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## ADDING WAGE THEFT AS A QUALIFYING CRIME IN THE U VISA CERTIFICATION

Genesis Aguirre Guerra\*

### Introduction

Jose Lopez<sup>1</sup> migrated to the United States without proper documentation. After he arrived, Mr. Lopez had several consecutive jobs as a line cook in various restaurants in Reno, Nevada. He started working at Casino restaurant. One day, Mr. Lopez noticed that his paychecks had not been reflecting the overtime hours he worked. Mr. Lopez approached his employer about his pay discrepancy. His employer told Mr. Lopez that he would pay for overtime the following week. The following week came, and the employer did not pay Mr. Lopez for his overtime hours. This continued for several weeks. Mr. Lopez confronted his employer again. This time, his employer threatened to call the police and U.S. Immigration and Customs Enforcement (ICE) on Mr. Lopez. Because of the stressful situation, Mr. Lopez quit and found another job, then sought immigration help.

Mr. Lopez sought the help of an immigration attorney. Mr. Lopez explained to the attorney that his employer was not paying him his wages. The attorney told Mr. Lopez that he might qualify for a U Nonimmigrant Status (U Visa) because he was a victim of wage theft. Wage theft is characterized as the “failure to pay workers the full wages to which they are legally entitled.”<sup>2</sup> To be eligible for the U Visa, Mr. Lopez had to be a victim of a qualifying crime, have substantial mental and physical harm, and cooperate with law enforcement or a designated agency, such as the U.S. Department of Labor (DOL), to certify the U Visa.<sup>3</sup> However, wage theft is not a qualifying crime on the U Visa certification form.<sup>4</sup> The attorney emailed a DOL investigator to explain Mr. Lopez’s situation and how the agency may help certify Mr. Lopez’s U Visa. After four weeks, the DOL investigator responded to the email and stated that Mr. Lopez had not suffered a qualifying crime. The only labor-related qualifying crimes in the U Visa are fraud in foreign labor contracting, involuntary servitude, trafficking, slave trade, and peonage.<sup>5</sup>

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<sup>1</sup> This is an alias for a client the author worked with in the past. Aspects of this story are based on his past.

<sup>2</sup> DAVID COOPER & TERESA KROEGER, ECON. POL’Y INST., EMPLOYERS STEAL BILLIONS FROM WORKERS’ PAYCHECKS EACH YEAR 4 (2017).

<sup>3</sup> 8 C.F.R. § 214.14(a)(2).

<sup>4</sup> Form I-918, Supplement B, U Nonimmigrant Status Certification, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf>.

<sup>5</sup> *Id.*

In the United States, many noncitizens have experienced wage theft.<sup>6</sup> Noncitizen workers are abused in their workplace through wage theft and retaliation by their employers.<sup>7</sup> In 2009, a study found that 37.1% of noncitizen workers surveyed were victims of minimum wage violations.<sup>8</sup> But few noncitizens report wage theft.<sup>9</sup> Crimes that noncitizen workers report typically do not qualify for a certification for a U Visa.<sup>10</sup>

The current U Visa statute, which specifies qualifying crimes, does not account for the less-severe labor-related crimes that noncitizen workers might suffer in the workplace.<sup>11</sup> In this article, I propose the addition of wage theft as a U Visa qualifying crime. In Part I, I will briefly describe the U Visa and its purpose. In Part II, I will discuss the vitality of adding wage theft as a qualifying crime to mitigate the vulnerability of noncitizens. I will also explore the benefits of adding wage theft in the U Visa, such as protecting noncitizen workers from the retaliation they will face from their employer when they stand up and report labor-related crimes. In Part III, I will discuss how accessibility to the U Visa in agencies such as the DOL and U.S. Equal Employment Opportunity Commission (EEOC) is necessary for this proposed change. Lastly, in Part IV, I will address critiques of this proposal.

## **I. Background: U Visa Was Intended to Include Labor-Related Crimes Like Wage Theft, Criteria for the U Visa, and the Current Strategies to Certify a U Visa for Wage Theft Crime.**

The U Visa was envisioned to help law enforcement agencies and protect survivors.<sup>12</sup> This section will first focus on how the U Visa was created and how Congress selected qualifying criminal activity. Next, it will discuss the criteria for the U Visa. Lastly, this section will review current strategies for noncitizens to qualify for a U Visa because of wage theft and the limitations of these strategies.

### *A. The legislative history for the creation of the U Visa and selecting the qualifying criminal activities for U Visa eligibility.*

In 1994, Congress enacted the Violence Against Women Act (VAWA).<sup>13</sup> VAWA was passed to address concerns of gender-motivated crimes and how to prevent these crimes.<sup>14</sup> The act

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<sup>6</sup> Michael Felsen & M. Patricia Smith, *Wage Theft is a Real National Emergency*, AM. PROSPECT (Mar. 5, 2019), <https://prospect.org/power/wage-theft-real-national-emergency/>.

<sup>7</sup> *Id.*

<sup>8</sup> ANNETTE BERNHARDT ET AL., *BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES* 42 (2009).

<sup>9</sup> Felsen & Smith, *supra* note 6.

<sup>10</sup> EUNICE HYUNHYE CHO, NAT'L EMP. L. PROJECT, *U VISA FOR VICTIMS OF CRIME IN THE WORKPLACE: A PRACTICE MANUAL*, 13 (2014) <https://www.nelp.org/wp-content/uploads/2015/03/U-Visas-for-Victims-of-Workplace-Crime-Practice-Manual-NELP.pdf>.

<sup>11</sup> 8 C.F.R. § 214.14(a)(9).

<sup>12</sup> Victims of Trafficking Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

<sup>13</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-1955 (1994).

<sup>14</sup> *Id.* See also Lisa N. Sacco & Emily Hanson, *The Violence Against Women Act (VAWA): History Overview, Funding, and Reauthorization*, Congressional Research Service (Apr. 23, 2019) <https://crsreports.congress.gov/product/pdf/R/R45410>.

recognized the abuse that noncitizen survivors faced because of their lack of immigration status.<sup>15</sup> The legislative history for VAWA demonstrates that Congress began to recognize the abusive power imbalance between U.S. citizens and noncitizens, who are often vulnerable and endure abuse.<sup>16</sup> Congress identified that “[M]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.”<sup>17</sup> VAWA of 1994 allowed Congress to imagine future amendments to VAWA for immigration relief such as the U Visa.<sup>18</sup> VAWA identified some crimes that now qualify for U Visa eligibility, such as abusive sexual contact, domestic violence, incest, rape, and sexual exploitation.<sup>19</sup>

In 2000, Congress enacted the Victims of Trafficking and Violence Protection Act (VTVPA), which included the Trafficking Victims Protection Act (TVPA) and reauthorized VAWA.<sup>20</sup> The TVPA was enacted to address issues involving human trafficking, including protection for the person who has trafficked.<sup>21</sup> Under the TVPA, lawmakers identified various severe forms of trafficking, including sex trafficking through force, fraud, or coercion, or of a minor, and trafficking of a person for labor or services through force, fraud, or coercion.<sup>22</sup> TVPA helped identify forced labor, peonage, slavery, and involuntary servitude as qualifying crimes for the U Visa.<sup>23</sup>

Under the TVPA, Congress created two forms of immigration relief: the U Visa and the T Visa.<sup>24</sup> Congress created the U Visa for survivors who experienced the crimes described in the TVPA and VAWA.<sup>25</sup> As explained by the Department of Homeland Security Rules and Regulations, the qualifying crimes established in the U Visa eligibility “represent the myriad types of behavior that can constitute domestic violence, sexual abuse, or trafficking, or are crimes of which vulnerable immigrants are often targeted as victims.”<sup>26</sup>

### B. *The Criteria for U Visa Eligibility.*

The U Visa was intended to “strengthen the ability of law enforcement agencies to detect, investigate and prosecute” crimes against immigrants and to offer protection to survivors who

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<sup>15</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1953-1955 (1994). *See also* Katrina Castillo et al., Legislative History of VAWA (94, 00, 05), T and U Visas, Battered Spouse Waiver and VAWA Confidentiality (Jun. 17, 2015) [https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/VAWA\\_Leg-History\\_Final.pdf](https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/VAWA_Leg-History_Final.pdf).

<sup>16</sup> Committee on the Judiciary, Report on the Violence Against Women Act to Accompany H.R. 1133, H.R. Rep. No. 395, 103d Cong., 1st Sess. 26-7 (1993).

<sup>17</sup> *Id.* at 63.

<sup>18</sup> *Id.*

<sup>19</sup> 146 Cong. Rec. S10196 (2000).

<sup>20</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

<sup>21</sup> *Id.* at 114 STAT. 1466. *See generally* Claire Bishop, *The Trafficking Victims Protection Act of 2000: Three Years Later*, 41 INT’L MIGRATION 219, 221 (2003).

