

Universalizing the U Visa: Challenges of Immigration Case Selection in Legal Nonprofits

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The resource limitations of legal nonprofit organizations force staff attorneys to make difficult choices about whom to serve. Nowhere are the consequences of lawyers' case selection decisions starker than in the immigration context, where individuals face deportation if unable to successfully advocate for themselves before legal authorities. Based on three years of qualitative research within legal services organizations in Los Angeles, this Note describes and contextualizes immigration lawyers' case-selection approach, with a focus on attorneys' role as policy actors within the immigrant justice movement.

In this Note, I focus on attorneys' selection of U visa clients. The U visa provides temporary immigration status and other benefits to noncitizens who endure violent crimes and subsequently cooperate with police investigations and prosecutions. People of all gender identities may qualify, and various crimes may confer eligibility. Yet I found that intra- and extra-organizational factors encourage attorneys

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to prioritize female domestic violence victims as U visa clients over others. While these cases warrant U visa protection, prioritizing this population effectively blocks other deserving immigrants from such protection and perpetuates a dangerous narrative around the mythologized perfect immigrant.

I also found that, although lawyers' case-selection approach excluded potentially viable U visa candidates in the short term, their decisions were part of a deliberate strategy of U visa policy protection. Thus, my findings demonstrate nonprofit lawyers' role as parastate actors: individuals who technically work outside of the state but whose work is intertwined with it. One potential solution is for nonprofit lawyers to partner with private sector attorneys, encouraging the latter to take on cases less likely to prevail under current jurisprudence; if successful, such a strategy could open up these cases, which nonprofit attorneys cannot accept now due to practical limitations, to nonprofit attorneys in the future. In a hypothetical world with immigration advocates taking on more U visa cases outside the female domestic violence context, the law might move to be more accepting of such cases.

In this Note, I present my empirical study of U visa case selection in legal nonprofits and its implications for immigration lawyering around the U visa and other relief opportunities for noncitizens.

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INTRODUCTION

“[T]he weeding out happens before [cases get to] Immigration¹ [authorities].”

– Leah, nonprofit² immigration attorney³

For the last year and a half, people had been waiting outside of Leah’s office starting at two or three o’clock in the morning on Mondays, anticipating AYUDA’s⁴ U visa intake hours that day. On Mondays, Leah and her colleagues evaluated immigrants’ claims of qualification for U visa status, a temporary legal standing created through the Victims of Trafficking and Violence Protection Act (VTVPA) in 2000.⁵ This Note is about how legal services lawyers select immigrant clients to help petition for U visa status and the repercussions for U visa jurisprudence more broadly.

Choosing whose cases to represent before US Citizenship and Immigration Services (USCIS)⁶ was difficult, Leah said. This was because many of the people Leah met during intakes were eligible for the relief by the letter of the law.

1. By “Immigration,” the attorney meant the United States Citizenship and Immigration Services (USCIS). USCIS, an administrative agency of the US government within the Department of Homeland Security (DHS), “administers the nation’s lawful immigration system” by “efficiently and fairly adjudicating requests for immigration benefits.” *About Us*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 8, 2018), <https://www.uscis.gov/aboutus> [<https://perma.cc/X82V-XKZV>].

2. I am mindful of distinctions between and among the terms “legal aid” lawyer, “legal services” lawyer, “nonprofit” lawyer, and “public interest” lawyer, particularly insofar as Legal Services Corporation (LSC) funding is concerned. *See, e.g.*, David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209, 211 n. 8 (2003) (foundational essay on public interest lawyers describing “legal-aid lawyers” as “LSC-funded lawyers,” and distinguishing “legal-aid lawyers” from “additional poor people’s lawyers,” who are “non-LSC recipients”). Notwithstanding differences in funding sources and fee structures between the three main legal nonprofit organizations where I conducted research, all attorney study participants conceived of and represented themselves as “legal services” and “public interest” lawyers, and, with the exception of the clinical instructor participants who were employed by law schools, all participants also identified as “nonprofit” lawyers. Therefore, in this Note, I use the designations “legal services” lawyer, “nonprofit” lawyer, and “public interest” lawyer to describe all attorney study participants. I use the term “legal aid” lawyer only in reference to those attorney study participants who worked at LSC-funded organizations. *See infra* Part II.A (description of the legal services organizations that employed attorney study participants) and Part III.A (explanatory historical overview of the Legal Services Corporation and its funding proclivities).

3. Interview with Leah, AYUDA attorney, in Los Angeles, Cal. (Jan. 24, 2011) (transcript on file with author). “Leah” is a pseudonym used to protect the confidentiality of this lawyer, who participated in my empirical study of the U visa legalization process and immigration lawyering under that condition. The study received Institutional Review Board approval from the University of California, Los Angeles and the American Bar Foundation. For more information on study data and methods, see *infra* Part II.A.

4. “AYUDA” is a pseudonym for the nonprofit organization where Leah worked. *See infra* Part II.A for a complete description of the study.

5. Victims of Trafficking and Violence Protection Act of 2000, Pub L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended in scattered sections of 42 U.S.C. §§ 1501–1513). The VTVPA passed as part of Congress’s 2000 reauthorization of the Violence Against Women Act (VAWA), which was originally enacted in 1994. Pub. L. No. 103-322, § 40701, 108 Stat. 1796 (1994).

6. *See supra* text accompanying note 1.

Nevertheless, she could not assist everyone who wanted to apply for U visa status because the demand for aid outstripped her organization's capacity.⁷ Leah had to prioritize certain individuals over others as U visa clients. Reflecting on this aspect of her job, she commented:

[U]nless my heartstrings are super pulled, I don't accept cases [on behalf of individuals] with criminal convictions because they take so many resources, and then I just think about how I'm using all of these resources on this person when there are single moms that have no criminal history that aren't getting seen. . . . [W]e'll get a lot of young dudes who are . . . sort of involved in criminal activity, but then something really horrible happens [to them] and it's like, I want someone to help them [apply for U visa status], [but] I also don't want that to be at the expense of the people that I'm not going to be able to help if I take th[ose] case[s].⁸

The U visa provides temporary immigration status and other benefits to noncitizens who survive violent crimes and cooperate with police investigations and prosecutions.⁹ U visa status provides many valuable benefits, including employment authorization, access to public benefits, and a pathway to citizenship.¹⁰ Although the U visa was part of legislation that passed in 2000, it took almost nine years for USCIS to promulgate regulations explaining eligibility parameters and application procedures.¹¹ Thus, lawyers began mobilizing to interpret implementing regulations for the U visa about a decade ago.¹²

7. This is a longstanding, widely acknowledged problem in US legal services. *See generally* Marshall J. Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 N.C. L. REV. 281 (1982) (examining the competing justifications for the provision of free legal aid and the "inescapable fact" of outside demand for such aid relative to supply); James F. Smurl, *Eligibility for Legal Aid: Whom to Help When Unable to Help All*, 12 IND. L. REV. 519 (1979) (analyzing the "moral dilemmas" that arise in under-resourced legal services agencies as they rank potential aid recipients); Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475 (1999) (discussing the ethics and strategy of legal services triage).

8. Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

9. *See infra* Part I.A.

10. *Id.*

11. Congress did not issue adjudicative regulations implementing the U visa until 2007–2009, before which bona fide U visa status was not available. Specifically, in 2007, Congress issued regulations implementing U visa status; they became effective on October 17, 2007 and are the current regulations. In 2008, Congress issued regulations implementing provisions for U visa recipients to adjust their status to permanent residence; they became effective on January 12, 2009. Current regulations remain interim and subject to change. SALLY KINOSHITA ET AL., *THE U VISA: OBTAINING STATUS FOR IMMIGRANT VICTIMS OF CRIME* 1-3 to 1-4 (5th ed. 2016) (hereinafter U VISA MANUAL); *see also* Elizabeth M. McCormick, *Rethinking Indirect Victim Eligibility for U Non-Immigrant Visas to Better Protect Families and Communities*, 22 STAN. L. & POL'Y REV. 587, 604–08 (2011).

12. *See, e.g.*, U VISA MANUAL, *supra* note 11; Leslye E. Orloff et al., *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections and its "Any Credible Evidence" Rules—A Call for Consistency*, 11 GEO. J. GENDER & L. 619 (2010); Leticia M. Saucedo, *A New "U": Organizing Victims and Protecting Immigrant Workers*, 42 U. RICH. L. REV. 891 (2008); Tahja L. Jensen, Comment, *U Visa "Certification": Overcoming the Local Hurdle in Response to a Federal Statute*, 45 IDAHO L. REV. 691, 704 (2009); Gail Pendleton,

This Note focuses on the first phase of lawyers' application of U visa policy and regulations to prospective noncitizen clients. Specifically, I describe the approach nonprofit lawyers took to select U visa cases during the initial period when the full remedy was available.¹³ I do so empirically, by drawing on three years of qualitative research within legal services organizations in Los Angeles. As part of my Ph.D. studies, I conducted participant observation research as a law clerk-ethnographer in one legal aid organization between 2009 and 2012.¹⁴ Through my position at Equal Justice of Los Angeles (EJLA),¹⁵ I met attorneys at similar organizations in the region.¹⁶ These lawyers, and noncitizens pursuing U visa status, allowed me to observe their intake consultations.

This Note relates two key findings of my empirical study. First, while the statutory and regulatory framework for the U visa suggests that people of all gender identities may qualify for the relief and that various crimes may confer eligibility, intra- and extra-organizational factors encouraged attorneys to prioritize female¹⁷ domestic violence victims as U visa clients over others. While these cases warranted U visa protection, prioritizing this population effectively blocked other deserving immigrants from such protection and perpetuated a dangerous narrative around the *mythologized perfect immigrant*.¹⁸ Second, although lawyers excluded potentially viable U visa candidates in the short term, their client decisions were part of a deliberate strategy to safeguard the U visa policy in the long term.

Together, my findings illustrate nonprofit lawyers' role as *parastate actors*: individuals who technically work outside of the state but whose work is intertwined with it.¹⁹ Funding constraints and the institutional design of U visa

Winning U Visas After the Regulations, EXPERT COMMENT. (LexisNexis) (Jan. 2008), <https://asistahelp.org/wp-content/uploads/2018/12/Winning-U-Visas-after-the-Regulations-.pdf> [<https://perma.cc/4692-DQZQ>]; see also Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 162–68 (2002) (reviewing the history of legislative protections for battered immigrant women in the United States, including the U visa); Gail Pendleton, *Ensuring Fairness and Justice for Noncitizen Survivors of Domestic Violence*, 54 JUV. & FAM. CT. J. 69 (2003).

13. See *supra* note 11.

14. See *infra* Part II.A for a discussion of my data and methods.

15. "Equal Justice of Los Angeles" is a pseudonym used to protect the confidentiality of the organization. See *infra* Part II.A for a discussion of my data and methods.

16. See *infra* Part II.A for a discussion of my data and methods.

17. In using the terms "female" and "male" to describe U visa petitioners throughout this Note, I conform to the gender identity constructions recognized by USCIS in its Form I-918, Petition for U Nonimmigrant Status. See *infra* note 37. Because USCIS asks petitioners to select one of these two binary gender representations in their I-918 petitions, the attorneys and clients with whom I collaborated also worked within that gender framework.

18. See Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207, 256 (2012) [hereinafter Keyes, *Beyond Saints and Sinners*]; *infra* note 282 and accompanying text.

19. See JENNIFER R. WOLCH, *THE SHADOW STATE: GOVERNMENT AND VOLUNTARY SECTOR IN TRANSITION* 41 (1990). The welfare state restructuring since the 1970s has produced a "shadow state apparatus," defined as "a *para-state* apparatus," i.e., "a set of auxiliary agencies constituted separately from the state . . . and possessing some degree of operational autonomy . . . but retaining those functions

adjudication compromise lawyers' independence in selecting cases. Such a compromise of independence in turn advances a limited vision of what makes for a sympathetic case. My findings also point to avenues of action for immigration advocates and others who wish to expand the pool of noncitizens who could benefit from the U visa program, including organizing creative pro bono partnerships.

Part I provides background for my analysis, including a summary of the U visa policy and regulations, and the application requirements and procedures for obtaining U visa status. I also review literature from the social sciences and legal academia that framed the design of my research project and informed my interpretation of results. In turn, I explain the legislative context from which the U visa emerged, including circumstances that influenced which noncitizen populations initially learned of the U visa and pursued legal assistance in order to apply for the remedy. Part II describes my qualitative study, including my data, methodology, and analytical techniques. Part III discusses my empirical findings. Through ethnographic accounts, I identify the factors that led nonprofit immigration lawyers in Los Angeles to prioritize female domestic violence victims as U visa clients over others during 2009-2012 and that approximate nationwide advocacy patterns around the U visa since that period.²⁰ I conclude by arguing that nonprofit lawyers should establish public-private partnerships to diversify the entities that handle U visa cases and the kinds of clients they represent. This could help to transform U visa jurisprudence and to further important goals of the contemporary immigrant rights movement.

characteristic of state sub-apparatus. The shadow state carries out welfare state functions, providing essential human services [and] financial and in-kind benefits. . . . In these activities, it is enabled, regulated, and subsidized by the state. But shadow state activities are not formally part of the state. They do not involve the same types of direct accountability and oversight procedures characteristic of the internal state apparatus. Instead, they are subject to state-imposed direct and indirect constraints on their autonomy." *Id.* (emphasis added) (internal citations and quotations omitted).

20. LESLYE E. ORLOFF & PAIGE E. FELDMAN, NATIONAL SURVEY ON TYPES OF CRIMINAL ACTIVITIES EXPERIENCED BY U-VISA RECIPIENTS 1-2 (2011) (reporting results of survey of victim advocates, legal assistance programs, attorneys, law firms, and law school legal clinics who represent and assist immigrant crime victims applying for U visa status and finding that of 4,034 U visa recipients since January 2008, over 75% were domestic violence, sexual assault, or human trafficking victims); see also Michael Kagan, *Immigrant Victims, Immigrant Accusers*, 48 U. MICH. J. L. REFORM 915, 931-32 (2015) (citing "domestic violence accounts for the majority of U visa applications; prototypically, a female victim levels an accusation against a male defendant"); Rachel Gonzalez Settlage, *Uniquely Unhelpful: The U Visa's Disparate Treatment of Immigrant Victims of Domestic Violence*, 68 RUTGERS U. L. REV. 1747, 1764 (2016) ("seventy-five percent of U visas requested are requested for domestic violence related crimes."); Advisory, Cecelia Friedman Levin, Staff Attorney, ASISTA, U Cap Update from USCIS & Additional Updates from VSC Stakeholder Teleconference 3 (Dec. 11, 2013), http://www.asistahelp.org/documents/news/U_cap_advisory_and_notes_from_stakh_60F50EB294846.pdf [<https://perma.cc/WP45-X2PQ>] ("About 75% of U visas are based in domestic violence or domestic violence/sexual assault crimes.").

I.
BACKGROUND

A. *U visa status and the application process*

U visa status²¹ is a temporary nonimmigrant status that allows noncitizen victims of crime to remain in the United States, obtain employment authorization, apply for lawful permanent resident status, and help certain other family members obtain temporary nonimmigrant status as well.²² A subsidiary benefit of a successful U visa application is that it can cancel a removal order.²³ Also, a U visa can benefit people who have already been deported, because USCIS may grant U visas to petitioners outside the country if they were victims of crime while present in the United States.²⁴

The TVTPA, which Congress enacted in October 2000, created the U visa.²⁵ Although interim regulations have since implemented the application requirements and procedures for U visa status, protocols remain subject to change.²⁶ By establishing U visa status, Congress intended to protect victims of

21. Attorneys and advocates often use the terms “U visa status” and “U nonimmigrant status” interchangeably. There is an important technical distinction between the two, but it is irrelevant for the purposes of this Note. *See* U VISA MANUAL, *supra* note 11, at 1-1 to 1-2. For terminological simplicity, I refer to the form of legal relief as “U visa status” in this paper.

22. *See id.*

23. *See* 8 C.F.R. § 214.14(c)(1)(i) (2018).

24. *See* 8 C.F.R. § 214.14(c)(5)(i)(B).

25. Victims of Trafficking and Violence Protection Act (VTVTPA) of 2000, Pub. L. 106-386, 114 Stat. 1464. The Violence Against Women and Department of Justice Reauthorization Act of 2005, enacted in January 2006, later amended the U visa program. Pub. L. 109-162, 119 Stat. 2960 (2006). This was subsequently amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, enacted in December 2008. Pub. L. 110-457, 122 Stat. 5087 (2008). This was amended by the Violence Against Women Reauthorization Act of 2013, combined with the Trafficking Victims Protection Reauthorization Act, and signed into law on March 7, 2013. *See* U VISA MANUAL, *supra* note 11, at 1-1.

26. *See supra* note 11; *see also* U VISA MANUAL, *supra* note 11, at 1-1. Indeed, the Trump administration recently made drastic alterations to U visa application protocols. Until November 2018, undocumented U visa applicants whose petitions USCIS denied were not considered a priority for deportation; the US government seldom placed denied applicants in removal proceedings. U VISA MANUAL, *supra* note 11, at 3-47 (“While there is no written policy on this, USCIS has repeatedly stated that they do not place applicants in removal proceedings simply because their U nonimmigrant status application was denied. The risk of being placed in removal proceedings by applying for U nonimmigrant status is extremely low.”); *id.* at 4-20 (“USCIS has adjudicated over 50,000 U nonimmigrant status applications, and there are no reports from immigrants or advocates that any denials have resulted in removal proceedings being initiated in denied cases.”). As of November 2018, however, undocumented victims who are denied a U visa may receive an order to appear before an immigration judge. U.S. CITIZENSHIP & IMMIGRATION SERVS., NOTICE TO APPEAR POLICY MEMORANDUM (Nov. 19, 2018), <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum> [<https://perma.cc/ZTZ2-TFE8>] (“On June 28, 2018, USCIS issued a new Notice to Appear (NTA) policy memorandum (PM), providing guidance on when USCIS may issue Form I-862, Notice to Appear . . . Starting Nov. 19, 2018, USCIS may also issue NTAs based on denials of Forms I-914/I-914A, Applications for T Nonimmigrant Status; I-918/I-918 Petitions for U Nonimmigrant Status”); U.S. CITIZENSHIP & IMMIGRATION SERVS., PM-602-0050.1, POLICY MEMORANDUM: UPDATED GUIDANCE FOR THE REFERRAL OF CASES AND ISSUANCE OF NOTICES TO APPEAR (NTAs) IN CASES INVOLVING

certain crimes who gather the courage to come forward, report the crime, and assist in the criminal investigation and prosecution.²⁷ The purpose of the U visa is thus twofold. First, it enhances law enforcement's ability to investigate and prosecute crimes.²⁸ Second, it furthers humanitarian interests by protecting victims of serious crimes.²⁹

U visa status is available to noncitizens who have "suffered substantial physical or mental abuse"³⁰ resulting from a wide range of criminal activity, including the following qualifying crimes:

Abduction	Incest	Sexual exploitation
Abusive sexual contact	Involuntary servitude	Slave trade
Being held hostage	Kidnapping	Stalking
Blackmail	Manslaughter	Torture
Domestic violence	Murder	Trafficking
Extortion	Obstruction of justice	Unlawful criminal restraint; or
False imprisonment	Peonage	Attempt, conspiracy, or solicitation to commit
Felonious assault	Perjury	any of the above. ³¹
Female genital mutilation	Prostitution	
Fraud in foreign labor contracting	Rape	
	Sexual assault	

Qualifying U visa crimes may also include other acts that can be characterized as "similar activity" to a crime that violates federal, state, or local criminal law.³² Other requirements for a grant of U visa status include that the applicant "possesses information concerning criminal activity" and "has been helpful, is being helpful, or is likely to be helpful to [federal, state, or local authorities] investigating or prosecuting criminal activity."³³ This means that the victim must

INADMISSIBLE AND DEPORTABLE ALIENS 9 n.20 (June 28, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf> [<https://perma.cc/S8MF-MSEH>]; Priyanka Boghani, *Undocumented Crime Victims Face Heightened Risk of Deportation*, PBS (Nov. 30, 2018), <https://www.pbs.org/wgbh/frontline/article/undocumented-crime-victims-face-heightened-risk-of-deportation> [<https://perma.cc/6SUG-D649>].

