THE U VISA AT 25: LEGISLATIVE MISSTEPS, BUREAUCRATIC NEGLECT, AND GEOGRAPHIC ROULETTE

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A quarter century ago, Congress created the U visa with dual goals: protecting immigrant crime victims and facilitating law enforcement cooperation by removing deportation barriers to crime reporting. Yet the program as implemented has fallen dramatically short of these aims. This Essay provides the first comprehensive analysis of the U visa's structural failures at its twenty-fifth anniversary. Two fundamental design flaws plague the program. First, Congress capped U visas at 10,000 annually—far below actual need—while the immigration agency has consistently failed to implement congressionally authorized interim protections. The result is that, as of 2025, most applicants wait around five years for work authorization and twenty years for status, creating a time tax with profound human costs. Second, Congress delegated exclusive gatekeeping authority to local law enforcement without federal oversight or obligation to certify, generating a jurisdictional lottery where access depends entirely on the policies of whichever agency has authority. Drawing on litigation experience, empirical data on processing delays and certification patterns, and theoretical frameworks including slow violence, political time, and governance theory, this Essay demonstrates how these failures have transformed the bipartisan humanitarian legislation into a system requiring decades of precarity. Federal litigation has become routine to access interim protections, but remains available only to resourced applicants, creating new inequities while diffusing governmental accountability. The Essay concludes with comprehensive reform proposals spanning congressional action, executive policy changes, and state-local initiatives, offering pathways to finally realize the U visa's promise to crime survivors and communities.

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INTRODUCTION

Twenty years. That's how long a crime victim filing a U visa application today can expect to wait before receiving lawful status—assuming they can navigate a certification gauntlet, survive decades of liminality without being deported, and maintain their eligibility throughout. A quarter century ago, Congress created this pathway to lawful immigration status with considerable promise: to protect undocumented crime survivors who report crimes and cooperate with law enforcement. As this Essay demonstrates, however, the animating bipartisan vision for the U visa has yet to be realized, and the program as it operates now exacts considerable costs on the very people it was designed to help.

The impetus for U visa legislation was straightforward. Undocumented residents in the United States have long had reason to fear that any contact with law enforcement may lead to their detention and removal, and this fear impacts their willingness to report criminal activity, even very serious crimes.[1] The result is often continued victimization, especially in situations involving interpersonal violence. Congress concluded that this dynamic posed problems from multiple perspectives: Victims remained vulnerable to ongoing harm, and law enforcement lacked tools to investigate or prosecute crimes against a substantial population.[2] Legislators attempted to address these concerns in 2000 by providing protection from removal and a pathway to status for noncitizens harmed by serious crime in the United States, so long as they cooperate with law enforcement.[3] Critical scholars have questioned whether increased police involvement in immigrants' lives necessarily improves safety, particularly given how carceral responses can endanger rather than protect immigrants and survivors of gender-based violence.[4] But Congress's theory was that giving crime victims immigration

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1 *See generally* Jason A. Cade & Meghan L. Flanagan, *Five Steps to a Better U: Improving the Crime-Fighting Visa*, 21 RICH. PUB. INT. L. REV. 85, 87 (2018) (explaining that Congress created the U visa to encourage undocumented crime victims to report offenses without fearing deportation); *see also infra* notes 93–107 and accompanying text (discussing increased integration of immigration enforcement and local law enforcement).

2 *See infra* Part I.

3 *See* 8 U.S.C. § 1101(a)(15)(U).

4 *See, e.g.*, Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015) (arguing that a framework where community-based conflict resolution replaces the carceral system would reduce both state violence and interpersonal violence); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2087–88 (2017) (arguing that communities cooperate less with investigations when they feel alienated from law

relief would both protect individual survivors and facilitate law enforcement cooperation where victims chose to seek it.

Despite these laudable aims, Congress made critical missteps that have significantly undermined the U visa's efficacy. First, lawmakers allotted only 10,000 U visas annually—far fewer than the number of undocumented crime victims each year in the United States.[5] The immigration agency compounded this shortage by failing to issue implementing regulations until 2007, allowing a massive backlog to develop.[6] Today, the queue of almost 250,000 pending applications means that crime victims filing now face a roughly twenty-year wait for U status—an almost unfathomable delay for a benefit ostensibly designed to provide quick safety and incentivize cooperation with law enforcement.[7] And although Congress created a pathway for U status holders to become lawful permanent residents, it would take more than a quarter century for a crime victim filing their initial U visa application today to reach that stage.[8]

Further, while Congress created safety-valve authority for interim work authorization to help protect applicants during this wait, every administration over the past twenty-five years has failed to implement any reasonable version of a provisional benefits program.[9] Most applicants today wait nearly half a decade before receiving the right to work or deferred action (an assurance they will not be prioritized for removal).[10]

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enforcement); LEIGH GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE (2018) (arguing that the criminal justice system can harm victims and fail to deter intimate partner violence, and proposing alternative economic, public health, and community-based solutions); *see also* NIK THEODORE, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT (2013), https://immigrantjustice.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF [https://perma.cc/E7Q9-8UA7] (demonstrating that increased involvement of police in immigration enforcement has made immigrant crime victims less likely to report crimes or cooperate with investigations, undermining rather than enhancing public safety). This Essay takes Congress's stated goals as its analytical starting point while acknowledging these critical perspectives. The U visa's design—which conditions relief on the applicant's willingness to cooperate with law enforcement but does not require that perpetrators be arrested, prosecuted, or convicted—arguably creates space for survivor choice rather than compulsory engagement with the criminal legal system.

5 *See infra* Part II.

6 *See* Alison J. Coutifaris, *Surviving Crime and Facing Deportation: U Visas as a Defense Against Removal in a System of Divided Agency Jurisdiction*, 36 GEO. IMMIGR. L.J. 909, 918–20 (2022) (discussing the preregulatory accumulation of U visa filings over the first seven years).

7 *See infra* Part II (discussing the U visa timeline and explaining why a queue of 250,000 likely equates to a twenty-year wait for U status).

8 *See infra* Part II.

9 *See infra* Parts II and IV.

10 *See infra* Part II. Deferred action is the "generic term that DHS uses for a decision not to remove an inadmissible or deportable alien pursuant to its enforcement discretion." BEN HARRINGTON, CONG. RSCH. SERV., R45158, AN OVERVIEW OF DISCRETIONARY REPRIEVES FROM

A second critical structural flaw concerns Congress's decision to delegate exclusive gatekeeping authority to law enforcement. To apply for U status, noncitizens must first obtain certification from a law enforcement agency,[11] yet local officials face no federal oversight and bear no legal obligation to certify, even where victims clearly qualify.[12] This arrangement grants local authorities complete gatekeeping control over a federal immigration benefit,[13] creating "geographic roulette" where access depends on which law enforcement agency happens to have jurisdiction.[14] Thus, although lawmakers intended to protect immigrant crime victims who assist authorities, many immigrants who meet statutory criteria remain shut out due to local policies based in ignorance, bias, or restrictionism.

Recent developments under the second Trump administration have further undermined the program.[15] Vastly expanded collaboration between ICE and local law enforcement, combined with a sharp turn away from humanitarian discretion toward mass enforcement, has intensified survivors' fear of reporting crimes.[16] This maximalist enforcement approach deters victims from seeking congressionally authorized protection—particularly when that protection remains years or decades away—subverting Congress's bipartisan design. Enforcing immigration law means implementing the entire statutory scheme, including the pathways Congress created to protect cooperative crime victims and enhance public safety.

REMOVAL: DEFERRED ACTION, DACA, TPS, AND OTHERS, Summary (2018).

11 *See* 8 U.S.C. § 1101(a)(15)(U)(i).

12 *See infra* Part III.

13 *See* Emily M. Poor, *Police Gatekeeping*, 30 MICH. J. RACE & L. 49, 83 (2025) (noting that police-reporting requirements make access to relief dependent on agencies' willingness to help).

14 Cade & Flanagan, *supra* note 1, at 88; JEAN ABREU, SIDNEY FOWLER, NINA HOLTSBERRY, ASHLEY KLIEN, KEVIN SCHROEDER, MELANIE STRATTON LOPEZ & DEBORAH M. WEISSMAN, UNIV. OF N.C. SCH. OF L. IMMIGR./HUM. RTS. POL'Y CLINIC, THE POLITICAL GEOGRAPHY OF THE U VISA: ELIGIBILITY AS A MATTER OF LOCALE 22 (2014), https://law.unc.edu/wp-content/uploads/2019/10/uvisafullreport.pdf [https://perma.cc/BWT4-CSYY] (coining the term "geographic roulette" in the U visa context). *Cf.* Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, 60 STAN. L. REV. 295 (2007) (coining "refugee roulette" to describe jurisdictional disparities in the asylum context).

15 *See infra* notes 93–107 and accompanying text.

16 *See, e.g.*, GRAEME BLAIR & DAVID HAUSMAN, DEPORTATION DATA PROJECT, IMMIGRATION ENFORCEMENT IN THE FIRST NINE MONTHS OF THE SECOND TRUMP ADMINISTRATION (Jan. 27, 2026), https://deportationdata.org/analysis/immigration-enforcement-first-nine-months-trump.pdf [https://perma.cc/6VWG-8785] (showing that in 2025 ICE street arrests increased eleven-fold, immigration detentions more than tripled, and interior deportations more than quadrupled); Andrea Castillo, *Trump Administration Plan Could Restrict Work Permits for Asylum Seekers for Years*, L.A. TIMES (Feb. 20, 2026), https://www.latimes.com/politics/story/2026-02-20/trump-administration-plan-could-indefinity-restrict-work-permits-for-asylum-seekers [https://perma.cc/4XDK-QP5X] (reporting on "sweeping efforts by the Trump administration to end humanitarian benefits and restrict legal immigration").

What began as congressional missteps in 2000 have, through a quarter century of persistence, transformed into a system reflecting structural choices about whose lives matter. As discussed throughout this Essay, the U visa's failures are now well-understood through decades of administration, agency reports, litigation, and scholarly attention. Moreover, remedies are readily at hand, from increasing the annual cap to implementing timely interim benefits to creating alternative certification routes.[17] Yet reforms remain elusive across multiple administrations and congressional sessions. At this point, continued inaction—or active resistance to change—constitutes an ongoing decision about whose safety matters and whose lives the system values. Initial design flaws have hardened into structural choices through inattention and willful persistence.

It is hard to consider a crime-fighting visa program successful where relief is so contingent on geography, shifting enforcement priorities, and the extensive period that applicants must wait out before reaching any real state of security. Even those lucky enough to pass the certification gauntlet must endure an existence in which they do not have any true means of establishing independence or forging a better life, cannot drive lawfully or travel freely, do not have a right to attend college, and pass every day in the shadow of possible detention and removal. This fraught, liminal state has political significance and must be understood as a form of social control. What decision-makers choose not to fix becomes a choice about whose suffering is tolerable.[18]

In theory, individuals with pending applications can file lawsuits alleging unreasonable delay in the government's adjudication of their eligibility for the stopgap relief of work authorization and deferred action.[19] Recent years have seen a dramatic increase in mandamus litigation of this sort.[20] But this intervention generally remains available only to those with access to specialized counsel, creating a two-tiered system that privileges better-resourced applicants. Moreover, any scheme requiring individual litigation to compel routine agency functions is problematic, because it diffuses responsibility, lacks transparency, and unnecessarily burdens courts.[21]

This Essay demonstrates that the first quarter century of the U visa's

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17 *See infra* Part VI.

18 *See* ELIZABETH F. COHEN, THE POLITICAL VALUE OF TIME: CITIZENSHIP, DURATION, AND DEMOCRATIC JUSTICE 121 (2018) (discussing the political value of time); Nina Rabin, *Legal Limbo as Subordination: Immigrants, Caste, and the Precarity of Liminal Status in the Trump Era*, 35 GEO. IMMIGR. L.J. 567, 572 (2021) (discussing liminality as a form of status and key aspect of the U.S. immigration system).

19 *See infra* Part IV.

20 *See infra* Part IV.

21 *See infra* Part IV.

operation has fallen far short of legislators' original goals. The humanitarian protections and crime-prevention aims that Congress envisioned remain largely unrealized, with the gap between promise and reality growing wider each year. The analysis unfolds as follows. Part I examines the U visa's statutory origins and bipartisan vision. Parts II and III analyze the program's two fundamental flaws: a delay crisis stemming from congressional and agency failures, and a certification gauntlet that grants unchecked power to local law enforcement. Part IV then explores how federal litigation has become a necessary but insufficient intervention for interim protections, available only to privileged applicants. Part V examines the significance of extended liminality in the U visa program through the lens of political time and slow violence. Finally, Part VI proposes concrete reforms at multiple levels of government.

I
STATUTORY ORIGINS AND BIPARTISAN VISION

The U visa arose out of a period of sustained congressional attention to the harms of interpersonal violence.[22] The landmark Violence Against Women Act of 1994 (VAWA I) had created pathways to status for battered immigrants—but only when their abusers were U.S. citizens or lawful permanent residents.[23] This left "several groups of battered immigrant women and children" without protection, meaning "their abusers [were] virtually immune from prosecution because their victims [could] be deported as a result of action by their abusers."[24] Congress finally addressed this gap in 2000 through the Trafficking Victims Protection Act and the Battered Immigrant Women Protection Act, creating the U nonimmigrant visa to "remove barriers to criminal prosecutions" and "offer protection against domestic violence."[25]

Congress designed U nonimmigrant status with dual goals: (1) "strengthen the ability of law enforcement agencies to . . . investigate . . . crimes . . . committed against [noncitizens]," and (2) "offer[] protection to victims of such offenses in keeping with the humanitarian interests of the

22 *See generally* Elizabeth M. Schneider, *Introduction: The Promise of the Violence Against Women Act of 1994*, 4 J.L. & POL'Y 371 (1996) (noting the sustained efforts of a coalition of women and civil rights groups that led to the passage of the Violence Against Women Act of 1994); FRED STREBEIGH, EQUAL: WOMEN RESHAPE AMERICAN LAW 307–38 (2009) (recounting the legislative groundwork that culminated in the Violence Against Women Act of 1994).

23 *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40701–03, 108 Stat. 1796.

24 Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502(a)(3), 114 Stat. 1518. *See generally* Coutifaris, *supra* note 6, at 914–16 (discussing the origin of the U visa); Cade & Flanagan, *supra* note 1, at 90–91 (same).

25 Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, §§ 1502(b)(1), 1502(b)(2), 114 Stat. 1518.