<sup>22</sup> *Id.* 114 STAT. 1470.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 114 STAT. 1533-1537.

<sup>25</sup> *Id.* at 114 STAT. 1535. *See generally* LESLYE E. ORLOFF, NAT’L IMMIGRANT WOMEN’S ADVOC. PROJECT, VAWA CONFIDENTIALITY: HISTORY, PURPOSE, DHS IMPLEMENTATION AND VIOLATIONS OF VAWA CONFIDENTIALITY PROTECTIONS, 8 (2015), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/VAWA-Confidentiality-History-Purpose-and-Violations.pdf>.

<sup>26</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007).

feared cooperating with law enforcement because of their immigrant status.<sup>27</sup> Congress recognized it needed to create protection against deportation fears to encourage survivors to cooperate with law enforcement efforts to detect crime, launch investigations, and penalize perpetrators.<sup>28</sup> To qualify for a U Visa, an immigrant survivor must meet four requirements:

(1) have been the survivor of a criminal activity perpetrated in the United States or that violated the laws, state or federal, of the United States; (2) possess information concerning such criminal activity; (3) have been helpful, be helpful or be likely to be helpful in the investigation or prosecution of a crime; and (4) have suffered substantial physical or mental abuse as a result of having been a survivor of a listed criminal activity.<sup>29</sup>

Additionally, a survivor must have lawfully entered the United States, including presenting themselves for inspection and being authorized for entry by an immigration officer, and not be inadmissible under enumerated grounds.<sup>30</sup> Survivors are subject to several classes of inadmissibility, including health-related grounds, criminal and related grounds, security and related grounds, labor certification qualifications, illegal entry and immigration violations, documentation requirement, ineligibility for citizenship, previous removal, and miscellaneous reasons.<sup>31</sup> However, under the U Visa, survivors are exempt from the public charge category of inadmissibility.<sup>32</sup> Public charge is someone who is dependent on government assistance, such as Supplemental Security Income, Temporary Assistance for Needy Families, Section 8 Housing Assistance, and federally funded Medicaid.<sup>33</sup> Congress created this exemption because survivors suffered through horrific crimes and often had to use public benefits to recover from the crime.<sup>34</sup>

If a survivor is found to be inadmissible, they may ask for a waiver. The U Visa offers a generous waiver provision.<sup>35</sup> A waiver “excuses the [survivor] from the ground of inadmissibility

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<sup>27</sup> See VTVPA, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533-34 (2000); *see also* New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (amending 8 C.F.R. §§ 103, 212, 214, 248; 274a and 299); *See generally* NAT’L EMP. L. PROJECT, THE U VISA: A POTENTIAL IMMIGRATION REMEDY FOR IMMIGRANT WORKERS PAYING LABOR ABUSE, (2011), <https://asistahelp.org/wp-content/uploads/2019/01/The-U-Visa-A-Potential-Immigration-Remedy-for-Immigrant-Workers-Facing-Labor-Abuse.pdf>;

<sup>28</sup> See VTVPA, Pub. L. No. 106-386, § 1513(a)(2)(A).

<sup>29</sup> See 8 U.S.C. § 1101(a)(15)(U)(i).

<sup>30</sup> See I.N.A. § 101(a)(13), 8 U.S.C. § 1101(a)(13). Inadmissibility renders the noncitizen ineligible for a visa or admission. *See* 8 U.S.C. § 1182. *See also* Instructions for Petition for U Nonimmigrant Status and Supplement A, Petition for Qualifying Family Member of U-1 Recipient, <https://www.uscis.gov/sites/default/files/document/forms/I-918instr.pdf>.

<sup>31</sup> *See* I.N.A. § 212(a); 8 U.S.C. § 1182.

<sup>32</sup> *See* I.N.A. § 212(a)(4)(E)(ii); 8 U.S.C. § 1182 (a)(4)(E)(ii).

<sup>33</sup> *Public Charge Fact Sheet*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources> (last visited Jan. 29, 2023).

<sup>34</sup> *See* Inadmissibility on Public Charge, 84 Fed. 41292, 41437 (August 14, 2019). *See also* SARAH LAKHANI, IMMIGRANT LEGAL RESOURCE CENTER, PUBLIC CHARGE EXEMPTIONS AND CONSIDERATIONS, 14 (2021), [https://www.ilrc.org/sites/default/files/resources/public\\_charge\\_exemptions\\_considerations-sk-dgfinal.sl\\_.pdf](https://www.ilrc.org/sites/default/files/resources/public_charge_exemptions_considerations-sk-dgfinal.sl_.pdf).

<sup>35</sup> *See* 8 C.F.R. § 212.17. *See generally* VERONICA GARCIA & ARIEL BROWN, IMMIGRANT LEGAL RESOURCE CENTER, PROS AND CONS OF APPLYING A U VISA, 1 (2022) [https://www.ilrc.org/sites/default/files/resources/june\\_2022\\_u\\_visa\\_pros\\_and\\_cons\\_of\\_applying\\_final22.pdf](https://www.ilrc.org/sites/default/files/resources/june_2022_u_visa_pros_and_cons_of_applying_final22.pdf).

preventing the [survivor] from obtaining” a U-Visa status and lawful permanent residency.<sup>36</sup> Survivors may request a waiver for any grounds of inadmissibility except for seeking entry into the U.S. solely to engage in espionage or sabotage;<sup>37</sup> engage in any kind of unlawful activity;<sup>38</sup> overthrow of the U.S. government;<sup>39</sup> a potentially adverse foreign policy consequence;<sup>40</sup> and Nazi persecution, genocide, torture, or extrajudicial killing.<sup>41</sup> It is important to note that the Secretary of the Department of Homeland Security (DHS) has the discretion to waive some of the grounds of inadmissibility in U Visa application.<sup>42</sup> This discretion may change the grounds of admissibility or alter it to be more expansive or exclusive, which may encourage or deter survivors to apply for the U Visa.

To petition for a U Visa, the survivor must submit Form I-918, Petition for U Nonimmigrant Status, and Form I-918 Supplement B, U Nonimmigrant Status Certification, to the U.S. Citizenship and Immigrant Services (USCIS).<sup>43</sup> If the survivor needs an admissibility waiver, they must submit the I-192 Application for Advance Permission to Enter as a Nonimmigrant.<sup>44</sup>

Law enforcement officials, prosecutors, or other authorized government agency officials must complete and certify the I-918 Supplement B (U Visa Certification or I-918B), which includes sections to detail the crime(s) experienced and helpfulness of the victim.<sup>45</sup> Certifying agencies include all authorities responsible for the qualifying criminal activity investigation, conviction, or sentencing.<sup>46</sup> This includes federal, state, and local law enforcement agencies; federal, state, and local prosecutors’ offices; federal, state, and local judges; federal, state, and local family protective services; the EEOC; federal and state departments of labor; and other investigative agencies.<sup>47</sup> The person or agency certifying the U Visa confirms that the survivor has been helpful, is being helpful, or is likely to be helpful.<sup>48</sup> Helpfulness means that the survivor did not refuse or fail to provide information and assistance reasonably requested by the law enforcement agency.<sup>49</sup>

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<sup>36</sup> See 8 C.F.R. § 212.17. See generally LIMAYLI HUGET ET AL., NAT’L IMMIGRANT WOMEN’S ADVOC. PROJECT, COMPARING INADMISSIBILITY WAIVERS AVAILABLE TO IMMIGRANT VICTIMS IN VAWA SELF-PETITIONING, U VISA, T VISA, AND SPECIAL IMMIGRANT JUVENILE STATUS CASES, 1 (2021) <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Comparing-Inadmissibility-Waivers-Available-to-Immigrant-Victims-in-VAWA-Self-Petitioning-U-Visa-T-Visa-and-Special-Immigrant-Juvenile-Status-Cases-1.28.21-.pdf>.

<sup>37</sup> See I.N.A. § 212(d)(3)(A)(i)(I).

<sup>38</sup> See I.N.A. § 212(d)(3)(A)(ii).

<sup>39</sup> See I.N.A. § 212(d)(3)(A)(iii).

<sup>40</sup> See I.N.A. § 212(a)(3)(C).

<sup>41</sup> See I.N.A. § 212(a)(3)(E).

<sup>42</sup> See 8 C.F.R. § 212.17(b)(1). See also Huget et al., *supra* note 36 at 3.

<sup>43</sup> *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZEN AND IMMIGR. SERV., <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status> [<https://perma.cc/4K56-C959>].

<sup>44</sup> *Id.*

<sup>45</sup> DEP’T OF HOMELAND SEC., *U Visa Law Enforcement Certification Resource Guide*, 1, [https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022\\_1.pdf](https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf) [hereinafter *Law Enforcement Resource Guide*].