27. See Saucedo, *supra* note 12, at 907–09.

28. *Id.*

29. *Id.*

30. 8 U.S.C. § 1101(a)(15)(U)(i)(I) (2012) (stating victims who suffered substantial physical or mental abuse as a result of criminal activity are eligible). "Substantial physical or mental abuse" can be shown through "[a] series of acts taken together . . . even where no single act alone rises to that level." 8 C.F.R. § 214.14(b)(1) (2018).

31. 8 U.S.C. § 1101(a)(15)(U)(iii) (attempts, conspiracies, or solicitation also qualify).

32. *Id.*

33. 8 U.S.C. § 1101(a)(15)(U)(i).

know “specific facts” about the crime, and must not refuse to provide information to law enforcement when “reasonably requested.”³⁴

Unlike petitioners for many other forms of US immigration status, U visa petitioners do not face mandatory interviews with USCIS officers or appearances in front of immigration judges.³⁵ Noncitizens apply for U visa status via administrative, paper-based exchanges with dedicated U visa adjudicators at USCIS.³⁶ Adjudicators at the USCIS Vermont Service Center (VSC) evaluate most³⁷ applications for U visa standing, as well as status through the Violence Against Women Act (VAWA) for battered spouses, children, and parents, T visa status for trafficking victims, and select asylum petitions.³⁸ U visa adjudicators receive special training on domestic violence and on sensitivity to issues unique to immigrant crime victims.³⁹

34. 8 C.F.R. § 214.14(b).

35. Immigrants applying for U visa status may appear in front of immigration judges if they are already in removal proceedings when they decide to apply for the standing, but immigration judges do not adjudicate U visa petitions. See U VISA MANUAL, *supra* note 11, at 3-2.

36. *Id.*

37. As of July 2016, USCIS began reviewing some U visa petitions at the Nebraska Service Center, but the extent of such adjudications is unclear. See *U Nonimmigrant Status Program Updates, July 2016 – Work Share Plan: Form I-918, Petition for U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/u-nonimmigrant-status-program-updates> [<https://perma.cc/3MKS-CHTX>]. The USCIS update explained: “USCIS will begin reviewing U nonimmigrant status (U visa) petitions at two service centers — the Vermont Service Center (VSC) and Nebraska Service Center (NSC). This permanent workload share will allow us to balance workloads between service centers and provide flexibility as we work towards improving processing times, efficiency and service to this victim population. While officers generally rotate among petition types depending on the needs of the agency, there will always be dedicated officers assigned to adjudicate U visa petitions at both the NSC and the VSC. . . . We are initially transferring 3,000 Form I-918 U nonimmigrant status petitions from the VSC to the NSC. . . . Once the NSC completes the adjudication of the initial set of transferred U visa petitions, the VSC will transfer more cases to the NSC. At this time, we do not have an anticipated timeline for subsequent transfers.” Notwithstanding this shift, U visa applicants continue to submit their initial U visa petitions to the Vermont Service Center. *I-918, Petition for U Nonimmigrant Status, “Where to File,”* U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/i-918>, [<https://perma.cc/Q2NX-7P35>]; see also *Service Center Forms Processing*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/forms/service-center-forms-processing>, [<https://perma.cc/RK3D-5AJM>] (table showing that the Vermont Service Center and the Nebraska Service Center currently process all U visa petitions).

38. See *infra* note 174 (regarding H.R. Rep. No. 109-233).

39. U VISA MANUAL, *supra* note 11, at 3-39 (“USCIS I-918 adjudicators are generally well trained and supervised”); *id.* at 3-47 (“VSC staff has specialized training on U nonimmigrant cases”); see also *infra* note 174 (regarding H.R. Rep. No. 109-233). Following the diversion of some U visa adjudications to the NSC in July 2016, see *supra* note 37, USCIS indicated a “commit[ment] to ensuring consistency in adjudication between the service centers” by training NSC officers in the same manner as VSC officers. See *U Nonimmigrant Status Program Updates, July 2016 – Work Share Plan: Form I-918, Petition for U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/u-nonimmigrant-status-program-updates>, [<https://perma.cc/V5UZ-P3NS>]. (“VSC officers—including subject matter experts, managers, and members of the training team—will be at the NSC to train officers on adjudicating the Form I-918. They will provide the same Form I-918 training that VSC officers currently receive”).

A petitioner's application packet must include completed USCIS I-918 and I-918 Supplement B, which attest to the person's eligibility for U visa standing along the criteria delineated above.⁴⁰ As part of the I-918, a person must submit a signed personal statement (sometimes called an "affidavit" or "declaration") describing the criminal activity of which he or she was a victim and its consequences and documenting other pertinent evidence bearing on eligibility.⁴¹ A petitioner may submit additional supporting documents, including photographs of physical injuries, trial transcripts, court documents, police reports, news articles, orders of protection, and affidavits of other witnesses or officials with knowledge of the petitioner's experiences.⁴²

A law enforcement agent—typically a police officer, prosecutor, or judge—signs the I-918, Supplement B, certifying that the petitioner "is or was a victim" of qualifying criminal activity, that the agency is investigating the crime, and that the petitioner possesses information about the crime and is being helpful to the investigation.⁴³ Advocates criticize the U visa certification process because it "shifts to local law enforcement the critical assessments that determine eligibility for the U visa: Is the person a genuine victim, and is he or she assisting law enforcement? This shift . . . allows for inconsistencies in the implementation of a national program . . . It also opens the possibility for law enforcement agencies to exert unusual leverage over immigrant victims."⁴⁴ In addition, U visa applicants are often responsible for obtaining signed U visa certification forms from law enforcement agencies before retaining nonprofit immigration counsel

40. See U.S. CITIZENSHIP & IMMIGRATION SERVS., INSTRUCTIONS FOR PETITION FOR U NONIMMIGRANT STATUS AND SUPPLEMENT A, PETITION FOR QUALIFYING FAMILY MEMBER OF U-1 RECIPIENT, https://www.uscis.gov/system/files_force/files/form/i-918instr.pdf?download=1 [<https://perma.cc/UP8C-K5H3>]; U.S. CITIZENSHIP & IMMIGRATION SERVS., SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION, https://www.uscis.gov/system/files_force/files/form/i-918supb.pdf?download=1 [<https://perma.cc/BQ4B-R2C6>]; U.S. CITIZENSHIP & IMMIGRATION SERVS., PETITION FOR U NONIMMIGRANT STATUS, https://www.uscis.gov/system/files_force/files/form/i-918.pdf?download=1 [<https://perma.cc/L2LR-VEW5>]; U.S. CITIZENSHIP & IMMIGRATION SERVS., INSTRUCTIONS FOR SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION, <http://www.uscis.gov/files/form/i-918supbinstr.pdf> [<https://perma.cc/B3KD-CUCB>].

41. 8 U.S.C. § 1184(p)(1) (2012); 8 C.F.R. § 214.14(c)(2) (2018).

42. U.S. CITIZENSHIP & IMMIGRATION SERVS., INSTRUCTIONS FOR PETITION FOR U NONIMMIGRANT STATUS AND SUPPLEMENT A, PETITION FOR QUALIFYING FAMILY MEMBER OF U-1 RECIPIENT 10–11, https://www.uscis.gov/system/files_force/files/form/i-918instr.pdf?download=1 [<https://perma.cc/UP8C-K5H3>].

43. 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(c)(2) (2018); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION, https://www.uscis.gov/system/files_force/files/form/i-918supb.pdf?download=1 [<https://perma.cc/BQ4B-R2C6>]; U.S. CITIZENSHIP & IMMIGRATION SERVS., INSTRUCTIONS FOR SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION, https://www.uscis.gov/system/files_force/files/form/i-918supbinstr.pdf?download=1 [<https://perma.cc/B3KD-CUCB>].

44. Kagan, *supra* note 20, at 928; see also *Arizona v. United States*, 567 U.S. 387, 394 (2012); Jamie R. Abrams, *The Dual Purposes of the U Visa Thwarted in a Legislative Duel*, 29 ST. LOUIS U. PUB. L. REV. 373, 392 (2010) (shifting immigration decision-making power to local officials "fatally alter[s] the symbiotic balance that Congress envisioned"); Jensen, *supra* note 12, at 704.

and beginning casework; this can be difficult for noncitizens who are deeply traumatized from surviving experiences of crime, worry that contact with law enforcement could put them at risk of detention or deportation, or have had negative interactions with law enforcement and prefer to avoid further contact with such agencies.⁴⁵

Applicants submit completed U visa applications to the VSC for review.⁴⁶ If adjudicators want clarification or more details about an aspect of applicants' claims, they send Requests for Evidence ("RFEs") to immigrants and their attorneys.⁴⁷ RFEs indicate what information is needed for full application evaluation.⁴⁸ Applicants typically have one to three months to respond, after which they await final decisions.⁴⁹ When research for this study was underway, immigrants usually received a final response four to six months after applying, not including time to respond to RFEs.⁵⁰ The waiting time has since increased immensely,⁵¹ largely because the size of the U visa program is inadequate to

45. Sarah M. Lakhani, *From Problems of Living to Problems of Law: The Legal Translation and Documentation of Immigrant Abuse and Helpfulness*, 39 LAW & SOC. INQUIRY 643 (2014) (analyzing the challenges for prospective U visa applicants in approaching law enforcement agencies to request U visa certification).

46. I-918, *Petition for U Nonimmigrant Status*, "Where to File," U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/i-918> [<https://perma.cc/MT8F-FZU9>].

47. *Id.* at 3-38 to 3-39.

48. *Id.*

49. *Id.* at 3-21 ("CIS requires a 33-day response time for a request for initial evidence and an 87-day response time for requests involving the I-192 inadmissibility waiver").

50. During the first two years (2009 and 2010) that I volunteered at Equal Justice, I regularly observed lawyers tell their clients that they should expect to wait at least four to six months for their U visa applications to be adjudicated.

51. By 2011, the adjudication process had slowed considerably and become more erratic. Attorneys began extending their estimated waiting periods. For example, an AYUDA lawyer I observed told immigrants that they could expect to wait between three and fifteen months for a decision. Under current legal and regulatory specifications, there is no absolute deadline by which adjudicators must approve or deny U visa applications. See U VISA MANUAL, *supra* note 11, at 3-39 to 3-40 ("Under INA § 214(p), only 10,000 applicants may be granted U nonimmigrant status each fiscal year ('FY'). USCIS announced in late 2015 that it had already reached the 10,000 cap for FY 2016. This marks the seventh straight year that USCIS has approved the maximum of 10,000 U applications. It also marks an increasing backlog; because USCIS has reached the 10,000 cap so many years in a row, the remaining U applications are placed on a waitlist until USCIS can begin processing the new allotment of 10,000 cases the following fiscal year. . . . Therefore, attorneys and representatives should anticipate that any new applicants for U nonimmigrant status will be subject to the statutory cap and may be on a waiting list for years before receiving U nonimmigrant status.").

meet applicant needs: there is a statutory annual limit of 10,000 U visas that can be granted,⁵² and the number of applicants exceeds this cap by a landslide.⁵³

Given the current extended wait times for adjudication,⁵⁴ USCIS may review a U visa application and make a preliminary determination that the applicant appears to meet the eligibility requirements.⁵⁵ Applicants who receive this “conditional approval” are placed on a waitlist for a final evaluation and may become eligible for deferred action, parole, or work authorization in the interim.⁵⁶

B. Social science and legal academic scholarship

Contemporary immigration laws are distinctly difficult to unravel without the help of a lawyer,⁵⁷ yet indigent noncitizens do not have the right to counsel in civil immigration proceedings.⁵⁸ Legal representation significantly increases noncitizens’ odds of success in immigration court and when petitioning other

52. Immigration and Nationality Act, § 214(p)(2)(A) (2012). This cap is for “principal” applicants, i.e. the main victim petitioner. There is no cap on “derivative” U visa applicants. § 214(p)(2)(B). For U visa principal applicants who are under 21 years old at the timing of filing, derivative family members may include their spouse, children (under age 21 and unmarried), parents, and siblings (under age 18 and unmarried). § 101(a)(15)(U)(ii)(I). For U visa principal applicants who are over the age of 21 at the time of filing, derivative family members may include their spouse and children (under age 21 and unmarried). § 101(a)(15)(U)(ii)(II); *see also* U VISA MANUAL, *supra* note 11, at 7-1 to 7-3.

53. As of June 2018, USCIS had a total backlog of 128,079 pending principal U visa applications. U.S. CITIZENSHIP & IMMIGRATION SERVS., NUMBER OF FORM I-918, PETITION FOR U NONIMMIGRANT STATUS, BY FISCAL YEAR, QUARTER, AND CASE STATUS 2009–2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr3.pdf [<https://perma.cc/SAV7-ZCRK>]. This figure does not include pending derivative applications for U visa status, since “[t]he derivatives are not counted in the annual cap of 10,000.” *Id.* at n.7. In fiscal year 2017 alone, USCIS received 36,531 principal U visa petitions. *Id.*; *see also* USCIS Approves 10,000 U Visas for 7th Straight Fiscal Year, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/news/uscis-approves-10000-u-visas-7th-straight-fiscal-year> [<https://perma.cc/BEU6-QMZ3>]. Scholars and practitioners have criticized the low U visa cap and repeatedly urged Congress to raise or eliminate it. *See, e.g.*, Jason A. Cade & Meghan L. Flanagan, *Five Steps to a Better U: Improving the Crime-Fighting Visa*, 21 RICH. PUB. INT. L. REV. 85, 113 (2018); Sara Ramey, *Eliminating the U Visa Cap Will Help Catch Criminals*, THE HILL (Feb. 14, 2018), <https://thehill.com/opinion/immigration/373808-eliminating-the-u-visa-cap-will-help-catch-criminals> [<https://perma.cc/C9YU-7UZQ>].

54. Current wait times for U visas are incredibly long. *See* Ramey, *supra* note 53, at para. 8 (explaining that “[a]t the end of September 2017 there were 110,551 pending principle [sic] applications, making the wait time for a U visa about 11 years”).

55. *See* U VISA MANUAL, *supra* note 11, at 3-40 to 3-43.

56. *Id.* Advocates note, however, that there is currently “close to a two year wait to get on the waitlist.” *See, e.g.*, Ramey, *supra* note 53, at 2.

57. *See, e.g.*, *Hernandez v. Mukasey*, 524 F.3d 1014, 1018 (9th Cir. 2008) (quoting *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005)) (“[t]he proliferation of immigration laws and regulations has aptly been called a labyrinth that only a lawyer could navigate.”).

58. Noncitizens have a statutory right to be represented by counsel, but only at their own expense. 8 U.S.C. § 1229a(b)(4)(A) (2012) (“[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings.”).

immigration agencies for relief.⁵⁹ Thus, while noncitizens are not required to proceed with an attorney when applying for immigration benefits, those who are able to find and secure competent lawyers to help them usually do so.⁶⁰

Noncitizens who cannot afford the fees of private immigration attorneys⁶¹ may seek out alternative sources of legal assistance. Options include legal nonprofit organizations that provide free or low cost aid,⁶² including “low bono” organizations.⁶³ These organizations offer income-sensitive fee arrangements, like reduced, flat-rate fees on an income-dependent sliding scale.⁶⁴ The services of these organizations are in high demand, with attorneys commonly managing outsize caseloads.⁶⁵ As a result, a dilemma that legal services attorneys routinely face is *who to help* when not everyone can be helped.⁶⁶ Lawyers must rank potential clients in some order of priority for legal services; attorneys agree to represent certain people and turn away others, offering referrals to different organizations or law offices.

59. Individuals unable to obtain representation are more likely to be deported than those with counsel. *See, e.g.,* Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 339–41 (2007) (finding that asylum seekers represented by counsel were three times more likely to succeed in their asylum claims than pro se applicants); Steering Comm. of the N.Y. Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 CARDOZO L. REV. 357, 364 (2011) (concluding, based on data from New York, that the odds of a successful outcome in a case (defined as relief or termination) rise from 3% to 18% for immigrant detainees and from 13% to 74% for those who are not detained when represented by counsel).

60. *See, e.g.,* Ingrid V. Eagly, *Gideon’s Migration*, YALE L.J. 2282, 2289 (2013) (“[T]he unmet need for immigration counsel is dire.”).

61. *Cf.* Leslie C. Levin, *Guardians at the Gate: The Backgrounds, Career Paths, and Professional Development of Private US Immigration Lawyers*, 34 LAW & SOC. INQUIRY 399 (2009) (describing private immigration attorneys’ personal backgrounds, career trajectories, and modes of practice) [hereinafter Levin, *Guardians at the Gate*]; Leslie C. Levin, *Immigration Lawyers and the Lying Client*, in *LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT* 87–109 (Leslie C. Levin & Lynn Mather eds., 2012) [hereinafter Levin, *Immigration Lawyers and the Lying Client*] (analyzing ethical challenges lawyers encounter in the private practice of immigration law).

62. *See* Eagly, *supra* note 60, at 2289 (describing three primary legal services delivery models that currently exist for civil immigration matters—nonprofit organizations, both government and philanthropically funded; pro bono legal services; and law school clinics).

63. *See, e.g.,* *Legal Services*, ARAB AM. LEGAL SERVS. (AALS), <http://araborganizing.org/what-we-do/immigration-services/legal-services> [<https://perma.cc/U4N7-Q9ZM>] (organization explaining that it offers “[p]ro-bono & low-bono immigration legal services for low and moderate income Arab and Muslim immigrants in the SF Bay Area.”); *Direct Legal Representation*, PANGAEA LEGAL SERVS., <http://www.pangealegal.org/our-work/#represent> [<https://perma.cc/TW5C-TH4U>] (“Pangea is dedicated to making high quality legal services more accessible to immigrant communities. We offer pro-bono and low-bono services for individuals in removal proceedings and those currently being held in immigrant detention.”).

64. *See, e.g.,* *Meet Our Staff*, IMMIGR. CTR. FOR WOMEN & CHILD., <http://icwclaw.org/meet-our-staff> [<https://perma.cc/VC97-8ZLC>] (“ICWC provides legal services on a sliding scale fee system that is based on income and family size.”).

65. *See supra* note 7 discussion.

66. *Id.*; *see also* Tremblay, *supra* note 7, at 2475 (“Poverty lawyers will inevitably encounter more potential poor persons than they have the resources, time, and money to serve . . . The result is triage.”).