United States."[26] Members of Congress underscored the rationales for a pathway to status for undocumented crime victims.[27] Representative John Conyers, for example, emphasized that "[b]attered immigrant women and children were not able to appeal to law enforcement agencies and courts for protection because they simply feared being . . . deported."[28] Senator Paul Sarbanes similarly emphasized that the legislation would "make it easier for battered women to leave their abusers without fear of deportation."[29] Even as the program evolved, lawmakers continued to emphasize these foundational principles. Senator Amy Klobuchar, who was a former prosecutor, described U visas as having become a "necessary component" of effective law enforcement by the time of VAWA's 2013 reauthorization.[30]

Congress enacted the Victims of Trafficking and Violence Protection Act with overwhelming bipartisan support in both chambers. The Republican-controlled House approved the conference report 371 to 1, and the Republican-controlled Senate followed with unanimous passage.[31] President Clinton praised "the bipartisan sponsorship of, and support for" the legislation upon signing it into law.[32] This bipartisan commitment has endured. The law has been reauthorized under both Republican and Democratic administrations, and Congress expanded the U visa's protections in 2008 and 2013, demonstrating sustained recognition of the program's value even as implementation failures became apparent.[33] The U visa's

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26 Battered Immigrant Women Protection Act of 2000 § 1513(a)(2)(A), 114 Stat. 1518.

27 *See, e.g.*, *Battered Immigrant Women Protection Act of 1999: Hearing Before the Subcomm. on Immigr. and Claims of the H. Comm. on the Judiciary*, 106th Cong. 31–32 (2000) (statement of Rep. Janice Schakowsky) (arguing in favor of passage of the Battered Immigrant Women Protection Act); 146 CONG. REC. 22048 (2000) (statement of Sen. Edward Kennedy) (stating that the Battered Immigrant Women Protection Act is "[o]ne of the most important provisions" in the reauthorization of the Violence Against Women Act).

28 *Battered Immigrant Women Protection Act of 1999: Hearing on H.R. 3083 Before the Subcomm. on Immigr. and Claims of the H. Comm. on the Judiciary*, 106th Cong. 26 (2000) (statement of Rep. John Conyers, Jr.).

29 146 CONG. REC. 18119 (2000) (statement of Sen. Paul Sarbanes).

30 159 CONG. REC. 1047 (2013) (statement of Sen. Amy Klobuchar).

31 *See* H.R. 3244, 106th Cong., 146 CONG. REC. 21346 (2000) (enacted) (approving House conference report 371 to 1); H.R. 3244, 106th Cong., 146 CONG. REC. 22108 (2000) (enacted) (approving Senate conference report 95 to 0). The bill was sponsored by Rep. Chris Smith with thirty-seven bipartisan cosponsors (composed of nineteen Republican, seventeen Democratic, and one independent members). *See Cosponsors: H.R. 3244 — 106th Congress (1999-2000)*, CONG., https://www.congress.gov/bill/106th-congress/house-bill/3244/cosponsors [https://perma.cc/57QW-WKQ9] (list of cosponsors and affiliation).

32 *Statement by President William J. Clinton on Signing the Victims of Trafficking and Violence Protection Act of 2000*, THE AMERICAN PRESIDENCY PROJECT (Oct. 28, 2000), https://www.presidency.ucsb.edu/documents/statement-signing-the-victims-trafficking-and-violence-protection-act-2000 [https://perma.cc/8M2F-Y7LQ].

33 *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 201, 122 Stat. 5044, 5053 (2008) (sponsored by Rep. Howard Berman with bipartisan cosponsors including Reps. Chris Smith, Jeff Fortenberry, Ileana Ros-Lehtinen, John

appeal across the political spectrum reflects its dual character as both a humanitarian protection and a crime-fighting tool.

While Congress initially focused on domestic violence, legislators recognized that undocumented immigrants' fear of deportation deterred reporting of all serious crimes, not just intimate partner abuse. Ultimately, Congress expanded the U visa protections beyond domestic violence crimes to cover victims of a wide range of qualifying criminal activity, including rape, torture, trafficking, kidnapping, sexual assault, extortion, murder, felonious assault, and witness tampering, among others.[34] The statute now encompasses over two dozen categories of qualifying criminal activity,[35] including attempts, conspiracies, or solicitations to commit these crimes, as well as "similar activity" where the nature and elements substantially resemble the enumerated offenses.[36]

The potential benefits to noncitizen crime survivors are substantial. U visas provide generous waivers of inadmissibility, allowing noncitizens with past immigration violations or criminal histories to gain status if equities warrant.[37] Approved U status protects recipients from discretionary deportation and guarantees work authorization and permission to reside in the United States for four years.[38] U recipients residing abroad gain authorization to lawfully enter. Successful applicants can bring certain family members into status as derivative beneficiaries.[39] Most significantly, Congress provided a clear pathway to permanent resident status after three years in U status, offering not just temporary protection but genuine opportunity for long-term integration and stability.[40]

Yet beneath this promising framework lay critical structural flaws. First, lawmakers placed a statutory cap of only 10,000 principal petitioners

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Conyers, Jr., Zoe Lofgren, and Robert Scott, amending INA § 214(p)(6) to authorize employment authorization for aliens with pending, bona fide U visa petitions); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 801, 127 Stat. 54, 110 (2013) (sponsored by Sen. Patrick Leahy; passed Senate 78-22, expanding U visa qualifying crimes to include stalking).

34 *See* Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1513(b)(3), 114 Stat. 1533 (codified at 8 U.S.C. § 1101(a)(15)(U)).

35 *See* 8 U.S.C. § 1101(a)(15)(U)(iii) (2023).

36 *See* U.S. CITIZENSHIP & IMMIGR. SERVS., U VISA LAW ENFORCEMENT RESOURCE GUIDE: FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES AND OTHER GOVERNMENT AGENCIES, https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf [https://perma.cc/G3KY-MYEL] (last visited May 27, 2026).

37 *See* 8 U.S.C. § 1182(d)(14) (allowing waivers of inadmissibility "if the Secretary of Homeland Security considers it to be in the public or national interest to do so").

38 *See infra* text accompanying notes 66–69.

39 *See* 8 U.S.C. § 1101(a)(15)(U)(ii). Derivative U applicants still must overcome any inadmissibility grounds (with same generous waiver provision). *See* 8 C.F.R. § 214.14(f)(1) (2024). Only principal U applicants count towards the statutory cap. *See* 8 U.S.C. § 1184(p)(2)(B).

40 *See* 8 U.S.C. § 1255(m).

per year, a number that would quickly prove wholly inadequate to the need.[41] Second, lawmakers lodged exclusive gatekeeping authority with local law enforcement without any federal oversight or obligation to certify, generating profound access inequities. As the following Parts demonstrate, these design choices have fundamentally undermined the program's efficacy, transforming a bipartisan vision of swift protection into a multi-decade ordeal that serves neither crime victims nor public safety.

II
A DELAY CRISIS

The U visa's delay crisis has reached staggering proportions. As of the third quarter of Fiscal Year 2025, there were 249,843 principal U applications pending.[42] If all were approvable, clearing this backlog would take twenty-five years at the current 10,000 annual cap. Accounting for denials, abandonments, and duplicate filings, the reality is somewhat better but still dire.[43] One researcher estimates that seventy-seven percent of pending petitions are ultimately approvable.[44] This means a crime victim filing today faces a roughly two-decade wait for final adjudication in a program ostensibly designed to provide swift protection.

This crisis has deep roots. The immigration benefits agency[45] failed to issue implementing regulations for seven years after the U visa's 2000 creation.[46] By 2007, when regulations finally arrived, the gap between the 10,000 cap and actual need was already apparent. The agency acknowledged

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41 8 U.S.C. § 1184(p)(2)(A) ("The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title in any fiscal year shall not exceed 10,000.").

42 *See* U.S. CITIZENSHIP & IMMIGR. SERVS., FORM I-918, PETITION FOR U NONIMMIGRANT STATUS, BY FISCAL YEAR, QUARTER, AND CASE STATUS AND FORM I-918, PETITION FOR U NONIMMIGRANT STATUS, BONA FIDE DETERMINATION REVIEW (FISCAL YEAR 2025, QUARTER 3), https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data (search for "Form I-918" and choose "Oct" as the month and "2025" as the year) [https://perma.cc/ME2D-64HK] [hereinafter USCIS, FORM I-918 BY FISCAL YEAR].

43 *See* Cade & Flanagan, *supra* note 1, at 92 n.32 (listing reasons why some pending U visas will be denied or abandoned).

44 *See* Coutifaris, *supra* note 6, at 917. Coutifaris used the percentage of approved U visa cases adjudicated in fiscal year 2019 to derive the 77.1% approval rate. This appears to hold current through 2024. According to USCIS, over the last ten fiscal years, the agency has denied an average of 2,881 applications each year before reaching the approvable quota of 10,000—an approval rate of 77.6%. *See* USCIS, FORM I-918 BY FISCAL YEAR, *supra* note 42.

45 In 2002, Congress abolished the Immigration and Naturalization Service (INS) and placed many of the agency's former functions under the newly created USCIS. *See* WILLIAM A. KANDEL, CONG. RSCH. SERV., R48021, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS): OPERATIONS AND ISSUES FOR CONGRESS 2 (2024).

46 *See* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53027 (proposed Sep. 17, 2007) (to be codified at 8 C.F.R. pt. 214) (proposing the regulations that went into effect on October 17, 2007).

in the Interim Regulations preamble the need for "a stable mechanism through which to regularize the status of victims and witnesses."[47]

The agency's solution was a regulatory "waitlist" involving full merits review, with approved applicants receiving deferred action and work authorization while awaiting visa availability.[48] Congress, however, enacted a parallel but less demanding pathway in 2008: a "pending, bona fide" determination (BFD) under 8 U.S.C. § 1184(p), which authorized work permits for applicants with facially valid petitions.[49] Congressional sponsors expected BFD adjudications within sixty days, but this was not codified.[50]

Neither mechanism has functioned as intended. USCIS rarely used the waitlist option[51] and ignored the BFD pathway entirely until 2021, thirteen years after congressional authorization.[52] Even now, with BFD processing finally operational, the agency allocates grossly insufficient resources to what is essentially a checklist review.[53] The result is that in recent years most applicants wait around five years for interim benefits that Congress clearly intended to be prompt and essentially universal.[54]

The upshot is a multi-stage journey spanning decades, with each

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47 *See id.*; *see also* Coutifaris, *supra* note 6, at 918–19 (discussing INS and USCIS policy memoranda "establishing interim procedures to protect victims of serious crime from removal").

48 8 C.F.R. § 214.14(d)(2) ("USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.").

49 8 U.S.C. § 1184(p)(6). USCIS's implementation of 1184(p) states that BFD benefits should issue if the petitioner has passed background checks and the application includes: (1) the I-918 form; (2) a law enforcement certification signed within the prior six months; and (3) a signed applicant statement describing the "facts of the victimization." *See Policy Manual, Volume 3, Part C, Chapter 5: Bona Fide Determination Process*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 [https://perma.cc/UX6F-SZW2] (last updated May 8, 2026). Criminal history should not disqualify noncitizens unless particularly serious. *See id.* (indicating that convictions raising public safety concerns are in the nature of murder, rape, sexual abuse, firearms offenses, trafficking, child pornography, or selling drugs).

50 *See* 154 CONG. REC. 24603 (2008).

51 *See generally* Coutifaris, *supra* note 6, at 920–21 (explaining that the Department of Homeland Security created a regulatory waitlist to manage exceeding the statutory cap, granting deferred action and work authorization to eligible petitioners but applying those protections to only a small fraction of applicants).

52 *See* U.S. CITIZENSHIP & IMMIGR. SERVS., PA-2021-13, POLICY ALERT: BONA FIDE DETERMINATION PROCESS FOR VICTIMS OF QUALIFYING CRIMES, AND EMPLOYMENT AUTHORIZATION AND DEFERRED ACTION FOR CERTAIN PETITIONERS (June 14, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf [https://perma.cc/N9ZP-R4PL].

53 *See supra* note 49.

54 In its most recent report to Congress, USCIS indicated that the median time for BFD or waitlist adjudication for a principal U applicant exceeds fifty-three months. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., FISCAL YEAR 2024: IMMIGRATION APPLICATIONS AND PETITIONS MADE BY VICTIMS OF ABUSE ANNUAL REPORT TO CONGRESS 7 (2025), https://www.uscis.gov/sites/default/files/document/data/fy24_immigration_applications_made_by_victims_of_abuse.pdf [https://perma.cc/9QSZ-WU8G].

milestone providing incrementally less precarity, but never true security, until permanent residency, which today would arrive a quarter century after initial application.[55]

Stage One: Receipt Notice (1-6 months). Even a simple receipt notice—which historically is issued within a month but in the current administration sometimes lags for half a year[56]—provides minimal protection. It offers evidence that the applicant is "doing things the right way,"[57] which may persuade some enforcement officers to exercise discretion, particularly in jurisdictions with active ICE-local law enforcement cooperation.[58] But this protection is fragile—the current administration has detained and removed individuals with pending U applications—and provides no work authorization.[59]

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55 Even legal permanent resident status contains significant precarity. *See* Rabin, *supra* note 18, at 579 ("Legal permanent residency is, in itself, a form of limbo, in that it is more precarious than citizenship and requires a period of waiting prior to obtaining the 'full security' of citizenship."); HIROSHI MOTOMURA, IMMIGRANTS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 54 (2006) ("Even a lawful immigrant who has not abandoned permanent residence may be 'removed' . . . under various deportability grounds.").

56 *See, e.g.*, *Practice Alert: Receipt Delays in VAWA, U, and T-Related Filings*, AM. IMMIGR. LAWYERS ASS'N (Apr. 10, 2026), https://www.aila.org/library/practice-alert-receipt-delays-in-vawa-u-and-t-related-filings (on file with author).

57 Here I borrow, but do not endorse, a phrase often used by immigration skeptics or restrictionists. *See* Stuart Anderson, *Reducing Long Wait Times for Family-Sponsored and Employment-Based Immigrants*, *in* 12 NEW IMMIGRATION IDEAS FOR THE 21ST CENTURY 8 (Alex Nowrasteh & David J. Bier eds., 2020) ("Immigration opponents frequently argue that immigrants should 'wait in line' and come to America the 'right way.'").

58 In my law school clinic practice, students draft "U Visa-Pending Letters" for clients, which explain the statutory cap as well as the nature of the "crime-fighting visa" pathway. Clients subjected to traffic stops have sometimes used these letters to persuade local law enforcement not to further detain or involve ICE. On the integration of traffic stops and immigration enforcement in Georgia and elsewhere, see generally Jason A. Cade, *Challenging the Criminalization of Undocumented Drivers Through a Health-Justice Framework*, 41 WIS. INT'L L.J. 325 (2024) [hereinafter Cade, *Criminalization of Undocumented Drivers*].

