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IMMIGRANT CRIME FIGHTERS

How the U Visa Program Makes US Communities Safer



Immigrant Crime Fighters

How the U Visa Program Makes US Communities Safer

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Summary

I am forever grateful he is a member of my community.

—Colorado prosecutor Heidi McCollum, speaking of the crime-fighting courage shown by undocumented immigrant Alan Gonzalez, November 28, 2017

US President Donald Trump launched his campaign for president in 2015 promising a major crackdown on undocumented immigrants, whom he characterized as “bringing crime” and as “rapists.” As president, Trump has continued to denigrate undocumented immigrants in similarly alarmist terms despite studies showing they are less likely to commit crime than people born in the United States. What has been absent from the discussion about immigrants and crime are the stories of the many courageous immigrants, such as those featured in this report, who have stepped forward in the fight against crime.

Immigration protections exist in US law that have been crucial to police and prosecutors’ ability to effectively fight crime. This report focuses on recipients of the U visa, which exists to ensure that immigrants who assist in the investigation or prosecution of violent crimes are protected from deportation. Many intervene to stop crimes or assist police at grave personal risk.

Two such courageous immigrants whose stories are detailed below are Alan Gonzalez and Linda Mendoza. The former was shot and seriously wounded when he intervened to stop the armed robbery of a store owner he barely knew. The latter, Mendoza, a victim of an armed robbery herself, called police and then provided critical information that led to the arrest and successful prosecution of the perpetrators when other witnesses were afraid to come forward. Both were undocumented at the time and risked deportation to take a stand against crime.

The U Visa Program

The U visa was created with strong bi-partisan support as part of the reauthorization of the Violence Against Women Act (VAWA) in 2000, the follow up to landmark legislation that encompasses Congress’ efforts to address and prevent gender-based violence. Congress

recognized that immigrant women are especially susceptible to violence and that a significant number of women suffering violence stay in abusive relationships because of fear of being reported to immigration authorities.

To address this problem, Congress created immigration protections to ensure that undocumented women and children would no longer be tethered to abusers because of their immigration status. They could instead apply for a “U visa” which confers a legal status called “nonimmigrant status,” and protects immigrants against deportation if they were willing to help in the investigation or prosecution of certain crimes. This important protection also covers victims (men and women) of other violent or coercive crimes, such as trafficking and sexual violence. A similar program, the T visa, was introduced at the same time and allows victims brought to the US for sex or labor trafficking to come forward without fear of punishment.

In researching this report, Human Rights Watch spoke not only to immigrant victims of crime, lawyers, and experts, but to more than a dozen law enforcement officials from Arizona, California, Colorado, North Carolina, and Texas, all of whom told us the U visa has been an essential tool in strengthening relationships with immigrant communities and ensuring public safety. They emphasized that effective crime-fighting requires that all members of the community are comfortable reporting crimes to the police.

If an immigrant victim fears coming forward, police officers and prosecutors noted, perpetrators remain free to commit crimes against others in the community. Even if the perpetrator cannot immediately be apprehended, reports of criminal activity help police understand exactly where crime is occurring, allowing for informed decisions about where to deploy resources. Several emphasized that information provided by undocumented victims or witnesses on dangerous criminal activities has a ripple effect that makes the whole community safer.

Denver City Attorney Kristin Bronson said, “U visas are a very important tool to keep people involved in the system and it enhances the trust of the community in law enforcement.”¹ Other prosecutors and police officers described the visas as “crucial” and “essential” to their work, and lamented the fact that they are not more widely available. Several

¹ Human Rights Watch interview with Kristin Bronson, Denver City Attorney, January 24, 2018.

emphasized that the program strengthens communities by embracing those who are willing to make sacrifices to benefit others.

There is a tight nationwide cap on U visas, 10,000 a year, creating a years-long backlog in the application process. An administrative tool that immigration judges can use to put deportation proceedings on hold while U visa applications are adjudicated has been put in jeopardy by a 2018 Department of Justice decision. This uncertainty about status while waiting for visa approval takes a significant toll on the applicants: they may endure severe economic hardship before they receive work authorization and be forced to rely on an abusive partner in order to survive. They may become more vulnerable to labor or sex trafficking. And, abusers, perpetrators of crimes or their associates may threaten to turn victims or witnesses in to immigration authorities while their visa status is in limbo.

Many of the victims whose experiences are recounted in this report are women who suffered sexual and other physical assault. Undocumented victims have helped bring to justice serial rapists and other repeat criminals. Some have intervened in crimes underway to protect innocent victims from harm. They have stepped forward at risk to themselves to provide evidence that has led to the prosecution of individuals who might have gone on to commit new crimes against citizens and non-citizens alike. Without them, American society would be less safe.

With the renewal of VAWA on the horizon, Congress should preserve this important program. It should also seriously consider expanding it to protect immigrant victims and witnesses of a broader range of violent crimes, and should consider raising or removing the cap on the number of visas, or at least allowing unused U or T visas each year to be carried forward to help eliminate the U visa backlog.

Two Immigrant Crime Fighters

Alan Gonzalez

On September 4, 2014, in the small town of Gypsum, Colorado, 23-year-old construction worker Alan Gonzalez stopped by a local store where he was a regular only to discover an

armed robbery in progress. Gonzalez was incensed to see the store owner being held at gunpoint. He thought “What if this happened to my mother or sister?”²

Rather than turn away, Gonzalez tried to stop the crime. When he confronted the robbers, one pointed a fully loaded 9 mm handgun at his forehead and told him not to call the police. Gonzalez told the robbers repeatedly to calm down. Eventually the gunman and his accomplice fled, but Gonzalez ran after them to prevent their escape. He quickly caught the gunman and put him into a headlock. During the ensuing struggle, Gonzalez was shot twice. He nonetheless continued to wrestle with the gunman. After Gonzalez was shot a third time, the gunman was able to run away—but Gonzalez was so determined to stop the suspect that he chased him until he realized he was covered in his own blood and collapsed on the sidewalk.

At the hospital, doctors found Gonzalez had been shot through his hand, his armpit, and very close to his heart. Miraculously, he survived and became a star witness for the prosecution. The prosecutor said had Gonzalez not chased down the robbers, they might never have been caught. Moreover, Gonzalez was able to identify and testify against not only the shooter, but three others who had been involved in planning what turned out to be a failed crime spree. Approximately a half hour before robbing the Gypsum store, the suspects had attempted to rob a check cashing store in the neighboring town of Eagle. Police had been unable to identify one of the suspects in the video from that robbery. While attending a sentencing hearing for the Gypsum case, Gonzalez happened to see the video of the Eagle robbery and, to the prosecutor’s surprise, identified the third person who had assisted in the planning and commission of the robberies.

Gonzalez is an undocumented immigrant from Mexico who had been working in the United States for a year at the time of the robbery. At any time, he could have decided it was in his best interest to disappear rather than draw attention to himself by trying to stop a crime. Yet he chose to stop a robbery and cooperate with law enforcement, putting his own life, and his life in the United States, at risk.

Gonzalez’s testimony ultimately resulted in the convictions of four defendants who were handed down prison sentences ranging from two to 42 years. The court and prosecutor

² Human Rights Watch telephone interview with Alan Gonzalez, November 29, 2017.

hailed him as a “hero.”³ The prosecutor who handled the case, Heidi McCollum, said of him: “Alan has all the respect in the world that I could have for another person. I am forever grateful he is a member of my community.”⁴ Police in town nicknamed him “Superman” since he continued to chase the suspects after being shot in the chest.

McCollum has helped ensure that Gonzalez can stay a member of her community by certifying his application for a U visa. In the application for Gonzalez, McCollum wrote “I grew up in Eagle County and attended the high school two blocks from this shooting. My parents, ages 75 and 84, have been in this community for 49 years. I would be proud to have Mr. Gonzalez living next door to my parents, knowing that this young man is literally willing to take a bullet for a complete stranger he knows is being victimized.”⁵

Linda Mendoza

Linda Mendoza was 22 years old and four months pregnant when she fell victim to a crime in 2010. She was just opening her beauty salon in East Oakland when a gunman pointed his gun at her belly and demanded cash. Mendoza, who had been brought to the United States from Mexico when she was four and was undocumented, was terrified and called the police after the gunman took the money and fled. A customer in the salon at the time ran out before the police arrived. Her employee, who also witnessed the crime and was undocumented, was afraid to talk to police.

But Linda wanted the perpetrators off the streets and felt they should face consequences for their crimes. Her family and co-workers were skeptical and asked if she knew what she was doing. They were concerned that interacting with police would put her at risk.

Months later, her grandmother was on a bus and mentioned the robbery to someone who told her to go to a women’s legal center for advice, which is where Mendoza found out about the U visa. With U visa in hand, Mendoza has since encouraged other crime victims to come forward and continues to assist law enforcement herself.

³ Form I-918 Supplement B, U Nonimmigrant Status Certification for Alan Gonzalez, comments in supplement by Heidi McCollum, on file at Human Rights Watch.

⁴ Human Rights Watch telephone interview with Asst. District Attorney Heidi McCollum, November 28, 2017.

⁵ Ibid.

Due to Mendoza's testimony in her own case, not only was the gunman arrested and convicted, but so was his accomplice; both had previously robbed several other stores in the neighborhood but people had been too afraid to report them. When Mendoza later witnessed the robbery of an ice cream cart outside her salon, she chased the robber down the street in her car until he ran into a McDonald's. She provided a description to police and awaited their arrival so she could identify him. He was arrested.

Since obtaining the U visa, Mendoza has earned a degree in psychology. Before this happened, she did not think it was worth it to study because she would not have been able to practice as a therapist without legal status. She is "so grateful that something so bad was able to bring something positive to her."⁶

Protecting people like Alan Gonzalez and Linda Mendoza from deportation benefits everyone in the community, citizens included. Prosecutors and police officers have many other stories of courageous undocumented immigrants whose testimony has ensured that murderers, rapists, human traffickers, and armed robbers were prosecuted successfully. Often perpetrators were repeat offenders only apprehended because undocumented witnesses were willing to come forward, despite personal risks.