Socio-legal scholars have studied the function of human services bureaucracies—agencies that deal directly with the public and cope with significant caseloads, ambiguous agency goals, and limited resources—for decades.⁶⁷ As distinct from *legislative* policymaking, Michael Lipsky famously argued that because of the wide discretion granted the “street-level bureaucrats”⁶⁸ who staff these agencies, their work practices and orientations determine a great deal of actual public service policy. Understanding the work of street-level bureaucrats—a group that includes lawyers—is critical, because they are most people’s main point of contact with the government and they “make policy”⁶⁹ through an accumulation of day-to-day decisions that produce normative categories.⁷⁰

Street-level bureaucrats derive their power from law and policy, including guidelines that set limits to their actions. Nevertheless, such guidelines do not dictate exactly how to complete work within those bounds or with what rationales.⁷¹ By choosing among courses of action and inaction, street-level bureaucrats clarify and elaborate their own authorizing mandates.⁷²

67. See generally AMADA ARMENTA, PROTECT, SERVE, AND DEPORT: THE RISE OF POLICING AS IMMIGRATION ENFORCEMENT (2017) (containing empirical study of Nashville’s participation in the 287(g) immigration enforcement program, which turned jail employees into immigration officers who identified removable immigrants for deportation; the author highlights the role of bureaucratic priorities, relevant laws, and local norms in enabling officers to rationalize and psychically distance themselves from the negative consequences of their work for the immigrant community); MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES 3 (1980); STEVEN MAYNARD-MOODY & MICHAEL MUSHENO, COPS, TEACHERS, COUNSELORS: STORIES FROM THE FRONT LINES OF PUBLIC SERVICE (2003) (containing empirical study of how police officers, public school teachers, and vocational rehabilitation counselors perceive and conduct their everyday work, including the case management strategies and rationales they develop to serve their constituencies).

68. LIPSKY, *supra* note 67, at 3 (defining “street-level bureaucrats” to include “teachers, police officers, and other law enforcement personnel, social workers, judges, public lawyers, and other court officers, health workers, and many other public employees who grant access to government services and provide services within them.”).

69. *Id.* at 13.

70. *Id.* at xii (noting that street-level bureaucrats “develop techniques to recognize and respond . . . [and] process categories of cases”); *id.* at 59 (“People come to street-level bureaucracies as unique individuals with different life experiences, personalities, and current circumstances . . . [and] are transformed into clients, identifiably located in a very small number of categories.”).

71. See, e.g., Carol A. Heimer, *Explaining Variation in the Impact of Law: Organizations, Institutions, and Professions*, in 15 STUDIES IN L., POL. & SOC’Y 29, 31 (Austin Sarat & Susan Silbey eds., 1995) (explaining the power of front line legal workers in organizations to shape the form law takes when implementing the black letter, noting that “[v]ariations in effects on organizational activities can be understood by looking simultaneously at institutions, professions, and organizational decision making”); Susan S. Silbey, *Case Processing: Consumer Protection in an Attorney General’s Office*, 15 LAW & SOC’Y. REV. 849, 849 (1981) (empirically examining complaint processing in an attorney general’s office of consumer protection and describing how, “in the implementation and routinization of a new statute, considerations external to the law or the individual case arise, transform, and begin to characterize law enforcement”).

72. See generally, e.g., JEFFREY JOWELL, LAW AND BUREAUCRACY: ADMINISTRATIVE DISCRETION AND THE LIMITS OF LEGAL ACTION (1975) (qualitative study of the extent to which law and legal techniques can control bureaucratic decision-making based on an examination of case

Public services employees interpret and implement policy within special constraints. They often interact with clients regularly, but their work environments are stressful and their resources are limited.⁷³ Bureaucratic and organizational goals and directives are frequently vague, or even contradictory.⁷⁴ As a result, while the clients are the “lifeblood” of these organizations, internal decision-making is commonly driven by other concerns, like bureaucrats’ ability to finish discrete tasks.⁷⁵ Workers cope with these circumstances by developing routines, standards, categorizations, simplifications, and forms of accountability that economize on resources and meet baseline institutional goals.⁷⁶ For example, they may invent definitions of effectiveness that their procedures are able to meet and apply post hoc rationales that justify them.⁷⁷ In so doing, they may alter the concept of their job, redefine their clientele, or modify their organizational mandates.⁷⁸ Street-level bureaucrats often perceive these efforts as necessary for the survival of their organizations and, implicitly, their organizations’ broader ideological goals.⁷⁹

processing in three Boston agencies involved in welfare administration, racial discrimination claims in housing and employment, and urban renewal, respectively).

73. See, e.g., LIPSKY, *supra* note 67, at xii (referencing the “huge caseloads and inadequate resources” of street-level bureaucrats to do their jobs).

74. *Id.*; *id.* at 40 (describing the “ambiguity and unclarity of goals and the unavailability of appropriate performance measures in street-level bureaucracies,” and explaining that “[s]treet-level bureaucrats characteristically work in jobs with conflicting and ambiguous goals . . . Public service goals also tend to have an idealized dimension that makes them difficult to achieve and confusing and complicated to approach,” like “good health, equal justice, and public education”).

75. *Id.* at 140 (noting that street-level bureaucrats are “expected to exercise discretion in response to individuals and individual cases,” but “in practice they must process people in terms of routines, stereotypes, and other mechanisms that facilitate work tasks”); Silbey, *supra* note 71, at 850 (“The clients are the lifeblood of the organization, but they are not the primary reference group for decision making.”).

76. See, e.g., Silbey, *supra* note 70, at 850–51; see also LIPSKY, *supra* note 67, at xiii (“They believe themselves to be doing the best they can under adverse circumstances, and they develop techniques to salvage service and decision-making values within the limits imposed upon them by the structure of the work. They develop conceptions of their work and of their clients that narrow the gap between their personal and work limitations and the service ideal.”); Marcia K. Meyers et al., *On the Front Lines of Welfare Delivery: Are Workers Implementing Policy Reforms?*, 17 J. POL’Y ANALYSIS & MGMT. 1, 17 (1998) (describing that welfare caseworkers “responded to the increased information demands of welfare reform by routinizing discussions of work and self-sufficiency”; “workers provided more information, but their standardized recitation of work incentives and rules did little to explain complex information or adapt it to clients’ individual situations”).

77. See, e.g., Silbey, *supra* note 71, at 850–51; see also Amada Armenta, *From Sheriff’s Deputies to Immigration Officers: Screening Immigrant Status in a Tennessee Jail*, 34 LAW & POL’Y. 191, 192 (2012) (containing empirical study of federal immigration enforcement by local-level police officers finding that “immigration officers see themselves as objective administrators whose primary responsibilities are to process and identify immigrants” for removal, thereby “uphold[ing] the rule of law,” but “alternate frames emerge depending on how they *feel* about the immigrants they encounter,” including “frames [that] range from pride at identifying ‘criminal aliens’ to guilt for processing immigrants who were arrested for very minor violations”).

78. See, e.g., Silbey, *supra* note 70, at 851.

79. *Id.* at 850–51.

Discretion in decision-making is a dominant feature for street-level bureaucrats.⁸⁰ Myriad factors shape the discretionary judgments of these individuals, such as prior knowledge, which can take many forms.⁸¹ For example, popular stereotypes of particular criminal offenses provide imagery about “typical” offender and victim characteristics as well as situational features of the offense.⁸² In turn, street-level bureaucrats are likely to disproportionately attach particular positive or negative labels to members of certain social groups.⁸³ Types of organized prior knowledge like records or recommendations complement cognitive forms of prior knowledge, like stereotypes, socialization, or direct personal experiences.⁸⁴ Ultimately, prior knowledge influences street-level bureaucrats to create case categories; these conscious or subconscious categories shape how bureaucrats assess and respond to cases they confront.

Context fundamentally drives the categorization decisions of street-level bureaucrats. Thus, which, how, and to whom street-level bureaucrats apply categories depends on the organizational settings in which decision-makers work as well as workers’ occupational orientations.⁸⁵ Time and experience bear on categorization as well. For instance, Sudnow’s classic study of how guilty pleas are produced in criminal legal cases through the social construction of cases into “normal cases” demonstrates that the letter of the law (in this case, the penal code) is often less important than the power of “typification” as it plays out between public defenders and district attorneys.⁸⁶ Sudnow shows that lawyers’

80. See LIPSKY, *supra* note 67, at 140.

81. *Id.*

82. See, e.g., Caroline J. S. Picart, *Rhetorically Reconfiguring Victimhood and Agency: The Violence Against Women Act’s Civil Rights Clause*, 6 RHETORIC & PUB. AFF. 97 (2003) (arguing that the “rhetoric” around VAWA “reifies the . . . picture of the monolithic woman as pure victim, one who must be protected from ‘evil’ and predatorial forces because she is incapable of any acts of agency to defend herself”); Victoria Lynn Swigert & Ronald A. Farrell, *Normal Homicides and the Law*, 42 AM. SOC. REV. 16 (1977) (containing empirical study of people arrested for murder arguing that “the stereotype of the violent offender, the ‘normal primitive,’ constitutes an official imagery within which legal decisions are made”); Linda Meyer Williams & Ronald A. Farrell, *Legal Response to Child Sexual Abuse in Day Care*, 17 CRIM. JUST. & BEHAV. 284, 287 (1990) (empirical study finding that child abuse “cases [fitting] the popular stereotype of [child molestation] are more likely to elicit a formal response” from the criminal justice system, “whereas those at variance with the imagery require that additional aggravating conditions be present before formal actions are effected”).

83. See, e.g., HOWARD S. BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963) (explaining that definitions of deviancy vary widely across social groups, such that one can only discern what conduct is “deviant” and what is not by examining the setting in which one group of persons confers a deviant label on another).

84. See, e.g., John S. Carroll et al., *Evaluation, Diagnosis, and Prediction in Parole Decision Making*, 17 LAW & SOC’Y REV. 199 (1982) (empirical study of parole decision-making involving analysis of post-hearing questionnaires and case files); see also Arthur J. Lurigio & Loretta J. Stalans, *Thinking More About How Criminal Justice Decision Makers Think*, 17 CRIM. JUST. & BEHAV. 260, 261–62 (1990) (describing examples of cognitive forms of prior knowledge).

85. See, e.g., Robert M. Emerson, *Case Processing and Interorganizational Knowledge: Detecting the “Real Reasons” for Referrals*, 38 SOC. PROBS. 198 (1991).

86. David Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOC. PROBS. 255, 260 (1965) (defining “normal crimes” as “those occurrences whose typical features, e.g., the ways they usually occur and the characteristics of persons who commit

agreements about “reasonable” offenses and recommendations about criminal sentencing in individual cases are formulated in light of both sides’ motivation to avoid resource- and time-intensive trials, which would tax lawyers’ ability to complete work on other cases.⁸⁷

Likewise, employees in the federal immigration bureaucracy are practically constrained in their capacity to enforce immigration policies because they are given conflicting and unclear policy directives⁸⁸ and have limited resources to execute their jobs.⁸⁹ As a result, immigration enforcement agents as well as immigration judges exercise discretion to carry out their mandates as best they see fit, developing categories, routines, and rationalizations of their choices.⁹⁰ Immigration lawyers—particularly nonprofit immigration attorneys—

them (as well as the typical victims and typical scenes), are known and attended to by the P.D. [public defender]. For any of a series of offense types the P.D. can provide some form of proverbial characterization. For example, *burglary* is seen as involving regular violators, no weapons, low-priced items”); *id.* at 262 (“Over the course of their interaction and repeated ‘bargaining’ discussions, the P.D. and D.A. have developed a set of unstated recipes for reducing original charges to lesser offenses. These recipes are specifically appropriate for use in instances of normal crimes and in such instances alone. ‘Typical’ burglaries are reduced to petty theft . . .”).

87. Sudnow, *supra* note 86, at 262.

88. See generally LISA MAGAÑA, STRADDLING THE BORDER: IMMIGRATION POLICY AND THE INS (2003) (containing empirical study of how the working conditions and organizational constraints on Immigration and Naturalization Service bureaucrats shaped the implementation of major U.S. immigration policies of the 1980s and 1990s).

89. See, e.g., Janet A. Gilboy, *Deciding Who Gets In: Decisionmaking by Immigration Inspectors*, 25 LAW & SOC’Y REV. 571, 577–80 (1991) (analyzing the constraints that bear on immigration inspectors’ regulation of entry at airports, including general time pressure, unreliable technological systems, and the challenge of rapidly policing strangers). Likewise, the nation’s immigration courts, which are part of the US Department of Justice, are severely under resourced, with judges lamenting an inability to sufficiently prepare for cases and deliberate on outcomes. See, e.g., Stuart L. Lustig, et al., *Inside the Judges’ Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey*, 23 GEO. IMMIGR. L.J. 57, 66 (2008) (analysis of survey of immigration judges documenting extreme stress and burnout, with one judge expressing in a survey, “There is not enough time to think”); Dana Leigh Marks, *Immigration Judge: Death Penalty Cases in a Traffic Court Setting*, CNN (June 26, 2014), <http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html> [https://perma.cc/T2G4-BQKC] (San Francisco Immigration Judge likening her work to adjudicating “death penalty cases in a traffic court setting” due to the lack of resources and high stakes involved); Eli Saslow, *In a Crowded Immigration Court, Seven Minutes to Decide a Family’s Future*, WASH. POST (Feb. 2, 2014), https://www.washingtonpost.com/national/in-a-crowded-immigration-court-seven-minutes-to-decide-a-familys-future/2014/02/02/518c3e3e-8798-11e3-a5bd-844629433ba3_story.html?noredirect=on&utm_term=.90390ea4dc58 [https://perma.cc/W6AQ-5F9J] (an immigration judge at the Arlington Immigration Court calculating that he had an average of seven minutes to adjudicate each case).

90. For example, police officers that help Immigration and Customs Enforcement by identifying removable immigrants are selective and pragmatic about whom to detain. ARMENTA, *supra* note 67, at 56–87, 71 (chapter on officers’ “proactive” police practices describing sociological factors that shape officers’ decisions to cite or arrest removable immigrants after making traffic stops, including that the Nashville Police Department’s “laissez-faire identity policy empowered officers to issue misdemeanor citations” instead of making arrests if officers could establish individuals’ identities, “but it did not require that they do so”; officers are expected to “rely on their professional experience and expertise when deciding whether to cite or arrest”); *id.* at 86–87 (explaining police officers’ “justifications” for exercising their “discretion” to arrest undocumented immigrants).

experience similar challenges and exhibit similar responses in their client representation work.⁹¹ However, it is largely unclear how legal services lawyers navigate the decision to represent clients in the first place.⁹²

In sum, socio-legal research suggests that immigration lawyers may evaluate and select U visa cases not based on their individual characteristics alone but with more expansive purposes or reference points in mind. In particular, an attorney's caseload, including the demands, issues, and impacts of other current and incoming cases, may affect the way the attorney assesses any given person's situation. An attorney's case selection decisions may also stem, at least in part, from the lawyer's past casework and related career experiences.⁹³

C. Legislative context

The legal and social context that the U visa emerged in provides an important foundation from which to understand public interest lawyers' U visa case selection.

Congress created the U visa in the VTVPA of 2000, during a legislative renewal of VAWA, a 1994 bipartisan Congressional effort to curb domestic violence.⁹⁴ By providing funding for police, prosecutors, battered women services providers, state domestic violence coalitions, and a national domestic violence hotline, Congress designed VAWA to increase awareness of domestic

91. See, e.g., SUSAN BIBLER COUTIN, *LEGALIZING MOVES: SALVADORAN IMMIGRANTS' STRUGGLE FOR U.S. RESIDENCY* 86–94 (2000) (chapter focusing on efforts of nonprofit immigration lawyers to streamline casework); ROBERTA VILLALÓN, *VIOLENCE AGAINST LATINA IMMIGRANTS: CITIZENSHIP, INEQUALITY, & COMMUNITY* 89–90, 99–100 (2010) (chapter describing the “informal parameters” that lawyers and staff of a Texas nonprofit used to select immigrants, and noting that these standards “discriminated against the most destitute immigrants who approached the organization . . . because the [organizational staff] would decide not to represent their cases”; chapter also underscores the contradiction that the organization’s “mission was to provide justice to underprivileged immigrants . . . who were deserving of justice, but also who promised to have easy cases leading to successful resolutions”).

92. For example, Susan Coutin mentions criteria that shape case selection in general, but does not engage in a systematic analysis of the phenomenon itself. Specifically, she notes that immigration attorneys “used the state’s criteria to assess the merits of clients’ cases,” but “sometimes accepted cases that had the potential to establish precedents that would further legal justice,” like “HIV-positive asylum seekers, sexual orientation asylum cases, domestic-violence suspension cases, and emotionally based past persecution cases.” COUTIN, *supra* note 91, at 93. But in a context of a “continual shortage of resources,” lawyers in Coutin’s study often “limit[ed] legal representation to cases that [would] win” over “morally compelling cases that ha[d] little chances of winning.” *Id.*

93. For instance, a lawyer’s ability—based on his or her education, training, and employment experiences—to spot legal issues in and assess the strength of a person’s potential case, affects the attorney’s likelihood of selecting that case for representation. See, e.g., Robert M. Emerson, *Holistic Effects in Social Control Decision-Making*, 17 *LAW & SOC’Y REV.* 425, 425 (1983) (“Particular cases are in fact processed not independently of others but in ways that take into account the implications of other cases for the present one and vice versa. These wider, *holistic* concerns and influences are an important organizationally-based factor that shapes decision outcomes.”).

94. E.g., Mariela Olivares, *Battered by Law: The Political Subordination of Immigrant Women*, 64 *AM. U. L. REV.* 231, 248 (2014).

violence, with the overarching goal of enhancing services for victims.⁹⁵ When Congress enacted VAWA, it presented the Act as “an essential step in forging a national consensus that our society will not tolerate violence against women.”⁹⁶ Politicians advanced domestic violence as a pervasive and serious social problem by citing statistics conveying that domestic violence threatened the lives, safety, and welfare of millions of women and children in the United States each year, and that domestic violence crimes were vastly under-reported.⁹⁷

While VAWA was not an immigration remedy in principal, it included special provisions for noncitizen adults and children abused by US citizen or permanent resident spouses or parents, with Congress noting that US immigration laws were part of a larger societal failure to confront domestic violence.⁹⁸ The House of Representatives Committee on the Judiciary found that domestic abuse problems were “exacerbated in marriages where one spouse is not a citizen and the non-citizen’s legal status depends on his or her marriage to the abuser,”⁹⁹ because it places control of the noncitizen spouse’s ability to gain legal status in the hands of the batterer.¹⁰⁰

Through VAWA, Congress provided these select immigrants with an avenue to secure lawful immigration status independently of their abusers.¹⁰¹ The VAWA 1994 immigration provisions enabled victims to “self-petition” for deferred action,¹⁰² lawful permanent resident status,¹⁰³ or VAWA cancellation of removal.¹⁰⁴ Because VAWA’s implementing regulations and applicant

95. See generally *id.*; Orloff & Kaguyutan, *supra* note 12.

96. S. Rep. No. 103-138, at 41–42 (1993); see Orloff & Kaguyutan, *supra* note 12, at 109.

97. PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 9–11, 55 (2000), <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf> [<https://perma.cc/XCF6-AZN9>].

98. Orloff & Kaguyutan, *supra* note 12, at 110.

99. H.R. Rep. No. 103-395, at 26 (1993); see Orloff & Kaguyutan, *supra* note 12, at 97.

100. Orloff & Kaguyutan, *supra* note 12, at 97.

101. *Id.* at 113.

102. Immigrant victims of domestic violence by a spouse, parent, or child who are undocumented can apply for “deferred action” status via VAWA, which can, but does not necessarily, lead to permanent residency. With “deferred action,” individuals are eligible for work authorization and some federal, state, and local public benefits and financial assistance. See, e.g., *Battered Spouse, Children & Parents*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/battered-spouse-children-parents> [<https://perma.cc/6TPS-ESZX>].

