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Decline to Sign: The Impact of Local Bureaucratic Discretion on Immigrant Victims'
Equal Access to the Law

A thesis submitted in partial satisfaction of the
requirements for the degree Master of Arts

in

Latin American Studies (International Migration)

by

Katherine Grant Collins

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2014

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Chair

University of California, San Diego
2014

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List of Abbreviations

DHS	United States Department of Homeland Security
LPR	Legal Permanent Resident
ICE	Immigration and Customs Enforcement
INA	Immigration Naturalization Act
USCIS	United States Citizenship and Immigration Services
VAWA	The Violence Against Women Act
DA	District Attorney
EPD	Escondido Police Department

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ABSTRACT OF THE THESIS

Decline to Sign: The Impact of Local Bureaucratic Discretion on Immigrant Victims'
Equal Access to the Law

by

Katherine Grant Collins

Master of Arts in Latin American Studies (International Migration)

University of California, San Diego, 2014

Professor David FitzGerald, Chair

In a time of increasingly restrictive U.S. immigration policy, a small category of individuals has been allowed a rare opportunity for inclusion: victims of violent crime. Characterized as a humanitarian island of niceness in a sea of restrictive United States immigration laws, the U-1 non-immigrant visa, commonly referred to as the “U Visa”, provides temporary immigration benefits to some non-citizen immigrant victims of crime. However, one’s victim status alone does not qualify them to access these benefits. Despite the purported humanitarian intentions of this policy, this thesis explores the alternative, and potentially more powerful logic behind the law. Using

San Diego County as a case study, this thesis traces the U Visa from formation to implementation, in an attempt to create a more complete image of this victim-centered piece of immigration legislation.

Introduction: Research Goals and Methodological Approach

In a time of increasingly restrictive U.S. immigration policy, a small category of individuals has been allowed a rare opportunity for inclusion: victims of violent crime. Characterized as a “humanitarian island of niceness in a sea of restrictive United States immigration laws” (Ellison 2010), the U-1 non-immigrant visa, commonly referred to as the “U Visa”, provides temporary immigration benefits to some non-citizen immigrant victims of crime. Signed into law under the Violence Against Women Act of 2000, the U Visa was created with the stated dual intent of (1) protecting immigrant victims who lack legal status in the United States and (2) providing a tool for law enforcement to investigate and prosecute crime (USCIS, 2012). Having the potential to grant an undocumented immigrant access to a pathway to citizenship, the visa is indeed a rare “island” of generosity in an immigration system engineered to exclude. While no logical individual holds aspirations of becoming a victim of crime, those who unfortunately find themselves in such circumstances are extended this twisted consolation prize in exchange for their misfortune. However, one’s harm and suffering alone does not qualify them to access these benefits. Despite the purported humanitarian intentions of this legislation, this thesis explores the alternative, and potentially more powerful logic behind the formation and subsequent implementation of this package of laws.

Drafted by then-Senator Joseph Biden, The Violence Against Women Act, included in the Violent Crime and Control Act of 1994, was signed into law on

September 13, 1994 by President Clinton. Through the collective efforts of victims of abuse, their advocates, law enforcement agencies, and prosecutors' offices, this bipartisan supported act was considered to be a landmark piece of women's rights legislation. Essentially a large funding package, the Violence Against Women Act (VAWA) allocated a total of \$1.6 billion over a period of six years to fund law enforcement, victim services, violence prevention and education programs, and abuse-related research (National Coalition Against Domestic Violence, 2006). While VAWA is heralded as a feminist victory, what often goes overlooked in discussions surrounding the bill are the immigrant provisions contained in the legislation that dramatically amend sections of the Immigration Naturalization Act (INA), paving the way for a series of new laws that provide a path to legal status for undocumented immigrant victims of abuse.¹ Included under the section subtitled "Protections for Battered Immigrant Women and Children", VAWA 1994 provided a way for immigrants who have been abused by their U.S. citizen spouse or parent to self-petition to adjust their immigration status to permanent residency independent of their abuser, regardless of the petitioner's immigration status. This amendment removes the formerly established requirement that a petition to adjust one's status must be initiated by an immediate relative. The stated intent of this legislation was to remedy the current immigration law, which had the potential to trap women with dependent immigration status in abusive relationships.

¹ Despite being included in the Violence Against Women Act, the immigration provisions in the legislation are gender neutral — both men and women immigrants who meet the written qualifications are eligible to apply for immigration relief under these laws.

Six years later VAWA was reauthorized, again with bi-partisan support. The Violence Against Women Act of 2000, was moved, and enacted as Division B of the Victims of Trafficking and Violence Protection Act of 2000. The reauthorization was expansive in nature. In addition to extending program grants, more than doubling funding from \$1.6 billion to \$3.3 billion over the following five years (National Coalition Against Domestic Violence, 2006), the most dramatic amendments made to VAWA 2000 were the creation of two new nonimmigrant visas: the T-1 non-immigrant visa (referred to as the T Visa), which provided up to 5,000 visas annually to immigrant trafficking victims, and the other, the focus of this study, the U-1 non-immigrant visa, which provided for up to 10,000 visas annually to immigrant victims of crime.

When VAWA was again reauthorized in 2005, the duration of the U-visa was changed from three years to four, and a provision was added that this period could be extended even further if the victim's presence was required to assist in the ongoing prosecution or investigation of the crime of which they had been a victim (National Coalition Against Domestic Violence, 2006). However, despite the seemingly expansion of this program, during the time period between the 2000 and 2005 reauthorizations, not a single U Visa had been issued. The final regulations spelling out eligibility requirements and future options for U-visa holders had yet to be drafted (Hanson 2010). In 2005, a class action lawsuit was filed against the U.S. government for “refusing and failing” to implement the U Visa provisions. After the filing of the lawsuit, not until 2007 did the U.S. Department of Homeland Security finally release

interim regulations, and only in 2009 did applications start to be approved in significant numbers (Hanson 2010).

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

Despite many bumps and bruises, the U Visa has survived, and remains an important tool for undocumented immigrant victims of violence to seek equal protection of the law. To date, a total of 39,057 U Visas have been granted to immigrant victims of crime, and an additional 30,082 U Visas have been granted derivatively to direct family members of those victims (USCIS, 2013). However, the reality is that the numbers presented in Table 1.1 are not reflective of all those who have sought out this generous form of immigration relief. As all law is ultimately social, and requires that real people carry out policy on the ground that was formed in the sky, even the most meticulously constructed legislation has unanticipated results. The U Visa has proven to be no exception.

Table 1.1: Petitions for U Nonimmigrant Status
Source: USCIS, U Visa Quarterly Statistics (2002-2013)

Petitions for U Nonimmigrant Status									
U VISAS	VICTIMS (U-1)			FAMILY OF VICTIMS (U-			I-918 TOTALS		
FISCAL YEAR	Receipts	Approved	Denied	Receipts	Approved	Denied	Receipts	Approved	Denied
2009	6,835	5,825	688	4,102	2,838	158	10,937	8,663	846
2010	10,742	10,073	4,347	6,418	9,315	2,576	17,160	19,388	6,923
2011	16,768	10,088	2,929	10,033	7,602	1,645	26,801	17,690	4,574
2012	24,768	10,122	2,866	15,126	7,421	1,465	39,894	17,543	4,331
2013 (YTD)	6,565	2,949	461	4,656	2,906	338	11,221	5,855	799
TOTALS	65,678	39,057	11,291	40,335	30,082	6,182	106,013	69,139	17,473

U.S. immigration law is known for being the most complicated, and most ambiguous law on the books (Legomsky, 2010), and since its creation, the U Visa has shown itself to be particularly unnavigable for undocumented immigrants, their advocates, and local justice systems alike. The largest obstacle in obtaining this visa has shown itself to be the initial phase of application process, which requires obtaining

the signature of a “certifying agency” on a form called the “I-918 Supplement B.”² The purpose of this form is to provide “official” proof to that the immigrant was indeed a victim of a crime and aided in the investigation of that crime, and without this signature, an immigrant’s application for the U Visa will not be considered for approval. A problem has emerged that local certifying agencies are refusing to sign this form in large numbers (Jensen, 2009), resulting in the significant delay, and possibly the complete denial of the petitioner’s access to this form of immigration relief. For those denied this signature, the road to legal status stops there.

Through drawing on the current literature surrounding the U Visa, collecting data through secondary sources and government documents, and conducting a case study of the U Visa application process in San Diego County using in-depth interviews and participant observation, I trace the U Visa from policy formation to implementation. In analyzing the internal dynamics of this legislation, I find that often unable to move forward with the certification requirement, many who are eligible for the U Visa are falling through the cracks; their equal access to the law is being denied. I conclude that granting local certifying agents such a large amount of discretion in the certification process has clouded the purported “dual intent” of the U Visa; rather than being used as a tool to proactively protect immigrant victims of crime, the visa is operating as primarily as a mechanism of control; representing another piece of the growing internal enforcement regime of immigration policy in the United States

² For a copy of this form, see Appendix A

Methodology

The primary goal of this thesis is to perform a process evaluation of the U Visa with the intention of elucidating and understanding the internal dynamics of this piece of legislation. According to Patton (1990), a process evaluation not only looks at formal activities and anticipated outcomes of a program, but also “investigates informal patterns and unanticipated consequences in the full context of program formation and development.” Patton asserts that this sort of evaluation typically requires a detailed description of “program operations”, and the effort to generate such an accurate and detailed description lends itself to the use of qualitative research strategies -- the methodological approach I have chosen to use for this project.

This process evaluation was accomplished in two phases: The first aimed to uncover the possible underlying legislative logic behind the creation the U Visa. As social policy scholar Jonathan Simon (2007) states, “One might suppose that laws always have an underlying legislative logic or rationality, a way of imaging subjects who will be responding to the law and the purposes of intervening among them” (p. 77). By placing the U Visa in historical context with other victim-centered immigration legislation, and performing a content analysis of the testimonies presented during the 2000 hearing on the Battered Immigrant Protection Act before

the House Judiciary Committee, I attempt to identify what this logic was, and who the imagined subjects may have been.

The second phase of this evaluation involved examining how the U Visa has translated from policy into practice. In an effort to fill a void in available government data, I examine how the U Visa legislation has been working on the ground. Using San Diego County as a case study, I investigate whether or not the U Visa regulations are being equitably implemented across groups. In order to answer this larger question, I focused on more specific sub-questions, focused on identifying what factors impede or promote an individual's ability to access U Visa status. The data from this phase of the project was derived from two sources: Observations gathered during meetings of a U Visa working group, and in-depth, semi-structured interviews with twenty-three practicing immigration attorneys.

San Diego County: A Key Case

According to Patton (1990), "case studies become particularly useful where one needs to understand some particular problem or situation in great depth, and where one can identify cases rich in information -- rich in the sense that a great deal can often be learned from a few exemplars of the phenomenon in question." San Diego County was selected as the site for my fieldwork as it represents a key case for this body of research due to three main circumstances.

The first rationale behind focusing on San Diego County is its large population of undocumented immigrants. California is home to 10.3 million immigrants, of which

2.6 million are estimated to be undocumented (Pastor, et. al., 2013). San Diego County, the second most populous county in the state, also has the second largest undocumented population, with an estimated 198,000 undocumented immigrants residing there (Hill and Johnson, 2011). These demographics suggest that there is a large population base that is potentially eligible to benefit from the U Visa.

In addition to the having a large undocumented population, San Diego was selected based on the presence of an established institutional framework that works with this population. The city of San Diego is considered a “traditional immigrant gateway” (Hill and Johnson, 2011). Not only do immigrants enter the United States through these areas, but gateways often become where immigrants settle to live, work, and raise families. According to Singer (2004) gateways represent a phenomenon of consequence for the population residing in those places and for the institutions, services, and people that are affected by the movement of immigrants who may be culturally, socially, and linguistically different than the resident population. It can be assumed that due to its historical and continuing ‘gateway’ status, San Diego County, as opposed to other non- or emerging-gateway regions, will have an established network of institutions to assist this population. It is likely that San Diego County has more legal practitioners and organizations that deal with immigrant-specific matters, and there will be a larger sample size of immigration attorneys who have experience handling U Visa cases to draw from.

The third rational behind selecting San Diego is its geopolitical variation. Considered more socially conservative than other parts of the country, North County is

a region in north San Diego County located fifty miles north of the U.S.-Mexico border. North County is home to a large and rapidly growing Latino immigrant population, many of who reside in the more ethnically diverse, working-class communities of Oceanside, Escondido, and Vista. Within the last ten years, reacting defensively to this groups' growing presence, these three cities have taken an actively restrictive stance on immigration by passing local level enforcement measures. Targeting low-income immigrants, these policies (sometimes referred to as self-deportation strategies) are formed with the intent to exclude this population from the community by making their lives there as difficult as possible.

The inland city of Escondido has developed a reputation for being openly hostile towards its undocumented residents, and has been on the forefront of passing local-level anti-immigrant laws. In 2004, the city began conducting sobriety and license checkpoints that the American Civil Liberties Union has found to unfairly target the undocumented Latinos (Buiza and Yusufi, 2012). In 2006, the city council passed an ordinance that would have made it illegal for landlords to rent apartments to undocumented immigrants. In January of 2007, the city council adopted Resolution No. 2007-16, stating the following:

Immigration leads to higher crime rates, contributes to overcrowded and failing schools, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care and destroys our neighborhoods and diminishes our overall quality of life...City Council as the duly elected governing body of the City of Escondido wishes to address the public nuisances of illegal immigration by aggressively working to prohibit and address acts, policies, people and businesses that aid and abet illegal aliens.

In May of 2009, Escondido became the first jurisdiction in California to join Secure Communities -- a federal program intended to prioritize the removal of criminal aliens through matching biometric information obtained at local jails with a federal database. A year later, the Escondido Police Department (EPD) joined efforts with Immigration and Customs Enforcement (ICE) in an exclusive agreement known as "Operation Joint Effort"-- a first-of-its-kind program that allows for two ICE officers to be permanently stationed at the police department. These ICE officers, among other things, were allowed ride in EPD squad cars and assist in traffic stops (Buiza and Yusufi, 2012). In 2011, the Escondido City Council passed yet another piece restrictive resolution, mandating the use of E-Verify for all city employees and contractors.

The city of Vista has participated in similar restrictive practices. In 2006 the city passed an anti-day labor ordinance, requiring employers of workers to register with the city. Unlike Escondido, the local law enforcement agency in Vista, the San Diego Sheriff's Department, does not have a history of engaging in any formal partnerships between ICE (Sifuentes, 2012). However, in 2010 there emerged documented reports of a very active, informal collaboration between the Sheriff's department and Customs and Border Patrol agents. A longtime Vista resident, and immigration attorney interviewed for this project tells this story:

Here in Vista, the San Diego Sheriff had a policy, well not a policy I guess... but they turn people over all the time, not to ICE but to Border Patrol. So with Secure Communities, you get in trouble with the cops, you go to jail, and then from there they turn you on to ICE...But what the Sheriff's Department here used to do is that they stopped somebody for no reason, or for whatever they wanted to, and then they have no reason to

take them to jail, so they take them over to the San Clemente checkpoint and turn them over to Border Patrol, where border patrol would claim that they were caught trying to cross the checkpoint. They did that all the time...It was happening every week, every day.

After a series of meetings with Sheriff's department, in 2012 local immigrant activist groups were able to pressure the Sheriff's department to stop this practice, as of this writing, there is no knowledge that this informal relationship is continuing.

Oceanside, a coastal city in North County, has been much less overt on attempts to restrict the undocumented population residing there. Following Escondido's example, Oceanside Police have implemented the use of sobriety and license checkpoints, and have a history of conducting such checkpoints strategically; in 2008 blocking a major artery into one of the city's predominantly Latino neighborhoods in an attempt to catch unlicensed drivers (Sifuentes, 2008). Also, like Escondido, in May of 2011 the Oceanside City Council supported the drafting of a resolution requiring all contractors with the city to use E-Verify. However, unlike Escondido, the Oceanside Police claim not to have a working relationship with federal immigration agents, and currently there are no ICE officers stationed at the police department (personal interview with Oceanside Police Officer, July 18, 2013).

The presence of such geopolitical variation presents a rich case that allowed me to potentially observe any regional differences in the U Visa application process between exclusionary and permissive localities within the same county.

Sampling and Participant Demographics

Immigration attorney's with experience working on U Visa cases in San Diego County were the chosen subjects for this project. While it is not unheard of for an immigrant to independently complete the entire U Visa application without any assistance from a legal representative, this is indeed the road less traveled. To date, there is no available data regarding the numbers of those who choose to go it alone. Immigrant victims of crime are often are unaware that their victimization qualifies them for U Visa status. Additionally, immigration is a particularly complex area of law, and stakes are high. Approaching this application process alone is a potentially risky venture. Therefore, more often than not, immigrants are referred to, or seek out attorneys with experience in this area of the law to complete the U Visa application on their behalf, making immigration lawyers the primary actors navigating this process. While the bulk of the interviews took place over a period of three months (June to August) during the summer of 2013, my initial field work began in the winter of 2012.

Being a resident of San Diego County during this time positioned me to be able to informally meet with local legal-aid organizations that serve immigrant populations. In one such meeting, I was invited to attend a meeting of the "U Visa Working Group." This group, made up of a usual group of ten immigration attorney's from both nonprofit legal aid groups and private firms, formed in 2009 for the purpose of bringing together a coalition of immigration attorneys in San Diego Country who were working on, and oftentimes struggling with these cases. During these bi-monthly meeting meetings, which last about two hours, attorneys discuss the ever-changing U

U Visa “environment” in the county. The meetings provide a space to collaborate with each other when a case proves to be particularly difficult, and the group works actively to refer cases to what they consider to be the most appropriate practitioners. Outside of meetings, the members of the working group also serve as policy advocates, meeting with government officials, and organizing U Visa training sessions for local certifying agencies. In addition to providing an environment rich for data collection through participant observation, these meetings provided a useful starting point for me to access potential interview subjects. All ten members of the working group were interviewed for this project.

In an attempt to avoid “groupthink” biases that may have been occurring, and to get a more representative sample, I extended my search beyond the U Visa Working Group and their affiliates. Immigration firms often specialize in particular types of cases. Some firms deal only with employment issues, others with only deportation defense; some handle affirmative immigration claims, some only take on clients with asylum claims. There is no exhaustive register of practicing immigration attorneys, let alone a complete record of those immigration lawyers’ specialization. Therefore, my initial challenge was locating those who handle U Visa cases.