As Denver Chief Deputy Prosecutor Song said: "The people who come forward to cooperate with law enforcement to make their communities safer are exactly the kind of people we want to protect and keep in the country."⁷ Additionally, protecting people like Gonzalez and Mendoza from deportation sends a message to the immigrant community that they can come forward to assist in the investigation or prosecution of crimes without fear of being turned over to immigration authorities for deportation. It also sends the message to would-be criminals that they cannot prey on undocumented immigrants with the expectation that these victims will be too afraid to intervene or report crime to authorities.

⁶ Human Rights Watch telephone interview with Linda Mendoza, January 21, 2018.

⁷ Human Rights Watch telephone interview with Michael Song, Denver District Attorney's Office, and Scott Snow, Denver Police Department, January 29, 2018.

Methodology

This report is based primarily on 72 in-person and telephone interviews conducted between April 2017 and May 2018 with crime victims, witnesses, attorneys, and law enforcement officials. It also draws on court documents, material provided by interview subjects, and published sources. We conducted interviews with 18 law enforcement officials (including police, prosecutors, city attorneys, and witness advocates) in Arizona, California, Colorado, New York, Texas, and North Carolina, and with eight victims of crimes including attempted murder, attempted rape and rape, assault with a deadly weapon, and robbery. In addition, we spoke with several immigration attorneys and with immigration and criminal justice experts.

Most interviews were conducted individually, in private, and in English. One interview was conducted in Spanish with the assistance of an interpreter. On two occasions, we spoke by telephone with two law enforcement officials from the same city at the same time. No interviewee received compensation for providing information.

In three instances, we have used pseudonyms to protect the identity of interviewees given the sensitive nature of the information they provided; in such cases we have noted our use of pseudonyms in the relevant citations. We identified many of our interview subjects through chain referrals, often starting with referrals from immigration attorneys.

Background: U and T Visas and the Violence Against Women Act

The acute vulnerability to violence of women and children who rely on abusers for immigration status came to Congress' attention in 1994. To ensure that abusers could not use the risk of deportation to lock immigrant women and children into abusive relationships, Congress created a "self-petition" mechanism as part of the first Violence Against Women Act. In this way, immigrants who experienced violence and were married to US citizens or legal residents were allowed to apply for legal status on their own without having to depend on their partner to apply for them. Having legal status allows victims to work lawfully and therefore gain financial independence. Financial dependence is a significant barrier for reporting abuse, seeking supportive services, or leaving an abusive home.

In response to pressure from victim advocates and law enforcement who were concerned about their ability to detect and investigate crimes in their communities, Congress expanded the protections for immigrant victims a few years later. A category of visas for immigrants (or "alien victims" as referenced in the statute) who collaborate with law enforcement in the the fight against crime originated in the Victims of Trafficking and Violence Prevention Act, which was part of the reauthorization of VAWA in 2000.

The creation of this visa, known as the "U visa," allows victims to go to law enforcement without fear that reporting will result in deportation. Unlike for self-petitioners, no formal relationship with the abuser is required as long as the victim cooperates in the investigation or prosecution of certain crimes, allowing trafficking victims and victims of sexual assault and other crimes to safely go to police even if they do not know their attacker.

When crime victims are at risk of deportation, they are much less likely to report the crimes as doing so can lead to removal which may entail separation from their families, loss of livelihood, and return to dangerous conditions or extreme hardship in their country of origin. Before the U visa, some perpetrators benefitted from this vulnerability, becoming

effectively immune from prosecution, and there was little prosecutors could do about it no matter how compelling the case.⁸

Congress also voted unanimously to create protections for those brought to the US because of trafficking as part of the 2000 Act.⁹ Congress was concerned that efforts to combat trafficking were falling short, in part because undocumented trafficking victims are “repeatedly punished more harshly than the traffickers themselves,” even if they were brought to the United States by force, fraud, or coercion.¹⁰ Human traffickers, like other types of abusers, were able to exploit that fear of deportation to entrap and silence victims. In explaining the purpose of the new visa category for trafficking victims, Congress described vulnerabilities that apply to many immigrants without legal status:

Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.¹¹

Congress initially included 26 qualifying criminal activities that could be the basis of a U visa. Congress recognized that immigrant women and children can be and are targeted for many crimes in addition to domestic violence,¹² noting that “All women and children who are victims of these crimes committed against them in the United States must be able to

⁸ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1502 (a)(1) and (2) (2000), <https://www.state.gov/documents/organization/10492.pdf> (accessed June 18, 2018). Hereinafter referenced as “Trafficking Victims Protection Act”.

⁹ 22 U.S.C. §7101 (b)(20) (2000), <https://www.law.cornell.edu/uscode/text/22/7101> (accessed June 18, 2018). Other immigration provisions allow victims to gain legal status independent of an abusive spouse.

¹⁰ Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat. 1467 (2000); 22 U.S.C. §7101 (102) (b)(2) and (b)(17) (2000).

¹¹ Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat. 1486 (2000); 22 U.S.C. §7101, 102(b)(20) (2000).

¹² This was later expanded in VAWA 2013 when Congress added stalking and fraud in foreign labor contracting as qualifying crimes. Furthermore, the U visa statute provides that US Citizenship and Immigration Services (USCIS) can consider any similar activity to one of the enumerated crimes or attempt, conspiracy, or solicitation to commit one of the listed crimes. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 211, 101(a)(15)(U)(iii) (1965).

report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.”¹³

In addition to facilitating reporting, Congress emphasized that “[p]roviding temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.”¹⁴ Permitting victims to remain in the US allows them to be protected from their abusers, receive counseling, and remain with their family after a traumatic event.

A primary purpose for creating this immigrant visa classification, other than humanitarian concerns, was to strengthen law enforcement’s ability to investigate and prosecute serious crimes by protecting undocumented victims who cooperate with law enforcement, so they will not be at immediate risk of deportation while the investigation and prosecution is taking place.¹⁵ Congress also intended the law to strengthen relations between police and immigrant communities.¹⁶

Despite these many reasons for ensuring protections for immigrant victims and witnesses to crime, the U visa program is narrow and does not embrace all those who might put themselves at risk by cooperating with law enforcement. U visas are not easy to obtain even for those who are eligible to apply.

An immigrant must meet a number of criteria to be eligible for a U visa. The applicant must be a direct victim or the immediate relative of an incapacitated or incompetent victim of an enumerated crime.¹⁷ . The now 28 qualifying crimes include rape, torture, trafficking,

¹³ Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat. 1513(a)(1)(B) (2000); Louis F. Quijas and January Contreras, “Department of Homeland Security Releases U Visa Law Enforcement Certification Resource Guide,” post to “The White House: President Barack Obama” (blog), January 3, 2012, <https://obamawhitehouse.archives.gov/blog/2012/01/03/departments-homeland-security-releases-u-visa-law-enforcement-certification-resource-> (accessed June 18, 2018).

¹⁴ Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat.1513 (a)(2)(B) (2000).

¹⁵ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force January 3, 1976, ratified by the United States on June 8, 1992, art. 26, <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (accessed June 18, 2018).

¹⁶ Department of Homeland Security, “U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies,” n.d., https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf (accessed on June 18, 2018).

¹⁷ An “indirect victim” may also be eligible to petition for a U visa. Indirect victims include family members where the direct victim under 21 or is deceased due to murder or manslaughter or is incompetent or incapacitated and therefore unable to

incest, domestic violence, manslaughter, murder, felonious assault, witness tampering, obstruction of justice and/or perjury,¹⁸ kidnapping, abduction, peonage, prostitution, sexual exploitation, and extortion. A victim applying for a U visa must obtain certification from a certifying agency or official (such as a district attorney’s office, the police, a judge, or other agency investigating or prosecuting the criminal activity, such as the Department of Labor, the Equal Employment Opportunity Commission, or child or adult protective services) confirming that a qualifying crime occurred, that the victim has information about the criminal activity, and that the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. The official providing the certification must be the head of the agency or another authorized supervisor. However, law enforcement or other agencies are not legally required to certify any applications and may decide whether or not to sign in accordance with their own policies, regardless of the strength of the application.¹⁹ Departments and agencies vary significantly in their approach to certification, including whether they choose to certify at all. Officials we interviewed who are responsible for certification in their agencies described multiple checks against fraud, as discussed further below.

In addition to certification, applicants must also show they have suffered significant physical or mental abuse as a result of having been a victim of criminal activity and they must be otherwise “admissible” to the United States.

When the application comes before United States Citizenship and Immigration Services (USCIS), immigration authorities with specialized training in VAWA and fraud conduct a thorough review of the entire application, including the petition, certification, and the victim’s affidavit, as well as supporting evidence such as police reports, medical records, photographs, court documents, and witness affidavits. As part of the review, USCIS may contact the certifying agency to ask if the victim has continued to provide assistance or may ask questions based on information in the application. USCIS also conducts a

provide information concerning the criminal activity. Family members must also meet other criteria for the U visa. 8 C.F.R. 214.14(a)(14); Police departments we spoke to said that witnesses to murder or manslaughter were considered indirect victims eligible for U visas when their testimony was important for prosecution.

¹⁸ Perjury or obstruction of justice could include making false representations on Department of Labor forms about working conditions in an application for a guest laborer, falsifying wage or hour records, instructing a worker not to speak to investigators, or threatening them if they make a complaint.