103. Immigrant victims of domestic violence by a spouse, parent, or child whose abuser has already petitioned for legal status for them may be eligible to apply immediately for permanent residency. See IMMIGRANT LEGAL RES. CTR, INTRODUCTION TO CONDITIONAL PERMANENT RESIDENCE AND FILING THE PETITION TO REMOVE THE CONDITIONS ON RESIDENCE (FORM I-751) 7–10 (2017), https://www.ilrc.org/sites/default/files/resources/i-751_advisory_final.pdf [<https://perma.cc/7BL2-BAT6>] (explaining the requirements and process for removing the conditions on residency acquired through marriage when the conditional resident or the conditional resident’s child was subject to abuse during the marriage).

104. Immigrant victims of domestic violence by a spouse, parent, or child who are in removal proceedings may apply for cancellation of removal via VAWA and petition for deferred action afterwards. See, e.g., VIOLENCE AGAINST WOMEN ACT (VAWA) PROVIDES PROTECTIONS FOR

instructions are gender-neutral, abused spouses and children of any gender identity are technically eligible to petition for relief.¹⁰⁵ However, Congressional discourse associated with VAWA, including its very name, signaled legislators' preference for female victims and mothers from the potential adult beneficiaries.¹⁰⁶ In particular, the numerous references in Congressional proceedings to domestic violence statistics presenting women as common targets, positioned women as the most likely, and thus most deserving, beneficiaries of the remedy.¹⁰⁷

In the aftermath of VAWA 1994, domestic violence and immigration advocates argued that the legislative protections for battered immigrants remained incomplete.¹⁰⁸ One problem was that VAWA excluded vulnerable sub-populations of battered immigrants, including those abused by citizen and lawful permanent resident *non-married partners* and children and intimate partners abused by *undocumented perpetrators*.¹⁰⁹ Through bipartisan efforts of sympathetic members of Congress working collaboratively with the advocacy

IMMIGRANT WOMEN AND VICTIMS OF CRIME, AM. IMMIGR. COUNCIL (May 7, 2012), <https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime> [https://perma.cc/X9SX-TWT8].

105. Orloff & Kaguyutan, *supra* note 12, at 114 & n.111.

106. *See generally* Olivares, *supra* note 94, at 243 (describing Congressional debate on early versions of the proposed VAWA 1994 legislation focusing on “immigrant women who have been forced to remain in destructive marriages with husbands who beat and abuse them”); Orloff & Kaguyutan, *supra* note 12, at 109, 111 n.91 (recounting Congressional findings at the time VAWA 1994 was enacted centering on the “lives, safety and welfare of millions of women and children,” and noting that “[a]s violence against the mother becomes more severe and more frequent, children experienced 300% increase in physical violence by the male batterer”).

107. *Id.*; *see also* VILLALÓN, *supra* note 91, at 41 (“The all-inclusive spirit of the Violence Against Women Act and the Victims of Trafficking and Violence Protection Act is tainted by gender, sexual, racial, ethnic, and class discriminatory parameters that end up excluding many battered immigrants, regardless of their history of abuse.”); Susan Berger, *(Un)Worthy: Latina Battered Immigrants under VAWA and the Construction of Neoliberal Subjects*, 13 CITIZENSHIP STUD. 201, 203 (2009) (chronicling the legislative efforts leading up to VAWA and their emphasis on “female victim[s]”).

108. *See* Olivares, *supra* note 94, at 249–50 (discussing the widening of legal protections in VAWA 2000 for immigrant crime victims including but not limited to domestic violence victims, in the U visa); Orloff & Kaguyutan, *supra* note 12, at 117 (“Although the passage of VAWA 1994 represented a great stride forward in providing legal protection for battered immigrant women, it was a compromise with a number of significant shortcomings.”); *id.* at 143–44 (acknowledging that laws passed after VAWA 1994 “effectively barred access to VAWA protection for many immigrants”).

109. *See, e.g.*, Orloff & Kaguyutan, *supra* note 12, at 117 (“The legislation helped many very needy battered immigrant women and children abused by their citizen or lawful permanent resident spouses or parents, but many other battered immigrants still remained locked in abusive homes without any real remedy.”); *id.* at 143–44 (explaining that “the original VAWA 1994 did not offer any protection to several categories of battered immigrants: those abused by citizen and lawful permanent resident boyfriends; immigrant spouses and children of abusive non-immigrant visa holders or diplomats; immigrant spouses, children and intimate partners abused by undocumented abusers; and non-citizen spouses and children of abusive United States government employees and military members living abroad”).

community, Congress passed the VTVPA as part of VAWA's 2000 reauthorization.¹¹⁰

The VTVPA created a new nonimmigrant standing, the U visa,¹¹¹ for certain battered noncitizens and other crime victims not protected in VAWA's original iteration.¹¹² The U visa offered legal immigration status to noncitizens who experienced a broader range of crimes than VAWA, by a broader set of perpetrators.¹¹³

As with VAWA 1994, some of the Congressional discussion of the VTVPA was facially gender neutral: "VAWA 2000 addresses the residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that . . . had not come to the attention of the drafters of VAWA 1994. . . ."¹¹⁴ Yet elsewhere, Congressional findings clearly index the ideal gender of future beneficiaries:

Immigrant *women* and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnapping, trafficking, incest, domestic violence, sexual assault, *female* genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained. . . . All *women* and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.¹¹⁵

Furthermore, while the crimes covered by section 101(a)(15)(U)(iii) of the Immigration and Nationality Act include a wide range of offenses that do not necessarily connote female victimhood (such as abduction, being held hostage, blackmail, extortion, false imprisonment, felonious assault, fraud in foreign labor contracting, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, slave trade, stalking, torture, and unlawful criminal restraint), the three crimes repeatedly mentioned in published Congressional records associated with the VTVPA and VAWA 2000 usually befall women and are perpetrated by men.¹¹⁶ For example, Congress found that:

[The] creat[ion] [of] a new nonimmigrant visa classification will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of

110. Olivares, *supra* note 94, at 248–51.

111. Like most US immigrant visas, the U visa name derives from the section of the Immigration and Nationality Act that defines it: Immigration and Nationality Act, § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (2012).

112. Olivares, *supra* note 94, at 248–51.

113. *Id.*; see also Kagan, *supra* note 20, at 925.

114. 146 CONG. REC. S10, 195 (daily ed. Oct. 11, 2000) (Violence Against Women Act of 2000 Section-by-Section Summary); see Orloff & Kaguyutan, *supra* note 12, at 144.

115. Violence Against Women Act of 2000, § 1513, 8 U.S.C. § 1184 (2012); see Orloff & Kaguyutan, *supra* note 12, at 633 (emphasis added).

116. Orloff & Kaguyutan, *supra* note 12, at 634; Kagan, *supra* note 20, at 932.

aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.¹¹⁷

Gendered preferences here were thinly veiled but readily discernible.

Although VAWA 2000 purported to expand legal protections for immigrant crime victims, the legislative history of the Violence Against Women Act¹¹⁸ is replete with evidence of Congress' intended purpose of strengthening relief and protection for domestic violence, sexual assault, and trafficking victims.¹¹⁹ Thus, the U visa remedy is bound up with VAWA's overarching aims at least to some extent, notwithstanding its more capacious eligibility parameters. This Note addresses the extent to which advocates have attended to these aims while helping individuals apply for the U visa, and how U visa jurisprudence has correspondingly evolved.

II.

EMPIRICAL ANALYSIS

A. *Data, methods, and analytical techniques*

This Note draws on qualitative data collected during three years of ethnographic participant observation research¹²⁰ within nonprofit legal organizations in Los Angeles, California between January 2009 and December 2011. During this period, I volunteered as a law clerk at Equal Justice of Los Angeles (“EJLA,” or “Equal Justice”), helping immigration lawyers and noncitizens apply for victim-based immigration benefits,¹²¹ including U visa

117. 8 U.S.C. § 1184; *see* Orloff & Kaguyutan, *supra* note 12, at 634.

118. *See* Olivares, *supra* note 94, at 242–62 (recounting the legislative history of VAWA, including Congressional reauthorizations of the original 1994 Act in 2000, 2005, and 2013).

119. Orloff & Kaguyutan, *supra* note 12, at 620; *see also* Lindsey J. Gill, *Secure Communities: Burdening Local Law Enforcement and Undermining the U Visa*, 54 WM. & MARY L. REV. 2055, 2065 (2013) (“Although federal law incorporates a long list of qualifying crimes that create U visa eligibility for victims, Congress sought specifically to address concerns about domestic violence.”).

120. There are many explanations of ethnographic research. One particularly straightforward articulation is as follows: “Ethnographic field research involves the study of groups and people as they go about their everyday lives. Carrying out such research involves two distinct activities. First, the ethnographer enters into a social setting and gets to know the people involved in it . . . The ethnographer participates in the daily routines of this setting, develops ongoing relations with the people in it, and observes all the while what is going on. Indeed, the term ‘participant observation’ is often used to characterize this basic research approach. But, second, the ethnographer writes down in regular systematic ways what she observes and learns while participating in the daily rounds of the lives of others. In so doing, the researcher creates an accumulating written record of these observations and experiences.” ROBERT M. EMERSON ET AL., WRITING ETHNOGRAPHIC FIELDNOTES 1 (2d ed. 2011).

121. *See Humanitarian, U.S. CITIZENSHIP & IMMIGR. SERVS.*, <https://www.uscis.gov/humanitarian> [<https://perma.cc/ZA4Y-VVVC>] (explaining the humanitarian programs and protections that the US government provides “to assist individuals in need of shelter or aid from disasters, oppression, emergency medical issues and other urgent circumstances”).

status. In turn, I was present during numerous conversations between lawyers, paralegals, and other law clerks about client selection.

As an EJLA law clerk, I attended bimonthly “Network” meetings of Equal Justice and other nonprofit attorneys in Los Angeles who represent noncitizens applying for U visa status and VAWA relief. The Network convenes to strategize on challenges in their casework, including the selection of U visa cases. I attended Network meetings for two years starting in September 2009, listening as lawyers shared information about U visa cases they were considering taking on and watching as attorneys learned from one another and reinforced shared notions about what made certain individuals desirable or undesirable legal clients. In this way, I gained insight into the factors that inform lawyers’ U visa case selection decisions.

In addition, from June to December 2011, I observed 55 intake consultations (“intakes”) between noncitizens and immigration lawyers at EJLA and two other Los Angeles organizations whose immigration staff attorneys attended Network meetings. AYUDA and VIDA lawyers handled similar types of immigration cases as EJLA attorneys, although operations differed somewhat in that noncitizens did not pay for legal services at EJLA and VIDA.¹²² At AYUDA, noncitizens paid modest flat fees depending on the immigration benefit(s) for which they were applying. Lawyers at all organizations perceived and referred to themselves as “legal services,” “nonprofit,” or “public interest” lawyers because of their commitment to providing accessible legal assistance to low-income immigrants.¹²³

The three organizations structured their intakes similarly. Typically, lawyers allocated periods of time each week, every other week, or monthly to meeting with prospective clients. During intakes, lawyers listened to immigrants’ accounts of their experiences, reviewed documents immigrants had brought with them, and asked screening questions for various immigration benefits. In ending intakes, lawyers offered preliminary assessments of immigrants’ eligibility for the U visa and other forms of relief and forecasted their willingness (or lack thereof) to provide representation. It appeared likely that 47 of the 55 individuals whose intakes I observed would become legal clients of EJLA, AYUDA, or VIDA lawyers.¹²⁴

In all, I observed 24 intakes at AYUDA (performed by three attorneys), 19 at EJLA (performed by four attorneys and one paralegal), and 12 at VIDA

122. EJLA and VIDA are LSC-funded organizations. *See supra* note 2; *infra* Part III.A (description of LSC).

123. *See supra* note 2 for a discussion of terminological differences between “legal aid” lawyers and “legal services,” “nonprofit,” and “public interest” lawyers.

124. I indicate attorneys’ likelihood of accepting cases versus certitude because attorneys did not commit to full legal representation during most of the intakes I observed. Rather, lawyers expressed probable representation contingent on their supervisor’s agreement and/or the noncitizen’s procurement of a critical evidentiary document (like a police report) or application component (like a signed Form I-918, Supplement B).

(performed by 3 attorneys). Of these 55 intakes, 40 included immigrants who hoped to apply for U visa status and who appeared to qualify because they experienced domestic violence (n = 22) or other violent crimes¹²⁵ (n = 18). Intakes were free at EJLA and VIDA and cost \$25 at AYUDA. They lasted between 30 minutes and two hours, with 44 conducted in Spanish and 11 in English.

The majority of the 55 individuals whose intakes I observed were women (n = 44) from Mexico¹²⁶ (n = 36). Likewise, of the 40 individuals who appeared to qualify for U visa status, the majority were women (n = 35) from Mexico¹²⁷ (n = 29).

Apart from the content of the actual intakes between lawyers and noncitizens, the down time when attorneys stepped out to make copies of paperwork or attend to other tasks was useful because it gave me the opportunity to talk directly with noncitizens about their experiences and legal interests. The time between individual intakes was also valuable, as I could ask lawyers about the consultations I had just observed and the case selection process at their organizations.

To supplement my observational research of the U visa case selection process, I completed 48 in-depth interviews with immigration lawyers (n = 37) and legal staff (n = 11) at Network organizations. The interviews covered a range of topics, including U visa case selection. I tape-recorded and transcribed interviews when I had interviewees' consent; otherwise, I took notes.

While conducting ethnographic fieldwork research at EJLA, AYUDA, and VIDA and attending Network meetings, I took detailed handwritten "jottings," which I typed and formalized as fieldnotes on my computer as soon as I left the field.¹²⁸ I taped and transcribed some meetings I participated in and observed when I obtained permission from all individuals present. For the purposes of this Note, I translated study participants' statements from Spanish to English, in some cases altering their content to protect individuals' anonymity and confidentiality.

125. The crimes these individuals or their family members experienced were sexual assault (n = 7), armed robbery (n = 3), murder (n = 3), felonious assault (n = 3), and attempted murder (n = 1); in one consultation, it was unclear what crime the individual experienced.

126. I also observed intakes on behalf of individuals from El Salvador (n = 6), Guatemala (n = 4), Nicaragua (n = 2), China (n = 1), the Philippines (n = 1), Armenia (n = 1), Burundi (n = 1), the United States (n = 1), an unspecified Latin American country (n = 1), and an unspecified country in Asia (n = 1).

127. The other individuals were from El Salvador (n = 5), Guatemala (n = 3), Nicaragua (n = 2), and one from an unspecified Latin American country.

128. EMERSON ET AL., *supra* note 120, at 29 ("While participating in the field and attending to ongoing scenes, events, and interactions, field researchers may . . . decide that certain events and impressions should be written down as they are occurring in order to preserve accuracy and detail. [The field researcher] . . . record[s] jottings—a brief written record of events and impressions captured in key words and phrases . . . [to] jog the memory later in the day when she attempts to recall the details of significant actions and to construct evocative descriptions of the scene.").

I analyzed all study data in a modified grounded theory and analytical induction tradition,¹²⁹ using common qualitative data analysis techniques. During multiple reviews of my ethnographic fieldnotes and interview and meeting transcripts, I identified recurrent themes in my dataset to create “codes.”¹³⁰ Next, I systematically mined these codes for nuances in context by comparing the codes as they appeared across discrete transcripts and fieldnote entries, and wrote memos.¹³¹ Salient themes in existing social science and legal scholarship on immigration, street-level bureaucrats and case processing, and access to justice also informed my analytical process.¹³²

To understand U visa case selection in Los Angeles legal nonprofit organizations, I observed as many parts of the phenomenon as was feasible in great detail, for an extended period of time. Close observation yielded a fine-grained understanding of the processes by which lawyers evaluated immigrants’ potential U visa cases and chose clients.¹³³

129. The grounded theory approach to analyzing qualitative data prioritizes inductive reasoning by advocating deriving “analytic categories directly from the data, not from preconceived concepts or hypotheses.” Kathy Charmaz, *Grounded Theory*, in ROBERT M. EMERSON, CONTEMPORARY FIELD RESEARCH: PERSPECTIVES AND FORMULATIONS 336–37 (2001). Nevertheless, contemporary grounded theory practitioners recognize that analysis occurs in all phases of the research process—as the researcher makes observations, writes fieldnotes, codes these notes in analytic categories, and finally develops explicit theoretical propositions. Thus, the modified grounded theory approach is both inductive and deductive. EMERSON ET AL., *supra* note 120, at 17; *see also* JULIET CORBIN & ANSELM STRAUSS, BASICS OF QUALITATIVE RESEARCH: TECHNIQUES AND PROCEDURES FOR DEVELOPING GROUNDED THEORY (4th ed., 2015) (comprehensive guide on qualitative research and grounded theory methods).

130. *See* EMERSON ET AL., *supra* note 120, at 172 (describing that “[e]thnographic coding involves line-by-line categorization of specific notes via two stages; in “open coding,” the researcher reads fieldnotes line-by-line to identify and formulate any and all ideas, themes, or issues they suggest, no matter how varied and disparate, whereas in “focused coding,” the researcher “subjects fieldnotes to fine-grained, line-by-line analysis on the basis of topics that have been identified as being of particular interest”).

131. *Id.* (explaining that “[w]hile continuing to code and review initial memos, [the researcher] elaborates these insights by writing more systematic theoretical *code memos* . . . [A]s the fieldworker develops a clearer sense of the ideas or themes she wants to pursue, memos take on a more focused character; they relate or integrate what were previously separate pieces of data and analytic points. These *integrative memos* seek to clarify and link analytic themes and categories”).

132. *See* CORBIN & STRAUSS, *supra* note 129, at 188–89 (explaining how researchers engage in theory construction when analyzing qualitative data); *see also* Stefan Timmermans & Iddo Tavory, *Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis*, 30 SOC. THEORY 167, 169 (advocating a rethinking of core ideas and research methods associated with grounded theory, including that researchers derive theories about their data “against a background of multiple existing sociological theories”).

133. An unavoidable tradeoff of this qualitative study, as with any case study research, is some sacrifice in generalizability beyond the individual cases themselves. *But see* Mario Luis Small, “How Many Cases Do I Need?” *On Science and the Logic of Case Selection in Field-Based Research*, 10 ETHNOGRAPHY 5, 10, 28 (2009) (defending case study research because of the depth of detail and nuanced findings such research affords and arguing that the quality of qualitative case study research should not be measured by how “representative” its findings are because such research is undertaken to achieve data “saturation.” By contrast, the quality of *quantitative* research often turns on the dataset’s generalizability or “representativeness”).

III.

IMPLEMENTING THE U VISA PROGRAM

In assessing potential U visa cases, nonprofit lawyers reviewed noncitizens' claims in light of their fit with relevant laws, policies, and legal regulations. However, attorneys also considered organizational, bureaucratic, and policy concerns before accepting U visa cases.

A. *Navigating organizational needs*

Nonprofit organizations' reliance on outside agencies and grants to fund their work affected immigration lawyers' U visa case selection in direct and indirect ways. For instance, Congress limits the particular noncitizens that EJLA and VIDA lawyers can accept as clients¹³⁴ because these organizations receive funding from the Legal Services Corporation (LSC).¹³⁵ LSC is the main funder of civil legal services for low-income individuals in the United States.¹³⁶ LSC circumscribes the type of legal work in which funded attorneys may engage¹³⁷ and restricts the populations whom lawyers may represent.¹³⁸ LSC restrictions on grantees' work apply to the use of LSC funds and usually to grantees' use of other funds they receive as well.¹³⁹

134. See *LSC Restrictions and Other Funding Sources*, LEGAL SERVS. CORP., <https://www.lsc.gov/lsc-restrictions-and-funding-sources> [<https://perma.cc/6NAQ-NVF9>] ("LSC grants are subject to statutory and regulatory restrictions that prohibit the grantee from performing certain activities and from representing specific categories of clients."); see also Geoffrey Heeren, *Illegal Aid: Legal Assistance to Immigrants in the United States*, 33 CARDOZO L. REV. 619, 622, 654–55 (2011). Non-LSC-funded lawyers, including those at AYUDA, were not subject to LSC rules but faced other funding-related constraints on their legal representation of immigrants. See *infra* pp. 127–29 (about grant deliverables).