59 *See, e.g.*, Aaron Granillo, *Oregon Firefighter Reunites with Family After ICE Detention*, MY NW. NEWS (Sep. 24, 2025), https://mynorthwest.com/local/oregon-firefighter-ice/4135683 [https://perma.cc/PG69-A93H] (discussing ICE arrest of Oregon firefighter—essentially while engaged in firefighting—who had U visa application pending since 2018, but not yet a BFD or waitlist adjudication). A pending U visa can allow for continuances of removal proceedings, although that is not usually being honored by the Trump administration. *See generally* IMMIGR. LEGAL RES. CTR., PROS AND CONS OF APPLYING FOR A U VISA UNDER THE SECOND TRUMP ADMINISTRATION (2025), https://www.ilrc.org/sites/default/files/2025-12/U-Visa-PA-FINAL.pdf [https://perma.cc/HH5C-2NE7]. Further, the Board of Immigration Appeals (BIA) recently held that IJs abuse their discretion by granting administrative closure based on a pending U application if the visa will not be available in the "reasonably near future." Ibarra-Vega, 29 I. & N. Dec. 476, 481 (B.I.A. 2026). On the BIA's approach to maximalizing the second Trump administration's hardline enforcement policies through adjudication, see Jason A. Cade, *Welcome to the Trump Administration's Board of Immigration Appeals. The Immigrant Always Loses*, 136 YALE L.J. F. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6506380 [hereinafter, Cade, *Welcome to the Trump Administration's BIA*].

Stage Two: BFD or Waitlist Approval (approximately five years).[60] This stage finally brings meaningful, if still limited, benefits: deferred action (temporary protection from removal), work authorization, a social security number, and critically, eligibility for a driver's license in all states.[61] Valid licenses dramatically reduce risks of ICE encounters at traffic stops and criminal charges for unlicensed driving.[62] Employment authorization documents also function as government-issued IDs, valuable even for those who are not working.[63] Yet reaching this stage currently requires, for the median applicant, a fifty-four month wait in complete vulnerability.[64] Further, if applicants are denied BFDs and require a waitlist adjudication in order to receive interim benefits (perhaps due to criminal history), they will also have to survive a full, on-the-merits review, including whether they qualify for a waiver of any applicable grounds of inadmissibility.[65]

Stage Three: U Status (twenty years and counting). Actual U nonimmigrant status—which applicants filing as of 2025 will need to wait around two decades to obtain—provides four years of authorized residence and work, protection from discretionary removal, and the ability to bring derivative family members into status.[66] The length of this wait will continue to grow every year as newly filed cases add to the backlog.

Even U status itself, however, remains a temporary stage with significant limitations. U recipients cannot freely depart and reenter the country without advance parole, which requires separate USCIS approval and is not guaranteed.[67] The status can be terminated if USCIS determines the holder unreasonably refused to cooperate with law enforcement regarding the qualifying crime, or engaged in conduct that would render

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60 USCIS initiates full-review waiting list adjudication for petitioners who do not receive BFDs. *See Policy Manual*, *supra* note 49.

61 Waitlist adjudications have a potential advantage over BFD in providing for family unity; the same benefits that petitioners have apply to qualifying family members. *See Policy Manual, Volume 3, Part C, Chapter 6: Waiting List*, U.S. CITIZENSHIP & IMMIGR. SERVS. (May 8, 2026), https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 [https://perma.cc/WA3T-KUY7]; *Policy Manual*, *supra* note 49.

62 *See* Cade, *Criminalization of Undocumented Drivers*, *supra* note 58, at 342–43, 346–47.

63 *See* 8 C.F.R. § 274a.2(b)(1)(v)(A) (2025) (noting that an EAD is "acceptable to evidence both identity and employment authorization").

64 *See* U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 54, at 7 (identifying 53.2 to 54.2 months as the median time between petition receipt and waiting list adjudication or BFD review).

65 *See supra* note 60 and accompanying text; *see also* Coutifaris, *supra* note 6, at 917–18 ("Most U petitioners are inadmissible because they entered without inspection, lack a valid passport, or were previously removed. DHS, however, has broad statutory discretion to grant a waiver for all but the most serious grounds of inadmissibility.").

66 *See* 8 C.F.R. § 214.14(g) (2025).

67 *See Knowledge Article: Advance Parole*, U.S. CUSTOMS & BORDER PROT. (Nov. 18, 2025), https://www.help.cbp.gov/s/article/Article-1906?language=en_US [https://perma.cc/8BNW-LYEZ].

them inadmissible and that has not been waived.[68] After four years, U status expires unless the holder files for an extension, or has already applied for and been granted permanent residency.[69]

Stage Four: Permanent Residency (approximately twenty-four years). After holding U status for three years, recipients can apply for permanent residency,[70] but qualifying is not automatic. Only at this final stage, which, considering administrative processing time, typically nearly a quarter century after the initial U application, do U applicants achieve truly durable status with a pathway to citizenship.[71]

Applicants must demonstrate continuous physical presence in the United States throughout the three-year period, prove they have not unreasonably refused law enforcement requests for cooperation regarding the qualifying criminal activity, and establish that their removal would result in hardship.[72] They must undergo additional security and background checks and remain admissible under immigration law (or obtain waivers of inadmissibility grounds).[73]

This protracted journey mirrors what Ingrid Eagly terms the "alienage spectrum," the phenomenon in U.S. immigration law where noncitizens' status progressively becomes more robust, with each stage facilitating greater integration and flourishing.[74] The U visa pathway follows this pattern, but with two critical distinctions: The timeline spans a quarter century rather than years, and some transitions (like BFD approval) provide

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68 *See* 8 C.F.R. § 214.14(b)(3) (2025) (describing when USCIS can revoke an approved U visa petition).

69 *See id.* § 214.14(g).

70 *See* 8 U.S.C. § 1255(m). Previously, a noncitizen admitted with U status could potentially adjust status in less than three years through an alternate pathway (such as through an immediate relative). As of 2025, however, DHS's position is that a U status admission will not cure an entry without inspection as a bar to adjustment. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., POLICY ALERT: ADMISSION FOR ADJUSTMENT OF STATUS UNDER INA 245(A) 2 (2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251103-AOSAdmission.pdf [https://perma.cc/9G3Q-3DFU].

71 Noncitizens in LPR status for five years can apply for naturalization. *See* Immigration and Nationality Act § 316(a), 8 U.S.C. § 1427(a). Even as LPRs, noncitizens remain on the status-precarity spectrum and can be deported for engaging in certain criminal activities or prohibited from returning to the U.S. after a trip abroad. *See generally* 8 U.S.C. § 1101(a)(13)(C) (specifying circumstances in which a returning LPR would be considered "seeking an admission" and thus subject to inadmissibility grounds); *id.* § 1227 (specifying grounds of removability). *See also* Rabin, *supra* note 18, at 579 (discussing precarity for LPRs); MOTOMURA, *supra* note 55, at 54 (same).

72 *See Green Card for a Victim of a Crime (U Nonimmigrant)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 22, 2025), https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-a-victim-of-a-crime-u-nonimmigrant [https://perma.cc/B7PF-E2H7].

73 *See Policy Manual, Volume 3, Part C, Chapter 7: Final Adjudication*, U.S. CITIZENSHIP & IMMIGR. SERVS. (May 8, 2026), https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7 [https://perma.cc/FM3F-JDSY].

74 Ingrid V. Eagly, *Criminal Justice for Noncitizens: An Analysis of Variation in Local Enforcement*, 88 N.Y.U. L. REV. 1126, 1137–39 (2013).

meaningful protection without formal status changes.

The U visa thus requires far more than statutory cooperation with law enforcement and proof of hardship. It requires time—decades of it—during which applicants remain vulnerable to detention, removal, and poverty. Parts IV and V examine the political significance of this "time tax" and its unequal distribution through the lens of litigation-as-governance and slow violence. But first, Part III turns to the other fundamental design flaw: the delegation of exclusive gatekeeping authority to local law enforcement without any federal oversight or obligation to cooperate.

III
A CERTIFICATION GAUNTLET

Noncitizens seeking federal U visa status must obtain certification from law enforcement confirming their past, present, or anticipated cooperation in investigating or prosecuting qualifying criminal activity.[75] This certification typically comes from designated officials within law enforcement agencies, prosecutors, or judicial authorities handling the relevant case.[76] As this Part explains, this certification requirement creates a significant structural vulnerability in the program's design.

In theory, the federal framework is straightforward: Law enforcement should provide the prerequisite certification to any victim of one of the qualifying crimes who has not refused reasonable requests for assistance.[77] However, the reality diverges sharply from this standard. Because federal law imposes no constraints on law enforcement discretion in this area, local officials possess extraordinary gatekeeping power; they can impose conditions far more demanding than federal requirements dictate or decline to certify entirely.[78]

The absence of adequate training and oversight compounds this

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75 *See* Immigration and Nationality Act § 101(a)(15)(U)(i)(III), 8 U.S.C. § 1101(a)(15)(U)(i)(III) (defining U status); 8 U.S.C. § 1184(p)(1) (certification requirement). *See also* 8 C.F.R. § 214.14(c)(2)(i) (2025) (describing the "U Nonimmigrant Status Certification" which must be signed by a certifying official within the six months immediately preceding the filing of Form I-918).

76 Some child protective agencies have certification authority. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 36, at 3 (describing how "[a]gencies with criminal investigative jurisdiction, such as child and adult protective services" can complete the Form I-918B). Certain congressional committees may have certification authority as well. *See generally* Elora Mukherjee, Fatma Marouf & Sabrineh Ardalan, *Congress's Untapped Authority to Certify U Visas*, 124 COLUM. L. REV. F. 43 (2024) (arguing that congressional committees and subcommittees conducting investigations qualify as certifying authorities for U visas).

77 *See* U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 36, at 8. Indirect victims (e.g., parents of minors) also qualify. *Id.* at 7.

78 *Cf.* Poor, *supra* note 13, at 51 ("Police act as gatekeepers when their reports or testimony are required in order to access non-criminal resources and remedies.").

problem.[79] Law enforcement officials often lack familiarity with federal U visa standards or harbor significant misunderstandings about the criteria. This knowledge gap has produced an unusual dynamic: Nonprofit advocates and other immigration lawyers find themselves not merely assisting clients with the immigration system, but also actively trying to educate law enforcement about the U process generally and the standards for certifications specifically. In this way, DHS has effectively delegated to nonprofits and private practitioners the responsibility for training law enforcement agencies, a function one might expect the federal government itself to perform.[80]

This arrangement is not without its costs. Legal services organizations already tend to operate with limited resources.[81] If they must also allocate substantial time and energy to law enforcement education and advocacy regarding U certifications, that task diverts from time better spent on direct client representation. For individuals in detention or residing in areas without access to knowledgeable immigration attorneys, navigating the certification process independently can be nearly insurmountable. The inevitable outcome is that many people Congress intended to protect never even receive the opportunity to apply for that protection.

The certification barrier becomes particularly troubling when law enforcement refuses to sign even for clearly eligible applicants. No mechanism exists to compel certification, nor is there any process to appeal or challenge erroneous denials.[82] Current regulations provide neither alternatives to the certification requirement nor meaningful oversight of uncooperative officials.[83] USCIS compounds the problem by explicitly informing local authorities on the certification form instructions that they bear "no obligation" to sign.[84] This framework grants local law enforcement complete control over which crime victims—if any—may pursue the congressional protection the U visa was designed to provide.

Predictably, implementation varies wildly and often conflicts with

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79 *See* Cade & Flanagan, *supra* note 1, at 97 ("[M]any law enforcement officials are either unfamiliar with or misinformed about federal standards for the U visa.").

80 *Id.*

81 *Id.* ("One consequential drawback of this obligation is that time and effort spent on law enforcement advocacy and education cuts into the resources these already-strapped legal-services providers can devote to representing their clients.").

82 *See id.* ("There is no mechanism to compel law enforcement officials to sign a certification, and there is no appellate review of a law enforcement official's refusal to issue a certification."); U.S. CITIZENSHIP & IMMIGR. SERVS., INSTRUCTIONS FOR SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION 1 (2026), https://www.uscis.gov/sites/default/files/document/forms/i-918supbinstr.pdf [https://perma.cc/W8FN-QHPA].

83 Compare the T Visa, which asks for a similar certification but allows alternative "credible secondary evidence" where unreasonably withheld. *See* 8 C.F.R. § 214.204(e)–(j) (2025).

84 U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 36, at 10.

federal eligibility standards. National studies reveal that hundreds of jurisdictions either categorically refuse certifications or impose restrictions or conditions not required by federal law.[85] Officials deny certifications because crimes occurred too long ago or too recently, because cases didn't result in prosecution or conviction, or because they subjectively determine the victim didn't suffer "substantial harm," despite meeting statutory requirements.[86] Some jurisdictions demand extraordinary levels of cooperation beyond what federal law requires.[87]

Even when noncitizens clearly satisfy eligibility criteria and express willingness to assist with investigations, many officials simply decline to participate.[88] Some hold immigration-restrictionist views, or racial biases, and may oppose providing any assistance to undocumented individuals. Others view U visa certification as outside their professional responsibilities or make decisions based on seemingly arbitrary considerations. All of this adds up to "geographic roulette," in which a survivor's access to protection depends entirely on which law enforcement agency happens to have jurisdiction over the crime.[89]

The arbitrary nature of these denials is well-documented in a recent report by Human Rights Watch. In Georgia, a victim of armed robbery was denied certification because the masked perpetrator could not be identified, despite the victim clearly meeting all statutory requirements including suffering substantial harm and providing all available information to police.[90] In California, one survivor attempted for over six years to obtain certification from a local police department that "regularly refuses to provide certifications to domestic violence victims," while nearby jurisdictions in the

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85 *See* ABREU ET AL., *supra* note 14, at 29, 47–64; NATALIA LEE ET AL., NAT'L IMMIGR. WOMEN'S ADVOC. PROJECT & AM. UNIV. WASH. COLL. OF L., NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRATION CRIME VICTIMS, U VISA CERTIFICATION, AND LANGUAGE ACCESS 13–20 (2013), https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/National-Survery-on-Police-Response-U-Visas-Language-Access-Report-4.16.13-Final.pdf [https://perma.cc/Z9F5-892F].

86 *See* ABREU ET AL., *supra* note 14, at 58 ("Another local law enforcement agency implemented their own definition of substantial harm, requiring that the victim demonstrate 'a significant loss as a result of becoming a victim.'").