¹⁹ *Catholic Charities CYO v. Chertoff*, 622 F. Supp.2d 865, 887 (N.D. Cal. 2008) (holding that there is no statutory directive to law enforcement officials to issue law enforcement certifications.); Department of Homeland Security, “U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies,” n.d., https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf (accessed on June 18, 2018).

thorough background investigation of all applicants and their qualifying family members, including conducting an FBI biometric data and name check to determine whether the applicant has a criminal history, immigration violations, or raises any security concerns. The result of these checks, and any other evidence that certifying officials possess, may result in the denial of a visa.²⁰ Between 2012 and 2017, UCSIS reviewers rejected 20 percent of U visa applicants.²¹

If the application is approved, and a visa is available, the victim receives work authorization and can live and work in the United States for four years. Certain family members can be included in the application as “derivatives” and may also apply for work visas if the principal applicant’s visa is approved. After three years, the U visa holder may be eligible to apply for lawful permanent residence status. Currently there are only 10,000 U visas available per year for principal applicants, far fewer than the number of applicants. For example, in 2017 USCIS received 36,531 applications.²²

The T visa is similar but is directed toward helping prosecute sex or labor trafficking. Victims are eligible for a T visa if they were brought to the US due to trafficking, have complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking, and would suffer extreme hardship if removed from the United States. As with U visa applicants, they must meet the other standards of admissibility for immigration. T visa recipients are eligible for the same benefits as refugees. Five thousand T visas are available each year, though the number of applications received is far fewer. Between 2008 and 2017, the number of applications per

²⁰ Department of Homeland Security, “U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies,” n.d., https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf (accessed on June 18, 2018).

²¹ UCSIS considered 75,712 applications between 2012 and 2017 and rejected 15,437. U.S. Citizenship and Immigration Services (USCIS), “Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status, 2009-2018,” May 2, 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr1.pdf (accessed June 13, 2018).

²² Ibid.

fiscal year ranged from 408 to 1,141.²³ The highest number of T visas approved in one year was 848 in 2013.²⁴

Though the U visa was initially created to protect women and children, in practice, the program has stretched to accommodate law enforcement's broader need to ensure victim and witness cooperation in criminal matters. Police and prosecutors now say U visa applicants are frequently victims of violent crimes enumerated under the statute other than domestic or sexual violence.²⁵

²³ USCIS, "Number of Form I-914, Application for T-Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, 2008-2018," May 1, 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2018_qtr1.pdf (accessed June 13, 2018).

²⁴ *Ibid.*

²⁵ Human Rights Watch telephone interview with Maj. Diego Anselmo and Capt. Christian Wagner, Charlotte-Mecklenberg Police Department, March 15, 2018; Human Rights Watch telephone interview with Lt. Christine Chomout, Austin Police Department, March 14, 2018; Human Rights Watch telephone interview with Robyn Withrow, Assistant District Attorney, 26th Prosecutorial District, North Carolina, April 2, 2018.

Law Enforcement Perspectives on the Utility of U and T Visa Programs

It is critically important to ensure that police are trusted by all segments of their community. As the International Association of Chiefs of Police explained in a report on immigration enforcement and policing:

Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. Because many families with undocumented family members also include legal immigrant members, this would drive a potential wedge between police and huge portions of the legal immigrant community as well. This will be felt most immediately in situations of domestic violence. For example, many law enforcement agencies have been addressing the difficult issues related to domestic abuse and the reluctance of some victims to contact the police. This barrier is heightened when the victim is an immigrant and rightly or wrongly perceives her tormentor to wield the power to control her ability to stay in the country. The word will get out quickly that contacting the local police can lead to deportation or being separated by a border from one's children.²⁶

The U and T visa programs are essential tools for police, enabling them to reassure immigrants that they will not be deported if they report crime. Law enforcement officials we spoke with described numerous ways in which the U and T visa programs helped with their work and, as a result, improved safety for the entire community. Most emphasized the immediate practical benefits of ensuring that victims are able to assist with investigations. Importantly, nearly all the officials also emphasized the longer-term benefits: when

²⁶ International Association of Chiefs of Police, *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement*, n.d., <http://www.theiacp.org/portals/o/pdfs/publications/immigrationenforcementconf.pdf> (accessed June 20, 2018).

members of vulnerable communities, particularly undocumented women who may be targeted for violence, see that others who assist police are protected and not punished, it creates greater confidence that going to law enforcement will help rather than hurt them. In this way, the U and T visa programs strengthen the safety of communities regardless of the outcome of individual cases.

Ensuring Victim and Witness Cooperation

As a practical matter, police and prosecutors we spoke with said the U and T visa programs are important tools to ensure victims are able to stay in the US long enough to testify. In addition, police interviewees said the programs help immigrants understand that it is not enough to report a crime, but that they need to continue to cooperate or assist with investigations.

For example, police in Charlotte, North Carolina, had found that prior to understanding U visa program requirements, victims would report a crime but then, especially if the crime had been committed in their home, feel uncomfortable and move but not tell the police their new address. As a result, they were sometimes impossible to find if police had a suspect they needed to identify. Police say the U visa program has helped encourage people to remain actively engaged with the investigation process.²⁷

After an arrest, the programs are also important for prosecution. Several recent cases from Colorado, detailed immediately below, illustrate how the U visa program has helped secure convictions for brutal rapes and assaults.

Because of ski season, Colorado has many seasonal workers from abroad who work in resort communities. They may be seen by perpetrators as less likely to report a crime or to cooperate with law enforcement. Bruce Brown, the District Attorney for Summit County, Colorado, described a 2016 case in which a South African woman who was temporarily in the United States was kidnapped and brutally raped over a 12-hour period. The attacker, a US citizen, had lured the victim, a stranger, into his car by asking for help, only to drive her a significant distance away and torture her in the most invasive way imaginable for over 12

²⁷ Human Rights Watch telephone interview with Maj. Diego Anselmo and Capt. Christian Wagner, March 15, 2018. Should a victim no longer cooperate, a certifying agency may withdraw or disavow certification at any time.

hours. Brown described the case as “truly every woman’s nightmare.”²⁸ The police officer who worked with the victim testified that “In my 20 or over 20-year career, this is probably one of the most horrific crimes I’ve ever seen.”²⁹

The attacker was arrested, but his prosecution depended on the woman’s testimony. Brown said “My subjective concern was that if we had not been able to support her, she may well have returned to South Africa and if she had done so, a serious sex offense might have had to have been dismissed. The defense kept continuing the case and I think it was his strategy to delay with the hope that the witness would leave.”³⁰ The case took nearly two years to prosecute. The perpetrator eventually pled guilty to second degree kidnapping where the victim is the victim of a sex offense. At sentencing, Brown described the assailant, who had had many run-ins with the law, as a threat to the local community.³¹ The victim also gave a powerful emotional statement about the many ways the assault impacted her life and relationships. The judge cited her testimony as a key factor when deciding to give the perpetrator the maximum sentence available under the plea deal, 25 years.³²

Similarly, Colorado prosecutor Heidi McCollum described a July 2017 case in which a 26-year-old Czech bartender, Elena P., who had overstayed her tourist visa, was brutally assaulted as the bar she worked in was closing for the night. Elena had come to the US to travel and work before settling down after earning her master’s degree in public health and physical education. She took the last shift bartending one night to earn some extra money before a planned return home to the Czech Republic later that month. It was then that she was attacked by a customer (a US citizen) while preparing to close the bar. A security video on the premises shows the suspect hit her with a beer bottle on her head and neck 52 times, attempted to strangle her, and slammed her head on the pool table. Elena thought she was going to be killed. She managed to run away, but as a result of the attack sustained multiple contusions, required stitches behind her ear, and had to have surgery to fix her wrist which was broken at the time of the assault.³³

²⁸ Transcript of Proceedings (Sentencing Hearing), *Colorado v. Jesse Daniel Duran*, October 12, 2017, District Court, County of Summit, State of Colorado, Case No. 2016 CR 000079, p. 7.

²⁹ *Ibid.* p. 12.

³⁰ Human Rights Watch telephone interview with Bruce Brown, Summit County District Attorney, November 30, 2017.

³¹ Transcript of Proceedings (Sentencing Hearing), *Colorado v. Jesse Daniel Duran*, October 12, 2017, District Court, County of Summit, State of Colorado, Case No. 2016 CR 000079, p. 9.

³² *Ibid.* pp. 29-30.

³³ Human Rights Watch telephone interview with Elena P. [pseudonym], May 14, 2018.

When deciding whether to go to the police, Elena said “In the beginning I was afraid because I had overstayed my tourist visa. I was a victim, but I was still worried that they would deport me.”³⁴ She went to police anyway, determined to see justice for her case and to make sure no one else was victimized by her assailant.³⁵ Although right after the incident she very much wanted to return home and see her family, she decided to delay her return in order to see the case through.³⁶ Law enforcement was concerned that if she went home, she would never return, which could be a problem as her testimony was “absolutely necessary” to prosecute the case. McCollum said “The U visa was an important tool to have to enable her to stay in the country to testify. It offered her a beacon of hope in a difficult time.”³⁷ Elena has since had multiple interviews with police and prosecutors and has attended every hearing, despite it being hard to see her perpetrator again. As the main witness, Elena said she felt a sense of responsibility to see the case through. In June 2018, Elena testified at trial and the defendant was convicted of first degree assault and attempted murder. Although she is concerned about the length of time it will take to get a U visa, she is glad to have of the opportunity to remain legally in the US despite her awful experience.³⁸

Stan Garnett, the Boulder District Attorney until January 2018, recounted the case of an undocumented victim who moved to Colorado after fleeing violence in El Salvador. She found work at a small company in Boulder that cleaned restaurants at night. Not long after, her boss started following her around while she worked alone at night and forced her to engage in sexual acts. According to Garnett, the witness testified her boss would say “If you do anything about it I am going to have you deported.”³⁹ Finally, she could not take it anymore. She made an audio recording of an assault and took the tape to police. Her boss was tried and convicted, but the case took 18 months to resolve. Garnett said the U visa was essential to enable and encourage the victim to stay here to testify and that “If not for the U visa, we are not sure she would have reported or stayed. The justice system takes time, and stability is necessary to prosecute cases.”⁴⁰

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Human Rights Watch telephone interview with Heidi McCollum, prosecutor, Eagle County, Colorado, November 28, 2017.

³⁸ Human Rights Watch telephone interview with Elena P. [pseudonym], May 14, 2018.