135. LSC is "an independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans. LSC promotes equal access to justice by providing funding to 133 independent non-profit legal aid programs in every state, the District of Columbia, and U.S. Territories. LSC grantees serve thousands of low-income individuals, children, families, seniors, and veterans in 813 offices in every congressional district." *How Legal Aid Works*, LEGAL SERVS. CORP., <https://www.lsc.gov> [<https://perma.cc/W33L-FR6C>]. Congress "appropriate[s] funds to LSC to achieve the purposes of the [1974] Legal Services Corporation Act." *Fiscal Year 2018 Budget Request*, LEGAL SERVS. CORP., <https://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request> [<https://perma.cc/4JPA-7GGQ>].

136. *About LSC*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc> [<https://perma.cc/CPT4-YYQ9>] ("LSC is the single largest funder of civil legal aid for low-income Americans in the nation.").

137. See *LSC Restrictions and Other Funding Sources*, *supra* note 134 (including table of major "restricted activities"). For example, LSC-funded entities may not participate in class actions, lobbying of any government, office, or legislature, or organizing. *Id.*

138. *Id.* For instance, LSC-funded entities may not represent most criminal defendants or noncitizens. *Id.*

139. *LSC Restrictions and Other Funding Sources*, *supra* note 134 ("These restrictions apply to the use of LSC funds and in many situations to a grantee's use of other funds, such as private funds, charitable donations, and public funds."). Lawyers who provide legal services to the poor are typically funded by one or a combination of one of the following sources: "(1) The Legal Services Corporation provides federal funds to legal services offices; (2) Governments and bar associations provide funds for particular types of legal services as parts of other social welfare programs (such as to address homelessness, domestic violence, problems of veterans, elderly or disabled people, and public health

Historically, LSC-funded attorneys were generally only allowed to represent noncitizens who already held a bona fide legal status that was either nonexpiring or, if temporary, carried the possibility of eventual permanent standing.¹⁴⁰ This meant that unauthorized immigrants without pending applications were basically unable to seek assistance at LSC-funded institutions.¹⁴¹ Beginning in 1997, however, Congress permitted legal aid lawyers to represent select groups of unauthorized immigrants, including those who experienced domestic violence, human trafficking, or sexual assault and qualified for relief under VAWA or for U or T visa¹⁴² status.¹⁴³ Further shifts in LSC regulations in 2000 and 2005 enabled legal aid attorneys to assist *anyone* who qualified for a U visa.¹⁴⁴ Thus, current LSC policy allows attorney recipients to aid a diverse range of U visa applicants, including all unauthorized immigrants who qualify no matter the particular crime they experienced.¹⁴⁵ It was in this policy context that immigration lawyers at EJLA, AYUDA, and VIDA evaluated and accepted U visa clients.

While grant funding ensured the institutional viability of attorneys' employing organizations, the grants simultaneously curtailed attorneys' independence in choosing cases.¹⁴⁶ When EJLA, AYUDA, and VIDA received grants, staff attorneys endeavored to meet grantors' implicit and explicit expectations about the U visa clients to be served with the money. Both the qualitative details and quantitative implications of each potential case mattered

issues); (3) States provide funding through the Interest on Lawyer Trust Accounts (IOLTA) program; (4) Private philanthropy funds some offices, or provides funding to support a lawyer in an office." ANN SOUTHWORTH & CATHERINE L. FISK, *THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE* 766 (2014).

140. Heeren, *supra* note 134, at 651–52.

141. *Id.*

142. T visa status is a temporary standing for victims of sex and labor trafficking. It was created via the VTVPA along with U visa status. *See Victims of Human Trafficking & Other Crimes*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes> [<https://perma.cc/2TH7-X4ZW>].

143. In 1997, Congress also added a provision to the LSC appropriation allowing for representation of otherwise ineligible immigrant abuse victims on legal matters related to the abuse. This provision is commonly called the "Kennedy Amendment" after Senator Edward Kennedy, who proposed it. *See Heeren, supra* note 134, at 654–55.

144. *Id.*

145. Congress regulates LSC; thus, LSC guidelines for representation of noncitizens are spelled out in the Code of Federal Regulations. *See Restrictions on Legal Assistance to Aliens*, 45 C.F.R. § 1626 (2019).

146. The enabling yet constraining power of grants has been critically analyzed, particularly in the context of nonprofit organizations insofar as the restrictions have tended to moderate the radical character of grassroots movements that became institutionalized and funded or, as some have argued, co-opted. *See generally* FRANCIS FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (1977); Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 (2008). Scholars have examined how the ability of legal services organizations that serve low-income and other vulnerable populations to carry out their missions can be restricted by their dependence on external funders, as they organize their work around the goals of outsiders with varying motivations and priorities. *See, e.g.,* Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975–2004*, 84 N.C. L. REV. 1591 (2006).

in attorneys' selection process because of funding considerations. This is because each case affected attorneys' ability to meet immediate grant "deliverables" deadlines for current rounds of funding.¹⁴⁷ Lawyers also perceived that the cases they selected could encourage or discourage funders from renewing their support in the future.

Issues surrounding resources and funding were constant concerns for immigration attorneys. Grants specified particular groups of people who were "worthy" of free or low-cost legal assistance.¹⁴⁸ Lawyers' time, for which grants paid, was supposed to be allocated towards those individuals to fulfill grant terms. Attorneys' case selection was so tied to funding concerns that lawyers sometimes referred to their clients and potential clients as "[name of grant] cases" instead of "U visa cases." For instance, Eleanor, an EJLA attorney, used such language in recounting how she chose a U visa client.¹⁴⁹ Many other lawyers also referenced the apparent "fit" of potential clients with the "worthy" social categories designated by funders as a key factor shaping their selection as U visa clients. Teresa, a VIDA lawyer, explained, "We choose our cases almost entirely based on whether they fit into a specific grant. We help people more who[m] we can report that we assisted in certain ways."¹⁵⁰

The numeric value of a potential case for grant reporting purposes loomed large during evaluations of prospective U visa clients. For example, a funding stream from the California Work Opportunities and Responsibility to Kids ("CalWORKS") program enabled Equal Justice attorneys to offer direct services to U visa applicants with minor children who participated in a state welfare-to-work program.¹⁵¹ During a break from intakes one afternoon, Eleanor noted that, in order to fulfill the CalWORKS grant, she was supposed to accept exactly 36 new U visa cases each year on behalf of noncitizens who participated in CalWORKS.¹⁵² While this task proved challenging for Eleanor at times,¹⁵³ her situation was quite typical in the civil legal services context, where it is common for lawyers' employment positions to be funded directly by—and contingent upon—one or more grants, fellowships, or donations.¹⁵⁴ Indeed, legal aid

147. Comment of Salomé, EJLA attorney, during organization retreat, in Los Angeles, Cal. (Aug. 2, 2010) (on file with author).

148. Fieldnotes from EJLA, in Los Angeles, Cal. (Nov. 19, 2009) (on file with author).

149. See *infra* Part III.C at 141 (discussing data excerpt involving Eleanor's selection of a case that was not a "CalWORKS" case).

150. Comment of Teresa, VIDA attorney, during lawyer team meeting, in Los Angeles, Cal. (Aug. 31, 2011) (on file with author).

151. See *California Work Opportunity and Responsibility to Kids (CalWORKS)*, CAL. DEP'T SOC. SERVS., <http://www.cdss.ca.gov/CalWORKS> [<https://perma.cc/C43R-A9XZ>].

152. Comment of Eleanor, EJLA attorney, in Los Angeles, Cal. (June 14, 2011) (on file with author).

153. See *infra* Part III.C at 141 (discussing data excerpt involving Eleanor's selection of a case that was not a "CalWORKS" case").

154. See, e.g., *New to Legal Services?*, LEGAL AID ASS'N OF CAL., <http://laaconline.org/coordination/new-to-legal-services> [<https://perma.cc/9ZNT-X99H>] (explaining how legal aid organizations in California are funded).

lawyers practicing immigration law frequently convey dissatisfaction that, because of funding issues, their work must be narrowly confined to certain categories of people rather than the broader communities they wish to serve.¹⁵⁵ They lament their inability to “[s]erv[e] immigrants as immigrants.”¹⁵⁶

Satisfying funders’ expectations was time-consuming and stressful for immigration attorneys, especially because it distracted them from legal casework. Nevertheless, lawyers dedicated significant energy to fulfilling grant terms and funders’ expectations because they perceived it as critical in an era of dwindling funding for civil legal aid.¹⁵⁷

Yet attorneys struggled to capture the extent of work they did on clients’ behalf in ways that registered with funders. According to EJLA lawyers, LSC appeared to care a great deal both about the number of individuals served with their grant funds, as well as the number of services provided.¹⁵⁸ By contrast, immigration attorneys at EJLA aspired to provide holistic,¹⁵⁹ multistage, and long-term aid to individuals,¹⁶⁰ particularly because applying for immigration benefits is often an attenuated process.¹⁶¹ In turn, the recordkeeping protocols for chronicling client services delivery at EJLA were specifically designed to be minimalistic so as not to divert attorneys’ attention from casework too much.¹⁶²

Immigration attorneys were aware of the tension between serving noncitizen clients well and maintaining the institutions within which to do so. As Eleanor described,

There [are] just so many steps along the way. It’s not just, “Oh, I got them a work permit,” and that’s it. It continues to the [Lawful Permanent Residency] green card [phase] and, you know, [there are] a lot of waivers and applications or possible appeals and trying to make

155. Joann Lee & Michael J. Ortiz, *Serving Immigrants as Immigrants*, MGMT. INFO. EXCHANGE J. 33, 35–36 (2010).

156. *Id.* at 33.

157. See generally Heeren, *supra* note 134; Leonor E. Miranda, *Finding a Practical Solution to Bridging the Justice Gap for Immigrants in the United States*, 30 GEO. IMMIGR. L.J. 163, 170–71 (2015).

158. Correspondence of Bea, EJLA grant manager, in Los Angeles, Cal. (Feb. 25, 2010) (on file with author); Fieldnotes from EJLA, in Los Angeles, Cal. (May 25, 2010) (on file with author); Fieldnotes from EJLA team meeting, in Los Angeles, Cal. (Mar. 18, 2010) (on file with author).

159. See, e.g., Sabrineh Ardalan, *Access to Justice for Asylum Seekers: Developing an Effective Model of Holistic Asylum Representation*, 48 U. MICH. J. L. REFORM 1001, 1005 (2015).

160. Fieldnotes from EJLA, in Los Angeles, Cal. (May 17, 2011) (on file with author); Interview with Eleanor, EJLA attorney, in Los Angeles, Cal. (Sept. 21, 2010) (on file with author); Interview with Katie, EJLA attorney, in Los Angeles, Cal. (Aug. 5, 2010) (on file with author); Interview with Salomé, EJLA attorney, in Los Angeles, Cal. (Oct. 12, 2010) (on file with author); Interview with Zarina, EJLA attorney, in Los Angeles, Cal. (Mar. 17, 2011) (on file with author).

161. See *supra* note 53 (describing U visa application backlog); see also Cecilia Menjivar & Sarah M. Lakhani, *Transformative Effects of Immigration Law: Immigrants’ Personal and Social Metamorphoses through Regularization*, 121 AM. J. SOC. 1818, 1823 (2016) (explaining that “the overwhelming majority of immigrants today face . . . lengthy waiting times for responses to legalization requests”).

162. See *infra* p. 130 (discussing fieldnotes about EJLA’s plan to augment recordkeeping practices to get more “credit” for their work from funders).

Immigration understand, so there's a lot of work. I'm sure overloaded with the amount of [legal] work that we need to deal with, but we still have to deal with the administrative side of things.¹⁶³

The pressure to adequately capture the extent of their work often stemmed from overt pressure from funders. Some grants only required EJLA, AYUDA, and VIDA to submit written funding reports on a periodic basis, while others also included evaluative visits from funding agency representatives. During these on-site reviews, funding representatives assessed whether organizations were utilizing grants appropriately. For example, LSC representatives visited Equal Justice in 2010 and concluded that immigration lawyers could provide better “client access.”¹⁶⁴ In particular, lawyers’ case statistics fell significantly below the national median amongst LSC-funded nonprofit organizations for the number of individuals aided.¹⁶⁵ The LSC report advised EJLA lawyers to systematically review their recordkeeping, or “case management” system to “assure the numbers accurately reflect the services” being provided, and consider accepting more new cases.¹⁶⁶ At a meeting called soon after EJLA circulated the report to staff, immigration attorneys discussed LSC’s instructions to evaluate their case management practices.

One lawyer remarked, “I think everyone knows that our numbers don’t reflect what we do.” Another lawyer, present via speakerphone, responded with, “[W]e should sacrifice our image here regarding numbers and focus more on the issues involved in our cases.” Several others rebuked her comments, saying things like, “Our numbers dictate our funding, which we need to do future work.” It became clear that most immigration attorneys at EJLA had been opening one case per individual client or per family, the one case remaining open as lawyers provided any number of discrete services, and closed only when clients became permanent residents. Lawyers concluded that this recordkeeping method was inadequate; they were not “getting credit” for all the “outcomes” they had been producing for people. The attorneys agreed that they needed to revise their case management system to adequately demonstrate their work to LSC.¹⁶⁷

Within a couple of months, immigration lawyers settled on a new procedure for tracking their U visa and other casework: they would open and close a case for each individual client and for each individual issue.¹⁶⁸ While all staff

163. Interview with Eleanor, EJLA attorney (Sept. 21, 2010), *supra* note 160.

164. Legal Services Corporation Office of Program Performance Final Program Quality Report for EJLA 11 (on file with author) [hereinafter LSC Report]; *see also id.* at 7–10; Fieldnotes from EJLA team meeting, in Los Angeles, Cal. (May 13, 2010) (on file with author).

165. LSC Report, *supra* note 164, at 7.

166. *Id.* at 5, 8, 9–11.

167. Fieldnotes from EJLA team meeting (Mar. 18, 2010), *supra* note 158; Fieldnotes from EJLA team meeting, in Los Angeles, Cal. (Apr. 15, 2010) (on file with author).

168. Fieldnotes from EJLA (May 25, 2010), *supra* note 158; Fieldnotes from EJLA team meeting (Mar. 18, 2010), *supra* note 158.

attorneys agreed with this reform, some were not completely satisfied with it. Nicole, for example, anticipated that “if we open a new file for every issue and for each derivative, our [administrative] caseload will skyrocket by seven hundred percent.”¹⁶⁹ Ultimately, this would mean that fewer individuals would receive legal aid at EJLA overall. Indeed, as EJLA began implementing its revised case management scheme, immigration intake temporarily closed; no new clients were accepted for several months.¹⁷⁰

Thus, it is clear how difficulties associated with showing work to funders at the stage of case preparation, submission, and results influences case selection dynamics. As Leah, the AYUDA lawyer quoted above, explained:

[W]e don’t invest resources [in cases] that don’t have a good probability of being winnable. . . . [W]hen I’m putting effort in[to a case], it’s because there’s a very high probability that it’s going to be approved.¹⁷¹

In other words, lawyers tended to prioritize U visa cases that they anticipated would yield tangible, reportable results, such as a work permit or a lawful permanent residence green card. Such products—clear markers of advocacy success—seemed to immediately register with outside funders, who might not fully comprehend the realities of immigration law practice today.¹⁷² If a case did not culminate in a concrete, relatable benefit and ended on a more ambiguous or negative note (like an application denial), lawyers worried that funders might not recognize their casework in the same way, which could jeopardize attorneys’ job security and their organizations’ viability. In this

169. Fieldnotes from EJLA team meeting (Mar. 18, 2010), *supra* note 158.

170. Fieldnotes from Network meeting, in Los Angeles, Cal. (Mar. 17, 2011) (on file with author).

171. Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

172. Such realities include shifting immigration policy agendas and unpredictable adjudicators, which affect case outcomes. *See, e.g.*, Laura Murray-Tjan, *What It’s Like to Be an Immigration Lawyer in the Trump Era*, WBUR (Oct. 24, 2018), <https://www.wbur.org/cognoscenti/2018/10/24/immigration-law-trump-administration-laura-murray-tjan> [<https://perma.cc/Z9J6-HHVX>] (experienced immigration attorney explaining how her job has changed under the Trump administration because of the “game of immigration policy dodge ball” it has initiated; she and other lawyers are “left guessing what innovative grounds for denials or deportation the government will come up with,” which affects her ability to advise prospective and actual clients about their likelihood of success if they choose to apply for immigration benefits). These realities pervaded the immigration scene before the Trump administration, though perhaps in less pernicious forms. *See, e.g.*, Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, N.Y. TIMES (Apr. 7, 2014), <https://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html> [<https://perma.cc/DY2S-LYMN>] (describing the uncertainty associated with the Obama administration practice of deporting people “who had committed minor infractions, including traffic violations, or had no criminal record at all,” notwithstanding its supposed policy of pursuing “criminals, gang bangers, people who are hurting the community, not after students, not after folks who are here just because they’re trying to figure out how to feed their families”). In the U visa context specifically, the current backlog for adjudication means that people who applied for status years ago, when there was minimal risk of deportation if they were denied, may “be[] taken by surprise” by the Trump administration’s 2018 decision to funnel undocumented crime victims whose U visa applications are denied into removal proceedings, because they “don’t get to actually weigh their options” regarding whether or not to petition for relief. *See* Boghani, *supra* note 26, at 2.

context, attorneys logically gravitated towards “winnable” U visa cases. The next section of this Note demonstrates that “winnable” U visa cases often involved female domestic violence victims.

B. Anticipating adjudicator preferences

Lawyers’ impressions of the adjudicators who would ultimately evaluate their clients’ U visa petitions shaped attorneys’ case selection as well. A specialized “VAWA Unit” at the VSC adjudicates most¹⁷³ U visa applications.¹⁷⁴ The Immigration and Naturalization Service (INS) first established the unit in 1997 to foster uniformity in the adjudication of VAWA petitions.¹⁷⁵ In 2001, the INS also consolidated adjudication of U and T visa petitions at the VSC.¹⁷⁶

Since adjudicators at a single office decided most U visa submissions, nonprofit attorneys tried to anticipate how VSC adjudicators would judge their petitions. For example, legal services lawyers believed that many adjudicators regarded their cases through a uniquely positive lens compared to those of other practitioners, in part because of the income status of clients served by their organizations¹⁷⁷ and the fact that clients did not pay nonprofit lawyers for their professional services.¹⁷⁸ Jane, an Equal Justice attorney, explained the situation this way:

173. At the time I conducted my research, the VSC adjudicated *all* such applications. *See supra* note 37, 39.

174. H.R. Rep. No. 109-233, 116 (2005) (“In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created ‘to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . . ,’ to ‘[engender] uniformity in the adjudication of all applications of this type,’ and to ‘[enhance] the Service’s ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies.’”); *see also* Direct Mail Program Form I-360, 62 Fed. Reg. 16,607–08 (Apr. 7, 1997). T-visa and U-visa adjudications were also consolidated in the specially trained “VAWA Unit.” *E.g.*, U.S. CITIZENSHIP & IMMIGRATION SERVS., REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER, REPORT TO CONGRESS ii, 11–12, 17 (Oct. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf> [<https://perma.cc/PH4F-877F>]; *see also* Orloff & Kaguyutan, *supra* note 12, at 129 (describing the “team of expert VAWA adjudicators” at the Vermont Service Center whose approach to their work emphasized “sensitiv[ity] to victim needs and circumstances”); *id.* at 138–39 (“A team of adjudicators who work only on VAWA cases has been formed, allowing for the centralized collection and adjudication of VAWA self-petitions. All VAWA cases are handled by a group of specially trained immigration adjudicators. . . . This group of officers has been made aware of the particular evidentiary burdens that victims of domestic violence face and have developed expertise in adjudicating these cases.”).