87 *See* LEE ET AL., *supra* note 85, at 15–16; HUMAN RIGHTS WATCH, "WE NEED U": HOW THE U VISA BUILDS TRUST, COUNTERS FEAR, AND PROMOTES COMMUNITY SAFETY 46 (2025), https://www.hrw.org/sites/default/files/media_2025/11/us_visas1225%20web.pdf [https://perma.cc/BQN9-BHJB].

88 *See* ABREU ET AL., *supra* note 14, at 13.

89 *Id.* at 29; *cf.* RAMJI-NOGALES, SCHOENHOLTZ & SCHRAG, *supra* note 14 (discussing disparities in asylum adjudications among asylum officers, immigration judges, the Board of Immigration Appeals, and Article III judges); Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 COLUM. HUM. RTS. L. REV. 266 (2014) (addressing geographic disparities in "Special Immigrant Juvenile Status" for immigrant youth).

90 HUMAN RIGHTS WATCH, *supra* note 87, at 46.

same state routinely certify eligible applicants.[91] Some jurisdictions refuse certification based on case age, whether the case resulted in arrest, or require proof of physical (not just mental) harm—all conditions exceeding federal requirements.[92]

Recent policy developments have intensified these existing tensions. The Trump administration has revived cooperative enforcement mechanisms—287(g) agreements in particular—that expand state and local police involvement in federal immigration enforcement.[93] Section 287(g), enacted through the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, essentially deputizes local officers to enforce immigration law, empowering them to investigate immigration status and detain apparently deportable individuals for transfer to federal custody.[94] President Trump issued an Executive Order on the first day of his second term, entitled "Protecting the American People Against Invasion," which called for maximal use of 287(g) agreements, structured to "provide[] the most effective model for enforcing Federal immigration laws."[95] Where there appear to have been as few as forty-five active agreements during the first Trump administration, as of July 27, 2026, there are 2,179 across thirty-nine states and two territories.[96] Further, some states have proposed or mandated that local law enforcement aid federal officials with immigration enforcement.[97] The administration sees local law enforcement as its force multipliers, and local law enforcement officers increasingly see themselves as "warriors" against immigrants and their communities.[98]

Meanwhile, the federal government has abandoned conviction-based enforcement priorities altogether; current policy directs enforcement against all removable noncitizens, and Congress has mandated detention for those merely charged with—and never prosecuted for—certain offenses.[99] The

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91 *Id.* at 45.

92 *Id.* at 46.

93 *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGR. & CUSTOMS ENF'T (July 27, 2026), https://www.ice.gov/identify-and-arrest/287g [https://perma.cc/CB3X-LRQG].

94 Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, § 133, 110 Stat. 3009-546, 563–64.

95 Exec. Order No. 14159, 90 Fed. Reg. 8443, 8445 (Jan. 29, 2025).

96 *See, e.g.*, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 93 (describing how as of July 27, 2026, ICE has signed 2,179 Memorandums of Agreement for 287(g) programs covering thirty-nine states and two territories).

97 *See, e.g.*, FLA. STAT. § 908.11 (2025); Georgia Criminal Alien Track and Report Act of 2024, 2024 Ga. Laws 505; S.B. 615, 87th Leg., Reg. Sess. (W. Va. 2026).

98 *See* Tara Lai Quinlan, *How Police Culture Shapes Use of Lethal Force: A Response to Flores et al.*, 49 GA. J. OF INT'L & COMPAR. L. 295, 299 (2021) (explaining the "warrior culture" lens adopted by observers and police themselves).

99 *See* Exec. Order No. 14159, 90 Fed. Reg. 8443, 8443–44 (Jan. 29, 2025) (declaring policy

administration has demonstrated willingness to detain and remove deportable noncitizens who have pending U visa applications, even without criminal histories.[100] The government's approach to detention—pressing a new statutory interpretation that makes everyone who entered without inspection subject to mandatory detention—increases the chance that most potential U visa applicants who encounter ICE officials or deputized local law enforcement will lose their freedom.[101]

These developments create a foreseeable and undesirable outcome: Undocumented survivors of serious crimes will become increasingly reluctant to report to police.[102] A 2025 survey of victim advocates confirms this trend, finding that over seventy-five percent reported their clients are now fearful of contacting police, and others expressed concerns about attending court proceedings due to potential ICE presence.[103] Crime victims

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to execute the immigration laws "against all inadmissible and removable aliens" and directing DHS components to set enforcement priorities accordingly); Press Release, U.S. Dep't of Homeland Sec., Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole (Jan. 21, 2025) (announcing rescission of the 2021 guidelines that had prioritized enforcement based on threats to national security, public safety, and border security); *cf.* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (mandating detention of noncitizens merely arrested for or charged with certain theft-related offenses, regardless of prosecution or conviction).

100 *See, e.g.*, Zane Irwin, *Authorities Detain Migrants Protected by Program that Offers Help to Victims of Crime*, NPR (June 9, 2025), https://www.npr.org/2025/06/09/nx-s1-5409081/authorities-detain-migrants-protected-by-program-that-offers-help-to-victims-of-crime [https://perma.cc/GZV9-YRYZ].

101 *See* Pratheek Rebala, Jeff Ernsthausen & Perla Trevizo, *Immigrants Who Say Their Detention Is Illegal Have Filed More Than 18,000 Cases. It's a Historic High.*, PROPUBLICA (Feb. 10, 2026), https://www.propublica.org/article/habeas-petitions-immigrant-detentions-trump [https://perma.cc/ZW4B-YR9T]. Circuit Courts of Appeal have split on the validity of the Trump administration's mandatory detention policy. *Compare* Cunha v. Freden, 175 F.4th 61, 71 (2d Cir. 2026) (ruling against the Trump administration's policy of no bond hearings for noncitizens who entered the country without inspection); Lopez-Campos v. Raycroft, 175 F.4th 713, 733 (6th Cir. 2026) (same); *and* Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami, 175 F.4th 1258, 1285 (11th Cir. 2026) (same) *with* Buenrostro-Mendez v. Bondi, 166 F.4th 494, 508 (5th Cir. 2026) (siding with the administration in limiting bond hearings to immigrants who entered the country lawfully) *and* Avila v. Bondi, 170 F.4th 1128, 1138 (8th Cir. 2026). *See also* Castañon Nava v. U.S. Dep't of Homeland Sec., 175 F.4th 828, 855 (7th Cir. 2026) ("In short, nothing in the statutory text or history supports Defendants' contention that Congress wanted to apply mandatory detention equally to both categories of noncitizens."); Rodriguez v. Ortega, No. 26-50181, 26-50219, 26-50221, 2026 WL 1906557, at *16 (5th Cir. July 2, 2026) (holding that notwithstanding the ruling in Buenrostro-Mendez finding a statutory basis for mandatory detention, constitutional due process requires a bond hearing within 90 days), *vacated*, No. 26-50183, 2026 WL 2014647, at *1 (5th Cir. July 10, 2026).

102 Alysia Santo, *How ICE Is Making It Harder for Immigrants to Escape Domestic Violence*, MARSHALL PROJECT (Nov. 22, 2025, at 12:00 ET), https://www.themarshallproject.org/2025/11/22/women-police-ice-domestic-violence [https://perma.cc/FWE2-RB75] (giving the tragic story of Jaimar Bravo Gil and her children, who were killed by a partner who had a history of violence, and explaining how she and many others kept silent about abuse for fear of being deported).

103 ALL. FOR IMMIGRANT SURVIVORS, FEAR AND SILENCE: 2025 INSIGHTS FROM ADVOCATES

with serious injuries, including broken bones, have expressed fear of seeking hospital treatment, and some are too afraid to renew protective orders or apply for them at all.[104] Immigration attorneys report that some victims refuse to pursue U visa petitions despite clear eligibility because they fear "being on ICE's radar screen."[105] This leaves crime survivors without access to whatever protections or resources law enforcement might offer, while those who harm them face no intervention, which is particularly concerning in contexts of ongoing intimate partner violence where survivors may have limited options for safety. While critical scholars rightly note that police involvement can sometimes endanger rather than protect survivors—especially immigrant survivors facing deportation risk—the current system denies survivors even the choice of whether to seek law enforcement assistance.[106] And even those crime victims who do attempt to cooperate with police may encounter officers unwilling to provide them with the necessary certification so that they can apply for a U visa. In this way, relief depends not just on reporting crime but also on whether local authorities decline to certify or, possibly, even detain the crime victim for purposes of ICE enforcement.[107]

The certification requirement thus creates the first major hurdle in accessing U visa relief. But it is far from the last. Crime survivors who successfully navigate the certification gauntlet—already a matter of jurisdictional luck—then confront the delay crisis described in Part II, facing a half-decade wait for basic work authorization and deferred action, followed by an approximately two-decade wait for actual U status.[108] For the vast majority of applicants, there is no remedy for these delays beyond simply waiting and hoping not to be detained or deported in the interim. For a select few, however, an alternative has emerged: federal court litigation challenging the government's unreasonable delays in processing interim benefits. As the next Part explains, this litigation has become surprisingly routine in recent years. But far from solving the U visa's structural problems, the rise of mandamus lawsuits reveals new inequities and raises fundamental

FOR IMMIGRANT SURVIVORS 1 (2025), https://static1.squarespace.com/static/5b9f1d48da02bc44473c36f1/t/6851e1903a67be6191523f91/1750196624790/AISInsights-from-Advocates-for-Immigrant+Survivors.pdf [https://perma.cc/FGH5-46V2].

104 *Id.*; HUMAN RIGHTS WATCH, *supra* note 87, at 30.

105 *Id.* at 29.

106 *See* sources cited *supra* note 4.

107 *See generally* Michael Kagan, *Immigrant Victims, Immigrant Accusers*, 48 U. MICH. J. L. REFORM 915, 952–53 (2015) (explaining why "a crime victim seeking police assistance can reasonably anticipate that his or her immigration status will be brought to the attention of federal authorities," especially in jurisdictions where "local law enforcement officials actively pursue unauthorized immigrants").

108 *See supra* notes 42–44, 54 and accompanying text.

questions about how immigration policy is actually implemented—and for whom.

IV
LITIGATION AS GOVERNANCE

Twenty-five years after the U visa's creation, noncitizen crime survivors who manage to navigate the certification gauntlet still must wait nearly half a decade for the stopgap benefits of work authorization and deferred action, approximately twenty years for U adjudication, and even longer for permanent status. During these extended periods of liminal status, they remain subject to intense risk of detention and even removal.[109]

While these structural problems may seem intractable, some noncitizen crime survivors have found a partial remedy through an unlikely source: federal court litigation. To be sure, nothing can be done about the ultimate waiting period for a U visa unless Congress finally adjusts the 10,000 statutory cap.[110] But governance failures in the adjudication of interim benefits do permit a potential remedy. To combat the delays in interim benefits processing, some U visa applicants have filed actions pursuant to the Administrative Procedure Act designed to compel the agency to make faster adjudications.[111]

As this Part demonstrates, federal litigation has become a necessary—and in some ways defensible—feature of immigration governance in an era of deep political contestation over immigration policy. Yet this litigation-as-governance model creates profound problems. It privileges resourced applicants who can access specialized counsel, lacks transparency as cases settle without precedent, and raises troubling questions about constitutional structure and line-cutting. While litigation provides meaningful relief to individual plaintiffs, it cannot substitute for the systemic reforms the U visa program desperately needs, which I address in Part VI.

In today's immigration system, where the administration of benefits takes a backseat to the priority of enforcement, agency delays in adjudication are widespread.[112] During the Biden administration, USCIS publicly

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109 *See supra* text accompanying notes 15, 93–107 (discussing enforcement and detention risks for crime victims who interact with law enforcement).

110 *See infra* Part VI (arguing that Congress should issue legislation clearing the current backlog and at least tripling the annual statutory cap on U visas).

111 *See* 5 U.S.C. § 706(1) (allowing a reviewing court to compel agency action that was unlawfully withheld or unreasonably delayed).

112 *See, e.g.*, Ximena Bustillo, *How Trump Is Remaking One Agency to Aid His Deportation Push*, NPR (Dec. 10, 2025) https://www.npr.org/2025/12/10/nx-s1-5611495/trump-citizenship-immigration-services-changes [https://perma.cc/R8WD-2VGJ] ("The Trump administration is transforming the agency known for processing green cards and citizenship requests into one of its strongest anti-immigration policing arms."). *See also* Exec. Order No. 14159, 90 Fed. Reg. 8443, 8443–44 (Jan. 29, 2025) (characterizing immigration as an "invasion" and calling on the Director

acknowledged many of these delays and issued a statement explaining how it hoped to address the setbacks.[113] In 2022, the agency stated that "[d]ue to the COVID-19 pandemic and resource constraints resulting from the prior administration, USCIS inherited a significant number of pending cases and increased processing times."[114] These delays have generally worsened under the second Trump administration, which has aggressively restructured USCIS away from the historically core mission of adjudicating asylum, citizenship, work visas, and family-based adjustment and towards an army of "homeland defenders."[115]

Faced with agency delays of what should be routine benefits applications, noncitizens have increasingly turned to the federal courts. Specifically, litigators representing noncitizens whose applications face adjudicatory processing delays have filed writs of mandamus or challenges alleging violations of the Administrative Procedure Act (APA).[116] In either styling, the underlying claim is procedural, not substantive. The gist of the lawsuit is that the agency is taking far too long to render a decision or take a routine action on a pending petition.

In fact, mandamus lawsuits have exploded in recent years, eclipsing the other immigration-related causes of action that are filed in federal court (habeas, naturalization, and challenges to deportation).[117] While the percentage of federal cases filed as habeas petitions has already risen to historic levels in response to the vast ramp-up of detentions under the second Trump administration,[118] at least as of mid-2025, mandamus petitions still amounted to twice as many filings as all other federal court immigration

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of the U.S. Citizenship and Immigration Services to "set priorities . . . that protect the public safety and national security interests of the American people, including by assuring the successful enforcement of final orders of removal").

113 *See, e.g.*, *USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 29, 2022), https://www.uscis.gov/archive/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work [https://perma.cc/6N8X-QG6B].

114 *Id.*

115 Bustillo, *supra* note 112.

116 5 U.S.C. § 706(1) (APA statute); 28 U.S.C. § 1361 (federal mandamus jurisdiction statute). *See infra* notes 117–24 and accompanying text.

117 *See generally Immigration Processing Delays Prompt Record Number of Mandamus Lawsuits in Federal Court*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE (May 15, 2023), https://tracreports.org/reports/717 [https://perma.cc/2KA9-CA5C] (empirically showing that as of February 2023, mandamus lawsuits comprised more than two-thirds of all immigration filings in federal court, whereas prior to 2021, mandamus lawsuits were less than thirty percent of the overall number of immigration lawsuits).