³⁹ Human Rights Watch telephone interview with Stan Garnett, former District Attorney, Boulder County, Colorado, December 12, 2017. Mr. Garnett returned to private practice in March 2018 after nearly 10 years as District Attorney.

⁴⁰ Ibid.

Others described the importance of visas for crime victims in human trafficking cases. Former US Attorney for Colorado John Walsh described people’s fear of contacting law enforcement as “an enormous problem” and emphasized that his “office had direct experience of T visas being crucial to people’s willingness to come forward and cooperate with prosecutions.”⁴¹

For example, Walsh described a human trafficking case in which a Colorado businessman lured Filipino nurses to the United States promising them high-paying nursing jobs. He charged them US\$6,500 to help obtain visas and required them to sign contracts obligating them to pay him \$25,000 if they left his employment. Many were deeply in debt after paying him to help with their visas. When they arrived in the US, they learned that the university where they had been led to believe they would work was non-existent, as were the promised \$72,000 a year jobs. Instead they had to apply for lower-paying hourly jobs in nursing homes. The trafficker then took 40 percent of their hourly wage and threatened to report them to the Department of Homeland Security if they did not pay him. When some women refused to pay, he did in fact inform officials that they were no longer employed at the fictitious university and their visas were revoked. Eventually some of the women worked up the courage to come forward to police. As a result of their assistance and their receipt of T visas, in 2013, the businessman was convicted of 89 counts of trafficking in forced labor, mail fraud, visa fraud, and money laundering. He was sentenced to 130 months in federal prison plus three years on supervised release and was required to pay restitution to victims. A co-defendant also pled guilty for his role in the scheme.⁴²

In California, prosecutors have found the program a crucial part of their efforts to crack down on illegal massage parlors in Alameda County. Alameda County District Attorney O’Malley agreed that “The U and T visa program is important to developing trust and encouraging people to come forward” and added that it was also an important tool for getting victims to stay in the area, which may be essential for prosecution.⁴³ She described their work focusing on illegal massage parlors that act as brothels and “may have 50 girls

⁴¹ Human Rights Watch telephone interview with John Walsh, former United States Attorney for Colorado, January 10, 2018.

⁴² U.S. Department of Justice, “Highlands Ranch Man Sentenced for Forced Labor and Trafficking in Forced Labor As Well As Other Offenses,” February 11, 2014, <https://www.justice.gov/usao-co/pr/highlands-ranch-man-sentenced-forced-labor-and-trafficking-forced-labor-well-other> (accessed June 18, 2018).

⁴³ Human Rights Watch telephone interview with Nancy O’Malley, District Attorney, Alameda County, California, February 9, 2018.

from Asia forced into sex work who thought they were going to be accountants.” The illegal massage parlor business is significant enough that law enforcement in Alameda County recovered \$1 million in cash during a raid. However, O’Malley said, “When we do a raid and the women are freed, many just want to leave as soon as possible, which could make the case difficult to prosecute. With these visas we were able to persuade a few to stay.” Going forward O’Malley indicated they were revamping their protocol to ensure that information about visas and help with housing are provided right away to encourage victims to stay in the United States.⁴⁴

On October 8, 2003, Hilda Gutierrez and her infant son went to pick up her three-year old daughter from pre-school in her neighborhood in Richmond, California. As they walked home, she noticed someone following them, but was not overly concerned after he crossed to the other side of the street. However, as she was entering her house, the man who had been following them suddenly appeared, forced his way inside and locked the door behind him. He threw her daughter on the couch, snatched her baby from her arms and then threw him next to his sister. Both children were crying and scared. He told Hilda to be quiet and that he had a gun and then proceeded to grope Hilda’s breasts. When he started to masturbate she realized the “weapon” he was concealing was a phone. At that point she started to scream and her assailant tried to flee. Hilda managed to kick him twice on his way out and chased him down the street, determined to protect her children from him.⁴⁵

Hilda was a 27-year-old unauthorized immigrant from Mexico. Until then, she, like many in her community, had kept a low profile because she feared that contact with officials could lead to deportation. This time, her fear that the perpetrator would attack someone else or her family led her to decide to risk deportation by reporting the crime to the police.

She reported her assault to police and she and her husband spread the word in the Spanish-speaking community. As a result of her efforts, another victim who had been assaulted in the same way came forward. After four visits by the police, Hilda was able

⁴⁴ Ibid.

⁴⁵ Declaration in Support of Application for U Visa for Hilda Gutierrez, on file at Human Rights Watch.

to identify her attacker. She ultimately testified in his trial. According to the police who investigated the case, “as a result of Ms. Gutierrez’s assistance, a serial rapist was arrested, convicted, and jailed.”⁴⁶

About five years after the crime, Hilda learned about the U visa program from the news and sought legal help from a local advocacy group. The police lieutenant in charge of her case was thrilled to learn about the program and he told her advocate he’d been hoping for something like the U visa for a long time, recognizing what an important tool it is to help fight crime. Together, they arranged to be interviewed on television in order to spread the word about the U visa in the immigrant community and encourage others to come forward.

Better Protections for Public Safety

Perpetrators pose a threat to the larger community. Victims are not just undocumented people—[perpetrators] also victimize other members of the community.

—Chris Magnus, chief of police, Tucson, Arizona, December 14, 2017

Encouraging all victims and witnesses to report crimes is important for everyone’s safety, whether or not they are US citizens or have legal status.

In Tucson, Arizona, which sits only 40 minutes from the border with Mexico, Police Chief Chris Magnus told Human Rights Watch that “It is very important that there is some level of protection for victims who are willing to play a role in the proceedings as it allows them to come forward.”⁴⁷

In North Carolina, Captain Wagner explained “If there are a couple individuals having a crime spree, we want to catch them. If people are not willing to come to us, crimes will continue and go unfettered. We need help from the entire community to get information we

⁴⁶ U Nonimmigrant Status Certification, I-918 Supplement B, August 31, 2007, on file at Human Rights Watch.

⁴⁷ Human Rights Watch telephone interview with Chris Magnus, Chief of Police, Tucson, Arizona, December 14, 2017.

need that will help lead to an arrest. Anything that helps people feel comfortable coming forward is helpful to us.”⁴⁸

The Charlotte-Mecklenberg Police Department also uses information from the community to determine where to deploy resources: having as accurate a depiction as possible of what is happening and where crime is occurring helps ensure the safety of the entire community. Major Anselmo of the department told Human Rights Watch there were many examples in which the U visa program has resulted in helpful information on drug activity or gang activity and that has a ripple effect for the entire community.⁴⁹ For example, he cited cases in which an undocumented witness provided important information to help in the investigation of a hit and run in which a police officer was the victim and a case in which an Uber driver was kidnapped and later found dead.⁵⁰

The Charlotte-Mecklenberg prosecutor responsible for U visas, Robyn Withrow, also mentioned a case in which a perpetrator in a rape and kidnapping was convicted only because an undocumented witness was willing to testify. She said that victim cooperation is also important in cases that do not go to trial—often the defense can see if a restitution worksheet or a victim impact statement is missing from the prosecutor’s file and may deduce the victim is not cooperating and be less likely to plea. Overall, Withrow said that the program does not just benefit the immigrant community, stressing that “Taking rapists and violent criminals out of the community where we all live, work, and recreate benefits the whole community.” She sees it as a matter of public safety.⁵¹

A similar sentiment was echoed by Oliver Cunningham, deputy chief of investigations for the Oakland Police Department, when interviewed about the U visa program. In describing to media why tools to help local police build trust with members of the public—regardless of their immigration status—are essential, he said, “In some cases there may be a violent crime trend,” Cunningham said, “and if they're not comfortable reporting” then the community won’t be as safe.⁵²

⁴⁸ Human Rights Watch telephone interview with Maj. Diego Anselmo and Capt. Christian Wagner, March 15, 2018.

⁴⁹ Ibid.

⁵⁰ Ibid.; Email from Maj. Diego Anselmo to Human Rights Watch, March 16, 2018, on file at Human Rights Watch.

⁵¹ Human Rights Watch telephone interview with Robyn Withrow, April 2, 2018.

⁵² Allie Rasmus, “Crime Victims asked to reapply for special U Visa after Oakland Police Wrongly Deny,” Fox KTVU Online, January 25, 2018, <http://www.ktvu.com/news/crime-victims-asked-to-reapply-for-special-u-visa-after-oakland-police-wrongly-deny> (accessed June 13, 2018).

Once victims have come forward, the availability of U visas may also help investigations by building witnesses' and victims' trust in police.

In 2008 Denver police certified the U visa application of a key witness to a gang-related double homicide. The individual had been visiting from Africa on a tourist visa when he witnessed the crime.⁵³ While this individual would have cooperated even without the U visa, the Director of the Denver Police's Crisis Services Division, Scott Snow noted that his department's offer to certify a U visa application showed the witness that police would take steps to protect him, increasing his confidence in police.

Snow emphasized how rare it is to have witnesses come forward or stay involved in gang-related crime investigations because they fear retaliation. In his opinion, the U visa helps strengthen relationships with victims and witnesses during investigations, adding: "Any tool that will help develop those relationships is helpful for investigations—if this helps create a stronger relationship with the witness, it is worth it."⁵⁴

In Colorado, which has a large undocumented population, efforts have been made to reach out to local communities to build confidence and trust in the police. Former Boulder District Attorney Stan Garrett said his office noticed that "victims who feared that their immigration status was a problem were targeted for such crimes as extortion, sexual violence and identity theft."⁵⁵ To address this problem and build trust in the community, they engaged in public outreach, an important component of which was explaining the U visa program. As a result, more crimes are being reported. He says "If the community trusts the police, they will report crimes and you can keep crime rates low. If they do not trust you, bad guys can commit crimes with impunity. No way this [U visa program] does not help law enforcement."⁵⁶

Michael Song from the Denver District Attorney's Office also said that the biggest benefit of the U visa program is building relationships with communities that might otherwise fear

⁵³ The witness was also considered a victim of an enumerated crime and therefore eligible for a U visa. . . . Human Rights Watch email correspondence with Scott Snow, Director, Denver Police Crisis Service Division, June 13, 2018, on file at Human Rights Watch.