175. *Id.*

176. *Id.*

177. To be eligible to receive LSC-funded services, an individual must earn no more than 125% of the Federal Poverty Guidelines, by household size. *Quick Facts*, LEGAL SERVS. CORP., <https://www.lsc.gov/quick-facts> [<https://perma.cc/CT98-3E8H>].

178. AYUDA clients paid relatively small sum directly to attorneys. As of June 2011, AYUDA charged \$500-\$700 for a principal U visa application, depending on the client’s income and the complexity of his or her case. A derivative U visa application cost \$200 if the client was physically in

[O]ur practice really focuses on specific immigrant communities, the most vulnerable immigrant communities. . . . [W]e are a legal aid organization, meaning we're funded by the Legal Services Corporation . . . which is funded by the federal government. . . . [A]long with that comes our certain restrictions, but also along with that comes . . . a degree of recognition. . . . [N]ationally speaking, I might not know of this great nonprofit . . . over in Maine or something, but I know that there's a legal aid office somewhere in Maine, and so . . . the first place I would go is like, "Oh, where is the local legal aid for that state?" for example. So we're in that network of legal aid.¹⁷⁹

Jane perceived that her status as a legal aid lawyer promoted a particular "recognition" of the quality of her organization and its lawyers, which could likewise affect how adjudicators viewed her clients.¹⁸⁰ Specifically, she thought that the prestige of practicing immigration law at one of the few LSC-funded programs in the state¹⁸¹ could prime adjudicators to grant her cases.

Other advocates in the study also shared this perception. Andrea, an Equal Justice paralegal, conveyed,

I think we're well known for being a serious organization that will do good work and won't . . . have a weak case . . . [E]verywhere I go, I say I work for EJLA and everybody's like, "Oh, really? Oh my God, that's really good." They think that we have good attorneys and good staff.¹⁸²

Nonprofit immigration attorneys perceived that, consciously or not, adjudicators were less skeptical of the U visa candidates they offered as worthy recipients than those presented by other practitioners.

the United States, and \$250 if he or she was abroad. According to AYUDA attorneys, their fees were far less than those of private immigration attorneys (who charged by the hour).

179. Interview with Jane, EJLA attorney, in Los Angeles, Cal. (Aug. 19, 2010) (on file with author).

180. See Ann Southworth, *What is Public Interest Law? Empirical Perspectives on an Old Question*, 62 DEPAUL L. REV. 493, 495–96 (2013) (explaining that the phrase "public interest law is symbolically important" because it "conveys approval; the organizations, activities, and lawyers associated with the term are understood to enhance access to justice, or to advance some other vision of the public good. . . . [H]ow the phrase is used and defined is integrally related to the allocation of some types of legitimacy and resources within the American legal profession"). Southworth also notes that who and who cannot successfully claim status as a "public interest" lawyer "may have significant consequences for judicial decision making and public policy formation to the extent that public interest law organizations and lawyers exercise special influence tied to their perceived status as champions of underrepresented constituencies." *Id.* at 496; see also Emily Ryo, *Representing Immigrants: the Role of Lawyers in Immigration Bond Hearings*, 52 L. & SOC'Y REV. 503, 525 (2018) (suggesting that "perhaps even more important than what lawyers do, the[] mere presence [of immigration lawyers] in the [immigration] courtroom might serve an important signaling function that advantages their clients").

181. See *Our Grantees*, LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/our-grantees> [https://perma.cc/A6YV-SA33].

182. Interview with Andrea, EJLA paralegal, in Los Angeles, Cal. (Sept. 2, 2010) (on file with author).

Immigration attorneys confront various ethical issues in the course of legal practice. In particular, the specter of fraud looms large in immigration legal transactions¹⁸³ because of the high stakes for noncitizens.¹⁸⁴ As noncitizens' representatives, nonprofit lawyers in this study perceived that adjudicators were likely to view all immigration attorneys with some dose of skepticism. However, the legal services lawyers believed that any skepticism of *them* in particular would be reduced by the prestige of their public interest positions. To that end, for their clients' benefit, the nonprofit attorneys endeavored to cultivate and protect their reputation as virtuous public interest practitioners. They did so during the course of their U visa case selection and subsequent casework, as well as in related ancillary work.

During 2011, the Network initiated an advocacy project vis-à-vis USCIS on behalf of their VAWA clients¹⁸⁵ whose subsequent permanent residency applications were being adjudicated at field offices in the greater Los Angeles area and had to appear for in-person interviews with adjudicators there.¹⁸⁶ The lawyers were concerned that adjudicators at Los Angeles field offices had not been properly trained on domestic violence and crime victim sensitivity based on their experiences during some clients' green card interviews; attorneys

183. See, e.g., COUTIN, *supra* note 91; VILLALÓN, *supra* note 91; Levin, *Immigration Lawyers and the Lying Client*, *supra* note 61, at 87–109.

184. Success in the immigration legal context can yield exceptionally valuable rewards for noncitizens—namely, an opportunity to work, access to benefits, and continued presence. See, e.g., Menjívar & Lakhani, *supra* note 161, at 1818–19 (surveying scholarship documenting “the effects of immigration law, through the legal statuses it creates, on various aspects of immigrants’ lives,” including “employment and wages, access to social benefits and health care, housing conditions and crowding, educational attainment and trajectories, and even friendships and the social lives of immigrants”) (internal citations omitted).

185. I am referring to individuals with legal standing through the Violence Against Women Act specifically, not the U visa.

186. Fieldnotes from Network meeting with USCIS, in Los Angeles, Cal. (Jan. 28, 2011) (on file with author). USCIS operations are divided into Application Support Centers (for “fingerprinting and related services”), Asylum Offices (for “scheduled interviews for asylum-related issues only”), four Service Centers (California, Nebraska, Texas, Vermont) and a National Benefits Center (that “receive and process a large variety of applications and petitions”), Local Offices (that “handle scheduled interviews on other applications” and “provide limited information and customer services”), and a National Records Center (which “receives and processes Freedom of Information Act requests and applications for genealogy information”). See, e.g., *Service and Office Locator*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://egov.uscis.gov/crisgwi/go?action=offices> [<https://perma.cc/PBV5-RDT2>]. Each “Local Office,” also known as a “Field Office,” is part of a “District.” There are twenty-six Districts throughout the United States, each of which includes several Field Offices. District 23 includes three Field Offices (the Los Angeles Field Office, the Santa Ana Field Office, and the San Bernardino Field Office), and is headquartered out of the Los Angeles County Field Office and the Los Angeles Field Office, which occupy the same location in downtown Los Angeles. See, e.g., *Domestic Map*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/sites/default/files/archive/delete/domestic_map.pdf [<https://perma.cc/GLD9-3Z3T>]; *Field Offices*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://egov.uscis.gov/crisgwi/go?action=offices.summary&OfficeLocator.office_type=LO&OfficeLocator.statecode=CA [<https://perma.cc/6E2H-7QHW>]. My analysis here refers to advocacy lawyers undertook with respect to USCIS District 23.

thought adjudicators were asking their clients inappropriate and unnecessary questions.¹⁸⁷ USCIS employees, including the District Director, agreed to meet with Network lawyers every few months starting in January to address the situation.¹⁸⁸

By May, lawyers had convinced the Director to appoint a special team of adjudicators at the District's field offices who would receive extra training in domestic violence and then process all residency applications and interviews for VAWA petitioners.¹⁸⁹ The Director also identified specific individuals at each field office, or "points of contact," whom Network lawyers could call directly if they felt their VAWA cases were not handled appropriately.¹⁹⁰

During these bimonthly meetings, which I was able to observe, it appeared that USCIS adjudicators did in fact view nonprofit immigration attorneys in a distinctly positive light, as lawyers imagined and hoped.¹⁹¹ As the Director informed Network lawyers of her plans for the special team and points of contact, she explained:

It really hit home when *you* told us all these things [about adjudicators' misconduct during interviews]. If you don't tell us, we usually don't know it. With you experts, we can make it better, and we're happy to help.¹⁹²

The Director recognized the Network lawyers as "experts" whose knowledge and authority on legal problems facing VAWA petitioners was taken seriously as a result.¹⁹³

The Director's comment was noteworthy to the legal services lawyers. At a follow-up Network meeting, the lawyers celebrated their success and debated whether to share the USCIS points of contact with other Los Angeles attorneys who were not part of the Network.¹⁹⁴ The main issue was whether to share the contacts with private immigration lawyers.¹⁹⁵

Eleanor, the Network's moderator, reminded the group that the Network was initially created for nonprofit organizations and law school clinics. Private attorneys were not permitted to join, because they have AILA.¹⁹⁶

187. Fieldnotes from Network meeting with USCIS (Jan. 28, 2011), *supra* note 186.

188. *See* Fieldnotes from Network meeting with USCIS (Jan. 28, 2011), *supra* note 186; Fieldnotes from Network meeting with USCIS, in Los Angeles, Cal. (Mar. 4, 2011) (on file with author).

189. Fieldnotes from Network meeting, in Los Angeles, Cal. (Mar. 4, 2011) (on file with author); Fieldnotes from Network meeting, in Los Angeles, Cal. (May 19, 2011) (on file with author).

190. Fieldnotes from Network meeting, in Los Angeles, Cal. (Mar. 4, 2011) (on file with author); Fieldnotes from Network meeting (May 19, 2011), *supra* note 189.

191. Fieldnotes from Network meeting with USCIS (Mar. 4, 2011), *supra* note 188.

192. *Id.* (emphasis in original).

193. *Id.*

194. Fieldnotes from Network meeting (May 19, 2011), *supra* note 189.

195. *Id.*

196. *About*, AM. IMMIGR. L. ASS'N, <http://www.aila.org/about> [<https://perma.cc/R7R8-3UDD>] ("The American Immigration Lawyers Association (AILA) is the national association of over 15,000 attorneys and law professors who practice and teach immigration law."). At a cost of several hundred

Diana, a clinical instructor at a local law school, added that private attorneys have an AILA representative to talk with USCIS [the presumption being that all private immigration attorneys were AILA members]. Eleanor continued: “Some of us are AILA members, but not all nonprofit organizations can pay for that.” Olivia, a VIDA lawyer, joined in: “I think [the USCIS Director] said that the fact that we’re nonprofits helped us get in the door.” Eleanor agreed. “They’re more loose with what they tell us versus AILA,” she said. Salomé, an EJLA lawyer, asked: “So, should we give out our points of contact to private attorneys who specifically *ask* for that?” Eleanor: “[The USCIS Director] has never said we *couldn’t* do that. I have no problem with that.”¹⁹⁷

After some discussion, the consensus was not to proactively share the information outside the Network, but possibly to do so if a nonmember lawyer asked a Network attorney directly.¹⁹⁸ The nonprofit attorneys did not want to jeopardize the collaborative relationship they seemed to have established with USCIS superiors.

Lawyers’ concerns about maintaining their credibility with adjudicators shaped their U visa case selection decisions. Legal services lawyers were careful to pick clients who would not make them look “fool[ish]” vis-à-vis adjudicators.¹⁹⁹ Lawyers sensed that VSC adjudicators expected them, as legal services attorneys, to submit particular types of U visa cases. As one lawyer articulated, “[There is] kind of a sense of not having a lot of control over, say, my caseload . . . I think there are layers of expectations, all the way up to LSC and USCIS, about what we should be producing.”²⁰⁰

As “repeat players”²⁰¹ who consistently submitted U visa petitions to the same USCIS office, lawyers perceived their reputations as wrapped up in the cases they took on. During a U visa intake at AYUDA, attorney Alessandra met with Veronica, a mother of six from Mexico.²⁰² At the beginning of the meeting, Veronica explained that her US citizen son, Jose, now seven, had been shot in gun crossfire when he was three years old.²⁰³ Veronica, who was undocumented, said she recently found out about the U visa and hoped to apply for it based on

dollars per year, AILA membership is prohibitively expensive for many nonprofit lawyers. Levin, *Guardians at the Gate*, *supra* note 61, at 400.

197. Fieldnotes from Network meeting (May 19, 2011), *supra* note 189 (emphasis in original).

198. *Id.*

199. Conversation with Alessandra, AYUDA attorney, in Los Angeles, Cal. (Aug. 24, 2011) (on file with author). See *infra* note 202 and the accompanying text for discussion of Alessandra’s consultation with Veronica.

200. Interview with Teresa, VIDA attorney, in Los Angeles, Cal. (Feb. 4, 2011) (on file with author).

201. Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *LAW & SOC’Y REV.* 95, 97 (1974).

202. Intake between Alessandra, AYUDA attorney, and Veronica, in Los Angeles, Cal. (Aug. 24, 2011) (on file with author).

203. *Id.*

what happened to Jose.²⁰⁴ If she succeeded, she could regularize her legal standing as well as that of her sixteen-year-old son Daniel.²⁰⁵ As the consult progressed, the lawyer asked Veronica if she could review her children's birth certificates.²⁰⁶ Handing a small stack of papers to Alessandra, Veronica said:

Veronica: And this here is my husband's. . . . [I wanted to ask you] . . . my husband [] committed something. . . . He stole . . . from a store. . . . Could he qualify or [] not?

Alessandra: . . . He doesn't have any violence [on his record]?

Veronica: Hardly anything . . . [T]here was a case of domestic violence with me. . . . It was nothing like he tried to kill me. He already paid for it.

Alessandra: *You* can probably qualify based on what happened to your son, but I think that we here are not going to help your husband because there's a big conflict between you. Especially because it happened recently, right?

Veronica: Oh no. It was two years ago. . . . He did the classes and everything.

Alessandra: I know. But I think his case is going to be almost impossible to win because of the case of domestic violence, not because of the robbery . . . [I]t's his fault that he behaved like this, so he has to deal with the consequences. . . . We can consider doing *your* case and *your son's* case based on the crime committed against your son. . . . If he wants to do a [U visa] case, he can do it, but he's going to have to do it separately. . . . with a private attorney. With that background, he is legally eligible to apply, despite the robbery, [and] despite the case of domestic violence. It's just that you have to understand that the Immigration office that makes the decisions on U visa cases . . . they are very aligned on the side of the victims.²⁰⁷

Veronica said she understood, and would contact a private attorney Alessandra recommended after her and her son's U visa petitions were filed.²⁰⁸ The meeting ended, and Alessandra escorted Veronica to the waiting room, returning to her office where I remained. She sat down in her desk chair and sighed.

204. *Id.* Veronica was eligible to apply for U visa status as an "indirect victim" of the crime her son experienced. See Elizabeth M. McCormick, *Rethinking Indirect Victim Eligibility for U Non-Immigrant Visas to Better Protect Immigrant Families and Communities*, 22 STAN. L. & POL'Y REV. 587, 612–13 (2011).

205. Intake between Alessandra, AYUDA attorney, and Veronica (Aug. 24, 2011), *supra* note 202; see also McCormick, *supra* note 204 at 612–13.

206. Intake between Alessandra, AYUDA attorney, and Veronica (Aug. 24, 2011), *supra* note 202.

207. *Id.* (emphasis in original)

208. *Id.*

I'm going up in front of these adjudicators all the time, so I can't just ask for crazy things just because [immigrant clients] want me to ask for them. . . . It would have been ludicrous for me to apply for that woman's husband. I'd look like a fool and she'd look like a fool. Asking for things that you know they're not going to get will tarnish your reputation.²⁰⁹

As this excerpt illustrates, nonprofit lawyers believed it was risky to represent immigrant crime victims who had also committed violent crimes because it could controvert attorneys' carefully curated and presumably powerful positionality. As one attorney put it, "the cases you take can have ripple effects and affect your career."²¹⁰ In Veronica's potential case, besides the conflict of interest concerns, Veronica's husband's domestic violence record was particularly problematic because of the U visa's legislative history and U visa jurisprudence to date.²¹¹

C. Preserving policy

Although the nonprofit immigration lawyers in this study were direct legal services practitioners who assisted individual U visa clients day in and day out, attorneys also perceived that their U visa cases were politically important. Because of the social status they seemed to enjoy as public interest lawyers,²¹² nonprofit lawyers internalized a sense of responsibility for their cases that extended beyond the individual U visa clients themselves. Working on the immigration frontlines during the early years of U visa implementation, the attorneys saw themselves as pseudo-policy workers because of the impact they believed their discrete U visa cases could have in the immigration policy arena.²¹³

The immigrants and lawyers discussed in this Note appealed to USCIS for legal status by way of a tenuous remedy. Given the U visa's recent creation (2000) and even more recent availability as an immigration benefit (2007-2009), any precedents²¹⁴ surrounding which types of immigrant crime victims were

209. Conversation with Alessandra, AYUDA Attorney (Aug. 24, 2011), *supra* note 199.

210. Comment of Susan, EJLA attorney, EJLA team meeting, in Los Angeles, Cal. (Apr. 15, 2010) (on file with author).

211. See *supra* Part I.C (legislative context of the U visa); *supra* Part I.A (U visa jurisprudence).

212. See Southworth, *supra* note 180, at 495–96 and accompanying text.

213. Given these understandings of their work, the attorneys in this study could be construed as "cause lawyers." As distinct from "conventional" lawyering practices, for so-called "cause lawyers" the very idea and practice of lawyering involves service to one or more of their own moral or political commitments. See, e.g., STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 3 (2004) (noting that "[s]cholarship on cause lawyering is plagued by definitional and conceptual challenges. . . . At its core, cause lawyering is about using legal skills to pursue ends and ideals that transcend client service—be those ideals social, cultural, political, economic or, indeed, legal. Yet cause lawyers are associated with many different causes, function with varying resources and degrees of legitimacy, deploy a wide variety of strategies, and seek extraordinarily diverse goals") (internal citation omitted).

214. *Precedent Decisions*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/laws/precedent-decisions> [<https://perma.cc/5VYC-L948>] ("Precedent decisions' are administrative decisions of the Administrative Appeals Office (AAO), the Board of

promising U visa candidates were inherently unstable and subject to change. The extent to which an attorney could predict any given noncitizen's likelihood of U visa approval was therefore limited.

But the U visa remedy was tenuous in a broader, political sense as well, particularly because it—as part of the Violence Against Women Act's immigration platform—represented basically “the only thing that's available for undocumented people at this point,” as one lawyer noted.²¹⁵ VAWA expires every five years and at each reauthorization window its content and continued existence fall into doubt. Indeed, since VAWA was first established in 1994, its provisions have been revised at each reauthorization cycle: in 2000, 2005, and 2013.²¹⁶ The 2005 iteration of VAWA expired in 2011 and was not renewed until March 2013 because of legislative gridlock over proposed amendments. During this gap period, individuals could continue to apply for VAWA's immigration benefits, including U visa status; the immigration provisions did not disappear because there is no sunset date specifically attached to them.²¹⁷ The VAWA 2018 version lapsed in late 2018 amidst legislative turmoil.²¹⁸

In the precarious political climate leading up to the 2013 reauthorization, immigration advocates across the country worried that the immigration benefits in VAWA could be totally or partially written out of its next version.²¹⁹ While

Immigration Appeals (BIA), and the Attorney General, which are selected and designated as precedent by the Secretary of the Department of Homeland Security (DHS), the BIA, and the Attorney General, respectively. . . . Precedent decisions are legally binding on the DHS components responsible for enforcing immigration laws in all proceedings involving the same issue or issues.”); *see also E-L-H-*, 23 I&N Dec. 814 (BIA 2005) (BIA precedent decision remains controlling unless the Attorney General, Congress, or a federal court modifies or overrules a decision).

215. Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3; *see* Menjivar & Lakhani, *supra* note 161, at 1823 (“the overwhelming majority of immigrants today [have] . . . few opportunities to regularize their legal status”).

216. *See* Olivares, *supra* note 94, at 242–62 (explaining VAWA's legislative history with regard to domestic violence victims, including immigrants).

217. Correspondence of Alessandra, AYUDA attorney, Los Angeles, CA (Nov. 2, 2012 and Nov. 5, 2012) (on file with author); *see also VAWA is Unauthorized – Now What?*, NAT'L TASK FORCE TO END SEXUAL & DOMESTIC VIOLENCE (Mar. 4, 2019), <http://www.4vawa.org/ntf-action-alerts-and-news/2019/3/4/vawa-is-unauthorized-now-what> [<https://perma.cc/F3S2-2MHD>] (“Authorization created the laws and legislators can change or add to the laws each time [VAWA] is reauthorized. . . . As with other laws, only the VAWA grant program authorizations expire – the underlying law and all the provisions that are not tied to specific funding levels do not expire. All legal protections for victims and survivors continue, including protections in federally-subsidized housing, special tribal jurisdiction, and protections for immigrant victims.”).

218. *See, e.g.,* Elise Viebeck, *Violence Against Women Act Expires with Government Shutdown*, WASH. POST (Dec. 22, 2018), https://www.washingtonpost.com/powerpost/violence-against-women-act-to-expire-with-government-shutdown/2018/12/21/b66f600a-0557-11e9-b5df-5d3874f1ac36_story.html?utm_term=.17ed08a3e9cd [<https://perma.cc/TP22-NY66>].

219. *See, e.g.,* Fieldnotes from Network meeting, Los Angeles, CA (Sept. 17, 2009); *see also* Norma Espinosa, *The Fight to Reauthorize the Violence Against Women Act*, CTR. FOR AM. PROGRESS (May 3, 2012), <https://www.americanprogress.org/issues/women/news/2012/05/03/11524/the-fight-to-reauthorize-the-violence-against-women-act> [<https://perma.cc/C5PR-U4LW>]; Leslye Orloff, *Don't Gut Violence Against Women Act*, CNN (Dec. 6, 2012), <https://www.cnn.com/2012/12/06/opinion/orloff-violence-against-women-act/index.html> [<https://perma.cc/42PE-KRQ3>].

they certainly did not see VAWA's immigration protections as perfect, they were "a unique form of relief in immigration law generally" and did not want them to be eliminated.²²⁰

While the LSC-funded lawyers in this study could not participate in direct policy work,²²¹ they aimed to contribute to a policy agenda in an ancillary way via the U visa cases they selected. The lawyers anticipated that continued renewal of VAWA's immigration benefits would be contingent on bipartisan Congressional support of success stories the legislation facilitated. Nonprofit lawyers perceived that the U visa cases most likely to appeal to legislators from both sides of the political aisle would be on behalf of female noncitizens who could be categorized as domestic violence victims. One lawyer referred to U visa cases for domestic violence victims as "slam-dunk cases" because of their broad political appeal.²²² Another explained:

[T]he majority [of our clients are] women and DV . . . I think [that is] just because of [organizational] culture and that DV victims are some of the most compelling and we want to prioritize them.²²³

The lawyer clarified that these clients were "compelling to everyone": to her personally, to USCIS adjudicators, and to other relevant groups, including policymakers.²²⁴

To help prevent the loss or curtailment of VAWA's immigration benefits, lawyers selected U visa clients whose stories appeared to fit most neatly with

220. Interview with Stephanie, Network attorney, in Los Angeles, Cal. (Feb. 2, 2011) (on file with author). Stephanie further explained that "when you're serving immigrant clients, if you're not eligible for U visa relief or for VAWA, the law kind of changes dramatically and [is] just very, very restrictive . . . [There are] drastically fewer waivers available, [and] drastically fewer avenues for relief." *Id.*; see also Rupaleem Bhuyan, *The Production of the "Battered Immigrant" in Public Policy and Domestic Violence Advocacy*, 23 J. OF INTERPERSONAL VIOLENCE 153, 154 (2008) (discussing how the domestic violence advocates at the shelter where Bhuyan conducted her research referred to the provisions for battered immigrants in VAWA and the U visa as "one of few bright spots" in immigration law).

221. Fieldnotes from EJLA team meeting, in Los Angeles, Cal. (Aug. 3, 2010) (on file with author); Fieldnotes from Network meeting (Sept. 17, 2009), *supra* note 219. EJLA and VIDA were barred from doing direct policy work by virtue of their LSC funding. See *supra* Part III.A. AYUDA did not receive LSC funding, so it had greater flexibility in its policy-related work. Nevertheless, because lawyers worked within charitable institutions designated as tax-exempt 501(c)(3) not-for-profit organizations by the Internal Revenue Service (IRS), attorneys were prohibited from participating in certain policy-related activities, including political campaigns and forms of lobbying. See, e.g., *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax Exempt Organizations*, INTERNAL REVENUE SERV., <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations> [<https://perma.cc/8CG9-4XL6>]. Lawyers were generally wary of involvement in activities that could be construed as policy work for fear that the IRS could revoke their tax-exempt status.

222. Interview with Jane, EJLA attorney, in Los Angeles, Cal. (May 6, 2010) (on file with author).

223. Correspondence of Alessandra, AYUDA attorney, in Los Angeles, Cal. (Nov. 1, 2012) (on file with author).

224. Correspondence of Alessandra, AYUDA attorney, in Los Angeles, Cal. (Nov. 1, 2012 and Nov. 2, 2012) (on file with author).

this deserving prototype. They believed that these U visa cases, if approved, could serve policy advocates' efforts; advocates could highlight these cases as normatively worthy—and prototypical—beneficiaries to wary members of Congress.²²⁵ In turn, by working to fill the annual statutory quota of 10,000 U visa approvals with a significant number of these types of beneficiaries, lawyers ultimately, if indirectly, aimed to promote the social value of VAWA's immigration relief to legislators.²²⁶

Yet attorneys did not *absolutely* limit their case selection to that deserving type. Attorneys sometimes accepted cases that seemed especially “sad” if they were emotionally moved to help immigrants.²²⁷ Equal Justice attorney Eleanor described one such case she accepted even though it did not conform completely to the organization's core “priorities.”

[W]e have to use our own judgment, depending on what type[s] of cases are coming in, about whether we're going to take it or not. Last time I got a client, it was a U visa client . . . and he was not, you know, [a CalWORKS case]. Our priorities are the CalWORKS [cases].²²⁸ But, you know, I had been waiting for some CalWORKS cases. I know I have to take on . . . 36 new cases this year, and I'm waiting for cases and they're not coming. And a guy came in. He's U-visa-eligible [because] his daughter, his 7-year-old daughter, got killed. You know, you start hearing stories and they're so sad, and . . . I want to do it. So I called my supervisor and told him it wasn't CalWORKS, [but] I really want to do this case, and he's like, “Well, OK, OK, go ahead and do it.” I'm like, you know, the guy's showing me pictures of his little girl. It literally happened within a month of his coming to the office . . . [I]t's heart wrenching. So, you know, our priorities are the CalWORKS [cases]. The ones we come across definitely those we absolutely take. [But] there's leeway.²²⁹

225. *Id.* This tactic was not new in VAWA advocacy endeavors. *See, e.g.*, Orloff & Kaguyutan, *supra* note 12, at 129 (“From 1997 through 2000, advocates for battered immigrants collected stories, monitored implementation of legal protections, documented problems and advocated for improvements and legal protections for battered immigrants.”); *id.* at 144 (describing the “campaign” of the “battered immigrant advocacy community” to “seek legislative responses” to the shortcomings of VAWA 1994, which culminated in “bipartisan efforts of sympathetic members of Congress working collaboratively with the advocacy community” to pass the Battered Immigrant Women Protection Act of 2000 as part of VAWA 2000).

226. Correspondence of Alessandra, AYUDA attorney (Nov. 1, 2012 and Nov. 2, 2012), *supra* note 224; Interview with Alessandra, AYUDA attorney, in Los Angeles, Cal. (Aug. 26, 2011) (on file with author); Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

227. Conversation with Katie, EJLA attorney, in Los Angeles, Cal. (Aug. 23, 2011) (on file with author) (explaining her intent to accept a prospective U visa case on behalf of the bereaved parents and sister of a 19-year-old youth who was shot and killed at a park a couple of months earlier: “Of course I'm going to take this . . . It's so sad.”).

228. *See supra* Part III.A & note 151.

229. Conversation with Eleanor, EJLA attorney, in Los Angeles, Cal. (June 14, 2011) (on file with author).

Other lawyers also conveyed that they had “leeway” to select cases depending on similarly idiosyncratic circumstances in their employing organizations. Alessandra, an AYUDA lawyer, said her boss was not very “micro-manage-y [*sic*]” when it came to selecting U visa cases.²³⁰ And Jane, the EJLA lawyer quoted above, explained, “no one’s breathing down [her] neck” when she evaluates a potential case, and that “you are given a degree of autonomy.”²³¹ Nonetheless, nonprofit immigration attorneys affirmed that their autonomy needed to be exercised carefully and within limits, the selection of each case involving a distinct “judgment call” in light of various constraints.²³² Another lawyer related that case selection was “never cut and dry . . . You’re always thinking strategically.”²³³

The particular kind of crime an individual had experienced and how “heart wrenching”²³⁴ or “sad”²³⁵ it was only amounted to one of the axes along which lawyers evaluated potential U visa cases. Immigrants’ comparative apparent morality and personal character factored into lawyers’ case selection as well. For example, attorneys were leery of representing immigrant crime victims who had committed crimes themselves.²³⁶ Leah, an AYUDA attorney quoted above, described her typical reaction to such potential clients:

[U]nless my heartstrings are super pulled, I don’t accept cases with [] criminal convictions because they take so many resources, and then I just think about how I’m using all of these resources on this person when there are single moms that have no criminal history that aren’t getting seen. . . . [W]e’ll get a lot of . . . like young dudes who are . . . loosely involved in criminal activity, but then something really horrible happens and it’s like, I want someone to help them [but] I also don’t want that to be at the expense of the people that I’m not going to be able to help if I take that case.²³⁷

As Leah’s remark conveys, attorneys’ scant time and resources also limited their U visa case selection; they could only work on so many U visa cases at once, and various considerations motivated them to convert as many of their

230. Correspondence with Alessandra, AYUDA attorney, in Los Angeles, Cal. (Oct. 30, 2012) (on file with author).

231. Interview with Jane, EJLA attorney (Aug. 19, 2010), *supra* note 179.

232. Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

233. Fieldnotes from EJLA (Comment of Salomé, EJLA attorney), in Los Angeles, Cal. (Oct. 11, 2010) (on file with author).

234. Conversation with Eleanor, EJLA attorney (June 14, 2011), *supra* note 229.

235. Conversation with Katie, EJLA attorney (Aug. 23, 2011), *supra* note 227.

236. *See, e.g.*, Conversation with Carmen, AYUDA attorney, in Los Angeles, Cal. (June 22, 2011) (on file with author); Fieldnotes from EJLA team meeting (Mar. 18, 2010), *supra* note 158; Intake between Alessandra, AYUDA attorney, and Veronica (Aug. 24, 2011), *supra* note 202; Interview with Ellen, Network attorney, in Los Angeles, Cal. (Mar. 6, 2012) (on file with author); Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

237. Interview with Leah, AYUDA attorney (Jan. 24, 2011).

cases as possible to approvals.²³⁸ The finite U visa cap²³⁹ loomed over lawyers' case selection too. If Leah chose to help a "young dude[] who [was] . . . loosely involved in criminal activity" over a "single mom" with "no criminal history," that "single mom" could lose her chance at U visa status or find herself in a longer line for relief—and not only because she would miss out on AYUDA's legal assistance to apply.²⁴⁰ Given the U visa cap, the "young dude" might occupy the very spot that the "single mom" could have filled that same fiscal year.²⁴¹

In addition, since U visa cases with criminal issues "take so many resources" to prepare adequately, attorneys fretted that more than one "single mom" could lose out on her chance for legal status if they devoted their scarce time to "young single dudes with criminal convictions" or other similarly situated crime victims.²⁴² As AYUDA lawyer Alessandra explained:

[T]he majority [of our U visa cases are] women and DV . . . [in part] because they're "easy" cases to present (guys have more criminal issues and fewer mitigating factors as a whole, so cases are more complex). So, with limited resources, we want to help the kids and the ladies.²⁴³

Attorneys employed by other nonprofits in the Network expressed a like reluctance to accept U visa cases for noncitizens with criminal records. Ellen, who primarily represents immigrant children, explained that she and her colleagues rarely accept cases for abused youth who have abused others:

[I]t is really rare that we accept a case for a child who sexually abused another child . . . but most of the perpetrators who are children are also victims. [W]e just have real concerns about those cases with the Immigration Service, and . . . in order to properly present those cases, I think you really need to invest a substantial amount of resources into really getting as much evidence of rehabilitation or mitigation [as possible], so we've made a general decision not to file those cases. We don't tell the children they're not eligible, but we don't generally take them. But there can always be exceptions, [like] a statutory rape case or something where there's a pretty straightforward explanation . . . that [no] [one was particularly harmed].²⁴⁴

As Ellen conveyed, she had "real concerns" about how USCIS would react to U visa cases for child crime victims who had also committed crimes, despite how

238. See, e.g., Fieldnotes from EJLA (based on interview with Dora, EJLA attorney), in Los Angeles, Cal. (Sept. 1, 2010) (on file with author); Interview with Alessandra, AYUDA attorney (Aug. 26, 2011), *supra* note 226 ("my ultimate goal is to help as many people as possible"); Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

239. See *supra* pp. 111–12 and notes 51–53.

240. Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

241. See *id.*; see also *supra* pp. 111–12 and notes 51–56 (discussion of U visa waiting list).

242. Interview with Leah, AYUDA attorney, (Jan. 24, 2011), *supra* note 3.

243. Correspondence of Alessandra, AYUDA attorney (Nov. 1, 2012), *supra* note 223.

244. Interview with Ellen, Network attorney (Mar. 6, 2012), *supra* note 236.

common it was.²⁴⁵ The extra resources they would need to invest in such petitions would detract from the time they would have for other cases.²⁴⁶ Still, there could “always be exceptions” to the general rule.²⁴⁷

At EJLA, VIDA, and AYUDA, lawyers debated which cases should be deemed “exceptions”²⁴⁸ to their general case selection rules. During a March 2010 meeting of the Equal Justice immigration lawyers, one attorney proposed establishing “more clear criteria for case acceptance,” including “specifically stat[ing] that we don’t represent clients who have domestic violence violations on their record.”²⁴⁹ Victoria, the lawyer, said she had “a problem” with it because she thought “there was tension there” for EJLA and wanted to “draw the line.”²⁵⁰

Katie, another immigration attorney participating in the meeting, suggested that she would be unlikely to agree with implementing a blanket ban on representing abusers. “If we put the brakes on at the front end, it’s hard to get to the level of detail that we’d need to find out about a person’s case to see if we wanted to represent them,” she explained. Katie shared that she herself had an 18-year-old U visa client who abused his girlfriend. Because the young man grew up in an abusive household where violence was a normal way to resolve conflict, Katie thought he shouldn’t be excluded from EJLA representation upfront. Victoria responded, “It just seems like kind of a contradiction, especially down the line for domestic violence funding.” Nicole, another immigration lawyer, said she thought extenuating or mitigating circumstances that justify a moral imperative to take the case, such as those in Katie’s case, should be taken into account when evaluating whether or not to take a case.²⁵¹

EJLA lawyers did not resolve the issue during the meeting,²⁵² underscoring both the multiple lenses lawyers applied to case selection even within the same organization and attorneys’ belief that their case choices resonated beyond each individual case they accepted or declined.

Nonprofit lawyers believed that the U visa cases they accepted and submitted to USCIS adjudicators contributed to the development of an evolving track record of “meritorious” case types that stemmed from their institutional credibility with USCIS.²⁵³ They connected this to their reputation for

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*; see also Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

249. Fieldnotes from EJLA team meeting (Mar. 18, 2010), *supra* note 158.

250. *Id.*

251. *Id.*

252. *Id.*

253. Interview with Jane, EJLA attorney (Aug. 19, 2010), *supra* note 179; Interview with Laura, EJLA paralegal, in Los Angeles, Cal. (Oct. 15, 2010) (on file with author) (describing her work as a “liaison with the Nebraska Service Center” of USCIS, a “community position” that “has been good for [EJLA] because I [] have this sort of open channel to them” that gets EJLA “some leverage and . . . firsthand information on many things”); Interview with Nicole, EJLA attorney, in Los Angeles,

representing the “most vulnerable” immigrants, which helped compel the approval of their cases.²⁵⁴ Nicole, an EJLA immigration lawyer, remarked that, “[Equal Justice] really lead[s] the pack with regard to VAWA and U visa[s].”²⁵⁵ Thus, the more that they, as public interest lawyers, endorsed certain case prototypes as deserving U visa petitioners and garnered approvals, the more adjudicators came to expect these prototypes from them and other lawyers,²⁵⁶ and the faster adjudicators tended to approve them.²⁵⁷

As this process of meritorious typification became more entrenched and predictable, lawyers’ U visa cases started “sort of speak[ing] for themselves,”²⁵⁸ as one attorney put it, and got “eas[ier] . . . to present” to adjudicators.²⁵⁹ This enabled lawyers to effect a model of “mass processing [U visa cases] just as quickly as possible,”²⁶⁰ which facilitated attorneys’ “ultimate goal [] [of] help[ing] as many people as possible.”²⁶¹ Leah projected that between her and Alessandra at AYUDA, they submitted “over 500 [U visa] cases a year . . . [it] turns out to be a huge number.”²⁶²

Importantly, USCIS granted the overwhelming majority of AYUDA’s, EJLA’s, and VIDA’s U visa cases. In fact, approvals of these lawyers’ U visa cases became so frequent as to seem routine.

I’m used to winning our cases because we file things that have merit, so we usually get things approved. . . . [I]t’s to the point where you just expect the approval.²⁶³

I think [our approval record] would be close to 100%. . . . [P]ersonally my cases . . . I haven’t had any cases that have been . . . denied. Even here with the other attorneys, I think it’s like probably, we can count them . . . how many have been denied. We do very thorough screening before we file anything or before we take a case and, you know, make sure that it is a type of case that, you know, that’s strong, before we file anything with Immigration.²⁶⁴

We always present very, very strong cases and we rarely lose a case. I

Cal. (Oct. 6, 2010) (on file with author) (discussing “the relationships that [EJLA attorneys] have with immigration, USCIS,” and her sense that “[EJLA attorneys] are at the forefront among several other [nonprofit legal organizations serving immigrants] . . . and that would be nationally”).

254. Interview with Jane, EJLA attorney (Aug. 19, 2010), *supra* note 179.

255. Interview with Nicole, EJLA attorney (Oct. 6, 2010), *supra* note 253.

256. *See, e.g.*, Conversation with Alessandra, AYUDA attorney (Aug. 24, 2011), *supra* note 199.

257. *See, e.g.*, Correspondence with Alessandra, AYUDA attorney (Nov. 1, 2012), *supra* note 223.

