37, *supra* note 150, at 4.

255. *Id.*

256. *Id.*

257. *See, e.g.*, CONN. GEN. STAT. ANN. § 46b-38b(g)(5)(A) (West 2023) (requiring applications to be processed “expeditiously”); DEL. CODE ANN. tit. 11, § 787(n) (West 2024) (requiring applications to be processed “as soon as practicable”).

decision. Certifying agencies across the country have begun requiring certifying agents to provide explanations for denials and allowing for the opportunity to resubmit after a request is denied.²⁵⁸ It is unclear how detailed those explanations need to be, but moving forward, states should pass laws mandating that a minimum amount of information be included in a denial. This minimum should include an explanation of which element of the policy the applicant did not satisfy, whether the applicant lacked the evidence to prove their claim, or if there were other reasons that the agency denied the certification request. This explanation is an especially important protection for pro se applicants, who may not fully understand the U Certification process. If those applicants are denied and understand why, they may be able to submit a more compelling request with more detailed evidence.

Fourth, legislation should require certifying agencies to report and publicize their U Certification data. While there are pieces of state-level legislation that already require reporting and some law enforcement agencies that do it voluntarily, not every certifying agency has data available on their U Certification rate.²⁵⁹ For example, while the Mayor's Office of Immigrant Affairs in New York City publishes its U Certification data annually, the DPD requires individuals to submit Open Records requests to obtain U Certification data.²⁶⁰ Having access to the number of requests, grants, and denials each year gives advocates and applicants a better understanding of how likely they are to succeed in obtaining U visa certifications.²⁶¹ It would also help certifying agencies address backlogs in the system.

258. In California, the penal code requires that a certifying official provide a written denial with detailed explanations for why the certification was denied. CAL. PENAL CODE § 679.10(i)(2) (West 2024). Other states that require a written explanation of why a certification was denied include Rhode Island. 11 R.I. GEN. LAWS ANN. § 67.1-22(b) (West 2024).

259. California requires law enforcement agencies to report to the legislature annually regarding the number of certification requests received, signed, and denied. CAL. PENAL CODE § 679.10(n).

260. For a discussion on the U Certification data of the New York and Dallas Police Departments, see *supra* Part II.

261. For more on the relationship between data and law enforcement agency accountability, see Andrew Guthrie Ferguson, *The Exclusionary Rule in the Age of Blue Data*, 72 VAND. L. REV. 561, 568–69 (2019) (arguing that the time has come to think about how we can use data to promote accountability).

2. Substantive Reforms

Beyond improving transparency, other legislative changes can be implemented to help ensure that the U Certification process is meeting the legislative intent of the U Visa. These are changes that may be more difficult to pass in states with more anti-immigrant sentiments but would be an important step in making the U Certification process more just.

First, state legislatures can address the vagueness of the “helpfulness” requirement.²⁶² The language in the U Visa statute is vague in defining helpfulness, and therefore certifying agencies have attempted to implement different procedures to determine what being helpful means.²⁶³ Some federal agencies have merely parroted the requirements established by federal law. For example, the DHS guide explains that someone is helpful if they were assisting, are assisting, or are likely to assist law enforcement in the prosecution of the qualifying criminal activity of which they were a victim.²⁶⁴ Other agencies have interpreted helpfulness beyond what is required by the statute.²⁶⁵

To combat this issue, states should issue clear guidance on what can be considered helpful. States should make it clear that an individual can be helpful even if charges were never filed or where there was no prosecution or conviction.²⁶⁶ Additionally, states can create a “rebuttable presumption” that the victim meets the helpfulness requirement if there is no evidence that the victim

262. See New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53019 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299) (discussing the statutory language of the helpfulness requirement).

263. See Mickelson, *supra* note 127, at 1467–73 (analyzing the flaws of the helpfulness requirement).

264. DHS, U VISA ENFORCEMENT GUIDE, *supra* note at 41, at iii.

265. For example, some agencies have misinterpreted the statute as prohibiting officers from considering a person as helpful if the crime is no longer under investigation. See Mickelson, *supra* note 127, at 1467–68 (discussing the problems with the helpfulness requirement that can lead to different interpretations of helpfulness by certifying agencies).

266. For examples of states that have enacted such provisions, see CAL. PENAL CODE § 679.10(k)(1) (West 2024); NEV. REV. STAT. ANN. § 217.580(3) (West 2025); WASH. REV. CODE ANN. § 7.98.020(4) (West 2024); MD. CODE ANN., CRIM. PROC. § 11-931(e) (West 2024).

refused or failed to provide information and assistance reasonably requested by law enforcement.²⁶⁷

Second, state legislatures could require agencies to grant certification if the individual meets the statutory eligibility requirements in the U visa legislation.²⁶⁸ This requirement may be one of the hardest changes to implement since it would take away the discretionary power of certifying agencies. In Illinois, S.B. 34 requires certifying agents to sign the I-918B unless the certifier cannot determine that the individual was the victim of a qualifying crime.²⁶⁹ Alternatively, states can implement regulations that ban common reasons for denial, including refusing to certify because of a lengthy delay between the crime and the request or the lack of an open investigation into the underlying crime.²⁷⁰ By eliminating those extra-statutory requirements, states will be more likely to adhere to the listed statutory requirements and thus remove unnecessary obstacles in the U Certification process.