To identify as many potential interview subjects as possible, I consulted the closest thing to a complete list of practicing immigration attorneys in the region: The State Bar of California website.³ The State Bar website offers a member search

³ Only those attorneys to agree to have their contact information made available on this website are listed. Therefore, this is not a complete list of practicing immigration lawyers, as some may have opted to not have this information made public.

function, with the ability to narrow a search using immigration as the designated area of law. In order to contain my search to only San Diego County, I entered in a mile range of 100 miles. From these results, I created a list of phone numbers for those with offices located within San Diego County. I then called each one, and inquired whether the firm took U Visa cases. This method could have been resulted in some unintentional exclusion. At times I was not able speak with the attorney's directly, and receptionists were unsure of what sort of services the office handled. I also left voicemails that were unreturned, resulting in some non-responses.

My first finding of this study was discovered during my search for potential interview subjects: very few immigration attorneys are actually willing to take U Visa cases. I was told by many that they did not take such cases because "the nonprofits handle that." Of the sixty-eight offices that I called, only ten responded that they handled these types of cases. For those attorneys that did have experience with U Visa applications, I would either speak to the attorney directly, or email them, soliciting their participation in a research project. They were told that I was a graduate student at University of California, San Diego and I was interested in interviewing them about their experience with the U Visa application process in San Diego County. Some individuals were hesitant to participate, and ultimately refused to meet with me as they had only filed one or two applications, and felt they could not speak in depth about this topic. From this group of ten, five agreed to be interviewed.

Ultimately, I decided to utilize a chain-referral sampling method (Erickson 1979) to widen my sample size. Chain-referral sampling is an effective way in

deriving samples from “hidden populations.” This method has been proven useful for accessing groups who have privacy concerns based on stigma associated with membership in the population, as traditional methods for sampling these groups are often inapplicable (Mackeller et. al., 1996). It seems a bit strange to describe a group of lawyers as a hidden population, however, having discovered the U Visa to be a very specialized area of practice, this was chosen as the most appropriate way to gain access to this population. After each interview, I asked the subject for the name and contact information of as many other attorneys that they were aware of who had experience working on U Visa cases. Oftentimes, I found that this information was volunteered to me without having to ask. I would then contact those individuals via email, mentioning them the name of the individual who had given me their contact information. This method proved successful, and I was able to interview all of those who I had been referred to, adding an additional eight subjects to my sample.

In the end, a total of twenty-three practicing immigration attorneys with U Visa experience in San Diego County were interviewed for this project. The attorneys were employed by both private firms and nonprofit legal aid organizations (16 from private and 7 from nonprofit). Three of the participants’ offices were located in North County, and the others were located in the more metropolitan South Bay region of the county. Most participants worked for firms/organizations that specialized in serving immigrants in immigration law matters alone, however some of the legal aid organizations provided other services to the immigrant community as well, including financial independence courses, and “safety plan” programs, aimed at minimizing the

harms immigrants and their families suffer if detained by immigration or deported. Some firms/organizations exclusively focused on immigrants who were victims of domestic violence, and handled affirmative U Visa and VAWA cases exclusively, while others offered a wider range of immigration legal services, including family reunification petitions, deportation defense, asylum claims, and naturalization. All participants were women, with the exception of four men. Their experience practicing immigration law ranged from three to fifteen years of experience, with an average experience of 6.45 years. As mentioned, the U Visa was passed in 2000, but interim relief was not made available until 2007. Due to this, only three of the attorney's interviewed reporting having experience dealing with U Visas that dated back to 2007. Most did not begin to take U Visa cases until 2009, the year that U Visa's started to be issued.

The attorneys interviewed had experience working on anywhere from 15 to 125 U Visa cases throughout their career, with an average of number of 60 cases. The current U Visa case load varied greatly between offices. Private offices were capable of handling much fewer cases than the nonprofit organizations with an average of 12 and 190 pending cases respectively. This was despite the fact that in both private and nonprofit firms, usually only one attorney was assigned to the entire U Visa caseloads. Due to the desire to provide services to as many individuals as possible, the nonprofit organizations tended to be more selective in the cases they were willing to accept, taking only cases that were "easier" or "more straightforward" (a theme that will be

discussed in much detail later), and for this reason, were able to handle a much higher caseload.

In addition to San Diego, some subjects had experience applying for U Visa's in other localities. Many had worked in Los Angeles, and some had worked in other states, including Colorado, Oregon, and Nebraska.

Data Collection and Analysis

Phase One

Archival research and secondary sources comprised my sources for investigating the policy formation and development process. In addition to analyzing the formal framework of the immigration provisions contained in the Violence Against Women Act, I conducted a critical content analysis of the language used during the testimonies presented on the Battered Immigrant Women Protection Act of 1999 during the hearing before the House Committee on Judiciary of the 106th Congress. I sought to identify patterns based on the evaluation questions identified at the beginning of the study (Patton 1990): What was the underlying logic behind the creation of the U Visa, and who the imagined subjects of this law may have been. Once a "recurring-regularity" was recognized, I was able to sort these into categories, and code accordingly.

Phase Two

The bulk of my field research consisted of conducting semi-structured in-depth personal interviews with practicing immigration attorneys in San Diego County who had experience working with U Visa. These interviews occurred during June, July and August of 2013. All interviews were conducted in person, with the exception of one, which was telephonic. Prior to the beginning of each interview, the subject was informed that their participation was voluntary, and at any point they could stop the interview. Additionally they were informed that no identifying information would be used during the course of this study and were asked for their permission to record the interview. Each interview was digitally recorded.

Through these interviews I gathered primary data on the subjects' experience navigating the U Visa application process. I inquired about the demographics of their clientele and addressed what factors caused some cases to present easier/more difficult than others. Based on information gained through the "soak and poke" stage of my fieldwork, I had identified a recurring theme of dissatisfaction with the level of cooperation from certifying officials, and the certification process became a central focus of my questioning. I had prepared a structured set of questions⁴ and followed these as an outline; however, the interviews often became more unstructured and informal as I asked follow-up questions.

I complemented my interviews by attending two meetings of the U Visa Working Group; once in January of 2013, and again in June of the same year. My intent to attend these meetings was announced the group a week prior, and all

⁴ See Appendix B

participants were given the opportunity to either accept or object to my invitation. During the meetings, I was able to observe attorneys interact with each other, collaborate on cases, and express their frustrations with the U Visa application process. I adopted the role of a passive participant, and recorded my field observations in journal form, including as many direct quotations as possible.

Qualitative content analysis was employed to gather data from the transcribed interviews and from participant observation journal notes. By identifying patterns and creating a coding scheme, I was able to systematically understand the U Visa application process in San Diego County through the lived experience of those most intimate with it.

Limitations of Study

One limitation of this study involves the chosen method of data collection. As my results are derived from non-statistical information, there is a threat that this data could be subjective. Qualitative data has proven useful in applied policy research, as it has the potential to provide important insights and explanations for human behavior, that restrictiveness of quantitative data may not be able to adequately express: “What qualitative research can offer the policy maker is a theory of social action grounded on the experiences -- the world view -- of those likely to be affected by a policy decision or thought to be part of the problem” (Walker 1985). While some degree of subjectivity is some sense unavoidable, through conducting my interviews thoughtfully, utilizing a semi-structured approach, and constructing a systematic

coding scheme, I believe I was able to emphasize the informant's world of meaning, and utilize the informant's categories of understanding rather than my own. In the design phase of this project, I had tested surveys, attempting to quantify the U Visa application process, however I found that given the small population size available from which to draw a sample, coupled with the dynamic, unpredictable, and individual nature of the U Visa application process itself, I found qualitative methods of data collection to be most appropriate strategy to use in approaching this topic.

Additionally, the chain-referral sampling method has its limitations. First, it is a non-random sampling technique, and cannot be considered generalizable (Erickson 1979). Second, samples created from this method tend to be biased by volunteerism, in which more cooperative subjects agree to participate in higher numbers (Erickson 1979). This could potentially create a situation in which those who had more frustrations with the U Visa felt the need to speak to me, more so than those who were having an easier time navigating the application process. Third, the samples derived from this method are subject to homophily bias, as subjects refer those who they have social ties with. Despite these weaknesses, I argue that since the population of immigration attorneys in San Diego County that have experience working on U Visa cases within the county is so small, it is quite likely that I was able to interview nearly all of the members of this group. While there is no way to know the total size of the overall population (Morgan, 2008), towards the end of my field research, my interview subjects were unable to name any attorneys who I had yet to speak with. Therefore, I

can infer that I had reached a near sample-saturation, suggesting I have avoided the biases described here.

Sampling aside, limiting my fieldwork to one region causes the data collected through this project to lack external validity, and it cannot be considered generalizable to areas outside of San Diego County. However, this phase of the process analysis, providing an in-depth description of one county's experience with the U Visa application process, was intended to be exploratory and illustrative in nature and these findings were not intended to be generalizable to other regions. I believe that this does not defeat the value of this study as a whole as the goal of this project was to produce information that may be useful in making future public policy decisions, whether that is at a federal or local level. It is doubtful however that the experience of San Diego County is truly unique a one, and any unequal application of the law, even if in this region alone, is an injustice that demands public attention at any level.

Structure of Thesis

In the following chapters I trace the U Visa from formation to implementation, in an attempt to create a more complete image of this victim-centered piece of immigration legislation. In Chapter 1, I present background information on the victimization of Latino immigrants, as well as provide an explanation of what the U Visa is, what the application process entails, and why this is such a unique law. In Chapter 2, I use archival and secondary sources to place the U Visa in historical context with other humanitarian forms of immigration policy. I conclude that victims

have historically been included in the U.S. citizenry, not based upon the depths and breadths of their harm and suffering, but solely on their ability to fulfill the current socio-political interests of the state, and that the U Visa, the most modern form of victim-centered inclusion, is no different. In Chapter 3, I examine on how the U Visa is working on the ground and review primary data gathered from my case study of San Diego County. In the final chapter, I analyze and discuss these findings, and explain the implications of this work, offer recommendations for future policy decisions, and suggest topics for further research on undocumented immigrant victims of crime.

Chapter 1: Background Information

Latino immigrant victimization

A significant amount of data has been collected on the connection, or lack there-of, between immigration and crime (Hagan and Palloni, 1999; Reid, et.al.,2005); in this body of research, the immigrants' role as victims of criminal activity (as opposed to perpetrators) has received very little attention. Even more understudied have been undocumented victims of crime.

Ethnic minorities have historically been and continue to be disproportionately victims of violent crime. The National Crime Victim Survey (NCVS), the primary source for data on criminal victimization in the United States, does not collect information regarding a respondent's immigration status, but does collect data on ethnicity. According to the most recent available NCVS data, in 2011 Latinos were victims of violent crime at a rate of 23.8 per 1,000 persons (an increase from 16.8 per 1,000 from the year before). This is higher than the victimization rate of whites with a rate 21.5, and less than the rate at which black Americans experience victimization, with a rate of 26.4 (Truman and Planty, 2011). The very limited research that has been done on immigrant victimization has shown that the prevalence of victimization among immigrants is comparable to that among US-born adults (Wheeler et al. 2010). In a large-scale study of self-reported victimization among immigrant groups in South Florida, Biafora and Warheit (2007) found no difference in victimization rate between

Latino immigrants and non-immigrant groups. In a comparison of homicide rates among immigrant and non-immigrant populations in Los Angeles, Sorenson and Lew (2000) found immigrants were at only a slightly higher risk of homicide than non-immigrants.

The reality is that the majority of these crimes go unreported to law enforcement officials. The failure to report crime may partially be explained by this population's confidence in the U.S. legal system. According to a pair of nationwide surveys by the Pew Research Center, Latino's confidence in the U.S. criminal justice system is closer to the low levels expressed by black Americans than to the high levels expressed by whites (Lopez and Livingston, 2009). In addition to ethnicity, one's immigration status has shown to be a determinant of confidence levels. The Pew surveys found that immigrant Latinos report less confidence in the legal system than do native-born Latinos: Fifty percent of native-born Latinos report a great deal or a fair amount of confidence that police will avoid using excessive force on suspects, while 42% of immigrant Latinos express the same level of confidence; fifty-one percent of native-born Latinos are confident that police will treat Latinos fairly, compared with 40% of the foreign born; and sixty percent of native-born Latinos feel a great deal or a fair amount of confidence that the courts will treat Latinos fairly, in contrast to the 42% of immigrant Latinos that say the same (Lopez and Livingston, 2009). This lack of confidence from both immigrants and native-born is not unfounded. Research suggests it is not uncommon for police to improperly stop and

investigate Latinos based on their ethnicity and perceived immigrant status (Schoenholtz, 2005).

Victimization of Undocumented Latinos

It is important to note that most of this limited work on immigrant victims of crime has not been able to account for those with undocumented status. One of the largest barriers to immigrant cooperation with law enforcement agents is fear that contacting the police may lead negative repercussions based on their legally vulnerable standing (Skogan, 2009; Lopez and Livingston, 2009). In a small case study of fifty-seven undocumented male migrant workers in Memphis, Tennessee, the majority of respondents (63%) reported having been a victim of a crime, and only fourteen of the fifty-seven (24%) victims stated that the crime was reported to the police. When these crimes were reported, only one individual responded that he had reported the crime himself. The other crimes had been reported to the police by a second (presumably documented) party (Bucher, et. al. 2010). In a case study of a larger scale, Garcia and Keyes (2012) reach similar conclusions. In a survey of Mexican immigrants (both undocumented and documented) living in San Diego's North County, it was found that undocumented immigrants were generally reluctant to contact law enforcement to report a crime due to fears about interacting with local police. This study also found that despite a reluctance to report crimes, this group expressed reporting crime in positive terms, and viewed it as an action taken by responsible community members to promote safe neighborhood. Garcia and Keyes

explain that, in order to balance their anxieties with their desire to live in a safe community, undocumented individuals would often ask a documented relative to make the report to the police of their behalf.

Reluctance to involve law enforcement and report victimization can have real consequences for those individuals. Baumer, Messner, and Felson (2000) found that reluctance to report crimes to the police among poor, black males increased their overall likelihood of victimization. Not only are the individual immigrants themselves potentially made more vulnerable to victimization due to their reluctance to report, but the communities that they live in as a whole in are also negatively affected by this fearful environment: “Immigrants unwilling to interact with police are a serious impediment to ongoing trust between community members and law enforcement, and this may limit the efficacy of policing measures” (Garcia and Keyes, 2012). Political Scientist Wesley Skogan (2009) has written extensively on this issue and claims that one’s undocumented status is a “barrier” to immigrant cooperation with law enforcement and this limits the ability of local police to work effectively in areas with high concentrations of undocumented immigrants. Skogan attributes the exacerbation of the effects of this barrier to the increase in demand for local police in the United States to become more involved in enforcing immigration laws.

Law Enforcement Response

Local law enforcement agents have not been blind to this phenomenon, and in the last ten years have attempted to address the lack of immigrant trust in police. In a

2004 policy paper the International Association of Chiefs of Police voiced its perspective on this topic:

Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. In 2006, the Major Cities Chiefs Association issued a similar statement:

Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

In 2012, the Police Executive Research Forum released a report on this topic which includes case studies describing how chiefs in certain communities have managed tensions when crafting department-level immigration policies. This report makes a number of recommendations for federal, state, and local governments, such as encouraging police departments to craft written policies on immigration enforcement and involve immigrant residents in their development; limiting police enforcement of immigration laws to focus on “actual criminals”; and passing federal, comprehensive immigration reform.

There have been reports of successful implementation of these sorts of institutional-level policy reforms. In his book *Good Cops: The Case for Preventive*

Policing, criminal justice expert David A. Harris describes the positive experience of the city of Austin, Texas. After a wave of violent crime, the Assistant Police Chief in Austin launched an outreach campaign to encourage Latinos of all immigration statuses to report crimes to the police. His police department told the community: “Trust us. We are not Immigration, we are not going to arrest you, and we are not going to deport you.” As a result of this, reports of armed robberies in the city grew by 20 percent. Another study has shown Mexican immigrants in Oklahoma City, in spite of restrictive state-level measures, to be willing to cooperate with police because local law enforcement had made an effort to reach out to the immigrant community (Garcia and Keyes, 2012).

While these examples of successful of program reform offer valuable models for improving interactions between immigrant groups and local law enforcement by attempting to establish trust and minimize fear, any mention of the one federal policy that has actually put in place that aims to do exactly this is noticeably absent in these discussions.

The U Visa

As mentioned previously, the U Visa was created with the defined dual intent of strengthening the ability of law enforcement agencies to investigate and prosecute criminal cases, while also protecting immigrant victims of crime. However, being a victim of a crime is not the only requirement one must meet in order to be eligible for this visa. In addition to being a victim of a qualifying crime (See Table 1.2) that

occurred in the United States, in order to be eligible for the U Visa, an immigrant must meet the following requirements:

1. The immigrant must have suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity (See Table 1.2).
2. The immigrant must possess credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based.
3. The immigrant must have been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested (8 USC § 1101(a)(15)(U)(b)).

Once it is determined that an individual meets the eligibility requirements they then take the necessary steps to complete the application process. The visa application process can be described as having two phases. The first is collecting what United States and Citizenship Services (USCIS) calls “initial evidence.” This involves completing USCIS Form I-918 “Petition for U Nonimmigrant Status”, which is primarily a biographic form. In addition to this, the petitioner must demonstrate that they meet the eligibility requirements listed above. This involves documenting that the crime did in fact take place and that the petitioner was a victim of that crime, usually through police reports, or court documents; and demonstrating that “harm” took place, typically done through a signed statement by the petitioner, describing the facts of the victimization (referred to as a declaration), hospital records if available, and witness letters.

Table 1.2: Qualifying Criminal Activities

Qualifying Criminal Activities		
• Abduction	• Incest	• Rape
• Abusive Sexual Content	• Involuntary Servitude	• Sexual Assault
• Blackmail	• Kidnapping	• Sexual Exploitation
• Domestic Violence	• Manslaughter	• Slave Trade
• Extortion	• Murder	• Torture
• False Imprisonment	• Obstruction of Justice	• Trafficking
• Female Genital Mutilation	• Peonage	• Witness Tampering
• Felonious Assault	• Perjury	• Unlawful Criminal Restraint
• Hostage	• Prostitution	• Other Related Crimes

Along with the I-918, a supplemental form called the I-918 Supplement B is required to be included in this initial submission to USCIS. The purpose of the I-918 Supplement B is to officially verify the immigrant’s cooperation in the investigation and persecution of the crime that they were a victim of. The Supplement B form, or the “U Nonimmigrant Status Certification”, must be signed by a certifying agency. The agencies include federal, state, or local law enforcement agencies, prosecutors, judges, or any other authority that has responsibility for the investigation or prosecution of criminal activity. This also includes child protective services, the Equal Employment Opportunity Commission, and the Department of Labor (8 USC § 1101(a)(15)(U)(c)(2)(i)). The certification must be signed by a “designated official” at that particular certifying agency. This is defined as “the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U Nonimmigrant Status certifications on behalf of that agency; or (ii) a Federal, State, or local judge” (8 USC §

1101(a)(15)(U)(c)(2)(i)). If a particular agency has not assigned anyone to this duty, while the official procedure for this situation remains unclear, it has appeared that basically any investigative authority involved in the case is allowed to sign.