118 *See* Rebala, Ernsthausen & Trevizo, *supra* note 101 (reporting that immigrants are filing on average more than 200 habeas petitions each day); Nate Raymond, Kristina Cooke & Brad Heath, *Courts Have Ruled 4,400 Times that ICE Jailed People Illegally. It Hasn't Stopped.*, REUTERS (Feb. 17, 2026), https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14 [https://perma.cc/9KW3-4Q7U].

filings.[119]

I have personal experience with this practice. My law school clinic at the University of Georgia School of Law began using mandamus and APA actions in 2021 as a tool for compelling agency decisions for our clients experiencing unreasonable delay.[120] Since that time, we have successfully pursued interim benefits through federal litigation on behalf of forty-nine clients, forty-five of whom were U visa applicants and their derivative family members awaiting a BFD or waitlist determination, including quite a few residing outside the United States.[121] Another plaintiff was the infant child of a U status derivative beneficiary, both of whom were outside the country, and for whom we alleged that a humanitarian parole decision was being unreasonably delayed in the circumstances. Virtually all of these were what Laila Hlass and Mary Yanik term "shadow wins"—meaning that USCIS adjudicated our clients' cases favorably, mooting the case out before a judicial adjudication of the underlying APA claims.[122]

All of our forty-five U visa plaintiffs over the last four years were able to receive the interim benefits they sought within one to three years of their applications having been filed. That is still a long time to wait in limbo, but our clients were in a far better position than those who do not have the means to file lawsuits compelling reasonable government administration of its statutory and regulatory mandates. In several cases, including during the second Trump administration, we were able to reunite long-separated families because our lawsuit facilitated the lawful entry of derivative beneficiary family members given successful waitlist adjudications. Among the procedural gains of filing a federal lawsuit is the value of (finally) having a responsive attorney on the other side.[123]

This pattern illustrates a troubling reality. To avoid languishing in liminal precarity for half a decade, U visa applicants must routinely resort to individual federal litigation to ensure the immigration agency fulfills basic functions in a timely manner. The persistence of the necessity of this

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119 *Civil Filings for June 2025*, TRAC REPORTS, SYRACUSE UNIVERSITY (showing that federal district court lawsuits categorized as "other immigration actions" more than doubled all other lawsuits filed as habeas, naturalization, or deportation challenges, even though habeas corpus filings were up 840.7% compared to one year prior and even though "other immigration actions" were down 32.4% compared to one year prior) (custom report generated Sep. 16, 2025).

120 *See Community Health Law Partnership Clinic*, SCH. OF L., UNIV. OF GA., https://communityhelp.law.uga.edu [https://perma.cc/3PFZ-YB2A] (last visited Feb. 18, 2026).

121 The non-U visa contexts in which we have filed successful mandamus actions involved removal of conditional resident status and asylum.

122 Laila L. Hlass & Mary Yanik, *Studying the Hazy Line Between Procedure and Substance in Immigrant Detention Litigation*, 58 HARV. C.R.-C.L. L. REV. 203, 262–64 (2023) (discussing "shadow wins" in the context of habeas litigation).

123 *See, e.g.*, Beth K. Zilberman, *The Non-Adversarial Fiction of Immigration Adjudication*, 2020 WIS. L. REV. 707, 712 (characterizing USCIS adjudications as a "black hole").

intervention over time, however, becomes a program feature rather than an anomaly.[124]

This pattern—where private litigants must routinely compel agency compliance with statutory mandates—raises fundamental questions about how immigration policy is implemented in practice. Seen through this lens, private litigants who use the courts to compel the agency to do its job in a reasonable manner can be viewed as implementing a design choice by Congress.[125] The APA can be conceived of as a policy instrument through which Congress empowers private litigants, including in the immigration sphere, to compel procedural compliance with federal law by federal agencies.[126] By creating the capacity for private enforcement, Congress can insulate its priorities from subversion by the president while avoiding more direct interbranch conflict.[127]

Outsourcing governance to individuals and private litigators is an appealing move for Congress in the immigration sphere especially, because it is a less visible and more diffuse form of state intervention in a context marked by deep policy disagreement.[128] It allows for an alternative to further promulgation of immigration law, given deep policy contestation.[129] In this way, it mirrors private-enforcement schemes in other contested areas of regulation, like civil rights and environmental regulation.[130] Indeed, there is

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124 *Cf.* ROBERT A. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW 16 (2d ed. 2019) ("Because its structures always stand ready to be mobilized, adversarial legalism . . . is a barely latent, easily triggered potentiality in virtually all contemporary American political, economic, and administrative processes. It creates a set of incentives . . . that have come to loom very large in American governmental, commercial, and social life.").

125 As one political science scholar has explained, "private enforcement litigation is easily integrated into the idea of state capacity." SEAN FARHANG, THE LITIGATION STATE: PUBLIC REGULATION AND PRIVATE LAWSUITS IN THE U.S. 9 (2010).

126 I am unaware if others have made this specific claim about the APA or the mandamus statute, but some have argued that private enforcement litigation constitutes a form of infrastructural power, allowing civil society actors to exert control over agencies by compelling judicial involvement in disputes. *See, e.g.*, FARHANG, *supra* note 125, at 9 ("Private litigation is state power exercised *through* society.") (emphasis in original).

127 *See id.* at 34–35 (citing Terry M. Moe, *The Politics of Bureaucratic Structure*, *in* CAN THE GOVERNMENT GOVERN? (John E. Chubb & Paul E. Peterson, eds., 1989)); Terry M. Moe, *Political Institutions: The Neglected Side of the Story*, 6 J.L. ECON. & ORG. 213, 235 (1990).

128 *Cf.* FARHANG, *supra* note 125, at 225 ("The bureaucratic drift hypothesis holds that enacting coalitions use private enforcement regimes, in the institutional environment of a sticky status quo, to insulate from subversion by bureaucrats pursuing their own interests, including ideological agendas, timidity, apathy, shirking, careerism, and capture.").

129 *Cf.* Jaya Ramji-Nogales, *A Crisis of Human Rights: Litigation as Governance at the Border*, *in* HANDBOOK ON MIGRATION AND HUMAN RIGHTS 13, 14 (Ruth Rubio Marín et al. eds., 2025) ("Faced with governance failures in the federal level and executive, civil society actors turned to litigation in federal court to protect immigrants.").

130 *See* FARHANG, *supra* note 125, at 5 ("[C]onflict between Congress and the president over control of the bureaucracy . . . creates incentives for Congress to bypass the bureaucracy and provide for enforcement via private litigation.").

evidence that legislators may count on private litigation as an alternative to more bureaucracy.[131]

"Governance theory" describes this kind of design as a "step away from a state-centered understanding of power and authority, in which the government acts unilaterally in setting policy. Governance theory shifts the focus to interactions between multiple actors, in particular the role of 'private and civil society actors as resources and instruments for co-produced public policy making.'"[132] Official immigration policy is driven by a number of complex factors, including economics, culture, and race.[133] Competing perspectives on proper levels and kinds of immigration can be particularly challenging to resolve, leading to fragmented compromises.[134]

As is well-illustrated when it comes to changing priorities across administrations, presidents "possess considerable capacity to unilaterally influence agencies' structure and behavior."[135] President Trump's goals with the immigration system frequently do not align with the goals underlying immigration statutes that were the product of prior congressional coalitions. USCIS, previously the benefits arm of the immigration system, has been refashioned as just another enforcement agency. USCIS officers now carry guns and are told to deny and delay more applications, while everyone who is denied is subject to mandatory immigration removal proceedings.

The necessity of routine federal litigation intervention to mediate these dynamics flips the usual constitutional structure on its head. As all first-year law students are told, the power to make laws is entrusted to Congress, while the president has the responsibility to take care that the laws be faithfully executed. But the rise of mandamus litigation reveals a new variation in the immigration context. While Congress enacted the U visa scheme for noncitizen crime victims, it is up to noncitizens and their attorneys to take care that the laws be faithfully executed by pursuing individual remedies from federal court.[136]

Yet while this governance-through-litigation model may serve congressional interests in avoiding interbranch conflict, it creates profound

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131 *See* THOMAS F. BURKE, LAWYERS, LAWSUITS, AND LEGAL RIGHTS: THE BATTLE OVER LITIGATION IN AMERICAN SOCIETY 173–74 (2004).

132 Ramji-Nogales, *supra* note 129, at 16 (citing Christopher Ansell & Jacob Torfing, *Introduction* to HANDBOOK ON THEORIES OF GOVERNANCE 2, 9 (2016) and Gerry Stoker, *Governance as Theory: Five Propositions*, 50 INT'L SOC. SCI. J. 17, 21–22 (1998)).

133 *See* HIROSHI MOTOMURA, BORDERS AND BELONGING: TOWARD A FAIR IMMIGRATION POLICY 15–22, 119–32 (2025).

134 *See* Ramji-Nogales, *supra* note 129, at 15 ("The governance literature recognizes that conflicts driven by race can pose severe obstacles to the management of competing perspectives through compromise.").

135 FARHANG, *supra* note 125, at 35.

136 *Cf. id.* at 45–46 ("Congress makes laws, *private actors and their attorneys 'take care that the laws be faithfully executed,'* and courts decide cases or controversies.").

equity problems for the very population the U visa was designed to protect. Private lawsuits brought by U applicants ensure the agency upholds the federal statutory commitment to providing work authorization in a prompt manner (though only for those particular individuals) while allowing Congress to avoid tricky conflicts with the Executive Branch. But a system that relies on private actors to ensure the government follows procedural rules and executes its job in a reasonable manner is undeniably fraught.

For one, it privileges the better-resourced. Engaging in federal litigation requires specialized knowledge. Although many U applicants may have access to some form of counsel,[137] immigration lawyers in both nonprofit and firm settings tend to develop specialized administrative law practices, and few have the capacity to use the tools of federal litigation.[138]

This structure also lacks predictability and transparency. Litigation as a form of migration governance diffuses and deflects direct responsibility for immigration policy and immigration outcomes. Instead, the provision of interim benefits for U visa applicants becomes the product of private, judicially managed interactions between individuals and the agency.[139] In theory, such litigation should help define reasonable timeframes for agency adjudication, which ultimately should provide at least some constraints on the agency's approach for all pending applications. But civil litigation usually results in some form of settlement, not judicial opinion, and a version of this practice frequently occurs with respect to delay cases concerning U visa interim benefits.[140] All of the mandamus actions brought by my clinic have been adjudicated by the agency before the federal judge had the

137 A USCIS report from March 2020 estimated that almost 92% of U visa principal petitioners—meaning those filing as the primary person who directly qualifies for a U visa—filed with legal representation. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., U VISA DEMOGRAPHICS 6 (2020), https://www.uscis.gov/sites/default/files/document/reports/U_Visa_Report_-_Demographics.pdf [https://perma.cc/UHH2-H5AR] [hereinafter "U VISA DEMOGRAPHICS"].

138 *See, e.g.*, Hlass & Yanik, *supra* note 122, at 258–59 ("Further, generally, most immigration attorneys primarily learn to practice before the immigration agencies and in immigration court. Substantially fewer immigration attorneys have experience in federal practice to represent a habeas petitioner.").

139 *Cf.* FARHANG, *supra* note 125, at 47 ("[W]hereas bureaucratic implementation typically fuses rule articulation and rule enforcement powers in an agency, private enforcement regimes bifurcate the two, with private plaintiffs and their attorneys exercising rule enforcement powers and courts exercising rule articulation powers."). *See also id.* at 216–17 ("[D]ivided government[] leads Congress to . . . [rely] more upon private litigants, lawyers, and courts to implement policy. . . . [I]deological conflict between Congress and the executive . . . enhance the power of private litigants, lawyers, and courts in the enforcement of statutes and the elaboration of their substantive meaning.").

140 Over the years there have been a handful of federal court decisions regarding the reasonableness of the agency's timeline for adjudicating interim U visa benefits. *See, e.g.*, Barrios Garcia v. U.S. Dep't of Homeland Sec., 25 F.4th 430, 455 (6th Cir. 2022) (holding that plaintiffs sufficiently pled that USCIS had unreasonably delayed adjudication of their placement on the U visa waitlist).

opportunity to issue a ruling, resulting in stipulated dismissals. Generally speaking, the government doesn't want to create caselaw it doesn't like, and busy assistant U.S. attorneys generally prefer to moot these cases out without having to litigate dispositive motions. As a result, the government finds it easier just to go ahead and adjudicate the interim benefits (either a grant or a denial), which is usually a positive outcome for the individual bringing the lawsuit but has the downside of "foreclos[ing] the development of legal standards and obscur[ing] meritorious cases."[141]

Beyond the resource inequities, transparency flaws, and constitutional concerns, the litigation model raises a troubling practical question: Are applicants who use federal litigation to obtain interim benefits "cutting the line?" The central problem with timely adjudication of interim benefits is that the agency fails to allocate enough officers and resources to the U visa pathway.[142] As such, litigation that requires agency adjudicators to review the plaintiffs' applications might take them away from time they would otherwise spend on interim-benefit adjudications for applications filed by other crime victims—including some who may have filed even longer ago but who are not lucky enough to retain counsel with litigation experience or capacity.[143] However, it is just as likely that USCIS officers now identifying as "homeland defenders" would use the extra work time to issue more requests for evidence, notices of intent to deny, and denials.[144]

Congressional reliance on individual litigants and courts to implement routine agency policy also exacts a cost on the judicial system. Federal judges and assistant U.S. attorneys must devote time to cases that should never require judicial intervention.[145] This imposes real transaction costs in time and resources on an already overburdened judiciary.

In sum, federal litigation intervention, while now routine, remains available only to a privileged subset of noncitizen crime victims. Moreover, the fact that it has become a design feature for the U visa program raises profound concerns about governance, equity, and constitutional structure.

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141 Hlass & Yanik, *supra* note 122, at 237.

142 *See* Jason A. Cade & Mary Honeychurch, *Restoring the Statutory Safety-Valve for Immigrant Crime Victims: Premium Processing for Interim U Visa Benefits*, 113 NW. U. L. REV. ONLINE 120, 122–24 (2019).

143 At least until recently, the agency was pulling random batches or using other criteria for prioritizing adjudication of interim benefits (such as considering the most straightforward applications first). For now, USCIS has stopped pulling applications out of line for BFDs. *See I-918, Petition for U Nonimmigrant Status*, USCIS (Feb. 5, 2026), https://www.uscis.gov/I-918 (alerting that the agency "adjudicated petitions to meet the statutory cap based on filing date order, with the oldest petitions receiving highest priority").

144 *See supra* notes 112–15 and accompanying text (discussing the reorientation of USCIS from benefits to enforcement).