Finally, advocates should push for states to implement a policy of allowing individuals to report agencies that do not appear to be complying with the implemented rules. This policy is an essential step in creating a more equitable U Certification process, since even in states that have implemented favorable policies, there are still instances of certifying agencies refusing to comply.²⁷¹ While it may be difficult to pass a bill that contains consequences for certifying agencies, a reporting mechanism that publicizes failed compliance

267. For examples of state statutes establishing such a presumption, see CAL. PENAL CODE § 679.10(h); NEV. REV. STAT. ANN. § 217.580(4).

268. See New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53016–20 (proposed Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299) (providing a detailed overview of the statutory requirements).

269. 5 ILL. COMP. STAT. ANN. 825/10(d), 825/11(a) (West 2024).

270. See, e.g., NEV. REV. STAT. ANN. § 217.580(3) (prohibiting certifying officials from considering the “period of time between when the petitioner was victimized . . . and when the petitioner submitted his or her request for certification” or whether there is an active investigation or prosecution); MD. CODE ANN., CRIM. PROC. § 11-931(e) (providing that “[a] current investigation, the filing of charges, a prosecution, or a conviction is not required” to obtain an I-918B certification).

271. Carlos Ballesteros, *Chicago Police Denied Scores of Undocumented Crime Victims a Path to Citizenship*, INJUST. WATCH (Dec. 8, 2022) [hereinafter Ballesteros, *CPD Denied Scores of Undocumented Crime Victims*], <https://www.injusticewatch.org/news/immigration/2022/chicago-police-u-visa-denials/> [<https://perma.cc/KZR9-EKMD>] (reporting problems with the way that the Chicago Police Department handles U Visas).

may generate sufficient public pressure to create change.²⁷² For example, the non-profit newsroom Injustice Watch released a report in December 2022 explaining how the Chicago Police Department denied U Certification requests at odds with both federal standards and state law.²⁷³ The reporting led to an investigation by the Illinois Attorney General and a new Chicago Police Department Directive creating a detailed policy on the U Certification standard.²⁷⁴ While the investigation and directive did not immediately solve the problem, they created public pressure that will hopefully improve the system in the long term.

Increasing transparency in the application process and formalizing a complaint process will help hold certifying agencies accountable for respecting the intention of the U visa statute. This process could be formalized through statute, or Attorneys General in each state could create a hotline to accept claims.²⁷⁵

CONCLUSION

The discretionary nature of the certification for the U Visa has resulted in an uneven application of a form of immigration relief that, when properly implemented, can both protect noncitizen survivors of crime and assist law enforcement in making communities safer. There are few avenues for reform, due to the inability to challenge denied certifications in court and congressional gridlock,

272. Recall that the NYPD Department of Investigations Report on U Visa Certification brought attention to the flaws in the NYPD U Certification system and helped push the NYPD to make improvements. This is the type of report that other cities could emulate to build public pressure to bring about change. For a discussion about the DOI's report and its impacts on the NYPD's practices, see *supra* Section II.B.1.c.

273. Ballesteros, *CPD Denied Scores of Undocumented Crime Victims*, *supra* note 271.

274. Carlos Ballesteros, *Illinois AG Investigating Chicago Police Over Handling of U Visas*, INJUST. WATCH (Feb. 6, 2023), <https://www.injusticewatch.org/news/immigration/2023/u-visa-attorney-general-investigation/> [https://perma.cc/J6NJ-NL4C] (discussing the investigation conducted by Attorney General Kwame Raoul); *T Visa and U Visa Certification Directive*, CHI. POLICE DEP'T (Feb. 8, 2023), https://home.chicagopolice.org/draft_policy/t-visa-and-u-visa-certification-directive/ [https://perma.cc/5HGH-FV5X].

275. However, these types of reforms may face a variety of legal obstacles. Particularly with respect to the reforms which limit the discretionary power of the certifying agencies, one question is whether an agency could sue a state for trying to force them into a standardized U Certification process, which they could plausibly argue is contradictory to the language of the federal statute.

but there is still hope at the state or local level. Advocates should push for state legislatures to pass bills that increase transparency across certifying agencies in the state and implement substantial reforms to make the process more effective for applicants. While every reform may not be possible in each state, the legislative elements in this Note provide an array of options for advocates to push certifying agencies to actualize the admirable intent behind U Visas.