In addition to these documents, if the immigrant is considered inadmissible according to immigration law, which most undocumented individuals are, based on their having initially entered without inspection, having a history of prior deportations, and at times, having a criminal history, they must file a waiver, Form I-192, “Application for Advance Permission to Enter as a Non-Immigrant” (8 USC § 1101(a)(15)(U)(c)(2)(i)). The U Visa has one of the most generous waivers in U.S. immigration law; one that has the potential to essentially erase offenses that never could have been forgiven in other circumstances, including some criminal convictions, complicated immigration histories, and even false claims to citizenship. Without an approval of this waiver, a petitioner is not eligible to obtain a U Visa.

The second phase of the application process occurs once the application and supporting documents are sent to the USCIS Vermont Service Center to be reviewed by government adjudicators. After completing a review of the I-918 petition, the certification form, supporting evidence, as well as the waiver application, USCIS issues a written decision either approving or denying the application. If USCIS determines that the petitioner has met the requirements, USCIS will approve the waiver, and the visa application, and will grant the petitioner U-1 nonimmigrant status. USCIS automatically will issue the petitioner a work permit, and the petitioner is then also made eligible to receive public benefits.

As mentioned, the U Visa is a rather rare form of immigration status in that it has the potential to generate a path to citizenship for those who are able to obtain this “temporary” status. Even more rare, due to the forgiving nature of its waiver, the U Visa is able provide this immigration benefit to individuals who are currently residing in the United States with undocumented status. In order to understand why the U Visa is uniquely “generous”, one must have a basic awareness of the legal significance of undocumented status, and in the next section I seek to explain the inflexible nature of U.S. immigration law for those that have been branded as such.

What line?: From Undocumented to Citizen

A common response to the immigration debate in the United States is that immigrants should “get in line” or “just come legally.” These propositions demonstrate an ignorance of the unmovable legal barriers that most immigrants face when attempting to navigate a system of laws that is founded on exclusionary principals. For many, a “legal” path to documented status simply does not exist, and never will be available to them.

As Sarah Morando (2013) describes rather poetically, there are three general avenues through which immigrants obtain legal status in the United States: blood, sweat, or tears. If one has blood ties to a U.S. citizen or permanent resident, that in-status relative may sponsor that person to bring them to the United States; if the migrant has a desired skill-set they may be recruited by an employer in the U.S, and brought here to work; and if a person has suffered persecution in their home country,

they are eligible to apply for humanitarian based forms of immigration status, and receive refugee or asylee status. It is the reality for many that none of these narrow avenues apply to their particular circumstances, and for some, this means they must enter and reside in in the country outside of prescribed immigration law of the United States.

While an undocumented immigrant is popularly imagined to be someone who has covertly snuck across the border into the U.S., there are in reality three situations in which an individual's presence in the country is considered "unauthorized"; if an individual enters the U.S. without inspection by immigration officers, if an individual's temporary immigration status expires, commonly referred to in the legal community as "over-stay's"; and if an individual has been ordered removed by an immigration judge. The limiting of life-chances for those that fall into these categories has been institutionalized in the law. What most migrants are unaware of, is that in addition to the daily consequences of being undocumented (inability to work legally, restriction from accesses certain social benefits constant fear of detention and deportation, to name a few), there exist more subtle, and equally distressing administrative consequences. If an individual has been found to be in violation if U.S. immigration law not only are they considered "removeable", but also "inadmissible" to the United States; automatically barring them being able to adjust their status, let alone, obtain status that leads to citizenship. However, despite popular discourse, "illegal" or "undocumented" is not a natural, or permanent state. Even in the rigid system that is U.S. immigration law, it is possible to overcome the issue of

“inadmissibility.” The ability to affirmatively seek to normalize one’s immigration status, to go from being undocumented to documented, is a complex legal process that is available to only a select eligible few.

One way common way to adjust one’s status is through a family petition. An individual without immigration status can have an immediate relative sponsor them. This involves submitting a waiver application, where the immigrant must prove that in their absence, their U.S. citizen or LPR direct relative would experience “extreme hardship.” If approved, the petitioner is then given a filing date. Once this date becomes current, in order to adjust their status, the law requires that most return to their country of origin to obtain their documentation from their home consulate. Once there, they usually wait a couple of weeks, and once the visa is secured, the immigrant can re-enter the United States legally. This process is doable, but is lengthy, and not available to individuals “complicated” circumstances, including certain criminal charges, or multiple unauthorized re-entries. Also, in some cases, going back to one’s country of origin, even for a couple of weeks, may be a risky venture. Once this process is complete, the immigrant is eligible for permanent residency, and then three to five years later, citizenship.

Another way to normalize one’s status after having an unlawful entry is by making a claim for asylum. The eligibility requirements for this process are narrow. One must demonstrate that they faced persecution in their country of origin on account of one of five narrowly defined protected grounds: race, religion, nationality, political opinion, and social group. In addition to meeting this requirement, they must have

made this claim within one year of their last entry into the United States. An applicant initially presents their claim to an asylum officer, who may either grant asylum or refer the application to the Immigration Judge. If the asylum officer refers the application and the applicant is not legally authorized to remain in the United States, the applicant is placed in removal proceedings, where an immigration judge will determine the applicant's eligibility to remain in the country. Given the strict requirements and the large amount of discretion that immigration judges hold in determining immigrant's eligibility for asylee status, receiving a favorable judgment is, in reality, quite unlikely.

A less common, but not uncommon strategy for normalizing an undocumented immigrants' status is to have an immigration judge cancel an immigrant's deportation based on the claim that their removal from the country would cause extreme hardship to a U.S. citizen or permanent resident spouse or child. This approach requires that the immigrant put themselves in deportation proceedings, making this a potentially risky venture. "Extreme hardship" is strictly defined and difficult to prove, and again, given the amount large amount of discretion that immigration judges hold in deciding an immigrant's eligibility for this form relief, this option is available only to those with very specific life-circumstances.

As things stand, an undocumented immigrant's access to citizenship is incredibly limited. The options that are available to them to normalize their status have narrow requirements, and oftentimes involve gambling with their and their family's life. The U Visa is truly generous in this respect. It allows an immigrant to

independently petition for immigration relief without need for a sponsor; remaining in the U.S. while doing so. As mentioned, the U Visa waiver is extremely forgiving, having the power to excuse histories of criminal charges, and immigration violations. Additionally, an individual who is in removal proceedings may use their prima-facie eligibility for U-1 nonimmigrant status to cancel their deportation. The U Visa has the potential to allow an undocumented immigrant, to become a visa holder with work permit, to legal permanent resident, to a citizenship, all within about eight years. As one attorney interviewed for this project delicately explained, “It can totally change someone’s awful life.” However, despite the many real benefits that this piece of immigration legislation has the potential to provide, as is the case of public policy, nothing is ever completely as it seems.

The U Visa on the Ground

The immigration provisions contained within the Violence Against Women Act, including the U Visa have been receiving a growing amount of attention in academic literature. The limited amount of research on this subject has described the U Visa application process as an unpredictable, chaotic, maze-like procedure for immigrants, their advocates, and government officials alike.

As mentioned previously, a period of seven years separated VAWA 2000 passage and when the first U Visa was issued. Once the visa became available, the 10,000 cap was not reached until 2010. In the 2010 article “The U Visa: Immigration Law’s Best Kept Secret”, Hanson explains that the U Visa at the time was not being

utilized as much as it could be due to the fact that many immigrant victims, as well as legal practitioners and advocates were unaware that this form of relief existed.

Once an individual becomes aware of that they may be able to adjust their status through this avenue, they face another obstacle. Even applying for a U Visa can be a frightening proposition for an undocumented immigrant, as this involves identifying themselves to immigration authorities. If they are not granted the U Visa, they are potentially putting themselves in danger for being placed in deportation proceedings. If they are willing to accept this risk, the next step is often to consult an attorney. Although an immigrant may petition for U Visa status without the aid of attorneys, legal representation has been shown to significantly increase an individual's chance of receiving an approval (Ramji-Nogales, Schoenholtz, and Schrag 2009). Here presents another barrier: Legal representation is expensive. Non-profit legal aid organizations often handle this sort of humanitarian process for little to no fees. However, these organizations can be very selective on what kind of cases they take, and often have long wait-lists to receive services. For this reason, potential U Visa applicants who can afford to do so, usually opt to hire private an attorney.

Even when one is able to secure representation, victims that belong to traditionally marginalized groups face additional obstacles. In Villalón's (2010) case study of Latina immigrants seeking to adjust their status under VAWA, she explains how nonprofit organizations, by demonstrating preferences for "good clients", informally (re)enforce dominant power relations and (re)produce structural inequalities. The result of this is that not all victims are equal, and that access to the

relief offered by these laws is, to some extent, limited by the immigrant's national origin, race, ethnicity, gender, sexual orientation, and/or class status.

The first formal step in the U Visa application process is to obtain a signed certification. Jensen (2008) problematizes the U Visa certification process, discussing how the certification requirement for the U Visa is the biggest hurdle for immigrants to overcome when applying for the visa due to law enforcement's reluctance to sign. Jensen states that one factor that contributes to this is a lack of awareness of what the U Visa actually is, and that many law enforcement agents falsely believe that by signing the U Visa certification form they themselves are actually granting that immigrant legal status in the U.S., which they perceive as taking a "pro-immigration" stance (an oftentimes unpopular political stance in this field).

In a 2009 report on the U Visa, the USCIS Ombudsman also cited confusion and lack of cooperation on the part of certifying officials as one and the key barriers in the application process. The report acknowledged the following:

Stakeholders have reported to the Ombudsman that the requirement that the certification be signed by a supervisor or agency head is a significant administrative obstacle for applicants because the supervisor or agency head is often unavailable or not as familiar with the case as another officer who worked on the case. Also, stakeholders have indicated that some officials are not always cooperative and are unaware of the protections afforded to victims in the VTVPA. Others claim that officers are more responsive to certain types of crimes, such as sexual assault, but not other crimes, such as domestic violence (USCIS, 2009).

Attributing this to a lack of education, DHS and USCIS have made available various resources for certifying officials, including a twenty page resource guide for law

enforcement officials, trainings on certifications, and a hotline for additional information (USDHS).

If an individual is fortunate enough to secure a signed certification, and are able to complete the initial application phase, only then are they able to submit their application to USCIS to be adjudicated. This process itself is lengthy -- the processing time for U Visa's is currently fifteen months (USCIS, 2013). In addition to this time, one has to hope to submit their application before the 10,000 visa cap is reached, or an additional wait can be expected. The cap has been met consecutively for the past three years. According to formulated estimates, the 10,000 U Visas available each year are nowhere near enough to serve the targeted population. Helisse and Pepper (2012) found that with an estimated 37,000 undocumented female victims of interpersonal violence in 2008, the current cap will not even cover this group, let alone the victims of the other qualifying crimes listed under U-1 non-immigrant regulations.

In addition to these hurdles, despite the very real benefits that the U Visa can potentially have for a victim of crime, there are potentially, very negative, lasting effects of the U Visa application process. Several scholars have written critically about the U Visa application process, as a process of subjectification of the immigrant petitioner; disempowering victims, rather than empowering survivors. In order to obtain a U Visa, the immigrant must not only demonstrate that they are eligible for relief, but also that they are deserving (Morando 2013). In critical analysis of the language used in the VAWA policy making, Berger (2009) argues that requiring petitioners to demonstrate their deservingness "(creates) a binary dichotomy between

worthy and unworthy domestic violence victims, in which a worthy subject is defined as abused and powerless but willing to remake herself into a self-reliant head of household, while unworthy is linked to state dependency and criminality” and that this process “encourages the cultural remaking of these battered Latina immigrants into compliant subjects of another order.”

Deservingness is usually established through the supporting evidence submitted with the U Visa application. Most of the time, this is done in the form of a declaration, or a narrative of the petitioner’s victimization. Buhan (2008) argues the requirement to prove “substantial harm” compels the petitioner perform their legal subjectivity by “taking up the discourse of the legal system to be read (viewed by the state) as a compliant subject.” Morando (2013) also problematizes the “substantial harm” ground of the U Visa, finding that in order to meet the eligibility requirements, victim advocates are charged with constructing a narrative of a “clean victim” to present to USCIS. This consists of portraying their clients’ status as victims of violent crimes in the form of their “master” trait, while downplaying any “messy” details, which include behaviors that may be considered deviant.

Conclusion

On its face, the U Visa aims to protect those most vulnerable members of U.S. society: immigrants who lack lawful residence in the United States. Tens-of-thousands have benefited from this policy, adjusting their status under the new law. For those who are able to successfully navigate the U Visa application, the visa is a blessing;

giving those who have been victims of crime, discrimination, and legal oppression, a way to live peacefully in the United States. However, as current literature has indicated, when transferred from policy to practice, the U Visa has not been operating in a way that effectively serves immigrant victims of crime. Considering the purported humanitarian nature of this policy, the program does not appear to be working according to plan. In the next chapter, by placing the U Visa in historical context with other victim-centered immigration legislation in the United States, and critically examining the language used during the policy making process, I attempt to provide a more complete depiction of the logic behind the law.

Chapter 2: Victims as Desirable Citizens

There are few categories of immigrants deemed eligible for legal entrance into the United States, and those given access a legal status that provides a path to citizenship are even fewer. Often overlooked in discussions of immigration policy, one such category of individuals that has been granted the rare opportunity for full legal inclusion is victims. Being defined a victim however is not enough; this label alone does not guarantee that one will be extended a humanitarian hand from the United States. Despite the popular American narrative of being a nation defined by its generosity to those tired, poor, huddled masses yearning to breathe free, the nature of U.S. immigration policy is selectively restrictive — allowing entrance only to those that promote the political, economic, and social interests of the state, while excluding those that challenge this. Victim-centered immigration legislation has shown to be no exception to this rule.

The United States has a rather short history of offering legal status to immigrant victims fleeing conditions in their countries of origin. These victim-centered policies have swung from openness to restrictionist. After a long period of slamming the gates on the most vulnerable people, post-World War II, the United States began to admit a select few. While immediately appearing to be humanitarian in nature, these admissions had a dominant underlying logic — to include only those that had the potential to provide a political benefit for the state. In order to control for this, the decision of which immigrant victims were fit for inclusion became based not on

the depth and breadth of an individual's suffering, but rather on the nation that they called home. These immigrants were most commonly granted one of two forms of legal status — that of a refugee, or of an asylee.

While the ghost of these selective nation-based victim-centered immigration policies continues on, it appears that there has been a move in a slightly different direction. Within the past twenty years, there has emerged a new category of victims that has been designated fit for inclusion — victims of crime. The amendments made to the Immigration and Nationality Act (INA) contained within the Violent Crime Control and Law Enforcement Act of 1994 and the Victims of Trafficking and Violence Protection Act of 2000 provide immigration benefits to some non-citizen immigrants victims of domestic violence, and other forms of crime. Much like the stated motivation behind asylum and refugee policy, the passage of these laws was to protect those most vulnerable members of society; in this case, immigrants who lack secure legal status in the United States.

Although these new policies might seem to represent an enlightened transition away from the unjust practice of prioritizing some victims over others, the motivations behind the new victim-centered legislation is similar to before. Despite the fact that selective nation-based victim-centered immigration policies and the new forms of crime victim-centered immigration legislation do differ, the dominate intentions of these laws are the same. While the inclusion of refugees and asylees is intended to promote United States foreign policy interests, the inclusion of the immigrant crime victim is done in the interest of promoting social order and control through local crime

management. Despite this difference, the new policies overreaching motivations mirror those of victim-centered immigration legislation of the past -- to protect the interests of the state, using the immigrant is a mere means to an end. After a discussion of definitions, I will provide an abbreviated review the history of U.S. legal treatment of immigrant victims, primarily focusing on the experience of refugees and asylees. The second part of this paper I will devote to an explanation and analysis of recently created victim-centered immigration policy. Using legal scholar Jonathan Simon's framework of "governing through crime", I contextualize the use of these policies as a mechanism for increasing social control of immigrant communities.

United States immigration law distinguishes between immigrant victims that are desirable members of American society, and those who are not. Those considered fit for inclusion are those who can be used as tools. This this sort of opportunistic discriminatory policy making has human consequences, causing many of those who are in great need of humanitarian aid are being turned away. This move away from nation-based victim-centered immigration policy is not and enlightened one, but more of the same.

Victim Defined

The term "victim", while immediately appearing familiar, is in reality quite a fuzzy legal concept. While one can be a victim of a natural disaster, a deadly disease, or a bad joke, the label of "victim" that we are most familiar with is one that appears in the context of law, and more specifically, in the context of crime. The United States

federal government has attempted many times to define who qualifies as being a victim, however there has yet to be one all-encompassing definition that can be used outside of the law in which it was contained.

Victims are often legally defined in terms of the particular type of harm that they suffered. Victimologist Robert Elias (1986) spells out different five forms that victimization can take. One can be a victim of violent personal crimes, white-collar and corporate crimes, organized and professional crime, state crime, and political crime. Nash (2008) describes how this contextualization the definition of victim has proven problematic. One notable example of this is the “patch-worked” definition of victim contained within the United States Sentencing Guidelines. When established in 1987, the aim of the guidelines was to provide a framework for consistent sentencing of federal offenders. The term “victim” is used throughout these the Guidelines, however, a general definition of victim is surprisingly absent. Instead, each specific set of guidelines “locally” defined victims. Nash (2008) argues that while it could be proposed that a general definition could be constructed out of the different definitions, this lack of an overreaching definition has caused a great deal of judicial confusion, and inconsistent application of the law.

Victims are also commonly defined for legal purposes based on extent of the harm that they have suffered. This technique is especially visible in U.S. immigration law. According to most U.S. victim-centered immigration policies, in order to be considered a victim, the immigrant must prove that the level of the harm they experienced was “substantial.” This way of defining victim is particularly problematic,

as it is purely subjective. For example, according to one individual, sleep disruption might qualify under this definition, while others might not perceive such an issue to be a sufficient enough to meet the definition of harm.