145 *See, e.g.*, FARHANG, *supra* note 125, at 46 ("The act and process of litigation . . . sets the agenda for courts' exercise of their rule articulation function . . . .").

Yet even successful litigation merely compresses part of the timeline; it does not eliminate the extended period of liminality that defines the U visa experience. And that period of waiting, as the next Part explains, is far from neutral. The multi-year—in fact, multi-decade—limbo that U applicants endure carries deep political significance and exacts real human costs that compound over time.

V
EXTENDED LIMINALITY AND PRECARITY

As should be clear by now, the annual statutory cap of 10,000 U visas is incommensurate with the number of undocumented crime victims each year.[146] Further, although the agency has mechanisms for allocating interim benefits that would provide protection and integration opportunities, its failure to commit adequate resources renders these mechanisms essentially null for most noncitizen survivors, especially as the Trump administration ramps up indiscriminate enforcement and tightens connections between affirmative visa applications and removal proceedings.[147]

The U visa process makes extensive demands of immigrant crime survivors—report crime, provide reasonable assistance to law enforcement, prove resulting harm, potentially establish waiver eligibility[148]—all while risking detention in hostile jurisdictions, often hiring counsel to navigate the complex multi-step process,[149] and incurring other costs.[150] But even when

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146 The number of potentially eligible crime survivors each year still far exceeds annual U applications. *See generally* Cade & Flanagan, *supra* note 1 (discussing factors that keep immigrant crime survivors from filing U applications, including lack of knowledge about the process, resource constraints of counsel, and local law enforcement acting as gatekeepers).

147 *See* U.S. CITIZENSHIP & IMMIGR. SERVS., PM-602-0187, POLICY MEMORANDUM: ISSUANCE OF NOTICES TO APPEAR (NTAS) IN CASES INVOLVING INADMISSIBLE AND DEPORTABLE ALIENS (Feb. 28, 2025), https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf [https://perma.cc/KA53-H2KG] (eliminating various affirmative status exemptions from Notice to Appear issuance policy); Muzaffar Chishti, Kathleen Bush-Joseph & Colleen Putzel-Kavanaugh, *Unleashing Power in New Ways: Immigration in the First Year of Trump 2.0*, MIGRATION POL'Y INST. (Jan. 13, 2026), https://www.migrationpolicy.org/article/trump-2-immigration-1st-year [https://perma.cc/66TJ-T3AQ].

148 Typically, most U visa applicants will need to seek waivers of unlawful entry, unauthorized employment, and, if they have previously left and reentered the United States, unlawful presence. *See, e.g.*, 8 U.S.C. § 1182(a)(9)(B) (unlawful presence bars for noncitizens who have accrued more than 180 days of unlawful presence); 8 U.S.C. § 1182(a)(6)(A)(i) (entry without inspection bar). *See generally* 8 U.S.C. § 1182(d)(14) (U visa waiver for grounds of inadmissibility).

149 *See* U VISA DEMOGRAPHICS, *supra* note 137 (citing rates of representation in U visa filings).

150 Other costs may include travel expenses, evaluations or expert reports, and application fees. While fees are not currently charged for most components of a U visa application, until April 1, 2024, applicants had to pay $930 to submit a waiver of inadmissibility form (or obtain a fee waiver). *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 Fed. Reg. 6194 (Jan. 31, 2024) (to be codified at 8 C.F.R. pts. 103, 106, 204, 212, 214, 240, 244, 245, 245a, 264, and 274a) (describing changes to the

applicants successfully navigate these explicit requirements, the process asks for something more fundamental: their time, and lots of it. The wait for U status now verges on two decades. Even basic interim protections require around five years for most applicants. This extended liminal period is essentially transactional, with time becoming the primary currency.[151]

Cecilia Menjívar introduced the concept of "liminal legality" to immigration processes in 2006, focusing on Temporary Protected Status (TPS).[152] While TPS provides nationals facing extreme conditions (civil wars, natural disasters, etc.) in their home countries with humanitarian respite in the United States, the status is highly conditional, with omnipresent insecurity about its durability.[153] Recent Trump administration efforts to undo virtually all TPS designations, with consequences for millions of people residing in the U.S., underscore the uncertainty.[154]

There have long been various forms of liminal status in the United States,[155] but as Nina Rabin has explained, "[n]ot all forms of legal limbo are equal."[156] Rabin developed a "spectrum of precarity" to "capture the gradations within and between various forms of legal limbo."[157] Rabin's focus is on the variables affecting precarity for persons facing removal proceedings, but her risk framing applies well to long-term processes like the U visa, where applicants must navigate multiple stages in which the balance of rights, risk, and integration shifts over time.

I-192 filing fees).

151 *Cf.* COHEN, *supra* note 18, at 122 ("Just as time acquires an entirely new form of value once it becomes the medium of exchange in a labor-based economy, so too does time acquire a new form of value once it becomes the medium of exchange in a rights-based politics."); *see also id.* at 142 ("In the political economy of time, an individual['s] . . . time can be devalued or made valueless in a way that creates or perpetuates disadvantage . . . some non-citizens wait for indefinite periods of time, never knowing if or when they will be allowed to naturalize or be deported.").

152 Cecilia Menjívar, *Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States*, 111 AM. J. SOCIO. 999, 1015–16 (2006).

153 *Id.* at 1016.

154 *See* Jazmine Ulloa & Allison McCann, *Who Still Has Temporary Protected Status?*, N.Y. TIMES (Oct. 4, 2025) https://www.nytimes.com/2025/10/04/us/politics/temporary-protected-status-scotus.html [https://perma.cc/7WXS-K2Z7] ("This year, the Trump administration has taken steps to eliminate the program for more than one million people from eight nations . . . ."); Ashley Ahn, *Trump Administration Revokes Deportation Protections for Yemenis*, N.Y. TIMES (Feb. 13, 2026) https://www.nytimes.com/2026/02/13/us/politics/trump-administration-revokes-deportation-protections-for-yemenis.html [https://perma.cc/58K9-G3DQ] (emphasizing how the sudden revocation of deportation protection for Yemeni migrants left them "scrambling"); Mullin v. Doe, 609 U.S. No. 25-1083, 25-1084, 2026 WL 1825840, at *2 (June 25, 2026) (holding that federal courts lack jurisdiction to review non-constitutional challenges to the executive's decision to end TPS for Haiti and Syria).

155 Rabin, *supra* note 18, at 575 ("Since its earliest history, the U.S. immigration legal system has had pockets of ambiguity. Certain immigrants live in gray spaces, sometimes for prolonged periods of time, in states of uncertain legal immigration status.").

156 *Id.* at 572.

157 *Id.* at 577.

In legal systems, durational requirements often serve as proxies for concepts like loyalty, fitness, or community bonds.[158] Probationary periods for naturalization, for example, reflect deliberate congressional compromises about eligibility criteria, such that stakeholders with divergent values can find agreement through the commensurate aspects of time.[159] As Elizabeth Cohen explains, "[p]rocesses that occur over time can transform children into adults, turn foreigners into countrymen, and even unmake criminality."[160] Time thus has political value, which can be both instrumental and representational.[161]

But the U visa's extended waiting period is meaningfully different from traditional probationary periods. It is not a congressionally defined term reflecting consensus or compromise about eligibility requirements. Rather, it is an ever-growing default delay arising from resource choices, which will inevitably grow longer every year as the number of actual noncitizen crime survivors continues to dwarf the annual cap limitations. And crucially, the safety-valve benefits of work authorization and deferred action fall outside the 10,000 cap entirely; the delay is purely a function of processing time, wholly dependent on agency resource allocation.[162] Many visa categories involve delays due to annual quotas that do not align with the number of eligible applicants.[163] But at least with respect to interim U visa benefits, the agency is empowered—and legislatively expected—to provide protections to bona fide applicants.[164]

Today these delays can no longer be dismissed as mere administrative challenges or resource constraints inherited from prior administrations. Twenty-five years of administration, litigation, scholarship, and advocacy have made the harms abundantly clear to policymakers. As Part II detailed, Congress expected sixty-day BFD adjudications;[165] the agency ignored the pathway for thirteen years and still starves it of resources.[166] At this stage, with extensive documentation of harm and clear knowledge of straightforward solutions, the choice not to allocate resources becomes itself

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158 COHEN, *supra* note 18, at 8.

159 Cohen defines "commensuration" as "the means through which qualities are transformed into quantities . . . using proxies for things that are difficult to specify." *Id.* at 128.

160 *Id.* at 142.

161 *Id.* at 8.

162 *See* Cade & Honeychurch, *supra* note 142, at 122 ("The problem, however, is that USCIS has never allocated sufficient resources to adjudicate these interim benefits in a timely fashion. In fact, in recent litigation the agency conceded that it never implemented the statutory safety-valve at all.").

163 *See* Michael Kagan, *A Faster Way to Yes: Re-Balancing American Asylum Procedures*, 113 GEO. L.J. 1001, 1021–22 (2025) (describing delays caused by insufficient quota allocations for family-based visas and insufficient per-country quotas).

164 *See supra* notes 48–50 and accompanying text.

165 *See supra* note 50 and accompanying text.

166 *See supra* notes 51–54 and accompanying text.

a structural choice with profound consequences for how the state values immigrant lives.

Viewed through the lens of the political valence of time, the agency's choice not to allocate sufficient resources to the BFD or waitlist process devalues the time, and thereby diminishes the lives, of a segment of the population.[167] In this case, that segment consists of survivors of serious crime (and their family members) who have the courage to report that crime to the police and cooperate with any related law enforcement activities.[168]

The "slow violence" framework helps reveal why extended wait times constitute structural harm rather than mere administrative inconvenience, by identifying how bureaucratic delay itself becomes a mechanism of subordination and population management.[169] As Professor Hlass explains, "slow violence reveals the violence within bureaucratic systems that require waiting and which contribute to maintaining poverty,"[170] while Lauren Berlant defines slow death as "the physical wearing out of a population" whose deterioration defines "their experience and historical existence."[171] Congress failed to allot sufficient U visas per year, and USCIS has consciously chosen to allocate minimal resources to interim benefit adjudications despite congressional intent and the relative ease of increasing processing. The combination of legislative failure and bureaucratic resource allocation decisions creates a system where disparities and harms deepen and entrench over time.

At least until they receive a BFD or waitlist adjudication, U visa applicants remain structurally mired in what amounts to a caste system despite being on a legitimate pathway to status.[172] Indeed, their courage in

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167 *See* COHEN, *supra* note 18, at 142 ("In the political economy of time, an individual or a group of individuals' time can be devalued or made valueless in a way that creates or perpetuates disadvantage."); *see also id.* ("To devalue someone's time is to devalue her actual life and lifespan.").

168 *Cf.* ABIGAIL F. KOLKER, EMILY J. HANSON & KRISTIN FINKLEA, CONG. RSCH. SERV., R47404, IMMIGRATION RELIEF FOR NONCITIZEN CRIME VICTIMS 2 (2023) ("Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to . . . language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.").

169 *See* Lauren Berlant, *Slow Death (Sovereignty, Obesity, Lateral Agency)*, 33 CRITICAL INQUIRY 754, 754 (2007) (connecting slow death with structural subordination).

170 Laila L. Hlass, *The Slow Death of Childhood for Immigrant Youth*, 19 HARV. L. & POL'Y REV. 539, 543 (2025).

171 Berlant, *supra* note 169, at 754.

172 In *Plyler v. Doe*, the Court described a "shadow population" that "raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents." 457 U.S. 202, 218–19 (1982). Through a mix of equal protection and due process reasoning, the Court endeavored to mitigate this caste specter by holding that all children have access to public education, regardless of immigration status. *Id.* at 205, 223–24, 230; *see also* Jason

coming forward makes them all the more vulnerable to the removal whims of shifting administration priorities. They are confined "in limbo to an extremely limited life at the margins of society,"[173] at extreme risk of being put into removal proceedings—in fact, higher risk than undocumented noncitizens who remain fully in the shadows—and lacking the structural tools for fleeing abuse and safely contributing to the community. The devaluation of U applicants' political time can be seen as state-based "skepticism about their moral worth."[174] It is a form of "legally sanctioned social suffering"[175] that stands in stark contrast to what Congress said it wanted when it passed and subsequently amended the U visa legislation.

And of course, the passage of time means different things for different U applicants. U applicants are of all ages. Some are children; some are elderly. Professor Cohen's work on the political value of time argues there "are grave consequences of laws, policies, and practices that do not account adequately for difference and treat people as if they all have the same relationship to time."[176] Children waiting in U visa purgatory may miss out on critical milestone opportunities related to their developmental stage. When younger applicants are relegated to liminal status over the entire course of their childhood, they potentially experience life-altering levels of stress and miss out on developmental and educational opportunities that generally only come around once. The devaluation of childhood as a product of agency neglect exacts a harm that can never really be remedied.[177] And in order to stay eligible for derivative U beneficiary status, the children and siblings of the principal crime victim must delay marriage by twenty years.[178]

A. Cade, *Judicial Review of Disproportionate (or Retaliatory) Deportation*, 75 WASH. & LEE L. REV. 1427, 1469–70 (2018) ("The combined harms of a law both depriving children of a right to education and discriminating on the basis of immigration status (and possibly race) led the Court to invalidate the law. . . . [T]he joint force of the Equal Protection and Due Process Clauses facilitated the result."); Cade, *Criminalization of Undocumented Drivers*, *supra* note 58, at 363–66 (discussing how *Plyler* can be applied to other contexts where discriminatory practices contribute to a caste society).

173 Rabin, *supra* note 18, at 573.

174 *See* COHEN, *supra* note 18, at 121 ("The discussion . . . identifies the dark side of temporal commensuration, as evidenced by instances in which some people's political time is devalued or accorded no value at all. . . . The devaluation of a group or individual's political time reflects skepticism about their moral worth.").

175 Cecilia Menjívar & Leisy J. Abrego, *Legal Violence: Immigration Law and the Lives of Central American Immigrants*, 117 AM. J. SOCIO. 1380, 1413 (2012).

176 COHEN, *supra* note 18, at 16; *accord id.* ("A five-year prison term may be a life sentence for someone with a terminal illness and even six months of incarceration could permanently derail the life trajectory of a very young person.").

177 Discussing SIJS applicants in similar postures of limbo, Professor Hlass focuses on "the impact of protracted uncertainty, exclusion from educational, social, and professional opportunities, and resulting risks to health and wellbeing that children face while navigating the immigration legal system." Hlass, *supra* note 170, at 548.