⁵⁴ Human Rights Watch telephone interview with Michael Song, and Scott Snow, January 29, 2018.

⁵⁵ Human Rights Watch telephone interview with Stan Garnett, December 12, 2017.

⁵⁶ Ibid.

police. He added that the program “gives victims peace of mind and is consistent with our general policy of helping victims with various aspects of their lives so they are able to cooperate with prosecutions. Having victims more apt to become involved with the justice system, rather than turn a blind eye to crimes, makes the whole community safer.”⁵⁷ Scott Snow from the Denver Police Department agreed that U visas are an essential tool in building relationships with marginalized communities, adding “Why would we not want to keep people in our community who cooperate with police to put away the real ‘bad hombres’? They [U visas] are so important for community safety.”⁵⁸

Christina L., an undocumented woman from Chile, was looking for a side door into her church in Berkeley, California, at 6:30 one evening in 2002 when a stranger with a gun approached her and tried to pull her away with him. She was terrified and believes he intended to rape her. Her husband was nearby and when he saw what was happening he tried to intervene. As they backed away from their attacker, Christina realized she had car keys in her pocket and was able to get into the car which was parked nearby. From there she was able to call the police. Meanwhile her husband struggled to get the gun away from their assailant. In the fight for the gun, it dropped and the clip fell out so that it jammed when the assailant attempted to fire. The attacker hit her husband repeatedly on the head and face with the disabled gun, only stopping when he heard sirens and police arrived on the scene. As a result, Christina’s husband needed 65 stitches.

The perpetrator was apprehended near the scene of the crime. At the request of the police, Christina identified the perpetrator before joining her husband at the hospital. Though she was anxious to be with her husband and scared, she was determined to cooperate with police to make sure the perpetrator went to jail.

Both Christina and her husband testified at the preliminary hearing, despite their fear of confronting the attacker and his family. They did it because they were committed to seeing justice and keeping him off the street. As a result, their attacker ended up pleading guilty and was sentenced to 20 years in prison without the possibility of

⁵⁷ Human Rights Watch telephone interview with Michael Song, and Scott Snow, January 29, 2018.

⁵⁸ Ibid.

parole. According to the prosecutor, the perpetrator had also been implicated in an attempted murder.

Christina and her husband eventually received U visas. Though they did not cooperate with police in order to get status and did not find out about the U visa program until later, they were happy that they would have the opportunity to remain in the US legally. Christina and her husband are from Chile and were working without authorization as a nanny and a gardener.⁵⁹

Michael McGrath, the director of public safety in Cleveland, Ohio, co-authored an article about Cleveland's experience with U visas in *Police Chief Magazine*. In it, he wrote:

After positive experiences with the U visa in addressing crimes of domestic violence, the Division of Police has expanded its utilization of the U visa in other types of serious crimes perpetrated upon immigrants. In one case, the division and the Legal Aid Society of Cleveland partnered to provide support to an immigrant who was the victim of felonious assault and aggravated robbery. She was held up at gunpoint while working at a store. The perpetrator shot her in the head as she fled to the back room. The perpetrator was apprehended and charged with both crimes—without the woman's cooperation in the investigation and prosecution of the crime, the community at large would be less safe. The U visa was a tool that helped the young woman gather the courage necessary to cooperate. She is still recovering from her traumatic brain injury, but she is happy to be able to watch her young son, who wants to serve in law enforcement, grow up.⁶⁰

Many recipients of U visas are victims of domestic violence who may not have otherwise come forward. In these cases too, the community as a whole benefits from efforts to curb abuse within families.

⁵⁹ Human Rights Watch telephone interview with Christina L. [pseudonym]. January 21, 2018.

⁶⁰ Michael McGrath and Megan L. Sprecher, "Encouraging Crime Reporting by Immigrants," *Police Chief Magazine*, March 2017, pp. 58-59, http://www.policchiefmagazine.org/wp-content/uploads/PoliceChief_March_2017_WEB.pdf (accessed June 18, 2018).

For example, Alameda County’s Family Justice Center serves a significant number of immigrant women who are victims of domestic or sexual violence. District Attorney O’Malley stresses that her office is open to everyone and they do not ask about immigration status because they want to ensure all victims are safe. They explain that if the person is without documentation they are eligible for a visa and they will assist in the process. She says her office’s message is “if you are a victim of a crime, do not suffer in silence, come forward.”⁶¹ She says “So many sexual assault victims do not come forward because of shame and for domestic violence victims they also may be economically dependent on their abuser. If we can assure them that we will protect them and give them a pathway to permanent residence, more people will report.” She also explained that violence in the home impacts more than just the spouse, “When domestic violence exists in a community, it affects everyone. Kids act out in school and when they become adults, the untreated trauma continues to impact their lives. It permeates the whole community.”⁶²

In late 2006, around noon the Sanchez family (Jorge, his wife, 4-year-old son, and his brother) was driving to a family gathering in California when they heard gunshots. The shooter, who had been waiting in ambush, fired 13 shots from a semi-automatic weapon at the car in front of the Sanchez car. The family had inadvertently been caught in a turf war between rival drug dealers. Jorge pulled the car over and yelled for everyone to duck down. The shots continued for several long scary minutes. When it was over, the driver of the vehicle in front of them was dead.

Jorge went to his brother’s house and told everyone to go inside. At that point, he realized his son had been wounded. He was covered in blood and it seemed he had been shot in his lower back. Jorge immediately sought help at a nearby fire station. A police officer driving by called an ambulance, which took Jorge’s wife and son to the hospital. Meanwhile, Jorge and his brother stayed with the officer and explained what had happened. They gave him all the details they could about the vehicles at the intersection and the shooting. The officer inspected Jorge’s car and found a bullet hole near the rear passenger side door. Back at the hospital, Jorge learned that bullet

⁶¹ Human Rights Watch telephone interview with Nancy O’Malley, February 9, 2018.

⁶² Ibid.

fragments had lodged into his son's lower back, where they remain today. He was hospitalized for four days, but has recovered. The bullet fragments were less than an inch from his kidney, large intestine, and spinal cord.

About six weeks later, a local district attorney informed Jorge that a suspect had been arrested. Jorge was able to identify the cars involved from the photo line-up and ultimately testified in court against the assailants. He was very afraid to appear in court, but felt it was his duty so that justice would be served and no one else would be hurt. He told the judge and jury what had happened. Two other witnesses who had identified the suspect recanted their testimony, according to court records.

Nonetheless in the spring of 2008, after a two-week trial, the jury returned a guilty verdict for murder, assault with a firearm with enhancements for use of a firearm and infliction of great bodily injury on a child, shooting at a motor vehicle and possession of a firearm. The shooter was sentenced to an aggregate term of 57 years and four months to life in part because of Jorge's testimony. Jorge and his family received U visas as a result of their assistance in this case.⁶³

⁶³ Statement from Jorge Sanchez [pseudonym] and appellate decision denying defendant's appeal on his murder conviction, on file at Human Rights Watch. Identifying details have been obscured to protect the privacy of the victim's family.

The Need for an Expanded U Visa Program

“There is a misconception that if people know about the program there will be false reports, but they know you can get in trouble for false reports.”

—Denver Chief Deputy Prosecutor Michael Song, January 29, 2018

All of the law enforcement officials we interviewed found U and T visas helpful, and several described ways in which the programs could be strengthened to provide better protection for communities. Many said that better public information about the programs and expansion of their reach could be a boon for public safety in their communities.

Fraud

Immigration skeptics have questioned whether the U visa program is being exploited through falsified reports or bribes to allow undeserving foreign nationals entry into the United States.

Official statistics on fraud are unavailable. A 2012 report prepared for Congress by the Congressional Research Service examined the immigration provisions of VAWA to determine in part, if they facilitated marriage fraud. In a footnote, the report noted it had searched press reports and legal proceedings for immigrant fraud relating to the U visa and had only located one article in which some defense attorneys claimed they believed applicants were defrauding the system “by taking cases to court they otherwise wouldn’t in the hopes of obtaining a visa.” The report also said, “Members of USCIS’ Fraud Detection and National Security (FDNS) Directorate recently told CRS that they had not seen cases of benefit fraud using the U visa.”⁶⁴ In December 2016, Senator Charles Grassley and Representative Bob Goodlatte wrote to the Secretary of the Department of Homeland Security (DHS) raising concerns about U visa fraud and requesting information

⁶⁴ Congressional Research Service, “Immigration Provisions of the Violence Against Women Act (VAWA),” May 15, 2012, fn. 66, <https://fas.org/sgp/crs/misc/R42477.pdf> (accessed June 13, 2018); Benefit fraud is defined as “the willful misrepresentation of material facts to qualify for a specific immigration status or benefit in the absence of lawful eligibility for that benefit.” *Ibid.* p. 6.

about the number of fraudulent cases DHS had identified between 2014 and 2016.⁶⁵ Human Rights Watch has requested a copy of any response prepared by DHS or received by the Congressmen’s offices, but we received no reply to our requests.⁶⁶ A search of press reports and legal databases between September 1, 2011 and June 20, 2018 located only three U visa fraud cases. In one case an immigration lawyer had, unbeknownst to his clients, submitted fraudulent U visa certifications on their behalf. He was convicted of mail fraud, immigration document fraud, and aggravated identity theft.⁶⁷ In the second case in 2016, seven defendants pled guilty to conspiracy to commit U visa fraud in Jackson, Mississippi. In that case an attorney drafted false U visa applications on the basis of false police reports an officer in the Jackson Police Department was paid to prepare. Four others were implicated in the scheme.⁶⁸ In a third case, a Texas immigration attorney was indicted for filing forged law enforcement certifications to obtain U visas for clients she represented.⁶⁹

Anecdotally, law enforcement officials we spoke with said they thought effective safeguards against such fraud were in place. Some said they had experienced little or no such problems in their jurisdictions and others said that attempted fraudulent uses of the program can be identified and addressed through existing procedures and laws. Most law enforcement officials said that the biggest problem is not overuse or fraudulent use of the U or T visas, but their underutilization.