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 4

<sup>49</sup> See Cho *supra* note 10 at 4.

On the I-918B form, the certifying agency must select a relevant qualifying crime.<sup>50</sup> The qualifying crimes include various crimes that describe behaviors of domestic violence, sexual assault, trafficking, and other criminal activities that impact noncitizens.<sup>51</sup> The labor-related crimes on the list are limited to fraud in foreign labor contracting, involuntary servitude, trafficking, slave trade, and peonage.<sup>52</sup> These crimes are “a list of general categories of criminal activity.”<sup>53</sup> State statutes must be analogized to the federal statute in order to meet the elements of the crime.<sup>54</sup> Thus, the addition of these labor-related crimes demonstrates that Congress wanted to include labor crimes in the statute.<sup>55</sup>

After the survivor obtains the certification and applies for the U Visa, the survivor waits for their application to be adjudicated, which could take 60 months.<sup>56</sup> The adjudication process is long, with an extreme backlog.<sup>57</sup> Once the survivor receives the U Visa, the survivor must wait three years to apply for adjustment status and become a permanent resident.<sup>58</sup>

On June 14, 2021, USCIS implemented the bona fide determination (BFD) process.<sup>59</sup> The BFD process was created with the goal to conduct initial reviews of U nonimmigrant status more efficiently.<sup>60</sup> Its purpose is also to provide the U Visa petitioner with a four-year employment authorization and “deferred action while they await a final adjudication of their petition for U nonimmigrant status under the annual statutory cap.”<sup>61</sup> This is beneficial both for U Visa petitioners with pending U petitions and their qualifying family members who will also receive a

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<sup>50</sup>*I-918 Supplemental B, Nonimmigrant Certification*, U.S. CITIZEN AND IMMIGR. SERV., <https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> 72 C.F.R. 53018 (<https://www.govinfo.gov/content/pkg/FR-2007-09-17/pdf/E7-17807.pdf>).

<sup>54</sup> *Id.*

<sup>55</sup> See generally 8 U.S.C. § 1101(a)(15)(U)(i).

<sup>56</sup> *CHECK CASE PROCESSING TIMES*, U.S. CITIZEN AND IMMIGR. SERV., <https://egov.uscis.gov/processing-times/>, select form I-918 (last visited May 6, 2023).

<sup>57</sup> See *USCIS’ U Visa Program Is Not Managed Effectively and Is Susceptible to Fraud*, Office of the Inspector General, (Jan. 6, 2022) <https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-10-Jan22-Redacted.pdf>. Garcia & Brown, *supra* note 35, at 10.

<sup>58</sup> LESLYE E. ORLOFF ET AL., NAT’L IMMIGRANT WOMEN’S ADVOC. PROJECT, U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS, 22 (2021) [https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/U-T-Visa-Toolkit\\_Law-Enforcement-Prosecutor-6.15.21.pdf](https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/U-T-Visa-Toolkit_Law-Enforcement-Prosecutor-6.15.21.pdf).

<sup>59</sup> Policy Alert - Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners, 1, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf>. ASISTA, *Annotated Notes: ASISTA and ILRC Webinar on Bona Fide Determinations for U Nonimmigrant Status*, (Aug. 18, 2021), <https://asistahelp.org/wp-content/uploads/2021/09/Bona-Fide-Determination-8.18.21-webinar-notes.pdf>, (bona fide means that the “application was made in good faith, without fraud or deceit.”).

<sup>60</sup> Policy Alert - Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners, 2, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf>. *National Engagement – U Visa and Bona Fide Determination Process – Frequently Asked Questions*, U.S. CITIZENSHIP AND IMMIGR. SERV., (Sept. 23, 2021) <https://www.uscis.gov/records/electronic-reading-room/national-engagement-U-Visa-and-bona-fide-determination-process-frequently-asked-questions> [<https://perma.cc/2G8F-6752>].

<sup>61</sup> *Id.*

four-year employment authorization.<sup>62</sup> This is an instrumental change for survivors because it provides them with protection to work in the United States and not hide in the shadows.

C. *The Current Strategies for Noncitizens Who Have Experienced Wage Theft Qualify for the U Visa Crime and Their Limitations.*

Although the INA enumerates specific criminal activities,<sup>63</sup> these are general categories, which constitute a “non-exclusive list.”<sup>64</sup> These categories allow for different crimes to meet the criteria of criminal activity.<sup>65</sup> Under the relevant USCIS rule, “for a criminal activity to be deemed similar to one specified on the statutory list, the similarities must be substantial.”<sup>66</sup> Thus, attorneys can creatively advocate that their clients qualify for a U Visa if the client experienced wage theft that is *substantially similar to one of the enumerated categories of criminal activity*. Attorneys have accomplished this in various ways. The University of North Carolina School of Law Immigration & Human Rights Policy Clinic created a resource guide outlining potential strategies for attorneys.<sup>67</sup>

The National Employment Law Project created a resource guide, the *U Visas for Victims of Workplace Crime Practice Manual*, to help attorneys advocate for their clients to obtain U Visas for workplace crimes such as a wage theft.<sup>68</sup> The manual describes strategies attorneys and advocates can use to help noncitizens who have experienced qualifying criminal activity complete their applications.<sup>69</sup> For example, wage theft can be a supporting fact for involuntary servitude, peonage, or labor trafficking.<sup>70</sup> Victims must show that they suffered the following:

- (a) threats of physical, psychological, financial or reputational restraint or harm by employer that compels an individual to continue work;
- (b) threats to contact local law enforcement or immigration authorities by employer in order to compel continued work;
- (c) confiscation or withholding of identity documents, passports, or other travel documents by employer.<sup>71</sup>

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<sup>62</sup> ARIEL BROWN ET AL., IMMIGRANT LEGAL RES. CTR., OVERVIEW OF THE NEW U NONIMMIGRANT (“U VISA”) BONA FIDE DETERMINATION 3, (2021), [https://www.ilrc.org/sites/default/files/resources/u\\_nonimmigrant\\_status\\_bona\\_fide\\_determination-nov.2021-dg.ak\\_.pdf](https://www.ilrc.org/sites/default/files/resources/u_nonimmigrant_status_bona_fide_determination-nov.2021-dg.ak_.pdf).

<sup>63</sup> See I.N.A. § 101(a)(15)(U)(iii).

<sup>64</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007). (to be codified at 8 C.F.R. 214(a)(9)).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> H. ESTEBAN DIAZ ET AL., U.N.C. SCHOOL OF L. IMMIGR. & HUM. RTS. CLINIC, WAGE THEFT AND U VISAS: A GUIDE TO ANALYZING FEDERAL AND STATE CRIMES RELEVANT FOR UNDOCUMENTED WORKERS SEEKING U VISA REMEDIES, (2019), <https://law.unc.edu/wp-content/uploads/2019/10/wagetheftanduvisasguide.pdf>. See, e.g., *Complaint at 11-17*, *Montano-Perez v. Durrett Cheese Sales, Inc.*, No. 3:08-1015, 2011 WL 128793 (M.D. Tenn. Jan. 14, 2011). (Attorneys may also use litigation as a strategy for the U-Visa to be certified.)

<sup>68</sup> Cho, *supra* note 10 at 1.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 45.

<sup>71</sup> *Id.* at 45.



This is one example of noncitizens using a general category to qualify for criminal activity. The number of people who have benefitted from this strategy is unknown because USCIS does not separately track labor-related crimes.<sup>72</sup>

Another way that noncitizens can use the broad category rule is through a lawsuit against the employer and an investigation by the DOL or the EEOC. For example, in *Montano-Perez v. Durrett Cheese Sales, Inc.*, an employer denied and delayed payments to noncitizen Mexican and Mixtec<sup>73</sup> workers.<sup>74</sup> The employer berated the workers, using discriminatory and derogatory comments.<sup>75</sup> When the workers confronted their employer about their pay, the employer refused to pay their wages and threatened to call the police and ICE.<sup>76</sup> The employer subsequently called police, and the workers were arrested for trespassing.<sup>77</sup> The workers were then detained by ICE and charged with aggravated identity theft, Social Security fraud, and fraudulent use of documents,<sup>78</sup> even though they were victims of exploitation and possibly human trafficking.<sup>79</sup> In response, the workers pleaded guilty to some of the identity theft charges.<sup>80</sup> In addition, the DOL and the EEOC investigated the employer's alleged criminal activity and workplace violations, and the workers were ultimately granted U Visas because the federal agencies certified the U Visa applications based on their investigations of the employer.<sup>81</sup> But litigation is only effective if workers are brave enough to come forward and confront their employers. And the risks of such bravery include retaliation, threats, and even deportation.<sup>82</sup>

While resource guides and litigation have helped pave the way for noncitizens to receive U Visas because they experienced wage theft, these are not enough. Specifically, litigation is not enough because it generally does not create precedent for other noncitizens who could take this approach. It can also negatively impact the noncitizen who might be prosecuted for their immigration-related mistakes.<sup>83</sup> Also, resource guides are only helpful to an extent because certifying agencies have discretion whether to certify if a qualifying crime has occurred generally, and more specifically, under the facts of wage theft.<sup>84</sup> Certifying agencies might not certify the U Visa because it does not meet their discretionary standards. Furthermore, individual state statutes

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<sup>72</sup> U.S. CITIZENSHIP AND IMMIGR. SERV., TRENDS IN U VISA LAW ENFORCEMENT CERTIFICATIONS, QUALIFYING CRIMES, AND EVIDENCE OF HELPFULNESS (2020), [https://www.uscis.gov/sites/default/files/document/reports/U\\_Visa\\_Report-Law\\_Enforcement\\_Certs\\_QCAs\\_Helpfulness.pdf](https://www.uscis.gov/sites/default/files/document/reports/U_Visa_Report-Law_Enforcement_Certs_QCAs_Helpfulness.pdf).