Under United States criminal law, a victim need not necessarily refer to individuals, but groups as well. In some cases, a victim does not even have to be the direct receiver of harm, but can also be family members or close relatives to that individual who did. A victim can even be or even imaginary or potential victims — people that are yet to exist, or may never exist. To make things more complicated, defining who is a victim in a criminal context can vary across time and space. For example, a person may be victim of a crime in California, but not in Arizona with the very same circumstances; a person may be a victim not have been a victim of domestic violence in the 1950s, as domestic violence laws did not exist, but would be considered a victim now.

How far does this label reach? What are the appropriate standards for qualifying who counts as a victim? Is it possible to have one working definition for all contexts? Deciding who is, and who does not warrant the label of victim is an extremely tricky topic, and since these questions have yet to be resolved, the definition remains malleable. This discretionary defining of victim is clearly visible through U.S. immigration policy making, and has been used to justify the inclusion and exclusion of immigrant groups.

Vulnerable Undesirables

Victims, by the most basic of definitions, are a vulnerable population. Since the earliest years of United States history, there has been strongly expressed desire to exclude immigrants based on precisely this characteristic. Rooted in early concerns of British “dumping”, and articulated primarily in the the language of economics, this desire to exclude the world’s tired, poor, huddled masses was expressed through the long history of exclusion of those “likely to be a public charge”, which consisted primarily of the poor and disabled.

In the beginning years of the United States’ new-nationhood there was a great concern over immigrant’s ability to support themselves financially upon arrival. One of the initial groups targeted from exclusion were paupers, those fleeing Britain and other country’s dismal economic state. Many states enacted laws excluding poor immigrants from their territories. In 1804 the state of Massachusetts went so far to imprison or deport those who could not support themselves financially (Zolberg, 2006). Coinciding with the passage of the 1834 British Poor Law, which dramatically cut the British welfare system, an unprecedented magnitude of immigrants began arriving in the US. This migration flow strained the receiving city’s already limited social services. During this time, there were many attempts to offset these burdens. These interventions took the form of bonding or head-tax systems that were established by individual states and paid by the shipping companies. Those who appeared likely to become a public charge, referred to as “defectives” were charged higher rates (Zolberg, 2006).

Immigrants who were poor were undesirable, but so too were those deemed to have the potential to be poor. In his article that addresses disability and U.S. immigration policy, Douglas Bayton (2005) explains that the “public charge” provision was intended to account for not just poor individuals, but those with mental and physical disabilities more generally. In addition to those excluded for mental disabilities, those so kindly termed “lunatics”, “idiots”, “imbeciles and feeble-minded persons”, immigrants with physical disabilities were also denied entry to the United States. Immigration inspectors were instructed to detect “irregularities in movement” and “abnormalities of any description.” Bayton describes that the logic of these exclusionary practices was circular in nature. Those who were poor or disabled may not be able to find employment because they were not mentally or physically capable of doing so. It was further rationalized that or even if the immigrants’ disability did not cause them to be unable to seek and perform the work, the reality is that they would be discriminated against by potential employers, and were therefore simply not going to be hired. Although most likely motivated by eugenic politics, the exclusion of these individuals was rationalized through the desire to promote the economic interests of the state, and these immigrants perceived inability to do so due to particular assigned vulnerabilities. In this time in United States history, the tired, the poor, and the huddled masses need not apply.

Jewish Refugees of World War II

U.S. immigration policy during the period of the 1920s to 1940s was restrictive in nature. The depression caused immigrants to be seen as competitors for scarce jobs, which called for shutting out new immigrants, as well as caused for a general hostility towards those already residing within the United States. This hostile economic atmosphere, layered with continued presence of eugenics movement politics and discourse, calling for a white population, free of ethnic minorities, fueled a series of exclusionary immigration legislation.

With the beginning of World War II, the American public, although sympathetic to the suffering of European refugees and critical of Hitler's policies, continued to favor immigration restriction. One of the most remembered, astonishing displays of the refusal of immigrant victims occurred off the coast of Florida coast. In May of 1939 the German transatlantic liner *St. Louis* left Hamburg, Germany, for Havana, Cuba with 938 passengers on board, most of whom were German and Eastern European Jews fleeing Nazi rule. While initially cleared to land in Havana, anti-Semitism and xenophobia in Cuba, caused the President Federico Laredo Bru, to invalidate the immigrants landing certificates. In a desperate attempt, some passengers on the *St. Louis* cabled President Franklin D. Roosevelt asking for refuge. In response, a State Department telegram sent to a passenger on the ship stated that the passengers must "await their turns on the waiting list and qualify for and obtain immigration visas before they may be admissible into the United States" (United States Holocaust Memorial Museum, 2012a). Though US newspapers generally portrayed the plight of

the passengers with great sympathy, only a few journalists and editors suggested that the refugees be admitted into the United States.

During the second half of 1941, even as incidents of mass murder committed by the Nazis was being reported on in the United States, the US Department of State placed even stricter limits on immigration based on national security concerns.

Although thousands of Jews had been admitted into the United States under the combined German-Austrian quota from 1938–1941, it was not until 1948 that the

United States created a formal program to admit European refugees. The Displaced Persons Act of 1948 allowed for 400,000 refugees to come to the United States.

However, out these immigrants, only twenty percent were Jewish, while the rest were Christians from Eastern Europe that were forced to work as laborers in Germany. The entry requirements for this act favored agricultural laborers to such an extent, however, that President Truman called the law "flagrantly discriminatory against Jews" (United States Holocaust Memorial Museum, 2012b).

The U.S. attitude towards Jewish refugees during this period was that they wished them well, but simply preferred for them to go elsewhere. The admittance of Jews in the citizenry was perceived as a threat to national security, U.S. social cohesion, and an economic burden. The state saw no benefit in their inclusion, and therefore denied entry to a group of victims who had suffered the most horrific crimes in human history

Freedom for Freedom Fighters: 1950s-1980s

As opposed to the complete denial of immigrants perceived as vulnerable, proceeding World War II, it superficially appears as if the United States experienced a change of heart, admitted particular groups vulnerable individuals. But rather than a softening of conscience, this transition was motivated by an evolution to more sophisticated foreign policy making. It involved a realization that immigrants victims are indeed desirable citizens, based precisely upon the vulnerabilities that would likely have been cause for their deportation decades earlier.

At end of World War II, the United States was faced with another population fleeing their home countries — people escaping communist regimes that had been established at the end of the war. However, unlike immigrant Jews who were of no use to the state, these victims were just what the U.S. was looking for to advance their anti-communist message, both domestically and abroad. Framed as victims of “Communist tyranny”, the United States began to welcome the “escapees” with open arms. One such group of this sort was the Hungarian “freedom fighters.” In *Calculated Kindness*, Loescher and Scanlan observe that only a small number of Hungarians who fled to the United States had actually taken an active part in the revolution. As those who fled their homeland in 1956 and 1957 possessed no “well-founded fear of persecution”, they were not legally refugees when they arrived in the United States (Loeschner and Scanlan, 1986). Rather than based on claims of harm, this group was included primarily because of their propaganda value as anti-communist symbols

The next group that was targeted to be the recipients of generous immigration exceptions was Cuban nationals. As Fidel Castro rose to power, the United States passively allowed Cubans to enter without legal formalities. Those who attempted to enter without authorization were not turned away, and rarely deported. Not only was the federal government allowing Cubans to come to the U.S., but they even encouraged them to do so through radio programs and other propaganda (Loeschner and Scanlan, 1986). Later, in 1966, President Lydon B. Johnson signed into law the Cuban Adjustment Act, allowing Cubans who had arrived in the United States after 1959 to become permanent residents if they had been present in the United States for at least two years. Cubans, like the freedom-fighting Hungarians provided a political benefit to the United States as their fleeing represented a dramatic display of the failures of communism.

When one compares the experience of Cuban immigrants to that of Haitians, the states intentions to only include those who provide a political benefit becomes screamingly clear. Cuba and Haiti are comparable, in that both nations have a history of repressive governments with documented human rights violations. However, Haitians did not have the symbolic value that the Cubans possessed, as their victimization was not ideologically based. While the U.S. passively allowed Haitians to enter, and generally did not attempt to deport them, because the government did not see a political use for this population, they were never given the generous offer that Cuban citizens were extended to adjust their status to permanent residency.

Along the same line, the U.S. has a history of denying entry to those victims seeking to flee human rights abuse at the hands of governments boosted by U.S. engineered efforts to fight the spread of communism. Examples of this strategy are quite evident in Latin America during the 1970s and 1980s. Following the 1970 Chilean democratic election of Marxist Salvador Allende, the United States took economic measures intended to disrupt the new government. Such unstable financial conditions in the country facilitated the 1973 overthrow of Allende by General Augusto Pinochet. Following the coup, Allende supporters, regarded as enemies of the state, were tortured, murdered, and “disappeared”, human rights violations that the United States largely ignored. Resistant to admit “leftist radicals”, programs to assist Chilean refugees were not implemented until 1975, which, according to Loeschner and Scanlan (1986), was too late to be of any real benefit.

Central Americans fleeing U.S. backed rightist regimes experienced similar treatment during this time period. In 1985, a group of religious and refugee advocacy organizations filed a class action lawsuit against the federal government alleging, among other things, that the INS (now USCIS), the Executive office OIR and DOS engaged in discriminatory treatment against asylum claims made by Guatemalans and Salvadorans (USCIS, 2008).

An Enlightened Transition?

Post World War II, the golden-gate widened for victim immigrants, but only a select few. Those deemed admissible are those who fit into the political goals of the

state, and this is has been controlled for by putting victims into narrow groups based on national origin. Those whose suffering has recognized has not been because of their horrific lived-experiences, but because of political position of the country that they once home. However, recently victim-centered immigrant legislation has been moving away from Cold War mentality and is increasingly including individuals based on non-ideological reasons, independent of their state-membership. What was the rationale behind this? I argue that instead of serving to promote U.S. foreign policy interests abroad, the admission of this new group of immigrant victims was intended to promote the state's domestic interests by enforcing social control over this population through local crime management.

Since the late 1960's a transition has been taking place in U.S. policy making that uses crime as a justification for the creation of new legislation. This sort of policy not only centers on punishing criminals, but also on protecting victims and potential victims of crime. Legal scholar Jonathan Simon (2007) has dubbed this phenomenon "governing through crime." Simon argues that this form of policy making has caused crime, and the forms of knowledge historically associated with it (criminal law, popular crime narrative, and criminology) to seep into areas of law that are outside of the criminal domain. He cites this shift in policy making as being deeply problematic as "crime and punishment have become the occasions and institutional contexts" for that state's ever increasing exercise of societal control. He explains that this governing through crime has been made possible in large part through victim-centered legislation:

Classifying the citizenry into types of actual and potential victims allows for a broad recognition of diversity within the unifying framework of ‘fearing crime’ -- while our contemporary catalog of “monsters,” including sex-offenders, gang members, drug kingpins, and violent crime recidivists, forms a constantly renewed rationale for legislative action.

Immigration law has not been immune to this phenomenon.

The phrase “criminalization of immigration law”, or “crimigration”, has been used by scholars to describe the shift toward greater criminal punitiveness of immigration that began to emerge in the last twenty years. However, in these discussions on the merging of crime and immigration, the role of the immigrant as victim is rarely discussed.

The Violent Crime Control and Law Enforcement Act of 1994

Enacted in 1994, the Violent Crime Control and Law Enforcement Act became the largest crime bill in the history of the United States, providing for 100,000 new police officers, \$9.7 billion in funding for prisons and \$6.1 billion in funding for prevention programs (National Criminal Justice Reference Service). As Simon (2007) writes, the law “reflected the stunning variety of groups now seeking to be represented in crime legislation (103)”; one such group being women. Heralded as a landmark piece of women’s rights legislation, the Violence Against Women Act, a massive bill in itself, was passed under the Violent Crime Control and Law Enforcement Act of 1994. In an effort to “make women more safe” (Senate Majority Staff, 1993) the bill greatly expanded funding to law enforcement, victim support, abuse prevention and

education programs, as well as abuse-related research (National Coalition Against Domestic Violence, 2006).

Simon (2007) explains that “what is most noteworthy about the construction of the victim in the 1994 act is the way that the victim category has grown and fragmented to address many of the fault lines of difference around which American social conflict is frequently found” -- the passage of the victim-centered immigration provisions contained in the Violence Against Women Act of 1994 perfectly exemplifying this. At a time in U.S. history when anti-immigrant discourse was driving restrictive immigration policy, the prospects of passing a law that granted lenient exceptions to a group of immigrants, going so far to even offer them path to citizenship, would appear dim. However, because this group of immigrants was framed in terms of crime, the bill passed by a wide margin with bipartisan support.

Located in Subtitle G, titled “Protections for Battered Immigrant Women and Children” are the immigration provisions of the Violence Against Women Act. These policies amended the INA to allow an immigrant spouse or child of a U.S. citizen or legal permanent resident to petition to adjust their status to permanent residency independent of that “in-status” relative, regardless of the immigrant’s current legal status. This amendment removes the formerly established requirement that a petition to adjust one’s status must be initiated by the immediate relative. Under this version of the law, an immigrant was eligible for this form of relief (referred to in the legal community “VAWA Self-Petitioning”, or simply “VAWA”) if the following could be demonstrated:

1. That the immigrant has been physically present in the United States for a continuous period of not less than three years immediately preceding the date of the application;
2. The immigrant has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident;
3. The immigrant can prove that during all of such time in the United States they were and is a person of good moral character; and
4. Can prove that their deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child. (USCIS, 2013).

In a manual prepared by the majority staff for use in the initial formation of the Violence Against Women Act, the motivation for the creation of bill was described as a remedy for “the Catch-22 faced by such women: today, they must either stay in the abusive relationships or risk deportation when their U.S. husbands refuse to file petitions on their behalf” (U.S. Senate Majority Staff, 1994). Additionally, when enacting this legislation, Congress found that “This fear of deportation paralyzed immigrant victims and prevented them from calling the police for help, from cooperating with prosecutors bringing criminal cases against their abusers and from seeking protection orders.” VAWA self-petitioning can be described as having two motivations: protecting immigrant victims of abuse, and increasing the probability that this group will assist in administering of punishment against their abusers.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Two years after the passage of the Violent Crime Control and Law Enforcement Act, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IRRIRA) was signed into law. IRRIRA was a restrictive piece of immigration legislation that punitive in nature. This bill expanded the definition of aggravated felonies to include new deportable offenses such as rape and sexual abuse of a minor, and lowered the sentence length and monetary amount thresholds involved in many crimes defined as aggravated felonies. IIRIRA provided for the mandatory detention of virtually all criminal aliens subject to deportation, regardless of family ties, ties to the community, and dependent children. Additionally, IIRIRA criminalized many of the immigration-related activities to which civil penalties previously applied.

In addition to these amendments, one of the policies included in this bill amended the INA, adding Section 287(g), which “(authorized) the deputy director of Immigration and Customs Enforcement (ICE) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, provided that the local law enforcement officers receive appropriate training and function under the supervision of ICE officers” (ICE, 2012). Section 287(g) gave local law enforcement agencies the power to enforce federal immigration law, and therefore the ability to initiate of the deportation process for undocumented migrants.

What seemed to have been overlooked in the formation of this law and the interlocking of crime and immigration was the rise in popularity of the use of

community policing tactics that began in the early 1990s. Community policing is defined by the U.S. Department of Justice (2011) as “a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.” The logic behind local law enforcement agencies integrating the use of these tactics is that in order to successfully police a community, law enforcement requires a certain amount of cooperation from the community members being policed. Strategies employed by agencies following the community policing philosophy involve an emphasis on police-citizen interactions, including increased foot patrols, “stop-and-talk” programs, ride-along’s, “beat-meetings” and neighborhood-watch groups. Community policing models have grown increasingly popular in the last twenty years, and have become “the new orthodoxy for cops” (Eck and Rosenbaum, 2000, p. 30).

As law enforcement agencies began to see success with these tactics with “mainstream” populations, it became apparent that policing immigrant communities using these same methods was proving to be difficult. Skogan (2009) claims that there exist “immigrant specific barriers” that provide great disincentives for this population from cooperating with law enforcement agents; one such “barrier” being one’s undocumented status. He argues that these “barriers” limit the ability of local police to work effectively in areas with high concentrations of undocumented immigrant and attributes the exacerbation of the effects of this to the increase in demand for local police in the United States to become more involved in enforcing immigration laws. If

an individual has been criminalized by the state, and are aware that the local authorities are enforcing federal immigration laws that they have violated, rationally the last thing an undocumented person would do is to seek to call attention to themselves from this particular institution. In a community in which local law enforcement was acting as, or cooperating with deportation agents, it would never be in the undocumented immigrant's interest to cooperate with the police. This situation has proved problematic for the state when attempting to exert control and maintain social order in communities with large immigrant populations.

The problem the state faces is as follows: It wants to maintain the restrictive legislation contained in IRRIRA, including the 287(g) program, so that it can continue forcibly removing undesirable "criminal" immigrants in the most efficient way possible. However, at the same time, it is the reality of the nation's current demographic situation that undocumented immigrants are community members in U.S. neighborhoods. The state required a way to mitigate these contradictory interests, and this is where the U Visa comes in.

Victims of Trafficking and Violence Protection Act of 2000.

The Violence Against Women Act was moved, and reauthorized, again with bipartisan support, under Division B of the Victims of Trafficking and Violence Protection Act of 2000. When looking critically at the content of the House Judiciary Committee hearing on the reauthorization of the bill, it becomes clear that the

immigration provisions contained in VAWA exemplify Simon's governing through crime.

One of the most prevalent trends in the testimonies presented in the House hearing is that despite the fact that this law applies equally to both men and women, the pronoun assigned to the victim is forever female -- the imagined subject is always "she." Another identifiable trend seen throughout the hearing is the use of narratives by immigrant advocates describing the plight of the "battered immigrant." These testimonies aim to depict "real-life" examples of those who stand to benefit from the legislation. The main characters in these narratives follow an identifiable formula: Defenseless, docile women from Latin American countries.

In one of the most emotionally fueled examples of this, Maria Ortiz, a domestic violence case worker, tells the story of Juana, a Mexican immigrant who had been a victim of abuse at the hands of husband. During her testimony, Ortiz presents a drawing by Juana, and claims that the drawing "best expresses her situation as a battered immigrant woman." The drawing contains the following phrase, which Ortiz has translated into English: "I am sick I am scared I am alone My heart is crying, it is alone, it is dead I feel that I am alone in the world in the town in the country."