258. Interview with Alessandra, AYUDA attorney (Aug. 26, 2011), *supra* note 226.

259. Correspondence with Alessandra, AYUDA attorney, in Los Angeles, Cal. (Nov. 1, 2012), *supra* note 223.

260. Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

261. Interview with Alessandra, AYUDA attorney (Aug. 26, 2011), *supra* note 226.

262. Interview with Leah, AYUDA attorney (Jan. 24, 2011), *supra* note 3.

263. Interview with Jane, EJLA attorney (Aug. 19, 2010), *supra* note 179.

264. Interview with Aurelia, VIDA paralegal, in Los Angeles, Cal. (Oct. 7, 2011) (on file with author).

think I haven't seen a case that we have lost 100%. I don't know if other organizations can say the same.²⁶⁵

On the one hand, rapidly opening, winning, and closing a high volume of U visa cases on behalf of a client base of mostly female domestic violence victims allowed lawyers to help many noncitizens regularize their legal status. This mode of practice also enabled lawyers to meet funders' expectations and facilitated attorneys' policy goals. On the other hand, some attorneys identified downsides to their organizations' approach to U visa case selection. One attorney explained:

EJLA purposefully screens out complicated cases. We don't take on cases that we don't think will get approved, which is not abnormal for law firms or organizations. But we don't take on cases with red flags that could still work.²⁶⁶

By only submitting U visa cases of a limited repertoire during the early years of the remedy's implementation, these lawyers worried about perpetuating the deservingness of narrow types of immigrant crime victims at the expense of other types that "could still work" legally.²⁶⁷

CONCLUSION

This Note began by claiming that public interest lawyers operate as *parastate actors* in their selection of U visa cases. These attorneys are *parastate actors*²⁶⁸ because, though not employed by the federal government, their ability to succeed professionally on behalf of their U visa clients depends on the existence of federal immigration law and policy, on federal bureaucrats approving their requests, and on having government funding for their nonprofit work. Yet, as nonstate actors mediating between noncitizens and the state, public interest attorneys technically have the freedom to interpret and apply the VTPA in their U visa practice as they see fit. Nevertheless, because of intra- and extra-organizational factors that encourage nonprofit lawyers to prioritize female domestic violence victims as U visa clients over others, the state shapes lawyering efforts on behalf of immigrant crime victims.

Indeed, a central goal of this Note was to name the problematic and subtle phenomena that can function to separate U-visa-eligible immigrants who become legal services clients from those who do not. In turn, I showed that although nonprofit lawyers prioritized female domestic violence victims to the exclusion of other viable U visa candidates during the remedy's debut (2009-2012), these client decisions were part of a strategy to protect U visa status as a relief avenue for the immigrant community writ large.

265. Interview with Andrea, EJLA paralegal (Sept. 2, 2010), *supra* note 182.

266. Interview with Dora, AYUDA attorney, in Los Angeles, Cal. (Sept. 1, 2010) (on file with author).

267. *Id.*

268. See WOLCH, *supra* note 19, at 41.

In drawing attention to these dynamics, this Note is responsive to calls for more information on intake in civil legal services organizations.²⁶⁹ In addition, this Note extends scholarship on the work of “cause” lawyers, who “use [their] legal skills to pursue ends and ideals that transcend client service.”²⁷⁰ The cause lawyering canon focuses on how such lawyers navigate tensions between client and cause during representation.²⁷¹ This Note establishes that ideological concerns infiltrate the pre-representation phase of cause lawyers’ work as well.²⁷² For instance, during U visa intakes, legal services lawyers in my study considered the downstream political impact of representing individuals with any sort of criminal record, given the U visa’s purpose as a “crime-fighting tool.”²⁷³

Another goal of this Note was to begin discussion of how U visa case selection phenomena within legal services organizations call upon lawyers to approach their U visa casework in new ways. The identification of these issues adds yet more weight to already compelling calls for structural changes to the way legal assistance for immigrants is funded in the United States.²⁷⁴ With

269. See, e.g., D. James Greiner, *What We Know and Need to Know About Outreach and Intake by Legal Services Providers*, 67 S.C. L. REV. 287, 28889 (2016) (“[I]f the legal community’s response to resource shortages in access to justice is to move beyond bemoaning scarcity, protesting the importance of what we do, and issuing increasingly shrill and increasingly ignored demands for more resources, we need to know a great deal more about outreach and intake.”).

270. See SCHEINGOLD & SARAT, *supra* note 213, at 3.

271. See generally 1 CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA (Austin Sarat & Stuart Scheingold eds., 2001); 2 CAUSE LAWYERS AND SOCIAL MOVEMENTS (Austin Sarat & Stuart A. Scheingold eds., 2006); 3 THE CULTURAL LIVES OF CAUSE LAWYERS (Austin Sarat & Stuart Scheingold eds., 2008). These volumes include lawyer case studies that reference case selection dynamics (see, e.g., chapter 5 by Susan Bibler Coutin in volume 1, Sandra R. Levitsky and Scott Barclay & Shauna Fisher chapters in volume 2) but none focuses on case choice. For example, the Coutin chapter in volume 1 includes a short section on “Assessing Cases” that mentions how, “out of economic necessity, [immigration] service providers resisted most clients’ efforts to obtain free legal representation,” but the author does not describe how this resistance was conveyed by attorneys or interpreted by clients. Susan Bibler Coutin, *Cause Lawyering in the Shadow of the State: A U.S. Immigration Example*, in 1 CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA, *supra*, at 123.

272. Outside of the cause lawyering scholarship specifically, academics have analyzed the strategic case selection efforts of civil rights litigators. See generally MARK V. TUSHNET, *THE NAACP’S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950* (1987) (examining the challenges for NAACP lawyers of finding appropriate plaintiffs and selecting cases in the public interest litigation campaign that culminated in the 1954 U.S. Supreme Court decision in *Brown v. Board of Education*); see also RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* 187, 202, 406 (1975) (describing NAACP attorneys’ efforts “to seek suitable plaintiffs” and why particular individuals made “ideal candidates” or appropriate “test case[s]” at various stages of the *Brown* litigation); Jill Lepore, *Misjudged*, *THE NEW YORKER*, Oct. 8, 2018, at 37 (recounting Ruth Bader Ginsburg’s sex discrimination litigation campaign at the ACLU during the 1970s, including her tactical case choices).

273. See *supra* Part III.C at 140–43; see also LESLYE E. ORLOFF ET AL., NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT AM. U. WASH. C. L., *THE IMPORTANCE OF THE U-VISA AS A CRIME-FIGHTING TOOL FOR LAW ENFORCEMENT OFFICIALS: VIEWS FROM AROUND THE COUNTRY* (Dec. 3, 2012), <http://library.niwap.org/wp-content/uploads/2015/IMM-Qref-UVisaCrimeFightingTool-12.03.12.pdf> [<https://perma.cc/T366-HPWC>] (describing the U visa as “an important crime-fighting tool”).

274. See, e.g., Heeren, *supra* note 134; Miranda, *supra* note 157, at 175–78.

greater funding for immigration legal services in absolute terms, and funding streams with fewer restrictions on service recipients, legal nonprofits could afford to hire more attorneys and to directly represent more clients in-house—including those with complicated, morally ambiguous fact patterns. But beyond structural reforms that may or may not materialize, these issues call upon advocates to start doing some things differently during U visa intake and case selection.

For instance, civil legal services agencies could develop public-private partnerships to channel U visa cases that legal aid lawyers screen but cannot accept to pro bono lawyers not subject to the various institutional challenges this Note describes. Given the rise in pro bono work by private lawyers generally²⁷⁵ and an interest in immigration pro bono work specifically,²⁷⁶ there is a market for such public-private collaboration to support immigrant crime victims' access to justice in this way. While the pro bono model is not without limitations,²⁷⁷ building relationships with private lawyers eager to serve the immigrant community may be the most expedient way for legal aid lawyers to expand their service to the diverse population of low-income, U-visa-eligible immigrants they are already vetting via existing intake programs. Such public-private

275. Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1 (2004) (noting the growth and transformation of pro bono within the past twenty-five years, including that pro bono has become “the dominant means of dispensing free representation to poor and underserved clients, eclipsing state-sponsored legal services and other nongovernmental mechanisms in importance”).

276. See, e.g., Eagly, *supra* note 60, at 2291 (“Pro bono services from the private bar are an increasingly integral component of immigration legal services for the poor.”); Annie Correal, *Why Big Law Is Taking On Trump Over Immigration*, N.Y. TIMES (Nov. 21, 2018), <https://www.nytimes.com/2018/11/21/nyregion/president-trump-immigration-law-firms.html> [<https://perma.cc/N8R5-RGEY>] (“Big Law—a nexus of power where partners are often plucked for top government posts—has emerged as a fierce, and perhaps unexpected, antagonist to President Trump’s immigration agenda. While pro bono work is nothing new, over the past two years, major law firms have become more vocal and visible in pushing back against the administration’s policies.”); see also David Lash, *The Critical Need for Pro Bono Immigration Work*, ABOVE THE LAW (Dec. 1, 2016), <https://abovethelaw.com/2016/12/the-critical-need-for-pro-bono-immigration-work> [<https://perma.cc/T366-HPWC>] (explaining the “overwhelming need for the private bar to volunteer their pro bono services, be trained, and represent, as a community, as many [immigration] clients as they possibly can,” and that “[a]lthough many lawyers and law firms already have increased their pro bono activities [on behalf of immigrants], tens of thousands more will be needed.” Thus, “[e]fforts to . . . solicit many more new volunteers[] must be made by . . . legal aid organizations . . . [in order to] create more leverage through their pro bono efforts”).

277. See Cummings, *supra* note 275, at 1 (noting that pro bono efforts necessarily “weigh[] the pragmatic benefits of leveraged law firm resources against the limitations imposed by the dependence on private lawyers beholden to commercial client interests”).

partnerships could be organized formally²⁷⁸ or informally,²⁷⁹ but either way, pro bono volunteers must be trained, supervised, and mentored by expert practitioners.²⁸⁰

Whether the U visa remedy was initially envisioned or should now be implemented as a broad-based form of relief—i.e., one that supports applications from victims of numerous crimes, with a wide variety of experiences and qualities—is a matter of some debate.²⁸¹ Ultimately, though, I see efforts to

278. There are many successful examples of public-private immigration service partnerships, including the Lawyers' Committee for Civil Rights of the San Francisco Bay Area's (LCCR) Asylum Program. The Program, which has existed since 1983, interviews asylum seekers, evaluates their claims, and assesses the most advantageous course of action before placing clients with "pro bono attorneys from leading law firms [where they receive] top-notch representation." "Through maintaining mutually beneficial relationships with community organizations, the Lawyers' Committee is regularly contacted by asylum seekers who have suffered persecution but are unable to afford attorneys to assist them in navigating the confusing and oppressive immigration process." *Request Legal Services: Asylum Program*, LAW. COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, <https://www.lccr.com/get-help/immigrant-justice-asylum-program> [<https://perma.cc/9JBU-9HBQ>]; *Immigrant Justice: Asylum Program*, LAW. COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, <https://www.lccr.com/programs/immigrant-justice/direct-services> [<https://perma.cc/69YD-ADD8>].

279. For example, a legal services organization could seek out a private sector partner and establish a working relationship whereby the organization would screen and evaluate potential U visa applicants before placing cases with the law firm. The organization could provide ongoing mentorship as the firm prepares and submits the case, as supplemented by practitioner guides, trainings, and Attorney of the Day (AOD) consultation services of the Immigrant Legal Resource Center (ILRC). The ILRC is "a national nonprofit resource center that provides immigration legal trainings, technical assistance, and educational materials, and engages in advocacy and immigrant civil engagement to advance immigrant rights." *What We Do*, IMMIGRANT LEGAL RESOURCE CTR., <https://www.ilrc.org/what-we-do> [<https://perma.cc/AE2P-XUCA>]. The AOD service "provides case-specific technical assistance to attorneys, nonprofit organizations, public defenders, and other immigration advocates" for free or low cost. *Technical Assistance*, IMMIGRANT LEGAL RESOURCE CTR., <https://www.ilrc.org/technical-assistance> [<https://perma.cc/YTD7-7DRR>]. In the realm of U visa advocacy, the ILRC publishes a comprehensive U-visa-specific guide, which is updated periodically to reflect developments in the law, policy, and immigration practice. *The U Visa: Obtaining Status for Immigrant Victims of Crime*, IMMIGRANT LEGAL RESOURCE CTR., <https://www.ilrc.org/publications/u-visa> [<https://perma.cc/86AU-XWRZ>]. They maintain a website advertising new practice advisories, seminars, and webinars on up-to-the-minute developments in U visa law. *U Visa/T Visa/VAWA*, IMMIGRANT LEGAL RESOURCE CTR., <https://www.ilrc.org/u-visa-t-visa-vawa> [<https://perma.cc/4KDQ-HTKC>].

280. For instance, LCCR "regularly hosts a variety of workshops, trainings and other support to guide and inform each pro bono attorney who does asylum work to ensure they are fully equipped to meet the needs of the client. Twice annually there is a two-day seminar that gives an overview of asylum law as well as general tips for practitioners. Also, the program holds more focused monthly trainings that educate attorneys and others on topics that range from conditions in certain regions to working with clients who have faced trauma to significant case law updates. Further, each pro bono attorney is paired with an immigration practitioner who mentors the pro bono attorney throughout the asylum process. Through these support structures, attorneys who have had little or no immigration law experience are able to successfully take an asylum case from beginning to end." *Immigrant Justice: Asylum Program*, *supra* note 278.

281. Compare Joey Hipolito, *Illegal Aliens or Deserving Victims: The Ambivalent Implementation of the U Visa Program*, 17 ASIAN AM. L.J. 153, 157 (2010) (arguing that "an iconic figure neither guided passage of, nor emerged from, the U visa statute"), and Kagan, *supra* note 20, at 930 ("[B]ecause it encompasses so many different kinds of crime, the U visa does not have an obvious,

expand the pool of U visa recipients to its full statutory potential as part and parcel of efforts of the immigrant justice movement to counter polarized notions of “good” and “bad” immigrants.²⁸² Rather, given its broad statutory language covering many crimes, advocates should seize the U visa as an opportunity to complicate the deserving/undeserving archetypes that have come to characterize other government visa programs²⁸³ by representing eligible U visa applicants whose stories show them to be “real people,” rather than “mythologized perfect immigrants,” but who are nevertheless “as worthy and flawed and full of potential as any of us.”²⁸⁴ While many reforms to the U visa program are needed,²⁸⁵ establishing public-private service partnerships to serve the larger populations that the U visa statute supports and that could clearly benefit from the relief²⁸⁶ is one way to improve the status quo.

The private bar has both the will and the way to bolster immigrants’ rights by representing qualified, low-income U visa applicants that civil legal services providers cannot. Establishing public-private sector partnerships to carry out this mission could parlay the legal expertise, trust of the immigrant community, and “special influence”²⁸⁷ vis-à-vis USCIS adjudicators that nonprofit practitioners

prototypical victim . . . since the U visa relies on local officials to certify genuine victims, there can be as many conceptions of deserving, ideal victims as there are law enforcement agencies”), *with* Settlege, *supra* note 20, at 1764 (arguing that “the U visa is, at its heart, a solution created for battered immigrants who are not eligible for other forms of immigration relief”) and Saucedo, *supra* note 12, at 892 (describing that “[i]nitially, the government implemented the statute to protect domestic violence or sex crime victims because the legislation was a companion to the Violence Against Women Act” but noting the potential broad application of the U visa program).

282. Practitioners, scholars, and noncitizens are calling for a broadening of the narratives about “good” and “bad” immigrants that pervade American society, including the minds of adjudicators. *See, e.g.*, Hipolito, *supra* note 281, at 179; Keyes, *Beyond Saints and Sinners*, *supra* note 18; Elizabeth Keyes, *Defining American: The DREAM Act, Immigration Reform and Citizenship*, 14 NEV. L.J. 101 (2013); Mariela Olivares, *Narrative Reform Dilemmas*, 82 MO. L. REV. 1089 (2017); Joel Sati, *How DACA Pits Good Immigrants Against Millions of Others*, WASH. POST (Sept. 7, 2017), https://www.washingtonpost.com/news/posteverything/wp/2017/09/07/how-daca-pits-good-immigrants-against-millions-of-others/?noredirect=on&utm_term=.1786108bca18 [<https://perma.cc/867Q-JKQ6>].

283. Kevin R. Johnson, “*Aliens*” and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263, 276–79 (1997); Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 187–95 (2007).

284. Keyes, *Beyond Saints and Sinners*, *supra* note 18, at 256.

285. *See, e.g.*, Cade & Flanagan, *supra* note 51, at 85.

286. My empirical findings suggest that there are many immigrant populations other than female domestic violence victims who would like to apply for U visa status. *See supra* Part II.A at pp. 123–24 and note 125 (discussion of U visa intakes observed, including the types of crimes individuals experienced). Some immigration attorneys today are filing U visa cases on behalf of victims of crimes other than domestic violence. *See e.g.*, *Victims of Crimes or Domestic Violence*, VAN DER HOUT IMMIGR. & NAT’LITY L., <https://www.vblaw.com/Practice-Areas/Victims-of-Crimes-or-Domestic-Violence.shtml> [<https://perma.cc/S6LA-6263>] (website of well-known San Francisco, CA immigration law firm Van Der Hout, Brigagliano & Nightingale, LLP explaining that it submits “U visas for victims of violent crimes (some common examples include domestic violence, involuntary servitude, kidnapping, false imprisonment, assault, blackmail, and extortion)”).

287. *See* Southworth, *supra* note 180, at 496.

have honed into the legalization of many more noncitizen crime victims than would otherwise be served. Taking steps to realize a broader application of the U visa statute will validate more complex and merciful²⁸⁸ narratives of deservingness around the U visa that square with a vision of immigrants as members of our civil society²⁸⁹ and as future Americans.²⁹⁰ Although the application of the U visa statute within legal services offices to date may have left some immigrant crime victims without remedy,²⁹¹ the program nonetheless represents an opportunity to gradually revise the state's and the public's understanding of immigration. In particular, building efforts that will bring more diverse U visa cases to the attention of adjudicators will help challenge rigid perceptions of immigrants as "good" or "bad."²⁹² Rather than excluding certain immigrant crime victims as undeserving of aid, the U visa presents an opportunity to protect the immigrant community as a whole and ultimately to develop a more nuanced, holistic understanding of immigration and citizenship.

288. Keyes, *Beyond Saints and Sinners*, *supra* note 282, at 250 (advocating for a "more merciful immigration law"); *see also* Bill Ong Hing, *Providing a Second Chance*, 39 CONN. L. REV. 1893, 1897–99 (2007) (arguing that immigration policy should incorporate a stronger commitment to norms of rehabilitation as part of a healthy civil society, particularly for immigrants who arrived as children and as refugees).

289. Hing, *supra* note 288, at 1897–99 (maintaining that the United States acquires a moral responsibility for its immigrants; this means that in evaluating applications for relief or an individual's deportability, the government should consider not only the obligations that immigrants owe America, but what reciprocal obligations arise toward those immigrants).

290. HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 9 (2006) (advocating a view of U.S. immigration policy that treats immigrants essentially as future citizens—Americans in waiting).

291. *See supra* note 20 (explaining that approximately 75% of U visa recipients are female domestic violence survivors).

292. *See* Keyes, *Beyond Saints and Sinners*, *supra* note 282, at 252–55 (arguing that lawyers should alert immigration judges to "the dominant preconceived narrative" associated with the particular form of relief a client is applying for when advocating for that client; highlighting how their client's situation "presents a different narrative that the judge can distinguish from the preconceived one" will break down psychological barriers that currently operate to exclude non-normative applicants). This may, over time, help immigration judges to see immigrants in more holistic and realistic ways, ultimately leading to more favorable legal outcomes for immigrants in general.