<sup>73</sup> Mixtec refers to indigenous Mesoamerican people who reside in Oaxaca, Guerrero, and Puebla. *See, e.g., About, MIXTEC.ORG*, <https://mixtec.sdsu.edu/about.html>, (last visited Jan. 31, 2023).

<sup>74</sup> *Complaint at 11-17*, *Montano-Perez v. Durrett Cheese Sales, Inc.*, No. 3:08-1015, 2011 WL 128793, at \*1 (M.D. Tenn. Jan. 14, 2011).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Leticia Saucedo, *Immigration Enforcement Versus Law Enforcement: The Case for Integrated Protections in the Immigrant Workplace*, 38 FORDHAM URB. L.J. 303, 309 (2010).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Tanya L. Goldman, *The Labor Standards Enforcement Toolbox: Step 5: Addressing and Preventing Retaliation and Immigration-Based Threats to Workers*, 2 (Apr. 2019) [https://smlr.rutgers.edu/sites/default/files/Documents/Centers/CIWO/2019\\_addressingandpreventingretaliation.pdf](https://smlr.rutgers.edu/sites/default/files/Documents/Centers/CIWO/2019_addressingandpreventingretaliation.pdf).

<sup>83</sup> Saucedo, *supra* note 79 at 310.

<sup>84</sup> *Law Enforcement Resource Guide*, *supra* note 45, at 10.

might not necessarily mirror the federal offenses.<sup>85</sup> Overall, these approaches are discretionary and not mandatory.

Currently, the U Visa does not address the power imbalance that many noncitizens experience in the workplace.<sup>86</sup> Instead, noncitizens who experience labor-related crimes that do not qualify for U Visas are disadvantaged. For this reason, as law professor Leticia Saucedo proposes, “Congress should expand workplace-related crimes to include crimes that arise out of wage and hour violations.”<sup>87</sup> Wage theft must be added as a qualifying crime for the U Visa as protection for workers who have suffered wage theft.

## II. Adding Wage Theft as a Qualifying Crime For a U Visa Would Create a Mechanism to Combat this Crime and Better Protect Noncitizens.

Adding wage theft as a qualifying crime in the U Visa would help noncitizen workers to seek justice and stand up against abusive employers—and would penalize employers for criminal actions. Noncitizens’ unprotected status makes them vulnerable to wage theft. Noncitizen workers “perform some of America’s lowest-paying, arduous jobs, and are among those most victimized by employers failing to pay them fairly.”<sup>88</sup> First, I will provide a brief explanation of wage theft and how noncitizens are protected under the Fair Labor Standards Act (FLSA). Second, I will discuss noncitizens’ vulnerability to wage theft. Third, I will provide reasons why wage theft should be added as a qualifying crime in the U Visa.

### A. *Wage Theft Defined and How the Fair Labor Standards Act Protects Noncitizens from Wage Theft.*

The basic concept of wage theft is an employer stealing an employee’s wages.<sup>89</sup> The common forms of stealing wages are “(1) paying less than the minimum, promised, or overtime wage; (2) taking unauthorized deductions from a worker’s pay; or (3) failing to pay for all hours worked.”<sup>90</sup> Wage theft is a pervasive crime that affects workers regardless of their immigration status.<sup>91</sup> According to a National Employment Law Project report, in 2019, about \$9.27 billion was stolen from workers who earned less than \$13 per hour.<sup>92</sup> However, this \$9.37 billion figure is not an accurate representation because many workers do not file a claim to recover stolen wages.<sup>93</sup>

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<sup>85</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007). (to be codified at 8 C.F.R. 214(a)(9)).

<sup>86</sup> See generally Saucedo, *supra* note 79.

<sup>87</sup> *Id.* at 321.

<sup>88</sup> Susan Ferriss & Joe Yerardi, *Wage Theft Hits Immigrants – Hard*, PBS NEWS HOUR (Oct. 14, 2021, 4:28 PM), <https://www.pbs.org/newshour/economy/wage-theft-hits-immigrants-hard> [<https://perma.cc/9ZGH-AHUV>].

<sup>89</sup> Anthony Damelio, *Note, Making Wage Theft Costly: District Attorneys and Attorneys General Enforcing Wage and Hour Law*, 49 FORDHAM URB. L.J. 110 (2021).

<sup>90</sup> Jennifer J. Lee & Annie Smith, *Regulating Wage Theft*, 94 WASH. L. REV. 759, 765 (2019).

<sup>91</sup> *Id.* at 767, 768.

<sup>92</sup> Hugh Baran & Elisabeth Campbell, *Forced Arbitration Helped Employers Who Committed Wage Theft Pocket \$9.2 Billion in 2019 From Workers in Low-Paid Jobs*, Nat’l Emp. L. Project, 1, <https://s27147.pcdn.co/wp-content/uploads/Data-Brief-Forced-Arbitration-Wage-Theft-Losses-June-2021.pdf>.

<sup>93</sup> IHNA MANGUNDAYAO ET AL., ECON. POL’Y INST., MORE THAN \$3 BILLION IN STOLEN WAGES RECOVERED FOR WORKERS BETWEEN 2017 AND 2020, at 4. (2021), <https://www.epi.org/publication/wage-theft-2021/>.

Under the FLSA, U.S. citizens and noncitizen workers must be paid minimum wage<sup>94</sup> and overtime.<sup>95</sup> The FLSA defines wage theft under the penalties employers will face if they engage in wage theft. The FLSA states that “employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalty of up to \$1,000 for each such violation.”<sup>96</sup>

*a. Noncitizen Workers are Vulnerable to Wage Theft Because they are Defenseless to Retaliation, Lack English Language Ability/Fluency, and Gender Can Play a Role.*

Many employers exploit noncitizens’ labor. Employers intentionally take advantage of noncitizen workers because these workers are less likely to report crimes like wage theft.<sup>97</sup> The power imbalance between employers and noncitizen workers creates a relationship vulnerable to abuse and coercive power.<sup>98</sup> Certain factors make noncitizens more susceptible to wage theft: retaliation, lack of English language ability/fluency, and gender.

There are often large power differentials between employers and noncitizen workers.<sup>99</sup> Employers may see noncitizen workers as “complacent and subservient, and ... more willing to accept employer control.”<sup>100</sup> Part of this perception of noncitizens as “complacent” may be because they fear retaliation if they stand up against an employer and report abuse.<sup>101</sup> Employers violate anti-retaliation laws that protect noncitizen workers.<sup>102</sup> Retaliation against noncitizen workers who report wage theft often looks like “decreased hours and pay, increased workloads, termination,” and reporting them to immigration authorities.<sup>103</sup> Fear of deportation hangs over many noncitizens, especially those who do not have legal status or lack the proper documentation to work in the United States.<sup>104</sup> Furthermore, retaliation can take the form of verbal abuse and blacklisting the worker.<sup>105</sup> The need to provide for themselves and their families drives noncitizens to work under conditions where an employer continues to steal their wages.<sup>106</sup>

Limited English proficiency can also increase noncitizen workers’ vulnerability to wage theft.<sup>107</sup> Often, employers do not “comply with posting and mandatory disclosure requirements of labor laws.”<sup>108</sup> Employers are required to display minimum wage posters.<sup>109</sup> If they do comply,

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<sup>94</sup> 29 U.S.C. § 206(a).

<sup>95</sup> 29 U.S.C. § 207(b).

<sup>96</sup> 29 U.S.C. § 216 (b). *See also Fair Labor Standards Act Advisor*, U.S. DEP’T OF LABOR, <https://webapps.dol.gov/elaws/whd/flsa/screen74.asp> [<https://perma.cc/X6XD-N9PK>].