Prosecutors and police stressed that processes in place make fraud unlikely. Michael Song said, “It [fraud] is really not going to happen. There are many checks and balances on certification. We check if there is probable cause and the victim is cooperating. It would be so hard to get a fraud case across my desk, much less approved.”⁷⁰ He went on to explain,

⁶⁵ Letter from Sen. Charles Grassley and Rep. Bob Goodlatte to Hon. Jeh Johnson, December 20, 2016, <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/2016-12-20%20CEG%2C%20Goodlatte%20to%20DHS%20-%20U%20Visa%20Management.pdf> (accessed June 13, 2018).

⁶⁶ Human Rights Watch requested a copy of the response to that letter from Sen. Grassley’s office and Re. Goodlatte’s office and made an official request to the Department of Homeland Security on June 11, 2018.

⁶⁷ “Immigration Attorney Pleads Guilty to Fraud Scheme and Identity Theft in Relation to Visa Applications,” Department of Justice Press Release, November 30, 2017, <https://www.justice.gov/opa/pr/immigration-attorney-pleads-guilty-fraud-scheme-and-identity-theft-relation-visa-applications> (accessed June 13, 2018).

⁶⁸ “Twelve Defendants Plead Guilty to Marriage and Visa Immigration Fraud,” Department of Justice, US Attorney’s Office Southern District of Mississippi Press Release, October 25, 2015, <https://www.justice.gov/usao-sdms/pr/twelve-defendants-plead-guilty-marriage-and-visa-immigration-fraud> (accessed June 20, 2018).

⁶⁹ “Local Immigration Lawyer Arrested on Federal Charges,” Department of Justice, US Attorney’s Office, Northern District of Texas Press Release, February 20, 2015, <https://www.justice.gov/usao-ndtx/pr/local-immigration-lawyer-arrested-federal-charges> (accessed June 25, 2018).

⁷⁰ Human Rights Watch telephone interview with Michael Song and Scott Snow, January 29, 2018.

“There is a misconception that if people know about the program there will be false reports, but they know you can get in trouble for false reports.”⁷¹ The district attorney for Denver, Beth McCann, agreed that if someone tried to commit fraud, “we would find out pretty quickly” because they investigate applications. However, she was doubtful that undocumented people would put themselves at risk in this way because submitting a fraudulent application is itself a crime.⁷²

The Denver police also did not see fraud as an issue as, “All cases have to be corroborated before they are certified.”⁷³ The former US Attorney for Colorado and the acting City Attorney for Denver both said that they had never heard of any actual fraud in these cases, and that the prosecutor’s sign-off ensures that it does not happen.⁷⁴

The Austin Police Lieutenant who certifies U visas also expressed skepticism about fraud as applications in her office are reviewed by two sergeants and victims’ services before they come to her for approval.⁷⁵

Assistant District Attorney McCollum is the designated official responsible for U visa certifications in her regional office in Colorado. Before certifying an application, McCollum confirms the case exists in the court’s electronic database, obtains the unredacted police report, reads the entire case file, and interviews the investigating officer, patrol officer and/or the prosecutor to determine the extent of the victim’s cooperation. She does everything she can to determine whether the victim meets eligibility requirements independently of what the victim or the victim’s attorney claims in the application. She said, “Not only would it [a made-up case] not get past me, I would consider filing charges against the applicant or, if there was an attorney involved, I would report the attorney to the bar association for an ethics violation.”⁷⁶ In the five and a half years she has been certifying applications, she has never seen a fraudulent case.

⁷¹ Ibid.

⁷² Human Rights Watch interview with Beth McCann, District Attorney, Denver, Colorado, June 7, 2018.

⁷³ Human Rights Watch telephone interview with Michael Song and Scott Snow, January 29, 2018.

⁷⁴ Human Rights Watch telephone interview with John Walsh, January 10, 2018; Human Rights Watch telephone interview with Kristin Bronson, January 24, 2018.

⁷⁵ Human Rights Watch telephone interview with Lt. Christine Chomout, March 14, 2018.

⁷⁶ Human Rights Watch interview with Heidi McCollum, Eagle, Colorado, June 6, 2018.

Major Anselmo, who oversees the Charlotte-Mecklenberg Police Department U visa program, did say that they had had some cases of fraud. Although it is rare, there was an instance in which a certification was falsified. And they have trouble verifying some robberies because the victim may not see the perpetrator. Also, perhaps due to a lack of understanding about the requirements of the program, attorneys were encouraging clients to file for U visas if they had ever been a victim of any crime which Anselmo felt led to an influx of cases that they could not verify because the crimes were not eligible. As a result, for some crimes (such as robberies), they instituted a policy to only accept applications if the crimes occurred within the last five years, though there is no statute of limitations on the U visa program.⁷⁷

The North Carolina prosecutor who has been responsible for U visas in the area since 2013 recalls two instances of fraud during her time reviewing these cases and her office receives 700-800 applications a year. She believes the benefits of the program “far outweigh” the risks of fraud.⁷⁸

Limited Eligible Crimes

The U and T visas offer a unique way to protect courageous immigrants, but they do not cover all instances of victimization suffered by immigrants, only the 28 enumerated crimes under the statute. The U visa program also does not include witnesses to serious crimes except in rare circumstances, even though undocumented witnesses may be crucial to investigating and prosecuting crimes.⁷⁹

The rationale that justified creating the U visa for domestic violence victims applies to other serious crimes—that unauthorized immigrants are targeted because they are vulnerable and afraid to come forward. For example, in Charlotte, North Carolina, Latinos were targeted for robberies on the assumption they would not go to police. Major Anselmo of the Charlotte Police told Human Rights Watch about one suspect who told police he saw “\$500 per Latino” whom he would regularly target on paydays.⁸⁰ However, robbery is not specifically an eligible U visa crime. To address such limits, police sometimes look to

⁷⁷ Human Rights Watch telephone interview with Maj. Diego Anselmo and Capt. Christian Wagner, March 15, 2018.

⁷⁸ Human Rights Watch telephone interview with Robyn Withrow, April 2, 2018.

⁷⁹ See footnote 17 *infra*.

⁸⁰ Human Rights Watch telephone interview with Maj. Diego Anselmo and Capt. Christian Wagner, March 15, 2018.

attendant crimes committed as part of a larger criminal incident to ensure key victims are eligible for the program and can cooperate with law enforcement.

Because of the law's limitations, victims of the same crime may still have different immigration outcomes. In Boulder, former District Attorney Stan Garnett said the program should be available for a wider range of crimes. He found the program practical and beneficial, but not necessarily fair. He described a case in which victims of the same crime, an extortion scheme, were treated differently for immigration purposes based on slight differences in what they experienced.⁸¹

Law enforcement sources also described “intellectual backflips” by immigration lawyers to try to fit their clients' crimes into the eligible categories so they can be certified for a U visa.⁸² One of the most common crimes for which victims apply for the visa, robbery, is not even technically included in the list of eligible offenses and so lawyers try to categorize such crimes instead as felonious assaults when applying for U visa certification on behalf of their clients.⁸³

Another important limitation of the programs is that witnesses to crimes are also ineligible for the U visa program. Unless the witness to a serious crime is an immediate relative of an incapacitated or incompetent victim, or otherwise can be considered a direct victim of the crime (for example if they suffered unusually direct injuries, such as a miscarriage, as a result of their fright from witnessing the crime), they cannot benefit from a U visa no matter how important their testimony is to bringing the perpetrator to justice.

U Visa Shortage and Administrative Delays

Several prosecutors said that the problem with the U visa program is that it is not more widely available.

⁸¹ Human Rights Watch telephone interview with Stan Garnett, December 12, 2017.

⁸² Human Rights Watch telephone interview with Casey Bates, Assistant District Attorney, Alameda County District Attorney's Office, March 6, 2018.

⁸³ Human Rights Watch telephone interview with Maj. Diego Anselmo and Capt. Christian Wagner, March 15, 2018.

The primary problem several interviewees cited was the cap on the number of visas.⁸⁴ As previously mentioned, Congress permits only 10,000 U visas to be granted each year for principal applicants.⁸⁵ The number of petitions far outstrips availability: 36,531 victims submitted U visa applications in Fiscal Year 2017.⁸⁶ If a case is deemed “approvable” after review but there is no visa available due to the cap, the applicant may be placed on a waitlist, granted deferred action, and may receive work authorization until the U visa becomes available. However, because of the backlog, and the lack of sufficient staff to review these cases, it currently takes more than four years from the time USCIS receives the immigration petition until a victim is placed on the waitlist.⁸⁷ According to USCIS, 117,738 victims’ petitions are currently pending adjudication.⁸⁸

The delay is due in large part to the relatively low numbers of USCIS adjudicators working on these cases, far fewer than necessary to keep up with the volume.⁸⁹ Some estimate the process could take eight years which could be a problem for law enforcement if members of the community do not see a benefit from applying for a U visa. As the Denver district attorney’s office said, “If the delay is too long, it could limit the value of the tool.”⁹⁰

⁸⁴ Human Rights Watch telephone interview with Chris Magnus, December 14, 2017; Human Rights Watch telephone interview with Kristin Bronson, January 24, 2018; Human Rights Watch telephone interview with John Walsh, January 10, 2018 (“The biggest problem is the cap on the number of visas.”); Human Rights Watch telephone interview with Nancy O’Malley, February 9, 2018 (“My personal feeling is they should lift the cap. If someone is a victim of crime, they are a victim of crime and if the person is courageous and willing to come forward, they should be protected.”)

⁸⁵ This cap applies to principal applicants only and is not inclusive of eligible derivative family members.