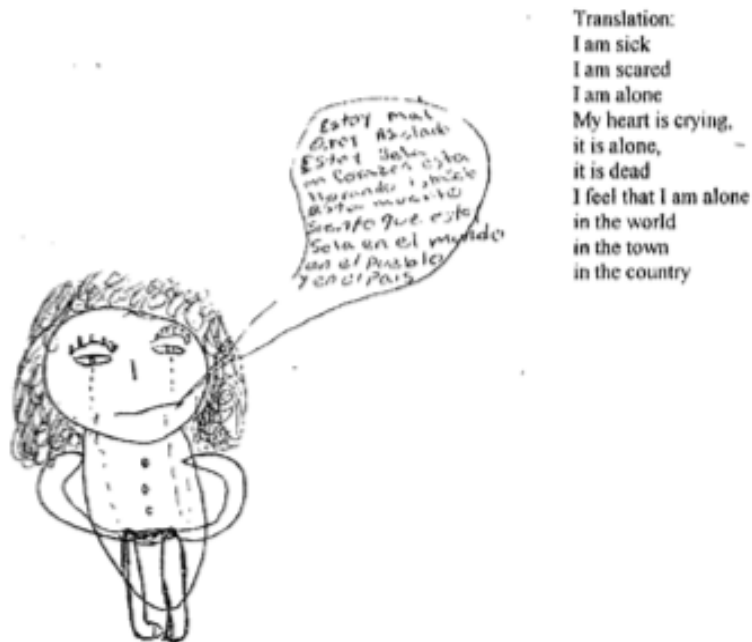


Figure 2.1: Drawing of Juana Ortiz

Source: Battered Immigrant Women Protection Act of 1999: Hearing before the House Committee on Judiciary, p.68.

Strategically evoking pathos to catch the attention of lawmakers, the immigrant advocates portray the immigrant victim as a vulnerable, and particularly in this example, child-like individual, who is desperate for state intervention.

During the hearing, like the victim, the description of the perpetrator also follows a distinct trend: The aggressor is imagined as a foreign male, from a lawless and inherently violent Latin American country. An example of this can be seen in the testimony of Leslye Orloff, a director of a non-profit legal center:

If they have a protection order, the moment they step over the border into Mexico or go to leave the United States that protection order stops helping them. We know from farm worker families, particularly in Texas, he will drag her over the border, beat her up there and bring her back because he knows if he beats her in Mexico he cannot be held

accountable. That is what we want to stop. Many of these guys are stalkers (pg.78).

Duke Austin, a retired career employee of the Immigration and Naturalization Service also demonstrates this logic:

There is no doubt that immigrant women, especially illegal alien women are vulnerable to spousal abuse. Part of the problem is that they and the person to whom they are married or in a relationship with are from societies in which spousal abuse is tolerated or not considered abuse. (p. 47).

In the testimonies, the binary of victim and criminal was most often maintained, however a blurring of the lines occurred in the discussion of possible fraud. An anxiety was expressed that because VAWA eligibility requirements did not include the need to report domestic abuse to law enforcement, this would cause a “super-highway for fraudulent claims to immigration benefits.” Congressman Conyers of Michigan voiced this concern: “Is this going to open the door for everybody to make excuses that my spouse battered me and beat me up and so now I want to become a citizen? That is the main problem here.” Duke Austin also spoke to this:

This bill takes the approach that spousal abuse is a no-fault offense and does not require the abuse to be investigated and punished. Instead, it encourages those who are abused to opt out of the abusive relationship by granting them immigration status to which they otherwise may not be entitled. In this process, a vast loophole of potential fraud and abuse is opened for illegal immigrants who seek to obtain legal residence (p. 47).

Along with problematizing the lack of safe-guards against fraudulent claims, a concern was brought forward that not requiring the reporting of domestic abuse to law enforcement was, according to Texas Congressman Lamar Smith, “contrary to the

alleged purpose of the bill” to increase immigrant cooperation with police. Later in the hearing, Congressman Smith asks domestic violence advocate Lesley Orloff if the bill could be improved by “requiring cooperation with law enforcement to go after the abusers”, to which she replies:

One of the problems with that approach is that if you look at FBI statistics it is very clear that the risk of violence goes up upon separation and particularly when there is involvement with the criminal justice system or a divorce pending. And so lots of times you have women who may want to cooperate but are legitimately terrified that if in fact they cooperate with law enforcement they will get killed. And so I don't think it would be wise to have any piece of legislation that requires such cooperation, and, in fact, original VAWA did not for that reason. (p. 73)

Seemingly unsatisfied with this answer, Smith responds:

If you do not require the cooperation, you are unlikely to get it....I have a major disagreement with the bill if it is not going to require cooperation with law enforcement officials to try to stop the abuse from occurring. Otherwise the abuse may occur with another spouse and you are not really going to the core problem in my judgment. (p. 74)

Dan Stein, executive director of the Federation for American Immigration Reform echoes a similar concern:

The accuser receives these (welfare) benefits without any reciprocal responsibility to cooperate with the INS or local law enforcement to punish or deport the purportedly abusive father or husband. The absence of provisions to link the immigration benefits for the VAWA petitioner with the sanctions against the “abusers” under immigration law suggest that (this law) was never intended to serve as a deterrent to future abuse in immigrant communities (p. 88).

The desire to enforce cooperation is telling of the underlying logic of this victim-centered piece of immigration legislation. Comments made by Smith and Stein

demonstrate that while superficially appearing to have an interest in protecting immigrant victims, the primary purpose of requiring documented cooperation is one of punitiveness, and was intended to punish an imagined foreign abuser. While VAWA self-petitioning was able to make it through reauthorization without this added requirement for cooperation, another piece of victim-centered immigration legislation included in the bill was not.

After VAWA self-petitioning was enacted, immigrant advocates were confronted with the reality that many undocumented immigrants who were victims of domestic abuse were unable to apply for VAWA because they might not have been married to their abuser, or their abuser did not have legal status. Because of this, they lobbied for a way for these individuals' victimization to count and for them to be included under this law. They were successful in doing so with the U Visa. However, most likely the result of a compromise between immigrant advocates and immigration restrictionists like Smith and Stein, the U Visa, unlike VAWA, was engineered with a requirement of documented cooperation.

In examining the content of the testimonies presented during the policy making process, the imagined subjects of the law can be identified, and purpose for intervening among them, the underlying logic behind the law, surfaces. It becomes clear that the intentions of the VAWA immigrant provisions, claiming to have the interest of the victim at heart, are not as pure. By portraying the victim in an idealized light -- innocent, child-like, abused and helpless, VAWA expresses a preference for these individual's inclusion in the citizenry due to their imagined hyper-moral, non-

threatening attributes. With the addition of the U Visa's requirement of cooperation, and it becomes clear that at least one part of driving underlying logic of this policy was to justify the punishment of the "undesirable", violent, criminal immigrants by justifying state-intervention in the lives of the "good", "moral" victims. In part, the U Visa can be seen as an incentive mechanism for neighbors to report neighbors, sisters to report brothers. The desire to make legal status contingent upon cooperation, even if that cooperation could result in the victim's death, clearly shows that in this legislation, the desire to enable an individual to free themselves from abuse is secondary to the ability to police immigrant communities.

Conclusion

In his thorough review of American immigration policy, Zolberg (2006) argues that immigration policy has been used as a tool in the deliberate shaping of American political and economic landscape, and swings from openness to restrictionist depending on the immediate political, social and economic interests of the state. Victim-centered legislation, while superficially appearing to have been made with only the well-being of the immigrant in mind, is not immune to this sort of politics. In this type of policy the immigrant a means to an end -- at most an afterthought.

As opposed to the complete denial of immigrants perceived as vulnerable, proceeding World War II, it superficially appears as if the United States experienced a change of heart, extending a humanitarian hand to victims with possibly with no priorities to the country, without support networks in the U.S., who by definition were

vulnerable. However rather than a softening of conscience, this transition was an evolution to more sophisticated techniques of foreign policy making. It involved a realization that immigrants are indeed desirable citizens, based precisely upon their vulnerabilities that would likely have been cause for their deportation decades earlier. Not all victims were welcomed, but a chosen few. Those deemed admissible, those who's suffering was recognized, was not because of their horrific lived-experiences, but because of the country which they once home.

Within the past twenty years, another transition has taken place in humanitarian immigration policy. Within the last twenty years, U.S. immigration policy has been more accepting of immigrant victims based on non-ideological reasons. In recent years, United States Refugee Admissions Program has switched its focus from large-scale populations of special interest to the United States, to smaller numbers of refugees from more diverse locales in an effort to resettle the most vulnerable populations (Kerwin, 2011). In 2011, the United States accepted refugees from more than 54 different countries (DHS, 2012). Even Iraqi refugees, who, as Kerwin (2011) explains, would have been clear candidates for large-scale admissions, have been admitted in relatively modest numbers. Additionally, beginning in 1994 with the creation of the immigration provisions contained within the Violence Against Women Act, a new category of victim-centered immigration policy has emerged. What makes this legislation unique is that the conditions for an immigrant's acceptance are completely independent of their national origin. Despite this apparent difference, as demonstrated during the House hearings, the motivations behind this

new form of victim-centered policy making is modeled on the logic of the old -- to promote the interests of the state in exercising control over the foreign other. Since 9/11, the focus on control has largely been projected inward. The U Visa reflects this shift to domestic exercise of state-power, and is clear example of regulating immigration through being “tough on crime”; an increasingly popular, and deeply problematic trend in U.S. policy making.

Despite the macro-level non-humanitarian motivations behind the creation of U Visa, it is an undeniable truth that thousands of undocumented immigrants have and will continue to adjust their status through this avenue, becoming “legal”, which no doubt seriously improves some aspect of their quality of life. For this reason, these success stories are nice to hear about. However, as Loescher and Scalan (1986) point out, “For every statistic of welcome, there is another of exclusion, for each example of the open door, there is another of the door banging shut” (p. 209). Using the experience of San Diego County, the following chapter is a glimpse into how the logic of these regulations has played out on the ground.

Chapter 3: San Diego County Case

Who is the “typical” U Visa applicant?

“The typical U Visa applicant is a woman, she’s from Mexico, she has two children who are under the age of fifteen maybe, maybe she has three children. She’s not super well educated, but she probably has six years of school. She is a victim of domestic violence, and it varies significantly the degree, I mean I have seen clients who were shoved and verbally abused, to clients who have been maimed...They are typically employed, in service work of some kind.”

All twenty-three of the interview subjects described the typical U visa applicant as a Mexican woman. According to the participants, the U Visa applicant in San Diego County is usually female. Most of the interviewees reported having handled very few male U Visa cases in which the male was the primary petitioner, ranging from zero, to “being able to count them on one hand.”

When asked the national origin of their U Visa clients, a common response I received was “Let me just think of who is not from Mexico.” Participants estimated that Mexican nationals comprised 75-100 percent of their U Visa cases. The second most represented country of origin was Guatemala, and then Honduras. Only three respondents mentioned having U Visa clients that were from outside of Latin America; these included individuals from Italy, Canada, and the United Kingdom. Regarding the manner of entry of the immigrants, interviewees responded that between 80-100 percent of their clients entered the United States without inspection, with the second most common entry being with a tourist visa, which was subsequently overstayed.

The age range of U Visa applicants of those interviewed ranged from minors as young as 8 years old, to individuals in their mid-forties. The most frequent age range mentioned was 25-30. When asked for the estimated education level of the applicants, all respondents replied that their applicants most likely had six years of education in their country of origin.

The majority of the participants mentioned that their typical U Visa client is often a mother of several children, with some, if not all of her children having been born in the United States. Despite the lack of formal work authorization, attorneys reported that the majority of their clients were employed, with women typically performing service work (housekeeping, restaurants and caregiving) and men working as day laborers, in construction, and restaurants.

Twenty-six crimes qualify under U Visa regulations, however, all participants states that, by far, the most common crime that the U Visa applicant has been a victim of is domestic violence that was perpetrated by an undocumented spouse, or significant other. It is common that the victim has experienced not only the one incident of abuse that they have reported, but has a long history being abused by their partner. The second most common crime mentioned was sexual assault. In addition to these, attorneys reported handling cases for clients that had been victims of many other crimes qualified under the U Visa regulations; including stalking, extortion, hate crime, and murder, to name a few.

The majority of attorneys explained that their clients had fear of contacting police; however this fear was eventually outweighed by the fear of harm caused by the

abuse. As this was the case, contact with the police was most often initiated by the victim. One interviewee explains a common case:

The classic scenario (is) where she's the victim (of domestic violence), never called the police because her abuser said that she would be deported if she did. We have clients where that has happened, but it has just gotten so bad that they don't care anymore. They just say "Fine if I'm going to be deported, I'll just take my kids with me, and that will be that, but I can't keep living this way."

Children's witnessing of abuse was mentioned as another factor that motivated the reporting of crime. Oftentimes, the U Visa applicant themselves were not the one to contact the police, and instead a bystander, neighbor or friend did so on the victim's behalf.

The majority of the attorneys felt that their clients had not known about the U Visa at the time of victimization, and found out about this potential for relief post-hoc. Many of attorney's clients had been referred to them by victims' advocates at the District Attorney's office, as well as social workers at community health clinics, shelters, family service centers, and other organizations that have been trained to screen for such things. Victims also commonly found out about the U Visa via their social network: "A friend of a friend told her that because she was a victim she might be able to do something." However, as one attorney interestingly pointed out, that word of mouth has not been the most efficient, effective way of promoting awareness due in great part to the lengthy processing time of the application:

Once a U Visa gets approved and the family has it, then they might be willing to say "Hey, I got something." Do you really want to go out and talk about the awful things that happened to you at a party? I doubt it. But once they have status and someone asks "Well how did you get

status?", "Oh ok, I'll tell you about it." In that way it will disseminate in the immigrant community.

Lastly, migrants often learned of their potential eligibility for the U Visa only upon contacting legal representation for other immigration matters, for example if they or one of their family members had a pending removal case.

Several of the interviewees mentioned that the discovery process can be more difficult for men than for women. This was attributed to the tendency to fail to come forward because of cultural stigma associated with male victimization. Additionally, many organizations that provide screening for domestic abuse are focused on serving women and children exclusively. Because of this, men often have a harder time accessing services. I was told by one practitioner that oftentimes, her male clients are victims of psychological violence as opposed to physical. This form of abuse is rarely reported to law enforcement, and therefore despite having been a victim of abuse, they are not eligible for U-1 status.

“All U Visa cases are difficult”

The current processing time of U Visa applications is currently officially listed as being fifteen months; however my interviewees' responses varied on the average amount of time their clients must wait to receive a decision from USCIS. Many responded that the wait-time was unpredictable. Some responded that they had received a response in five months, while others stated that they have applications that have been pending with USCIS for almost two years. The participants did not perceive

there to be any identifiable trend in what cases took longer than others. In the end, all of the practitioners reported a very high approval rate with USCIS, with only three interviewees stating that they had ever received a denial. Reasons for these denials included adverse immigration history, one case in particular in which the client had seventeen re-entries. Another example given of a case that was denied by USCIS was based on the finding that the crime which the petitioner was a victim of could be considered under the list of qualifying criminal activity.

While all subjects reported that they had not noticed any systematic bias or discrimination demonstrated on the part of USCIS, they were able to articulate what factors characterized a U Visa case that they considered to present as easier, or more difficult than others. These factors can be broken down into two categories. The first category is factors that have the potential to affect the immigrant's eligibility to receive an approved waiver of inadmissibility. This waiver, titled the "Application for Advance Permission to Enter as a Non-Immigrant", requires that the petitioner explain why they believe they should be admitted despite having committed a violation of immigration and/or criminal law. This usually involves including in the application supporting documentation attesting to the immigrant's good moral character. The waiver has the potential to be quite flexible; however, it does not excuse every transgression.

As a history of immigration and/or criminal offenses is the largest determinate of one's eligibility for admissibility, a straight-forward case was described most often as a client who had a short list of immigration violations, and a minimal, if not non-

existent criminal history. As one participant described, a comparatively easy case would be for a client who “maybe had entered illegally and worked here illegally, but did not have any expedited removal at the port of entry or any criminal background, basically a clean case for the waiver part.” The concept of a “clean case” was mentioned by several attorneys. The nature of one’s criminal history was also a consideration. As one interviewee put it:

It's a balancing test. You have to decide: Are the person's positive equities going to overcome anything negative in their history? So if a person has very serious DV conviction that can't be explained any other way other than that's what happened then you're going to have to have a lot of strong equities to overcome that and get the U Visa. While you might be able to explain a petty theft for a woman who went to the store to buy formula for their baby because her abuser was keeping all the funds, then that would be something that would be something you would easily be able to overcome whereas other crimes are going to be a lot tougher if there's no explanation for them, or if there's a history, like a pattern of DUI's would be hard to overcome.

Straight-forward cases were frequently described in terms of being “sympathetic.” This included cases involving child victims and single mothers, cases in which the crime was considered particularly severe, and cases in which victims had experienced a long history of abuse. It was also mentioned that in the case of a domestic violence offense, it was important that the victim currently not be in a relationship, or living with the abuser. One of the nonprofit organizations I spoke with went so far as to refuse to take a case in which the victim was still with the abuser. Several interviewees mentioned that male U Visa clients frequently presented a difficulty in being able to present such sympathetic cases because it was more difficult to prove they met the requirement of having suffered substantial harm. Described as

“tougher and harder to break down”, many attorneys mentioned the delicate situation of assisting their male clients in constructing compelling cases. As one attorney described, “You don't want to invent reasons for them. You don't want to traumatize them when they aren't traumatized.”

Another key factor in determining the difficulty of a case deals with providing corroborating evidence to prove that the applicant meets the U Visa eligibility demonstrating substantial abuse. While the declaration plays a large role in providing support for the applicant's claim, many of the attorneys told me that a stronger case would have documentation considered to be more “official.” Examples of this include the existence of a police report, and that report explicitly describes the immigrant's cooperation. It was mentioned several times to me that cases that went to trial and in which the perpetrator was convicted of that crime are best because it is easier to demonstrate cooperation. Additionally helpful in documenting eligibility was the ability to formally prove harm, this included the ability to provide hospital records that demonstrate physical injury, letters from a psychologist if the victim has gone to therapy, clinically describing the extent of a victim's traumatization.

While these all these above factors were mentioned have a significant impact on the second phase of the application process; the phase in which a USCIS adjudicating officer discretionarily grants or denies the applicant a waiver, these factors were reported as secondary. The fact is that in San Diego County, countless cases are not able to make it this far in the application process. All twenty-three interview subjects stated that the difficulty level of a case, and its subsequent success

or failure was weighted most heavily upon one factor alone: the jurisdiction where the crime took place.