<sup>97</sup> *Id.*

<sup>98</sup> Eunice Hyunhye Cho et al., *A New Understanding of Substantial Abuse: Evaluating Harm in U Visa Petitions for Immigrant Victims of Workplace Crime*, 29 GEO. IMMIGR. L.J. 1, 35 (2014).

<sup>99</sup> *Id.* at 27.

<sup>100</sup> *Id.* at 31.

<sup>101</sup> *Id.* at 29.

<sup>102</sup> Lee & Smith, *supra* note 90 at 790.

<sup>103</sup> *Id.* at 770.

<sup>104</sup> *See* Cho, *supra* note 98 at 15.

<sup>105</sup> *Id.* at 33; blacklisting is the “practice of actively preventing someone from getting a job.” Milly Christmann, *Blacklisting*, EDDY, HR ENCYCLOPEDIA, <https://eddy.com/hr-encyclopedia/blacklisting/> (last visited Feb. 3, 2023).

<sup>106</sup> Cho, *supra* note 98 at 26.

<sup>107</sup> *Id.* at 23.

<sup>108</sup> *Id.*

<sup>109</sup> 29 C.F.R. § 516.4. *See generally Workplace Posters*, U.S. DEP’T OF LAB., <https://www.dol.gov/general/topics/posters> (last visited Mar. 2, 2023).

employers usually do not translate the poster for noncitizens workers to understand their rights in their native language because they do not have to unless it meets one of the exceptions.<sup>110</sup> Because of the lack of translation and accessible language to the law, noncitizen workers do not know their rights and how to fight against the abusive practice of wage theft.<sup>111</sup> For example, a study conducted on immigrant restaurant workers in the Chinatown District of San Francisco showed that about 65% of the observed restaurants failed to comply with any of the posting requirements for worker's compensation, the city's minimum wage, and paid sick leave laws.<sup>112</sup> Of the few restaurants that complied with the posting requirements, 27% only had English versions posted, even though the neighborhood is primarily Chinese.<sup>113</sup> Employers take advantage of language barriers, increasing immigration susceptibility to wage theft.<sup>114</sup>

Gender also plays a role in noncitizen workers' vulnerability to wage theft.<sup>115</sup> There are 2.5 million noncitizen women in the U.S. workforce<sup>116</sup> and are more likely to experience wage theft than men.<sup>117</sup> In 2008, 4,387 workers in low-wage industries were surveyed in Chicago, Los Angeles, and New York; of these, approximately 39% were undocumented.<sup>118</sup> The study found that the "higher minimum wage violation rate for foreign-born respondents was concentrated among women—especially women who are unauthorized immigrants."<sup>119</sup> Despite their contribution to the workforce, noncitizen women experience "particular invisibility" with wage theft.<sup>120</sup> Due in part to this "invisibility," noncitizen women tolerate wage theft because they fear deportation, sexual harassment, and sexual assault by male co-workers and supervisors.<sup>121</sup>

Furthermore, noncitizens' cultural narratives may increase vulnerability to wage theft.<sup>122</sup> Professor Llezlie Green Coleman engages in a cultural narrative analysis that shows the subordination of undocumented Latina workers and how it can leave them vulnerable to wage

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<sup>110</sup> *Frequently asked questions*, <https://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=546&topicid=17&subtopicid=199>. See also *Executive Order 13496: Notification of Employee Rights Under Federal Labor Laws*, U.S. DEP'T OF LAB, <https://www.dol.gov/agencies/olms/poster/labor-rights-federal-contractors>.

<sup>111</sup> Charlotte S. Alexander, *Workplace Information Forcing: Constitutionality and Effectiveness* 53 Am. Bus. L. J. 1, 25, 31 (2016).

<sup>112</sup> Meredith Minkler et al., *Wage Theft as a Neglected Public Health Problem, An Overview and Case Study from San Francisco's Chinatown District*, 104 AM. J. PUB. HEALTH 1010, 1013 (2014) ("First, only 35% of the 106 restaurants observed had any of the 3 labor law signs of concern posted, including minimum wage law and paid sick leave signage.").

<sup>113</sup> *Id.*

<sup>114</sup> *Winning Wage Justice*, NAT'L EMP. L. PROJECT, 50, <https://www.nelp.org/wp-content/uploads/2015/03/WinningWageJustice2011.pdf>.

<sup>115</sup> Nicole Taykhman, *Defying Silence: Immigrant Women Workers, Wage Theft, and Anti Retaliation Policy in the States*, 32 COLUM. J. GENDER & L. 96, 103 (2016).

<sup>116</sup> Sofia Carratala et al., *A Profile of Immigrant Women in the Workforce*, <https://www.americanprogress.org/article/profile-immigrant-women-workforce/>.

<sup>117</sup> Llezlie Green Coleman, *Exploited at the Intersection: A Critical Race Feminist Analysis of Undocumented Latina Workers and the Role of the Private Attorney General*, 22 VA. J. SOC. POL'Y & L. 397, 403 (2015).

<sup>118</sup> Taykhman, *supra* note 115 at 102-103.

<sup>119</sup> Bernhardt, *supra* note 8 at 5.

<sup>120</sup> Taykhman, *supra* note 115 at 103.

<sup>121</sup> *Immigrant Women, Backbone of U.S. Food Industry, Targets for Wage Theft, Sexual Harassment and Other Abuses New SPLC Report Finds*, S. POVERTY L. CTR., <https://www.splcenter.org/news/2010/11/16/immigrant-women-backbone-us-food-industry-targets-wage-theft-sexual-harassment-and-other> (Nov. 16, 2010).

<sup>122</sup> Green Coleman, *supra* note 117 at 408-09.

theft.<sup>123</sup> The first cultural narrative is valuing “deference to male authority figures in [Latina workers’] families and communities.”<sup>124</sup> For example, a husband and wife work in the same workplace.<sup>125</sup> Instead of receiving her own check, the wife is paid through her husband’s paycheck.<sup>126</sup> This makes it difficult for the wife to differentiate her earnings, such as “determine her hourly rate of pay, whether she received overtime compensation, or whether she received payment for all of her hours worked.”<sup>127</sup> Another cultural narrative is self-abnegation, where Latinas must be pure and passive.<sup>128</sup> This narrative makes Latinas vulnerable to wage theft because of a belief that it is better to keep quiet about the wage theft than to complain or cause any trouble.<sup>129</sup> The third cultural narrative is that the Latina is the protector and foundation of the family.<sup>130</sup> This narrative makes Latinas vulnerable to wage theft because it may prompt them to prioritize the family’s needs and avoid taking risks that could bring hardships to the family.<sup>131</sup> Gender roles create another layer of vulnerability to wage theft because of physical violence, fear, and cultural expectations.<sup>132</sup>

For all of these reasons, noncitizen workers are often at risk for wage theft. Wage theft is a significant crime that noncitizen workers face in abusive workplaces, and it must be stopped.<sup>133</sup> Identifying these vulnerabilities allows us to recognize better why employers continue to perpetuate wage theft.

b. *Wage Theft Must be Added as a Qualifying Crime in the U Visa.*

Adding wage theft as a qualifying crime for U Visa certification would encourage noncitizen workers to cooperate with enforcement agencies who will investigate the crime and it may encourage workers to testify against their employers.<sup>134</sup> Noncitizens disproportionately work in low-wage jobs and unsafe conditions.<sup>135</sup> Noncitizens are particularly vulnerable to employers’ abusive practice of cheating them on their wages.<sup>136</sup> Employers need to be held accountable for abusive practices when they are bad actors who continue this injustice of taking away someone’s hard-earned money. Because noncitizen workers are more likely to experience labor exploitation than citizen workers,<sup>137</sup> they are integral to reporting wage theft.

Noncitizens reporting wage theft to agencies such as the DOL, EEOC, and local labor-related agencies will help hold employers accountable, enforce labor laws, and strengthen worker

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<sup>123</sup> *Id.* at 409.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 410.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 411.

<sup>129</sup> *Id.* at 411-12.

<sup>130</sup> *Id.* at 412.

<sup>131</sup> *Id.* at 414.

<sup>132</sup> See also Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989) (discussing how race, class, gender, and other individual characteristics intersect).

<sup>133</sup> Green Coleman, *supra* note 117 at 428.

<sup>134</sup> Alejandro N. Mayorkas, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, 2, <https://aboutblaw.com/ZZ3>.

<sup>135</sup> Cho et al., *supra* note 98 at 4.

<sup>136</sup> *Id.* at 26.