⁸⁶ In FY 2017, 10,031 U visa applications were granted and 2,128 were denied. However, due to the significant backlog in processing these applications, visas were being granted to individuals who had submitted their applications in 2014. The limit on the number of approvals is due to the annual cap. Other cases that would be approved but for the cap are placed on the waitlist. USCIS, “Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status, 2009-2018,” May 2, 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr1.pdf (accessed June 13, 2018).; See also USCIS, “Number of Form I-914, Application for T-Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, 2008-2018,” May 1, 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2018_qtr1.pdf (accessed June 13, 2018). There is much less demand for T visas which has a cap of 5,000 visas per year. In 2017, USCIS received 1,141 T visa principal applications and approved 672 cases. Unfortunately, the remaining unused visas are not used to reduce the U visa backlog.

⁸⁷ Human Rights Watch email correspondence with Alyssa Reed, Immigration Attorney, May 2, 2018, on file at Human Rights Watch.

⁸⁸ USCIS, “Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status, 2009-2018,” May 2, 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr1.pdf (accessed June 13, 2018). The number jumps to 201,279 when family members are included.

⁸⁹ Citizenship and Immigration Service Ombudsman, “Annual Report 2017,” June 29, 2017, p. 56, https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017_o.pdf (accessed June 18, 2018).

⁹⁰ Human Rights Watch telephone interview with Michael Song and Scott Snow, January 29, 2018.

Moreover, while the grant of a U visa provides protection from deportation, no such protection exists for those awaiting a decision on their application. A 2018 court decision found “no constitutional, statutory, or regulatory authority mandating that their [U visa applicants’] removal be stayed during the pendency of their U Visa applications.”⁹¹ Congress’ goal in establishing the program is undermined if victims are deported when an application is pending. In 2011, US Immigration and Customs Enforcement (ICE) issued a policy against initiating removal proceedings against individuals known to be a witness or a victim to a crime.⁹² The Department of Homeland Security (of which ICE is a constituent agency) explained that “It is common for perpetrators to report immigrant crime victims and witnesses to immigration enforcement officials to gain an advantage in a civil or family law case and/or to avoid prosecution in a criminal case” and for that reason urged law enforcement to pay particular attention to victims of domestic violence, human trafficking, and sexual assault and to witnesses involved in pending criminal investigations or prosecutions when making enforcement decisions.⁹³ A 2017 survey of advocates and attorneys found that in 38 percent of cases in which immigrant victims were subject to enforcement proceedings, the enforcement action was triggered by the perpetrator or perpetrator’s family calling immigration enforcement officials.⁹⁴

A February 20, 2017, Trump administration memorandum implementing a January 25, 2017 Executive Order states that all guidance, directives, or memoranda on enforcement laws are rescinded (with the exception of enforcement of deportation against those who came to the United States as children) and that the “Department [of Homeland Security] no longer will exempt classes or categories of removable aliens from potential enforcement.”⁹⁵ Though some prosecutors we interviewed do not believe that this memo

⁹¹ *Velarde-Flores v. Sessions*, 2018 U.S. Dist. LEXIS 12303 (2018).

⁹² Memorandum from John Morton, director, U.S. Immigration and Customs enforcement to All Field Officer Directors et. al., June 17, 2011, <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf> (accessed June 18, 2018).

⁹³ Department of Homeland Security, “U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies,” undated, https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf (accessed on June 18, 2018).

⁹⁴ National Immigrant Women’s Advocacy Project, “Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey,” May 3, 2018, pp.92-93.

⁹⁵ Memorandum of John Kelly, secretary, Department of Homeland Security, to Kevin McAleenan, et. al., February 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (accessed June 18, 2018).

meant to change the policy against deporting crime victims who have U visa applications pending, the guidance is not clear.⁹⁶

Even if immigration enforcement officials do not seek out U visa recipients for deportation, the processing delay means there is a greater likelihood that the victim may be involved in a minor infraction that would not result in deportation if they had a U visa but could lead to deportation without one. Because the new priorities for immigration enforcement are so broad, immigrants can be deported for simply being in the country unlawfully, as well as for any chargeable offense, no matter how minor, including jaywalking, driving without a license, or a traffic infraction.

Chief Magnus in Tucson said his biggest concern about U visas is that the program's effectiveness would diminish as a result of the enormous backlog as witnesses or victims may get deported before getting through the program: "If word gets out that this does nothing for you, then people won't be willing to come forward."⁹⁷

A last line for defense for U visa applicants caught up in deportation proceedings may have recently been undermined. On May 17, 2018, Attorney General Jeff Sessions issued a decision in an immigration case declaring that judges do not have the ability to administratively close immigration cases except in narrow circumstances authorized by regulation or a judicially approved settlement.⁹⁸ Administrative closure is a mechanism that judges use to remove cases from their active docket. It can be used to allow the immigrant time to resolve matters that may be relevant to their case. Thus, an administrative closure would be appropriate in a deportation case when an immigrant is awaiting a decision on the U visa. While regulations explicitly allow for administrative closure of cases involving trafficking victims,⁹⁹ the same is not true for U visa applicants.

⁹⁶ In at least one case, U visa applicants have been deported. In November 2016, two brothers who had helped secure the conviction of a man who fired his gun at them during a soccer dispute, were abruptly deported while awaiting adjudication on their U visas. In separating them from their families, the authorities sent a message to communities that it is not worth it to go to police. Tresa Baldas, "We have to take your dad: Man deported by ICE after helping Detroit cops," *Detroit Free Press*, October 30, 2017, <https://www.freep.com/story/news/2017/10/30/ice-arrests-deports-undocumented-mexican-immigrant-who-helped-cops/804430001/> (accessed June 18, 2018).

⁹⁷ Human Rights Watch telephone interview with Chris Magnus, December 14, 2017.

⁹⁸ *Matter of Castro-Tum*, Respondent, 27 I & N Dec. 271, May 17, 2018, https://nao1.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.justice.gov%2Ffeoir%2Fpage%2Ffile%2F1064086%2Fdownload%3Futm_medium%3Demail%26utm_source%3Dgovdelivery&data=02%7Co1%7Cdarehss%40hrw.org%7C35eb4af74914470f081808d5bf457fcc%7C2eb79de4d8044273a6e64b3188855f66%7C1%7Co%7C636625227582206113&sdata=T5jtFZDZliyFIHbRK2TN%2B8%2BJ34AUQ80Ia9l8MsT2K4k%3D&reserved=o (accessed June 18, 2018).

⁹⁹ 8 C.F.R. 5.1214.2(a).

Therefore, going forward immigration judges may have less flexibility in allowing vulnerable victims the time they need to have their U visa applications resolved. How this will work in practice is unclear and the confusion around the new policies has made it difficult for immigration attorneys to know how best to advise their clients.

Uncertainty about status while awaiting approval takes a significant toll on applicants: they may endure severe economic hardship before they receive work authorization and be forced to rely on an abusive partner in order to survive. They may become more vulnerable to labor or sex trafficking. Additionally, for trauma victims, anxiety around the uncertainty of their status and the ongoing risk of deportation may be especially harmful to their emotional health. Moreover, abusers may continue to threaten them with deportation while their status is in limbo.¹⁰⁰

Apart from problems with delays, some police also expressed concern about the lack of uniform application of the program across jurisdictions and the lack of resources provided to police to implement the program. In Charlotte, North Carolina, Major Anselmo said his department was relatively well-resourced so he was able to dedicate one staff member to the program full time, but other places may not have the ability to handle certifications. He contrasted this with other programs, such as the 287(g) program that encourages law enforcement to cooperate with immigration enforcement authorities, which comes with resources and training.¹⁰¹

¹⁰⁰ See Giselle Haas, et al, “Barriers and Successes in U Visas for Immigrant Victims: The Experiences of Legal Assistance for Victims Grantees,” *Arts and Social Sciences Journal*, Special Issue: Violence Against Immigrant Women: A Global Perspective Throughout the Life-Cycle (2014), accessed June 18, 2018, doi: 10.4172/2151-6200.S1-005.

¹⁰¹ Human Rights Watch telephone interview with Maj. Diego Anselmo and Capt. Christian Wagner, March 15, 2018.

Human Rights Considerations

Violent crime can impair or deny the enjoyment of rights guaranteed under international law, and states carry an obligation to protect people against such harms. Under the International Covenant on Civil and Political Rights (ICCPR), the United States is obligated to respect and ensure the rights to life and to liberty and security of person, among others.¹⁰² The UN Human Rights Committee, the expert body charged with interpreting state obligations under the ICCPR, has emphasized that “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations against covenant rights by its agents, but also against acts committed by private persons or entities.” States may violate their obligations under the ICCPR where they fail to “take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”¹⁰³

The U and T visa programs should be seen as a key component of US government efforts to live up to these ICCPR obligations. Furthermore, the *importance* of those visa programs must be understood within the larger context of the United States’ abusive and draconian immigration laws.

US immigration law does not generally accord meaningful weight to the deep family and other ties many undocumented people build to the country and to their communities. Such people generally lack any possible path to legal status and are therefore at constant risk of arrest and deportation, even when their families and indeed their entire lives are inextricably rooted in their US communities.¹⁰⁴ US immigration law also imposes draconian

¹⁰² ICCPR, arts. 2, 6, and 9.

¹⁰³ UN Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 8, <http://www.refworld.org/docid/478b26ae2.html> (accessed June 8, 2018).

¹⁰⁴ See Human Rights Watch, *United States: The Deported—Immigrants Uprooted from the Country They Call Home*, December 2017, <https://www.hrw.org/report/2017/12/05/deported/immigrants-uprooted-country-they-call-home>.

penalties for violations, and places enormous numbers of people in prolonged detention, often without justification, under dangerous and abusive conditions.¹⁰⁵

Human Rights Watch has long argued for deep reform of US immigration laws to address these and other rights concerns.¹⁰⁶ The particular relevance of these problems to any understanding of the U and T visa programs, however, is that US immigration enforcement efforts generate such fear in immigrant communities that they dissuade many people from coming forward to report crime or otherwise cooperate with law enforcement.