The Certification Process

When asked what the most difficult part of the U Visa application process is, all twenty-three subjects responded it that it was obtaining a signed certification. As described earlier, in order to be considered for a U Visa, a supplemental form called the I-918 Supplement B is required to be included in the initial application submission to USCIS. The purpose of the I-918 Supplement B is to officially verify the immigrant's cooperation in the investigation and persecution of the crime that they were a victim of. The Supplement B form, or the "U Nonimmigrant Status Certification", must be signed by a certifying agency. Without a signed certification, the application will not be considered by USCIS.

In inability to obtain a certification was common. The immigrant representatives expressed great frustration in regards to this hurdle. Emerging as such a prevalent issue, this issue alone was described as the motivating factor for the formation of the U Visa working described earlier. When the topic of certifications arose during the interview, most attorneys reacted emotionally. One participant working for a legal aid society even cited this frustration as one of the reasons why her organization was no longer accepting new U Visa cases, and was now referring these clients elsewhere.

The process of beginning a U Visa case first involves the attorney performing some sort of intake with the client to assess eligibility. Once prima facie eligibility has been established, many of those interviewed reported it was important to them to be upfront with the possibility that despite the fact that their client may qualify under the U Visa regulations, they ultimately may not be able to adjust their status through this avenue. The inability to get a signed certification was such a common occurrence that most offices, when writing contracts for services, in an interest of fairness, obtaining a signed certification was made a service separate from the filing of the U Visa application with USCIS. A subject describes how she approaches this issue with her clients:

I do tell them that it (getting a signed certification) will be difficult, and that I can't guarantee it. I never say, "Oh I'm going to get the certification." What we do is we separate our process, and then if we get it (the signed certification) we go on to the second step. We do not want to commit to the U Visa in general if we cannot overcome the hurdle of the certification.

The next step in the application process is for either the attorney (or sometimes, but rarely, the client themselves) to communicate with appropriate certifying agency. This is assessed based upon the particular circumstances of the crime. The appropriate certifying agency is judged basically on whatever investigating body had contact with the case at hand. For example, if the police responded to a reported crime, that particular department was usually contacted. If the crime was then prosecuted, this suggests that the city and/or district attorney became involved in the case, and therefore could be considered relevant parties. In San Diego County, the

most frequently relevant certifying agencies were reported as the local police and sheriff's departments. This was the case as many crimes do not result in a prosecution. However, if a case reaches that level, attorneys often reported seeking certifications from the city attorney's office, the district attorney's office (DA), and the San Diego Family Justice Center. Additionally, interviewees had reported contacting Child Protective Services as well as local judges, albeit less frequently. Methods of contact varied, but usually the attorney would attempt the agency, making the request for signed certification by phone, or by mail. The next step is to wait for a response.

Certifying Agency's Response to Requests

All twenty-three attorneys interviewed reported having frequently confronted certifying officials' reluctance and/or outright refusal to sign certifications. Responses of this sort took three forms: denial without justification, denial with justification, and a more complex issue of what I will call a "passive denial." It was reported that the jurisdiction frequently dictated the nature of the response.

Denial without Justification: The Case of Oceanside

All interviewees reported great difficulty in obtaining signed certifications for crimes that occurred within the city of Oceanside. One attorney, working at a large legal nonprofit, explains the U Visa procedure (or lack thereof) in the city:

The Oceanside Police Department says that their officers don't sign, but they forward us to the city attorney who says we (the city attorney's office) can't sign it. They just give us the runaround. So there's certain

victims that if they reported (a crime) to those police stations, we just can't help them because we can't get a certification.

This “runaround” experience with the Oceanside Police Department (OPD), and with the Oceanside City Attorney’s Office was very common. All attorneys reported that at some time or another, they had received this sort of treatment attempting to get signed certifications in this area. Once referred to the city attorney’s office, many responded that they had been sent a letter from the City Attorney stating only that the OPD had reviewed the U Visa certification request and “at this time we decline to sign the certification form.”⁵

According to the interviewees, Oceanside has not communicated an official policy on how they handle U Visa certification requests, and this has been the cause of lack in clarity, and much frustration on the part of victim advocates. Several interviewees reported having attempted unsuccessfully to communicate with the Oceanside City Attorney’s office about this issue. One attorney describes her experience of doing so:

I always ask questions like "Do you have a specific policy that you aren't signing U Visas?" because it is in their discretion, they are perfectly able to say you no we're not signing, that's perfectly fine. But they won't let me know if they have an explicit policy, they won't let me know if there's some type of case that they are willing to sign, but others they might not be willing to sign. There's just no rhyme or reason that they are willing to give to us.

As a result of this long history of denials, many attorneys reported that during an eligibility evaluation, one of the first questions they ask a potential client is “where did

⁵ For an example, see Appendix C.

the crime occur.” If the answer to this question is Oceanside, most reported that they would not take that case, unless the case had made it to the District Attorney’s Office (which most do not), or until they knew that there had been some change in the way that Oceanside handles their U Visa requests. However, several of the interviewees reported have been aware of a handful of successes in getting “strong” cases signed certifications from the OPD. Only one of the attorneys interviewed in this study had personal experience with such. She explained me the circumstances of this particular case:

It was a very public case. If you're familiar with the case, there's not much I can do to change the story of it. He's a high school student, he's an honors student, college bound. He and a couple of friends were at a park just hanging out on a bench and these three or four gang members who were trying to retaliate against somebody else who happened to be at the park came up and basically just decided to open fire. He was shot seven times, twice in the head. The other kids died. He survived with one other. And he was the only person to cooperate with the police. So there was no problem getting them to sign that certification. But even then we didn't know because Oceanside in particular is incredibly capricious, and they don't have a system for how the U Visa's go.

When asked why she thought OPD was willing to sign for this particular case and not others, she answered:

They knew him because he's actively involved in the community center, and there's a lot of community policing there and it happened at the park at that community center...I think that they all fell in love with this kid. He's a stellar student. He's your lifetime made for TV movie. Only the farthest right minute men would have been able to have any beef with the fact that he was here undocumented.

Many of the attorneys had brought up this case to me during our conversations. It had become a sort of U Visa folklore. Because of the publicity surrounding the crime, and

the victim's idealized circumstances they hoped that this case would be a breakthrough, potentially motivating OPD to create a policy on signed certifications, or at the very least, a conversation between the police department and immigrant advocates. However, the attorney representing this client had a much bleaker and possibly more pragmatic outlook on the situation:

I'm almost bummed out because this is the perfect case and the problem with the perfect case is that then they get the idea that that's what cases are supposed to look like and they don't. They don't normally look like that. His case almost hurts us. So when you want to talk about the perfect case, that's the perfect case from the police's point of view, it's the perfect case because it's easy, but in terms of the long term strategy for how do we build a protection for victims of violence, that's not a case we want on our desk. He's the poster child, but how many people are poster children?

For those non-poster children clients, if they were a victim of a crime within the jurisdiction of Oceanside, it remains very unlikely that they will ever be able to apply for U Visa status, despite meeting all eligibility requirements. Attorneys reported that this concept was frequently difficult for their immigrant victims to grasp.

When you send it to Oceanside, they will forward it to the city attorney's office who will then send back a letter saying that they decline to sign the certification without any other details. It's always the same letter, you always get it. Sometimes we just go through that process so we have something to give the client saying that they denied. Because sometimes they say, "Well I don't see any letter." They want something physical saying that it's been denied. So if a client's insistent we'll go through the process to show them what is happening.

This process is resource intensive, especially for legal nonprofits that have only one attorney handling more than one hundred U Visa cases. Therefore, most immigrants who find themselves victims of crime in Oceanside are simply told, "I'm sorry, but

we're not able to get a certification signed right now, check back with us in six to eight months." As of this writing, the city maintains this non-policy in regards to the U Visa, and immigrant victims of crime continue to be turned away in mass.

Denial with Justification

Another form of response very familiar to immigrant advocates was a denial of certification request paired with some attempt on the part of the certifying agency to justify this decision. Often, these "justifications" were irrelevant according to the regulations spelled out in the INA. The following are examples of the most common justifications provided by San Diego County certifying agencies in their denials.

"A U What?"

If a certifying official had no knowledge of what the U Visa was, they were more reluctant to sign. As one attorney stated, it was not uncommon to hear that "they have no idea what it is, and they don't want to get involved." Many interviewees mentioned that the most common misconception expressed by certifying agents is that by signing the certification, the agent themselves is granting that immigrant legal status in the United States. One attorney explains this: " 'I don't want to give an undocumented person status' is what most of them automatically think that I am asking them to do." This lack of knowledge was at times curable. Most mentioned that if confronted with this response, they usually attempted to educate that individual. The U Visa Working Group was an important resource in this respect. During their

meetings, the attorneys discussed whether or not they believed that certain agencies would benefit from educational trainings. Additionally, in an interest to avoid “bombarding” one agency, the group would coordinate to send one point person, usually a member from a local organization, to engage communication with that particular agency or signing official. Many of the interviewees reported that the U Visa informational materials released by the FBI and DHS had been an effective tool for educating law enforcement, because of police distrust in attorneys and as one participant stated, “Sometimes they have to hear from their own ranks.”

Victim did not “Suffer Enough”

One particularly upsetting trend was denials based on the perception on the part of the certifying official that the victim of crime did not experience what they believed to be “substantial harm.” One of the interviewees described to me a case of this. Her client was a victim of battery and a hate crime, had reported that crime to the police, and had assisted both the police and city attorney with the investigation and prosecution. Despite demonstrating cooperation to the fullest extent, an attorney at the San Diego City Attorney’s office refused to sign the certification for this client:

In that case the reason the attorney in charge didn't want to sign it was because she personally didn't feel that the victim suffered enough, which is not in her role to determine as a certifying official. Her role is to just look at the records, verify that the crime happened, and sign off on it. USCIS determines whether or not the person suffered substantial harm as a result of the qualifying crime. In that case we kindly followed up with a letter explain that very politely, reminding her what her role was, she continued to believe that she could determine whether or not the victim had suffered enough so we sent another letter where we actually attached information from USICS explaining how those officers are trained to

evaluate that, she is not. Again that is not her role, didn't want to sign it. Every factor was there and she just didn't want to sign.

This was reported as a common response to cases of domestic violence which the certifying agent considered to be isolated incidents, or “spats.”

Failure to “Cooperate”

The purpose of the I-918 certification is to provide official proof that the immigrant victim fulfilled the cooperation requirement of U Visa eligibility. If the victim did not cooperate, the certifying agent is instructed to not sign the certification, which is completely reasonable. However how “cooperation” has been interpreted by certifying agents has varied.

According to U Visa regulations, just reporting a crime is sufficient enough to establish cooperation. However, certifying agents do not often recognize this being the case. One attorney expressed his frustration with attempting to educate officials about this: “I would say (to the certifying officer), you realize that cooperation is past, present, and future in the law, and at minimum she gave you a police report and she was available as a witness and that is minimally sufficient for cooperation and they'll just go ‘nah, nah’.” This loose definition of cooperation proved problematic when the city or district attorney was unable to secure a conviction in the case that the victim brought against their perpetrator.

Several interviewees reported that this tendency was prevalent in domestic violence and sexual assault cases. As one attorney brought up during a U Visa

working group meeting, “If they have chosen not to prosecute, they are getting push back.” A participant explains her experience with this:

One (certification) was denied because the victim was a minor, and from the time we filed the request to the time the San Diego DA looked at it, the mother took the daughter in and recanted her story. The mom took the child in and the child said that she made it up. The DA said well we can't sign it because either she's not cooperating or she made it up.

Rescinding claims of domestic violence and/or sexual assault was reported as very common occurrence with U Visa applicants. As one attorney explained, “Victims are at different stages of recovery process.” Oftentimes, U Visa eligible individuals don't want to testify against their perpetrator in cases where there is a lot of fear. They do not want to face this person in court. Additionally, U Visa applicants because they are undocumented, lack employment authorization, and if working, often find themselves unable to earn a livable wage, they are often financially dependent upon their abuser. The fear of familial harm caused by imprisoning, or even deporting the individual who provides an income outweighs the fear of abuse or the desire for justice. When reporting a crime, many victims hope to stop the immediate injury. However, when faced with the prospect of having to survive day-to-day, supporting themselves and their children, prosecuting is simply not an option.

Other decisions to deny certifications based on lack of cooperation appeared to be even more arbitrary. For example, one interviewee reported having a case in which his client had filed a police report for having received threats, and had applied for and been granted two restraining orders against their perpetrator. Despite this

demonstration of cooperation, Chula Vista Police Department (a jurisdiction located in southern San Diego County) denied a certification request based on lack of such.⁶

“Too old”

The age of a case was frequently cited as a reason for not being able to sign a U Visa certification. One of the reasons for this was that case records are often maintained by agencies for a designated period of time, in San Diego this is usually somewhere between seven and ten years, before the case documents are destroyed. Attorneys reported that they frequently were denied certifications based on the certifying agent’s claim that they were unable to access the documents that described cooperation. However, many of the interviewees were skeptical about whether this reasoning was accurate. A common sentiment expressed was that “they could get it if they wanted to, they just don’t.” One attorney explained a case that the explanation given for denial based on age was particularly unjustified:

The San Diego City Attorney didn't want to sign it (the certification) because the case was too old, so they didn't have the records in their system anymore. But the client actually had the records, his own copies, so we had submitted them to the City Attorney, and they still sent us their general letter, saying “we've conducted a records search we can't verify the information so we can't sign it under penalty of perjury.” So then we wrote back saying we actually gave you the records because they were really old, clearly the client didn't fabricate these records. They still didn't sign it.

⁶ For an example of this, see Appendix D

Another reason for denying a certification based on the age of the case had to do with U Visa applicants' attempting to report a crime that had occurred some time ago. While back-reporting crimes to the police is allowed and even encouraged by law enforcement agencies, attorney's reported that police frequently denied certification requests based on the belief that the individual had reported the crime in order to become U Visa eligible; implying that the back-reporting of crime for this purpose suggested fraud.⁷ During a meeting of the U Visa Working Group, one attorney told the group that she had been made aware of an incident in which a supervising officer at the San Diego Police Department "point blank asked 'What is your immigration status? Why are you reporting this crime? Are you reporting this crime only to get status?' He said he wouldn't sign the certification because 'they are purposely victimizing themselves'." Attorneys themselves expressed hesitancy on taking older cases that had not yet been reported, citing the concern that they did not "want to make it look like the person reported it just to get a U Visa."

Criminalization of the Victim

Certifying agencies frequently denied certifications based on the perceived criminality of the U Visa applicant. One attorney explained the circumstances of a certification request that was denied by Escondido Police Department on the basis of an unfounded presumption of the victim's gang affiliation:

The detective believes that the client was actually involved in some way with the criminal activity which he was the victim. She thinks that he has

⁷ For an example of this, see Appendix E

gang affiliations and that that was the reason he was shot three times. It was a horrible, horrible crime so obviously we're arguing that, look, even if that was the case, there's no evidence anywhere. He's never been arrested, never been labeled. You know how police departments put that someone has prior gang affiliations? None of that with him. So we're saying, look, even if that was the case somehow, we don't know where they're getting that information, he still reported the crime. It's not like he was scared and didn't say anything because he thought something would happen to him, he still came forward.

Another attorney described a similar experience in regards to the blurring of the line between victimization and criminality:

The mom was applying because her son was murdered. But the DA stated that they will not sign it because their investigation showed that the client's son was actually the aggressor in the case. So they're saying that he's not the victim, he's actually the one who started the fight and he died as a result of it. So they refused to sign it.

Along this same theme, one participant explained, “They (the certifying official) often don't see the difference between the perpetrator and the victim. They don't see the drug dealer’s wife as being a victim, but instead as an enabler.”

Case is open, Case is closed

According to one interviewee, between 2003 and 2008, it was common knowledge in the legal community that there was a memo from the San Diego District Attorney that instructed the office staff to not sign U Visa certifications for cases that were open. The reason for this is that every good defense attorney is going to claim that the victim had an incentive to fabricate or exaggerate their claims in order to

obtain legal immigration status. One of the attorneys interviewed had actually experienced this strategy first-hand:

I have one case where he (the defendant) used the knowledge that knowledge that the victim was applying for the U Visa as a defense. I was called in with my file by the court to provide the U Visa application because that was his only defense. It was a sexual abuse of a minor, and my client was filed as an indirect victim. My client was the mom. The defense was essentially that the mom made this up so that she could get her immigration papers.

This memo became a Catch-22 of sorts for immigrant advocates. As one attorney described it, if the case was open “they (the DA) would say don't sign it. But then when the case was done and over, they would say, well we're not signing now, the case is already done and we don't need your help.” Because of advocacy work done on the part of members of the U Visa Working Group, it was reported that this trap had, for the most part, been remedied. While the DA no longer refuses to sign certifications after the case is completed, it is still common practice to require a victim to wait until a case is closed until they are able to obtain a signature. Many immigrant advocates believed this to be a legitimate stance.

Passive Denial

Potentially the most frustrating form of denial reported by attorneys is what I am labeling a “passive denial”, where the intent to deny is underlying the response, but is not made overt.

All twenty-three attorneys brought up that they had received this treatment from one agency in particular: The San Diego Family Justice Center. The San Diego

Family Justice Center is a first-of-its-kind government office that works closely with social workers and the city and district attorney offices in an effort to provide comprehensive services to victims of family violence. The center, unlike many other governmental agencies in the county, has developed a policy for how U Visa certification requests are handled. Once a request is received, it is directed to the attention of the designated official, who has been put in charge handling all U Visa cases for the agency. This official was described as “really good about signing” and that “he’ll sign anything you give him.” However, along with his signature, this individual has become notorious for including notes in the comments section of the form; notes that often make filing that application more difficult for the victim. One attorney accounts an example of this:

We had a client whose son was hit by a drunk driver. He's thirteen now, it happened when he was eight or nine. He has a lot of disabilities as a result of the accident. He goes to physical therapy, he doesn't walk the same, he can't run or play sports anymore, a lot of really severe damage. She (the client) filed a civil suit against the guy and got a judgment for her son. That went to the Family Justice Center and it (the certification) was signed, but in the comments section it said: "Not only did the defendant drive through the neighborhood at "x" miles per hour but the seven year old son also was partially at fault because he darted out to the middle of the street to get a soccer ball." Which is true, that is how the accident happened. But the guy was clearly at fault driving wasted through a residential neighborhood. Yeah, the little kid shouldn't have been in the street, but really?

The attorney working on this case stated that the note required her to provide an additional explanation when submitting the victim’s application to USCIS. This was done in the cover letter, where she argued that “although this issue was noted, clearly

this person was convicted, and he was at fault. From a discretionary standpoint the driver's bad behavior outweighs the fault of the child.”

While this sort of irrelevant comment was described as being “annoying” rather than damning, others reported that the marginal notes made by this certifying official did indeed have the potential to cause an application to be refused by USCIS.