<sup>137</sup> Kara Takasaki et al., *Wage Theft and Work Safety: Immigrant Day Labor Jobs and the Potential for Workers Rights Training at Worker Centers*, 25 J. OF LAB. AND SOC’Y 237, 240 (2022).

protections. However, noncitizen workers may report wage theft in more significant numbers if they have protection from one of the feared consequences of reporting—deportation. For this reason, wage theft must be included as a qualifying crime for U Visa certification.

Adding wage theft in the U Visa Certification would better effectuate Congress’s goal of strengthening enforcement, investigation, and prosecution of offending employers. Ultimately, all workers benefit from reporting wage theft because they can collectively stand up against their employers and create new protections. New protections may look like an increase of the number of DOL and EEOC investigators, and passing local and federal laws to increase civil penalties or even implement criminal prosecution.<sup>138</sup> This would help DOL, EEOC, and local labor-related agencies to deter employers from committing wage theft, better enforce regulations, and penalize employers when they violate the law.<sup>139</sup>

Wage theft violates noncitizen workers’ rights to compensation.<sup>140</sup> Wage theft does not happen to one single person but millions of workers.<sup>141</sup> If noncitizens are afforded better protection, they will likely expose abusive practices. The number of complaints made to agencies like the DOL and the EEOC may help to strengthen the enforcement of workplace laws and regulations.<sup>142</sup>

### **III. Access to Information Within the Department Of Labor and The Equal Employment Opportunity Commission is Vital to the Proposal of Adding Wage Theft as a Qualifying Crime in the U Visa Certification.**

Access to information about the U Visa protocols for the DOL and the EEOC is a critical component of this proposal to add wage theft as a qualifying criminal activity. The DOL and EEOC are designated as certifying agencies, responsible for investigating a qualifying crime or criminal activity.<sup>143</sup> Both agencies have specific protocols on how petitioners may request a U Visa certification.<sup>144</sup> However, the process is complicated. The DOL and EEOC websites are challenging to navigate to find relevant process information. Another difficulty is getting into contact with a certifying officer.<sup>145</sup> It is important for petitioners to have access to these agencies because when they file complaints about the labor crime they experienced they want to be informed and once the investigation is over then they are able to certify the U-Visa.

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<sup>138</sup> Mangundayao, *supra* note 93 **Error! Bookmark not defined.**at 8-10.

<sup>139</sup> See U.S. Department of Labor, National Labor Relations Board, U.S. Equal Employment Opportunity Commission Align to End Retaliation, Promote Workers’ Rights, <https://www.eeoc.gov/newsroom/us-department-labor-national-labor-relations-board-us-equal-employment-opportunity>. See also TERRI GERSTEIN, ECON. POL’Y INST. HOW DISTRICT ATTORNEYS AND STATE ATTORNEYS GENERAL ARE FIGHTING WORKPLACE ABUSES (2021), <https://www.epi.org/publication/fighting-workplace-abuses-criminal-prosecutions-of-wage-theft-and-other-employer-crimes-against-workers/>.

<sup>140</sup> Felsen & Smith, *supra* note 6.

<sup>141</sup> Mangundayao, *supra* note 93 at 2.

<sup>142</sup> Amanda M. Grittner and Matthew S. Johnson, *Complaint-Driven Enforcement of Labor Regulations*, 40, [https://www.terry.uga.edu/sites/default/files/inline-files/grittner\\_johnson\\_complaints\\_08-17-20\\_1.pdf](https://www.terry.uga.edu/sites/default/files/inline-files/grittner_johnson_complaints_08-17-20_1.pdf).

<sup>143</sup> 8 C.F.R. § 214.14(a)(2).

<sup>144</sup> See *Department of Labor and U and T Visa Process and Protocols Question – Answer, Question 4*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/u-t-visa/faq> [<https://perma.cc/UYQ6-C7L4>]. See also *EEOC Procedure: Requesting EEOC Certification for U Nonimmigrant Classification (U Visa) Petitions in EEOC Cases*, U.S. Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-u-visa-petitions-eeoc>.

<sup>145</sup> *Id.*

*A. The Department of Labor and the Equal Employment Opportunity Commission are Certifying Agencies for the U Visa and are Essential to the Addition of Wage Theft as a Clarifying Crime.*

The DOL and EEOC receive complaints made by workers and investigate the complaints.<sup>146</sup> The DOL conducts investigations to determine whether an employer has violated federal laws that set the basic labor standards.<sup>147</sup> The DOL can issue citations, civil penalties, and in some cases pursue criminal prosecution.<sup>148</sup> The EEOC investigates complaints of “of job discrimination based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (40 or older), or genetic information.”<sup>149</sup> The EEOC can issue citations and civil penalties.<sup>150</sup> These agencies have a slight difference when they certify the U Visa for petitioners who are victims of a labor-related crime.<sup>151</sup>

Under the DOL, the Wage and Hour Division has the authority investigate the noncitizens complaint to determine if there is a qualifying crime and then to complete U Visa certification.<sup>152</sup> A U Visa request can be made if the complaint is current or completed with the Wage and Hour Division investigation or it is concurrent with a division complaint.<sup>153</sup> The Wage and Hour Division is responsible for “enforcing some of the nation’s most comprehensive federal labor laws, including the minimum wage, overtime pay, child labor, the employment of persons with disabilities, family and medical leave, the employment of temporary or seasonal migrant workers, and prevailing wages for government service and construction contracts.”<sup>154</sup> The division investigates minimum wage and overtime violations, but does not investigate violations of

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<sup>146</sup> See *Fact Sheet #44 Visit to Employers*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/fact-sheets/44-flsa-visits-to-employers>. See also *Frequently Asked Questions*, U.S. Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/youth/frequently-asked-questions>.

<sup>147</sup> *Id.* (These laws include the Fair Labor Standards Act; the Family and Medical Leave Act; the Migrant and Seasonal Agricultural Worker Protection Act; the Field Sanitation Standards of the Occupational Safety and Health Act; the Employee Polygraph Protection Act; certain employment standards and worker protections under the Immigration and Nationality Act; government contracts prevailing wage statutes such as the Davis-Bacon and related Acts and the McNamara-O’Hara Service Contract Act; and garnishment provisions of the Consumer Credit Protection Act.)

<sup>148</sup> *Id.*

<sup>149</sup> See *About the EEOC*, U.S. Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/youth/about-eeoc-2#:~:text=EEOC%20investigates%20complaints%20of%20job,action%20to%20stop%20the%20discrimination>.

<sup>150</sup> See also *Frequently Asked Questions*, U.S. Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/youth/frequently-asked-questions>.

<sup>151</sup> See *Department of Labor and U and T Visa Process and Protocols Question – Answer, Question 4*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/u-t-visa/faq> [<https://perma.cc/UYQ6-C7L4>]. See also *EEOC Procedure: Requesting EEOC Certification for U Nonimmigrant Classification (U Visa) Petitions in EEOC Cases*, U.S. Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-u-visa-petitions-eeoc> [<https://perma.cc/2HL5-DPC3>].

<sup>152</sup> See *Department of Labor U and T Visa Process and Protocols Question – Answer, Question 4*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/u-t-visa/faq> [<https://perma.cc/UYQ6-C7L4>]. See also *Field Assistance Bulletin No. 2011-1*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2011-1>

<sup>153</sup> See *Field Assistance Bulletin No. 2011-1*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2011-1>.

<sup>154</sup> See *Department of Labor U and T Visa Process and Protocols Question – Answer, Question 4*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/u-t-visa/faq> [<https://perma.cc/UYQ6-C7L4>]. See also *Field Assistance Bulletin No. 2011-1*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2011-1>.

qualifying criminal activities per se.<sup>155</sup> The certification process for qualifying crimes under the DOL is delegated to five regional administrators, assisted by regional coordinators.<sup>156</sup> A regional coordinator usually interviews the petitioner to determine whether “the request meets the requisite factors identified to consider certification.”<sup>157</sup> The DOL also complies with the division’s standard complaint policy for their minimum wage or overtime complaint.<sup>158</sup> If the regional administrator determines that the petitioner meets the requirement for a qualifying crime, the DOL will complete the certification. The noncitizen is responsible to complete the U-Visa application and send it to USCIS.

The EEOC is responsible for “enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.”<sup>159</sup> The EEOC delegates the U Visa certification to a regional attorney, who will assess whether the petitioner has been a victim of a qualifying crime and their helpfulness, to include an interview with the petitioner.<sup>160</sup> If the regional attorney determines that the petitioner meets the requirements for the U Visa certification, the regional attorney will recommend certification to the EEOC Office of General Counsel.<sup>161</sup> The General Counsel will review the petitioner’s claim and applicable criminal law and make a determination on the certification.<sup>162</sup> If the General Counsel determines that EEOC should act as the certifying agency, the General Counsel will notify and designate the regional attorney as the certifying official.<sup>163</sup> Once the I-918B is signed, it is the noncitizen’s responsibility to submit the U-Visa to USCIS.