Many local law enforcement agencies have sought to limit their cooperation with federal immigration authorities, precisely in order to build and maintain trust with immigrant communities so that they can fight crime more effectively. These and other trust-building efforts by law enforcement are an uphill struggle to begin with and as this report describes, Trump administration moves to push back against “sanctuary cities” have made them significantly more challenging.

In this larger context, the U and T visa programs are particularly important. US immigration enforcement tends to dissuade many immigrants from cooperating with law enforcement, and this presents a significant obstacle to US government efforts to ensure ICCPR rights in immigrant communities. The U and T visa programs help mitigate that problem, by allowing undocumented immigrants to assist law enforcement without worrying that doing so will lead to their being ripped apart from their families and deported. In doing so, it bolsters US government efforts to ensure ICCPR rights for all communities and people in the United States—citizens and non-citizens alike.

¹⁰⁵ Ibid; See also Human Rights Watch, *United States: Systemic Indifference—Dangerous & Substandard Medical Care in US Immigration Detention*, May 2017, <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

¹⁰⁶ See Human Rights Watch, *United States: Tough, Fair, and Practical—a Human Rights Framework for Immigration Reform in the United States*, July 2010, <https://www.hrw.org/report/2010/07/08/tough-fair-and-practical/human-rights-framework-immigration-reform-united-states>.

Conclusion: U and T Visas Programs Should be Protected

In creating U and T visa protections, Congress recognized that those without legal status are often particularly vulnerable to crime and fearful about coming forward to law enforcement when risk of deportation lurks in the background. Such individuals might be reluctant to come forward for various reasons, including that they have limited English proficiency, are unfamiliar with the legal system, are far from friends and family or support systems, are fearful of law enforcement and deportation, or are economically dependent on their abuser. Some perpetrators of crime, recognizing that reluctance, target them for both property-related crimes and gender-based violence.

Perhaps less widely understood by Congress at the time, and yet amply illustrated by cases in this report, is that such protections are needed not only in typical domestic violence or assault cases where the victims know their abusers, but in many other cases as well. Protections serve the same societal interests in cases where undocumented victims are targeted for crimes by strangers because of their vulnerability, cases involving eyewitnesses to crime, and cases involving “wrong place wrong time” victims.

Fear of deportation has real impact on crime reporting. A 2012 survey examined Latinos’ perceptions of law enforcement authorities in light of greater involvement of police in immigration enforcement. Of Latino residents surveyed in Texas, Illinois, Arizona, and California, 44 percent of respondents said they would be less likely to contact police if they had been a victim of a crime for fear that police would inquire about their immigration status or that of people they know. About the same number, 45 percent, indicated they would be less likely to report a crime or offer information about crimes for the same reason. Among unauthorized immigrants who took the survey, the numbers were higher: 70 percent said they would be less likely to contact law enforcement if they had been a victim of a crime.¹⁰⁷ Several cities with large immigrant populations, including Houston, Los Angeles, San Diego

¹⁰⁷ Nik Theodore, “Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” Department of Urban Planning and Policy, University of Chicago, May 2013, p. 1, http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF (accessed June 20, 2018).

and Denver, reported a decline in domestic and sexual violence reports from Hispanic communities in 2017 which police attribute to a fear of deportation.¹⁰⁸

Previous research by Human Rights Watch has shown how threat of deportation impacts cooperation with police. In interviews in Nashville undertaken when Nashville police were cooperating with immigration authorities under a federal program that deputizes local police to act as immigration enforcers, Human Rights Watch interviewed immigrants who suffered assault, sexual harassment, robbery, and kidnapping yet were reluctant to call the police. One woman whose 10-year-old daughter was assaulted feared calling police even though neighbors caught the perpetrator. She eventually relented, but stopped cooperating and fled when immigration raided her building; she felt that living in the United States, even underground, was better than returning to Honduras where she feared she and her daughters might be killed. Another victim who was stabbed 12 times and whose newborn baby was kidnapped said her initial response when neighbors told her to call 911 was to say “No” because of her immigration status. She said, “Even when I was in the ambulance, bleeding, the thing I kept thinking was ‘Who will take care of my children when I am deported?’”¹⁰⁹

The introduction of more aggressive immigration enforcement policies by the Trump administration appears to have deepened the reluctance of many immigrants to cooperate with law enforcement. A 2017 National Immigrant Women’s Advocacy Project and American Civil Liberties Union study surveyed law enforcement officers, judges, prosecutors, survivor advocates, and legal service providers in 24 states. The majority of law enforcement officers surveyed said that domestic violence (69 percent), human trafficking (64 percent) and sexual violence had become more difficult to investigate since Trump came into office. Most officers also said that the lack of trust from immigrant crime survivors had already had an impact on their ability to protect crime survivors (67 percent) and ensure officer safety (64 percent). In addition, 82 percent of prosecutors said domestic violence was underreported and harder to investigate and 70 percent said the same was true for sexual assault.

¹⁰⁸ Cora Englebrecht, “Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation,” *The New York Times*, June 3, 2018, <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>

¹⁰⁹ “Nashville Immigrants Too Scared to Call the Police,” Human Rights Watch news release, May 19, 2014, <https://www.hrw.org/news/2014/05/19/nashville-immigrants-too-scared-call-police> (accessed June 26, 2018).

Advocates also said that their clients were staying in abusive relationships rather than seeking protection through the legal system. Seventy-two percent of advocates said their clients suffered daily, weekly, or monthly abuse from their partner.¹¹⁰ Fifty-two percent of law enforcement surveyed said they believed barriers to cooperation by victims are leading to greater numbers of perpetrators at large in their communities.¹¹¹ Law enforcement surveyed said reduced cooperation from immigrant victims also impacts community safety (69 percent) and the ability to hold violent perpetrators accountable (71 percent).¹¹² To the extent law enforcement has been able to overcome these obstacles, the study indicated it appeared to be due to increased community outreach including education about U and T visa programs.¹¹³ Should the U and T visa programs be scaled back, the safety of victims—and the larger community—would be significantly impacted.

In order to better protect public safety in the United States, the U and T visa programs should be protected, and the government should consider strengthening and expanding them. Immigrant victims of crime, and undocumented immigrants who refuse to let their victimization or their immigration status impede the fight for justice and accountability deserve protection. Law enforcement personnel, who need strong relationships with immigrant communities to more effectively fight crime, say they need tools like the U and T visa programs, and many say that they would like to see the programs strengthened and expanded.

¹¹⁰ American Civil Liberties Union, “Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system,” 2018, pp. 1-2, <https://www.aclu.org/report/freezing-out-justice> (accessed June 26, 2018).

¹¹¹ National Immigrant Women’s Advocacy Project, “Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey, May 3, 2018, pp. 103-04, <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf> (accessed June 26, 2018).

¹¹² *Ibid.*, p. 103.

¹¹³ *Ibid.* p. 44 (increased community outreach at agencies with U visa signing programs lead to increases in willingness to cooperate with law enforcement investigating crimes against immigrant victims).

Recommendations

To the United States Congress:

- Reauthorize the Violence Against Women Act (VAWA) and preserve the U visa program with no rollbacks in protections for immigrant survivors.
- Consider passing legislation that would strengthen U visa protections by expanding qualifying crimes for U visas to include robbery and other serious crimes and by including witnesses who aid in the investigation and prosecution of serious crimes.
- Increase the number of USCIS adjudicators that determine eligibility for the U visas in order to process applications more expeditiously. This would enable USCIS to place more eligible victims on the wait list, with access to work authorization and deferred action while waiting for U visas to become available under the cap.
- Consider increasing the number of U visas available annually for victims of eligible crimes. Possible approaches include:
 - Eliminating the cap on U visas altogether;
 - Raising the number of U visas permitted or combine the allotted number of U visas and T visas so that unused T visas can be used to reduce the current backlog of U visas; and
 - Using unused authorized U and T visas from prior years (2000 to 2007) to reduce the current U visa backlog.
- Consider providing work authorization to those whose applications have been pending for more than 180 days.
- Consider taking steps to ensure that victims who have applied for the U and T visa are granted a stay of removal while their applications are pending.
- Designate additional resources to train law enforcement in implementation of the program, provide staffing for certifying applications, and to conduct community outreach to ensure immigrant communities are aware they can report crimes and reduce their fear of deportation.

To the Department of Homeland Security:

- Consider issuing a policy directive indicating that those who have U visas pending will not be detained or deported while awaiting a determination on their eligibility for the program.
- Conduct outreach to increase awareness that victims of crimes can report to law enforcement and may be eligible to apply for a T or U visa.
- Screen immigrants arrested in enforcement actions for eligibility for U and T visas.
- Clarify whether the Immigration and Customs Enforcement memo of June 17, 2011, entitled “Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs,” is still in effect.

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IMMIGRANT CRIME FIGHTERS

How the U Visa Program Makes US Communities Safer

The Trump administration has painted undocumented immigrants in the US as criminals and a threat to public safety. Little has been said about the many undocumented immigrants who have taken great risks to help law enforcement investigate and prosecute crimes.

Immigrant Crime Fighters highlights just a few examples of immigrants who have bravely stepped forward to ensure serial rapists, robbers, and violent criminals are brought to justice, despite risks to themselves. The report focuses on recipients of the U visa, which exists to ensure that otherwise undocumented immigrants who assist in the investigation or prosecution of serious crimes are protected from deportation. Without it, perpetrators can target undocumented victims without fear that they will go to police.

The report draws heavily on interviews with law enforcement officials from five states, who consistently emphasized that the U visa is essential to ensuring that everyone in the community can safely report crimes. They see the visa as a critical tool in ensuring broader public safety.

The U visa, created with strong bipartisan support as part of the Violence Against Women Act (VAWA) in 2000, is up for renewal in 2018. Congress should protect and expand these immigration protections and work to eliminate the multi-year backlog of victims awaiting consideration of their applications.



Alan "Superman" Gonzalez welding, June 5, 2018.

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