178 8 C.F.R. § 214.14(a)(10) (2025) (defining qualifying family members for derivative U visa benefits to include children, and, where the principal crime victim is under the age of twenty-one,

For the elderly U applicant, or for those with elderly relatives who might be U visa beneficiaries, the excruciatingly long waiting period may simply run the clock out on life. When it comes to noncitizen crime victims of any age, the protracted period of uncertain waiting without protection from removal or authorization to work is not conducive to human flourishing, an undesirable outcome for a visa enacted to protect crime survivors.

Thus, as implemented, the price of access to the benefits Congress wanted to provide to crime victims who are helpful to law enforcement has become time. Lots of time. Time in which the applicant remains on the far end of the spectrum of precarity. And for some, that valuable commodity of time will take far too much from them.

VI
PATHWAYS TO REFORM

Crime victims on the journey for a U visa must brave exposure to law enforcement and an immigration labyrinth fraught with danger. They cannot expect protection from removal or work authorization for half a decade. Even after reaching that critical interim milestone, they must continually renew their authorization until they finally reach their turn in the queue, which, for someone filing at the end of 2025, will be in about twenty years.

These harms stem from Congress's initial missteps in 2000—the stingy cap and unchecked local gatekeeping—compounded by a quarter century of agency implementation choices and congressional inaction despite clear evidence and available remedies. In the sections that follow, I outline comprehensive reform proposals spanning congressional action, executive policy changes, and state-local initiatives. These interventions are more urgent than ever to finally realize the U visa's promise to crime survivors and communities.

A. Federal Reforms

1. Congress Should Abolish—or Substantially Increase—the Annual Cap, Specify a Short Timeline for Interim Benefits, and Create an Alternative Certification Route.

The simplest route to eliminating the backlog crisis in the U visa program would be for Congress to remove the annual cap. This would, in turn, essentially obviate the need to administer an interim benefits program, freeing up agency resources and dismantling the governance litigation model

unmarried siblings); INA § 101(b)(1) (defining "child" for immigration purposes as being under twenty-one and unmarried, in addition to other requirements).

that places significant burdens on noncitizens, attorneys, and courts. There would undoubtedly be political opposition to this approach from some factions,[179] but one would also expect the bipartisan support that has long characterized Congress's vision for the U visa to continue.[180] The U visa program will flourish if the cap is abolished.

That said, if a blanket no-cap approach lacks political feasibility, Congress should at least triple the annual cap along with a one-time allocation of enough visas to clear the backlog. In work published in 2018, a co-author and I recommended that Congress substantially increase the annual statutory cap on U visas.[181] At that time, when the backlog was sitting at around 110,000, we proposed the cap be raised to at least 34,000 per year—a figure derived from the number of likely approvable primary victim applications then filed annually.[182] Today, with filings consistently exceeding 35,000 annually, this benchmark would still be very meaningful, but the delay crisis for crime survivors would persist unless Congress also passes stopgap legislation for one-time authorization of sufficient visas to clear all approvable applications languishing in the current 250,000+ backlog.[183] Without such action, even if the cap is tripled, the current queue length will remain, condemning future generations of crime survivors to decades of limbo.

Another idea worth Congress's serious consideration is to create an alternative federal route for certification modeled on the T visa for trafficking victims.[184] Under this approach, noncitizens who clearly qualify

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179 *See, e.g.*, Jessica M. Vaughan, *The U Visa Program*, CTR. FOR IMMIGR. STUD. (Jan. 14, 2026), https://cis.org/Report/U-Visa-Program [https://perma.cc/Z29C-3EL5] (describing U visas as an "amnesty program").

180 *See supra* notes 31–33 and accompanying text.

181 *See* Cade & Flanagan, *supra* note 1, at 113.

182 *Id.* Relevant legislation proposed in recent years would either eliminate the cap entirely or raise it modestly, but none of these efforts have gotten much traction. *See* Immigrant Witness and Victim Protection Act of 2025, H.R. 4817, 119th Cong. §§ 3, 5(a), 6–7 (2025) (aiming to eliminate the 10,000 annual cap, mandate work authorization within 180 days of filing, and prohibit detention or deportation of applicants while their petitions are pending); Working for Immigrant Safety and Empowerment (WISE) Act of 2023, H.R. 5145, 118th Cong. § 3(g)–(h) (2023) (eliminating U visa cap and mandating work authorization within 180 days of filing); U.S. Citizenship Act of 2021, H.R. 1177, 117th Cong. § 4302 (2021) (aiming to raise the cap from 10,000 to 30,000); *see also* Matthew La Corte & Monica Leung, *Congress Can Help Crime Victims and Witnesses with One Easy Fix*, NISKANEN CTR. (Feb. 11, 2021), https://www.niskanencenter.org/congress-can-help-crime-victims-and-witnesses-with-one-easy-fix [https://perma.cc/R4S9-J4H8] (proposing that unused T visas from the last decade be awarded to approved, backlogged U visa applicants).

183 If the seventy-seven percent approval rate cited earlier is correct this would require stopgap authorization for around 200,000 U visas. *See supra* notes 42, 44 and accompanying text.

184 *See* Cade & Flanagan, *supra* note 1, at 114 (suggesting this reform). The T visa program does not require minors to obtain certifications, nor those whose trauma renders them unable to cooperate. 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb), (cc). Moreover, all T visa applicants can avoid the certification requirement through the submission of credible evidence that they would comply with reasonable requests for law enforcement cooperation. *See Victims of Human Trafficking: T*

for U visas but face unwilling local law enforcement officials could use police reports, affidavits, and medical records or other credible evidence demonstrating that they experienced serious crime, reported it to police, and were willing to provide necessary assistance.

This reform would present both benefits and costs. It would allow Congress's U visa goals to be achieved while still requiring applicants to prove they reported the crime and didn't refuse reasonable requests for assistance, thereby maintaining the incentive for cooperation with law enforcement even in jurisdictions where police unreasonably refuse to sign certifications. And providing an alternative route would have several additional benefits beyond simply providing a workaround for uncooperative jurisdictions. It would reduce the burden on nonprofit legal service providers who currently must educate law enforcement about federal standards. It would create consistency and predictability for applicants regardless of geographic location. And it would preserve the integrity of the U visa's crime-fighting purpose by maintaining cooperation incentives while removing arbitrary local barriers.

Finally, an alternative certification route would shift evidentiary control from police to victims themselves, enabling, in some cases at least, the presentation of accounts truer to what crime victims experienced. The current structure privileges law enforcement narratives over all else; even when police are willing to certify, it is the police version of events—reflected in reports and certifications—that establishes the official story of what happened.[185] This subordinates victims' lived experiences to however police choose to characterize or document what occurred, which may reflect law enforcement biases, misunderstandings, or minimization of harm that victims know to be central to their trauma.[186] The alternate certification approach would also better serve survivors who, whether due to distrust of police, fear of deportation, or concerns about how law enforcement might respond, prefer not to engage with the criminal legal system but still need protection and work authorization.

To be sure, however, there are some tradeoffs that require careful design. Most fundamentally, if an alternate pathway to local law

Nonimmigrant Status, USCIS (Dec. 22, 2025), https://www.uscis.gov/humanitarian/victims-of-human-trafficking-t-nonimmigrant-status [https://perma.cc/4SC7-MLMV]. Congressional certifications could also provide a federal certification option. *See* Mukherjee et al., *supra* note 76, at 114 (arguing that congressional committees and subcommittees offer an alternative federal route to local U visa certification).

185 *See* Poor, *supra* note 13, at 81–84 (describing barriers to getting police to write a report, and arguing that even where police do write reports, their use in non-criminal matters can perpetuate discrimination).

186 *See id.* at 84 (describing a "domino effect" precipitated by use of police reports in non-criminal matters that causes "the racially discriminatory aspects of the criminal legal system [to] spill over into non-criminal areas").

enforcement certification is created, the number of U visas filed each year will certainly increase. For this reason, providing an alternative to certification should be accompanied by abolishment or adjustment of the annual cap. Even so, the nature of U visa adjudication itself might be affected. To the extent that USCIS treats local law enforcement certification as an important marker of the viability of a particular application, as seems to be the case, an adjudicator making decisions without that proxy might have to devote more time and scrutiny to each application. How the agency goes about absorbing additional process and resource costs associated with a higher number of applications each year—a number of which will also lack the usual proxy of state certification—will depend very much on what those numbers actually are, which is hard to predict. Processing times may lengthen, fees may be increased, interviews may be required in many cases, and so on. While an alternate certification route remains an important measure to offset the geographic roulette unfairness that the current scheme generates, these costs will need to be accounted for.

If Congress is unwilling or unable to adjust the annual cap on U visas, then it should at least mandate timely deferred action and work authorization for those whose applications are pending on the waitlist. The asylum context provides a useful model: Once an asylum application has been pending for 180 days, the applicant is generally eligible for employment authorization.[187] Congress could adopt a similar framework for U visa applicants, providing that those who have submitted complete applications and passed security checks should receive deferred action and work authorization within a specified period of time, not to exceed 180 days.[188] This would align with the statutory intent to provide interim protection and would dramatically reduce the current multi-year wait that leaves crime survivors vulnerable.

2. DHS Should Provide More Timely Deferred Action and Revise Removal Priorities Impacting Undocumented Crime Survivors.

While falling far short of the benefits of actual U status, temporary protection from removal and work authorization are meaningful if granted promptly. There is no rational reason that so many crime survivor visa applicants should wait as long as five years before receiving any protection from deportation or the right to work. Determining 1184(p) prima facie eligibility, as the agency has already structured it, is essentially a ministerial task.[189] Indeed, BFDs could essentially be determined in the vast majority of cases within hours of receipt of biometrics. Given the checklist nature of

187 8 C.F.R. § 208.7(a)(1) (2025).

188 Pending legislation would implement many of these reforms. *See* Immigrant Witness and Victim Protection Act of 2025, H.R. 4817, 119th Cong. §§ 3, 5(a), 6–7 (2025).

189 *See Policy Manual*, *supra* note 49.

BFD adjudication, most cases could be easily approved. Easy cases should be easy.[190]

If the agency does not want to commit human resources to BFD adjudication, it could turn to Artificial Intelligence ("AI") for initial sorting. While some advocates might view this skeptically, USCIS has already implemented AI in numerous capacities, including fraud detection and case prioritization.[191] An AI program could readily identify which applications meet the prima facie BFD standard based on the checklist criteria: valid certification, applicant statement, biometric completion, and absence of serious public safety concerns. Those flagged as potential BFD denials could then proceed to human oversight. This hybrid approach could process the vast majority of straightforward BFD approvals within days while preserving human judgment for more complicated situations. The technology clearly exists; only the will is lacking. Certainly, any AI implementation would require safeguards against bias and error, regular auditing, and meaningful human oversight for complex cases.[192] For straightforward checklist determinations, however, the efficiency gains could be transformative.

In earlier work published during the first Trump administration, my co-author and I suggested that the agency could consider a fee-based premium processing route for interim U visa benefits without requiring congressional authorization.[193] While this approach raises important equity concerns about creating a timeliness-of-processing division along socioeconomic lines, it could provide immediate relief to many, while complementary across-the-board processing improvements are implemented. As we argued, the agency should use premium processing fees to fund faster adjudications for all

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190 *See* Kagan, *supra* note 163, at 1002 ("An easy case should not be so hard.").

191 *See United States Citizenship and Immigration Services – AI Use Cases*, U.S. DEP'T HOMELAND SEC. (Feb. 12, 2026), https://www.dhs.gov/ai/use-case-inventory/uscis [https://perma.cc/YY4H-2663] (inventorying where the USCIS uses AI to deliver immigration services).

192 *See, e.g.*, Vera Lúcia Raposo, *The Digital "To Kill a Mockingbird": Artificial Intelligence Biases in Courts*, 54 CAL. W. INT'L L.J. 459, 472 (2024) (explaining that AI code can "reflect[] the developer's unintentional or implicit biases" which "may perpetuate existing disparities in society by unfairly creating outcomes based on them"); Kashif Javed & Jianxin Li, *Bias in Adjudication: Investigating the Impact of Artificial Intelligence, Media, Financial and Legal Institutions in Pursuit of Social Justice*, PLOS ONE, Jan. 2025, at 1, 2 ("If mismanaged, biased AI may result in biasing outcomes that are primarily negative to the already marginalized communities and only serve to deepen these inequities rather than improve them.").

193 Cade & Honeychurch, *supra* note 142, at 124. A fee-based premium processing route for interim U visa benefits is a second best but workable solution that could appeal to administrations across the political spectrum. Drawing parallels to existing premium processing options for nonimmigrant and employment-based visa categories, we argued that the U program could incorporate an expedited pathway allowing applicants to pay for timely consideration of deferred action and work authorization. This expedited route would only affect the conditional approval stage; ultimate U visa grants would still be issued according to the original date of receipt, preserving the waitlist order. *Id.* at 124–25.

applicants, creating positive spillover effects for those unable to afford the premium fee.[194]

ICE should also revise its prosecutorial discretion policies to ensure that crime survivors with pending U visa applications—whether or not they have yet received deferred action through the BFD or waitlist processes—are generally not considered removal priorities, even if they are deportable based on unlawful entry or presence. Historically, ICE has long employed a "victim-centered approach," declining to prosecute removal proceedings against crime victims seeking VAWA or U-based benefits, absent aggravating factors.[195] Following President Trump's second-term command that ICE exercise "total and efficient enforcement" of immigration laws, this victim-centered approach was abandoned.[196] But the administration should revisit this policy change. Faithful adherence to immigration laws should include not just enforcement but also ensuring that legal pathways to status enacted by Congress remain available.[197] Moreover, the U visa's focus on crime-prevention and victim protection should make it appealing to any administration.

Additionally, ICE should implement screening protocols to identify potential crime victims among individuals arrested in enforcement operations. When immigrants are detained, agents should inquire about potential victimization and provide referrals to supportive services and immigration attorneys who can assess U visa eligibility.[198] This would help

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[194] While recognizing the seriousness of the equity concern, we concluded that the benefits would outweigh the downsides, especially given that the reform focuses solely on the interim stage. *Id.*

[195] *See, e.g.*, U.S. IMMIGR. & CUSTOMS ENF'T, ICE DIRECTIVE 11005.3, USING A VICTIM-CENTERED APPROACH WITH NONCITIZEN CRIME VICTIMS 1–2, 4 (2021) (directing the agency to refrain from civil enforcement action against applicants for victim-based immigration benefits); Memorandum from John Morton, Dir., U.S. Immigr. & Customs Enf't, to All Field Office Directors, All Special Agents in Charge & All Chief Counsel, Pol'y No. 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs 1 (June 17, 2011) (setting out policy to "minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice").