The DOL and EEOC have similar protocols for the I-918 certification process. However, the inability to access information about the U-Visa certification process makes an already-complicated process more difficult.

### *B. Access to Information About the U Visa Certification is Critical to Ensure the Effectiveness of Certifying the U Visa for Wage Theft.*

Access to information is important in creating this proposal of adding wage theft to the U Visa certification. The DOL and EEOC websites are challenging to navigate and find information, and their workforce is often understaffed to meet the demand of complaints that can hinder the U

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<sup>155</sup> *Id.*

<sup>156</sup> See *Department of Labor U and T Visa Process and Protocols Question – Answer, Question 5*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/u-t-visa/faq> (last visited Feb. 5, 2023).

<sup>157</sup> See *Department of Labor U and T Visa Process and Protocols Question – Answer, Question 10*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/u-t-visa/faq> [<https://perma.cc/3CHZ-PBVS>].

<sup>158</sup> *Id.*

<sup>159</sup> *Overview*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/overview> [<https://perma.cc/LBU9-V2NG>].

<sup>160</sup> *EEOC Procedures: Requesting EEOC Certification for U Nonimmigrant Classification (U Visa) Petitions in EEOC Cases*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-U-Visa-petitions-eeoc> [<https://perma.cc/G34E-B6T5>].

<sup>161</sup> *Id.*

<sup>162</sup> *EEOC Procedures: Requesting EEOC Certification for U Nonimmigrant Classification (U Visa) Petitions in EEOC Cases*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-U-Visa-petitions-eeoc> [<https://perma.cc/G34E-B6T5>].

<sup>163</sup> *Id.*



Visa certification for noncitizens.<sup>164</sup> For petitioners to benefit, DOL and EEOC should make a few improvements: The DOL should translate its information into more languages and hire more staff dedicated to U Visa certification; the EEOC should improve its website and include direct access to relevant immigration information.

Even though EEOC is a certifying agency for U Visa petitions, the EEOC website does not have a section or page with information on immigration relief. The EEOC website provides information on how a worker can file a complaint against an employer, including how to file a complaint for sex discrimination, national origin discrimination, and race/color discrimination through the agency.<sup>165</sup> The information about immigration services that EEOC provides, such as U Visa certification as a result of workplace violations, is not available through website navigation—only if the user utilizes the search engine. This lack of information about immigration relief is a barrier to petitioners because they will have a more challenging time getting information about the U Visa certification process—including that it exists and that EEOC is a certifying agency—and whom they need to contact or how to submit a request. The EEOC should consider improving the usability of its main page related to sources for immigration. More prominent placement of the information on the EEOC website will allow petitioners to navigate and find the information more quickly.<sup>166</sup> EEOC should make it clear to noncitizens that they have information about immigration and potential immigration relief.

The DOL needs to translate its Wage and Hour Division website section to additional languages, so that it is accessible to more people. The Wage and Hour Division section provides information only in English and Spanish for its main page, unlike the EEOC, which has an option to read its information in several different languages.<sup>167</sup> Language access, within the context of immigration, is the ability “for noncitizens to engage in immigration processes in their primary language.”<sup>168</sup> Language access provides petitioners with information and gives context to the process for U Visa certification and their expectations of the process.<sup>169</sup> Language access

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<sup>164</sup> Department of Labor Fiscal Year 2023 Budget Request, *C-Span*, <https://www.c-span.org/video/?520323-1/department-labor-fiscal-year-2023-budget-request&live=>. See also Paige Smith & Jaclyn Diaz, *White House’s EEOC Cut Plan Highlights Dwindling Workforce*, BL (Feb. 27, 2020, 8:00 AM), <https://news.bloomberglaw.com/daily-labor-report/white-houses-eeoc-staff-cut-plan-highlights-dwindling-workforce>.

<sup>165</sup> U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/> [<https://perma.cc/XM23-TG5T>] [hereinafter *EEOC Main Page*]. See also, *How to File a Charge of Employment Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/how-file-charge-employment-discrimination>. The EEOC provides information about the other discriminations that employees may face including national origin discrimination, race/color discrimination, and sexual orientation/gender discrimination.

<sup>166</sup> For a discussion of website navigation design, see, e.g., Dreamkatcha, *The Importance of Website Usability*, <https://dreamkatcha.com/importance-website-usability/> (last visited Feb. 5, 2023); U.S. Web Design System, *Design Principles*, <https://designsystem.digital.gov/design-principles/>.

<sup>167</sup> *Wage and Hour Division*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd> [<https://perma.cc/2XLP-QDKQ>] (Languages include Español; العربية (Arabic); 中国人 (Chinese); Ayisyen (Haitian); हिंदी (Hindi); Hmoob (Hmong); 한국어 (Korean); नेपाली (Nepali); Polskie (Polish); Português (Portuguese); ਪੰਜਾਬੀ (Punjabi); Русский (Russian); Faasamoa (Samoan); Soomaali (Somali); Tagalog; ไทย (Thai); اردو (Urdu); and, Tiếng Việt (Vietnamese)).

<sup>168</sup> Cristobal Ramon & Lucas Reyes, *Language Access in the Immigration System*, BIPARTISAN POLICY CENTER (Sept. 18, 2020) <https://bipartisanpolicy.org/blog/language-access-in-the-immigration-system-a-primer/>.

<sup>169</sup> *Id.*

empowers petitioners to understand that they had their wages stolen and to report their employers for these actions.<sup>170</sup>

The EEOC and DOL's Wage and Hour Division should hire more staff to provide information and conduct investigations for the U Visa certification.<sup>171</sup> The Wage and Hour Division has been understaffed.<sup>172</sup> In the first quarter of 2022, the Wage and Hour Division had lost about 25% of its investigators.<sup>173</sup> This trend is also happening in the EEOC, where they are understaffed.<sup>174</sup> Staffing issues impact petitioners because this delays noncitizens' investigation,<sup>175</sup> which in turn causes a delay on their U Visa certifications and questions about the process go unanswered.

The EEOC and DOL are essential agencies for victims of labor-related crimes such as wage theft. The addition of wage theft as a qualifying crime for U Visas could result in a significant influx of U Visa certification requests to these agencies as noncitizens who file a complaint often need immigration relief. The information that the EEOC and DOL provide is essential for noncitizens to seek immigration relief and understand the process. Thus, information about the U Visa certification and the roles of these agencies is important for petitioners to know.

#### **IV. Shortfalls and Criticism for Adding Wage Theft as a Qualifying Crime in The U Visa**

This section will address the potential critiques to adding wage theft as a qualifying crime in the U Visa. The U Visa is only a tool to protect survivors and for them to gain status; it is not the solution. In this section, I will highlight several critiques about expanding the U Visa to cover wage theft: (1) the backlog of U Visa applications; (2) recognition that the U Visa is not a solution to wage theft but rather an incentive for survivors to report wage theft; (3) the U Visa is an individualized process; (4) perpetuation of the "good" vs. "bad" immigrant rhetoric; and (5) the potential to re-victimize survivors.

First, the U Visa is capped at 10,000 per year, which has created a backlog and delays.<sup>176</sup> Because of the cap on the U Visa, the path to "legalization is too limited to impact the number of

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<sup>170</sup> See generally Abigail Hylton, Note, *Ballots in an Unfamiliar Language and Other Things That Make No Sense: Interpreting How the Voting Rights Act Undermines Constitutional Rights for Voters With Limited English Proficiency*, 30 WM. & MARY BILL OF RTS. J. 505 (2021).

<sup>171</sup> Department of Labor Fiscal Year 2023 Budget Request, *C-Span*, <https://www.c-span.org/video/?520323-1/department-labor-fiscal-year-2023-budget-request&live=>. See also, *Fiscal Year 2023 Congressional Budget Justification*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/fiscal-year-2023-congressional-budget-justification>.

<sup>172</sup> See Rebecca Rainey, *Wage-Hour Investigator Hiring Plans Signal DOL Enforcement Drive*, BL (Jan. 28, 2022, 10:30 AM), <https://news.bloomberglaw.com/daily-labor-report/wage-hour-investigator-hiring-plans-signal-dol-enforcement-drive>. See also, Rebecca Rainey, *Low Morale at Labor's Wage and Hour Shrinks Investigative Ranks*, BL (May 11, 2022, 5:15 AM), <https://news.bloomberglaw.com/daily-labor-report/low-morale-at-labors-wage-and-hour-shrinks-investigative-ranks>.

<sup>173</sup> *Id.*

<sup>174</sup> See *Fiscal Year 2023 Congressional Budget Justification, VI.C.1 Litigation*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/fiscal-year-2023-congressional-budget-justification> ("In FY 2022, the agency plans to hire additional attorneys, and to backfill any FY 2021 staff losses.").