An interviewee shared her experience with this:

The designated officer with the Family Justice Center in San Diego will pretty much sign every certification, but if there's anything in their notes that the person didn't return phone calls, or stated that they didn't want to prosecute, or stated didn't want to cooperate, that goes on the certification. We've gone forward with some of these, including a removal case that we had to go forward with. Now, the Vermont Service Center is requesting a new certification saying that she did cooperate. So we had a second police report where my client has informed me up and down that she cooperated, and the police report says that she was willing to cooperate, yet we just got the certification and it states that she said she didn't want to cooperate and prosecute.⁸

These sorts of certifications presented a challenge to the attorney’s in explaining to their client, why, despite the fact that the form was signed, they may not be obtain a U Visa. A practitioner who works for a large legal nonprofit described this frustration:

It makes it hard for us because we have a signed certification, technically the client is eligible to move forward, but the comments are just so bad that there is no we should move forward. And a lot of times the clients says, "Well I just want to try it anyway." But it's a huge resource to file an application, so we don't want to file one that we don't believe will be successful.

⁸ For a copy of this police report, see Appendix F

When asked what the motivation behind signing the certification but adding contradictory comments, many interviewees optimistically believed it to be an issue of education. Representatives from the U Visa Working Group had made phone calls to the certifying official at the Family Justice Center about comments that they had recently received. They reported that his response was "well, that's just for the attorney's to argue in court." One interviewee commented on this: "I don't think he understood that these aren't going to court, they are going to an agency and once we send it, that's it. They (USCIS) are going to decide it based on what's on that form." Alternatively, several attorneys believed that this was strategy was an attempt to not allow the case to go forward, because, as one participant put it "I think everyone has a bias in some way."

Lastly, many attorneys stated that one of the most common responses they received were non-responses in the form of unreturned voicemails, emails, faxes, letters, and so on. Participants reported that they often sent certification requests that seemed to be completely ignored. As one interviewee stated "without a policy in place, if they get your request and they want to throw it in the trash, they can, and you would never know. It's in their discretion."

The interviewees expressed that explaining a certification denial to their clients was a difficult task. Oftentimes, clients seemed to have a hard time understanding why they could not move forward with their case, despite meeting the U Visa eligibility requirements. One attorney explained what she tells her client in these cases:

I tell them that it is very unfair that they were a victim of a crime and it shouldn't matter where it took place in their case, at all, it should be irrelevant, but in practice it makes a difference in whether we can get it or not.

While they may not grasp the details of why their request for certification had been denied, most attorneys mentioned that their client's seemed able to accept that decision as final because, as one participant explained, "They're used to being denied, this and this and that, so for most of them it's not a surprise. Ok, someone else said no."

U Visa Champions

It is undeniable that in San Diego County there exists a common practice of denying U Visa's based on reasons that are outside of the law. However, not all applicants experience the U Visa application process the same, and many are able to navigate around, or avoid all together this obstacle.

Success stories are often a result of specific department level policies that have been put in place to accommodate U Visa applicants. An example of such a case is the Escondido Police Department. As described earlier, Escondido is a city in Northern San Diego County. Having a history of engaging in institutional practices aimed at limiting the freedoms of undocumented immigrants, the city has developed a national reputation for being openly hostile towards this population. Despite this, according all attorneys interviewed, Escondido's treatment of immigrant victims seems to be quite a departure from the city's usual restrictive stance on the issue of immigration. When asking about their experience with getting U Visa certifications in that jurisdiction, I was told over and over again "Escondido is great!" In light of Escondido Police Department's history of maltreatment of the population that immigrant advocates aims

to serve, this was a particularly unexpected finding. One attorney, who worked for a legal nonprofit in North County, explained her positive experience with the Escondido Police Department:

Surprisingly, Escondido has been one of the best. It blows my mind. I have to be perfectly honest, and put my bias out there, but part of me wants to hate them for everything, but they've been really good. They're organized in how they do it, they take care of it, they get it back to you, and then it's done and over with.

While none of the interviewees were able to say whether they knew if the Escondido Police Department had an official policy in place in how they executed U Visa certifications, it seemed at the very least that there had been some informal organization of the process. While the Escondido Police Department was described several times as being “straight forward” and “very helpful”, this did not mean that they signed every certification that came their way. As one attorney explained, “we’re not going to get a certification in every case, because the reality is that not everyone is cooperative.”

In addition to department level policies, individual decision makers within agencies greatly influenced how U Visa certifications were treated in particular jurisdictions. A remarkable case of this was Patrick McGrath, who was the Deputy District Attorney of San Diego and head of the San Diego District Attorney's Office Family Protection Unit. All twenty-three interviewees mentioned this individual's “pro-U Visa” efforts, which included instilling an official procedure within the DA's office on how to handle U Visa cases. Additionally, participants explained that when the U Visa regulations were first released in 2007, most law enforcement agencies in

San Diego County were reluctant to sign certifications because they were not aware of what they were signing. Patrick McGrath worked to change this, educating agencies about the purpose of the visa. Because of his efforts, the San Diego Police Department, the largest local law enforcement agency in the county, developed a department protocol for U Visa certifications.

Patrick McGrath could be described as having taken on an advocate role. The U Visa Working group was in close communication with him. As one member of the working group described him, “He was amazing, returned phone calls the same day you called him, he was on top of it.” It was common for group members to seek out his assistance when a case had dead-ended because of the inability to get a signature from the investigating agency. The Working Group had approached Mr. McGrath regarding Oceanside’s practice of circularly-referring representatives seeking certifications on behalf of their clients. One interviewee explains this communication:

I called him up and explained what was going on, and he said “I’m going to call Oceanside because this isn’t right, they need to have a system in place for the U visa. Somebody there needs to be designated. They need to understand what is going on.” So he personally called the Oceanside City Attorney and said “you guys need to get your stuff together and here’s what we do here at the DA office. You don’t have to do it the same way, but here are some pointers.” Pat called me back and said “I called and I explained to him you can’t just send us all your cases because we don’t have jurisdiction over every single case. He (the City Attorney) said he was going to work on it, and follow up with you.”

As evidenced by Oceanside’s continuing to refuse certification requests, nothing came of this conversation. Nonetheless, Mr. McGrath’s work was described as being very

important in “getting law enforcement on board”-- allowing countless immigrant victims the opportunity to present their case to USCIS.

Last, but in no way least, the advocate work performed by the immigrant victim’s legal representatives played an immense role in the ability for an individual to secure signed certifications. In an attempt to get a sense of the amount of U Visa eligible immigrants who are unable to proceed with their claims in San Diego County, I received a huge variation in responses. More than half of the interviewees claimed to have been able to eventually obtain a certification for every one of their U Visa cases, while many others reported that they had up to a fifty-percent rate of certification denial. In asking one interviewee how they were able to secure certifications for all but one client, he responded that it was a simple matter of not taking no for an answer:

We sent El Cajon Police Department a letter requesting a certification. They wouldn't sign because the crime happened so long ago, and they said that the victim wouldn't be of any use to them. They said "No, we're not going to sign it, it's four years old." We sent a letter back with stronger language, and they signed it. But if it was a nonprofit, or pro se, or if it was someone who just doesn't want to win as bad as we do, the road could have ended there.

Several attorneys mentioned being uncomfortable with taking a more aggressive approach, as they believed that if they were to appear too “pushy”, it might result in them being black-listed by a particular agency, causing them to receive unfavorable treatment in the future.

All attorneys mentioned particular strategies they used to circumnavigate individual officials and agencies that were known to frequently deny certification requests. For example, one frequently employed tactic was that because the District

Attorney was perceived to typically be more “pro-U Visa” than police officers, if the case had been prosecuted, the attorney would seek to contact the District Attorney’s office first, as opposed to the local law enforcement agency that responded to the crime. This is where the U Visa Working Group proved to be a very important resource. During meetings, the members would share contact information of designated officials at particular agencies that they had been accommodating in the past.

Overcoming a certification denial often demanded an intimate knowledge of the many local actors involved in the certification process. This requirement makes it very difficult for new attorneys or even experienced attorney new to the area, to help their clients, no matter how much they “want to win.” One interviewee who had recently relocated his practice to San Diego explained the reason he thought he was having a difficult time getting signed certifications for his clients:

It probably has a lot to do with being new here and maybe not being as familiar with activities of organizations to develop relationships. I haven't encountered law enforcement agencies who tell me, yes they do have an existing protocol, yes they have a designated official. I just think I'm learning again what the attitudes and the routines are.

In the end, many attorneys confronting a denial are faced with only one option: persistence -- call the agency, and call again.

Chapter 4: Discussion and Conclusion

In this thesis I have traced the U Visa from policy formation to implementation. In the first phase of the process analysis, I determined that the U Visa was created with particular subjects in mind, and with a specific rationale for intervening among them. The findings of the San Diego County case study reveal that such idealized legislative targets do not exist in the imaginary alone. Drawing primarily on Jonathan Simon's theory of "governing through crime" and Michael Lipsky's "street-level bureaucrat", I will discuss how requiring a certification of cooperation, and granting low-level local bureaucrats such a large amount of discretion, has limited some groups' equal access to the law. I conclude that rather than providing support for undocumented victims of crime, the U Visa has shown to be operating in a way that is intended to exert control over immigrant communities through local policing.

The Ideal Victim

As is shown in the San Diego case, the characteristics of the real benefactors of this legislation in the region are consistent with descriptions of the imagined victims presented during the policy formation process -- "likable", well-behaved, cooperative, Latina women, who have been victims of severe domestic abuse at the hands of their immigrant male partners. Conversely, as shown from the justifications given by

certifying authorities, those that do not fit such an idealized image in the eyes of the certifier -- those who did not cooperate enough, those who did not suffer enough, and those who had a criminal history themselves -- generally faced a more difficult road to obtaining the signature required for them to apply to normalize their status. Based on these findings, the U Visa regulations can be seen implementing a classification system that privileges “deserving” immigrants and simultaneously criminalizes those who do not fit into this prescribed category. This finding is consistent with that of Berger (2009) and Morando (2013). Wood (2005) speaks of the role that the idealized victim plays in policy making:

A protection racket is at work in the development of these crime policies in that they enhance the state’s power to punish, a power that is hidden behind the idealized images of these particular victims who are represented as powerless. The victims’ powerlessness becomes the state’s alibi for the violence that the state commits in the victim’s names.

This is a form of what Simon (2007) calls “governing through crime”, a way for the state to extend social control by making victim-centered policy. In the case of the U Visa, this extension of control is made possible primarily through granting low-level local bureaucrats full discretionary power in determining who is deemed “worthy” of immigration benefits.

The Consequences of Local Bureaucratic Discretion

In *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (1980), Lipsky describes how granting even small amounts discretion to low-level government employees has the potential to drastically influence the impact of social

policy. In the case of the U Visa, certifying agents have been granted an enormous amount of discretion in determining whether or not to sign a certification, and have therefore, in some sense, been granted ultimate authority in determining who will and will not be given an opportunity to have access to citizenship in this country. As evidenced by the San Diego County case study, many certifying officials are using this discretionary power to its fullest extent. As a result, what groups of immigrants are able to apply for this form of immigration relief have been limited. This can be seen in the trend of specific jurisdictions' complete denial of virtually all certifications, as well as specific jurisdictions' demonstrating preference for "clean" victims.

Lipsky describes how the nature of the work that low-level bureaucrats are tasked with requires "the processing of people into clients, assigning them to categories for treatment by bureaucrats, and treating them in terms of those categories" (p. 59). This requisite can have serious impacts on particular groups' equal access to what has been dictated by policy. As Lipsky explains, this need for simplification "call(s) for differentiation of the client population and thus there is a structural receptivity to prejudicial attitudes" (p.115). This is one possible explanation for what is occurring in San Diego County. Undocumented immigrants, particularly Latino immigrants, have a history of being represented as "violent, foreign, criminal-minded, disloyal, and overrunning the border" (Bender, 2009). As Lawston and Murillo (2009) explain, "anti-immigrant discourses dominating the public sphere follow the tautological reasoning that undocumented immigrants have 'broken the law' and hence deserve to be treated as 'criminals'." Authorized U Visa certifiers, which in San

Diego County consist primarily of local law enforcement agents and prosecuting attorneys in, have been charged with upholding the law. When confronted by someone who has popularly been branded as “illegal”, it is possible that they have a difficult time seeing a victim, rather than someone who is the violator of United States law.

Additionally, in signing U Visa certifications, certifying agents, especially law enforcement, face a conflicting role expectation in light of recent immigration reforms. Federal programs such as 287(g) and Secure Communities greatly expand the role of local police in enforcing U.S. immigration law. Local law enforcement agents have been sent a message that it is priority of theirs to identify and punish the undocumented residents of their community; not to protect, and definitely not to reward them by allowing them access to legal status.

The interviewees although hesitant to offer speculations on the motivations behind legally unjustifiable certification denials, frequently expressed a belief that it often related to anti-immigrant sentiment of individual officers and of particular agencies. Regarding Oceanside’s U Visa policy (or lack thereof), one attorney exclaimed “It’s like Arizona up there!” When asked if there was a regional variation in the ability to get signed certifications, many of the interviewees responded that they perceived certifying agents in North County San Diego to be more prejudicial against immigrant victims, and less cooperative in the U Visa application process. As one participant stated, “the further up you go, the less support you get.” This seemed clearly to be the case with the city of Oceanside, however, when questioned further about this, the same individuals who claimed North County officials to be anti-U Visa,

reported that Escondido, a city nationally infamous for its anti-immigrant stance, was in fact, one of the most cooperative jurisdictions in the county.

This seems puzzling at first. However, I believe that there exists a possible explanation for this phenomenon. In comparing the U Visa certification policies of Escondido and Oceanside, which appear very different at first glance, one can see that the two cities are in fact working towards the same goal -- extending state control over undocumented communities through crime management. Escondido appears to be using the U Visa as a way to rid their community of what they perceive as criminal immigrants, while Oceanside is controlling their undocumented community by withholding from them this avenue to legal status, maintaining them in legally submissive state, forcing them and their families to continue living a life of uncertainty and fear.

In addition to agency level prejudice, by granting certifying agents complete discretion in signing, a victims' ability to secure a certification was oftentimes subject to what appeared to be individual prejudice. Many of the interviewees stated that they believed officers were often reluctant to sign because they "didn't want to give an undocumented person status." However, as one participant explained: "You're not going to get anyone saying 'We don't want to help undocumented immigrants', you're going to get another reason, like 'We don't think it's our role'; 'We don't have the resources'; 'We don't have the ability to determine whether the person was helpful'." Lipsky explains this is an issue inherent in the granting of discretion to low-level bureaucrats:

If public officials were simply biased or racist, and if their prejudices were regularly manifested in behavior, the problem of bias in bureaucracy would be more pernicious but easier to root out. At the very least it would be easier to establish policy directives to reduce bias in bureaucracy. But patterns of prejudice are more subtle in the modern bureaucracy dedicated officially to equal treatment. (p.109)

One interviewee referred to the reliance on individual discretion (and impact of individual prejudice) as “Officer Roulette.” She explained her frustration with the unpredictable nature that results from this:

I'll just make a phone call, and I've had really good experiences where they want to help they remember the case very well, they say just drive down to me right now and I'll sign it. And then I've had other cases where they just like "What? No. Let me transfer you to someone else", and then that person has no idea what I'm talking about, so I feel that it's just luck of the draw some days. Depending on who answers the phone. It's just sad. It's sad for the client because some have an easier time with it (the certification) than others.

Hallet (1993) asserts that, “the images and categories embedded in law are accepted as the way things are at the same time that they limit conceptions of the way things might be.” When perceiving society through a lens of crime, everyone becomes actual victims, potential victims, or conversely, criminals (Simon, 2007). Those who have been authorized to sign U Visa certifications, by the nature of their work, are assigned to draw these lines. However, the real world does not operate on these terms. Lives are messy and lines blur. There is no such thing as “true victim.” However, as it was shown to be the case in San Diego, when victims are characterized by the law in one way, and someone doesn’t fit that image precisely, they are presumed “unworthy” of that label. In the case of undocumented immigrants, it is the unfortunate reality that

the scales have been tipped so that “criminal” has become a default identity -- one that screams much louder than that of victim. It is precisely for this reason that giving the power to grant or deny a U Visa certification to low-level government employees that have been charged with enforcing criminal law is so grossly misplaced.

While it is of little doubt that the U Visa was indeed created with some intent of protecting vulnerable undocumented immigrants of crime, the requiring a certification of cooperation, and granting local certifying agents such a large amount of discretion in whether or not to sign, has in practice, clouded the purported “dual intent” of the U Visa. As it stands, the certification is serving as a mechanism for control -- justifying the paternalistic intervention in the lives of “good” immigrants, while punishing of their “criminal” compatriots. In his discussion of structural violence, Galtung (1969) explains the dual nature of this sort of control:

(A) person can be influenced not only by punishing him when he does what the influencer considers wrong, but by rewarding him when he does what the influencer considers right. Instead of increasing the constraints on his movements the constraints may be decreased instead of increased, and somatic capabilities extended instead of reduced (p. 172).

The U Visa in this sense is a double-edged sword, granted or not, representing yet another piece of the growing internal enforcement regime of immigration policy in the U.S.

Conclusion

Through this process analysis, I have shown that the U Visa, by incorporating a certification of cooperation, is not functioning on the ground in a way that promotes

the well-being of undocumented immigrant victims of crime in the United States. This is consistent with the findings other scholars who have analyzed the VAWA immigration provisions before me (Berger, 2009; Morando, 2013, Villalón, 2010; Jensen, 2008). While these scholars focused more on the role of USCIS adjudicators and legal advocates as middle-men in determining which immigrants will be able to obtain legal status through this avenue, only Jensen (2008) begins to discuss the role that certifying agents play in the U Visa application process. The findings of the San Diego case study offer an in-depth evaluation of this, and suggest that because of this component alone, not all eligible undocumented immigrants of crime have been allowed equal access to this law. The granting of complete discretion to local bureaucrats in charge of crime management has amplified the binary of the worthy/unworthy victim resulting in the arbitrary limitations of the life-chances of innumerable immigrant victims of crime.

Despite the impure structural intentions behind this policy, it is an undeniable truth that tens of thousands of undocumented immigrants have and will continue to benefit from this policy. As one interviewee explained, “When they are finally able to get the U Visa, you see a change in that person, it's like all of a sudden they have this confidence.” It would be wrong to discredit the lived benefits that this form of immigration relief provides. So the question remains, can the U Visa be remedied to empower the survivors rather than victimize the victims?