[196] Memorandum from Caleb Vitello, Acting Dir., U.S. Immigr. & Customs Enf't, to All ICE Emps., Pol'y No. 11005.4, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits 2–3 (Jan. 31, 2025) (quoting Exec. Order No. 14159, 90 Fed. Reg. 8443, § 2 (Jan. 29, 2025)) (rescinding policy of prosecutorial discretion based on status as a crime victim). *But see* Immigr. Ctr. for Women & Child. v. Noem, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *35 (C.D. Cal. May 20, 2026) (holding plaintiffs likely to prevail on the merits of their claims that the Trump administration's abrupt change in policy abandoning a victim-centered approach in U and T cases violated the Administrative Procedure Act).

[197] *See* Jason A. Cade, *Sanctuaries as Equitable Delegation in an Era of Mass Immigration Enforcement*, 113 NW. U. L. REV. 433, 485 (2018) ("The full administration of the immigration laws requires more than attention to its enforcement provisions.").

[198] HUMAN RIGHTS WATCH, *supra* note 87, at 7 (recommending that DHS "screen immigrants arrested in enforcement actions for indicia suggesting that they are a victim of crime, domestic

prevent the perverse outcome of deporting cooperative crime victims before they can access congressionally authorized protection.[199]

DHS should also reinstate sensitive location guidelines prohibiting enforcement actions at courthouses, medical centers, and locations providing social services to victims. The current administration's elimination of these protections has made victims reluctant to attend court proceedings, seek medical care for injuries, or access victim services—all activities essential to both individual safety and successful prosecutions.[200] Even jurisdictions that do not actively cooperate with ICE report that victims fear appearing in public spaces where immigration enforcement might occur.

In sum, revisions to ICE's enforcement priorities and practices are warranted to encourage otherwise law-abiding victims to continue to come forward and assist law enforcement.

B. State and Local Reforms

1. State and Local Jurisdictions Should Increase Community Awareness and Transparency About the U Visa Certification Process and Requirements.

State and local jurisdictions should implement comprehensive measures to educate their communities about U visa certification processes and requirements.[201] Law enforcement agencies could conduct community outreach programs—including presentations in public schools (particularly those serving large immigrant populations), town halls, and community centers—to explain what the U visa is, how the application process works, and what local certification procedures entail. Agencies should publicize this information through written materials such as websites, pamphlets, and local publications, ideally available in Spanish and other languages common to the community. These transparency efforts would not only inform potential victims of their options, but they could also help humanize law enforcement officials and immigrant residents to each other, building mutual trust that would ultimately benefit public safety. Of course, not all immigrant crime survivors will want or benefit from police involvement, but those who do

violence, or trafficking, and provide referrals to supportive services").

199 *But see* Cade, *Welcome to the Trump Administration's BIA*, *supra* note 59 (manuscript at 28–30) (discussing how an ideologically reconstituted Board has characterized any moratorium on deporting noncitizens with U visas as "amnesty").

200 *See* HUMAN RIGHTS WATCH, *supra* note 87, at 28–30 (documenting survivors' fears of attending court, seeking hospital treatment, and accessing victim services); ALL. FOR IMMIGRANT SURVIVORS, *supra* note 103, at 1 (finding over seventy percent of advocates report clients have concerns about going to court).

201 *See* Cade & Flanagan, *supra* note 1, at 108–11 (describing various state and local strategies to educate their communities).

seek assistance should have clear information about available protections.

2. States Should Enact Legislation to Standardize Certification Processes and Limit Enforcement Against Victims Who Report Crime.

As a co-author and I previously recommended, states can take concrete legal steps beyond education and outreach to ensure consistent, lawful certification practices.[202] Some states, like California, have enacted legislation that adopts federal U visa definitions and standards for certification.[203] California's statute implements a rebuttable presumption that immigrant victims who report crimes meet the helpfulness requirement, which may significantly reduce fear and uncertainty among noncitizen crime victims. Where legislation proves politically unfeasible, state or municipal governments could at least provide regular training and guidance to law enforcement agencies regarding federal certification requirements, potentially funded through continuing professional education or law enforcement grants.[204] States can develop checklists or guidance documents clarifying the specific circumstances under which certifications should typically be provided. Additionally, particularly in jurisdictions that engage in cooperative enforcement with ICE, policies encouraging officers to refrain from reporting cooperating crime victims to immigration authorities should be adopted, at least absent significant negative factors.[205]

C. Addressing the Litigation Access Gap

The growth and acceptance of AI tools across professional spheres requires us to consider whether AI-powered pro se materials present a viable

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202 *See id.* at 110 ("The most effective approach along these lines would be for states to enact legislation that implements federal requirements for U visa certifications.").

203 *See* CAL. PENAL CODE § 679.10(g)–(j) (West 2026) (creating a "rebuttable presumption that [an immigrant] victim is helpful, has been helpful, or is likely to be helpful . . . , if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement," and requiring certifying entities to complete the certification within 30 days of the request in typical cases); *see also, e.g.*, COLO. REV. STAT. ANN. § 24-4.1-402(3), (4) (West 2026) (requiring certifiers to respond to a U certification request within ninety days, or thirty days if 1) the requester is in removal proceedings; or 2) children, parents, or siblings of the requester would become ineligible for U nonimmigrant status by virtue of age within sixty days of when the certifier receives the certification request); NEB. REV. STAT. ANN. § 29-217 (West 2026) (requiring certifying agencies to process U certification requests within ninety business days of request, and if the agency denies the certification, to inform the requester of the reason and allow the opportunity to submit additional evidence to satisfy the requirements); 11 R.I. GEN. LAWS ANN. § 11-67.1-22 (West 2026) (requiring law enforcement to complete certifications "as soon as practicable," and allowing victim to submit additional evidence if the certification is denied); VA. CODE ANN. § 9.1-1501 (West 2026) (requiring certifying officials to respond to certification requests within 120 days in most cases and make information regarding agency's policies on certification publicly available).

204 *See* Cade & Flanagan, *supra* note 1, at 110–11 (making this recommendation).

205 *Id.* (making this recommendation).

way to level the playing field for crime survivors who lack the means to hire counsel. If mandamus litigation has become a necessary feature of the U visa system—as Part IV demonstrated—then access to that remedy should not depend solely on finding specialized counsel.

One approach attempting to address this gap was illustrated by the company Pro Se Pro, which marketed AI-enhanced templates designed to help applicants file their own mandamus actions challenging agency delays, though the service is no longer available as of early 2026.[206] The company's website described its mission as both extending legal support to those excluded from the system and catalyzing grassroots efforts to streamline USCIS processing.[207] Their product model essentially sold templates to pro se applicants, claiming that "90% of cases settle on their own."[208]

The Pro Se Pro experiment reveals both the promise and profound risks of privatized, AI-driven access to justice. In Nebraska, a wave of carbon-copy pro se filings—likely using Pro Se Pro products—appears to have backfired. Faced with an onslaught of around 140 substantively identical pro se filings to the Nebraska District Courts,[209] federal judges began issuing decisions holding that the court lacks jurisdiction to review BFD delay claims in U visa cases.[210] These adverse rulings, which followed cases where

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206 *About Us*, PRO SE PRO, https://www.prosepro.co [https://perma.cc/M2F5-G3M9] (site discontinued early 2026). The company's aim seemed to be, at least in part, to help address the access-to-counsel concerns discussed in Part IV. The "About Us" tab shared Pro Se Pro's mission of extending legal support to those who might otherwise be excluded from the system, "ensuring that justice was not a privilege but a right."

207 *Id.*

208 *U Visa EAD Mandamus Service*, PRO SE PRO, https://www.prosepro.co [https://perma.cc/9Q9X-D6LT] (last captured Feb. 13, 2026).

209 *See* Monroy v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-0074, 2025 WL 1267767, at *1 & n.1 (D. Neb. May 1, 2025) (noting the case is the first of 140 nearly identical pro se cases and listing the others).

210 Research revealed at least eleven other Nebraska cases dealing with this issue. They all involve pro se plaintiffs filing BFD-delay claims, all now dismissed for lack of jurisdiction. *See* Noorani v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-00221, 2025 WL 1664344, at *2 (D. Neb. June 12, 2025); Aguilar Flores v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-00126, 2025 WL 1655293, at *1 (D. Neb. June 11, 2025); Kumar v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-00092, 2025 WL 1655272, at *1 (D. Neb. June 11, 2025); Licea v. Alfonso-Royals, No. 25-cv-00290, 2025 WL 1655376, at *2 (D. Neb. June 11, 2025); Ali v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-00097, 2025 WL 1655382, at *1 (D. Neb. June 11, 2025); Maredia v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-00107, 2025 WL 1655274, at *1 (D. Neb. June 11, 2025); Patel v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-00124, 2025 WL 1655372, at *1–2 (D. Neb. June 11, 2025); Rivera Neria v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-0158, 2025 WL 1655291, at *2 (D. Neb. June 11, 2025); Rodriguez Venegas v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-0082, 2025 WL 1655271, at *1 (D. Neb. June 11, 2025); Acevedo v. Alfonso-Royals, No. 25-cv-0274, 2025 WL 1883742, at *1 (D. Neb. July 8, 2025); Patel v. Dir., U.S. Citizenship & Immigr. Servs., No. 25-cv-0232, 2025 WL 1883699, at *1 (D. Neb. July 8, 2025); *see also New Proceedings Filed in Immigration Court*, TRAC REPORTS: IMMIGRATION, https://tracreports.org/phptools/immigration/ntanew [https://perma.cc/Y868-74UE] (set Case Group to "All Cases" and Graph to "by Month and Year,"

pro se plaintiffs failed to respond to motions to dismiss,[211] now constitute a body of adverse authority that makes it substantially harder for all applicants—even those with experienced counsel—to bring delay challenges in that jurisdiction.

This cautionary tale illustrates several problems with AI-driven pro se litigation as a systematic solution. First, the quality of AI-generated pleadings may be inconsistent, and pro se filers may lack the legal knowledge to adapt templates to their specific circumstances or respond effectively to government motions. Second, the volume of cookie-cutter filings can generate judicial hostility and adverse precedent that harms the broader community of applicants. Third, commercial entities selling these products may not account for strategic litigation considerations, flooding courts with cases without regard for venue selection or the risk of creating bad law.

Yet the underlying impulse behind Pro Se Pro—democratizing access to mandamus remedies—reflects a real need. If individual litigation has become essential to obtaining timely interim benefits, then the current system, where only those with specialized counsel can access relief, is untenable. The solution, however, is not AI-driven mass filings by unrepresented individuals. Rather, it underscores the urgency of the substantive reforms proposed above: Congress and the agency must fix the underlying adjudication crisis so that litigation becomes unnecessary, not easier.

In the interim, legal services organizations and bar associations should consider developing coordinated pro bono mandamus programs that can provide strategic, supervised representation to U visa applicants facing unreasonable delays. Easier said than done. But this would preserve the benefits of individual litigation, compelling agency action in specific cases, while avoiding the pitfalls of unsupervised mass filings that risk generating adverse precedent.

CONCLUSION

A quarter century after its creation, the U visa's potential remains unrealized. Congress designed the program with dual goals: protecting crime victims and promoting public safety. Both aims depend on undocumented survivors feeling safe enough to come forward. Yet the system as it operates today achieves neither goal effectively.

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then under Immigration Court State, select "Nebraska," under Custody, select "All-Nebraska," and under Represented, select "All-Nebraska") (showing massive spike in immigration filings in Nebraska federal courts in late 2024 and early 2025).

211 *See Monroy*, 2025 WL 1267767, at *6 (noting the plaintiff failed to respond to the defendant's motion to dismiss).

Crime survivors who navigate the certification gauntlet—itself a jurisdictional lottery—face a two-decade wait for actual status and a half-decade wait even for basic interim protections. During these extended periods of limbo, they remain vulnerable to detention and removal, unable to work lawfully, unable to pursue education, unable to build stable lives. Those with resources to pursue federal litigation may cut years off their wait for moderate protections; those without such access simply endure. Meanwhile, those who commit crimes often escape accountability, survivors remain vulnerable to ongoing harm, and Congress's promise of protection goes unrealized.

The reforms outlined above span federal and state levels, legislative and executive action, immediate administrative changes and longer-term statutory fixes. Some are politically difficult; others could be implemented tomorrow with sufficient will. Some require resources; others require only shifted priorities.

What unites these recommendations is a return to first principles. Congress created the U visa to protect crime victims and promote public safety by removing barriers to reporting and prosecuting serious crime. Every year of unnecessary delay undermines this goal. Every crime survivor turned away by recalcitrant local officials undermines this goal. Every applicant deported while awaiting adjudication undermines this goal. The current system—where interim protection takes many years, ultimate adjudication takes twenty, and meaningful relief requires federal litigation—serves no one's interests except those who oppose immigration relief of any kind.

This is not mere bureaucratic inefficiency or resource scarcity, nor can it be attributed solely to the original congressional missteps of 2000. After a quarter century of documented harm, extensive litigation, and repeated calls for reform, the persistence of these failures reflects structural choices about whose time matters and whose safety matters. When USCIS consciously allocates minimal resources to processing interim benefits despite statutory authorization, congressional intent, and the foreseeable harms of leaving cooperative crime victims vulnerable to deportation, poverty, and continued abuse for years, it makes a choice. When local law enforcement agencies refuse certifications for clearly eligible victims, they make a choice. When presidential administrations expand immigration enforcement while constricting protection for those who aid law enforcement, they make choices. These are not the inevitable results of the 2000 legislation; they are the accumulated consequences of twenty-five years of decisions, big and small, not to do better. And these choices have consequences: Crime survivors remain vulnerable, perpetrators can act with impunity, and communities may become less safe.

The current system fails on its own terms. Crime survivors who seek help face prolonged vulnerability. Communities deserve systems that actually protect vulnerable residents rather than subjecting them to decades of precarity. And the rule of law—the principle that agencies must faithfully execute congressional mandates—deserves better than a framework requiring individual litigation to compel basic compliance. Reform is possible. Many of the solutions proposed here could be implemented through administrative action or state legislation without congressional approval. Even the legislative reforms are neither technically complex nor prohibitively expensive, and the U visa has historically received bipartisan support.[212]

As the U visa enters its third decade, the gap between congressional intent and operational reality has become a chasm. Closing that gap requires acknowledging that the current system fails on its own terms, protecting neither crime victims nor public safety. It requires recognizing that time is not a neutral variable in immigration law but a political choice with real human consequences. And it requires committing to reforms that would honor the promise Congress made twenty-five years ago: that crime survivors who courageously step forward to protect themselves and their communities find safety, not decades of precarity.

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212 *See* Cade & Flanagan, *supra* note 1, at 91 ("The legislation has been amended multiple times since 2000, with wide bipartisan support, under both Republican and Democratic administrations.").