<sup>175</sup> See Rainey *supra* note 172. See also Paige Smith & Jaclyn Diaz, *White House's EEOC Cut Plan Highlights Dwindling Workforce*, BL (Feb. 27, 2020, 8:00 AM), <https://news.bloomberglaw.com/daily-labor-report/white-houses-eeoc-staff-cut-plan-highlights-dwindling-workforce>.

<sup>176</sup> See 8 U.S.C. § 1184(p)(2)(A). See Joshua Rodriguez, *A Broken System: How the U Visa Program is Endangering Those It Was Meant to Protect* (March 21, 2022), <https://www.niskanencenter.org/a-broken-system-how-the-u-visa-program-is-endangering-those-it-was-meant-to-protect/>.

affected victims.”<sup>177</sup> Between 2011–2021, the backlog was over 170,000 applications, which continues to grow yearly.<sup>178</sup> The expansion of a qualifying crime would likely exacerbate that backlog. To solve this problem, Congress can increase the cap and fulfill the original intent of the U Visa to protect those who have cooperated with the enforcement agencies.<sup>179</sup> The backlog should not be the reason to deny protection to survivors who suffered from criminal activity. Justice delayed for many people does not mean justice should be denied to noncitizen workers.

Second, the expansion of the U Visa would not resolve the pervasive nature of wage theft. However, the number of complaints may create an urgency to create new policies, laws, and funding to investigating agencies.<sup>180</sup> To reemphasize, close to 40% of noncitizen workers have experienced wage theft in their workplace.<sup>181</sup> If each noncitizen is empowered to stand up against their employer and report them, it could create a real impact on reducing wage theft. Not only will noncitizens benefit from reporting wage theft, but citizens will benefit because such complaints could create better work standards and provide more ways to penalize bad employers.<sup>182</sup> There could be provisions in the state and federal level that penalize bad employers in civil and criminal grounds.<sup>183</sup> Also, it may provide the impetus for state legislatures and Congress to allocate additional funding to agencies who investigate these claims.<sup>184</sup>

A third critique is that the U Visa is an individualized process because certifying agencies review each survivor’s application and attest to their willingness to cooperate individually.<sup>185</sup> This is a barrier because certifying agencies may only select a few survivors to testify or provide information about an employer’s abusive practice of wage theft.<sup>186</sup> The survivors who do not cooperate with certifying agencies do not receive the benefit of the U Visa. Leticia Saucedo, a law professor at University of California, Davis, School of Law and an expert in employment, labor, and immigration law,<sup>187</sup> proposes that the certifying agencies identify a class of workers where “the agencies would act on a presumption that class members were willing to cooperate in the investigation or prosecution of a given violation and its underlying criminal activity.”<sup>188</sup> This class designation would allow for efficiency, encourage cooperation through the class of workers, support the claims against the employer, and systematically address abusive labor practices such as wage theft.<sup>189</sup> This proposal will solve the individualized process of the U Visa by allowing workers to testify against their employers as a collective.

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<sup>177</sup> Leticia M. Saucedo, *A New U Organizing Victims and Protecting Immigrant Workers*, 42 U. RICH. L. REV. 891, 948 (2008).

<sup>178</sup> Joshua Rodriguez, *A Broken System: How the U Visa Program is Endangering Those It Was Meant to Protect* (March 21, 2022), <https://www.niskanencenter.org/a-broken-system-how-the-u-visa-program-is-endangering-those-it-was-meant-to-protect/>.

<sup>179</sup> Saucedo, *supra* note 177 at 948.

<sup>180</sup> *Id.*

<sup>181</sup> Bernhardt, *supra* note 8 at 42.

<sup>182</sup> See U.S. Department of Labor, National Labor Relations Board, U.S. Equal Emp. Opportunity Comm’n Align to End Retaliation, Promote Workers’ Rights, <https://www.eeoc.gov/newsroom/us-department-labor-national-labor-relations-board-us-equal-employment-opportunity>.

<sup>183</sup> Mangundayao, *supra* note 93 at 9-10.

<sup>184</sup> *Id.*

<sup>185</sup> Saucedo, *supra* note 177 at 946.

<sup>186</sup> *Id.* at 944.

<sup>187</sup> Leticia Saucedo, U.C. DAVIS SCHOOL OF LAW, <https://law.ucdavis.edu/people/leticia-saucedo> (last visited Nov. 17, 2022).

<sup>188</sup> Saucedo, *supra* note 177 at 947.

<sup>189</sup> *Id.*

A fourth critique is that the U Visa perpetuates the “good immigrant” versus “bad immigration” rhetoric. The “good immigrant” is viewed as “hard working and came to the United States in search of the American Dream.”<sup>190</sup> The “bad immigrant” represents “all of the American public’s fears regarding poor, troubled, or criminal immigrants.”<sup>191</sup> This rhetoric of the “good immigrant” vs. “bad immigrant” is detrimental to noncitizens. Often noncitizens who do not fit the “good immigrant” narrative are considered unworthy and are not credible in their U Visa application when the USCIS officer reviews it.<sup>192</sup> Another reason why this rhetoric is detrimental is that “[W]e are conditioned to stop caring about immigrants as soon as they pose *any* risk . . . .”<sup>193</sup> This rhetoric makes it difficult for noncitizens who experience wage theft because they may be perceived to lack credibility or trustworthiness. Noncitizens do not need to be viewed through this lens. Noncitizens are hardworking individuals. There are about 7.6 million noncitizens in the U.S. workforce<sup>194</sup> and they contribute about \$11.74 billion to the economy.<sup>195</sup> Noncitizens should be paid their wages that they have earned.

Finally, many noncitizens are re-victimized through the process of applying for a U Visa.<sup>196</sup> The U Visa requires a declaration and gathering of medical and/or psychological evidence to prove that the crime harmed the noncitizen.<sup>197</sup> This process pressures noncitizens to magnify the abuse and downplay their resilience.<sup>198</sup> At the same time, however, noncitizens may feel empowered because they stand up to their abusive employer and feel like they helped end abusive practices.<sup>199</sup>

These are valid criticisms. The proposal of adding wage theft in the U Visa certification is only a small bandage on the more significant problem at hand, which is the exploitation of noncitizen workers’ low-wage labor. However, I believe this is the first step to help identify and protect workers through the immigration context specifically.

## Conclusion

Every day, employers steal workers’ wages.<sup>200</sup> Wage theft happens to workers regardless of status. Noncitizens, particularly women and non-English speakers, are more vulnerable to wage theft and often have fewer defenses because of their status. The U Visa may be a vital tool for noncitizens to expose wage theft’s harmful and abusive practice. It creates leverage for workers to

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<sup>190</sup> Taykhman, *supra* note 115 at 131.

<sup>191</sup> This was also perpetuated by President Obama’s “felons, not families” deportation policy. See President Barack Obama, Remarks by the President in Address to the Nation on Immigration (Nov. 20, 2014) (transcript available in the White House Office of the Press Secretary).

<sup>192</sup> 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, 211 (2012).

<sup>193</sup> Sophia DenUyl, Note, *The Particular Harms of the “Good Immigrant” Versus “Bad immigrant” Construction on Black Immigrants in the United States*, 36 GEO. IMMIGR. L.J. 755, 763 (2022).

<sup>194</sup> Abby Budiman, *Key Findings About U.S. immigrants*, PEW RSCH. CTR. (Aug. 20, 2020) <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/> (This is an undercount).

<sup>195</sup> Lisa Christensen Gee et al., *Undocumented Immigrants’ State & Local Tax Contribution*, Inst. on Tax’n & Econ. Pol’y, 2, (2017) <https://itep.sfo2.digitaloceanspaces.com/immigration2017.pdf>.

<sup>196</sup> Taykhman, *supra* note 115 at 131.

<sup>197</sup> See generally, U.S. CITIZENSHIP AND IMMIGR. SERV., *supra* note 33.

<sup>198</sup> Taykhman, *supra* note 115 at 131.

<sup>199</sup> *The U Visa and How It Can Protect Workers*, Nat’l Imm. L. Cent., 1 (2010) <https://www.nilc.org/wp-content/uploads/2016/03/u-visa-protect-workers-2010-09-15.pdf>.

<sup>200</sup> Press Release, Educ. & Lab. Comm., Scott, DeLauro, Murray Introduce Bill to Stop Wage Theft and Improve Wage Recovery (May 10, 2022), <https://www.help.senate.gov/chair/newsroom/press/murray-delauro-scott-introduce-bill-to-stop-wage-theft-and-improve-wage-recovery>.

gain power and strengthen their rights. This proposition helps to protect noncitizen workers from unfair and exploitative practices.