The way things are currently working, the U Visa application process takes all agency away from the victim. The petitioner is fully dependent on the choices made

by certifying agents. For the policy regain some of its humanitarian focus, reforms need to be made that give the immigrant victim back their agency. This has to be done on many levels simultaneously. While macro-level suggestions such as decriminalizing the undocumented immigrant and halting the practice of using victim-centered legislation to manage crime are important to take into consideration, the intent of this project was to produce information that may be useful in making future public policy decisions both at the federal and local level. Therefore, I have chosen to focus my attention of providing more practical recommendations in this section.

Federal Level Policy Reform

The first and most obvious recommendation for federal policy reform is the need to pass a comprehensive immigration reform bill that provides a pathway to citizenship for those immigrants currently residing in the United States without authorization. If those individuals residing in neighborhoods in the United States are able to normalize their status, potential fear that contacting the police will lead to their expulsion will be removed which would have the effect of diminishing the need for the U Visa in the first place. However, it is important to note that this comprehensive bill cannot include internal enforcement measures like we have seen, such as 287(g) and Secure Communities program, that intertwine the local criminal justice system with the federal civil immigration system. Without an assurance that local law enforcement is operating independent of ICE, those who lack status, or who have family who lack status will remain reluctant to report victimization.

The second federal reform suggestion would ideally be to throw out the U Visa's requirement for certification of cooperation. However, as it is likely that the certification component was bargained for in order to create the U Visa in the first place, getting rid of this might be unrealistic. Instead, I suggest that in order to allow petitioners some amount of control over their own application, the regulations be changed to consider proof of a good faith in attempting to get a certification, in place of a signed certification itself. That way, if a victim is U Visa eligible in every way, but the designated certifier is unjustifiably uncooperative, they are able to overcome that hurdle without it destroying their ability to have their application considered by USCIS. Another suggestion is to broaden those agencies that are considered "designated certifiers" to include those that work with victims of crime outside of the criminal system, such as social workers.

Thirdly, when the U Visa was created, it was done so over the head of certifying agencies those ultimately were given a primary role in the implementations of this law. Representatives from local law enforcement agencies were notably absent in the discussions surrounding the policy formation. A suggestion for future policy making is to involve those charged with working with the policy on the ground in this phase, and provide them with resources necessary to carry out their role. As it stands, certifying agents have not been required to receive training on how the U Visa works, nor have agencies been provided with funding for time spent processing U Visa applications. Because of this, it is almost not a surprise that certifying agents do not prioritize their role as signatories. Therefore, in the future I suggest that like is most

often the case of policy implementation, that resources and training be provided to those that are being required to operate the program on the ground.

Lastly, there is a lack of government transparency in the U Visa application process. There is no way of knowing how many individuals have been denied access to status because of failure to meet this certification requirement. Also, due to privacy regulations written into the law, information beyond how many U Visa certifications were received, approved, and denied is not available. Because of this, there is no way of discovering who is actually benefitting from this form of relief, and whether or not a group may be underserved. For this reason, I recommend an amendment that requires USCIS to record and make public basic, non-identifying information regarding U Visa applicant's profiles (including gender, age, type of crime, responding certifying agency, etc.).

Local Level Policy Reform

A main suggestion to remedy the certification hurdle that many immigrants confront is to eliminate, or at the very least, scale back the increasingly popular trend of local enforcement of federal immigration law. As stated, charging local law enforcement with executing immigration regulation has the potential to send mixed signals to officers on what their role is. Rather than perceiving undocumented individuals as community members that deserve equal protection, they are signaled that these are foreign, law-breaking individuals who do not belong. Additionally, by removing the association of local law enforcement and ICE, undocumented

immigrants may feel less hesitant to call attention to themselves from this particular agency, again, eliminating the need for the U Visa in the first place.

Another suggestion is that localities should be required to implement a uniform protocol for handling U Visa certification requests. In an ideal world, this would involve law enforcement officers proactively seeking to support immigrant victims of crime by empowering them to seek out relief using this avenue. One interviewee explained to me his vision of this:

What I'd like to have happen is (for) a law enforcement official to come to me and say, "Hey I've signed this certification, here's the police report, here's the court record, here's a personal letter from me endorsing this person and her resilience, so just let me know what else I can do." He can tell her that "I want you to get help, and what he did to you was terrible, and if you want it to stop I can help you, and the county can help you, but you need to be a witness and you need to be stable, call this attorney, or call this agency."

However, a more realistic expectation might be implementing a policy like one that has proven successful in Los Angeles County. In November of 2010, the Los Angeles County District Attorney's Office issued "Special Directive 10-08", requiring all office personnel to follow a designated procedure for dealing with certification requests. The directive, among other things, included a chain-of-command, and the requirement to keep a log of all U Visa requests. Such a county-wide policy would allow for consistency, decreasing the current unpredictable nature of the certification process. Additionally, requiring some sort of system keeps agencies accountable, and allows petitioners a course of action if they feel that they have been unjustly denied, or ignored.

Areas for Further Research

The U Visa is an area that is rich for further research. Firstly, given the delicate nature accessing undocumented populations, very little is known about the victimization rate of undocumented immigrants. It is imperative that this be looked into further in order to fully understand the need for legislation like the U Visa to begin with, as well as estimate the size of the population who might potentially be eligible for this form of immigration relief. Secondly, as mentioned previously, because of privacy restrictions written into the law, very little information exists regarding those who are actually benefiting from this policy. While my case study offered a glimpse into the groups of immigrants that are being served (or underserved) by the U Visa, the scale of this study was much too small to call attention to what could potentially be a large-scale denial of justice. Because of this, more data, from other regions throughout the United States is needed. Given the impact of local bureaucratic discretion, this sort of research is ripe for a larger-scale geopolitical comparative study.

Also, while this study focused on the experiences of the immigrant representatives, I believe that there is area to expand this research by examining the U Visa application process through the eyes of the victims themselves, addressing questions such as, how did they become aware of U Visa; how they themselves chose to contact the police; were those who were aware of the U Visa prior to being victimized more likely to have contacted the police themselves. Particularly interesting

would be to seek out those who were able to complete the U Visa application process by themselves, without formal legal representation. Additionally useful would be to hear the perspective of the certifying agents, and how they themselves perceive their role as certification signatories.

Lastly, as many U Visa advocates were operating in some part on the assumption that certification requests were denied because of a lack of education on the part of the certifying official, I believe that this issue would benefit from a program implementation experiment. Taking measures of certification rates of particular agencies pre and post implementation of some education program or training would be one way to assess if individual and/or department level prejudice was an influencing factor.

Closing Remarks

This thesis sought to track the U Visa from policy formation to implementation. In analyzing the formation of the law, I concluded a more accurate conception of the logic behind the creation of this policy was by no means humanitarian and that the U Visa policy framework demonstrated an aim to portray immigrant victims of crime as idealized subjects of the law in order to use them as a tool to police the communities in which they live. Then, through the case study of San Diego County, I explored the lived consequences suffered by those who find themselves as the imagined “beneficiaries” of this sort of lawmaking. I found that the criminal/victim binary depicted in the policy formation process was reified by granting

complete discretion to local low-level bureaucrats to signing certifications. In San Diego, when seeking to petition for a status which they legally deserve, a victim's eligibility has not been based on their actual victimization, nor their cooperation, but on a particular individual and/or agency's assessment of their "worthiness" to reside in U.S. neighborhoods.

The findings of this case study demonstrated that those judged to adhere to the idealized image of a victim are extended a welcoming hand, while those who do not are denied; forced to continue to live with uncertainty and the fear that their life and the lives of their family may be uprooted at any moment. A law that allows for the warrantless denial of certifications is an abusive one, designed to coerce undocumented into performing according to the will of the state. As the intended subjects of this set of laws, immigrant victims of crime are not simply victims of violent crime, but under U Visa regulations, have become the victims of violence at a structural level -- victims of an immigration legal system that is built to protect the interests of the state at the expense of the individual's equal access to the law.

Appendices

APPENDIX A

OMB No. 1615-0104: Expires 08/31/2010
I-918 Supplement B,
U Nonimmigrant Status Certification

Department of Homeland Security
 U.S. Citizenship and Immigration Services

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Part 1. Victim information.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">Returned</td> <td style="width: 50%; padding: 2px;">Receipt</td> </tr> <tr> <td style="padding: 2px;">Date</td> <td rowspan="10" style="width: 50%;"></td> </tr> <tr> <td style="padding: 2px;">Date</td> </tr> <tr> <td style="padding: 2px;">Resubmitted</td> </tr> <tr> <td style="padding: 2px;">Date</td> </tr> <tr> <td style="padding: 2px;">Date</td> </tr> <tr> <td style="padding: 2px;">Reloc Sent</td> </tr> <tr> <td style="padding: 2px;">Date</td> </tr> <tr> <td style="padding: 2px;">Date</td> </tr> <tr> <td style="padding: 2px;">Reloc Rec'd</td> </tr> <tr> <td style="padding: 2px;">Date</td> </tr> <tr> <td style="padding: 2px;">Date</td> </tr> </table>	Returned	Receipt	Date		Date	Resubmitted	Date	Date	Reloc Sent	Date	Date	Reloc Rec'd	Date	Date	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 2px;">Family Name</td> <td style="width: 33%; padding: 2px;">Given Name</td> <td style="width: 33%; padding: 2px;">Middle Name</td> </tr> <tr> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td colspan="3" style="padding: 2px;">Other Names Used (Include maiden name/nickname)</td> </tr> <tr> <td colspan="3" style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="padding: 2px;">Date of Birth (mm/dd/yyyy)</td> <td colspan="2" style="padding: 2px;">Gender</td> </tr> <tr> <td style="border: 1px solid black; height: 20px;"></td> <td colspan="2" style="padding: 2px;"> <input type="checkbox"/> Male <input type="checkbox"/> Female </td> </tr> </table>		Family Name	Given Name	Middle Name				Other Names Used (Include maiden name/nickname)						Date of Birth (mm/dd/yyyy)	Gender			<input type="checkbox"/> Male <input type="checkbox"/> Female	
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Part 2. Agency information.																																					
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Name of Certifying Official	Title and Division/Office of Certifying Official																																				
Name of Head of Certifying Agency																																					
Agency Address - Street Number and Name		Suite #																																			
City	State/Province	Zip/Postal Code																																			
Daytime Phone # (with area code and/or extension)	Fax # (with area code)																																				
Agency Type																																					
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<input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other _____																																					
Case Number		FBI # or SID # (if applicable)																																			

Part 3. Criminal acts.

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	

Form I-918 Supplement B (08/31/07)

Part 3. Criminal acts. (Continued.)

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy)

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3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

--

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States?

 Yes No

- a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

 Yes No

- b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

--

- c. Where did the criminal activity occur?

--

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

--

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

--

Part 4. Helpfulness of the victim.

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in Part 3.

 Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided.)

 Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)

 Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.)

 Yes No

Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

--

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	Involvement

Part 6. Certification.

I am the head of the agency listed in Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed in Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Date (mm/dd/yyyy)

APPENDIX B**INTERVIEW QUESTIONS****GENERAL**

How long have you been working in the field of immigration law?

When did you begin to work on U Visa cases?

Approximately, how many U Visa cases have you worked on? (Annually?)

Approximately what percentage of your U Visa clients are you able to successfully secure a visa for?

Could you describe for me the U Visa applicants that you have worked with (nationality, gender, education, occupation, age, etc.)?

How long does the U Visa application process take on average?

DIFFICULTY LEVEL OF CASES

Could you describe for me what characterizes a straight-forward, or “easy” U Visa case?

What would make a U Visa case more difficult?

Have you worked on U Visa cases in which the client has had a criminal history?

Does a criminal history affect one’s chances of getting a U Visa?
If so, at what point in the process does this affect their case?

Is there a difference in the way that detained U Visa cases are handled?

What would you say are the largest difficulties you have faced in working with U Visa cases?

Have you noticed a difference in the degree of difficulty for male vs. female applicants?

LAW ENFORCEMENT (CERTIFICATIONS)

What is law enforcement's role in the U Visa application process?

Have you found law enforcement agents to be cooperative?

Examples of interactions with law enforcement?

Has a law enforcement agent ever refused to sign a certification for one of your clients?

Can you describe this case?

Did the officer give an explanation for the decision not to sign?

Have you noticed a regional variation in the ability to obtain a signed certification from law enforcement?

Examples?

If a law enforcement agent refuses to cooperate, what are the next steps?

Have you ever had cases which "died" due an inability to get a signed certification?

Can you give some details about that individual's case?

How does a client react in this sort of situation?

MISC.

In your opinion, what is the purpose of the U Visa? Do you think that it is successfully fulfilling this purpose?

Do you think the U Visa is working in a way that benefits undocumented immigrants?

Why/ Why not?

Could you suggest a way (ways) in which the U Visa application process could be improved?

Is there anything else about U visas that you would like to add?

APPENDIX C

333

fax

02:05:10 p.m. 19-02-2013

1 / 1



CITY OF OCEANSIDE

OFFICE OF THE CITY ATTORNEY

JOHN P. MULLEN
City Attorney
(760) 435-3979

BARBARA L. HAMILTON
Assistant City Attorney
(760) 435-3986

TARQUIN PREZIOSI
Senior Deputy City Attorney
(760) 435-3977

ANNIE M. PERRIGO
Deputy City Attorney
(760) 435-3972

DEBORAH NASH
Deputy City Attorney
(760) 435-3991

CAROLYN M. KHOUZAM
Deputy City Attorney
(760) 435-3975

February 19, 2013

[REDACTED]

VIA FACSIMILE (619) 231-7784
and U.S. MAIL

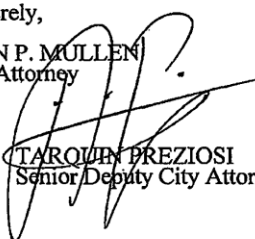
Re: [REDACTED]
Case No. [REDACTED]
Request for U Visa Certification

Dear [REDACTED]

The Oceanside Police Department has received your U Visa certification request. However, at this time they have declined to sign the certification form.

If you have any questions, please give me a call.

Sincerely,
JOHN P. MULLEN
City Attorney

By: 
TARQUIN PREZIOSI
Senior Deputy City Attorney

TP/sh
cc: Captain Ray Bechler, OPD

G:\Word Documents\OPD\U Visa\Uvisa letter to [REDACTED]

APPENDIX D



Police Department

March 27, 2012

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. Holt:

The Chula Vista Police Department received and reconsidered the U Nonimmigrant Status Certification Request for applicants [REDACTED] and [REDACTED]. The request was carefully and diligently evaluated. Based upon the information provided, the request for certifications is denied.

Sincerely,

David Bejarano
Police Chief

DB:yg

APPENDIX E

Jim Maher, Chief of Police
 Escondido Police Department
 1163 N. Centre City Parkway, Escondido, CA 92026
 Phone: 760-839-4721 Fax: 760-839-4919
jmaher@ci.escondido.org

November 1, 2012

[REDACTED]
 Re: U Visa Certification

Ms. [REDACTED]

I received the Form I-918 regarding EsPD Case [REDACTED] dated [REDACTED] where you reported being a victim of domestic violence in the city of Escondido, California. I am currently assigned to review all I-918 forms for certification for the Escondido Police Department.

Per 8 USC 1101(a)(15)(U), the U nonimmigrant status (U visa) is set aside for victims of crimes who have suffered substantial mental or physical abuse and are willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while, at the same time, offer protection to victims of such crimes.

There are four eligibility requirements which include, 1) the individual must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity; 2) the individual must have information concerning that criminal activity; 3) the individual must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime and 4) the qualifying criminal activity violated certain enumerated U.S. laws.

This is a delayed reporting of crimes without any specificity to the dates/locations, etc. You also advised the reporting officer that you desired documentation only and were reporting the crimes on the advice of a professional counselor. Therefore, I am returning the I-918 Form to you as it does not qualify for certification under U Nonimmigrant status described in the United States Code.

If you have any further questions, feel free to contact me at this office.

Sincerely,

[REDACTED]
 Investigations Bureau - Family Protection Unit
 Escondido Police Department
 [REDACTED]

Sam Abed, Mayor

Marie Waldron, Deputy Mayor

Olga Diaz

Ed Gallo

Michael Morasco

APPENDIX F

ad From		San Diego Regional Officer's Report Narrative		Incident Number 12070026124	
age 7 of 8				Case Number 12027654	
Code Section And Description (one incident only) PC 273.5 / INFLICT CORPORAL INJURY ON SPO		Date 7/14/2012 - 7/14/2012	Day of Week Sat - Sat	Time 06:30 - 06:35	
Location Of Incident (Or Address) ██████████			City San Diego	District	Beat 512
Person(s) Involved: Victim ██████████ Laury					
Suspect (If Named) ██████████ Arctres					
Property Tag No. is Inc #					

SYNOPSIS:

██████████ pushed his girlfriend ██████████. ██████████ fell to the ground and suffered a cut to one of her fingers. ██████████ and ██████████ have two children together.

██████████ has not been arrested for this incident.

ORIGIN:

On 07/14/12 at approximately 0635 hours, I received a radio call of a domestic violence incident at ██████████.

BACKGROUND:

██████████ and ██████████ have been in a dating relationship since 2004. ██████████ and ██████████ have two children listed in the above template.

██████████ is willing to cooperate with the court process.

INVESTIGATION:

I arrived on scene and briefly spoke to the reporting party, ██████████. ██████████ told me the incident had just recently occurred and her boyfriend left the scene through a back alley. Sergeant Manansala # 6010 arrived on scene and assisted me in making sure the residence was cleared before speaking to Frausto any further.

I obtained a statement from ██████████.

Statement of ██████████ (victim):

I was getting ready for work. My boyfriend ██████████ had been drinking all night in the back alley with some his friends. I went back there and he was still drinking by himself. I told him to come inside and said that he was drunk. He raised his voice and started to yell. He yelled and said, "Do you want me to go to jail?" We walked into the yard and he kept yelling. I told him ██████████. He then just pushed me and I fell to the ground. When I fell I cut my finger. I got up and called the police.

Reporting Officer MCMANUS	ID # 6655	Division C1	Approved By	Date of Report 7/14/2012	Time 08:51
------------------------------	--------------	----------------	-------------	-----------------------------	---------------

Continued Y

Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

VICTIM STATED SUSPECT POSTED HER AFTER SITE GLASSBORO NJ
SHE STATED IT WAS AN ACCIDENT AND DOES NOT WANT SUSPECT PROSECUTED OR TESTIFY IN COURT

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

Full Name	Relationship	Involvement

Part 6. Certification.

I am the head of the agency listed in Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed in Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

 4187

Date (mm/dd/yyyy)

6/24/2013

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